Approaches to Global Sustainability, Markets, and Governance
Series Editors: David Crowther · Shahla Seifi

David Crowther
Shahla Seifi *Editors*

Governance and Sustainability

International Perspectives

Approaches to Global Sustainability, Markets, and Governance

Series Editors

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Chapter 1
The Continuing Development of Governance: International Divergences

David Crowther and Shahla Seifi

Abstract This chapter discusses the need for the global regulation of international markets and the problems with establishing any form of regulation for these. It does so in the context of governance as the central platform for any kind of management and control. It contrasts the regulation of markets for goods and services with the market for international finance to show significant differences. It discusses collaborative approaches and the limited success achieved and also the various bodies which perform some kind of international regulation. A central theme of the chapter is that globalisation makes. Need for international regulation more important but does not offer solutions. It is therefore argued that governance is the key to the successful operation of global activity. In doing so, this chapter serves as an introduction to the theme of the book.

Keywords Globalisation · Regulation · Governance · Financial markets · International trading · Contagion

1.1 Introduction

It is apparent that governance is one of the most important aspects of managing any organisation. Indeed failures in governance have been the cause of many corporate failures and problems. Other organisations have also experienced governance failures leading to problems and some well-known ones have occurred within the sporting industry. Although the principles of governance are well known and ably expounded in Crowther (2009a, b), it must be acknowledged that the rules are only as effective as the way in which they are applied and operated. And there is considerable variation in

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this. One of the reasons for this is the effects of globalisation which causes similarities around the world—and also differences.

1.2 Globalisation

The phenomenon known as globalisation can be described as a complex (Weiss 2002) or many dimensioned process (Aras and Crowther 2007) which involves political, social, cultural and economic change. Although the economic influence which countries face through globalisation is the most crucial. All the countries in the twenty-first century recognise market globalisation in finance and economy. The effects of globalisation on the environment, corporations and businesses, in particular, in developing countries are crucial, inevitable and dynamic. Because of this, globalisation is the main issue for some well-known international institutions and some associations like the UN, World Bank, IMF, WTO, Bank for International Settlement (BIS), etc. as well as for the anti-capitalist protest movement. For example, the IMF has identified six key principles which should strengthen the global economy framework (IMF 2002a). These are as follows:

1. Greater priority should be given to the concept of international interdependence within national policy.
2. Self-responsibility in national level should not be replaced with international cooperation.
3. Globalisation necessarily needs solidarity.
4. There is no national boundary for ecological threat to the Earth.
5. It is required to recognise rules of the game and ensure a level playing field, for participating in globalisation.
6. There is a need to respect cultural and experiential diversity as a sign of prosperity of the Earth.

These principles cover national politics, ecological and environmental issues, wealth distributions and international corporate behaviour, sharing experiences and roles of main players of this process. One of the main questions is whether globalisation is inevitable and will have the same effect or not for all countries and markets. Another is whether globalisation causes less independence for countries generally, or some of them in particular. According to research and experience, it seems that not only is it an inevitable fact but also that it is having a strong effect for all countries. Therefore, in another publication, the IMF has specified the four additional key principles for globalisation strengthening as follows (IMF 2002b):

1. There must be a confidence among the countries that their voices will be heard.
2. All countries should be confident that they will live up to their own responsibilities.
3. Local and national traditions and cultures and responsibilities and religions should be respected when making international decisions.

4. Global ethics including observing human rights is needed for a global economy.

These key principles indicated that globalisation has needed some basic rules such as solidarity, respect and responsibility for each nation's value, and global ethics, for all actors in this process. Another issue is cooperation, solidarity, sharing experience and decisions which also will affect the dependency of nations.

According to Moshirian (2011), international institutions like the World Bank and the IMF—which are describing financial architecture—have devoted themselves to raise the quality of lives of so many people all around the globe for more than 50 years. He claims that it would be a step forward for the World Bank and the IMF to develop modern architecture for international finance. He had previously stated (Moshirian 2002), however, that this would not improve the situation in many developing countries and would not empower them to eradicate the bases for their financial powerlessness to sort out their social, environmental or economic issues.

Theoretically by globalisation it is implied that there must be a movement of labour and capital and goods freely through trade, although practically the primary manifest has been the free capital movement.[1] Financial globalisation is, in fact, the name given to such trade liberalisation. In neoclassical models, financial globalisation generates major economic benefits: in particular, the theory holds that it empowers investors across the globe in better sharing of risks and letting capital flow wherever it has the highest productivity, and gives the opportunity to the countries to make the best use of their comparative advantages (Stulz 2005). Globalisation is clearly an important influence on financial markets. The security of debts and assets, deposits and bank loans, titles to physical capital and lands will all be affected by financial markets globalisation. It is quite easier to trade in such debts and assets to globalise than to do so with labour and commodities. Their globalisation has indeed progressed so quickly as the only thing engaged in financial transactions is just electronic entries or exchange of pieces of papers. Due to the revolution in communications, all these transactions have been made easier, cheaper and faster. There is no need for financial assets to cross any physical frontiers. However, national regulations play as barriers to their transaction (Tobin 2000), although in transitional economies and developing countries regulation alone cannot control and regulate global transactions.[2]

1.3 Financial Globalisation

What is suggested by conventional wisdom is that by integration of markets of national finance, financial flows are facilitated to poor from rich countries, and therefore their development will be accelerated—a version of the discredited Trickle

[1]The movement of people from the Middle East and Africa into Europe has, however, become an issue since 2014 and has arguably contributed to the vote by British people to leave the European Union.

[2]See Crowther (2009a, b) for a detailed consideration of the context of governance within the world economic system.

Down Theory used by the Chicago School of economists (and championed by many economists, notably Milton Friedman while disparaged equally by other eminent economists such as J K Galbraith) to legitimise the privatisation of Latin America. According to this view, the globalisation of financial markets assists the reduction of national inequalities. However, it is commonly believed that in an imperfect world, rich countries are able to offer financial security to lenders, and therefore it is impossible for the poor countries to compete with them if financial market be integrated (Matsuyama 2004). The expected benefit from the development of integrated financial markets and flow of financial assets is to create a prospect global investment and savings allocation which is more efficient than ever before. But such worldwide financial market might have a very negative and harmful effect on financial markets in transitional and developing countries. Imperfectly competitive financial markets[3] can have unpredictable reactions to adverse economic shocks, which can be spread to other countries with a contagious effect (see, for example, Sachs et al. 1996, Kaminsky et al. 2003). One of the main causes of financial shock and crisis is capital flows, especially portfolio investments, for developing countries which have unregulated markets and unsound financial systems. These countries are wide open for international financial shocks; therefore, we can say that financial globalisation carries with it large risks.

In order to defeat the unavoidable and often unmanageable results of globalisation what is required is market discipline and stability in finance. Thus, in order to enhance the benefits and reduce the risks due to globalisation, before achieving more effective market discipline to ensure sound financial systems, regulatory monitoring should be more watchful. To attain this, organisations in national or international levels like the Basle Committee of Banking Supervisors and the World Bank and IMF look after the soundness of financial systems in developing and developed countries in this modern environment (Knight 1998).

Globalisation must be considered to be a growing influence on financial markets and for all the reasons mentioned, globalisation is necessitating global standards and regulations for international trading and for corporations. If the world is going to be only one federation there will be a need to have international rules and standards such as international bank regulations, international accounting standards and trade regulations (Ball 2006; Crowther 2009a, b). Besides, in order to attain to a real globalised market, a globalised financial organisation is needed which can act as the central regulator and coordinator (Arestis et al. 2005).

Financial globalisation would lead to such negative effects as crises and contagions. The financial and economic crises of the 1990s and subsequently the years 2007–2012 give an indication that financial globalisation is not always beneficial to all, and that it might cause big disturbance and expenses like reserves depletion of foreign exchange, failing banks and bankrupt organisations, turbulence in stock market and devaluation of currency. More significantly perhaps it can cause severe disruption to economies and to the lives of people and lead to turbulence in the social

[3] What is often ignored is that it is only in a perfect competition status that a completely unregulated free market can work, which means never. It is simply a construct in economic theory.

environment.[4] In global financial markets, the finance flow suddenly reverses by a change in market recognition of borrowing ability. Since 1973, the random selection of a country in crisis is two times more probable. So policies should be enforced to broaden, deepen and make more robust the financial systems in order to prevent the repetition of these scenarios. These policies should consider what weak points might lead to vulnerability of financial structures to external shocks. These should be addressed globally and nationally (Das 2006).

There are, of course, benefits to go alongside the problems. Thus, by integration of the financial markets, many of the developing countries have got better access to worldwide savings. A number of countries which managed to borrow more and therefore develop more rapidly had increase in yield for foreign investments and gave them the chance to cut risks by diversifying the portfolio. Therefore, many have welcomed the trend of integrating of financial markets and the related enhanced financial flow in international level (Park 2002). For this reason, globalisation has increased the speed of market reactions in the financial markets of developing countries. These countries, which tend not to have sufficient market rules and regulations, are clearly open for the external effects which come from capital flows and portfolio investment. In terms of the increasing volume of international trade and portfolio investment, globalisation causes markets to misbehave in these emerging countries. For example, as a principal reason for crisis in Asia, we can mention the quickly developing globalisation and the unregulated market conditions. In 1997, the annual average net private capital flow in developing countries was $285 billion. If you compare net capital flows in earlier and later years then, for example, in 1982 it was $57 billion while in 2003 it was $167 billion—a rapid increase followed by a sharp decrease in capital flows in these developing countries after the crisis.

Thus, we can see that the world is getting smaller through globalisation and mediums such as the Internet are bringing people closer together; indeed, ICT (Information and Communication Technology) will eventually change the way organisations operate and society itself will also change. As the world shrinks, different cultures are coming into contact with each other. This is having an effect on different areas of life and business is no exception. As Solomon and Solomon (2004: 153) state, ‘International harmonisation is now common in all areas of business’.

When cultures meet it is the dominant culture that prevails; thus, for example, Solomon and Solomon (2004) highlight concerns that the Anglo-American model of corporate governance is becoming more prevalent internationally than others. It could be argued on a number of levels that this is not the best way forward as countries have their own individuality. Thus, Cornelius and Rosenblum (2005) state that if all countries were the same it would erase the competitive advantage that some countries have over others. At the same time, there are organisations such as the OECD which are promoting a need for a basic global standard of corporate governance.

[4]Extremism—both political and religious—is partly caused by this turbulence.

1.4 Regulation and the Organisation of International Trading

The economic model currently used for resource acquisition—and indeed for all other forms of trading—is based on the market as a mechanism for moderation. The dominant ideology of the operation of the market is based on that of free trade with the implicit assumption[5] that complete freedom will ensure the best possible outcome. This is underpinned by the Utilitarian philosophy of Bentham (1834) which assumes that maximising individual utilities are the way to maximise total utility. Although the concept of the tragedy of the commons had been described by William Forster Lloyd[6] in 1833 (Lloyd 1833), it has not been named as a concept until Hardin did so in 1968 (Hardin 1968) and so this refutation of Utilitarianism was not recognised in Bentham's time.

Since the recognition of the tragedy of the commons, the approach taken throughout the world has been to mitigate its effects through the privatisation of ownership rights (e.g. Smith 1981). Some have even argued that the regulation of the commons is in breach of the Universal Declaration of Human Rights.[7] So the free market system continues to reign supreme although it is no longer being pushed so avidly by its supporters. The experience of the global economic disaster of 2008 and the subsequent revelations of malpractice have shown problems with corruption and misuse of the power given by the free market. Additionally, protest movements have expressed discontent with the existing system. The largest example would be the Occupy movement[8] who claimed to represent the 99% of the population who had no influence and were no longer content to be 'the silent majority'.

Even the governments which have actively fostered the free market system recognise that it is not perfect[9] and have some monitoring and regulatory oversight attached to its operation. Power imbalances prevent the working of the free market and indeed led to some of the problems in the global failure of 2008. They also show the fallacy of Utilitarian economics as overall benefit by summation does not represent the best possible outcome (Crowther 2011). Some regulation is deemed necessary to comply with any form of social contract and Roberts (2011) makes the case succinctly. Even

[5]This assumption is actually made explicit by Milton Friedman and the Chicago School of Economics. It has also been made explicit by the US government during the era of G W Bush although this has become noticeably more silent during the era of Obama as president. We await what will happen during the Bush era of 'putting America first'.

[6]Lloyd used the example of unregulated grazing on common land in his example.

[7]Article 17 states that 'no one shall be arbitrarily deprived of his property' and regulation would have this effect.

[8]https://wearethe99percent.tumblr.com accessed 14/3/2017.

[9]The system is based on the concept of perfect competition which is taught in introductory economics (e.g. Lipsey and Chrystal 2015) but rejected thereafter. It is based on the assumptions that there are sufficient buyers and sellers so that none of them is large enough to influence the market. In reality the number of sellers is small and continues to become smaller through mergers and acquisitions until a very few sellers have a great power imbalance in their favour when compared to the individuals who are buyers.

when the British government under the leadership of Thatcher began the course of privatization in the belief that the free market was the route to economic efficiency they were swayed by the arguments of Veljanovski (1988,1991) that regulatory oversight was essential. The case for regulatory oversight of markets seems, therefore, to be overwhelmingly accepted although some still argue for its minimisation.

Within a country regulation is a relatively straightforward affair as it just requires the government to insist upon this and to establish a body to undertake the regulatory monitoring. The laissez-faire approach has been to allow industries to regulate themselves and this is still common practice in the UK (Bartle and Vass 2005). Often this has proved unsatisfactory and increasingly the government has become involved in the establishment of regulatory bodies and imposing external regulation. As this happens, of course, the burden of regulatory costs falls upon companies and resources must be devoted to their satisfaction.

The collaborative approach means that markets cannot operate independently based on supply and demand with price as a mediating mechanism. Some form of regulation is needed to provide the necessary governance of these markets. This, of course, poses a problem. It is relatively straightforward for national governments to impose regulatory oversight over the activity within their borders but manufacturing production is increasingly a global business with resources being acquired from one country, used in manufacturing in other countries and then sold in multiple countries. This requires regulation on a global basis and some form of global governance of markets.

1.5 Global Regulatory Bodies

Global regulation requires global organisations to exist with the power of sanction for non-compliance. This, in turn, requires national governments to surrender some of their sovereignty to these bodies. And this is problematic; even the surrender by the UK of some of its sovereignty to the European Union has been so difficult that currently the British people have voted to leave the EU with one of the arguments being about sovereignty. At a global level, this would require the agreement of all nations. Currently, there are 195 nations, a number which is almost double that of 60 years ago. Some are significantly more powerful—and therefore more influential—than others but reaching global agreement is a very difficult process and almost impossible. Even the major countries of USA, Russia, China and the EU (with possibly the UK added) cannot agree about very much. Also, the 27 countries of the European Union have difficulty in agreeing about many things.

There are, however, a number of global bodies which manage to exist in some kind of satisfactory way. The principle one is the United Nations which has a number of subsidiary organisations within it. The main ones are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the International Court of Justice. Regulation of international trading does not fall within its ambit. For this, the World Trade Organisation exists. This started in 1995 to replace

the former GATT.[10] This merely forms a basis for extensive discussion surrounding the reduction of taxes for international trading but has made slow progress because it still needs the agreement of all countries before it is agreed. For example, the Doha Development Round commenced in 2001 and collapsed in 2011. Currently, it is still pending with an uncertain future. Regional trade agreements, such as between the EU countries themselves and with other countries, exist but this future is somewhat uncertain with the UK on the point of leaving. Similarly, regional agreements involving the USA are collapsing as Trump withdraws the USA from them. The prognosis for securing agreement among all countries to collaborate on manufacturing and the acquisition of raw materials seems at best doubtful.

When environmental protection is considered then the situation is equally bleak. In 1992, the United Nations Framework Convention on Climate Change was established, which led to the Kyoto Protocol in 1997. This was eventually signed by almost all countries but the USA was a significant non-signatory. Moreover, Canada renounced the agreement and withdrew in 2012. An attempt to revise it through the Doha agreement has met with limited success so far and the future of climate change control is at best uncertain, especially as USA has explicitly rejected the Paris Accord.

It is reasonable therefore to say that a global body in a position to establish and monitor a collaborative approach to the functioning of markets in manufacturing goods and resources does not exist. If the need is accepted for a change in the market mechanism, then there would be a need for the establishment of a body to undertake this. This would be necessary but would certainly not be an easy process because global benefit is in conflict with national self-interest as well as corporate self-interest.

It is, however, important to remember the argument of Popper (1957) regarding the poverty of historicism. In this argument, he contends that an analysis of the past is no guide to the future and that basing any expectations upon what has happened in the past is flawed and unreasonable. Thus, the fact that solutions have always been found previously gives us no cause for optimism in the present and immediate future.

1.6 The Need for Regulation

All organisations need some form of governance (Bevir 2013). At its simplest, governance is merely a set of rules which define the way the individual members of an organisation interact with each other. It is only when the term is used in either a political sense that it has any other connotation or a corporate sense when it refers to relations between the corporation and its investors. In general, it applied to any organisation of two people or more who need some sort of rules to engage in mutual activity. Thus, the markets which exist for raw materials trading need some form of governance (Williamson 1979) as would these when adapted to a collaborative approach. The whole purpose of governance rules is to share procedures to enable

[10]General Agreement on Trade and Tariffs.

the organisation to function and is based on the principles of transparency, fairness, accountability and the rule of law.

The United Nations does not fulfil the role of world governance although some (e.g. Rosenau 1999, Thakur and Weiss 2006) consider it as a possibility and perhaps desirable. Indeed the pressure group Forum for a New World Governance[11] exists to promote this concept. Thakur and Van Langenhove carry this concept forward further (2006) by proposing regional governance bodies[12] which eventually will become global governance. Such writers, however, seem to fail to differentiate between governance as a governmental function and governance as simple rules of operation. Thus, governance has become inseparable from the political domain and it is here where such a proposal will fail as nations are reluctant to surrender their autonomy and sovereignty. Without these rules, however, international relations are subject to the vagaries of political alliances and to the use of power with the most powerful nations exerting the greatest influence. This, of course, is one of the problems of the free market mechanism as a corollary of Utilitarian Economic Philosophy.

Governance of global trading markets, however, implies no political content but is merely rules of process and dispute resolution, which is nowhere near as controversial. To an extent, this already exists in the form of international trading—via the WTO rules which act as a default if no alternative between countries has been agreed (Mavroidis 2015)—and especially international finance (Quinn 1987). In each case, the regulation is not separated from the political domain, which can cause problems in both monitoring and enforcing sanctions and even in agreeing change. As the regulation is of a competitive economic market, then it is indeed difficult to separate the regulation of it from the use of power and therefore from the political domain and this is probably one of the major causes of the difficulties which arise in the negotiation of trading regulations.

1.7 Governance and Regulation

At its simplest, governance is just the set of rules and procedures by which people engage in any form of joint tasks or activities. In general, these need to be written so that they are available to everyone concerned and it can be seen that everyone is following the same procedures or would take the same actions in the same circumstances. If the rules of governance are incomplete or are not fully written down then this can lead to corrupt activity or the misuse of power. This is true of any form of organisation and is not limited to commercial organisations or to governments. An

[11] https://www.world-governance.org/spip.php?rubrique6&lang=en accessed 14/3/2107.

[12] The European Union was a prime example of this in 2006 with inevitable closer union seeming likely. Subsequent events have placed doubt upon this closer union and there is even a strong degree of questioning of the continuing role of the EU.

example of this is FIFA and the Sepp Blatter era where poor governance[13] was held responsible to the corruption problems experience. From this, it follows that transparency must exist so that all concerned parties can see how all other concerned parties are behaving in the agreed upon manner. This, therefore, requires accountability so that people can be held responsible for actions taken or not taken. With accountability comes the need for regulation (Braithwaite et al. 2007) and this, therefore, requires some form of regulatory oversight.

Regulatory oversight necessitates someone to undertake this function and this can be done either internally—by the organisation itself—or externally by either an existing body or one set up expressly for this purpose. The accounting profession provides a prime example of an internally regulated organisation while the Enron scandal (Toffler 2003) provides a prime example of the problems that can ensue from this form of regulation. An example of external regulation by an already existing organisation is given by the WTO and trade regulation which by a body expressly established for the purpose is given in the UK by the Financial Services Authority which has since become two bodies, The Financial Conduct Authority and the Prudential Regulation Authority, controlled by the Bank of England. Regulation within a country is not a great problem as it can be imposed by the government if all else fails. Markets for the trading of raw materials is, however, a different matter as this is done in an international manner in global markets. Indeed the market as such is often virtual as the price mechanism works in any competitive environment. Effectively, therefore, this is a global market which would require regulating on a global basis—and the establishment of a regulatory body to provide this oversight and with the power to impose the sanctions agreed upon in the event of non-compliance.

It is difficult to see how this could be established without the agreement of all nations, and certainly the agreement of the most powerful nations. It is equally difficult to see how this could be established without any geopolitical considerations. It should also be recognised that at the moment the power probably lies mainly with the consuming countries of those raw materials as they have the economic resources and extract greater value added from the employment of resources in production. As time progresses, however, the scarcity of resources, as they become more deplete, will change and this will inevitably change the power basis towards those who have the raw materials and away from those that desire them. Conceivably, therefore, Marshall McLuhan prediction (McLuhan and Fiore 1968) that future wars will be based on economic criteria has been shown to be both prescient and in need of serious consideration. Seifi and Crowther (2016) have noted that the BRIC countries possess a considerable share of these remaining resources while also developing their industrial capability which will have a significant effect on the current markets for resources and this will become more pronounced as time progresses, as will resource depletion and the development of industrial production capability in these (and other) countries. This, of course, would strengthen the argument for a collaborative approach, at least among the developed but resource-poor countries (such as the UK) but perhaps lessen

[13] https://www.theguardian.com/football/blog/2015/jun/09/fifa-reform-manifesto-football-sepp-blatter accessed 14/3/2017.

the desirability among developing but resource-rich countries. This also increases the likelihood of armed conflicts increasing. Such conflicts exist at the present and have been forecast for the future (e.g. Bulloch and Darwish 1993) as well as explained by economic reasons such as (in part) the invasion of Iraq in 2003 (Bassil 2012).

The regulation of the market for raw materials in a collaborative environment would require the establishment of a new organisation with a new set of rules. This is possible, of course, and the example of the Russian federation after the collapse of the USSR gives an example of how this can be done (de Rosa D and N Malyshev 2008). It is, however, a complicated process without any guidelines. One of the basic principles of such a market would have to be the allocation of resources. The conventional mechanism for market exchange is that of price but this would not work in this situation as price allocates resources to those who can pay the most, and therefore probably in developed countries, whereas the resources would need to be allocated in the way which would enable maximum use to be made of them. This raises several problems as given below.

- Determining optimal use
  In theory, economics enables resources to be allocated in the optimal way through the price mechanism which implies that the highest price will always be paid by the party which can make best use of the resources. But this best use is determined by what is most profitable to that party which may well not be what is best for the world as a whole. It also presupposes a short-term view of what is best whereas a sustainable future might need different decisions when the future is taken into account—in other words, the long-term view might well need to outweigh the short-term view and immediate profitability. A further difficulty is that optimal use is not an absolute concept and competing uses might well be preferred by different people.
- National prejudices
  National interests and prejudices cannot be separated from a global allocation process. Many countries have preferred trading partners, such as the claimed special relationship between the UK and the USA, or the reinstated special relationship with commonwealth countries. Equally many countries are wary of trading with certain others due to such reasons as ideological reasons or religious differences, or preferences for these reasons. It could be claimed that economic utility ignores such preferences and prejudices but in reality the trading of increasingly scarce resources can never be separated from either political influences or from power relationships.
- Political influences
  Political processes among nations consider a wide variety of aims and objectives which are not economic. Indeed strategic objectives are often more important and these could outweigh economic benefit in decision-making. Thus, the optimal sustainable capability of the world as a whole is almost never considered and does not even rank on most decision-making processes in the political arena. Indeed even if war is engaged in for economic reasons then the outcome might be beneficial for some individual countries but is never beneficial for the planet

as a whole: some nations become worse off as a result. It is also the case that resources are used for this purpose and therefore diverted from other purposes and so the net productive capacity of the planet is reduced in this manner. As resources become more depleted, and therefore more scarce, then this becomes an increasingly important consideration.

- Corruption
  Regulation is part of governance and human nature means that procedures become more lax as they continue in existence. Rules get ignored and corruption creeps into the system. With most systems of governance this can be overcome by an oversight of the process—regulating the regulators. At a national level, this is not really a problem as there is always a higher authority. At a global level, however, such as required by this system, there is no higher authority who can check on the world governance of markets.

1.8 The Idea of Global Governance

All governance systems are mainly concerned with management or governance of formal groupings of people and hence with political power, institutions and, eventually, control. In this context, the idea of governance denotes official political institutions which are aimed at coordinating and controlling interdependent social associations and can implement decisions. In the modern world, the idea of governance is commonly used to explain the regulation of interrelated associations given the nonexistence of any overarching political organisation, like that of the international system. Hence, it can be suggested that global governance means managing the world processes when there is not government for the whole world. At the moment, organisations such as WTO and UN address such issues. Such organisations have accomplished partial success in introducing some kind of world governance. However, as Rosenau (1999) suggests these organisations are a part of acknowledgment of the complexities and an effort to address international problems which exceed the ability of countries to solve.

By mentioning global governance there is no implication that such a system actually exists (as it plainly does not). Equally, any study of the effectiveness of such a system is not claimed to exist. Instead it is just to acknowledge in a world heading towards globalisation, sorting out problems in global and international levels requires a kind of governance. Hence, this is a descriptive expression which is to acknowledge the problem and address the arrangements for collaboration to solve problems. Such arrangements might consist of laws or formal organisations to deal with matters of collective interest of such bodies as NGOs and intergovernmental bodies, countries, as well as private sector bodies and pressure groups. Such a system incorporates both formal (such as coalitions) and informal (such as guidelines and practices) units as well as the temporary ones. Hence, it can be suggested that a world governance is a combination of informal and formal institutions, associations, processes

and mechanisms among citizens, intergovernmental and nongovernmental organisations, markets and countries to articulate matters of common interest, mediate the differences and to establish obligations.

It is important to stress that global governance cannot be defined as world government. In fact, if the world had a unique government then there would not have been any need to such a system. But today the enforcement power is the lawful monopoly of different governments. Hence, by global governance, it means an interaction between different countries in order to sort out issues affecting several countries or regions when compliance cannot be enforced. Indeed, enhancement of solving global problems does not need setting up stronger formal institutions. Instead what is needed is existence of consensus on standards and procedures to be followed.

It can be considered that steps are currently in hand to form a consensus such as the creation of means for global accountability. For instance, the UN Global Compact,[14] which has been labelled as the biggest voluntary corporate responsibility initiative of the world, comprises the views of international and national bodies, businesses, labour unions and different NGOs to protect the principles of environmental conservation and also human rights. There is no enforcement of the principles by anyone and participation is completely voluntary. Increasingly, however, companies adopt the compact because they are economic-wise sensible and also as their stakeholders, including their shareholders care increasingly about these issues. It therefore provides a means enabling the monitoring of compliance by companies. Such techniques as the Global Compact increase the power of local communities and also individuals to make companies keep accountable.

The importance of good governance is imperative in all parts of society, not just in the corporate environment but also the political environment and society generally. For instance, improved public confidence in the political environment stems from strong governance. When the economic situation means that resources are limited and people cannot meet their lowest expectations, then good levels of governance can help to satisfy people and promote the general welfare of society. Naturally, a firm's concern with governance is also very important in the corporate world.

An essential factor for good performance of a company is good governance and an aspect of it is stewardship. In the context of sustainability, it is reasonable to argue that the concern of a firm's manager would be equally about the stewardship of the firm's financial resources as well as the environmental ones. But environmental resources are different because they are often situated outside the firm. So, in this regard, such stewardship should be both concerned with the firm's and the society's resources. Then it can be concluded that the stewardship of the outside environmental resources should involve the provision of sustainability. Predominantly sustainability has a focus on tomorrow and concerns about making sure that the options made regarding the consumption of resources at present do not unduly limit the choices available in the future. This includes a range of activities such as the reduction of waste, minimising pollution and generating renewable resources (or finding alternatives). It also includes the development of new techniques through

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[14] See www.unglobalcompact.org.

research and development. Sustainability also requires an acceptance that current investment is partly an investment for the future, and not merely a cost to be borne.

It is standard within economic theory that the environment in which economic activity takes place is based within a free market with open competition. This is because it is generally accepted that competition engenders the necessary incentives for both efficiency in operations and equity in the way in which benefits are derived and shared. It is only when the market itself seems unable to ensure this that government intervention becomes necessary. Crowther and Seifi (2011) argue that the resulting regulation is a means of replacing the imperfectly operating market forces and acts as a substitute. The point of this intervention through regulation is to make sure that nobody is in a position to exploit the inequalities in power in order to gain benefits. It is also to make certain that the gains in efficiency result in equity in the distribution of the resultant benefits.

One form of regulation which has been generally used is that of self-regulation, in which an industry controls the activities of its own members, and this has been generally accepted as satisfactory. It has more recently been shown that such self-regulation does not operate satisfactorily as the Enron debacle showed with respect to the auditing industry and the demise of Arthur Anderson. In such cases, it is clear that external regulation is required (Veljanovski 1991). Crowther (1996) argues that the purpose of such regulation is to balance the needs of the various stakeholders, in which each tends to have different perspectives and expectations regarding satisfactory performance of the company concerned and the distribution of benefits; mostly, however, two groups of stakeholders are paramount—customers and investors.

The focus in the western capitalist countries is highly on returns provided for the shareholders which makes them the most important stakeholders. Veljanovski (1991) argues that the duty of the regulators in the countries governed by regulation has been to safeguard consumers so that monopoly would not abuse their rights. When discussing about customers then the main focus is on the local ones, perhaps because their number is the highest and they are in the poorest situation for bargaining, or perhaps as government needs their voting for elections. Regulation here is based on the idea of protecting the consumer so that they would not be abused to the cost of shareholders. Therefore, National Consumer Council (1989) considers that shareholders are only allowed to receive higher returns if prices are reduced for consumers. In the United Kingdom, such kind of regulation was common in the beginning of this century and again it has become favourite as it is argued that equitable distribution is impossible through other kinds of regulation.

During the 2008–13 financial crisis, failures in regulation and governance were highlighted. As stated by Grabel (2003), there is one flaw in the argument surrounding such failures and a problem about how to manage in order to prevent financial crisis in future. This is related to acknowledging and regulating a financial market which is truly worldwide. The consensus of governments has led to freedom of movement for

funds around the world's financial markets which arguably led to a global crisis of 2007 through a disguising of doubtful debts[15] within a variety of financial packages.[16]

Unfortunately, regulators must focus upon a specific market in which they are located while finance evades such regulation by its potential to spread everywhere. As Becker and Westbrook (1998) state, its impact is that it is impossible to have a realistic kind of regulation. As a result of such failure in regulation, contamination migrates everywhere and faulty processes used somewhere in financial markets change to a norm for the whole of markets.

This seems to make a crisis inevitable which then spreads to all economies resulting in a crisis of confidence in all markets. The financial market is a truly global market with easy movement from one country to another around the world. This cannot be regulated except by a form of global regulation—something which we do not seem capable of achieving. Presumably because of the respective self-interests of various governments.

1.9 Conclusions

There is no suggestion that any kind of global order and overseeing is needed to ensure international trading and interaction. Indeed the prospect seems unlikely. It must be recognised, however, that in its absence there can be problems in the regulation and governance of international markets. At present, there are differences in application and the purpose of this book is to investigate some of these.

References

Aras, G., & Crowther, D. (2007). Sustainable corporate social responsibility and the value chain. In D. Crowther, & M. M. Zain (Eds.), *New perspectives on corporate social responsibility* (pp. 109–128).

Arestis, P., Santonu, B., & Sushanta, M. (2005). Financial globalisation: The need for a single currency and a global central bank. *Journal of Post Keynesian Economics, 27*(3), 507–531.

Ball, R. (2006). International financial reporting standards (IFRS): Pros and cons for investors. *Accounting and Business Research, 36*(supp 1), 5–27.

Bartle, I., & Vass, P. (2005). Self—regulation and the regulatory state—A survey of policy and practice*; Report No 17, Centre for the Study of Regulated Industries*; University of Bath.

Bassil, Y. (2012). The 2003 Iraq war: Operations, causes and consequences. *Journal of Humanities and Social Sciences, 4*(5), 29–47.

[15]One of the causes of the crisis was that these packages were not understood by anyone (The Economist Sept 7 2013) and just accepted—in which case this form of investing is no different to gambling such as Russian Roulette and decries any claim of the efficient market hypothesis (Malkiel 1991).

[16]Even the previous US regime (led by Obama) admitted the existence of deficiency in regulation which has been very helpful to the creation of this situation, although the current (Trump) regime appears to think the opposite.

Becker, B., & Westbrook, D. A. (1998). Confronting asymmetry: Global financial markets and national regulation. *International Finance, 1*(2), 339–355.
Bentham, J. (1834). *Deontology or the science of morality*. London: Longman, Rees, Orme, Browne, Green, and Longman.
Bevir, M. (2013). *Governance: A very short introduction*. Oxford: Oxford University Press.
Braithwaite, J., Coglianese, C., & Levi-Faur, D. (2007). Can regulation make a difference? *Regulation and Governance, 1*(1), 1–7.
Bulloch, J., & Darwish, A. (1993). *Water wars: Coming conflicts in the middle east*. London: Victor Gollancz.
Cornelius, W. A., & Rosenblum, M. R. (2005). Immigration and politics. *Annual Review of Political Science, 8,* 99–119.
Crowther, D., (2009). Corporate governance and corporate social responsibility in context. In G. Aras, & D. Crowther, (Eds.), *Global perspectives on corporate governance and CSR* (pp. 1–41). Springer: Farnham, UK.
Grabel, I. (2003). Averting crisis? Assessing measures to manage financial integration in emerging economies. *Cambridge Journal of Economics, 27*, 317–336.
Crowther, D. (1996). Corporate performance operates in three dimensions. *Managerial Auditing Journal, 11*(8), 4–13.
Crowther, D. (2009), Corporate governance and corporate social responsibility in context. In G. Aras, & D. Crowther, (Eds.), *Global perspectives on corporate governance and corporate social responsibility* (pp. 1–41). Farnham: Gower.
Crowther, D. (2011), The utilitarian fallacy. In G. Aras, & D. Crowther, (Eds.), *Governance in the business environment* (pp 71–90). Bingley: Emerald.
Crowther, D., & Seifi, S. (2011). *Corporate governance and international business*. Copenhagen: Ventus.
Das, D. K. (2006). Globalization in the world of finance: An analytical history. *Global Economy Journal, 6*(1), 27–45.
de Rosa, D., & Malyshev, N. (2008). Regulatory institutions: A blueprint for the Russian federation. *OECD Working Papers on Public Governance*; No. 10; OECD Publishing. doi:10.1787/241530366501.
Hardin, G. (1968). The tragedy of the commons. *Science, 162,* 1243–1248.
International Monetary Fund. (2002a). *Strengthening the framework for the global economy*. Washington DC: IMF.
International Monetary Fund. (2002b). *Working for a better globalisation*. Washington DC: IMF.
Kaminsky, G. L., Reinhart, C. M., & Vegh, C. A. (2003). The unholy trinity of financial contagion. *Journal of Economic Perspectives, 17*(4), 51–74.
Knight, M. (1998). Developing countries and the globalisation of financial markets. *Word Development, 26*(7), 1185–1200.
Lipsey, R., & Chrystal, A. (2015). *Economics* (13th ed.). Oxford: OUP.
Lloyd, W. F. (1833). Two lectures on the checks to population; Oxford: JSTOR 1972412.
Malkiel, B. J. (1991). Efficient market hypothesis. In J. Eatwell, et al. (Eds.), *The World of Economics* (pp 211–218). London: Palgrave.
Matsuyama, K. (2004). Financial markets globalisations; symmetry-breaking and endogenous inequality of nations. *Econometrica, 72*(3), 853–884.
Mavroidis, P. C. (2015). *The regulation of international trade*. Cambridge: MA.; MIT Press.
McLuhan, M., & Fiore, Q. (1968). *War and peace in the global village*. San Francisco: Hardwire.
Moshirian, F. (2002). New international financial architecture. *Journal of Multinational Financial Management, 12*, 273–284.
Moshirian, F. (2011). The global financial crisis and the evolution of markets, institutions and regulation. *Journal of Banking and Finance, 36*(1), 14–59.
National Consumer Council. (1989). *In the absence of competition: A consumers view of public utilities regulation*. London: HMSO.

Park, J. H. (2002). Globalisation of financial markets and the asian crisis: Some lessons for third world developing countries. *Journal of Third World Studies, 19*(2), 141.

Popper, K. R. (1957). *The poverty of historicism.* London: Routledge.

Quinn, D. (1987). The correlates of change in international finance regulation. *American Political Science Review, 91*(3), 531–551.

Roberts, P. C. (2011). The case for regulation. *The International Economy*, Fall 2011, 45–63.

Rosenau, J., (1999). Toward an ontology for global governance. In M. Hewson, & T. J. Sinclair, (Eds.). *Approaches to global governance theory*, Albany, NY: State University of New York Press.

Sachs, J., Tornell, A., & Velasco, A., (1996). Financial crises in emerging markets: the lessons from 1995, NBER Working Paper No 5576, published as *Brooking Papers on Economic Activity, 27*(1), 147–199.

Seifi, S., & Crowther, D. (2016). The governance of sustainable development. In D. Crowther, & L. Lauesen, (Eds.), *Accountability and social responsibility: International perspectives*, Bingley: Emerald.

Smith, R. J. (1981). Resolving the tragedy of the commons by creating private property rights in wildlife. *Cato Journal, 1*(2), 439–468.

Solomon, J., & Solomon, A. (2004). *Corporate governance and accountability*. London: John Wiley & Sons.

Stulz, R. M. (2005). The limits of financial globalisation. *Journal of Finance, LX*(4), 1595–1638.

Thakur, R., & Weiss, T. G. (2006). *The UN and global governance: an idea and its prospects.* Chicago: Indiana University Press.

Tobin, J. (2000). Financial globalisation. *World Development, 28*(6), 1101–1104.

Toffler, B. L. (2003). *Final accounting: Ambition, greed and the fall of Arthur Andersen.* New York: Broadway Books.

Veljanovski, C. (1988). *Selling the state –privatization in Britain*, Weidenfeld.

Veljanovski, C. (1991). The regulation game. In C. Veljanovski, (Ed.), *Regulators and the market: An assessment of the growth of regulation in the UK.* London: Institute of Economic Affairs.

Weiss, J. (2002). *Industrialisation and globalisation: Theory and evidence from developing countries.* London: Routledge.

Williamson, O. E. (1979). Transaction—cost economics: The governance of contractual relations. *Journal of Law and Economics, 22*(2), 233–245.

Part I
Legal and Regulatory Aspects

Chapter 2
Incorporating CSR in Corporate Governance of Banking Institutions in a Challenging Institutional Context: A Case Study of Nigeria

Victor Ediagbonya

Abstract One of the points of debate on the role of corporate governance in financial institutions is corporate accountability. Corporate accountability is arguably attainable if corporate governance in financial institutions is appropriately regulated. While there is the question of the adequacy of regulatory standards and enforcement in challenging institutional context of the developing and emerging markets (DEMs), corporate social responsibility (CSR) can play a complementary role to regulation by public agencies. The concept of CSR may be distinguishable from corporate governance, the former can play a strategic role in the promotion of good corporate governance, particularly in the banking sector. Drawing on the institutional theory, this paper examines the connection between CSR and corporate governance. It identifies the difficulties of implementing global CSR models in the disconnection between the models and the institutional environment. The chapter argues that CSR models of developed economies cannot be adopted effectively in the DEMs due to institutional challenges. Using Nigeria as a case study, it suggests ways of incorporating CSR as a corporate governance mechanism for banking institutions in the DEMs. This limited regulated form of CSR will, in particular, include the adoption by regulators banking-specific CSR principles that are appropriate for the institutional contexts as part of banking regulation and supervision and multiple stakeholder implementation and enforcement of CSR standards. A limited regulated form of CSR can help to fill the corporate accountability gap in the banking institutions of some countries in the DEMs. In light of the above, CSR could be integrated into the corporate governance framework of banks in the DEMs by compelling banks to consider the interest of all its stakeholders. Banks are generally expected to conduct their businesses with transparency and integrity. Therefore, this chapter suggests that CSR policies implementation within the banking sectors should be the responsibility of the board of directors. There should be a mandatory requirement within the corporate governance framework for the board of directors to report on their economic, social and environmental activities and also of those of their supply chains. The chapter further proposes the idea of integrating CSR into the corporate governance of banks

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by linking executive pay to their performance on economic, social and environmental issues. It also suggests that one of the qualifications for the office of executive and non-executive directors' banks would be to have some form of CSR training or and work-related CRS experience for at least for a period of 3 years.

Keywords Corporate governance · Corporate social responsibility · Institutional theory · Banking institutions · Banking regulation and directors' duties

2.1 Introduction

One of the points of debate on the role of corporate governance in financial institutions is corporate accountability. Corporate accountability is arguably attainable if corporate governance in financial institutions is appropriately regulated. While there is the question of the adequacy of regulatory standards and enforcement in challenging institutional context in a country like Nigeria, corporate social responsibility (CSR) can play a complementary role to regulation by public agencies. The concept of CSR may be distinguishable from corporate governance. The former can play a strategic role in the promotion of good corporate governance, particularly in the banking sector.

Drawing on the institutional theory, this chapter examines the connection between CSR and corporate governance. It identifies the difficulties of implementing global CSR and corporate governance models in countries with institutional challenges. This is due to the disconnection between the global models and the institutional environment in those countries. It argues that CSR models of developed economies cannot be adopted effectively in Nigeria due to institutional challenges. Using Nigeria as a case study, it suggests ways of incorporating CSR into the corporate governance mechanism for banking institutions in Nigeria. This partial regulated form of CSR will, in particular, include the adoption by regulators banking-specific CSR principles that are appropriate for the institutional contexts as part of banking regulation and supervision and multiple stakeholder implementation and enforcement of CSR standards. A partial regulated form of CSR can help to fill the corporate accountability gap in the banking institutions in Nigeria and elsewhere. For example, in some developing and emerging market that might be faced with similar institutional challenges and have adapted the western CSR and corporate governance model.

In light of the above, CSR could be integrated into the corporate governance framework of banks in Nigeria by compelling banks to consider the interest of all its stakeholders. Banks are generally expected to conduct their businesses with transparency and integrity. Therefore, this chapter suggests that CSR policies implementation within the banking sectors should be the responsibility of the board of directors. There should be a mandatory requirement within the corporate governance framework for the board of directors to report on their economic, social and environmental activities. Such reporting requirements should also include CSR approach of their supply chains. The chapter further proposes the idea of integrating CSR into the

corporate governance of banks by linking directors' compensation to their performance on economic, social and environmental obligations as this is at the heart of CSR. The economic obligation would include youth empowerment through the creation of jobs and provision of loans for MSMEs will be criteria for the receipt of the director remuneration. It also suggests that one of the qualifications for the office of executive and non-executive directors in the banking industry would be to have an up to date CSR certificate, such knowledge is achieved through CSR training in the form of continuing professional development (CPD). Since this chapter focuses on the implementation of CSR initiatives in the corporate governance of banking institutions in a challenging institutional context using Nigeria as a case study, it is imperative to describe what is meant by a challenging institutional environment.

The challenging institutional environment is where the legal, regulatory and supervisory institutions are, in no small extent weak and corrupted. This undoubtedly summarises the prevalent institutional environment in Nigeria. It is this institutional context that defines and constrains the adaptation of the developed countries' CSR and corporate governance models. For example, in Nigeria, the legal, regulatory and supervisory institutions are weak, the legal system is overstretched and there is a backlog of cases in the various courts. In this time and age, Nigeria judges are still writing court proceeding in longhand. However, in the United Kingdom, judges make use of stenographers, who record court proceeding in shorthand with the aid of the stenotype machine. This process enables the United Kingdom courts to deal with cases on time. Another characteristic of a challenging institutional environment is the absence of established commercial groups, although civil societies and non-governmental organisations (NGO) are present, they are in the embryonic stage with little or no impact on how institutions are managed. As a result of the weak institutions in these environments, any westernised CSR and corporate model designed on the assumption that the institutional environment is robust and effective is bound to fail. In this regard, an alternative model of corporate governance embedded with the fundamentals of CSR approach is what is required in the Nigeria banking industry.

This chapter is organised as follows: the first part focuses on the relationship between corporate social responsibility and corporate governance. The second part dwells on the theoretical aspect of corporate governance, it considered the four main theories of corporate governance, namely, the agency theory, stewardship theory, stakeholder theory and institutional theory. The Anglo-Saxon model which originates from the developed economies, for example, the United Kingdom is based on the agency theory. It examines the various institutional environments of the developed economies and why such a model would yield the desired result in those countries. The third part of this chapter examines the institutional context in Nigeria and, in analysing the institutional framework, it examines various CSR initiatives organised by some banks in Nigeria, this chapter distinguishes between philanthropic model and self-regulatory model of CSR. The question at this juncture is whether the CSR discretionary approach which is practised in the Nigerian banking industry is adequate to meet the economic, social and environmental challenges of the country? Or whether there is a need to ensure strict compliance of the CSR framework through conventional state regulation? The fourth part of the chapter suggests the various ways

CSR can be embedded in the corporate governance of banks in Nigeria. The fifth section of the chapter highlights the benefit of a combined CSR corporate governance paradigm for banks in Nigeria. The last section concludes the chapter.

2.2 The Debate Underpinning CSR and Corporate Governance

To properly understand the relationship between CSR and corporate governance, it is necessary to examine the meaning, nature and scope of the individual concept. This will provide the background knowledge required to fully understand the relationship between CSR and corporate governance and the benefit to be derived by all stakeholders if specific CSR requirements are embedded in the corporate governance of banks in Nigeria. This inclusion will not only make CSR initiatives by banks meaningful, but it will also ensure that the CSR interventions are also impactful.

2.2.1 Definition of CSR

Despite the growth of CSR in contemporary times, defining the concept is not an easy task, it has remained a complex and contested subject.[1] The reason for this is not farfetched, the contextual meaning of the CSR may vary from one jurisdiction to another. This is because what may constitute social responsibility in certain jurisdictions, for example, Nigeria may not be regarded as social responsibility in other jurisdictions like the United Kingdom or the United States.[2] Society's expectation usually vary from place to place. In Nigeria, for example, corporations are expected to contribute to the infrastructural development of their immediate locality in particular and to some extent, the entire country in general. However, in most developed economies, it is normally the responsibility of the government to provide basic infrastructural facilities. It is those minute but an important variant that creates the difficulty in having a consensus amongst scholars on the definition of the concept. Despite the complexity and lack of consensus amongst CSR scholars in having a uniform definition of the concept,[3] some scholars and institutions have offered definitions which have in no small measure contributed to the development of CSR in general as seen in several CSR literature. It is, therefore, necessary to consider some of these crucial

[1]Kenneth Amaeshi, Paul Nnodim, Onyeka Osuji, 'Corporate Social Responsibility, Entrepreneurship, and Innovation' (First Published 2013, Routledge Taylor & Francis, London) p. 7.

[2]M Gobbels, Reframing corporate social responsibility: The contemporary conception of fuzzy notion, Journal of Business Ethics, 44, 2002 p. 95–105.

[3]Tuan Nooriani Tuan Ismail, 'Corporate social responsibility: The influence of the silver book' International Journal of Business and Management Studies 3(2), 2011, p. 371–383.

definitions, as this will lay the essential foundation for the proper understanding of the subject.

One of the foremost definitions of CSR was the one offered by Howard Bowen[4] who defined CSR as the 'obligation of the businessman to pursue those policies, to make those decisions, or follow those lines of action which are desirable in terms of the objectives and values of our society.' However, Milton Friedman held a contrary view of what should constitute the social responsibility of a businessman. He argued that 'the only social responsibility of businesses is to increase its profits.'[5] It is instructive to note that the above assertion is based on the traditional view of the corporation which suggests that the primary, if not the sole purpose of businesses is the maximisation of profits and the promotion of shareholder value. This has led to the shareholder primacy model been practised in some developed economies, for example, the United Kingdom and the USA. However, this traditional view of the corporation has become less popular as it relates to CSR in recent time, particularly during the last three decades. Many businesses have been put under pressure to consider the interest of other stakeholders within and outside the corporation as part of their CSR obligation.[6] One of the most popular definitions of CSR is that propounded by Archie Carroll, which states that 'the social responsibility of business encompasses the economic, legal, ethical and discretionary (philanthropic) expectations that society has of organisations at any given point in time.'[7] The above definition adopts a nonchalant approach to CSR, seeing the responsibilities as the mere expectations the society has of the corporation rather than obligations which the corporation must comply with. Bearing that in mind, Carroll's definition, which had been represented in the diagram below, will no doubt shed some light when analysing how the Nigerian banks implement their CSR initiatives.

Figure 2.1 covers the four core responsibilities the society expects the organisation to fulfil in order to promote sustainable development. The attention and priority given to each head may vary from one country to another. Some may argue that those responsibilities need not be regulated, their argument is premised on the assumption that organisations are good corporate citizens and as such, they would discharge their responsibilities without being compelled or monitored. In as much as this to a certain degree may be true, it is correct to see the corporation as a corporate citizen that has rights and responsibilities like every other natural person. However, what is not true is the assumption that all corporations are good citizens. In fact, the same corporation can be a good citizen in one country due to the law that is operating there, and they may behave differently in another country because there are little or no law to regulate their conducts. Therefore, while there is the assumption that corporations are

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[4]Howard Bowen, 'Social Responsibilities of the Businessman' (Harper, New York, 1953) p. 3.

[5]Milton Friedman, 'The Social Responsibility of businesses is to increase its profit,' The New York Times, 13 September 1970, p. 122–126.

[6]Andy Lockett, Jeremy Moon, Wayne Visser, 'Corporate Social Responsibility in Management Research: Focus, Nature, Salience and Sources of Influence,' Journal of Management Studies (2006) 43(1):115–136.

[7]Archie Carrol, 'The Pyramid of Corporate Social Responsibility: Towards the Moral Management of Organisational Stakeholders' Business Horizons, (July/August 1991) 34; 39–48.

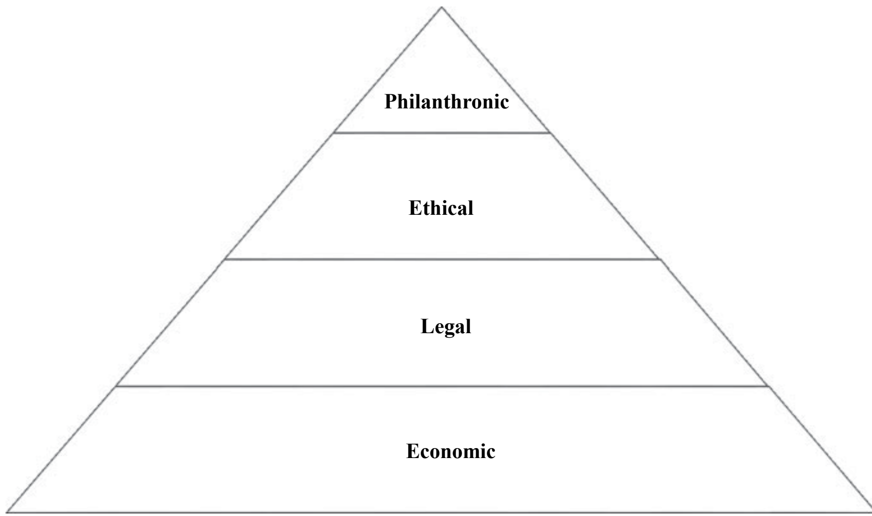

Fig. 2.1 The Carroll's pyramid CSR as adopted by the Nigerian banks

expected by society to meet its specific responsibilities as good corporate citizens, the way and manner of discharging such responsibilities are of great importance, particularly in the Nigeria banking sector. This is because companies, particularly the banks, have a significant role to play in the realisation of sustainable development goals.

The debates and literature on corporate social responsibility (CSR) and corporate governance in the banking sector in Nigeria have gained significant momentum within the last 4 years. The primary reason for the rise in the discourse among scholars is based on the adoption of Sustainable Development Goals (SDGs) by the United Nation General Assembly on 25 September 2015.[8] The framework was signed by many countries including Nigeria, who in 2019 ranked 159 out 162 in the SDG global ranking.[9] This does not indicate that Nigeria is backward, however, it shows the attitude of the majority of the corporations operating in Nigeria especially in the banking industry which seems to demonstrate a nonchalant attitude towards the realisation of SDGs by not engaging all the relevant stakeholders. There are a total of 17 goals and 169 targets which should be achieved by 2030, it is worth mentioning that the following three goals which are: goal 1, 'end poverty in all its forms everywhere,'[10]

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[8]UN SD in Action Newsletter, September issue VOLUME 3, ISSUE 9, SEPTEMBER 2015 https://sustainabledevelopment.un.org/sdinaction/newsletter/september2015, accessed 29 November 2019.

[9]Jeffrey Sachs, Guido Schmidt-Traub, Christian Kroll, Guillaume Lafortune, Grayson Fuller, 'Sustainable Development Report 2019.' (New York Bertelsmann Stiftung and Sustainable Development Solutions Network 2019) p. 21.

[10]UN Helping Governments and Stakeholders make the SDGs a reality available at: https://sustainabledevelopment.un.org/#, accessed 29 November 2019.

goal 8, 'promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'[11] and goal 16, 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'[12] are most relevant to the discussion of CSR in the Nigerian banking sector.

2.2.2 Definition of Corporate Governance

Corporate governance like CSR has been defined differently by various scholars, the wide variety of the definitions offered mirrors the multidisciplinary nature of the subject. Over the years, the definition postulated by Sir Adrian Cadbury has gained enormous popularity, it had appeared in many countries codes of corporate governance, for example, the United Kingdom code of corporate governance adopted the Cadbury definition.[13] He defined corporate governance as 'a system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting.'[14] This definition focuses more on how managerial functions are carried out to serve the interest of the shareholders. Besides compliance with the laws, rules and regulation by the leadership of corporation, it is geared towards accountability and transparency, which is driven through the board of directors. An important definition that will be germane to the discussion in this chapter is the one proposed by Jean Tirole. He defined corporate governance as 'the design of institutions that induce or force management to internalize the welfare of stakeholders. The provision of managerial incentives and the design of a control structure must account for their impact on the utilities of all stakeholders to induce or force internalization.'[15] This definition encompasses the interest of a broad spectrum of stakeholders and not just only the interest of the shareholders, as was evident from the Cadbury definition. Therefore, it is on that basis that the latter definition will be adopted in this chapter.

[11] Ibid.

[12] Ibid.

[13] 'The UK Corporate Governance Code' (Financial Reporting Council, London July 2018) p. 1.

[14] Adrian Cadbury, Report of the Committee on the Financial Aspects of Corporate Governance.

[15] Jean Tirole, 'Corporate Governance' Econometrica, Vol. 69, No. 1 (Jan. 2001), pp. 1–35. P4.

2.2.3 The Nexus Between CSR and Corporate Governance

One could argue that if corporate governance is construed in the broader sense, it emphasises the importance of good governance through the management of the company to all stakeholders. This, therefore, suggests that good governance is a form of responsibility on the manager to be accountable to all its stakeholders.[16] CSR, on the other hand, is also concerned with the responsibility of the company to its various stakeholders. Thus, one could argue that the primary relationship between CSR and corporate governance is based on the company's responsibility in terms of being accountable to all its stakeholders.[17] While it is correct to suggest that CSR is based on the relationship between the corporations and society, however, this goes beyond a mere expectation that the society has of the corporation. It is about the corporation's obligation to build trust as a corporate citizen in the community with all its' stakeholders. As such, the discourse which underpinned CSR and corporate governance is guided by the principles of integrity, transparency, responsibility, honesty and accountability. Consequently, the corporations must be subject to scrutiny on a regular basis, CSR must go beyond voluntariness[18] or alternatively, the philanthropic gesture as is presently the case in Nigeria. Stakeholders must be able to hold the corporations accountable for the failure to carry out its CSR obligations. This is only possible where CSR has the backing of law through its absorption in the corporate governance code of banking institutions in particular. It will create the platform for advancing the relationship the banks have with the society. Both CSR and corporate governance requires the corporations in this context the banks to take charge of its moral and fiduciary responsibilities towards all its stakeholders.

2.3 Theories of Corporate Governance

The theories underpinning corporate governance discourse in recent times have been drawn from various fields such as economics, management science, law, accounting and finance. In essence, several theories underpin the corporate governance debates. For example, corporate governance can be approached from the following theoretical perspectives, namely, agency theory, stewardship theory, stakeholder's theory, institutional theory, shareholder's theory, resource dependency theory, social contract

[16]Ruth Aguilera, Cynthia Williams, John M Conley, Deborah Rupp, 'Corporate Governance and Social Responsibility: a comparative analysis of the UK and the US'. Corporate Governance: An International Review 25 April 2006, Vol 14, Issue 3, p. 147–158.

[17]Dima Jamali, Asem Safieddine, Myriam Rabbath, 'Corporate Governance and Corporate Social Responsibility Synergies and interrelationships' Corporate Governance: An International Review, 14 October 2008 Vol 16, Issue 5, p. 443–459.

[18]Nikolay Dentchev, Mitchell Van Balen, Elvira Haezendock, 'On voluntarism and the role of governments in CSR: towards a contingency approach', Business Ethics: A European Review, October 2015 Volume 24, Issue 4, p. 378–397.

theory and transactional cost theory.[19] Therefore, it is necessary to briefly analyse some of the main theories listed above, as this would facilitate the understanding required analysing the CSR initiatives by banks in Nigeria. Moreover, explaining the four primary theories of corporate governance, which are, the agency theory, the stewardship theory, the stakeholder's theory and the institutional theory will bring to the fore why the Anglo-Saxon model of corporate governance had not been effective in Nigerian banks due to the challenging institutional environment of the country. Therefore understanding the stakeholder and the institutional theory would be useful in deciding what should be done in order to incorporate CSR into the corporate governance of banks in Nigeria.

2.3.1 Agency Theory

The agency theory is at the heart of the most dominant paradigm of corporate governance the Anglo-Saxon model. Nonetheless, it is by a wide margin, the most controversial theory underlying corporate governance research. While there are conflicting views on the origin of the agency theory, majority of scholars in the field are of the view that it evolved from the work of Berle and Means titled 'The Modern Corporation and Private Property,' which investigated the corporate ownership structure of firms operating in the 1930s. Their thesis focused on the problem associated with ownership structure and the control of corporations in the United States. They argued that due to the dispersed shareholdings in most of the large corporations in the United States, shareholders are finding it difficult to exert appropriate control over managers of those corporations. Consequently, they advocated for the separation of ownership from control of corporations.[20] The agency theory is based on a contractual relationship between the shareholders (principal) who engages the services of other individuals the managers (agent) to discharge specific duties which may include vesting them with authority to make decisions on their behalf.[21] This contractual relationship is marred by a conflict of interest where the managers may decide to pursue their interest at the detriment of those of the shareholders, thereby impeding the overall performance of the firm.[22] This situation is what is known as the agency problem, this is a problem because the interests of both parties, that is the principal and those of the agents does not align, especially where both of them are utility maximisers. There are several ways to resolve the agency problem. The first way is for the shareholders to put in place some mechanisms of corporate governance which

[19] Christine Mallin, Corporate Governance, (6th ed Oxford University Press, Oxford 2019) p. 80.

[20] Adolf Berle, Gardiner Means, 'The Modern Corporation and Private Property' (1932 New York, Macmillan Co.) p. 66.

[21] Michael Jensen, William Meckling, 'Theory of the firm: Managerial behaviour, agency costs, and ownership structure'. Journal of Financial Economics, 3: 305–360. 1976 p. 308.

[22] Kathleen Eisenhardt, 'Agency Theory: An Assessment and Review', Academy of Management Review, January 1989, Vol. 14, No. 1, p. 57–74.

is geared towards effective monitoring, supervision and assessment of the managers in order to ensure that they act in the best interest of the shareholders.[23] An example of such mechanisms is the board of directors with several non-executive/independent directors, who will have the responsibility for monitoring management. Another way of resolving the agency problem would be to incentivize the agents through directors' compensation. Performance should be linked with directors compensation and in such cases where the directors fails to perform, they will not be entitled to some components of their remuneration. The main criticism of the agency theory and rightly so is that it reduces the relationship in the corporation to just an interaction between two individuals, the principal and the agents and as a result, it undermines the interest of other relevant stakeholders in the corporation.

2.3.2 Stewardship Theory

Stewardship theory is the very opposite of the agency theory, although it is also about the employment relationship between the shareholders (principal) and the directors (steward) without the agency cost.[24] The proponents of this theory argued that it is not in all circumstance that the interest of the shareholders and those of the directors are conflicting as seen under the agency theory. They argue that under the stewardship theory, the directors who are good steward do not pursue their interests, instead, they act with integrity and independence.[25] Consequently, the cost of monitoring, assessing and supervising the directors is dispensed with. As it is not necessary to monitor the actions of the directors because of the interests of both parties, that is the shareholders and those of the directors are aligned. The stewardship theorists are of the view that the corporation's performance is connected with the decision taken by the directors who work for the maximation of shareholders returns.[26] The directors derive satisfaction from the recognition that they get when the company is successful. It is such recognition and fulfilment that propel them to put in their best in order to get the desired result. One would argue that although this is a contractual relationship between two individuals in the corporation, that is the principal (shareholders) and the steward (directors), it is quite different from the relationship that exist under the agency theory. Profit maximisation for the benefit of the shareholder is at the heart of the agency theory, thereby neglecting other relevant stakeholders. However, good steward promotes the success of the company and is likely to satisfy most stakeholders in the company if the stakeholders' interest would be meant by maximising

[23]ibid.

[24]James Davis, David Schoorman, Lex Donaldson, 'Towards a Stewardship Theory of Management Academy of Management Review', January 1997, Vol. 22, No. 1, p. 20–47.

[25]Ibid.

[26]Ibid.

the company's wealth.[27] The stewardship theory also has some fundamental criticisms, for example, it recommends the fusion of the office of the Chief Executive Officer (CEO) and the Chairman of the board. This in no small extent erodes the independence of the board as the individual who is vested with both offices without the presence of any non-executive director can be so powerful to influence other members of the board of director who are also employees.

2.3.3 Stakeholders Theory

Stakeholder theory is a critical theory of corporate governance. It is prominent in many discussions on business ethics, organisational effectiveness and corporate governance. The theorists are of the view that the corporation should not only seek to protect the interest of the shareholders, but the stakeholders' theory seek to create a balance between a diverse group of stakeholders whose interests the corporation must also promote. These stakeholder groups could be within the companies or are outside of the corporation to whom the corporation is accountable to. The reason why the corporation must consider the interest of all its stakeholders is because of the role the various stakeholders play in promoting the success of the company. Some scholars have argued that the stakeholder group is so broad and it is particularly difficult to ascertain those who falls within the stakeholder group. The above argument is not entirely correct, this is because stakeholders are defined as any identifiable group or individual who can affect or is affected by the achievement of the companies objectives.[28] It is, therefore, possible for the Nigeria banks to correctly identify the stakeholders who can affect the achievement of the banks, for example, the customers and those that may be affected by the achievements of the banks like the local communities. There are two groups of stakeholders, namely, the primary stakeholders and the secondary stakeholders. Primary stakeholders are those without whom the company cannot survive as a going concern while secondary stakeholders are those who affect or is affected by the corporation. It is correct to suggest that secondary stakeholder does not necessarily engage in any transaction with the company, which may be fundamental for its survival. In general terms, stakeholders would include shareholders, employees, customers, suppliers, creditors, local communities, government and regulatory agencies.[29]

[27] Ibid.

[28] R Edward Freeman, 'Strategic Management: A Stakeholder Approach' (Pitman, Boston MA 1984) p. 46.

[29] Ibid.

2.3.4 Institutional Theory

The institutional theory argues that the institutional environment influences the development of formal structures in a corporation.[30] It deals with the process by which structures such as rules, values, norms, routine, regulatory systems and belief becomes established as an authoritative guideline for social behaviour.[31] It explains why corporations tend to adopt similar characteristic and exhibits similar behaviour, and this conformity is what is known as institutional isomorphism. The institutional theorists argued that 'organizations confirm because they are rewarded for doing so through increased legitimacy, resources and survival capabilities.'[32] DiMaggio and Powell argued that behaviours are regulated through three isomorphisms, namely, the coercive isomorphism the normative isomorphism and mimetic isomorphism.[33] Coercive isomorphism occurs as a result of formal or informal pressures imposed by regulating authority, for example, the state as a result of its legal or political regulatory process put pressures on corporations to create legitimacy for practices in those corporations. This is usually external pressure from other organisations that the corporation is dependent upon based on the cultural expectations of society. It is worth mentioning that such restrictive pressure could originate from governmental mandates, contract law and financial reporting requirements.[34] For example, government regulatory agencies like the CBN whose mandate is to regulate the banking sector in Nigeria could put pressure on banks by giving them specific directives which would form part of their internal control. It must be stated that such pressure may be necessary in order to maintain a sound financial system. For example, putting a cap on what the banks can borrow during the interbank lending market. Normative isomorphism is the pressures brought about by either social or professional norms or standards.[35] This is occasioned by similar educational backgrounds which may influence the way people within such group, trade or profession behaves. For example, several auditors may act in the same way when auditing the financial statements of banking institutions, this may be as a result of the professional/vocational training or the educational qualification they have received. This supposed normative isomorphism is premised on the assumption that there is the tendency that individual professionals will approach specific problems using similar methods as such may be regarded as the norm. Therefore, being members of a professional group can, in some instances, contribute to what is acceptable in terms of corporate governance

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[30] Sheila Puffer, Daniel McCarthy, 'Institutional Theory' Wiley Encyclopaedia of Management January 2015, Vol. 6 International Management.

[31] Ibid.

[32] Richard Scott, The Adolescence of Institutional Theory, Administrative Science Quarterly December 1987 Vol. 32, No. 4 pp. 493–511, p 498.

[33] Paul Dimaggio, Walter Powell, 'The iron cage revisited: Institutional isomorphism and collective rationality in organisational fields', April 1983, America Sociological Review, Vol. 48, pp. 147–160.

[34] Ibid.

[35] Ibid.

practice. Lastly is the mimetic isomorphism which suggests imitating the best practice of other organisation.[36] One of the reasons for such imitation is due to lack of organisational certainty, for example, there is always the temptation of small or medium-size companies copying the modus operandi of large companies in certain areas of its operations. This is because they believe that such practices has been instrumental to the success of those corporations. From the analysis of the four main theories of corporate governance, one could rightly argue that CSR in the banking industry will best be implemented if it forms a fundamental part of the corporate governance framework. Such approach will no doubt take into account the interest of all stakeholders who can affect or is affected by the achievement of the companies objectives and ensuring that institutional environment is also taken into account in designing the corporate governance framework.

2.3.5 Nigerian Banks CSR Initiatives

There are 22 commercial banks in Nigeria[37] moreover, all claim to be engaging in one form of CSR activity or the other suffice to say that almost all the banks stated that CRS is a way of giving back to society. However, this chapter is not intended to examine how all the commercial banks in Nigeria carry out their CSR projects, as this is beyond its scope. Nonetheless, the CSR discourse here will focus on the four largest commercial banks in Nigeria. It is instructive to mention that there is striking similarity in the way all the banks in Nigeria engage approach their CSR activities. Therefore, this section would focus on the CSR initiatives of the four biggest lenders by assets in Nigeria, and these banks are, Zenith Bank Plc, Access Bank Plc, Guaranty Trust Bank Plc (GTB) and United Bank of Africa Plc (UBA).

Zenith Bank Plc CSR initiative is premised on Carroll dimension of CSR, namely, the economic responsibilities, the legal responsibilities, the ethical responsibilities and the philanthropic responsibilities. Suffice to say that despite adopting this categorisation, it does not follow the order as stated by Carroll in the pyramid of CSR. What is clear from the way the bank embarks on it CSR project is a red herring, it is just a case of ticking the box. It is nothing more than just paying lip service to CSR rather than actually engaging in any meaningful and impactful project. For example, in 2017, Zenith Bank claimed to have spent N2.6bn which represents a meagre 1.5% of its profit after tax,[38] while in the 2018 financial year, the bank claimed to have spent N3.06bn on CSR, which also represent about 1.5% of its profits after tax for that year. The problem, therefore, is not only the tiny percentage they claimed to have

[36] Ibid.

[37] CBN has listed the number of commercial banks on its website to be 23, however, following the recent merger of Access Bank Plc and Diamond, the total number of commercial banks in Nigeria as it stands told is 22. See List of Financial Institution: Commercial Bank, available at: https://www.cbn.gov.ng/Supervision/Inst-DM.asp, accessed 29 November 2019.

[38] Sustainability Report 2017 available at: https://www.zenithbank.com/Sustainability_Report_2017/index.html#p=103, accessed on 29 November 2019.

embarked on the CSR initiatives, what is worrisome is what the money has been spent on. Zenith Bank stated that the above monies were used for CSR initiatives such as Health care, sports, education, intervention projects and conferences.[39] This no doubt is an insignificant amount considering the profit they have accrued in that financial year. Such an amount cannot make any meaningful impact in any of the two areas, they claimed to have covered, let alone, would the said amount be enough in doing justice to all the areas they claimed to have covered.

Furthermore, in pursuit of sustainable development goals, there is no report on the number of MSMEs that were provided with credit facilities. If at all, there were any of the MSMEs that were financially empowered through the provision of credit facilities by the banks, the percentage would no doubt be very minimal. One would also argue that the amount spent on CSR is too small. For each of the banks to have expended an average of 1.5% of the net profit is unacceptable, considering their overall profits and also the fact that the majority of these banks pride themselves as front runners in the act of giving back to the society. The main issue here is not a question of giving back, but what is paramount is, what they claimed to have been given back and how it was given back? So it is not only the quality that matters, the quantum also matters and not a case of showcasing oneself as evident in the Nigerian banking arena as CSR compliant even when what has been given is insignificant and less impactful.

Access Bank Plc like Zenith bank also claimed that as a responsible corporate citizen, it is committed to giving back to society. It also adopted Carroll dimension of CSR, Economic responsibilities, Legal responsibilities, Ethical responsibilities and philanthropic responsibilities. Access Bank Plc claimed to have spent N567m on CSR initiatives in 2017, which represent less than 1% of its net profit, while in the 2018 financial year, the bank total spending on CSR initiatives was reduced by 34% compared to the previous year.[40] This is because the bank spent N567m on its CSR initiatives in 2017, however, it could only spend N376m in 2018 financial year on CSR initiatives in the following areas, namely, health care, sports, education and woman empowerment. Furthermore, one could argue that based on the available evidence and due to the spending pattern of the bank taking into account the amount Access Bank spent over the 2 years, it is correct to conclude that CSR is not a top priority to the bank. The reason the bank do not care about the expectation of the society is based on the assupmtion that regardless of how much is spent on CSR initiative, it does not in any way affect the profit the bank to make. Nigerians will still bank with them regardless of whether or not they have contributed meaningfully to CSR projects in their locality. The bank can behave as they like, this is because they are of the view that they are not under any obligation to embark on CSR projects, and as such, they only do it as an act of generosity. However, the reality is that banks claim to be engaging in CSR projects is a matter of corporate correctness.

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[39] Ibid.

[40] Access Bank, ten years of leading sustainability available at: https://www.accessbankplc.com/AccessBankGroup/media/Documents/Sustainable%20Reports/sustainability-report-2017.pdf, accessed 29 November 2019.

Suffice to say that any organisation that is committed to CSR as a way to pursue the realisation of the sustainable development goal would not be spending less than 1% of it profit let alone to have unconscionably reduced its spending by 34% in the following financial year. As a result, CSR initiatives will not only be meaningless due to the amount spent but also less impactful considering the various areas where they claimed to have spent the money.

For Guaranty Trust Bank (GTB), the case is not different, while claiming that its CSR initiatives are built on the following four pillars Education, Community Development, Arts and the Environment. However, its contributions towards CSR have not been more than 2% of its net profit. In the 2017 financial year, the bank claimed they spent the sum of N867m[41] while in 2018 although the money they claimed to have spent on CSR increased by 7.04% to N928m.[42] one would argue that the amount is still too small to make any meaningful impact in all the areas they have chosen to carry out thier CSR engagement.

Lastly, the fourth bank to be considered is United Bank Africa (UBA). The bank also claimed that they are CSR compliant. They engage in various CSR initiatives which are quite similar to those of the previous 3 banks discussed above. However, what is unique about the UBA approach is that it carries out its purported CSR agendas through what it called the UBA Foundation. The main focus of the foundation is to facilitate development in the areas of Education, Environment, Economic Empowerment and Special Projects.[43] In the 2017 financial year, UBA spent N823m on CSR while in 2018, it increased its contribution by 26% to N1.03 bn, and that been said, it must be stated that amount is less than 2% of the bank's net profit and this is not good enough considering all the areas they claimed they have covered.[44]

Despite all these purported CSR initiatives from the various banking institutions in Nigeria, the challenges facing the country are enormous, particularly in the area of infrastructural development. Suffice to say that there is a high-level of infrastructural decadence particularly the roads, where thousands of people have lost their lives due to road accidents, and this has necessitated the government to declare a state of emergency of the Nigerian roads. Consequently, on 25 January 2019, the Nigerian President, General Mohammadu Buhari signed the Executive Order number 007, which is a CSR-for-tax scheme specifically to encourage the private sector to engage in the construction of roads in any part of the country.[45] This is under the Federal Government's Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme. Private companies who embark on the construction of roads leading

[41] GTBank CSR report 2017 available at: https://www.gtbank.com/uploads/csr-reports/2017-report/CSRReport_2017.pdf, accessed 29 November 2019.

[42] GTBank CSR report 2018 available at: https://www.gtbank.com/uploads/csr-reports/2018-report/GTBank2018_CSRReport.pdf, accessed 29 November 2019.

[43] About UBA Foundation, available at: https://www.ubagroup.com/uba-foundation/, accessed on 29 November 2019.

[44] UBA Annual Report 2018 see, https://www.ubagroup.com/nigeria/wp-content/uploads/sites/3/2019/03/UBA_Plc_2018_Annual_Reports_and_Accounts_NSE_15-March-2019.pdf?x69983, accessed 29 November 2019.

[45] 'Executive Order 7, CSR and the duty of government' Business Day Nigeria 5 Feb 2019, p. 12.

to their factories or farms will get up to 50% of their tax back. An amount that will equate the money that they had spent for the construction of the roads. While some might argue that this is a step in the right direction, however, such would creates room for companies to engage in tax manipulation. If they are to get the money back as a percentage of their tax, then that is no longer CSR. What this means is that government have made these private companies contractors for roads construction in Nigeria. Suffice to say that from these construction of roads, the companies involved will still be able to make huge profits, coupled with the possibility of inflating the cost of the projects which is common due to corruption and as a result, companies might not be paying the correct taxes on the long run. It is worth mentioning here that presently, none of the commercial banks has taken part in the scheme. However, it is envisaged that some will partake in the scheme, considering its loophole for tax evasion and tax avoidance.

2.4 Recommendation

From the above analysis, it has become evident that the conceptualisation and implementation of CSR by banks in Nigeria is approached purely as a charitable or philanthropic gesture from the banks to the society. Moreover, there is no requirement for the banks to disclose how they have been committed to the realisation of the core goals of SDG, for example, goal one, goal eight and goal sixteen of the sustainable development goals through CSR. While all the banks have claimed that they are committed to CSR following the four-dimensional principle enunciated by Carroll, however, in reality, what the banks do is nothing more than just paying lip service to CSR. It is instructive to mention that Nigerian banks are fully cognisant of the fact that Nigerians will still bank with them whether or not they engage in any meaningful CSR projects, or the total money allocated for CSR projects is quite insignificant. From the available evidence, banks' CRS initiatives do not in any way affect the level of their profit. This is because the majority of Nigerians are either too reluctant to change their banks, or they are too uninformed to understand the complexity of the banking system. For example, majority of the banks are very exploitative of their customers, they impose different kinds of unnecessary charges on their customers, in some instances, they have made frivolous deductions from banks' customers, this, to a large extent, accounts for their recent profit. As a result, CBN had recently recovered over N65bn from several Nigerian banks, which were unlawfully deducted as charges from customers deposits and other bank transactions in the last 6 years.[46] Given the above, it is therefore imperative to propose the following recommendations on how CSR can be incorporated into the corporate governance of banks in Nigeria, which would take into account the interests of all the stakeholders.

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[46]Theophilus Onojeghen, 'Illegal Deductions: CBN return N65bn to bank customers,' The Punch 19 July 2019, available at: https://punchng.com/illegal-deductions-cbn-returns-n65bn-to-bank-customers/, accessed 29 November 2019.

It has become apparent that what the Nigerian banks spend on CSR initiatives is on average less than 2% of their net profit. Therefore, to work towards the realisation of the sustainable development goal by the year 2030, the corporate governance code for the banking industry should contain specific mandatory provision. For example, corporate governance code contains a provision requiring commercial banks in Nigeria to allocate a minimum of 5% of their net profit for developmental projects. Such monies will be used for providing infrastructure such as the building of schools, roads, hospitals, recreational centres in the various communities where they operate. This would help to accelerate the rate of development since the government cannot by itself meet the developmental needs of its growing population. In order to attain meaningful and impactful CSR initiatives, a multidimensional stakeholders approach must be employed. This can be achieved through consultations and informal interactions with individuals and groups to determine what projects or areas would best serve their interest.

Regarding the economic responsibilities of the banks, it transcends beyond the monetary gains or profits the banks are meant to derive. It also requires the banks to facilitate the economic development of the country through the provision of credits for businesses. Therefore, in order to ensure a more holistic stakeholder's approach to CSR, the corporate governance code for the banking industry should include a mandatory disclosure requirement on how banks have supported MSMEs. Such disclosure requirement should go beyond skills acquisition trainings and seminars purportedly organised by banks for MSMEs as part of their CSR initiative. There should be a specific disclosure requirement on the percentage of loans to the total credit which the banks have advanced to MSMEs yearly. It is quite apparent that the Nigerian banks are not absolutely committed to the economic responsibilities dimension of their CSR through the provision of finance to MSMEs, as majority of MSMEs are unable to secure credits from the banks due to excessive bureaucratic and unnecessary requirements despite the recent CBN directives to commercial banks to make available at least 60% of their deposit as loans to small businesses,[47] such apparent disregard for MSMEs no doubt impedes the economic development of the country and act as a clog in the realisation of the sustainable development goals. Consequently, if banks are made to disclose such information, it will challenge them to have a rethink about their relationship with this group of stakeholders. Banks are generally wary of start-ups business, especially the MSMEs, their viability and creditworthiness is at play, and as such, banks are reluctant to grant credit to them. To minimise this problem, CBN should introduce a system where it can guarantee MSMEs financing by commercial banks in Nigeria.

While the majority of commercial banks claimed to be discharging their ethical responsibilities, there is no disclosure requirement for those of their supply chains. The banks cannot be claiming to ethically and morally compliant and yet they dealing

[47] Aderemi Ojekunle, 'CBN pushes commercial banks into a tight corner with new lending policy,' Business Insider by Pulse 4 July 2019 available at: https://www.pulse.ng/bi/finance/cbn-pushes-commercial-banks-into-a-tight-corner-with-new-lending-policy/cx3gye1, accessed 29 November 2019.

with companies with questionable character, such behaviour is unacceptable. Therefore in order to ensure that they meet up with the ethical aspect of their CSR obligation, there should be a mandatory requirement in the corporate governance code for banks in Nigeria to disclose their compliance with minimum ethical standard and also those of their supply chains. This will enable banks to consider their role in ensuring the sanity of the environment. Such compliance with the ethical standards will facilitate the realisation of the sustainable development goal by making the world a better place and ending poverty by 2030.

Furthermore, the corporate governance code for banks operating in Nigeria should mandate the Board of Directors to be the chief implementer of the CSR projects. This will make CSR a top priority for the banks because as it stands presently CSR projects design and implantation are left in the hands of junior staff within the banks or in other instances, they are outsourced to third parties organisations. Relatedly, executive compensation should also be linked to the performance of their core CSR obligations. This will make the directors pay more attention to the delivery of their CSR obligation rather than just paying lip service/ticking the boxes, which has always been the case. Consequently, to enable the directors to perform at the minimum standard required, there is the need to raise the requirement for becoming a member of the board of director. The corporate governance code should contain a specific requirement, such as having basic CSR/corporate governance qualification. This should be a compulsory requirement for anyone who wants to become a bank director regardless of how long they have being in the bank. This will be further boosted through corporate governance/CSR trainings/seminars in the form of biannual continuing professional development (CPD) trainings/seminar during their term of office. Lastly, the corporate governance code for the banking industry should contain all the guidelines on how the Board of Directors should discharge the CSR obligations. It should also include how it will be monitored to ensure full compliance. In the event of noncompliance, the penalty to be given, for example such penalties like the forfeiture of compensation by members of the board of directors, fines and any other sanctions as the case may be. This will, in no small extent, discourage noncompliance of the CSR obligations by the banks.

2.5 Conclusion

This chapter has looked at how CSR can be incorporated into the corporate governance of banks in Nigeria. It started by exploring the various definitions of CSR and corporate governance. It also tried to X-ray the relationship between both concepts, it argued that while CSR is a means by which corporations can maintain a healthy relationship with the society, corporate governance would create the enabling platform for CSR to thrive. The chapter went further to examine some of the significant theories of corporate governance to wit, agency theory, stewardship theory, stakeholder's theory and institutional theory. It argued that despite the transplantation of the Anglo-Saxon model which is grounded on the agency theory into the corporate

governance of banks in Nigeria, the institutional theory and the stakeholder's theory would best serve the interest of all the stakeholders considering Nigeria's challenging institutional environment. More so, how the Nigerian banks engage in CSR projects was also examined, from the findings, it is correct to suggest that the Nigerian banks approach CSR solely on the charitable or the philanthropic model. There is no legal requirement on what banks should spend on these so-called philanthropic gestures. However, the available evidence suggests that majority of the banks spend less than 2% of their net profit on CSR initiatives, it is instructive to mention that no bank had ever spent above 2% on CSR projects. Such an insignificant amount purported to be spent on CSR undermines the banks' claims that they are CSR compliant. What is more, worrisome is the fact that such CSR projects are not meaningful because all relevant stakeholders are not consulted. This, in no small extent, erodes the banks' responsibility towards society. More so such unimpactful CRS gestures work against the realisation of the sustainable development goals.

Furthermore, there is a complete neglect of other aspects of CSR obligations, for example, MSMEs are not given the necessary assistance by the banks, especially as it relates to the finance for small businesses. In comparison with banks in the UK, small businesses can easily obtain loans from banks in order to finance their businesses. Beyond this, many other CSR obligations of the Nigeria banks are not taken seriously, for example, Nigerian banks ethical and legal responsibilities to a large extent are not given the required attention especially in the area of compliance and enforcement. Consequently, it is suggested that CSR in the Nigerian banking industry must go beyond voluntariness and philanthropic gestures and must be subject to some limited form of regulation. It is argued that the corporate governance code for the banks in Nigeria should contain a specific mandatory provision directing the banks to allocate a minimum of 5% of their net profits towards the provision of meaningful and impactful developmental or and infrastructural projects. Lastly, it should be the responsibility of the banks' board of directors to implement the CSR obligations for their respective banks, training and retraining on the implementation of sustainable CSR strategy is essential for them to discharge their responsibilities effectively. To this end, an adequate mechanism must be put in place to monitor and ensure full compliance of the code of corporate governance in the Nigerian banking industry. This should include the mode of enforcement of the various sanctions in the event of noncompliance. For example, the forfeiture of executive compensation or payment of a substantial fine depending on the level of failings, this will in no small extent prevent the neglect or disregard that banks currently show toward engaging in meaningful and impactful CSR initiatives.

Bibliography

Access Bank. 10 years of leading sustainability available at: https://www.accessbankplc.com/AccessBankGroup/media/Documents/Sustainable%20Reports/sustainability-report-2017.pdf.

Aderemi Ojekunle. 'CBN pushes commercial banks into a tight corner with new lending policy,' Bisness Insider by Pulse 4 July 2019 available at: https://www.pulse.ng/bi/finance/cbn-pushes-commercial-banks-into-a-tight-corner-with-new-lending-policy/cx3gye1.

Aguilera, R., Williams, C., Conley, J. M., & Rupp, D. Corporate governance and social responsibility: a comparative analysis of the UK and the US.

Amaeshi, K., Nnodim, P., & Osuji, O. Corporate social responsibility, entrepreneurship, and innovation (First Published 2013, London: Routledge Taylor & Francis).

Berle, A., & Means, G. (1932). *The modern corporation and private property*. New York: Macmillan Co.

Bowen, H. (1953). *Social responsibilities of the businessman*. New York: Harper.

Business Day Nigeria. (5 Feb 2019). 'Executive Order 7, CSR and the duty of government' available at: https://businessday.ng/.

Cadbury, A. Report of the Committee on the Financial Aspects of Corporate Governance.

Carrol, A. (1991). The pyramid of corporate social responsibility: towards the moral management of organisational stakeholders. *Business Horizons*, *34*, 39–48.

CBN, List of Financial Institution: Commercial Bank, available at: https://www.cbn.gov.ng/Supervision/Inst-DM.asp.

Davis, J., Schoorman, D., & Donaldson, L. (1997). Towards a stewardship theory of management. *Academy of Management Review*, *22*(1), 20–47.

Dentchev, N., Van Balen, M., & Haezendock, E. (2015). On voluntarism and the role of governments in CSR: towards a contingency approach. *Business Ethics: A European Review, 24*(4), 378–397.

Dimaggio, P., & Powell, W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organisational fields. *America Sociological Review*, *48*, 147–160.

Eisenhardt, K. (1989). Agency theory: an assessment and review. *Academy of Management Review, 14*(1), 57–74.

Freeman, R. E. (1984). *Strategic management: a stakeholder approach* (Boston MA, Pitman), p. 46.

Friedman, M. (1970). The social responsibility of businesses is to increase its profit. *The New York Times, 13,* 122–126.

Gobbels, M. (2002). Reframing corporate social responsibility: The contemporary conception of fuzzy notion. *Journal of Business Ethics, 44,* 95–105.

GTBank CSR report 2017 available at https://www.gtbank.com/uploads/csr-reports/2017-report/CSRReport_2017.pdf.

GTBank CSR report 2018 available at https://www.gtbank.com/uploads/csr-reports/2018-report/GTBank2018_CSRReport.pdf.

Ismail, T. N. T. (2011). Corporate social responsibility: the influence of the silver book. *International Journal of Business and Management Studies*, *3*(2), 371–383.

Jamali, D., Safieddine, A., Rabbath, M. (2008). Corporate governance and corporate social responsibility synergies and interrelationships. *Corporate Governance: An International Review*, *16*(5), 443–459.

Jensen, M., & Meckling, W. (1976). Theory of the firm: managerial behaviour, agency costs, and ownership structure. *Journal of Financial Economics, 3,* 305–360.

Lockett, A., Moon, J., & Visser, W. (2006). Corporate social responsibility in management research: focus, nature, salience and sources of influence. *Journal of Management Studies, 43*(1), 115–136.

Mallin, C. (2019). *Corporate governance* (6th ed.). Oxford: Oxford University Press.

Onojeghen, T. 'Illegal Deductions: CBN return N65bn to bank customers,' The Punch 19 July 2019, available at https://punchng.com/illegal-deductions-cbn-returns-n65bn-to-bank-customers/.

Puffer, S., & McCarthy, D. (2015). 'Institutional Theory' *Wiley encyclopaedia of management*, vol. 6 (International Management).

Sachs, J., Schmidt-Traub, G., Kroll, C., Lafortune, G., & Fuller, G. (2019). Sustainable Development Report 2019 (New York: Bertelsmann Stiftung and Sustainable Development Solutions Network).

Scott, R. (1987). The adolescence of institutional theory. *Administrative Science Quarterly*, *32*(4), 493–511 (p. 498).

Sustainability Report 2017 available at: https://www.zenithbank.com/Sustainability_Report_2017/index.html#p=103.
The UK Corporate Governance Code (London, Financial Reporting Council, July 2018).
Tirole, J. (2001). Corporate governance. *Econometrica, 69*(1), 1–35.
UBA Annual Report 2018 see, https://www.ubagroup.com/nigeria/wp-content/uploads/sites/3/2019/03/UBA_Plc_2018_Annual_Reports_and_Accounts_NSE_15-March-2019.pdf?x69983.
UN SD in Action Newsletter, September issue VOLUME 3, ISSUE 9, SEPTEMBER 2015 https://sustainabledevelopment.un.org/sdinaction/newsletter/september2015.
UBA, About UBA Foundation, available at https://www.ubagroup.com/uba-foundation/.
UN Helping Governments and Stakeholders make the SDGs a reality available at: https://sustainabledevelopment.un.org/#.

Chapter 3
Proposing CSR Provisions in Kuwaiti Legal Vision: A Middle-Ground Between UK and Indian Companies Law

Asma Alfouzan

Abstract CSR concepts encourage the identification of specific core CSR categories. Such categories include ethical, legal, economic and environmental responsibilities and obligations. The Indian and UK contexts exemplify a variety of CSR-related legislative provisions enacted to underscore the importance of a company's stakeholder obligations and responsibilities that extend beyond its corporate constituencies. However, the current CSR jurisprudence is carefully evaluated in Kuwaiti company law given the lack of CSR-related legislative provisions in the country. There is a need to explore and analyse these areas in different contexts, such as CSR in UK and Indian company laws, to form the basis of potential CSR provisions and legal vision for Kuwaiti company law. This chapter examines the CSR-related provisions in Kuwaiti company law. The chapter starts with a discussion of CSR practices and CSR in relation to the relevant provisions of Kuwaiti company law and corporate governance, including board of directors, CSR reporting and information disclosure, corporate constituencies, directors' duties and corporate objectives. The visions of CSR in the UK and Indian Companies Act and Kuwait are discussed and compared throughout the chapter in order to determine a middle ground for Kuwait with respect to adopting more socially responsible principles.

Keywords Corporate social responsibility · Company law · Corporate governance · Comparative law · Policymakers · Company's stakeholders

3.1 CSR Practices in Kuwait

Kuwaiti society is cooperative in nature and has gained this attribute from labour relations and a productive era that prevailed before the age of oil. This era was based primarily on travel and maritime trade, where men left their homes and families

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for months, in the care of other relatives, acquaintances and neighbours, until their return.[1] With the emergence of CSR practices at the global level, the term started to grow at the local level from around 2004 and a strong interest began to emerge from local institutions and companies. Now, after over 10 years of the depiction of CSR in Kuwait, many organisations have been acknowledged locally and internationally for their CSR initiatives. For example, the attention to social responsibility became evident through the launch of the "Kuwait CSR Conference and Exhibition" by Pro Media International Co., which was held in March 2016.[2] Several local and international CSR professionals showed their interest in participating in this event. Through a platform, which is dedicated to local and international professionals, the conference offered the most contemporary developments and optimal CSR practices, as well as sustainability and ways to transform organisations into becoming more socially responsible. The goals of the conference were to give academics in the CSR field a voice to demonstrate their research, provide a strong framework for creating a transparent CSR strategy and to promote successful CSR initiatives.[3]

The event provided the most current developments and best practices in CSR and sustainability, with practical tools, resources and examples that companies can utilise to transform their own organisations with the intention to become more socially and economically responsible.[4] Business leaders and experts at the event in 2016 identified some of the key challenges and discussed solutions that integrate CSR into core business, build relationships with key partners and protect brands and reputation. Areas of concern include CSR policy and governance, strategies and initiatives, labour, communications and reporting and global trends and standards.[5] Therefore, the conference identified a need to promote CSR in Kuwait.

There appears to be a good understanding of CSR in Kuwait owing to the charitable and selfless acts they promote, e.g. charity and supporting others.[6] CSR is a concept that aims to "to provide back into society", and this is synonymous with other terms such as "donations", "positive contributions to society", "ethical standards of conduct in relation to stakeholders" and "responsible business". These terms have been demonstrated in Kuwaiti companies through the Zakat Tax. In short, CSR and its related practices can vary depending on the way in which one interacts with different groups in society. This is because CSR practices are a commitment to a society in which corporations operate. In order to establish how existing company

[1]F. Al-Nakib, *Kuwait Transformed: A History of Oil and Urban Life* (Stanford University Press 2016) (2016), 296.

[2]ProMedia International Co, 'Kuwait CSR Conference & Exhibition' (2016): Available: https://www.nuwait.net.kw/events/kuwait-csr-conference-exhibition: Accessed 17th March 2019.

[3]Ibid.

[4]Ibid.

[5]Ibid.

[6]Dima Jamali and Walaa El Safadi, "Adaptations of CSR in the Context of Globalization" in *Globalization* (IntechOpen 2019) (2019), n.p.

law promotes social responsibility in Kuwait, it is important to first look at the pre-legislative intervention of CSR in Kuwait. This will help to establish what initiatives Kuwait was using prior to the introduction of CSR practices.

CSR practices in Kuwait have quickly become a topic of great interest among business leaders and government officials. This is because Kuwaiti companies have begun to engage in CSR activities via corporate philanthropy. There are an estimated 54 companies per 1million people in Kuwait,[7] including limited companies, joint stock companies, general partnerships, limited partnerships and joint ventures.[8] These types of companies set out to fulfil the interests of a wider group of stakeholders via donations to local charities and interest groups.[9] This can be considered an "easy" form of CSR engagement in the sense that very little managerial effort is needed. However, the tradition of giving has been prominent for quite some time in Islamic societies permeated by religious values. Managers see CSR as a corporate form of Zakat, which simply means the percentage of charitable wealth that Muslims are expected to donate.

Therefore, companies in Kuwait are motivated by the religious aspect in order to promote a collective society through charitable activities.[10] Furthermore, the chosen definition of CSR in this chapter by Aguinis[11]: "context-specific organisational actions and policies that take into account stakeholders' expectations and the triple bottom line of economic, social, and environmental performance.", aligns with the idea of corporate philanthropy and CSR as a charitable activity as the definition states that CSR involves organisations that aim to contribute to society. Therefore, organisations who engage in charitable activities, whether it be through the Zakat Tax in law (set at 1% and different from Zakat as the third pillar of Islam and does not refer to charitable activities)[12] will be less likely to engage in socially and environmentally damaging activities.

According to the Zakat Tax Law No. 46 2006 Article 1,[13] shareholding companies are required to pay 1% of their annual net profits. Although the law was proposed in

[7]Trading Economics, "Kuwait—Number of listed companies per 1,000,000 people" (2019). Available: https://tradingeconomics.com/kuwait/number-of-listed-companies-per-1000000-people-wb-data.html: Accessed 9th April 2019.

[8]IPR, 'Business Forms and Structures' (1999). Available: http://www.infoprod.co.il/country/kuwait2b.htm: Accessed 10th Feb 2019.

[9]D. Ronnegard, 'CSR in the Gulf region: corporate philanthropy likely to remain key for now' (2009): Available: https://knowledge.insead.edu/csr/csr-in-the-gulf-region-2233: Accessed 11th Feb 2019.

[10]Tareq Emtairah, Asya Al-Ashaikh, and Abdulmohsen Al-Badr. "Contexts and corporate social responsibility: the case of Saudi Arabia." International Journal of Sustainable Society 1.4 (2009): 325–346.

[11]Herman Aguinis, *Organizational responsibility: Doing good and doing well* (Chap. 24) (2011), 855.

[12]BBC, 'Zakat: charity' (2009): Available: http://www.bbc.co.uk/religion/religions/islam/practices/zakat.shtml: Accessed 1st April 2019.

[13]Zakat Tax Law No. 46, 2006 A.1.

2006, it was not enacted until 2007.[14] According to Article 2, the Ministry of Finance is responsible for collecting the 1% of annual net profits as stated in Article 1.[15] On the other hand, Article 3 states that the Minister of Finance will pass an executive by-law for collecting the funds that must not exceed one year from the time the law was passed based on the legal systems of Zakat and Sharia after obtaining approval from the Fatwa Authority with regard to the rules stated in Article 1.[16] Companies can also request to dedicate the Zakat tax to a public service of their choice, e.g. education or healthcare. Failure to pay the Zakat Tax or submission of false information about its contribution can make a company liable to a fine of up to KD 5,000 (approximately $16,000) and 3 years imprisonment.[17] The punishments under the Zakat Tax law appear justifiable since the tax is going towards a good cause and refusal to pay would be considered an act of greed.

Section 135 of the Indian Companies Act 2013[18] imposes similar punishments on companies as the Zakat Tax law for non-compliance to CSR provisions, such as failing to donate profit to charitable causes. Punishments include imprisonment of up to 3 years and a fine of up to 2.5 million rupees (approximately $30,000).[19] Although the term of imprisonment is the same across both laws, breaching section 135 of the Indian Companies Act 2013 incurs a greater fine, which suggests that India is potentially stricter and takes CSR practices such as corporate philanthropy more seriously.

This is similar to India's code as corporations are expected to give 2% of their profits to charity.[20] In support of this point, section 135 of India's Companies Act 2013 states that companies are obligated to donate 2% of the average net profits that have been made over 3 years to meet its CSR policy.[21] Therefore, both India and Kuwaiti companies are obligated to pay a mandatory sum of money to support a given cause, such as investing in the public services of their respective countries, like education, healthcare and public infrastructure. However, in the UK, no such code states that UK corporations are expected to give a certain percentage of their annual profits to charity with UK companies donating only 0.4% of their pre-tax profits to

[14]RSM, 'Zakat Law and Practices' (2019): Available: https://www.rsm.global/kuwait/service/zakat-law-and-practices: Accessed 1st April 2019.

[15]Zakat Tax Law No. 46 2006 A.2.

[16]Zakat Tax Law No. 46 2006 A.3.

[17]Zakat Tax Law No. 46 2006 A.1.

[18]Indian Companies Act 2016, S.135.

[19]Cyril Amarchand Mangaldas. Corporate Social Responsibility—Less Carrot More Stick (2019): Available https://www.lexology.com/library/detail.aspx?g=1321ef7c-bc8a-47a6-8eeb-8c0fb141d75f: Accessed: 20th August 2019.

[20]Kordant Philathropy Advisors Report, 'The 2% CSR Clause: New Requirements for Companies in India' (2013): Available: https://www.issuelab.org/resource/the-2-csr-clause-new-requirements-for-companies-in-india.html: Accessed 26th June 2019.

[21]India Companies Act 2013, S.135.

charity.[22] This indicates that UK companies can voluntarily donate a proportion of their annual profits to charity.

Normative and institutional pressures resulting from belief systems have a great impact on CSR practices in the CCASG.[23] Before CSR, Islam viewed social responsibility as an obligation to business activity, namely through the Zakat, which has to be obligatory and given to the poor on an annual basis. It is a general requirement under Islam to enhance social welfare and preserve environmental ecosystems.[24] This longstanding socially responsible tradition has transformed through business development to an obligatory institutional Zakat tax, commonly labelled by corporations as a CSR activity in recent years.[25] Therefore, philanthropy has been practised in Kuwait through Zakat. However, some have argued against the effectiveness of a centralised Zakat collection practice; such system does little to better the living standards of the needy.[26] Therefore, Zakat has a spiritual end and CSR ought to be targeted towards social equality and sustainable development, thus making the two similar in nature.

Islamic religion in CCASG countries, such as Kuwait, views social responsibility as an obligation to business activity mainly through the Zakat tax. However, the Zakat tax was practised long before the CSR concept became known in the region and is considered as only one of the secondary pillars of CSR practices which is philanthropic.[27] However, small- and medium-sized enterprises face structural challenges in integrating CSR into their business operations; such companies do not create high employment nor do they follow a strategic developmental approach to CSR, rather they merely stick to paying the annually applicable Zakat tax.[28] By comparison, larger companies are also expected to pay the Zakat Tax, according to Article 1 of the Zakat Tax Law No. 46 2006, which states that it applies to shareholding companies.[29] Therefore, Zakat Tax applies to all companies, just like the companies registered under Indian Companies Act 2013 that are obliged to follow

[22]C. Walker, ‘UK companies are failing to support charities (2014): Available: https://www.theguardian.com/sustainable-business/uk-companies-failing-support-charities: Accessed 17th March 2019.

[23]Emtairah, Al-Ashaikh and Al-Badr (n 865) 325.

[24]Ibid.

[25]Nisar Ahamad Nalband and Mohammed S. Al-Amri. “Corporate social responsibility: Perception, practices and performance of listed companies of Kingdom of Saudi Arabia.” Competitiveness Review: An International Business Journal 23.3 (2013), 284–295.

[26]Yaprak Anadol, Mohamed A. Youssef, and Eappen Thiruvattal. “Consumer reaction towards corporate social responsibility in United Arab Emirates.” Social Responsibility Journal 11.1 (2015), 19–35.

[27]Mahammed Al-Ajmie, Abdullah Al-Mutairi, and Nabi Al-Duwaila. “Corporate social disclosure practices in Kuwait.” International Journal of Economics and Finance 7.9 (2015), 244–254.

[28]H Abaza, N Saab and B Zeitoon, editors (2011). Arab forum for environment and development. In: Arab Environment: Green Economy: Sustainable Transition in a Changing Arab World. Beirut: Technical Publications and Environment & Development magazine, n.p.

[29]Zakat Tax Law No. 46 2006, A.1.

the CSR provisions of section 135, regardless if they are smaller enterprises or larger corporations.

Referring back to the socio-economic issues raised in Sect. 5.3, there are salient issues that relate to CSR practices in Kuwait. For example, Kuwait has one of the highest unemployment rates among the CCASG countries owing to youth unemployment.[30] However, due to the country's voluntary and philanthropic governance structure, corporations in Kuwait have become more socially responsible by providing job opportunities to not only Kuwaiti nationals, but also non-Kuwaiti nationals so as to boost the economy.[31] Kuwait's philanthropic nature also aligns with other activities; the country is currently focussing on, such as supporting education and building new schools, all of which fall to the responsibility of the state under Zakat, since it promotes such obligatory charitable deeds.

Kuwaiti corporations apply the religious philanthropic traditions of Zakat. It is required and collected by governmental bodies. However, corporations also show a high correlation between improved CSR disclosure and board independence and family ownership.[32] Indeed, family owned businesses tend to go beyond what is required by law (Zakat tax), and apply a broader Islamic view on business operations; Islamic provisions throughout the Quran encourages socially responsible deeds through charitable acts, e.g. Surah al baqarah (2:215), which emphasises the idea of giving charity for people in need.[33] Therefore, Islamic provisions are consistent with the notion of CSR owing to the socially responsible behaviours attached to the religious doctrine.

However, previously, the Kuwaiti Tax Authority accepted the exemption of sharing profits that are attributable to the government to charge Zakat Tax.[34] Today, under the reformed code, Zakat is levied on the entire income where companies are expected to pay the Zakat Tax to the government.[35] By looking at the reformed code in the Zakat Tax, it can be established that the government is spending taxes on public services, though according to the latest government spending figures, it is unclear on which specific public sector services. The total was approximately 9000 KWD Million in 2017 (approximately $29 billion).[36] In comparison to the UK, the latest government budget states that taxes are spent on education, technology, business and

[30]International Labour Organization (ILO). (2013). The Kuwaiti labour market and foreign workers: understanding the past and present to provide a way forward. Available: http://www.ilo.org/wcmsp5/groups/public/@arabstates/@ro-beirut/documents/meetingdocument/wcms_330314.pdf. Accessed: 17th March 2019.

[31]Gulf Labour Markets and Migration. (2013). the demographic and economic framework of migration in Kuwait. Available: from http://cadmus.eui.eu/bitstream/handle/1814/32155/GLMM%20ExpNote_01-2013.pdf?sequence=1: Accessed: 31st March 2019.

[32]Murya Habbash. "Corporate governance and corporate social responsibility disclosure: evidence from Saudi Arabia." Social Responsibility Journal 12.4 (2016), 740–754.

[33]Qura'n: Surah al baqarah (2:215).

[34]KPMG, *MESA Tax Guide* (2018), 20.

[35]Ibid.

[36]Trading Economics, 'Kuwait Government Spending' (2019): Available: https://tradingeconomics.com/kuwait/government-spending@ Accessed: 18th March 2019.

the environment.[37] As for India, government taxes are allocated towards reducing poverty among the Indian working class in an attempt to boost economic growth.[38] Therefore, from this comparison, CSR practice is dependent on the place.

In short, Zakat helps to explain the current focus on corporate philanthropy.[39] This differs from the mainstream idea of CSR since philanthropic CSR involves companies offering a financial contribution for meaningful causes as a way to overcome societal and environmental issues. However, current philanthropic CSR practices differ from western practices. This is because corporates in the CCASG have primarily done this through corporate philanthropy and not through integrating mainstream CSR into corporate strategies and managerial practices. Such practices are achieved through financial contribution. However, it can be said that CSR in Kuwait began with the support of the communities in which organisations operated, then spread to various stakeholders in society, and then the last stage was the development of strategic CSR or value creation, which is an integral part of the overall organisational strategy and requires responsible business conduct in all aspects of transactions.[40] Stakeholders also perceive CSR activities as tactical PR activities rather than strategic ones. This suggests that there are no specific CSR activities under the Zakat Tax Law because the additions and amendments state no such activities.[41] Thus, despite the fact that the term "CSR" has existed for more than 8 years, it is still perceived by stakeholders as socially responsible activities.[42]

In short, CSR practices in Kuwaiti company law have raised a number of economic, social and environmental issues, though corporate governance also plays a key role in CSR practices where companies are directed and controlled. Therefore, the next section discusses CSR in relation to Kuwaiti company law and corporate governance.

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[37] S Dawood, 'Spring statement 2019: how does it impact designers?' (2019): Available: https://www.designweek.co.uk/issues/11-17-march-2019/spring-statement-2019-how-it-impacts-designers/: Accessed: 18th March 2019.

[38] S O'Grady, 'India's 2018 budget aims to lift millions of rural farmers and workers out of poverty' (2018) https://www.independent.co.uk/news/business/news/india-budget-2018-poverty-economy-help-farmers-bjp-arun-jaitley-trade-modi-china-a8189226.html accessed 18th March 2019.

[39] Mahammed Al-Ajmie, Abdullah Al-Mutairi, and Nabi Al-Duwaila. "Corporate social disclosure practices in Kuwait." International Journal of Economics and Finance 7.9 (2015), 244–254.

[40] Ibid.

[41] A Qassem, "Additions and amendments to income tax" (2017): Available: http://www.alraimedia.com/Home/Details?id=f6ce7ece-4f03-44c1-a69b-a8d64e9f4d3e: Accessed 17th March 2019.

[42] A Aly Khedr, "Kuwait's Legal System and Legal Research" (2010): Available: http://www.nyulawglobal.org/globalex/Kuwait.html: Accessed 7th Dec 2018.

3.2 CSR in Kuwaiti Company Law and Corporate Governance

Company law can be seen as the backbone of the corporate governance system as it provides the framework for corporate governance mechanisms. It contains provisions that regulate the relationships of the parties involved in the corporation (i.e. the relations between the corporation's insiders, managers, employees and auditors on the one hand, and the relations between the corporation's insiders and the corporation's outsiders, customers, creditors and the community, on the other hand).[43] In other words, corporate law can include among its components, corporate governance principles, as well as CSR issues, such as social and environmental concerns. Further, the corporate governance system plays a major role in its success since the board of directors' role is to set the company's strategic plan.[44] In addition, the board of directors also monitors the management concerning strategic plan implementation. Accordingly, the following is an attempt to examine whether the Kuwaiti company law contains corporate governance tools or not and, if so, to what extent these tools are efficient.

3.3 Board of Directors

Countries adopt either of two structures for the board of directors. A unitary board comprises a single board and this involves electing directors at the company's Annual General Meeting. In addition, a unitary board structure comprises executive, non-executive and non-executive independent directors and corporate affairs is the board's responsibility. Countries such as Germany, Netherlands and Denmark adopt more of a dual board structure. A dual board system occurs when there are two boards in one company, one is a management board and the other is a supervisory board. A supervisory board is responsible for supervising the management board. In other words, it controls how management boards conduct their daily management functions. This shows a clear distinction between the two boards from a composition standpoint, e.g. one board member is unable to be a member of another at the same time.[45,46] Similarly, companies under the French system have the freedom to select either a unitary or a dual board for its company structure although it is expected to provide the structure in its memorandum of association.[47] Therefore, directors play

[43] Husam-Aldin N. Al-Malkawi, Rekha Pillai, and M. I. Bhatti. "Corporate governance practices in emerging markets: The case of GCC countries." Economic Modelling 38 (2014), 133–141.

[44] J. Solomon, *Corporate Governance and Accountability* (4th edn Wiley 2013), 386.

[45] Al-Malkawi, Pillai and Bhatti (n 44), 133–141.

[46] Ibid.

[47] Benedicte Millet-Reyes and Ronald Zhao. "A comparison between one-tier and two-tier board structures in France." Journal of International Financial Management & Accounting 21.3 (2010): 279–310.

a key role in protecting shareholders given the high power they possess within the company.[48] For CSR, the corporate structure of Kuwaiti companies encourages the representation of stakeholders through the protection of shareholders via respective supervision by directors, since this is a social responsibility of Kuwaiti companies as stated in Article 186 of the Kuwaiti Companies Law 2016.[49]

Although it has not been explicitly stated in the Kuwait Companies Law 2016, Kuwait has adopted a unitary board of director structure, according to Article 181.[50] This is due to the board of director's role of managing the company, as well as the number of members in the board structure, which will be included in the company contract or the memorandum of incorporation. The minimum number of directors has been stipulated in Article 181 of the company law as no less than five directors, but the law has allowed the determination of the maximum number of the directors to be provided for in the company's memorandum of association.[51] In terms of the qualifications of directors in Kuwait, no provision in the Kuwait Companies Law 2016 states such information. The same applies to the appointment of a professional body for directors, and the establishment of business schools in the country. However, Article 187 of the Kuwaiti Companies Law 2016 does state that directors are not required to be shareholders of the company,[52] but according to Article 193(3) the director can be an independent member.[53] In terms of CSR, the system demonstrates that effective boards consider and address the concerns and interests of shareholders including the rest of the company's stakeholders, which is a social obligation of directors to their stakeholders. In comparison to the UK[54] and India,[55] these countries follow the same idea that directors are not required to be shareholders of a company and it is voluntary for directors to be appointed by shareholders. Therefore, this aligns with the voluntary code adopted in both the UK and India because directors can also be shareholders but are not so required, and thus in terms of CSR, effective boards are more transparent about stakeholder concerns and do not assert their power and authority over stakeholders.

Similar to Kuwait, the unitary board of directors is the predominant structure in India and the UK.[56] This is because all three countries share a similar one-tier

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[48]Ibid.

[49]Kuwait Companies Law, 2016, A.186.

[50]Kuwait Companies Law, 2016, A.181.

[51]Kuwait Companies Law, 2016, A.181.

[52]Kuwait Companies Law 2016, 2016, A.187.

[53]Kuwait Companies Law, 2016, A. 193 S.3.

[54]Atom Content Marketing Ltd, "Directors' responsibilities" (2018): Available: https://www.business.hsbc.uk/en-gb/gb/article/directors-responsibilities: Accessed 17th March 2019.

[55]Parekh Hemang and others, "Corporate governance and directors' duties in India: overview" (2018): Available: https://uk.practicallaw.thomsonreuters.com/0-506-6482?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1: Accessed: 17th March 2019.

[56]Ibid.

board structure where meetings are held by the board of directors representing stakeholders.[57] For example, the UK adopts a unitary structure where non-executives are given a strong governance role and have the task of monitoring aspects of the executives' behaviour, but at the same time threatening the operation of the unitary board by giving stakeholders the power to overthrow the board's authority.[58] Therefore, the unitary board has a principle that all directors are expected to have the same legal responsibilities or duties. For CSR, the equal treatment of stakeholders and directors under a unitary system promotes social responsibility through granting power to stakeholders to criticise the actions of its board of directors, which is a good method of identifying any deficiencies in the board's actions.

3.4 CSR Reporting and Information Disclosure

Social and economic reporting in Kuwait seems to be about promoting good governance in the business environment.[59] Given the lack of specific provisions in Kuwait Companies Law 2016 concerning CSR reporting, companies there are free to report. This aligns with the voluntary CSR framework that is adopted in Kuwait. Therefore, since there are no provisions, the alternative is to look at what Kuwaiti companies are currently reporting in terms of social responsibility.

Several attempts have been made to establish a common global CSR reporting framework for Kuwait.[60] The Global Reporting Initiative (GRI), developed in collaboration with the United Nations Environment Programme (UNEP), has been particularly successful owing to the development of Sustainability Reporting Guidelines.[61] Currently, GRI is an independent organisation based in Amsterdam and its goal is to develop and disseminate Sustainability Reporting Guidelines that will allow organisations to voluntarily report on their social, environmental and economic activities. GRI provides a set of reporting principles and structured report content with indicators for these three areas.[62] According to the KPMG Global Corporate Responsibility Survey published in 2011, 95% of the world's 250 largest companies report their sustainability performance, with 80% using the GRI Guidelines.[63] In addition,

[57] Carsten Jungmann. "The effectiveness of corporate governance in one-tier and two-tier board systems–Evidence from the UK and Germany–." European Company and Financial Law Review 3.4 (2006): 426–474.

[58] A Belcher. The unitary board: fact or fiction? Corporate Ownership & Control, 1(1), (2003), 139.

[59] Markaz, 'Kuwait Financial Centre "Markaz": Corporate Social and Economic Responsibility Report' (2015): Available: https://www.markaz.com/getmedia/391a1b9d-e058-4378-baae-6a109afa41f9/CSER-Pillars-Report-ENGLISH.pdf.aspx: Accessed: 10th March 2019.

[60] David L Owen. "Recent developments in European social and environmental reporting and auditing practice: a critical evaluation and tentative prognosis." (2003), 32.

[61] Ibid.

[62] Ibid.

[63] Yvo de Boyer and others. "The KPMG survey of corporate responsibility reporting 2013." (KPMG International 2013), 82.

according to the GRI database, more than 5,000 organisations from 60 countries use the guidelines to prepare their sustainability reports. Therefore, these reports strongly promote CSR by reinforcing socially responsible activities, economic and environmental well-being and sustainability in companies.

It should be noted that three Kuwaiti companies have voluntarily adhered to the GRI reporting principles when preparing their annual reports for 2012: Equatorial Petrochemical Company, Zain Telecommunications Company and Kuwaiti Financial House.[64] The aforementioned companies also adopted the AA1000 standard for the confirmation of reporting.[65] However, the AA1000 standard does not directly address the prescribed reporting formats and is therefore not as stringent in terms of reporting guidelines.[66] For example, according to a KPMG global trends in sustainability reporting regulation and policy report, there are less than five reporting instruments documented in Kuwait.[67] This confirms the scarcity of CSR reporting in Kuwait owing to the lack of provisions to support sustainable reporting in the country. Therefore, there is a need for CSR reporting provisions in Kuwaiti company law in order to give insight into the disclosure of socio-economic, environmental, political and social issues in Kuwaiti companies and to fairly punish companies who fail to meet their mandatory reporting requirements.

In contrast, the importance of stakeholder engagement is emphasised more in existing provisions of the Kuwaiti Companies Law 2016 through Articles 177–180 as stated under shareholder rights and obligations,[68] than in the GRI given the lack of CSR reporting frameworks in the country. Although it is suggested that Kuwait adopts a voluntary approach to reporting owing to the lack of provisions in the country, there is evidence to suggest that the GRI is an emerging CSR reporting framework that promotes mandatory reporting. Evidence suggests that between 2013 and 2016, the percentage of mandatory reporting instruments in the Middle-Eastern region had increased from 58% in 2013 to 79% in 2016 with a reduction in voluntary reporting from 42% in 2013 to 21% in 2016.[69] This suggests that countries like Kuwait are considering mandatory CSR reporting strategies.

This is the same for CSR reporting in India because non-profit organisations are providing research on the CSR activities conducted within Indian companies, including products and services, expenditure and other related CSR activities

[64] Ibid.

[65] Michael Hopkins, *The planetary bargain: Corporate social responsibility matters* (Routledge 2012), 12.

[66] Urša Golob and Jennifer L. Bartlett. "Communicating about corporate social responsibility: A comparative study of CSR reporting in Australia and Slovenia." Public Relations Review 33.1 (2007): 1–9.

[67] KPMG, 'Carrots Sticks: Global trends in sustainability reporting regulation and policy' (2016): Available: https://www.globalreporting.org/resourcelibrary/Carrots%20and%20Sticks-2016.pdf: Accessed 9th April 2019.

[68] Kuwait Companies Law 2016, A.177-180.

[69] KPMG (n 67), 13.

that promote economic sustainability and socially responsible business practices.[70] Therefore, social reporting in both Indian and Kuwaiti businesses is promoting socially responsible acts, but is doing it in different ways. While India[71] and the UK[72] require CSR reporting under the law, Kuwaiti companies are freer to report on what they like owing to the lack of provisions stated in the Kuwaiti Companies Law 2016. Thus, Kuwait promotes more freedom and flexibility to report in that sense. This means there is a need for CSR provisions to be explicitly stated in the Kuwaiti Companies Law 2016.

In terms of information disclosure, according to an annual directors' report, a large number of companies specifically presented the implementation of sustainability and CSR, so that the information disclosure of CSR in the directors' report would be verified under legal requirements.[73] In the UK, company information disclosure, including social and environmental information, is strictly required in regulations, as the main legal obligation and standard to evaluate whether companies were qualified in corporate governance through the reported information. Following the requirement of information disclosure in directors' reports, section 481 of the UK Companies Act 2006 requires directors to provide a statement on the purpose of the audit and section 496 requires auditors to confirm that the directors' reports for the financial year are consistent with those accounts.[74] The UK Companies Act 2006 regulates information disclosure in the form of the annual directors' report, including environmental and employee matters in business reviews, and refers to the notion of an audit of published reports. For CSR, UK company law appears to have a social responsibility of considering the concerns of their stakeholders, as well as looking after the environment by informing companies about these issues through the disclosure of information, thus demonstrating the UK's strong efforts towards promoting CSR in its companies.

However, under UK legislation regarding CSR information disclosure and monitoring, publishing information about environmental and social matters is valuable to the decision-making process and implementation of corporate governance. The UK has established the legal requirements related to information disclosure in companies' strategic reports that are not only limited to the regulations of financial reporting or business review in the UK Companies Act 2006, but have also been categorised into different areas, such as health and safety, human rights, and the environment,[75]

[70] Sateesh Gouda, A. G. Khan, and S. L. Hiremath. Corporate Social Responsibility in India. Trends, Issues and Strategies. Anchor Academic Publishing, (2017), 141–161.

[71] Ibid.

[72] David Williamson and Gary Lynch-Wood. "Social and environmental reporting in UK company law and the issue of legitimacy." Corporate Governance: The international journal of business in society 8.2 (2008), 128–140.

[73] Ezekiel A.Chinyio and Akintola Akintoye. "Practical approaches for engaging stakeholders: findings from the UK." Construction Management and Economics 26.6 (2008), 591–599.

[74] UK Companies Act 2006, S. 481 (2) and S. 496.

[75] Nick Gibbon, Giles Peel, Clive Garston and Bridget Salaman, DAC Beachcroft LLP. Corporate governance and directors' duties in the UK (England and Wales): overview,

through particular provisions, e.g. section 172 stating the consideration of shareholder interests and the environment.[76] This demonstrates that the UK legal system prioritises equal rights and ethics in its statute. However, in India, information disclosure accompanied by a valid audit is still a new concept that is being developed in both legislation and voluntary corporate governance among Indian domestic companies, which later transitioned to a mandatory approach post-colonial era. This could have been down to a lack of evidence on information disclosure under the legislative and voluntary governance structure among Indian companies during the post-colonial era.[77]

In terms of CSR, and in comparison to the UK, the companies had shown relatively strong performance with respect to information disclosure and monitoring owing to their strong position as a regulator of information disclosure on social and environmental issues.[78] In practice, most other countries such as India had adopted an attitude of wait and see. In the specific provisions of Indian company law,[79] it requires a company, after the end of each fiscal year, to formulate a financial report that includes information on its balance sheet, profit and loss record, financial change, financial statement and allocation of profit, as well as to donate a small percentage of their profit to charity.[80] It only regulates companies that disclose financial information through their annual financial report without the further requirement of reporting in other fields, such as social or environmental issues, and relevant monitoring of reports. Compared with the UK, in Kuwait the requirement of information disclosure and auditing in CSR in employment is still at an elementary and state-directed step because there is a lack of evidence to support the disclosure of CSR in the Kuwaiti Companies Law 2016. However, CSR is exercised based on minimum legal standards and is voluntarily exercised by companies in corporate governance.

Kuwaiti companies cannot voluntarily develop the performance of information disclosure like UK and Indian companies can through the use of accurate statistics in reports, or reporting comprehensively on negative information to the public. This is because the Kuwaiti legal requirement of CSR information disclosure is not complete and is not as strict as the UK and Indian legislation regarding information disclosure. In addition, instead of administrative supervision, the third-party audit and verification, which was mostly adopted in UK private companies, made CSR

(2018): Available: https://uk.practicallaw.thomsonreuters.com/3-597-4626?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1: Accessed: 22nd August 2019.

[76] UK Companies Act 2006 S.172.

[77] Veerma Puri, and Manoj Kumar. "Factors influencing adoption and disclosure of voluntary corporate governance practices by the Indian listed firms." International Journal of Corporate Governance 9.1 (2018): 91–126.

[78] Gordon L. Clark, and Eric RW 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 Industry Studies Conference Paper, 1–44.

[79] India Companies Act 2013 S.135.

[80] Kordant Philathropy Advisors Report, 'The 2% CSR Clause: New Requirements for Companies in India' (2013): Available: https://www.issuelab.org/resource/the-2-csr-clause-new-requirements-for-companies-in-india.html: Accessed 26th June 2019.

reports persuasive and reliable to report users and public investors. The adoption of CSR information disclosure and auditing in the UK and India is a legal requirement and could potentially be applied in corporate governance by each Kuwaiti company. CSR information could potentially be disclosed owing to the promotion of company success through social and environmental considerations as stated in section 172 of the UK Companies Act 2006[81] and social well being in section 135 of the Indian Companies Act 2013.[82] Therefore, provisions regarding the disclosure of information on CSR, to some extent, could be integrated in existing corporate governance provisions as an effective strategy to incorporate CSR compliance in Kuwaiti companies law.

3.5 Corporate Constituencies

The company's general meeting constitutes the supreme authority to make decisions in relation to the company's affairs, and this authority is usually provided by company law or the company's constitution. In addition, it has been suggested that due to the consideration of stakeholder interests from directors, company law should balance the shareholders' rights against the management's authority that is given by company law.[83] For example, Article 32 of the Kuwait Companies Law 2016 states that interested parties are granted the right to view the company contract, general meeting minutes and other relevant information about the company.[84] This aligns with shareholders' rights because of their capital contributions, including the right to sell, buy and transfer shares, receive returns from their investment in the company, receive information about the company to assist the shareholder in making the right decision in regards to the company and attend the general meeting of the company.[85] This branches out to several other shareholder rights, such as securing methods of ownership registration, as well as the right to convey or transfer shares, obtain relevant and material information, participate and vote in general shareholder meetings, remove members of the board and sharing company profits.[86] These principles could potentially promote CSR in Kuwait, e.g. sharing of profit, since the company is already obliged to donate 1% of their annual profits in the form of Zakat Tax,[87] and thus there could be a potential CSR provision in Kuwaiti company law that is similar to section 135 of the Indian Companies Act 2013.[88]

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[81] UK Companies Act 2006 S.172.

[82] Indian Companies Act 2013 S.135.

[83] Bernard S. Black. "Agents watching agents: The promise of institutional investor voice." UClA l. reV. 39 (1991), 811.

[84] Kuwaiti Companies Law 2016, A.32.

[85] OECD Corporate Governance Principles (2015), 20–21.

[86] OECD Corporate Governance Principles (2015), 20–21.

[87] Zakat Tax Law No.46 2006, A.1.

[88] Indian Companies Act 2013, S.135.

Other shareholders' rights include the removal of directors. The provisions on director removal can be compared to those of the developed countries, such as the UK. According to section 168 of the UK Companies Act 2006, the shareholders can remove the directors by an ordinary resolution in the general meeting when they are not satisfied with their performance. Therefore, section 168, which allows the removal of directors who are deemed unfit to manage a company, reflects shareholder engagement and communication, which in terms of CSR demonstrates the law taking into account shareholders' rights and their say in company affairs.[89]

One of the protections that is available to the minority shareholders is the general meeting, where the shareholders can challenge the company management. It is considered one of the corporate governance tools that should be offered to the shareholders, specifically to minority shareholders; accordingly, the threshold to call for an extraordinary general meeting should be reasonable. But, according to Article 127[90] and Article 152[91] of the Kuwait Companies Law 2016, the threshold is set very high at 25% of the company's shares, whereas, in Saudi Arabia, the threshold to call an extraordinary general meeting is 5% of the company's capital pursuant to the Saudi Arabia Capital Market Corporate Governance Regulations 2006, Article (5), ss. B. Therefore, Kuwait sets a much more conservative threshold when it comes to company capital, which could be down to the wealth of each country, since Kuwait is the second richest country in the CCASG region.[92] This is a good opportunity for Kuwait to incorporate philanthropic activity in their company law provisions as shareholders could invest in charitable causes to support the social well being of Kuwaiti citizens, and thus could be obliged to allocate a small percentage of their shares to support a good cause. This would be a great contribution towards the CSR effort in Kuwaiti companies law through the incorporation of corporate philanthropy.

The right to call an extraordinary general meeting has been given significant importance by the European Union as they issued a directive requiring that all member countries reduce the threshold to call the extraordinary general meeting to 5%.[93] For example, the UK Companies Act 2006 stipulated 10% as a threshold to call for a general meeting, but in accordance with the EU Directive, it has been amended to 5%.[94] Therefore, unlike the UK, the EU restricts the rights of shareholders to hold meetings, which in terms of CSR would restrict shareholders' rights to express their interests and concerns as a social obligation of companies. This is because by law, shareholders have a right to a 10% threshold as opposed to 5%.[95]

[89] UK Companies Act 2006 S.168.

[90] Kuwait Companies Law 2016, A.127.

[91] Kuwait Companies Law 2016, A.152.

[92] World Atlas, "The Richest And Poorest Economies In The Middle East" (2017): Available: https://www.worldatlas.com/articles/the-richest-and-poorest-economies-in-the-middle-east.html: Accessed 11th Feb 2019.

[93] USA International Business Publications, *Kuwait Business Law Handbook: Strategic Information and Laws* (International Business Publications USA 2013), 300.

[94] UK Companies Act 2006 (c.46).

[95] Ibid.

According to the Kuwait Companies Law 2016, section 212, the shareholders in a general meeting can relieve the board of directors from liability. In the event of a successful removal of the board of directors and when no director has been replaced, the general meeting has the power to appoint the existing board of directors to manage the company until a new director has been appointed.[96] This provision could be seen as shareholders challenging the director's liability in a general meeting even if the said director has been relieved. For example, the Kuwait Companies Law 2016 Article 304(1) states that the board of directors who commit fraudulent acts that would prevent shareholders from participating in general meetings.[97] In terms of CSR, the latter provision reflects a poor representation of stakeholders as it appears that shareholders are being punished for the wrongdoings of their board of directors, which could be perceived as a subversion of their rights to express their interests and concerns for the company.

With respect to Kuwaiti company law and shareholder relations, CSR principles promote socially responsible behaviour through the formation of limited liability to define its relationship with shareholders, not to mention that future shareholders who subscribe to its shares have and will have the same rights, including the rights to attend general meetings. For example, Article 208[98] of the Kuwait Companies Law 2016 states that each shareholder, irrespective of the amount of shares they have, can attend the general meeting. For CSR, this is a good representation of shareholders because it demonstrates that shareholders are able to express their interests and concerns in the meetings they attend, irrespective of their shares, which in turn promotes equal opportunity.

Sticking to the idea of equivalent treatment between the shareholders, as well as attending general meetings and voting rights, Article 208[99] of the Kuwait Companies Law 2016 provides for the principle of one share one vote. In other words, all shareholders can vote the number of times equivalent to the number of their shares. However, this demonstrates shareholder bias because shareholders can vote based on the number of shares they have and thus it would be unfair towards shareholders who have less shares compared to those who have more shares. For CSR, this is an unfair representation of shareholders as it appears that wealthier shareholders have more rights to vote, which is a subversion of shareholders' equal rights to vote on company interests and concerns.

In terms of shareholders' representation, shareholders' rights should be protected by the law as it has been argued that: "Legal rights are important because they protect economic rights and define the basic context for the exercise and transfer of rights. In particular, legal rules are the foundation of modern corporate governance, as the property rights of shareholders are created and defined by federal securities

[96] Kuwait Companies Law 2016, A.212.

[97] Kuwait Companies Law 2016, A.304(1).

[98] Kuwait Companies Law 2016, A.208.

[99] Ibid.

regulations and case law".[100] In this context, the legal framework of any corporate governance system differs from country to country depending upon the legal origins of each country.[101] Therefore, there are a number of social, political and economic factors that play a significant role in the formulation of a country's legal framework, e.g. Sharia influences some of the laws in Kuwait, such as gender segregation and the consumption of Halal. It has been claimed that a country's legal system crucially affects the ownership structure of the company.[102] Hence, the high ownership concentration in the French civil law countries resulted from poor protection of the shareholders.[103]

It has been stated that the family business could increase the agency cost if the managers are working for the interests of the family or the major shareholders only.[104] This shows the innovative and continuous nature of the family owned business, which is dominant in Kuwait.[105] In terms of economic responsibility of CSR, the continuous growth of the family business in Kuwait will contribute to societal wealth because of the significant number of regional workers that are employed in Kuwait, resulting in the reformation of the family business.[106] This is supported by the Kuwaiti National Labour Force Support Act No. 19 of 2000, which encourages Kuwaiti nationals to work in the private sector in order to reduce unemployment, diversify and increase the country's wealth.[107] Furthermore, Article 9 of the law No. 19 of 2000 concerning supporting national labour states that the Council of Ministers is required to dedicate a percentage of the national workforce in the non-government sector. In terms of ethical business practices of CSR, failure to comply with Article 9 can incur an additional annual fee on the company's work permit and grants non-Kuwaiti workers the power to increase the number of non-national employment.[108] Although fair penalties maybe incurred by businesses (e.g. family/private businesses) who breach Article 9, this can be detrimental to the national Kuwaiti workforce as the article also encourages foreign labour. For CSR, Article 9 encourages the representation of

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[100]David L. Kang, and Aage B. Sørensen. "Ownership organization and firm performance." Annual review of sociology 25.1 (1999), 121–144.

[101]Ibid.

[102]C. Mallin, *Corporate Governance* (6th edn, OUP 2018), 384.

[103]La Porta Rafael and others, "Law and finance" 106 Journal of political economy 1113 (1998), 1113–1155.

[104]Morck, Randall, and Bernard Yeung. "Agency problems in large family business groups." Entrepreneurship theory and practice 27.4 (2003), 367–382.

[105]Dianne HB Welsh, and Peter Raven. "Family business in the Middle east: An exploratory study of retail management in Kuwait and Lebanon." Family Business Review 19.1 (2006), 29–48.

[106]SK Peter, "Kuwaiti family business at key transitional stage" (2014): Available: http://news.kuwaittimes.net/kuwaiti-family-business-key-transitional-stage/: Accessed 17th March 2019.

[107]O Gulseven, "Challenges to Employing Kuwaitis in the Private Sector" (2015): Available: https://www.oxgaps.org/files/analysis_gulseven.pdf: Accessed 5th April 2019.

[108]GCC-Legal, "The State of Kuwait Law No. 19 of 2000 Concerning Supporting National Labor and Encouraging it to Work in Non-Governmental Organizations (19/2000)" (2000): Available: http://gcc-legal.org/LawAsPDF.aspx?opt&country=1&LawID=1044#Section_1936: Accessed 5th April 2019.

stakeholders through the Kuwaiti National Labour Force by imposing this provision on companies to support their labour force and impose penalties on companies who fail to comply with this provision.

Since Kuwaiti company law grants several rights to shareholders owing to their capital contributions,[109] shareholders should have the right to participate in, and to be sufficiently informed of, the decisions concerning fundamental corporate changes. These changes include (a) amendments to the statutes, or articles of incorporation or similar governing documents of the company; (b) the authorisation of additional shares; (c) extraordinary transaction, including the transfer of all or substantially all assets that in effect result in the sale of the company. Therefore, Kuwaiti company law appears to grant special rights to shareholders who invest in family businesses, which in turn opens up to the aforementioned opportunities and rights. In terms of the economic sustainability of CSR, the development of family businesses relies on the next generation family members to keep their family business legacy alive. Since shareholders are given special rights to invest in companies like family business, they can commit to socially responsible deeds by investing in these types of businesses to maintain the family business sector in Kuwait.[110] For CSR, this encourages stakeholder representation through the promotion of next generation Kuwaiti workers and business owners who will be huge contributors to the Kuwaiti economy, which in turn promotes future economic sustainability for the country.

Given the differences between the western and Indian jurisdictions, the UK, for example, follows the "outsider" model of corporate governance in which most shareholders take full control over the company.[111] However, India follows the classic "insider" system in which companies are controlled by either the state or business families.[112] Even though Kuwait has many family run businesses, the government has the majority control of companies since they own the country's oil reserve, which is a huge contributor to their economy.[113] Therefore, it seems that both India and Kuwait have a more state-owned system. For CSR, this encourages stakeholder representation by enabling potential business owners to contribute to the Kuwaiti economy by establishing family businesses, thus contributing to the diversification of economic wealth to the country and helps them move away from their dependence on oil.

By comparing the India and UK law systems, the stakeholder approach differs in Kuwait from the developed jurisdictions of the UK and India, since Kuwait places more emphasis on stakeholder (e.g. shareholder) support and gives them more freedom to invest in family business ventures by giving them the right to invest in family businesses to help develop and maintain its future growth. This adds to the

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[109] SK Peter, "Kuwaiti family business at key transitional stage" (2014): Available: http://news.kuwaittimes.net/kuwaiti-family-business-key-transitional-stage/: Accessed 17th March 2019.

[110] Ibid.

[111] Joseph McCahery, et al., eds. Corporate governance regimes: convergence and diversity. Oxford University Press on Demand, (2002), 696.

[112] Shaun J Mathew. "Hostile Takeovers in India: New Prospects, Challenges, and Regulatory Opportunities." Colum. Bus. L. Rev. (2007), 800.

[113] 2019 Index of Economic Freedom. Kuwait (2019): Available: https://www.heritage.org/index/country/kuwait: Accessed 22nd August 2019.

socially responsible deeds committed by shareholders in contributing to the diversification of the Kuwaiti economy, which is currently an oil-dependent country.[114] Interestingly, in the UK, however, more control and restrictions are placed on shareholders, e.g. shareholders are unable to request a general meeting from a government body or court nor can they intervene in a general meeting,[115] which could restrict their ability to voice their interests and concerns about the company. Therefore, the legal model of the UK might not entirely work in Kuwait, but could work in India owing to Kuwait and India having a more socially responsible approach to treating its shareholders. This appears to be down to the freedom and power Kuwaiti companies give their shareholders in terms of investment contributions that aim to diversify their economy.

Nevertheless, Bebchuk argued that increasing the shareholders' rights has resulted in minimising the agency cost and increasing the shareholders' investment value owing to the lack of corporate governance and CSR laws that give shareholders ability to express their rights.[116] Accordingly, as stated above, there must be a balance between the shareholders' rights and the managers' authority. The above suggests that Kuwait leans more towards the enlightened shareholder value (ESV) corporate governance model, since it supports the idea of shareholder value, in addition to protecting all shareholder interests. As stated in Sect. 3.3, ESV links to CSR in the sense that shareholders are free to commit to socially responsible deeds through investing in family businesses in order to diversify an oil-dependent economy.[117]

In most of the jurisdictions around the world, company law usually provides for devices that are available to the shareholders to exercise supervision over their company.[118] Accordingly, it could be argued that the legislator in Kuwait has stipulated for the basic shareholder's rights and equivalent treatment between the shareholders as it transpired from Article 177 of the Kuwaiti Companies Law 2016.[119] Although the Kuwaiti Companies Law incorporated several provisions in favour of the minority shareholders, it failed to protect the minority shareholders in several other instances. For example, Article 133(4)4, in the Kuwaiti Companies Law 1960 prohibits any restriction to the shareholders' right to seek a remedy for the damage they suffered against the board of directors whether the violation has been done collectively by the directors or solely by an individual director. Furthermore, the same article allows the minority shareholder to file a lawsuit against any decision rendered by the general meeting of the company, provided that some conditions are

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[114]KPMG, *GCC Family Business Survey 2017* (2018), 18.

[115]Neal Watson and Beliz McKenzie, Smith LLP Travers. Shareholders' rights in private and public companies in the UK (England and Wales): overview (2019): Available: https://uk.practicallaw.thomsonreuters.com/5-613-3685?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1: Accessed 22nd August 2019.

[116]Lucian Arye Bebchuk, "The case for increasing shareholder power" Harvard Law Review, (2004), 833.

[117]KPMG, (n 114), 18.

[118]USA International Business Publications, *Kuwait Business Law Handbook: Strategic Information and Laws* (International Business Publications 2013), 300.

[119]Kuwaiti Companies Law 2016, A.177.

fulfilled, i.e. the plaintiff, who is the minority shareholder, must own shares constituting not less than 15% of the company's capital and they should have not approved the disputed decision.[120] Although this is stated in the outdated provisions of Kuwaiti company law, Article 133(4)[121] has been omitted from the newly updated provisions in the 2016 law. This could be down to the developments in the family business sector in Kuwait, in addition to giving shareholders more freedom to invest in these businesses for the sake of economic development and sustainability. Therefore, the abovementioned article offers protection to shareholders owing to the freedoms that the updated law provides them.

Nonetheless, it could be argued that shareholder protection is ineffective. For example, Article 220 of the Kuwaiti Companies Law 2016 allows the shareholders to challenge the general meeting resolutions but not the business decisions that are taken by the board of directors.[122] In terms of CSR, e.g. shareholder communication and engagement, this does promote socially responsible behaviour since the power of shareholders gives them the right to challenge the board of directors in addition to having the freedom to make investment decisions. For example, according to Article 212 of the Kuwaiti Companies Law 2016, shareholders have the right to remove the board of directors and the chairperson.[123]

Given the lack of CSR regulations, the provision still upholds stakeholder interests. This is because the current legal framework in Kuwait is weak, which therefore gives shareholders more freedom to make company decisions. However, the stronger legal framework in the UK and India places restrictions on shareholders, with directors' duties playing a key role in these restrictions. Therefore, the next section provides examples of directors' duties in Kuwait through the lens of CSR and comparison with the UK and Indian company laws.

3.6 Directors' Duties

Director's duties are an important corporate governance issue, since the board of directors enjoys wide authority, such as having the power to make direct approaches to the shareholders as a means to encourage them to enter into a specific transaction,[124] including raising money from shareholders, issuing new share capital, paying

[120] International Business Publications, *Kuwait Business Law Handbook: Strategic Information and Laws* (International Business Publication 2013), 300.

[121] Kuwaiti Companies Law (1960), 133(4).

[122] Kuwaiti Companies Law 2016, A.220.

[123] Kuwaiti Companies Law 2016, A.212.

[124] Carsten Gerner-Beuerle, Philipp Paech, and Edmund-Philipp Schuster. "Study on directors' duties and liability." (2013), 64.

dividends to shareholders and returning capital to shareholders.[125] Moreover, the director's legal responsibilities are subject to being increased due to their important role in the corporation's performance.[126] Furthermore, it has been argued that the corporate scandals that occurred in the last decade, such as Enron, WorldCom and Adelphia, encouraged shareholders to cast a close eye upon their agent's behaviour, that is upon the behaviour of their managers.[127]

According to the wide authority that is vested in the company director's hand in order to manage the company, there is a chance for the director to diverge from the company's objectives and mismanage the company.[128] With respect to CSR, a divergence of company objectives will result in other stakeholder interests being neglected because directors will only focus on the objectives that are of personal interest as opposed to the company's interest. Therefore, corporate governance, as a system, imposes several duties upon the company's directors to ensure that they are managing the company properly, i.e. in accordance with its plan to achieve its objectives. In the UK and India,[129] the company's director is considered an agent of the company. Companies can only act if an agent is present and it is their role to promote the company's interests.[130] This helps to clarify the relationship between the company and its directors. For CSR, a strong relationship between the company and the directors would also suggest a positive relationship between directors and shareholders which in turn will project a good image of the company as everyone is looking out for everyone's interests as opposed to their own.

In Kuwait, there are no provisions where the law explicitly states that the relationship between the company and its directors is a principal-agent relationship, although this relationship does exist, e.g. the introduction of a new agency law in 2016 that regulated commercial agencies in Kuwait.[131] Owing to the principal-agent relationship between the company and its directors, the directors owe the company the so-called fiduciary duties, which involves trust, particularly concerning the relationship between a trustee (director) and a beneficiary (company). Moreover, it has been argued that the notion of fiduciary duty is undeveloped in Kuwait owing to a

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[125] ICAEW, "Directors' responsibilities for transactions with shareholders" (2019): Available: https://www.icaew.com/membership/regulations-standards-and-guidance/membership/icaews-guide-to-directors-responsibilities/directors-responsibilities-with-shareholders: Accessed 2nd April 2019.

[126] Yuwa Wei. "Directors' Duties under Chinese Law: A Comparative Review." (2008), 26.

[127] Nadelle Grossman. "Director Compliance with Elusive Fiduciary Duties in a Climate of Corporate Governance Reform." Fordham J. Corp. & Fin. L. 12 (2007), 393.

[128] Carsten Gerner-Beuerle, Philipp Paech, and Edmund-Philipp Schuster. "Study on directors' duties and liability." (2013), 64.

[129] Dr Rajesh Kumar Agrawal. "A Comparative Study of UK Companies Act, 2006 and Indian Companies Act, 2013." International Education & Research Journal [IERJ], Research Paper E-ISSN 2454-9916 (2015), 33.

[130] Aberdeen Rlwy. Co. v Blaikie Bros. (1854) 1 Macq. 461 at p. 471 In A. Hudson, *Understanding Company Law* (Taylor & Francis 2017).

[131] T. O'Regan and R. Zayat, "Kuwait introduces new Agency Law: franchisors take note" (2016): Available: https://www.dlapiper.com/en/us/insights/publications/2016/04/kuwait-introduces-new-agency-law/: Accessed 1st April 2019.

lack of trust between trustees and beneficiaries due to the limited corporate laws that address fiduciary duties, e.g. corporate bonds, corporate governance and rules that regulate shares.[132] With respect to CSR, there is very little to no shareholder protection legislation that aims to protect shareholders in Kuwait because of the lack of explicit provisions that aim to promote social responsibility, and thus demonstrates the need for protective provisions for beneficiaries in Kuwaiti company law.

The role of a company's director is to act on a fully informed basis, in good faith, with due diligence and care in addition to working in the best interest of the company and shareholders.[133] Shareholders are the foundation of capitalism as they are the ones that provide the needed resources for all companies. In addition, shareholders' rights and the equal treatment between all shareholders are essential components that the corporate governance system aims at protecting.[134] Shareholders in Kuwait are typically profit-driven where they are not entirely motivated by social considerations owing to the lack of corporate governance and CSR laws in the country, as well as low accountability and responsibility standards.[135] Therefore, since stakeholders in Kuwait are profit-driven, this affects CSR objectives as profit-minded companies will ignore any interests related to developing social responsibility for the sake of maximising profit. This would project a bad image for the company as this would suggest that the company is only obligated to generate profit as opposed to considering the wider social issues.

In comparison to Kuwait, India is not as wealthy. In India, the CSR provisions under the Companies Act 2013[136] state that they are expected to give at least 2% of its profits after each financial year.[137] CSR provisions as stated in the Indian Companies Act 2013 ensure that Indian companies carry out these good deeds, whereas in Kuwait, there are no CSR provisions that expect them to conduct these socially responsible activities. Similarly, in the UK, despite the CSR provisions, such as economic efficiency and social justice, which are implemented not merely to make a profit,[138] as stated in section 172(1) of the Companies Act 2006,[139] companies are not required under law to give any of its annual profits, and thus are purely voluntary. For those reasons, emphasis on shareholders' protection is reflected in the CSR provisions of the UK and Indian legislation, which are absent in the Kuwaiti

[132] Lu'ayy Minwer Al-Rimawi. "Emerging markets of the Middle East: A critique of selected issues in Arab securities regulation." Journal of Financial Regulation and Compliance 7.2 (1999), 149-176.

[133] R.I. Tricker and R.I. Tricker, *Corporate Governance: Principles, Policies, and Practices* (Oxford University Press 2015) (2015), 431.

[134] Angualia Daniel. "Balance of Power between Shareholders and the Board in Corporate Governance." (2010), 28.

[135] Dima Jamali and Walaa El Safadi, 'Adaptations of CSR in the Context of Globalization' in *Globalization* (IntechOpen 2019) (2019), n.p.

[136] India Companies Act 2015 s.135.

[137] Gouda, Khan and Hiremath (n 70), 141–161.

[138] Andrew Johnston, "The shrinking scope of CSR in UK corporate law" 74 Wash & Lee L Rev (2017), 1036.

[139] UK Companies Act 2006, S.172(1).

company law. Accordingly, the next section examines the corporate objectives that are embedded in the Kuwaiti Companies Law 2016 in relation to CSR.

3.7 Corporate Objectives

A company's directors are primarily required to act in the best interests of the company through maximising value for the firm. Thus, to achieve this objective, the directors should consider the interests of several stakeholders, including the shareholders,[140] because the shareholders are the owners of the companies.[141] Hence, given this absence in the law in Kuwait, the provisions are more limited to economic matters, such as the creation of wealth and company investment. For example, Article 246(1–5) of the Kuwaiti Companies Law 2016 states that a holding company or shareholding company is able to invest shares in companies, manage property and establish patents, all of which enable companies to contribute to the economy.[142] Therefore, it can be established that a shareholding company's freedom gives shareholders their freedom to invest in companies to contribute to the economy, thereby helping to meet their economic objectives. For CSR, this promotes economic sustainability objectives as investment not only suggests a means to just make money, but also consider other companies and shareholders who have mutual interests, e.g. similar economic and social objectives, which in turn promotes collaboration and social cohesion between companies.

According to Kuwaiti Companies Law 2016, it has stipulated provisions that are prima facie in favour of the shareholders, whereas the application of these provisions seems to be difficult because the law requires a very high threshold (absolute majority), especially in Kuwait where the ownership is very concentrated. Therefore, the corporate governance model adopted in Kuwait leans more towards enlightened shareholder value (ESV), since it appears that companies place much emphasis on objectives concerning shareholder wealth based on responsible attention to relevant stakeholder interests.

The public sector plays a vital role in meeting economic sustainability objectives, such as the allocation and use of economic resources in Kuwait, given the importance of the government's expenditures and role in economic development. Efforts from government are also expected in order to promote the performance of the public sector to drive economic development, and thus meeting economic sustainability objectives. Within this context, Kuwaiti corporations collaborate with the Kuwait Economic Society, an independent non-governmental national organisation that focuses on the strengthening of governance principles in public institutions, which therefore helps

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[140] Remus D. Valsan, and Moin A. Yahya. "Shareholders, creditors, and directors' fiduciary duties: A law and finance approach." Va. L. & Bus. Rev. 2 (2007), 1.

[141] Thomas Lee Hazen. "Silencing the Shareholders' Voice." NCL Rev. 80 (2001): 1897.

[142] Kuwaiti Companies Law 2016, A.246(1–5).

to fulfil not only economic objectives, but also social objectives as well through companies working together.[143]

According to evidence in a 2015 Corporate Social and Economic Responsibility Report by the Kuwait Financial Centre Markaz, in their endeavour to actively participate in community service and contribute to meeting economic sustainability objectives, such as building a strong and sustainable national economy, Kuwait companies have adopted a corporate social and economic responsibility strategy aimed at fulfilling responsibilities to society and the national economy.[144] The strategy is founded on three main pillars, namely building human capacity, aligning the business environment with the principles of sustainable development and promoting good governance in the business environment. Out of the belief that the sustainable future of Kuwait depends on individual skills and capabilities, evidence from the 2015 Corporate Social and Economic Responsibility Report suggests that organisations are keen to cooperate with viable non-profit organisations and contribute to human capacity building programmes, in order to provide for and maintain sustainable progress.[145] Although CSR is stated in the law, it is not explicitly stated as a CSR provision, e.g. Article 224 states that a percentage of the company's profits shall be dedicated towards meeting the company's obligations under the labour and social security laws.[146] Although this is a socially responsible deed of a company, it is not highlighted as a CSR provision, and thus future amendments of the law should explicitly state this.

Similarly, aligning business environments with the principles of sustainable development is another form of social and economic reporting in Kuwait that aims towards meeting environmental, social and economic objectives. In fulfilling their economic responsibility, companies in Kuwait are aiming to broaden their knowledge of economic policy in attempt to be more socially and economically responsible.[147] Companies collaborate with a number of global research institutes and experts in the field of economic policies to address practical policies that could potentially be implemented in Kuwait, which concerns energy, manpower, economic structuring and the public sector. This is evidenced through the attempts to diversify their revenue streams in the private sector owing to their high dependence on oil. For example, Kuwait has undergone economic restructuring within the past decade and the family business has played a significant role in achieving economic stability.[148] This enables Kuwait to be both economically and socially responsible by investing in small family businesses through helping families generate wealth, in addition to investing in the Kuwaiti economy for economic growth through taxation and an increase in spending

[143]Markaz, "Kuwait Financial Centre 'Markaz': Corporate Social and Economic Responsibility Report" (2015): Available: https://www.markaz.com/getmedia/391a1b9d-e058-4378-baae-6a109afa41f9/CSER-Pillars-Report-ENGLISH.pdf.aspx: Accessed: 10th March 2019.

[144]Ibid.

[145]Ibid.

[146]Kuwaiti Companies Law 2016 A.224.

[147]KPMG, *GCC Family Business Survey 2017*, 18.

[148]Ibid.

through disposable income. For CSR, investing in family businesses is not only in the interest of stakeholders, but also meets economic and social objectives through helping families to generate wealth, thus contributing to enhancing their quality of life.

Kuwaiti corporations have recently reported on meeting environmental objectives with possible solutions, such as powering Kuwait into the twenty-first century. This is evidenced through Kuwait's attempts to adopt sustainable energy strategies, namely providing alternatives for power generation.[149] For example, according to a 2019 report by the International Renewable Energy Agency, Kuwaiti companies are committed to minimising greenhouse gas emissions from oil-based commodities by 2030 through introducing policies that promote the use of renewable energy sources.[150] This includes a reformation of oil prices, electricity and water costs and investments in environmentally cleaner transport systems that are less fuel intensive. Recently, Kuwait passed a new Environment Protection Law No. 99 2015 (amended from No. 42 2014) that aims to protect and sustain individual health, manage pollution, improve and increase the use of natural resources and promote clean energy, as well as energy efficiency and sustainability.[151] Although there is no provisions in Kuwaiti company law to support environmental sustainability, Kuwaiti companies are making strong efforts towards CSR through supporting environmental development and promoting cleaner and more sustainable energy sources irrespective of the Environmental Protection Law.[152] This shows that Kuwait is committed to CSR reporting in the future, not only on a social and economic level, but also on an environmental level.

In short, companies are still unclear about CSR activities. However, there are certain categories of initiatives that can be adopted by companies, such as education, health and employment to help meet their corporate objectives. Many CSR processes have been introduced, but have not been considered as part of the CSR programme, such as investor relations, risk management and corporate governance,[153] since these processes were considered not part of CSR, but as part of compliance with external regulatory requirements. This further indicates that CSR in Kuwait is not yet fully understood. It was noted that the global financial crisis has had a positive impact on CSR, as it has encouraged companies to become more selective in their choice of initiatives. Although some Kuwaiti companies did not reduce their CSR budgets during the crisis, they became more selective in both spending and distribution. The

[149] IRENA, "Renewable Energy Market Analysis" (2019): Available: https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2019/Jan/IRENA_Market_Analysis_GCC_2019.pdf: Accessed: 9th April 2019.

[150] Ibid.

[151] Ibid.

[152] Kuwait oil Gulf Company. The success journey of oil pits remediation in WJO Area. (2017). Available: https://www.kgoc.com/news6.html. Accessed: 3rd Sept 2019; Shell. Towards a lower-carbon world. (2019). Available: https://www.shell.com.kw/en_kw/sustainability/environment.html. Accessed: 3rd Sept 2019.

[153] P. Hohnen and J. Potts, *Corporate Social Responsibility: An Implementation Guide for Business* (2007), 4–5.

focus was on transparency, accountability and governance. These terms were used by companies in Kuwait only after the financial crisis, as they realised that because of the crisis, shareholders and the media began to pay more attention to responsible business conduct. This confirms that Kuwaiti companies are convinced that CSR is an investment rather than a cost and should therefore be taken seriously.

3.8 Conclusion

This chapter has analysed and compared the CSR provisions in Kuwaiti company law with Indian and UK company law in order to set the stage for the proposal of a middle ground for CSR provisions in Kuwait. This was achieved by first presenting a comparative analysis of corporate law in Kuwait, India and UK by comparing the law as it evolved and comparing the evolution of company law in Kuwait in relation to India and the UK, to determine the direction that Kuwait should take from its fellow members of the "common law" family.

Although the Kuwaiti legal requirement for CSR is not complete and as strict as the UK and Indian legislation, Kuwaiti companies could still potentially develop this legal requirement, as do UK and Indian companies. The UK and Indian experience of CSR is not a legal requirement for Kuwaiti companies and may be freely applied in corporate governance by each Kuwaiti company. The findings presented herein take into account not only the legal evolution, but also places it in the context of historical, social, environmental, economic and political factors that were at play in determining the legal regime of Kuwait. This helps to establish a middle-ground for proposing provisions in Kuwaiti company law through the legal transplant of the UK and Indian Companies Acts.

Chapter 4
Sustainable and Smart System: Rethinking Accounting and Taxation in Portugal

Lilian Meira Purcinelli, Rute Abreu, and Ana Lúcia Vasconcelos

Abstract The sustainable development has been the most important strategy for solving problems and joins it with smart information systems that change the answer of the organization to the new tendencies of appropriate transparency, ethical, and legal framework. So, the objective of this paper is to present a smart accounting and taxation system through a computerized and digital business model for the automation of accounting and taxation records that produce more robust information system, and then it contributes to the reduction and the elimination of physical document files and get faster decision to the stakeholder. The methodology of this paper is descriptive and exploratory, with qualitative approach and applied scientific research nature based on the international accounting standards and the Portuguese tax system. The empirical analysis used a technical procedure of the primary data collection that will build a survey through questionnaires and then applied them in accounting organizations in Portugal. The contribution of this paper is to discuss an interactive, connected, and sustainable accounting information system with online information that is capable of promoting digital transformation in two complementary areas (accounting and taxation), providing the stakeholder useful information for making economic and financial decisions in real time.

Keywords Sustainable · Smart · Accounting · Taxation · New digital era

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4.1 Introduction

Organizations aim to implement, every day, new types of technology, such as artificial intelligence, interactive computer programs, virtual reality, car use, and driverless aircraft. Indeed, the development of technology and information system has contributed to the processes of generate, diffusion, and storage of knowledge in the citizen life, in general, and, organizations, in particular. Therefore, the need to be always in the process of change and toward better solution not only your internal demands, but also your customers' needs and expectations (Filho 1994). Thus, the objective of this chapter is to present a sustainable and smart accounting and taxation system through a computerized and digital business model for the automation of accounting and taxation records that produce performance reporting as the most important communication tool. Then, this digital model will contribute to the reduction and the elimination of physical documents, transform them into files, and diminish the risk associated.

This decision is supported by information systems built to improve the performance of the organization, creating new spaces and opportunities for action that generating competitive advantage to them (Crowther and Rayman-Bacchus 2004). Organizations can integrate sustainable and smart systems that use accounting and taxation applications, which allows them to integrate and connect data from all areas, such as production, stocks, sales, services, human resources, marketing, and finance (Caldeira 2008). Despite the difficulties, the last years have good progress to modernize the accounting and taxation knowledge, based on the decrease of the complexity, due to the interaction of different platforms that exchange information.

Undeniably, integrate accounting and taxation on a business model capable of promoting digital transformation will provide stakeholders with information useful for taking economic and financial decisions. Consequently, the main discussion is to ensure an appropriate transparency, ethical and legal framework of the accounting and taxation information system that contributed to the processes of creation and diffusion of knowledge in the organization. Always, these processes of changing management seek to meet connectivity inside and outside of the organization based on their demands of information from the market, but through the knowledge of this system.

The focus of this chapter is directed to the analysis and to the accuracy of records, financial and tax, especially in establishing procedures and criteria to be followed by accountants in the work planning and record of accounting acts and facts. In relation to information generated and recorded by organizations, through the *International Accounting Standards—IAS 1* that establishes the objective of providing useful information for decision-making, foreseen in the Conceptual Framework, will be achieved through the disclosure of the Financial Statements (IASB 2019).

Hendriksen (2018) describes the qualitative characteristics of the accounting information that are comparability, verifiability, timeliness, and understandability which must be provided by the financial statements, as well as by other statements. In addition, according to Hendriksen (2018), the properties of information need to make it

useful and are paramount to management as a support in decision-making, but their stakeholders need to have an understanding of the information to generate knowledge.

This chapter aims to answer the following question:

How to provide stakeholders with useful information to make their economic and financial decisions based on a sustainable and integrated tax accounting model, interactive and connected to the digital world?

Nowadays, several entities (i.e., the European Commission) propose several regulations to promote fairness and transparency for organizations stakeholders of the online platforms to get more predictable environment (EU 2019). Certainly, this question allows solving problems more effectively and with less time to reinforce transparency of the decision of managers.

The structure of this chapter is divided into four sections. The first section presents the introduction, which emphasizes the purpose of the chapter. The second section focuses on the theoretical analysis, which highlights the literature review on accounting and taxation in Portugal. The third section justifies the methodology used. The fourth section demonstrates several case studies from the empirical analysis. Finally, the conclusion discusses the expected results of the research.

Theoretical Analysis

The concept of the sustainability began to be visible in the years 1980, in particular, with the publication of the Brundtland Report: "Our Common Future", through the United Nations (UN 1987) and the World Commission on Environmental and Development (WCED), which presented a vision and perspectives of the future of organizations related to their financial performance linked to society and the environment. After that, Gelb and Strawser (2001) argue that socially responsible organizations are more likely to provide better information and dissemination of best practices in relation to their stakeholders. Afterward, Ruscheinsky (2003) defines sustainability as a set of measures aimed at maintaining the replacement capacity of a population, whether animal or plant species, in which natural resources can be extracted without depleting these natural resources.

Goldberg et al. (2008) describe that there are benefits and challenges for organization wishing to employ socially responsible investments, for example, as benefits include return comparable with other investment options, stakeholder satisfaction, support for business strategies and profitability, and as challenges include high time and cost consumption, as well as limited investments.

Agreeing with Aras and Crowther (2008), over the years, they defend that corporate social responsibility has become a major issue for corporations all around the world. Organizations are not the only ones looking to find profitable solutions to social problems. Social entrepreneurs seek new product concepts that meet social needs through viable business models (Porter and Kramer 2011).

According to Porter and Kramer's (2011) study, social enterprises that create shared value can grow much faster than purely social programs, which often suffer from the inability to grow and become self-sustaining. Corporate Social Responsibility can also be seen as the answer to questions that go beyond the company's economic, technical, and legal requirements to achieve social and environmental

benefits, along with the traditional economic gains that it seeks (Ferreira and Oliveira 2014).

Zou (2019) argues that the goal of corporate governance is to save on the agency costs of modern organizations, which combine their own real situation and relevant legal requirements to formulate a solid and modern system of rules and regulations, distributing rights, responsibilities, and interests of stakeholders with different roles in the organization.

The social entrepreneurship must be measured by its ability to create shared value, not just social benefit. Therefore, it can be said that an organization is sustainable if it is able to use resources effectively, efficiently, economic, and quality, seeking to achieve its objectives (more profit) with the lowest cost and lowest environmental impact. While the focus is primarily on business, the principles of shared value apply equally to governments and other nonprofit organizations.

The modern economy is subject to state and regulatory intervention through the creation of norms, codes, and laws, whose intervention process is known as economic regulation. According to Cardoso (2005), the Theory of Regulation has as its main objective to understand and answer the question: why regulate and why restrict the decisions of economic agents? The literature identifies concepts from theory, which can be analyzed in three stages (Cardoso et al. 2009):

(i) the positive or normative theory, called public interest theory;
(ii) the capture theory; and
(iii) the regulation and economic theory, known as the competition theory.

Accounting standards are prepared by the standard bodies in each country, which set out how accounting should be done and how financial information should be prepared. However, according to Ball et al. (2000), accounting practice is not always determined by standardization, since practical execution is almost always more detailed than norms determine; Standards do not always reflect or capture innovations in practice, and organizations do not always implement standards.

Shleifer (2005) defends that organizations adopt four approaches to promote accounting disclosure, such as

(1) Market Solution: The business relationship is based on the premise that organizations have incentives to provide reliable information about their operations;
(2) Judicial Solution: The business relationship is based on the process of issuing invoices and/or contracts, and any disputes between the parties are resolved within the judicial scope;
(3) Regulatory Agency: The regulatory agent is responsible for defining what should be evidenced by organizations, for disclosure and defines the penalty in case of non-compliance with the rules; and
(4) State Agency: The government nationalizes the bond issuance process, and the public agents are responsible for the sale of these bonds.

According to Ball et al. (2000), several countries adopt the "regulatory agency" approach. For example, regarding taxation in Portugal, the Decree-Law nº 28/2019

(PCM 2019a) introduced rules to the invoice and archives of tax documents, in order to harmonize invoicing procedures and encourage dematerialization, as well as procedures conservation and archive of these supporting documents.

For example, invoices use accounting and taxation knowledge that allows them to introduce through the software, all the required descriptions in accordance with nº 5 of the article 36° of the value-added tax code (AT 2019). As mandatory elements of invoices, they must be dated, numbered sequentially, and contain names, firms or organization designation, the registered office or address of the supplier of goods, services and taxpayer, as well as the corresponding tax number as tax identification.

Another example is electronic documents (including backup); they may be kept in Portugal or in any other Member State of the European Union. Thus, it is possible to keep the archive of invoice documents and other fiscal relevant documents, issued and received electronically, in a third country or territory, provided that prior authorization is obtained from taxation authority.

All these evolution concepts and documents reinforce the question of corporate social responsibility. So, it is clear when seeking to answer a very significant question for the business world, according to Business for Social Responsibility, how to "achieve business success in ways that honor values ethical and respectful of people, communities and the environment." In this sense, McWilliams and Siegel (2000) describe social responsibility as actions that can promote social good, as well as the organization's interest and according to what is required by law. Without no doubt, strong effort has been made on legislation to facilitate access to e-commerce, e-privacy, digital contracts, and security.

Researchers have been using financial reporting and corporate disclosures: annual shareholder reports and CSR reports, to conduct those researches. Despite the popularity of these sources, there is no way to empirically determine whether social performance data revealed by organizations is underreported or over reported, since few organizations have their CSR reports audited or reviewed by independent or certified organizations. Thus, the information about corporate social performance is open to questions and subjective trends, and then new measures are needed to support this new digital era.

The issues of corporate responsibilities and business purpose are related to business ethics (Przulj and Radovanovic 2009). The award winner of Nobel Milton Friedman said: "The business of business is business" and "Business's only social responsibility is to maximize profits." This underlines that business ethics is an applied area that examines the ethical principles and moral issues that arise in a business environment. It is also concerned with business philosophy to determine the fundamental principles of an organization.

Friedman (2000) understands that increased profits, made in compliance with the "rules of the game" and legal regulations, are the sole corporate social responsibility, and that managers, as legal representatives of shareholders, have a responsibility for their financial benefits. From the point of view of the conditions of the free market economy, the biggest responsibility for an organization, or a manager who runs it, is to have a profitable business.

According to the Indian National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business (MCA 2011), the principle recognizes that ethical conduct in all its functions and processes is the basis of responsible business. In relation to business, the National Voluntary Guidelines brings some fundamental concepts that organizations must follow as well as the adaptation made from ISO 26000 (ISO 2010), among them:

(1) Ethical Behavior: "individual or collective behavior that is in accordance with accepted written or unwritten codes of principles and values, which govern decisions, actions and conduct within a business in the context of a particular situation and is consistent with norms of accepted behavior."
(2) Transparency: "openness about decisions and activities that affect society, the environment and the economy and the willingness of organizations to communicate information in a clear, accurate, honest, timely and complete manner."
(3) Disclosure: "is the practice of measuring, reporting and reporting to internal and external stakeholders to provide a balanced and reasonable representation of performance."

As resume and in according to the guide (MCA 2011), the principle emphasizes that to function effectively and profitably, organizations must work to improve customer's quality of life, and the need to promote sustainable development is an imperative that political realism will come to require it (UN 1987) to ensure a stronger digital era.

4.2 Methodology

The methodology of this chapter is classified as its nature as an applied scientific research, because it has the objective of generating products and processes to solve a specific problem (Almeida 2011). As form the approach, it is characterized as a qualitative research, which enables the researcher to investigate the phenomenon studied in order to provide insights regarding the problems presented, seeking a "complete and absolute understanding" of the object of investigation (Freixo 2011).

The qualitative approach employs interpretive techniques for analysis and understanding of phenomena, subjective in nature and with inductive reasoning in data analysis (Almeida 2011; Sordi 2013; Lakatos and Marconi 2017). Regarding the proposed objective (Freixo 2011), this research is classified as follows:

(i) Descriptive, for the purpose of observing, "describing or interpreting" a phenomenon as it presents itself, its characteristics and related problems, presenting with the utmost accuracy possible, and uses the inductive method in which the process is the main focus, involving standardized data collection techniques; and
(ii) Exploratory, as it allows the researcher greater familiarity with the object of study to make it understandable through the exploration of the collected data.

The population to implement the questionnaire are accounting organizations established in Portugal. A primary data collection will be performed as defined by Sordi (2013), from those databases where sources of information are near to the accounting and taxation record, so they will be understood as the object of the research. These data will be collected through questionnaires to be treated by electronic means, analyzed, and this transformation will be studied to understand the degree of digitalization of the existing processes in accounting organizations in Portugal. The most innovative accounting organizations will be learned from this new digital era to offer customers with more sophisticated services with multiple databases that will create new sources of value.

4.3 Empirical Analysis

This chapter presents a digital proposal with effective actions to modernize the accounting and taxation work performed by the accounting organizations, which seeks

- improvement and optimization of this process;
- achieve better procedural efficiency in this area that can bring competitive advantage to accounting firms;
- increase transparency, fairness, and reliability in the process of accounting records;
- promote operational efficiency in the work of technicians, auditors, and taxation; and
- minimize tax evasion.

The digital model that the authors propose is presented in Figs. 4.1 and 4.2. To better understand it, it will be a present two-macro flowchart, with the main steps to be followed by stakeholders involved in this process, such as: Accountant, Supplier,

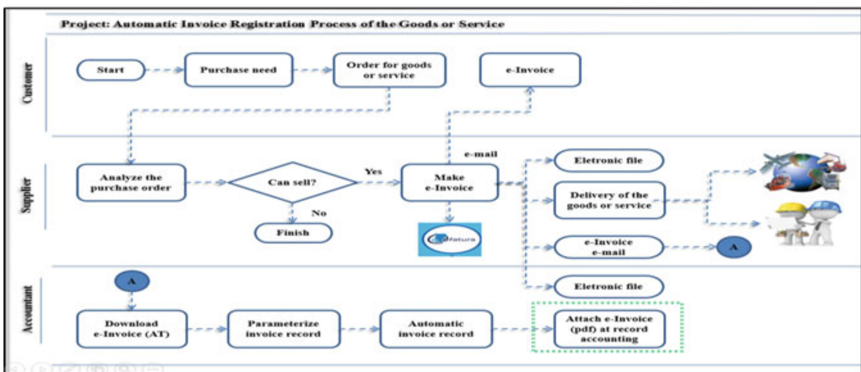

Fig. 4.1 Automatic e-invoice registration process

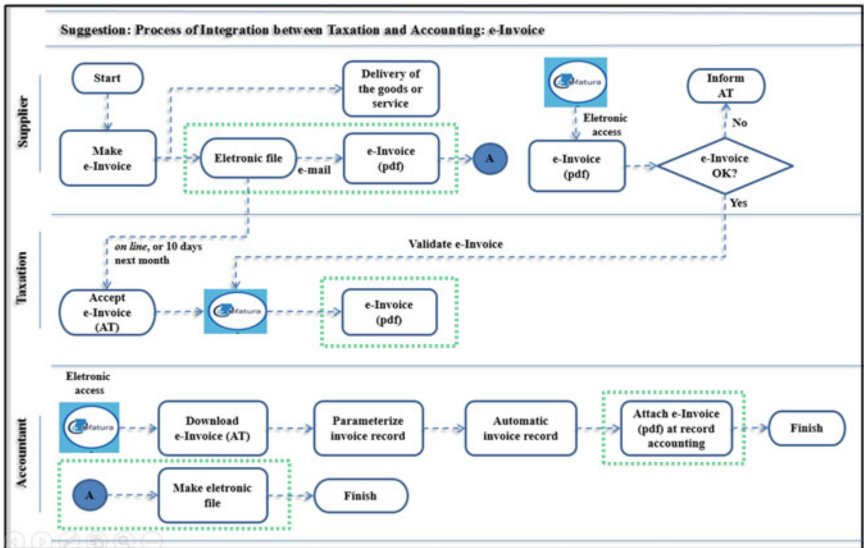

Fig. 4.2 Process of integration between taxation and accounting

Customer, Government and Taxation Authority (AR 2017). A deeper understanding of the model leads to present an integrated and connected paperless accounting business model with tax information (MF 2012), able to promote digital transformation in accounting organizations in Portugal and "*promoting the financial situation, performance, ownership, and governance of the company*" (OECD 2004).

The first figure presents an automatic e-invoice registration process with all the hypotheses of situations between customers that start the process until the accountant that closes the process as it details automatic invoice registration process each time a customer buys goods or services from its supplier.

According to the Decree-Law nº 28/2019 (PCM 2019a), invoices may be "in paper or electronic form which contain the elements referred to in articles 36° or 40° of the value added tax code (AT 2019), including: the simplified invoice, invoice-receipt and invoice amending documents under the legal terms called debit and credit documents." Also, the Decree-Law nº 28/2019 (PCM 2019a) details that invoices and other fiscally relevant documents "shall contain a two-dimensional bar code (QR code) and a unique document code." Regarding documentary archiving, the Decree-Law nº 28/2019 (PCM 2019a) provides that invoicing and other tax-relevant documents issued (PCM 2019b) or received on paper may be filed electronically through their digitization.

Figure 4.2 presents the process of the integration between accounting and taxation systems in the case of the e-invoice. To understand the progress in this case, it was essential for the legislation to improve the use of the e-invoice that modernize all the accounting departments of the organizations. A deeper and strong evolution has been made on the electronic communications to encourage investment.

After the implementation of this project, it is also sought to gain productivity in the accounting and taxation areas, eliminate manual processes, rework, paper, and document transit, and process transparency, detect and avoid duplication of accounting records or improper accounts, and generate useful information and reliably represented.

4.4 Discussion

This chapter provides stakeholders with computerized and digital business model for the automation of accounting and taxation records that generate useful information that will make their economic and financial decisions based on a sustainable and integrated tax accounting model, interactive and connected to the digital world. The role of accountant continues to be always under scrutiny, and the use of sustainable and smart information systems will provide more security to the accounting and taxation information.

As the global context becomes more sustainable, then this model, without the use of papers, will contribute to the partial or total elimination of physical document archives and increase the environment quality. The challenges of this chapter are related to the use of digital documents that can be integrated with accounting systems and later, which can be viewed and downloaded from the e-Invoice system directly from the taxation authority portal in Portugal.

As the global context becomes smarter, then this model engages with fair business practices and the accounting and taxation area will play a leading role. Organizations will take economic and financial decisions with the expectation that researchers will provide more knowledge to promote business with more protection and full respect for the rules of law.

For the citizen, the digital transformation on accounting and taxation information system will promote more equity, which improve significantly the transparency of online platforms and more accounting and taxation freedom and literacy.

For the organization, the integration of this process between accounting and taxation, aligned with technology systems, will allow the identification of possible nonconformities, errors, duplications, or failures that may direct managers to enable continuous improvement of their processes and that may ensure compliance with laws, regulations, and procedures established by the organization and that they are subordinate.

For the taxation authority, this integration process can bring productivity gains, since taxation work can be performed remotely, in the regional units of the Tax Authority, without physical displacement of agents, in the first moment, where it will be possible to cross-electronic data and check documents online.

For Polytechnic Higher Education Institutions, imperatives for education responsibility increase the challenge for organizations to acquire and to develop appropriate skills and competencies to deal with new digital era. This raises the question of the role of business education and higher education that must provide (i) graduates

with accounting, taxation, and digital skills; (ii) professionals and companies with social responsibility courses; and (iii) research projects to advance and disseminate knowledge on these areas to boosting transparency and ethical.

Finally, this research is the first step, which is expected to start moving toward more sustainable and smart systems into the organization, efficient in the use of their information, simplifying processes and eliminating physical documentary flow such as printed papers and archives.

References

Almeida, M. S. (2011). *Elaboração de Projeto, TCC, Dissertação e Tese: uma abordagem simples, prática e objetiva.* São Paulo: Atlas.

Aras, G., & Crowther, D. (2008). Governance and sustainability: An investigation into the relationship between corporate governance and corporate sustainability. *Management Research Review, 33,* 734–748.

Assembleia da Republica. (AR, 2017). Lei 114/2017, Lei de Orçamento do Estado. Diário da Republica, I Série, 249, de 29 de dezembro.

AT (2019). Value Added Tax. Lisboa: Portuguese Tax and Customs Authority [available at https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/civa_rep/Pages/codigo-do-iva-indice.aspx]

Ball, R., Kothari, S. P., & Robin, A. (2000). The effect of international institutional factors on properties of accounting earnings. *Journal of Accounting and Economics, 29*(1), 1–51.

Caldeira, M. (2008). *Sistema de Informação para a Gestão.* Lisboa: Universidade Aberta.

Cardoso, R. L. (2005). *Regulação econômica e escolhas de práticas contábeis: Evidências no mercado de saúde suplementar brasileiro.* São Paulo: R. L. Cardoso.

Cardoso, R. L., Saraiva, E., Tenório, F. G., & Silva, M. A. (2009). Regulação da contabilidade: teorias e análise da convergência dos padrões contábeis brasileiros aos IFRS. Revista de Administração Pública, jul/ago, 773–799.

Crowther, D., & Rayman-Bacchus, L. (2004). The future of corporate social responsibility. In *Perspectives on corporate social responsibility* (pp. 229–249).

European Union. (EU, 2019). General report on the activities of the European Union—The EU in 2018. Luxembourg: Publications Office of the European Union.

Ferreira, P., & Oliveira, E. (2014). Does Corporate Social Responsibility Impact on Employee Engagement? *Journal of Workplace Learning,* 232–247.

Filho, M. P. C. (1994). Os Sistemas de Informação e as modernas tendencias da tecnologia e dos negócios. Revistas de Administração de Empresas, Nov/Dez.

Freixo, M. J. V. (2011). *Metodologia Científica: Fundamentos.* Instituto Piaget: Métodos e Técnicas.

Friedman, M. (2000). *The social responsibility of business is to increase its profits, printed in ethical theory and business.* London: Prentice Hall/Pearson.

Gelb, D. S., & Strawser, J. A. (2001). Corporate social responsibility and financial disclosures: An alternative explanation for increased disclosure. *Journal of Business Ethics, 33,* 1–13.

Goldberg, J., Goldberg, S. R., & Ratliff-Miller, P. (2008). Investing in socially responsible companies. *The Journal of Corporate Accounting & Finance,* October, 20, 53–58.

Hendriksen, E. S. (2018). *Teoria da Contabilidade.* São Paulo: Atlas.

International Organization for Standardization. (ISO, 2010). ISO 26000: 2010, Guidance on social responsibility. Genève: ISO.

International Accounting Standards Board. (IASB, 2019). Accounting standards. http://www.ifrs.org/Pages/default.aspx.

Lakatos, E. M., & Marconi, M. A. (2017). *Fundamentos de metodologia científica.* São Paulo: Atlas.

McWilliams, A., & Siegel, D. (2000). Corporate social responsibility and financial performance: Correlation or misspecification? *Strategic Management Journal,* 603–609.
Ministério das Finanças. (MF, 2012). Decreto-Lei nº 198/2012. Diário da República, 164, I Série, 24 agosto.
Ministry of Corporate Affairs. (MCA, 2011). National voluntary guidelines on social, environmental and economical responsibilities of business. New Delhi: MCA.
Organization for Economic Cooperation and Development. (OECD, 2004). OECD principles of corporate governance, Paris: OECD.
Porter, M. E., & Kramer, M. R. (2011). Creating shared value: How to reinvent capitalism and unleash a wave of innovation and growth. Harvard Business Review, January–February.
Presidência do Conselho de Ministros. (PCM, 2019a). Decreto-Lei nº. 28/2019, procede à regulamentação das obrigações relativas ao processamento de faturas e outros documentos fiscalmente relevantes. Diário da Republica, I Série, 33, 15 de fevereiro.
Presidência do Conselho de Ministros. (2019b). Decreto-Lei nº 60/2019, determinação a aplicação da taxa reduzida do IVA à componente fixa de determinados fornecimentos de eletricidade e gás natural. Diário da Republica, I Série, 91, de 13 de maio.
Przulj, Z., & Radovanovic, B. (2009). Doing business in responsible manner: The case of Italian investors on the Serbian market. Belgrade.
Ruscheinsky, A. (2003). No conflito das interpretações: o enredo da sustentabilidade. Eletrônica do Mestrado de Educação Ambiental, 10.
Shleifer, A. (2005). Understanding regulation. *European Financial Management, 11,* 439–451.
Sordi, J. O. (2013). *Elaboração de Pesquisa Científica.* São Paulo: Saraiva.
United Nations. (1987). Brundtland report. Report of the World Commission on Environment and Development: Our Common Future.
Zou, J. (2019). On the role of internal audit in corporate. *American Journal of Industrial and Business Management,* 63–71.

Chapter 5
The Impact of Corporate Governance on Earnings Management of Portuguese Listed Firms

Inês Lisboa and Alexandra Costa

Abstract This work aims to analyze the impact of corporate governance characteristics on earnings management of Portuguese non-financial listed firms, for the period 2012–2016. Using panel data, we regress discretionary accruals, a proxy of earnings management, against corporate governance characteristics and control variables. The main results show that only two corporate governance variables: the independence of the board of directors and the type of corporate governance model adopted (one-tier or two-tier), and one control variable: level of indebtedness, are relevant to explain firm's earnings management. Results show that discretionary accruals increase with the independence of the board of directors. Moreover, companies who adopt the two-tier model are less prone to increase accruals due to a greater separation of functions and supervision and an increase in the monitorization of opportunistic behaviors. Finally, this study provides evidence that a high level of indebtedness is a deterrent to earning management practices since creditors also monitor the company's financial situation.

Keywords Corporate governance · Earnings management · Accruals · Transparency · Portugal

5.1 Introduction

Earnings management thematic has gained prominence in the last years due to diverse financial scandals that lead to companies' bankruptcy. Some examples are the financial scandals of Enron, WorldCom, and Lehman and Brothers, in the U.S., Parmalat, in Italy, Banco Português de Negócios, Banco Privado Português, and Banco Espírito Santo in Portugal. Managers take advantages of the flexibility of

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GAAP (Generally Accepted Accounting Principles) and compute earnings in the way to show the company's financial situation that is more accurate to fill private benefits. The company's financial situation is changed, misleading all stakeholders in the decision-making process (Roychowdhury 2006). These situations called for the need to change corporate governance recommendations in order to protect investors and other stakeholders.

In fact, in Portugal, the IPCG (Instituto Português de Corporate Governance—Portuguese Institute of Corporate Governance 2018) that is responsible by corporate governance thematic has adapted the existing corporate governance recommendations to regulate the relationship among stakeholders and promote the firm's strategic orientation and performance.

This study analyzes the impact of corporate governance characteristics on earnings management. Studies that link these two thematic earnings management and corporate governance are scarce. Therefore, this research aims to fulfill this gap in the literature by showing which corporate governance characteristics are more relevant to avoid earnings management practices.

The sample analyzed includes 36 Portuguese companies listed on the Euronext Lisbon stock exchange from 2012 to 2016. Only the financial industry was deleted from the total of the Portuguese listed firms in Euronext Lisbon. The choice for listed firms is because these firms are the only ones obligated to publish a corporate governance report.

To measure earnings management, we use accruals. Three models of discretionary accruals estimation were used: Jones model (1991), Dechow and Dichev (2002) model, and Kothari et al. (2005) model. It should be noted that the model of Jones (1991) and the model of Kothari et al. (2005) are similar, since both use the regressions to control non-discretionary accruals and indirectly estimate the value of discretionary accruals. However, the model of Dechow and Dichev (2002) analyzes the quality of accruals through the relation between accruals and cash flows of the period and adjacent periods.

Subsequently, the empirical model of the present study was developed. It relates some characteristics of corporate governance, control variables, and discretionary accruals. The selected corporate governance characteristics were the percentage of independent members on the board of directors (following Fama and Jensen 1983; Beasley 1996; Peasnell et al. 2005); the percentage of ownership held by managers (following Ali et al. 2008; Hermawan et al. 2012; Amara 2017); the number of meetings held by the board of directors (following Vafeas 1999; Xie et al. 2003), the existence of a Big4 as auditor (following Deumes et al. 2012; Hermawan et al. 2012), and the corporate governance model the company adopted. Some control variables were also included, namely, company's size, level of indebtedness, and a dummy that assumes value 1 if the net result of the previous period is negative and zero otherwise.

The main results show that a higher level of independent members in the board of directors has a positive impact on earnings management, and that firms who adopt the dualistic model are less prone to manipulation. The impact of the boards' independence is contrary to our expectations but can be explained as most of the Portuguese

listed firms do not follow the independence recommendation which argues that one-third of the board of directors' members should be independent. Moreover, when there is a separation between the chairman and the CEO, which is usual in the dualistic model of corporate governance, the supervision increases, leading to a decrease in discretionary accruals. Finally, evidence shows that when the level of indebtedness increases, discretionary accruals decreases, suggesting that indebtedness works as a mechanism to control managers' opportunistic behavior, due to the existence of costs regarding debt contracts.

The rest of the chapter is organized as follows: after this introduction, the second section deals with the literature review of corporate governance, earning management thematic and the link between both, and hypotheses development. Then a description of the sample is provided; the proposed models are explained, and the selected variables are presented. Afterward, the results are presented and the chapter ends in where the conclusion is provided.

5.2 Literature Review and Hypothesis

5.2.1 Corporate Governance

Corporate governance thematic is not new. It refers to the relationships among the firm's stakeholders, and how firms are managed and controlled (Cadbury 1992). The first influential report in this area goes back to 1992 when the Cadbury Report was published in the United Kingdom. It argued that corporate governance is "the system by which companies are directed and controlled" (Cadbury 1992, 15). After that, several codes of corporate governance were published.

The OECD (Organization for European Economic Co-operation) has published in 1999 the corporate governance practices, which was revised in 2004 and 2015. They recommend that these practices should be adopted in all European countries since they are practices of good corporate governance. In Portugal, corporate governance recommendations were proposed in 1999 by CMVM (Comissão de Mercado de Valores Mobiliários—Securities Market Commission 2019). Later on, in 2006, the IPCG published the white book of corporate governance with the aim to increase information transparency (Silva et al. 2006). In 2015, the CMVM recognizes the lack of self-regulation about corporate governance and have empowered the IPCG to assume the responsibility of this thematic. The first corporate governance code of IPCG was published in 2016, and it was revised in 2018 (IPCG 2018). This code includes recommendations about corporate control, executive and non-executive managers, supervision, remuneration setting, risk management, financial information, and auditing. It aims to ensure fairness, transparency, and accountability in the firm relationship with all stakeholders. Good corporate governance practices should be followed by listed firms but are also suggested to non-listed ones.

Two theories are relevant to explain corporate governance thematic: agency and stewardship theories. The agency theory argues that managers not always act in the way to maximize the firm's and shareholders' value unless an appropriate governance structure is implemented to safeguard shareholder's interests (Jensen and Meckling 1976). To protect shareholder's rights and promote information transparency, board of directors should have independent members to balance the power in the boardroom, and it should be guaranteed the separation of positions of CEO and chairman of the board (Fama and Jensen 1983; Lisboa 2018).

The stewardship theory argues that the human being is complex, and managers want to have a good performance, which not always means the satisfaction of self-interests (Donaldson and Davis 1991). Based on this theory, a good corporate governance should assure the involvement of executive directors in the board to increase its effectiveness (Lisboa 2018).

5.2.2 Earnings Management

Managers are pressured to maximize the firm's value and to fulfill stakeholders' and financial investors' expectations. Thus, they can take advantage of their position and change the firm's financial report to mislead stakeholders about the firm's performance or to influence contracts (Healy and Wahlen 1999). This leads to earnings management, that is, a complex phenomenon.

According to Schipper (1989), earnings management is a purposeful intervention in the process of reporting financial information, with the aim to obtain private benefits both to the firms and to managers. This process does not mean the violation of the generally accepted accounting principles (GAAP) but the use of its flexibility and the choice of accounting treatments that best fit certain interests. Earnings management is used to hide the firm's current performance from shareholders or other stakeholders (Klein 2002).

There are diverse reasons that justify this practice. Healy and Whalen (1999) have grouped it into three groups: capital market-related incentives, contractual incentives, and governance regulation incentives. Managers can change financial information to mislead financial investors about the firm's value and thus changing its market price. Regarding contractual incentives, it can be divided into two types: bank or other loan providers and managers bonus. Financial information is managed not only to gain the approval of new loans but also to maintain the firm's cost of debt (Moreira and Pope 2007). Managers are also tempted to manage earnings to increase their wealth when it is based on a compensation scheme. Finally, firms want to pay less income tax or to meet some regulations, and thus earnings management is to avoid the failure of some directives, which can bring some additional cost and penalties to the firm.

Earnings management can be applied through accruals or real activity. Changing accruals is more vulnerable and easily detected by auditors. It can be done at the end of the period, while real activities should be done throughout the year (Roychowdhury 2006). Most of the studies focus on accruals as it is easier to detect (Peasnell

et al. 2005). Accruals can be discretionary when managers change financial information to produce the desired effects on the results. Examples include changing asset depreciation methods, the method of valuing inventories, impairment losses, and others (Healy 1985).

5.2.3 Relationship Between Corporate Governance and Earnings Management

The 2007/2008 financial crisis that started in the US and extended to all world, and the financial scandals due to earnings management practices and frauds, as Enron, Xerox, and Worldcom in the US, Parmalat, in Italy and Banco Espírito Santo in Portugal call the attention to failures in corporate governance practices (Einiba and Eltaweel 2012). For this reason, some studies analyze the impact of corporate governance characteristics on earnings management (e.g., Fama and Jensen 1983; Beasley 1996; Moreira and Pope 2007). Based on the literature review, the hypotheses of this study were established.

5.2.3.1 Hypotheses

The board of directors is the main decision-making body and the first defense for shareholders' interests against the opportunistic behaviors of managers. Its members can be dependent or independent. The Portuguese Company's Code (Código das Sociedades Comerciais—CSC) argues that an independent member is "A person who is not associated with any specific interest group in the company or that in any circumstance may affect his/her exemption from analysis or decision, namely by virtue of: (a) Hold or act in the name or on behalf of holders of qualifying holdings equal or greater than 2% of the share capital of the company; (b) Has been reelected for more than two terms, on a continuous or intercalated basis" (article 414, number 5, CSC). The corporate governance recommendation is that every firm should have at least one-third of independent members (recommendation number III. 4, IPCG 2018).

Independent members are more effective in monitoring managers and reducing agency problems between owners and managers than inside members. They can protect shareholders' interests, ensuring the reliability of information provided, and leading to an increase in the firm's performance (Fama and Jensen 1983). Beasley (1996), Klein (2002), and Peasnell et al. (2005) found that firms with more independent members engage less in earnings management practices due to management monitoring. Independent members do not seek self-interests as executive compensation, fraudulent assets, or mislead investors to meet individual aims (Dechow and Dichev 2002).

Therefore, we expect that large proportion of independent members in the board of directors has a positive impact to avoid earnings management. The first hypothesis naturally follows:

Hypothesis 1: Board of directors' independence has a negative impact on earnings management practices

Ownership structure is also an internal mechanism of corporate governance. The level of managerial ownership explains their opportunistic behavior.

Ownership concentration avoids or at least reduces agency costs between managers and owners as managers are at the same time owners and have greater motivation to control all decision-making as it directly influences their personal interests (Jensen and Meckling 1976). Thus, managers, when owners of the firm, avoid earnings management practices as they will be harmed (Fama and Jensen 1983). When managers are not owners of the firm, they can engage in earnings management due to diverse reasons: to increase their own bonus, to fulfill financial investors' expectation, to have better credit conditions, and to avoid penalties because some regulations are not meet, among others (Healy and Whalen 1999).

Ali et al. (2008) and Hermawan et al. (2012) found that when the level of managerial ownership increases, earnings management decreases due to the interest alignment between the principal and manager.

Although Amara (2017) found the opposite relationship, justified due to agency costs between major and minority owners, major owners have more information about the firm and can use it to increase their own benefits, expropriating minority's wealth (Yermack 1996).

Hypothesis 2: Managerial ownership has a negative impact on earnings management practices

Often board of directors' meeting suggests a high monitor and supervision of the firm's activity (Vafeas 1999). Thus, more annual meetings should be negatively correlated with earnings management as these meetings are a way to control the activity of the board. Xie et al. (2003) found this negative relationship, justifying that more meetings help to solve conflicts of interests and to control managers' opportunistic behaviors. This leads to the next hypothesis:

Hypothesis 3: The number of board of directors' meetings has a negative impact on earnings management practices.

The type of auditor can also impact earnings management. The auditor should be independent, qualified, and offer guarantees that the firm's financial information is realistic and correct (OECD 2016). The Big4 audit firms (Pricewaterhouse Coopers, Ernest & Young, Deloitte, KPMG) are the major audit firms around the world. Due to their dimension, financial investors usually are confident that their reports are credible and that they will report any information that is not truthful (Hermawan et al. 2012). Moreover, these companies want to sustain their presence and reputation in the market and thus should provide a high-quality audit to firms. A negative impact between firms audit by a Big4 and earnings management is expected.

Although, after the financial crisis of 2008, and financial scandals regarding frauds, Big4 audit firms lost confidence from financial investors as some of the firms that went to bankruptcy due to incorrect accounting practices were audit by one of the Big4.

Deumes et al. (2012) and Hermawan et al. (2012) did not found a statistically significant relationship between firms' audit by a Big4 and earnings management. Even if previous researchers did not find a statistical relationship between the audit firm and earnings management, we still expect that this relationship can be found in Portugal, due to the already detected frauds. Although the impact can be positive or negative, we did not forecast the sign of this relationship.

Hypothesis 4: The audit of a Big4 company impacts earnings management practices.

Every firm should adopt one corporate governance model. In Portugal, two types of models are allowed: one-tier (monistic or Latin model, and Anglo-Saxon model) and two-tier (dualistic model). In the one-tier model, the board has a hybrid structure, with both administrative and supervisory roles, while the two-tier model has an executive board, a board of directors, a supervisory, and an auditing board (CSC, article number 278).

To our knowledge, studies analyzing the impact of the type of corporate governance model on earnings management do not exist. Campos (2015) has analyzed Portuguese listed firms and found that the type of board has an impact on firm's performance. He found that firms with the two-tier model have higher returns. Similar conclusions were found by Cunha and Martins (2007) who argued that the separation of the positions of CEO and the chairman of the board have impact on performance.

The dualistic model foresees more dispersion between the boards and more independence among members. This increases supervision, and thus earnings management practices can be avoided. The next hypothesis is established:

Hypothesis 5: Firms that adopt the two-tier model engage less in earnings management practices.

Not only corporate governance measures are relevant to explain earnings management. The firm's characteristics also impact it. The firm's size is one of those variables. Large-size firms are more monitored not only internally but also externally by financial investors, and their control is more sophisticated than those of small-size firms (Abbadi et al. 2016). Moreover, large-size firms have benefits of saving costs from economies of scale, so their profits are usually higher compare to small-size firms.

Therefore, small-size firms are more motivated to engage in earnings management practices to cover their high marginal costs. Chen et al. (2010) and Abbadi et al. (2016) found a negative relationship between firm's size and earnings management. The next hypothesis naturally follows:

Hypothesis 6: Firm's size has a negative impact on earnings management practices.
One reason for earnings management practice is related with debt contracts. Firms want to fulfill their contract covenants or have access to new debt contracts with good conditions. Therefore, the firm's leverage impacts earnings management. More indebted firms have more reasons to change financial statements in order to show a better financial situation and hide their financial problems. Klein (2002) and Abbadi et al. (2016) found a positive relationship between leverage and earnings management. Thus, the next hypothesis is as follows:

Hypothesis 7: Firm's leverage has a positive impact on earnings management practices.
Finally, the firm's previous net income can justify earnings management practices. Companies that present consecutively losses are more prone to change financial statements to show a better image, acquire confidence of all stakeholders, and sustain their presence in the market (Dechow and Dichev 2002). Moreira and Pope (2007) also found that firms with worse financial situation usually engage in earnings management because the cost of debt can increase. In fact, firms with losses have more financial problems and have the loss of confidence of all stakeholders, special suppliers, and customers. The last hypothesis is established:

Hypothesis 8: Previous losses have a positive impact on earnings management practices.

5.3 Sample and Methodology

5.3.1 Sample

The sample includes Portuguese non-financial listed firms. We choose Portugal because it is a country almost unexplored in all thematic due to its dimension. Moreover, diverse financial scandals related with earnings management and fraud (e.g., Banco Espírito Santo) were detected in the last years, calling the attention to study earnings management topic in this country. We linked corporate governance since it can protect investors from expropriation.

Only listed firms are obligated to do and publish corporate governance reports, which explains the choice of this type of firm. From the initial sample of the total firms listed in the Euronext Lisbon (49 firms), we deleted the financial industry due to its accounting singularities that could impact results. Moreover, firms that did not have available corporate governance report were also excluded as it was not possible to analyze the main aim of this work.

The sample period is from 2012 till 2016, 5 years of analysis. The final sample is unbalanced with 172 observations, of 36 companies.

The financial information was collected from SABI database, while corporate governance information was collected in CMVM website, where companies' corporate governance reports are published.

5.3.2 *Models*

5.3.2.1 Measuring Earnings Management

Earnings management is measured using discretionary accruals as it is easy to detect than real activities (Peasnell et al. 2005). There are various models to estimate discretionary accruals, as for example, Healy (1985), DeAngelo (1986), Jones (1991), Dechow, Sloan and Sweeney (1995), Dechow and Dichev (2002), and Kothari et al. (2005). We have selected three alternative models: Jones (1991) which is most extensively used in earnings management thematic, Dechow and Dichev (2002) that use a different perspective based on cash flows, and Kothari et al. (2005) which have adapted the Jones model, including a new variable to control the impact of performance.

For the three models, we first have to calculate total accruals, then non-discretionary accruals, and finally discretionary accruals, which is the proxy of earnings management. The followed procedures are explained after.

Using the Jones model (1991), total accruals are calculated using the following equation:

$$\mathrm{TA}_{i,t} = c + \alpha_1 \times \frac{1}{A_{i,t-1}} + \alpha_2 \times \frac{\Delta \mathrm{Rev}_{i,t}}{A_{i,t-1}} + \alpha_3 \times \frac{\mathrm{PPE}_{i,t}}{A_{i,t-1}} \quad (1)$$

where TA is the total accruals, which is the variation of non-cash current assets, less the annual change in current liabilities, plus depreciations, divided by total assets of the previous year; A is the total assets; ΔRev is the annual change in revenues; PPE is the net value of property, plant, and equipment; i represents the firm; and t represents the fiscal year analyzed.

The Dechow and Dichev (2002) model calculate total accruals using operational cash flows of different years:

$$\mathrm{TA}_{i,t} = c + \alpha_1 \times \mathrm{OCF}_{i,t-1} + \alpha_2 \times \mathrm{OCF}_{i,t} + \alpha_3 \times \mathrm{OCF}_{i,t+1} \quad (2)$$

where OCF is the operational cash flow.

The Kothari et al. (2005) model is an adaptation of the Jones model that includes a new variable to deal with the company's performance. The total accruals are calculated using the following model:

$$\mathrm{TA}_{i,t} = c + \alpha_1 \times \frac{1}{A_{i,t-1}} + \alpha_2 \times \frac{\Delta\mathrm{Rev}_{i,t}}{A_{i,t-1}} + \alpha_3 \times \frac{\mathrm{PPE}_{i,t}}{A_{i,t-1}} + \alpha_4 \times \mathrm{ROA}_{i,t} + \varepsilon_{i,t} \tag{3}$$

where ROA is the return on assets (net income divided by total assets).

The coefficients obtained to calculate TA (α) are used to estimate the non-discretionary accruals (NDA). Finally, the difference between total accruals and non-discretionary accruals represent the discretionary accruals (DA):

$$\mathrm{DA}_{i,t} = \mathrm{TA}_{i,t} - \mathrm{NDA}_{i,t} \tag{4}$$

5.3.2.2 Analyzing the impact of firm's characteristics on discretionary accruals

After calculating the discretionary accruals, the proxy of earnings management, we have analyzed the impact of corporate governance characteristics on it. Control variables were also included. The estimated model is the following:

$$\begin{aligned}\mathrm{DA}_{i,t} =& c + \beta_1 \times \mathrm{BOD_Ind}_{i,t} + \beta_2 \times \mathrm{BOD_Ow}_{i,t} + \beta_3 \times \mathrm{BOD_Meet}_{i,t} \\ &+ \beta_4 \times \mathrm{DAud}_{i,t} + \beta_5 \times \mathrm{DModel}_{i,t} + \beta_6 \times \mathrm{Size}_{i,t} + \beta_7 \times \mathrm{Lev}_{i,t} + \beta_8 \times \mathrm{DNI}_{i,t}\end{aligned} \tag{5}$$

In the next table, the list of independent variables is presented and explained how these variables were calculated based on previous researches (Table 5.1).

5.4 Results

Table 5.2 presents the summary statistic of the variables presented above, namely, mean, median, maximum, minimum, and standard deviation.

Analyzing Table 5.2, the following facts emerge:

(1) Discretionary accruals are in mean negative to the Jones (1991) and Kothari et al. (2005) models, but positive to the Dechow and Dichev (2002) model. This result is explained as the model of Kothari et al. is an adaptation of the Jones model, while the model of Dechow and Dichev estimates discretionary accruals using other information, namely, cash flows. Similar results were found by Lisboa (2017) who analyze earnings management of Portuguese listed firms. Moreover, the standard deviation is high suggesting the existence of earnings management practice in some companies.

(2) On average, board of directors' independence is 19%, which is smaller than the recommended (should be one-third). Similar results were found by Faria (2015) when analyzed the same market for the period of 2009-2013, although

Table 5.1 Independent variables

Hypothesis	Acronym	Independent variable	Formula	Previous researchers
H1	BOD_Ind	Board of directors' independence	Number of independent directors/total number of directors	Beasley (1996), Peasnell et al. (2005)
H2	BOD_Ow	BOD ownership	Percentage of ownership of board of director's members	Ali et al. (2008), Hermawan et al. (2012), Amara (2017)
H3	BOD_Meet	BOD annual meetings	Number of annual meetings of BOD	Vafeas (1999), Xie et al. (2003)
H4	DAud	Type of auditor	Dummy variable which is one when the auditor is one of the Big4 and zero otherwise	Deumes et al. (2012), Hermawan et al. (2012)
H5	DModel	Type of corporate governance model	Dummy variable which is one when the corporate governance model adopted is one-tier and zero otherwise	–
H6	Size	Company's size	Natural logarithmic of total assets	Chen et al. (2010), Abbadi et al. (2016)
H7	Lev	Company's leverage	Total liabilities/Total assets	Klein (2002), Abbadi et al. (2016)
H8	DNI	Losses in the previous year	Dummy variable which is one when net income of the previous period is negative and zero otherwise	Dechow and Dichev (2002), Moreira and Pope (2007)

it is much smaller than the percentage found by Amara (2017) to the French market (44%). The minimum value is zero, which means that some companies do not have any independent members while the maximum value is 78%.

(3) In mean, the percentage of managerial ownership is 38%. Similar value was found by Amara (2017) to the French market, while Ali et al. (2008) and Hermawan et al. (2012) found a smaller percentage (10%) to Malaysia and Indonesia. Once again, the difference between some firms is evident as some have 0% while others have 94%.

(4) The mean number of board of directors' meetings is 12. In some firms, the board only meets once a year while in other meet 59 times per year. Xie et al. (2003) found a smaller number (in mean) of eight meetings per year to the US firms.

Table 5.2 Descriptive statistics

	Mean	Median	Maximum	Minimum	Std. Dev.
DA_Jones	−0.001	−0.006	0.934	−1.457	0.242
DA_D&D	0.001	0.017	0.967	−1.742	0.254
DA_K.et al.	−0.002	−0.009	0.931	−1.412	0.241
BOD_Ind	0.190	0.200	0.778	0.000	0.190
BOD_Ow	0.376	0.411	0.936	0.000	0.327
BOD_Meet	12.514	11.000	59.000	1.000	8.986
DAud	0.803	1.000	1.000	0.000	0.399
DModel	0.971	1.000	1.000	0.000	0.168
Size	19.870	19.700	23.850	15.070	1.586
Lev	0.500	0.480	2.520	0.000	0.340
DNI	0.272	0.000	1.000	0.000	0.446

This table presents descriptive statistics, namely, mean, maximum, minimum, and standard deviation, for the variables included in the model: DA (discretionary accruals), BOD_Ind (BOD independence), BOA_Ow (BOD ownership), BOD_Meet (number of BOD annual meetings), DAud (dummy variable which is one when the auditor is one of the Big4), DModel (dummy variable which is one when the corporate governance model is one-tier), Size (company's size), Lev (company's leverage), DNI (dummy variable which is one when net income of previous period is negative)

(5) Most of the Portuguese listed firms are audit by a Big4 and adopted the one-tier corporate governance model. This last conclusion is justified since till 2006 only the one-tier model was allowed.
(6) Finally, the dimension among the firms is similar; in mean, the leverage is 50%, and most firms have positive net income in the previous year.

In the next table, the correlation coefficients between the dependent and independent variables used in this work are presented (Table 5.3).

The three measures of earnings management, discretionary accruals, are highly correlated, which was already expected as are alternative variables of earnings management. None of the selected variables to explain earnings management is highly correlated, at least not to a significant extent.

Contrary to our expectations, more independent members have a positive relationship with discretionary accruals. This result can be explained as most of the firms in the sample do not fulfill the recommended number of independent directors. Similar result was found by Miranda (2014) and Faria (2015) to the Portuguese market, who suggest that in Portugal independent members are not effectively independent as they aim to have some benefits and business opportunities when they accept to be a member of the board of directors.

Large-size firms are positively correlated with discretionary accruals measured using de Dechow and Dichev model. Contrary to our expectations, large-size firms have more discretionary accruals measured using cash flows. Although firms with a higher dimension can have more free cash flows, their power in the market is high

Table 5.3 Correlation matrix

	DA_Jones	DA_D&D	DA_K.et al.	BOD_Ind	BOD_Ow	BOD_Meet	DAud	DModel	Size	Lev	DNI
DA_Jones	1	0.95	1.00	0.148*	0.12	−0.06	−0.05	−0.08	0.01	−0.301***	−0.152**
DA_D&D		1.00	0.95	0.147*	0.12	−0.04	0.02	−0.09	0.174**	−0.451***	−0.219 ***
DA_K.et al.			1.00	0.162 **	0.12	−0.06	−0.05	−0.07	0.01	−0.290***	−0.11
BOD_Ind				1.00	−0.08	−0.228***	0.05	0.158**	0.210***	−0.04	−0.02
BOD_Ow					1.00	−0.11	0.10	0.184 **	−0.09	−0.260***	0.00
BOD_Meet						1.00	−0.172**	−0.549***	0.226***	0.178**	−0.12
DAud							1.00	−0.08	0.284***	−0.12	−0.06
DModel								1.00	−0.394***	−0.08	0.10
Size									1.00	−0.172**	−0.283***
Lev										1.00	0.175**
DNI											1.00

*, **, *** Significant at the 10%, 5%, and 1% levels, respectively

and so have less problems than receiving earlier from customers and paying later to suppliers.

Leverage is negatively correlated with discretionary accruals, contrary to our expectations. This result suggests that leverage is an alternative mechanism to control managers, and thus their opportunity to engage in earnings management is reduced.

Firms with previous losses also have less discretionary accruals, contrary to our expectations. This result can be explained due to the type of firms analyzed: listed firms that usually have less problems to look for leverage and can look for the financial market to fulfill their financial firms. Moreover, we found that most of the firms in our sample have positive net income, so they are more concerned about reducing the payment of income than increasing their profits.

Finally, board ownership (+), board of directors' meetings (−), audit by a Big4 company (−), and the adoption of the two-tier corporate governance model (−) have the expected impact on discretionary accruals, although this correlation is not statistically significant.

The results of the regression of earnings management against corporate governance determinants used in this study are presented in the next table (Table 5.4).

Table 5.4 Corporate governance impact on earnings management

	DA_Jones	DA_Dechow	DA_K.et al.
c	0.4107 **	0.4297	0.9258***
BOD_Ind	0.2197 **	0.2060**	0.2704***
BOD_Ow	0.0719	0.0514	0.0625
BOD_Meet	−0.0033	−0.0017	−0.0026
DAud	−0.0830 *	−0.0435	−0.0582
DModel	−0.2817 **	−0.2604**	−0.3822***
Size	0.1623	−0.0004	−0.0221*
Lev1	−0.174***	−0.2948***	−0.1855***
DNI	−0.0341	−0.0727*	−0.0498
Adjusted R^2	12.02%	22.46%	12.32%
F-statistic	3.9201***	7.1557***	3.9872***

This table presents the result estimation of the proposed model. Column 1—DA_Jones (discretionary accruals calculated using the Jones model), column 2—DA_D&D (discretionary accruals calculated using the Dechow and Dichev model), column 3—DA_K.et al. (discretionary accruals calculated using the Kothari et al. model). The explanatory variables are BOD_Ind (BOD independence), BOA_Ow (BOD ownership), BOD_Meet (number of BOD annual meetings), DAud (dummy variable which is one when the auditor is one of the Big4), DModel (dummy variable which is one when the corporate governance model is one-tier), Size (company's size), Lev (company's leverage), and DNI (dummy variable which is one when net income of previous period is negative)

*, **, *** Significant at the 10%, 5%, and 1% levels, respectively

The estimated model explains 12% of discretionary accruals, a proxy of earnings management using the Jones model, 22.5% of discretionary accruals using Dechow and Dichev model, and 12.3% of discretionary accruals calculated using the model of Kothari et al. Similar results were obtained by other researchers (e.g., Einiba and Eltaweel 2012; Abbadi et al. 2016). Moreover, analyzing the *F*-statistic, we can see that the model is relevant.

Board of directors' independence has a positive impact on discretionary accruals, contrary to the expectations of hypothesis 1. Corporate governance recommendations suggest a minimum of one-third of independent members, although most of the firms in the sample do not fulfill this recommendation. In mean, independent members represent 19% of the board of directors, which can explain this conclusion. Moreover, Miranda (2014) and Faria (2015) found similar results suggesting that besides the minimum of independence is not accomplished; independent members in Portugal are usually persons who aim to increase their personal benefits. Thus, these members may not act to protect shareholders' rights as they should but can work with managers and assume opportunistic behaviors.

Discretionary accruals are not influenced by managerial ownership; thus, hypothesis 2 is not validated. We supposed that the concentration of ownership in the hands of managers leads to diminish earnings management practices as the impact of these practices has a negative impact on the firm's and their personal wealth.

Board of directors' meetings have a negative impact on discretionary accruals although it is not statistically significant. Hypothesis 3 is not validated. This result can be justified due to the high volatility of the annual meetings of BOD, as the minimum is one annual meeting while the maximum is 59 meetings per year.

Firms audit by a Big4 have less discretionary accruals, at a level of significance of 10% when it is measured using the Jones model but is not statistically relevant for the other two alternative measures of earnings management. Hypothesis 4 is only partially confirmed. Big4 companies as want to maintain their reputation in the market and want to continue growing are more relevant to prevent earnings management practices.

Hypothesis 5 is validated; firms that adopt the two-tier model of corporate governance have less discretionary accruals. The inclusion of this variable to measure the impact on earnings management is new but we verify that it is statistically significant. Firms that adopt the two-tier model have more boards, the separation of positions between the chairman and the CEO, more independence among the members, and have a financial commission to control and manage risks. Therefore, as these firms are more prepared to monitor and supervise, earnings management practices are reduced.

The firm's size negatively impacts discretionary accruals measured using the Kothari et al. model but is not statistically significant to explain the other two proxies of earnings management. Thus, hypothesis 6 is only partially validated. Large-size firms are less prone to engage in earnings management since their monitoring system are more efficient. Similar results were found by Chen et al. (2010) and Abbadi et al. (2016).

The firm's indebtedness has a negative impact on earnings management, contrary to hypothesis 7. Our results show that firms with better financial situations are more prone to change financial information. This can be justified as leverage is an alternative way to control managers' opportunistic behaviors. Firms more indebt have less free cash flows available and need to cover their credit covenants. Thus, these firms have more difficulty to engage in earnings management practices.

Finally, previous negative net income has a negative impact on discretionary accruals measured using the Dechow and Dichev model but is not statistically significant to the other two proxies of earnings management. In fact, firms with losses have less cash flows, and the Dechow and Dichev model is estimated based on cash flows. Although the relation expected was the opposite, firms with losses could be more prone to manipulate their financial situation. We cannot forget that firms in our sample are listed firms that have a large dimension, and usually more profits those small- and medium-size enterprises. Thus, these firms are more prone to engage in earnings management to reduce the income tax for the period rather than to increase results, to have access to bank loans even because these firms have access to financial market to fulfill their financial needs. The mean value of this variable is near zero; it means that most of the firms in this sample present positive net income in the previous period, justifying this result.

As a synthesis, our results show that Portuguese firms have some singularities compared to firms from large-size countries. Contrary to our expectations, the independence of the board does not increase information transparency and contributes to increase accruals. This is explained since in mean the number of independent members is less than one-third, as recommended, calling the need to show the relevance of this board characteristic to increase the reliability of financial reports. Moreover, the separation of functions as well as the existence of debt holders works as deterrent of earnings management practices. These two factors of the firm help to reduce information asymmetry and thus to increase the transparency of results.

5.5 Conclusion

This study aims to see the impact of corporate governance in earnings management of Portuguese listed firms (non-financial firms). The choice to Portugal is because in the last years they had diverse cases of frauds that led to the firm's bankruptcy. Financial investors lost their confidence in firms' published information, and corporate governance recommendations have changed in order to protect investors and enhance information transparency. Only listed firms are obligated to publish corporate governance reports, which justify the choice for this type of firm. The final sample includes information of 36 Portuguese non-financial listed firms over the period 2012–2017. It is an unbalanced sample with a total of 172 observations.

To measure earnings management, we use discretionary accruals since it is an easier way to detect it (Peasnell et al. 2005). Discretionary accruals were calculated using three alternative models: Jones (1991) which is the more relevant model to

estimate accruals, Dechow and Dichev (2002) which have a different perspective and use cash flows to estimate accruals, and Kothari et al. (2005) which is an adaptation of the Jones model. We selected five corporate governance variables to explain earnings management and three control variables to deal with the firm's characteristics.

Estimating the panel data using ordinary least squares methodology, the main results show that when the number of independent members of the board of directors increases earnings management also increases. This result is explained because most Portuguese firms do not follow the recommendation of at least one-third of independent members, and some firms do not have any independent members. Moreover, these members can have personal aims to engage in earnings management in order to reach better positions in that or other firms in the future. Results also prove that firms that adopted the two-tier model of corporate governance are less prone to engage in earnings management practice as the number of boards increases; the independence is also higher and there are more mechanisms to control opportunistic behaviors. Moreover, in these firms, there is an effective separation of position between the chairman and the CEO. The level of indebtedness is also a way to monitor manager, because there are contractual clauses that must be fulfilled. Thus, higher leverage has a negative impact on earnings management.

This study is relevant because it brings together two themes that are intrinsically interconnected: earnings manipulation and corporate governance, although studies that analyze them together are still scarce. Moreover, we add a new corporate governance variable, the type of corporate governance model adapted: one-tier or two-tier model. This variable is relevant to explain earnings management, which can be related to the duality of the chairman and the CEO but also due to more supervision which avoid opportunistic behaviors. Additionally, we analyze the Portuguese market which is an interesting market for several reasons: (1) it was one of the countries where the financial crisis had a great impact, with the occurrence of several financial frauds; (2) it is a country whose regulator corporate governance practices have changed in 2016 because it recognizes its limitations to control and give more confidence to financial investors.

Our conclusions are not only relevant to the literature review but also to all stakeholders. Managers have more information that can be useful in the decision-making process; investors can understand how and the reasons firms engage in earnings management practices; the authorities can create effective ways to avoid changes in financial information and to promote more transparency; suppliers and customers can understand which determinants of the firm should be analyzed to see if the information is credible.

The goals we set ourselves were achieved, although this study, like others, is not without limitations. The results obtained are limited to listed firms, the period analyzed, and the methodology used. To the future, we suggest extending this analysis to other countries and the type of firms to confirm if the main conclusions are the same. In this study, we opted to measure earnings management using models based on accruals; however, there are other methods of detection of earnings management that can be used in a future perspective. There are other characteristics that can explain conclusions as macroeconomic factors that were not taken into account in

this study and could be considered in the future. Finally, the conclusions reached are a contribution to diverse stakeholders, but we are aware that stop earnings management practices are very difficult to achieve.

References

Abbadi, S., Hijazi, Q., & Al-Rahahleh, A. (2016). Corporate governance quality and earnings management: evidence from Jordan. *Australasian Accounting, Business and Finance Journal, 10*(2), 54–75.

Ali, M., Salleh, M., & Hassan, M. (2008). Ownership structure and earnings management in malaysian listed companies: the size effect. *Asian Journal of Business and Accounting, 1*(2), 89–116.

Amara, I. (2017). The effect of discretionary accruals on financial statement fraud: the case of the french companies. *International Research Journal of Finance and Economics, 161,* 48–62.

Beasley, M. S. (1996). An empirical analysis of the relation between the board of director composition and financial statement fraud. *Accounting Review, 71,* 443–465.

Cadbury, R. (1992). *The financial aspects of corporate governance.* Gee Professional Publishing Ltd, London. Retrieved from: http://cadbury.cjbs.archios.info/report.

Campos, L. (2015). *Influência das Caraterísticas dos Modelos de Corporate Governance no Desempenho Empresarial: Evidência empírica nas empresas cotadas em Portugal*. Master dissertation in Contabilidade e Finanças do Instituto Politécnico de Bragança.

Chen, H., Tang, Q., Jiang, Y., & Lin, Z. (2010). The role of international financial reporting standards in accounting quality: evidence from the European Union. *Journal of International Financial Management and Accounting, 21*(3), 221–278.

CMVM. (2019). *Comissão de Mercado de Valores Mobiliários*. Retrieved from http://www.cmvm.pt/.

CSC—*Código das Sociedades Comerciais*. Retrieved from: http://bdjur.almedina.net/.

Cunha, V., & Martins, A. (2007). O Conselho de Administração e o Desempenho das Sociedades. *Contabilidade e Gestão, 4,* 67–92.

DeAngelo, L. (1986). Accounting numbers as market valuation substitutes: a study of management buyouts of public stockholders. *Accounting Review, 61*(3), 400–420.

Dechow, P., & Dichev, I. (2002). The quality of accruals and earnings: the role of accrual estimation errors. *Accounting Review, 77*(1), 35–59.

Dechow, P., Sloan, R., & Sweeney, A. (1995). Detecting earnings management. *Accounting Review, 70*(2), 193–225.

Deumes, R., Schelleman, C., Bauwhede, H., & Vanstraelen, A. (2012). Audit firm governance: do transparency reports reveal audit quality?, *Auditing: A Journal of Practice & Theory, 31*(4), 193–214.

Donaldson, L., & Davis, J. (1991). stewardship theory or agency theory: CEO governance and shareholder returns. *Australian Journal of Management, 16*(1), 49–64.

Einiba, K., & Eltaweel, M. (2012). Earnings management and corporate governance. *Journal of Academic Research, 6,* 617–633.

Fama, E., & Jensen, M. (1983). Separation of ownership and control. *Journal of Law and Economics, 26*(2), 301–325.

Faria, I. (2015). *Governo Das Sociedades—Transparência Ou Marketing?* Master dissertation in Contabilidade e Fiscalidade Empresarial, Instituto Superior de Contabilidade e Administração de Coimbra.

Healy, P. (1985). The effect of bonus schemes on accounting decisions. *Journal of Accounting and Economics, 7*(1–3), 85–107.

Healy, P., & Wahlen, J. (1999). A review of the earnings management literature and its implications for standard setting. *Accounting Horizons, 13*(4), 365–383.

Hermawan, M., Waworuntu, S., & Hokardi, S. (2012). The impact of corporate governance on earnings management in Indonesia. *Journal Keuangan Dan Perbankan, 16*(3), 372–381.

IPCG—Instituto Português de Corporate Governance (2018). *Código de Governo das Sociedades*. Retrieved from https://cgov.pt.

Jensen, M., & Meckling, W. (1976). Theory of the firm: managerial behavior, agency costs, and ownership structure. *Journal of financial economics, 3,* 305–360.

Jones, J. (1991). Earnings management during import relief investigations. *Journal of Accounting Research, 29*(2), 193–228.

Klein, A. (2002). Audit committee, board of directorcharacteristics, and earnings management. *Journal of Accounting and Economics, 33,* 375–400.

Kothari, S., Leone, A., & Wasley, C. (2005). Performance matched discretionary accrual measures. *Journal of Accounting and Economics, 39*(1), 163–197.

Lisboa, I. (2017). Impact of financial crisis and family control on earning management of portuguese listed firms. *European Journal of Family Business, 6*(2), 118–131.

Lisboa, I. (2018). Corporate governance issues in family and non-family firms: evidence from Portugal. *Egitania Sciencia, 23,* 103–121.

Miranda, C. (2014). *A influência do governo das sociedades na qualidade dos resultados*. Master dissertation in Finanças e Fiscalidade da Faculdade de Economia, Universidade do Porto.

Moreira, J., & Pope, P. (2007). *earnings management to avoid losses: a cost of debt explanation* (pp. 1–45). Labour and Managerial Economics: Research Center on Industrial.

OECD (2015). *G20/OECD principles of corporate governance*. OECD Report to G20 Finance Ministers and Central Bank Governors.

Peasnell, K., Pope, P., & Young, S. (2005). Board monitoring and earnings management: do outside directors influence abnormal accruals? *Journal of Business Finance and Accounting, 32*(7–8), 1311–1346.

Roychowdhury, S. (2006). Earnings management through real activities manipulation. *Journal of Accounting and Economics, 42*(3), 335–370.

Schipper, K. (1989). Commentary on earnings management. *Accounting Horizons, 3*(1), 91–102.

Silva, A., Vitorino, A., Alves, C., Cunha, J., & Monteiro, M. (2006). *Livro Branco sobre Corporate Governance em Portugal*. Lisboa: Instituto Português de Corporate Governance.

Vafeas, N. (1999). Board meeting frequency and firm performance. *Journal of Financial Economics, 53*(1), 113–142.

Xie, B., Davidson, W., III, & DaDalt, P. (2003). earnings management and corporate governance: the roles of the board and the audit committee. *Journal of Corporate Finance, 9*(3), 295–316.

Yermack, D. (1996). Higher market valuation of companies with a small board of directors. *Journal of Financial Economics, 40*(2), 185–211.

Chapter 6
Legislating South African CSR Through Framework Legislation

Henk Kloppers

Abstract The notion of legislating Corporate Social Responsibility (CSR) has for the most part not been well received. This is evident from the fact that legislation directly regulating CSR (either in the public or private spheres) is almost non-existent, with only a handful of jurisdictions referring to CSR in national legislation, and where references to CSR are made it is generally in the context of taxation. In line with the international trend, South Africa also does not have legislation expressly addressing CSR, although it does have a regulatory framework with CSR content (such as socio-economic development initiatives in terms of the *Broad-Based Black Economic Empowerment Act* 53 of 2003, (the *BEE Act*) and the social and ethics committee in terms of the *Companies Act* 71 of 2008). However no explicit CSR legislation exist in the South African context. This contribution focuses on the following question: What could be included in a proposed CSR framework Act aimed at institutionalising CSR in the South African context? This contribution proposes a CSR framework Act for South Africa without creating an explicit right to CSR. The framework legislation proposed in this contribution should be regarded as being complementary to existing legislation addressing the rights addressed. With no comprehensive policy framework and no overarching legislation that addresses CSR in existence in South Africa, the country is in need of a framework law that addresses CSR and provides the necessary legal impetus for the establishment of a corporate conscience based on its social responsibility. It is evident, then, from noting the lack of an effective CSR enabling framework that the need exists to regulate aspects of CSR by means of a framework law. As a result, the aim of this contribution is to combine relevant national legislation and national and international guidelines into a framework Act that would institutionalise CSR.

Keywords Framework legislation · Institutionalising CSR · South Africa · Enabling framework

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6.1 Introduction

> Every political society is, and ought always to remain in constant need of adaptations to the persistent and inevitable changes in the social structure (Van der Vyver 1976: 56).

This remark, although made more than 40 years ago, is still applicable to the current situation in South Africa and now, more than ever, it is inevitable that changes should be made through legislation to achieve social reform and social justice. Especially in the area of social responsibility it might be necessary to implement social innovations through the use of legal compulsion. However, Van der Vyver (1976: 59) cautioned:

> The problem with democracy is that the government that owes its political power to the popular vote of the people must constantly bear the wishes and prejudices of the electorate in mind. Although it is within the power of the government of the day to take action which goes against what may conveniently be termed public opinion, such action can, in a democratic society, lead to the speedy downfall of the political party in office.

Given South Africa's political history and the extreme levels of inequality on various levels (in the South African context an apt example would be inequality with reference to land ownership), it is, in the opinion of the author, unlikely that the majority of South Africans who have to live with these inequalities on a daily basis will oppose moves by the Government to regulate CSR. In all likelihood a CSR Act will be popular amongst the poor and the marginalised and unpopular amongst some in the private sector. Any attempt to regulate CSR will be popular with some of the people some of the time, but certainly not with all the people, all the time. This contribution focuses on the following question: What could be included in a proposed CSR framework Act aimed at institutionalising CSR in the South African context?

At the outset of this contribution it should be stressed that the CSR framework law proposed here does not intend to create a right to corporate social responsibility or to create any individual entitlements giving rise to claims against private sector actors. Individuals can thus not institute a claim based on the proposed CSR Act in terms of which compliance with the Act is insisted upon. However, businesses can be held accountable by the state for failure to comply with the requirements of the Act. As will be become evident from the discussions to follow, it does propose the creation of certain obligations on the state and on the private sector which give rise to sanctions in instances of failure to comply. In the context of this research the broad notion of CSR could conceivably include an array of socio-economic, labour, environmental or other human rights without creating an explicit right to CSR. The framework legislation proposed in this contribution should be regarded as being complementary to existing legislation addressing the rights addressed. This is similar, for example, to the *Broad-based Black Economic Empowerment Act (BEE Act)* 53 of 2003, which does not create any constitutionally protected socio-economic rights but is regarded as a measure which *facilitates the realisation* of socio-economic rights (Kloppers 2012: 247–251).

The author has argued (Kloppers 2012: 204–212, 2013a: 121–123) that an enabling CSR environment is established through positive state action that includes

developing and implementing policies and strategies supported by legislation that guides CSR activities. However, despite the fact that governments (in general) are regarded as one of the main drivers behind CSR, (Vogel 2005: 11; Albareda et al. 2008: 388; Kloppers 2013a: 121–123) South Africa does not have any formal co-ordinated policies or strategies addressing the issue, nor does it have any legislation which explicitly regulates the issue (Coomans and Yakpo 2004: 19). The Government efforts which could be labelled as CSR or which have CSR content are inadequate and utterly fragmented. The CSR activities of private sector enterprises are generally not directed by legislation. As a result many businesses are dressing their purely philanthropic contributions (which have no strategic benefit) in a CSR coat, thus creating the appearance that they are acting in a socially responsible manner. The need exists to provide proper legislative guidance on CSR-related matters.

With no comprehensive policy framework and no overarching legislation that addresses CSR in existence in South Africa, it is reasonable to claim that the current measures aimed at facilitating CSR and embedding the notion in the corporate conscience are inadequate and fail to establish an effective enabling environment. As a result, South Africa is in need of a framework law that addresses CSR and provides the necessary legal impetus for the establishment of a corporate conscience based on its social responsibility. Khoza (2004a: 187) noted that the use of framework legislation or a framework law is “a relatively new and an undeveloped concept in legal theory and practice” and that there is “scant literature or scholarly work on the term and its application in a national context”.

The Government needs to adopt a framework law to give content to the private sector’s social responsibility towards society. Such framework law would confirm the Government’s commitment to embedding CSR in the domestic legal framework. The enactment of (framework) legislation provides an opportunity for the legislature to get involved in and establish accountability mechanisms which provide legitimacy to the process (Khoza 2004a: 187, b: 3–5).

The move towards a framework law in this context is supported by the fact that various sections included in the Bill of Rights (sections 24(b); 25(5); 26(2); and 27(1)) in the South African Constitution places the Government under a constitutional obligation to take *legislative* and other measures to ensure that the rights created are respected, protected, promoted and fulfilled, as required by section 7(2) of the *Constitution.* Based on this constitutional duty, a framework has to be provided for CSR, which provides the overarching instrument for the implementation of a national CSR strategy and policy.

It is evident, then, from noting the lack of an effective CSR enabling framework that the need exists to regulate aspects of CSR by means of a framework law in the South African context. As a result, the aim of this contribution is to combine relevant national legislation and national and international guidelines into a framework Act that could institutionalise CSR. To achieve this, the first discussion will extrapolate commonalities from various CSR instruments in order to determine which aspects of them should be included in a CSR framework law. The paragraph following this discussion will introduce the concept of framework legislation by way of a discussion of the nature, scope and advantages of such legislation. The final paragraph will

discuss elements of the proposed Corporate Social Responsibility Act and apply the elements to the Act. It is important to note that although the arguments put forward in this contribution is specifically aimed at the South African context, some of the recommendations might also be justified in other jurisdictions where CSR is not firmly embedded in the corporate culture and where social injustices need to be addressed.

It has to be emphasised that this contribution does not purport to provide the full content of a possible CSR framework Act. However, the contribution will discuss issues which in the opinion of the author have to be included in a possible framework Act.

6.2 General Trends in CSR or CSR-Related Instruments

Due to CSR's multidimensional nature, it is not strange that a variety of priority issues or themes are identified when working with CSR. As an example, the WBCSD identified a number of CSR priority issues including human rights, employee rights, environmental protection, supplier relations, community involvement, and related issues addressing the rights of stakeholder (interested parties) and monitoring and assessing CSR performance (WBCSD s.a.: 2). The European Commission identified human rights, labour and employment practices, environmental issues, combating bribery and corruption, community involvement and consumer interests as elements of the multidimensional nature of CSR (EC 2011: 1). Wan-Jan (2006: 182) notes that Business for Social Responsibility (BSR) identifies the following CSR "issues": business ethics, community investment, the environment, governance and accountability, human rights and workplace policies. The author has noted that the International Business Leaders Forum identifies the following 6 CSR "themes": human rights, labour and security, enterprise and economic development, business standards and corporate governance, health promotion, education and the environment (Wan-Jan 2006: 182).

It is evident that commonalities can be identified in the position that leading international institutions take with regard to CSR. Core issues such as human rights, employee rights, environmental aspects and community development feature prominently. However, it is important to establish whether these issues are also featured in the national and international instruments that address CSR or which are related to CSR.

From an evaluation of South African instruments it became evident that South African national instruments such as those included in the BEE framework or the JSE Socially Responsible Investment index follow a more context-specific approach with the focus on distinct national issues such as skills development and a demonstrated commitment towards the upliftment and the creation of equal opportunities (Kloppers 2012: 247–251). International instruments such as the ISO *Guidance on social responsibility* (ISO 2010), the GRI and the UNGC address more generic issues such as human rights and health and safety.

A number of recurring CSR "themes" or "issues" can be identified from various national and international CSR instruments. In the national context these include as mentioned, the BEE framework, the Companies Act (71 of 2008), SABS, 2010 *Guidance on social responsibility*, and the *King Reports* on *Corporate Governance*, and in the international context the *Global Reporting Initiative*, the *United Nations Global Compact* and the *Social Accountability 8000 (SA8000) standard.* (For a comprehensive discussion of these instruments, see Kloppers 2012: 247–287; 304–321; 325–338; 339–364; 374–389; 399–406, 2013a: 121–145, 2013b: 166–200, 2014: 58–79, 2018: 55–80.) It must be noted that a number of these themes can be linked directly to land reform in the South African context. The following paragraphs will briefly discuss them.

6.2.1 Health and Safety

The focus of this element is in the first instance on the occupational health and safety of employees in the workplace and secondly on the health and safety of consumers. Businesses must ensure that their employees work in a safe working environment and that the products which they produce are not harmful to consumers.

In the context of land reform the contribution of the agricultural sector can be found in instances where these companies can provide guidance to emerging farmers regarding health and safety issues. "Emerging farmers" for the purposes of the discussion in this paragraph are those farmers who have gained access to agricultural land through either land restitution or land redistribution. As an example, agricultural companies can provide guidance on the use of fertilisers for their crops and assist the emerging farmers with the distribution of the fertilisers between the crops. Through this assistance the farmers will be made aware of the potential dangers associated, for example, with handling the fertilisers. The farmers could also be provided with environmentally friendly alternatives to the use of non-organic fertilisers, which in turn relate to the following theme.

6.2.2 Natural Environment

This theme addresses issues related to the natural environment and is referred to in both national and international instruments. Businesses are required to consider the effect of their operations on the natural environment and to take steps to minimise any adverse effects their actions might have on the environment. Businesses must accept their environmental responsibility, must follow the precautionary approach to environmental management and must acknowledge the fact that the polluter pays. Businesses must further continuously monitor their usage of materials, energy and water and institute practices in terms of which they reduce their consumption of these resources and reuse and recycle them as much as possible.

6.2.3 Labour and Employment

Labour and employment issues in the CSR instruments appear predominantly in international instruments and focus on labour-related issues such as a prohibition on child or forced labour, freedom of association and the regulation of working hours. (See Kloppers 2012: 313–315; 331–332; 381; 393.) Although these issues are not expressly dealt with in any national CSR instrument they have received legislative attention in the national context with section 13 of the *Constitution*, for example, prohibiting slavery, servitude and forced labour, and section 23 regulating labour relations. Issues such as the regulation of working hours are also regulated by the *Basic Conditions of Employment Act* 75 of 1997. Businesses should not only ensure that they are complying with local labour laws, but should also satisfy themselves that those businesses in their supply chains are complying with local requirements. As an example, companies in the agricultural sector dealing with local producers (farmers) should be satisfied that their local producers comply with the major labour legislation. These companies could also provide assistance to those emerging farmers who are not sure about what is required of them with reference to labour and employment.

6.2.4 Community Involvement and Development

As is the case with labour and employment issues, community involvement and development is addressed some instruments. (For community involvement and development see Kloppers 2012: 334–336; 378) Due to its importance in the CSR context, the fact that this issue is not addressed in the majority of CSR instruments should be questioned. Community involvement and development is central to the notion of CSR and should consequently be included in the proposed draft Corporate Social Responsibility Act. This inclusion would be in line the constitutional values of equality and the advancement of human rights and freedoms and would also contribute to the empowerment of those in most need of being empowered. Businesses should conduct an analysis of the needs of the communities in which they operate in order to determine the communities' needs and then involve themselves in initiatives that contribute to the transformation of these communities. Community involvement and development should be central to any CSR enabling framework.

It is recommended that once a business has identified its stakeholders and established their needs an agreement be concluded between the business and the stakeholder community (Carroll 1991: 43; Mitchell et al. 1997: 874–877; ISO 2010; Kloppers 2012: 156–159). This agreement, which could be referred to as a mutual responsibility agreement, should then embody the business' CSR practices. In terms of this agreement the expectations and responsibilities of the parties (the business and the community) with regards to the community involvement should be clearly spelt out. If, for example, a community has a low rate of literacy, the business would agree to make education facilities available, subject to an undertaking by the community

that they would ensure that community members make use of the facilities. A step such as this would be beneficial to both the business and the community. A rise in the literacy level would benefit the members of the community and provide them with access to higher skilled employment, while the business would be able to recruit literate employees from the community.

The situation regarding emerging farmers also serves as an excellent example of how agricultural businesses can involve themselves in community development. Through their support of emerging farmers agricultural businesses will not only be contributing to the development (economic and otherwise) of these communities, but would also be contributing to a successful land reform programme by assisting these farmers to become productive commercial farmers.

6.2.5 Skills Development and Education

With reference to skills development, businesses are expected to involve themselves in issues such as training, internships and mentoring, which amounts to human development. (For references to skills development, see Kloppers 2012: 271–274; 329–331.) This type of involvement would signal a business' commitment to contributing to the enhancement of the overall skill levels of the business' stakeholders (including, but not limited to employees). In this regard skills development exhibits similarities with the issue of education, which also features in some of the instruments. (For references to education issues, see Kloppers 2012: 381–384.) It is recommended that the proposed CSR Act should include skills development and education programmes as possible manifestations of CSR initiatives.

The issues of skills development and education are crucial to the success of the land reform programme. The discussion of community involvement and development in the previous paragraph made it evident that the private sector could, through its community involvement, contribute to the upliftment of the beneficiaries of its CSR programmes. Agricultural companies are so centrally located in the agricultural sector that it almost seems like stating the obvious that their CSR programmes should be aimed at beneficiaries of the land reform programme. Unfortunately, this position is not so very obvious to some of the major agricultural companies operating in central South Africa, which are still not engaging with emerging farmers in an attempt to develop not only the skills of the farmers but also to develop future suppliers.

6.2.6 Consumer Relationships and Stakeholder Management

Consumer issues largely focus on fair marketing and the health and safety of consumers, though they also have to do with labelling and other forms of communication with customers. (For references to consumer relationships, see Kloppers 2012: 315–318; 333–334; 384.) Consequently, consumer issues are related to public

relations and are used as one of the indicators to measure social compliance. Since consumers are also regarded as legitimate stakeholders the issue of consumer relations can also be included under stakeholder management. Stakeholder management features prominently in the national instruments, with both of the King Reports as well as the JSE SRI Index referring to the issue. (For references to stakeholder management, see Kloppers 2012: 345–349; 361–362; 366–372.) Businesses should manage their stakeholder relations and consider the legitimate interests of stakeholders in their business activities (Kloppers 2012: 155–156; ISO 2010: 17; Post et al. 2002: 8). This can be done only if businesses are aware of who their stakeholders are and what their legitimate interests are. These matters should be established through a process of stakeholder mapping in terms of which the stakeholders are identified and classified according to their role in the business as well as their potential threat to the business. It is evident that the issue of stakeholder management is also closely linked to the issue of community involvement and development.

6.2.7 Human Rights (Including the Prohibition of Discrimination)

The majority of the international instruments which were discussed identified human rights as one of the major CSR themes. (For references to human rights issues, see Kloppers 2012: 329; 382–383; 391–392.) These instruments indicate that businesses should ensure that they are not complicit in human rights transgressions and that the human rights track records of suppliers should also be considered when concluding business contracts. Businesses should be able to demonstrate how they considered human rights issues in their investment decisions. Some of the instruments, such as the ISO *Guidance on social responsibility,* include the prohibition on discrimination under their discussion of human rights issues, (Kloppers 2012: 329) while the SA8000 (Social Accountability International 2008) standard addresses the issue under its discussion of labour issues (Kloppers 2012: 401).

Given the fact that human rights are priority issues nationally and are extensively dealt with and protected by the *Constitution*, it would not be necessary for a CSR Act necessarily to make specific reference to human rights issues. However, it would be prudent if the proposed Act required businesses to demonstrate to what extent suppliers have been screened for their human rights track records and how human rights issues have been considered in the selection of their socially responsible investment decisions.

6.2.8 Compliance and Reporting

Although the issue of compliance and enforcement is referred to in only a third of the instruments discussed, the author is of the opinion that this issue is crucial to the success of any attempt to provide a framework Act for CSR. (For references to compliance and enforcement issues, see Kloppers 2012: 344–345; 360–361; 383–384.) If CSR is to be embedded in the private sector's social conscience and supported by an effective enabling framework it is crucial that any proposed legislative intervention create enforcement mechanisms to ensure compliance. Compliance requires businesses to ensure that they adhere to applicable laws and that they consider adherence to voluntary non-binding rules and codes of conduct. The issue of compliance and enforcement can be linked to the majority of the themes identified in the instruments discussed. Businesses need to comply with labour standards and health and safety standards, and respect and promote human rights. If contributions to land reform programmes as a manifestation of CSR were included in a framework Act, businesses in the agricultural sector would legally be compelled to comply.

The issue of integrated reporting is closely linked to compliance and enforcement as well as several of the other themes. (For references to integrated reporting, see Kloppers 2012: 348–349; 362–364; 378.) Although only three of the instruments explicitly refer to integrated reporting it is recommended that it should at the very least be compulsory for all registered companies to report annually on the nature and extent of their CSR policies and practices and how these impacted on the beneficiaries of the CSR practices.

6.2.9 Socio-economic Development

Socio-economic development is referred to in some of the national instruments only, and no reference is made to the theme in the international instruments. (See Kloppers 2012: 281–283; 308–311 for references to socio-economic development.) The aim of socio-economic development (and socio-economic development initiatives) should be to empower individuals in order to enable them to improve their quality of life. Kloppers (2012: 281) noted that the notion of SED could be regarded as CSR under a different label, and as a consequence SED could in theory include the majority of the themes identified in the instruments. An important and useful approach with regards to SED contributions is followed in the BEE framework, where a compliance target of 1% of net profits after tax is set for SED contributions. In this regard it is recommended that the proposed CSR Act should include a requirement that businesses are to contribute a set percentage of their annual income to CSR initiatives.

This issue is fairly similar to community involvement and development. It could be argued that socio-economic development should be based on engaging the community and result in the community's socio-economic development. Since the aim of socio-economic development is to empower individuals to enable them to improve

their quality of life, it is not difficult to see that an issue such as skills development could easily be classified as a socio-economic development initiative.

6.2.10 Corporate Citizenship

Although both the *Companies Regulations, 2011* and the *King III Report* make reference to corporate citizenship (Kloppers 2012: 311–313; 358–360; For a discussion of corporate citizenship as an approach to CSR, see Kloppers 2012: 170; Palazzo and Scherer 2008: 25–49; 62–64; Garriga and Melé 2004: 57; Porter and Kramer 2006: 85.), the author is of the opinion that it is not necessary to make any explicit reference to the subject. This opinion is based on the fact that a business that respects and promotes human rights, that observes fair labour practices, that contributes to socio-economic development initiatives or that complies with environmental and health and safety regulations will be regarded as a being a good corporate citizen. A good corporate citizen also acts against corruption and eliminates all forms of bribery or extortion. (For references to anti-corruption see Kloppers 2012: 308–313; 378.) However, since the issue of corruption and bribery is extensively dealt with in numerous pieces of legislation, it is recommended that a CSR Act should not be burdened with sections addressing the issue.

6.2.11 Preferential Procurement and Enterprise Development

Preferential procurement (see Kloppers 2012: 274–277, 2014: 58–79 for a discussion of preferential procurement in the BEE context) and enterprise development (see Kloppers 2012: 277–281, 2014: 58–79 for a discussion of enterprise development in the BEE context.) are unique to the South African instruments and more specifically those included in the BEE framework. The aim of these two issues is firstly to encourage businesses to make their procurement from designated suppliers (in the context of BEE, the designated suppliers should be black-owned), and secondly, to encourage social investment through enterprise development contributions. Enterprise development should focus on matters such as the provision of training or mentoring to beneficiary entities, enabling the entities to increase their financial or operational capacity.

In the context of AgriBEE, “enterprise development” also refers to the provision of support to black emerging farmers and land reform beneficiaries. Although preferential procurement and enterprise development are addressed in the BEE framework, it is recommended that, given South Africa’s history and the persistent levels of

inequality, these themes should also be included in the proposed CSR Act, thus reiterating the Government's commitment to improving the socio-economic position of historically disadvantaged South Africans.

Regardless of what is included in the AgriBEE framework, both of these issues can be linked to land reform. With reference to preferential procurement, the Government could, for example, indicate that in certain areas it would transact only with those agricultural businesses that can confirm their contribution to assist land reform beneficiaries.

6.2.12 Management System

The final theme addressed in the discussion of the instruments relates to the establishment of a social management system to facilitate compliance with the prescriptions. The fact that the only reference to the establishment of a social management system is in the SA8000 standard (Social Accountability International 2008: 6–18; Kloppers 2012: 403) does not detract from the important role that such a system would play in a CSR framework. Businesses should have an internal management system through which they manage their CSR initiatives. In this regard it is recommended that when a business reports on an annual basis on its CSR initiatives, it should also report on the management system implemented in order to ensure compliance with the proposed Act.

With the above commonalities and recommendations in mind, an act to serve as a framework law for CSR is recommended. Framework legislation for the purposes of this research shows similarities to framework legislation used in other jurisdictions such as the USA. According to Garrett (2005) "framework laws establish internal procedures and rules that shape legislative deliberation and voting with respect to a specific subset of laws or decisions in the future. They are laws about lawmaking in a particular arena". However, in order to make proposals regarding the content of such a framework Act, it is necessary to briefly explain the concept of framework legislation by addressing its nature and scope as well as the advantages of making use thereof.

6.3 Framework Legislation in General

A number of the socio-economic rights enshrined in the Bill of Rights (including the right of access to land) in the South African constitution require the state to take reasonable legislative and other measures to realise these rights. These rights include the right of access to land (s 25(5)); access to housing (s 26(1)) and access to water (s 27(1)(b)). Framework legislation is regarded as one of the possible guises of legislative measures that could fulfil the state's obligation with regards to the obligation to take such measures (Terblanche 2012: 185; 188). Although delivered

in another context, the use of framework legislation as part of a comprehensive strategy has been endorsed by the Constitutional Court in the *Grootboom* case. In its judgement the Court noted "[i]t may also require framework legislation at national level" (at par 40), thus acknowledging the use of framework legislation within a broader legislative context. In this regard, Tereblance (2012: 188) remarked that

> raamwerk wetgewing as wetgewende maatreël ter verwesenliking van sosio-ekonomiese regte is nie 'n vreemde verskynsel in die Suid-Afrikaanse reg nie. [*framework legislation as a legislative measure in the realisation of socio-economic rights is not a strange phenomenon in the South African law.] own translation*

This remark is supported by various pieces of framework legislation aimed at realising socio-economic rights, such as the *National Health Act*,[1] the *National Environmental Management Act*[2] and the *National Water Act*.[3]

Framework legislation refers to

> a legislative technique used to address cross-sectoral issues and facilitate a cohesive, coordinated and holistic approach to them. (FAO 2009: 57)

In the context of CSR the need exists for social regulation that provides guidance to businesses on how to approach CSR and structure their internal policies accordingly. This need arises from the current institutional failure to comprehensively address CSR. In order to draft a framework law for CSR, the Government needs to demonstrate that it has the necessary political will to introduce measures that would in all likelihood be met with fierce resistance from the private sector, and that it has the managerial capacity and resources available to implement such legislation.

A concrete, effective and implementable CSR framework consisting of a framework law supported by sound policy and strategy is required—a framework that defines the scope of application of CSR and provides for implementation provisions and sanctions for failure to comply.

6.3.1 The Nature and Scope of Framework Legislation

The primary aim of framework legislation is to "provide an overarching and coordinated tool for implementing national strategies and policies" (Khoza 2004c: 672). As an overarching implementation tool, framework legislation can be used to harmonise

[1] 61 of 2003. This Act provides the framework for a structured uniform health system within the Republic based *inter alia* on the constitutional duty included in s 27(1)(a) of the *Constitution.*

[2] 107 of 1998. This Act establishes a framework for integrating good environmental management into all development activities and is regarded as a legislative measure taken in terms of s 24(b) of the *Constitution.*

[3] 36 of 1998. This legislative measure was taken in accordance with the Constitutional duty in s 27(1)(b) of the *Constitution.*

existing (and often disjointed) policies and strategies not regulated by law, as is the case with the current national approach to CSR.

Khoza (2004c: 672) identifies the purpose of framework legislation as an attempt.

> to get a systematically defined and complex process of implementation started. A framework law consolidates an agreement over procedures for regulating this process.

According to Coomans and Yakpo (2004: 20) a framework law is meant to.

> facilitate a more cohesive, co-ordinated and holistic approach to a specific issues. Such legislation lays down the basic legal principles and competences without a detailed codification. Usually it includes a declaration of objectives and policies, the establishment of relevant institutions and a definition of procedural principles. It may also lay down rules and principles for responsibility and accountability of actors involved.

According to the Food and Agricultural Organisation of the United Nations (FAO), framework legislation creates a broad outline for action without regulating the areas it covers in detail. However, it does lay down general principles and obligations.

> but leave[s] it to implementing legislation and other authorities to determine specific measures to be taken to realize such obligations... . (FAO 2009: 57)

Framework legislation identifies and addresses the shortcomings (or lack of coherence) in an existing framework and ultimately results in the development of a policy supported by legislation. Khoza (2004c: 667) as well as Coomans and Yakpo (2004: 23–24) note that before a framework law is drafted, the existing framework (consisting of legislation, policies or strategies) should be evaluated in order to identify possible weaknesses in the existing framework and then to address the weaknesses through a framework law. It should further establish guiding principles for future policy development. The absence of an established enabling framework for CSR necessitates and justifies legislative intervention aimed at guiding CSR.

Unlike framework legislation which is aimed at giving content to a constitutionally enshrined socio-economic right such as housing or food, a CSR framework law would not provide for the core content of the right due to the fact that the proposed framework law should not be regarded as a law creating specific rights.

6.3.2 The Advantages of Framework Legislation

Although the process of enacting framework legislation is more complicated and time-consuming than, for example, regulating CSR through soft law measures (including policies or strategies), once enacted, framework legislation as a manifestation of hard law presents numerous advantages (Khoza 2004b: 4, c: 676–677). A CSR framework Act would serve as confirmation of the Government's commitment to embed CSR within the national legislative framework and its identification as a priority area. Khoza noted that the adoption of a framework law could be regarded

as a "firm political and legislative statement" regarding its commitment to the issue at hand (Khoza 2004b: 4, c: 676–677). And it has the further advantage of spelling out the obligations of the private sector with reference to CSR.

Connected to the identification of obligations, a framework Act would make provision for legal sanctions in the event of violations of the act. The threat of sanction would compel the private sector to engage in CSR activities which would gradually lead to a greater commitment to CSR initiatives. A further advantage of a framework Act is that it would assign the responsibility for ensuring that the act is enforced to a designated state department or independent body. By assigning the "CSR portfolio" to a designated department or body, compliance with the stipulations of the act would be monitored with greater ease. According to Khoza (2004b: 3–5), the allocation of specific responsibilities to a designated department or body would ensure that the department or body accepted responsibility for ensuring compliance with the act and would be held accountable for a failure to do so. This would give rise to enhanced accountability.

Since framework legislation is in fact legislation, the normal legislative process would have to be followed in order to approve it. One of the advantages of addressing an issue through framework legislation as opposed to voluntary, self-regulatory measures is the participation of non-governmental organisations and other private sector actors in the process leading up to the final acceptance and enactment of the legislation. This inclusive approach provides greater legitimacy to the content and process. This position is in contrast, for example, to the process in which the Government formulates a national strategy or in which individual private sector actors decide to introduce voluntary self-regulatory measures.

Despite its advantages, Coomans and Yakpo (2004: 21) caution against the adoption of framework law on the grounds that it may be an exercise in window-dressing. The authors note that framework law should not be used as an excuse for the lack of more direct measures.

6.4 The Draft *Corporate Social Responsibility Act*

Businesses are obliged to consider the interests of society by accepting responsibility for the effect that their business activities have on an array of stakeholders, including customers, employees, shareholders and communities.[4] However, the notion of CSR is not yet firmly embedded in corporate South Africa and as a result it is necessary to consider the provision of legislative guidance (through social regulation) in order to get corporate South Africa involved in CSR and CSR initiatives. An attempt to legislate CSR through the promulgation of a CSR Act would be unique and a clear indication to the rest of the world that the South African Government appreciates the benefits of CSR as an instrument to bring about change in the lives of millions of struggling South Africans. It ought to be reiterated that the proposed CSR Act

[4]Similar to *Bill 1239* introduced in the Philippines aimed at institutionalising CSR.

should not be regarded as an attempt to comprehensively legislate every aspect of CSR. The proposed Act should be regarded as an instrument that could guide the Government if and when it decides to formulate a formal position on CSR.

It should be noted that to date no comprehensive act addressing CSR exists anywhere in the world. Nigeria and the Philippines have made attempts to draft CSR legislation but neither of these countries has moved beyond the drafting stage. India has included some CSR reporting requirements in their 2011 *Companies Bill*, while in Denmark companies are required to report on their CSR policies and the extent to which CSR was considered in its investment decisions. The issue of CSR is indirectly addressed in some legislation. This situation necessitates legislative intervention in order to compel businesses to act in a socially responsible manner and to contribute to projects that are regarded as a manifestation of their social responsibility. An attempt to legislate CSR would enhance the manner in which businesses respond to the needs of stakeholders and ensure that businesses contribute to socio-economic development with a view to achieving sustainable development. The following paragraphs will briefly discuss the content of a proposed CSR framework Act aimed at addressing businesses' contributions to socio-economic development.

Finally, by legislating CSR, the Government would not only be creating an enabling CSR environment, but it would also fulfil a number of the roles of governments in strengthening and creating an enabling environment for CSR (Kloppers 2013a: 123–130). These roles include the mandating, facilitating, endorsing, enforcing and legitimising roles (Kloppers 2012: 204–207; 209–210, 2013a: 121–146).

6.4.1 Content of the Draft Act

The paragraphs to follow will refer to the most prominent issues that, in the opinion of the author, should be included in any attempt to formulate an Act regulating CSR.

6.4.1.1 Preamble/Explanatory Note

The CSR Act should be introduced through an explanatory note (this could also be the preamble) providing an account of why it is necessary to intervene in an area which has largely been left unregulated or regulated through soft law and instruments based on voluntary self-regulation. Legislative intervention is necessitated by the fact that the majority of South Africa's business enterprises are focussed on maximising profits while failing to properly address pressing social issues (such as the crisis with land reform).

The explanatory note should further confirm the Government's commitment to creating an environment which is conducive to CSR. A statement should be included in which the Government recognises the vital role of the private sector in creating a society based on social justice and fundamental human rights. The statement should

further acknowledge the sector's role in improving the quality of life and freeing the potential of each person. As such, the Government encourages the sector's active participation in fostering sustainable development and strengthening CSR.

The explanatory note should not only recognise the role of the private sector but should also acknowledge the fact that the Act stems from the Government's inability to effectively provide for the full realisation of all individual rights, especially socio-economic rights such as access to land, access to housing and access to education. However, despite the Government's inability to deliver, the Government remains committed to the realisation of these rights and it consequently regards the CSR Act as a manifestation of the required *legislative measures and other measures* as envisaged in several of the sections in the *Constitution* addressing socio-economic rights (such as the right of access to land enshrined in section 25(5)).

Finally, the explanatory note should provide an indication of what the aim of the Act is, as well as give an outline of its purpose. The purpose of the proposed Act is institutionalising the social responsibility of private sector actors through *inter alia* the establishment of a Commission of CSR and the creation of legal obligations on the private sector with regards to CSR.

6.4.1.2 Definitions

The discussion of more than 25 national and international definitions of CSR in Kloppers (2012: 106–138), Kloppers and Kloppers (2018: 229–253) made it clear that a generally accepted definition does not exist. Any attempt to define CSR should recognise that the definition attached to CSR differs from society to society and can be influenced by factors such as culture and belief. As a result, a definition of CSR in a developing country such as South Africa will differ from an American definition. In this regard, CSR should rather be used as an umbrella term to indicate that businesses have a responsibility towards the societies within which they operate and that this responsibility needs to be managed and integrated throughout all levels of business and practised in all of its relationships with its stakeholders. An acceptable definition of CSR should reflect the fact that CSR goes beyond philanthropic contributions to communities and that CSR activities should, where possible, be linked to a business' core business and ultimately deliver sustainable value to society (Kloppers 2012: 138–141). Given South Africa's unique history the majority of CSR initiatives will identify historically disadvantaged South Africans as the beneficiaries of these initiatives. However, for the purposes of the CSR Act it is proposed that no distinction be drawn on the grounds of race and that the choice of beneficiaries of CSR initiatives be left up to the businesses themselves. This step recognises that the social problems which could be addressed through CSR initiatives are not limited to a specific race group. This is in contrast, for example, to the approach followed in the BEE framework, which is exclusively focussed on black South Africans.

Given that South Africa has transformed the ISOs *Guidance on social responsibility* into a national standard (SABS 2010) it is recommended that for the purposes of the CSR Act, CSR be defined as: The responsibility of a business for the impacts

of its decisions and activities on society and the environment, through transparent and ethical behaviour that delivers sustainable value to society and manifests itself in initiatives that are aimed at social upliftment, that are strategic in nature, and that go beyond purely philanthropic contributions; that take into account the expectations of stakeholders; that are in compliance with applicable law and consistent with international norms of behaviour; and that are integrated throughout the business and practised in its relationships.

The proposed Act could also include a number of definitions provided in the ISO *Guidance* such as "stakeholder" and "stakeholder engagement", "CSR initiative" and "impact of a business", thus ensuring that definitions related to CSR receive legal recognition and become part of the legal vocabulary.

6.4.1.3 Application of the Act

One of the most important sections of the proposed Act would be a section dedicated to the scope of application of the Act. This section should identify which businesses are targeted by the legislation. In the first instance it is recommended that the Act be applicable to all businesses operating in South Africa—whether domestic or foreign. Foreign businesses operating nationally are specifically included since these businesses also impact on the local society and communities. It is further proposed that an approach similar to the one followed by the *BEE Act* is followed where a distinction is made between businesses based on size. The determination of size could either be based on annual turnover or the number of employees, or a combination. A further although more extreme classification could be made based on the sector in which a business operates. The reasoning behind such a move is that certain sectors such as the mining sector probably cause more damage to the environment and result in more health and safety issues than, for example, the financial services sector.

6.4.1.4 Commission on Corporate Social Responsibility

One of the most important developments which would be introduced by the proposed CSR Act would be the establishment of a Commission on Corporate Social Responsibility (or CSR Commission in short). The establishment of this Commission would be in response to the requirement that CSR should have an "address" in the Government. An internal government structure would have to be established (Kloppers 2012: 214–215). This step would also be in line with the enforcing role of the Government in strengthening and creating an enabling environment for CSR (Kloppers 2012: 209–210). The proposed Act would seek to establish the Commission on Corporate Social Responsibility that would be responsible for regulating and overseeing the CSR activities of the business sector. The Commission would be the institution responsible for the implementation of the Act.

In the first instance, this section of the Act should address administrative issues such as the composition of the Governing Board of the Commission. It is recommended that the Board consists of: a National Director (chairperson)—this person should be appointed by the President in order to provide legitimacy to the position; a human rights lawyer; representatives from environmental agencies; organised labour; and the private sector. It is further recommended that the Board should also include a community development expert on CSR in order to provide advice on developmental issues and at least two representatives from either non-governmental organisations or community-based organisations. Although the Commission will be independent it is recommended that the Commission should fall under the auspices of a specific national ministry. It is recommended that, given CSR's proximity to trade and industry, the Commission should resort under the Department of Trade and Industry.

The section should also identify the functions and powers of the Commission. The functions of the Commission could be the creation of a CSR label based on a standard developed by the Commission or the development of strategies to promote CSR together with guidelines addressing the implementation of CSR practices. The Commission would further be responsible for integrating CSR into national trade policies and for the implementation of specific CSR regulations.

6.4.1.5 CSR Themes

The discussions above identified a number of trends in some national and international instruments. Based on these trends it is possible to identify priority areas where the private sector is well suited to provide assistance or relief. Once these priority areas have been identified it is crucial that businesses are encouraged to tailor their CSR initiatives to these themes. Given South Africa's history, a number of these areas will have a distinctly South African nuance, with the focus on improving the lives of historically disadvantaged citizens.

The theme with the first priority relates to human rights. Although human rights are constitutionally protected it is important that the CSR Act reiterates the fact that businesses should not be complicit in human rights abuses and that these rights should be promoted and protected by the private sector.

The theme with the second priority relates to skills development. Given the importance of skills development and the fact that the Government cannot alone be held responsible for providing education and skills development it would be prudent to include a section that reaffirms the importance of human capital development. Skills development in this context is not limited to the development of the skills of employees, but also includes improving the overall skills levels of persons living in local communities which are linked to the business. This section must identify skills development programmes as an example of CSR programmes to which a business can contribute in order to fulfil the obligations set in terms of this Act.

Given the importance of land reform in the national context and the immense pressure that the Government finds itself under to achieve the reform, it is logical that

support for initiatives related to the land reform programme be identified as possible CSR programmes. The agricultural sector is strategically situated to contribute to land reform. It is proposed, for example, that programmes which relate to providing support to emerging farmers be recognised as qualifying CSR programmes. Support should be understood in a broad sense to include financial support (such as access to credit) and support related to the provision of extension services, or the provision of guidance through mentorship programmes. Through the provision of this type of support it might be possible to turn the vast number of unproductive agricultural land reform projects into projects that in the first instance contribute to an improvement of the quality of life of the beneficiaries and secondly contribute to the national economy.

An issue that is closely related to both skills development and land reform is that of enterprise development. By providing support to emerging entrepreneurs (including emerging farmers) businesses have the ability to contribute to the establishment and development of new businesses. Businesses should be encouraged to make social investments in developing businesses. In the context of land reform, enterprise development will include the provision of support (financial and other) to emerging farmers and land reform beneficiaries.

Community involvement could be explicitly identified as a priority theme, although the majority of the priority areas already referred to can be related to some form of community involvement. The ultimate aim of community involvement programmes should be to contribute to the transformation of communities in which businesses operate. Programmes by agricultural sector companies to provide support to emerging farmers will be regarded as activities that would contribute to the economic transformation of the local communities (of which the emerging farmers would be members).

The final priority issue that has to be specifically identified in the Act is the issue of HIV/Aids and other diseases which negatively impact on business and society. It is proposed that the Act identifies programmes that are specifically aimed at addressing these health issues as another manifestation of CSR initiatives. Given the devastating effect of HIV/Aids and tuberculosis on society in general and the workforce specifically, it is recommended that programmes aimed at preventing the spread of these diseases or programmes that provide support to those who are suffering as a result of the diseases be recognised as CSR initiatives. The Government will not be able to fight the spread of HIV/Aids on its own, and is in dire need of assistance from the private sector.

Finally, it is recommended that the relevant Minister be given the authority, as time progresses, to identify other priority issues that are related to CSR and which could be addressed by the private sector through its CSR activities.

6.4.1.6 Statutory Requirements

The purpose of the Act is to foster conditions that provide an enabling environment for CSR and that give rise to sustainable businesses that contribute to society. In

order to achieve this, it is necessary to identify those who are charged with ensuring compliance and to assign and define responsibilities. From a CSR perspective this section would be the most significant, since it requires actual measures to be taken by businesses with regards to CSR.

The Government is faced with two distinct options when it comes to regulating CSR on a fiscal level, with both options related to taxes (Kloppers 2012: 218–222). The first option is to incentivise CSR through the use of tax incentives. The second option is to set a mandatory contributory target. In the first instance, the Government will incentivise CSR contributions through the use of tax rebates or the recognition of CSR expenditure as tax deductible. Although section 11(a) of the *Income Tax Act* 58 of 1962 makes provision for the deduction of expenditure in the production of income, it is unlikely that all CSR-related expenditure would be tax deductible, given the current tax position. The effect of deducting CSR expenditure would be that a business' taxable income would decline. The lower the business' taxable income is, the lower the amount of tax that has to be paid. Any attempt to recognise expenditure which is not addressed in section 11 of the *Income Tax Act* must be supported through an amendment of the *Income Tax Act*. This is mainly due to the fact that not all CSR-related expenditure is incurred in the production of income. However, if CSR expenditure is truly strategic and thus related to a business' activities with an expected return, such expenditure would in any evident be deductible in terms of section 11(a) of the *Income Tax Act.* In this regard the Government has an option to encourage CSR contributions through the recognition of CSR expenditure as fully tax deductible—if of course the expenditure is on recognised CSR initiatives (which the Act would stipulate). The Government could even provide advanced recognition for CSR expenditure. As an example, businesses could receive a tax deduction of R1.50 for every R1 of expenditure. It is recommended that the Act encourage businesses to contribute to initiatives in fields in which they have a direct interest. A company in the agricultural sector would in all likelihood not have a direct interest in research related to Alzheimer's disease. It will, however, have an interest in supporting land reform or emerging farmers. One of the obvious issues with providing this type of tax relief is that since businesses' taxable incomes will decrease the amount of tax collected will also decrease. This in turn will negatively impact on the total revenue collected through taxes, which would mean that fewer resources would be available to provide services.

In order to direct private sector expenditure into a specific area, the Government could identify priority areas which the Government would like the private sector to address, and thus determine the extent to which the Act is applicable to a specific sector. If, for example, land reform is identified as a priority area, the Government could provide advanced recognition to contributions by businesses in the agricultural sector in order to encourage further contributions in this area. The effect of these measures would be that funds are directed to a specific issue in a more expedient manner, thus providing quicker results.

The second option available to the Government is to require businesses in law to contribute a percentage of their annual taxable income to CSR initiatives without

receiving any tax credits.[5] It is recommended that an approach similar to the *BEE Act* be followed in terms of which businesses are classified according to their size in order to determine the extent of their contributions. For example, businesses which are described as micro businesses will be required to contribute 1% of their annual taxable income to qualifying CSR initiatives, while small and medium businesses will be required to contribute 2%. The remaining businesses will be required to contribute 3% of their annual taxable income to CSR programmes. The fact that these contributions will not be deductible implies that Government's income will not decline. The income available to the Government to fund its projects will remain unaffected. The imposition of a mandatory CSR contribution could be regarded as a Government tax simply in another guise. Although this might be true it is argued that direct contributions to CSR initiatives which support land reform, for example, would be more successful than attempts by the Government to provide the same support. Businesses are strategically well-positioned to get directly involved in issues which affect them and their stakeholders. An initiative by one of the major agricultural companies in terms of which it supports beneficiaries of the land reform programme (such as emerging farmers) would provide more immediate benefits to these beneficiaries than any attempt by the Government to do the same as there is less bureaucracy to contend within the private sector and the private sector is more proximate to the areas in need of attention. The private sector also has the ability to respond quicker to social issues as they arise.

A hybrid of the two options is also possible. In terms of this third option, businesses are still required to contribute a percentage of their taxable income, but amounts exceeding the prescribed minimum will become allowable deductions This approach might encourage businesses to go beyond what is legally required.

In the author's opinion the second approach is preferable to the first. More funds would be available to address social issues and businesses would realise that they need to make strategic contributions in order to receive the benefits of CSR (Kloppers 2012: 177–181). If an agricultural company supports emerging farmers it would not only be empowering those farmers but would also be assisting future suppliers to the company.

[5]S 5(o) of the Nigerian *Bill for an act to provide for the establishment of the Corporate Social Responsibility Commission* (available at https://senatorchukwumerije.net/id64.html) provides that Nigerian companies should annually contribute at least 3.5% of their gross annual profit to CSR initiatives (which could include educational, cultural, environmental or economic programmes). Failure to make these contributions would result in financial penalties of at least 3.5% of gross annual profit for repeated violations (s 7(3) of the *Bill*). Another and potentially more severe penalty is envisaged by s 7(2) of the *Bill,* which empowers the Commission to "temporarily shut down and suspend operations of an organization, corporation or company for a minimum of 30 working days as a penalty for non-compliance with statutory requirement of the corporate social responsibility as stipulated in this Act".

6.4.1.7 Monitoring Mechanisms

Taking note of the concern of Coomans and Yakpo (2004: 21) referred to earlier, the proposed CSR Act must include enforcement measures in order to ensure compliance which would support the Government's commitment to the issue and prevent window-dressing.

In terms of this section, businesses are required to annually submit a report to the CSR Commission detailing the businesses' CSR policies.[6] It is recommended that the content of the reports be determined by the size of the business in line with the classification used to determine the scope of the compulsory CSR contribution. Large businesses will, for example, be required to report on the content of their CSR policy and how the policy is implemented and managed throughout the business. These businesses will also be required to indicate if and to what extent social responsibility has been considered in their investment decisions. All businesses will be required to provide details of the CSR programmes to which they have contributed as well as what the relation between the programmes and the businesses are. In order to facilitate the process, the Commission should introduce an electronic filing system in terms of which businesses can submit their annual reports electronically. This would also be a more environmentally friendly approach, since less paper would be used in the drafting of the reports.

Failure to submit a report as required must result in criminal liability and depending on the size of the business could also include personal criminal liability for board members. By criminalising a failure to report, the Government would reiterate its commitment to CSR and give a clear indication that in this context it is approaching CSR in a "comply, or else" manner.

6.4.1.8 Offences

A crucial element of the CSR Act is the section addressing the creation of offences for instances of non-compliance with the Act. Without the creation of offences the Act will remain toothless and will have a limited impact. If no offences exist, businesses will not be deterred from non-compliance and the Act would be no more than a mere guideline. If businesses are required to contribute a percentage of their annual income to CSR initiatives, it is recommended that the penalty for non-compliance should be linked to the contribution required. If a large business is required to contribute 3% of its annual taxable income to CSR programmes and it contributes less than the prescribed percentage, the difference between the actual contribution and the required contribution should be levied as a penalty. It is further recommended that

[6]This resembles the provision in s 134(3)(o) of the Indian *Companies Bill, 2011* that requires the board of directors of Indian companies to report on the details of the company's CSR policy along with their annual financial statements, and to say how the policy has been implemented during the year. In terms of s 134(3)(o) of the Bill, companies should also report on their CSR initiatives undertaken during the year. Failure to report is a contravention of the section and punishable. Both the company and the officer who is in default will be held liable (see s 134(8)).

habitual non-compliers be "named and shamed". The details of persistent defaulters should be placed on a list of CSR offenders and should, for example, be considered by the Government when awarding contracts.

6.4.1.9 Separation Clause

Finally the Act should include a separability section. In terms of this section if any section of the Act is held to be unconstitutional or invalid, the other sections will not be affected and will remain in force.

6.5 Conclusion

Frederick (1987: 144–145) has identified six fundamental principles of CSR. Two of these principles are related to this contribution. Frederick (1987: 144–145) noted that a voluntary assumption of responsibility is preferable to government intervention and regulation; and greater economic, social and political stability will result if every business adopts a socially responsible posture. Although it might be true that a voluntary assumption of responsibility is preferable to government intervention, this contribution noted that a voluntary assumption of responsibilities is lacking and that government intervention is indeed necessary to embed social responsibility in the corporate conscience. The second contention, that greater economic, social and political stability will result if all businesses adopt a socially responsible posture, holds true for this chapter and is central to the argument that the Government should draft a framework Act for CSR. If all businesses contribute to CSR programmes greater economic, social and political stability will follow (Kloppers 2012: 177–181). In line with this argument, if an agricultural company provides assistance (through their CSR programmes) to emerging farmers who have received land in terms of the land reform programme, such assistance would undeniably contribute to economic stability, since both the farmers as well as the company would benefit financially. Given the fact that land reform is an emotional issue, measures taken to improve the success of the programme would also give rise to greater social and political stability with fewer inciting calls to occupy land illegally.

The aim of this contribution was to combine relevant national legislation and national and international guidelines into proposed framework legislation that would institutionalise CSR in the South African context. In order to address this research objective, this contribution proposed a *Corporate Social Responsibility Act* which is aimed at facilitating a cohesive approach to CSR. It extrapolated commonalities from the national legislation and national and international guidelines in order to identify recurring themes which should be included in a CSR Act. From the discussions of the commonalities a number of issues were identified which should be included in the Act. These commonalities included issues related to human rights, labour and employment; skills development, enterprise development, community

involvement and a stakeholder management system. Following the discussion of the commonalities, the concept of framework legislation was introduced. It became evident that framework legislation is not a new concept in South Africa, that the concept in general has been referred to by the Constitutional Court, and that it has been used by the legislature to address environmental management, health and water issues. The advantages of making use of framework legislation include the fact that a CSR Act would serve as a confirmation of the Government's commitment to embed CSR within the national legislative framework and establish CSR as a priority issue. Finally, the contribution introduced the draft CSR Act and identified sections which are pertinent to the establishment of an enabling CSR environment. During the discussions of the content of the proposed Act it became evident that the Act should at a minimum identify which businesses were to be targeted by the legislation. It was recommended that an approach similar to the one followed in the BEE framework be followed, where obligations are assigned according to the size of the business. It was further recommended that the Act make provision for the establishment of a CSR Commission responsible for the regulation and oversight of CSR activities. Recommendations regarding the Commission's composition and functions were also made. The discussion also identified a number of important themes to be referred to in the Act. These themes would include skills development, land reform and enterprise development. The proposed Act would contain a section which required a mandatory contribution by businesses to CSR programmes within the model of the proposed themes. The scope of the contribution would be based on the size of the business with micro businesses required to contribute less than large businesses. In order to ensure compliance, the Act would introduce penalties for non-compliance and also create mandatory reporting requirements in order to improve accountability.

Such a CSR Act would provide further legal impetus to the democratic transformation of the South African economy and highlight the undeniably important role that the private sector has to play in addressing contemporary social issues. The Act would serve as an affirmation of the South African Government's commitment to its constitutional duty to take *legislative and other measures* to realise the socio-economic rights (including the right to access to land) included in the Bill of Rights.

References

Albareda, L., Lozano, J. M., Tenacati, A., Midttun, A., & Perrini, F. (2008). The changing role of governments in corporate social responsibility: Drivers and responses. *Business Ethics: A European review, 17*(4), 347–363.

Carroll, A. (1991). The pyramid of corporate social responsibility: Toward the moral management of organizational stakeholders. *Business Horisons, 34,* 5–29.

Coomans, F., & Yakpo, K. (2004). A framework law on the right to food—An international and South African perspective. *African Human Rights Law Journal, 4,* 17–33.

EC see European Commission

European Commission. (2011). 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. Retrieved September 25, 2018, from https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0681_/com_com(2011)0681_en.pdf.

FAO see Food and Agricultural Organization of the United Nations

Food and Agricultural Organization of the United Nations. (2009). *Guide to legislating for the right to food*. Rome: FAO.

Frederick, W. (1987). Theories of corporate social performance. In S. Sethi & M. Falbe (Eds.), *Business and society* (pp. 144–145). Lexingtong: Lexington Books.

Garrett, E. (2005). The purposes of framework legislation. *Journal of Contemporary Legal Issues, 14,* 717–766.

Garriga, E., & Melé, D. (2004). Corporate social responsibility theories: Mapping the territory. *Journal of Business Ethics, 53,* 51–71.

ISO see International Standards Organisation

International Standards Organisation. (2010). *Guidance on social responsibility*. Geneva: ISO.

Khoza, S. (2004a). The right to food: Using South Africa as a case study of this new breed of law. In W. B. Eide & U. Kracht (Eds.), *Food and human rights in development* (pp. 187–204). Intersentia: Oxford.

Khoza, S. (2004a). Protecting the right to food in South Africa: The role of framework legislation. *ESR Review, 5,* 3–5.

Khoza, S. (2004b). Realising the right to food in South Africa: Not by policy alone—A need for framework legislation. *South African Journal on Human Rights, 20,* 664–683.

Kloppers, H. J. (2012). *Improving land reform through CSR: A legal framework analysis.* Potchefstroom: NWU (Thesis—LLD).

Kloppers, H. J. (2013a). Creating a CSR-enabling environment: The role of Government. *Southern African Public Law, 28,* 121–145.

Kloppers, H. J. (2013b). Driving corporate social responsibility (CSR) through the Companies Act: An overview of the role of the social and ethics committee. *Potchefstroom Electronic Law Journal, 16,* 166–200.

Kloppers, H. J. (2014). Driving corporate responsibility (CSR) through black economic empowerment. *Law, Development & Democracy, 18,* 58–79.

Kloppers, H. J. (2018). CSR, corporate governance and the King Reports. In G. Gal et al. (Eds.), *Sustainability and social responsibility: Regulation and reporting* (pp. 55–80). Singapore: Springer.

Kloppers, H. J., & Kloppers, E. M. (2018). Identifying commonalities in CSR definitions: Some perspectives. In K. Caliyurt & R. Said (Eds.), *Sustainability and social responsibility of accounting reporting systems* (pp. 229–254). Singapore: Springer.

Mitchell, R., Agle, B., & Wood, D. (1997). Towards a theory of stakeholder identification and salience: Defining the principle of who and what really counts. *Academy of Management Review, 22,* 853–886.
Porter, M., & Kramer, M. (2006). Strategy and society: The link between competitive advantage and corporate social responsibility. *Harvard Business Review, 84,* 78–92.
Post, E., Preston, L., & Sachs, S. (2002). Managing the extended enterprise: The new stakeholder view. *California Management Review, 12,* 6–28.

SABS see South African Bureau of Standards

Palazzo, G., & Scherer, A. (2008). Corporate social responsibility, democracy, and the politicization of the corporation. *The Academy of Management Review, 33*(3), 773–775.
Social Accountability International. (2008). *Social accountability 8000*. New York: SAI.
South African Bureau of Standards. (2010). *SANS 26000:2010 guidance on social responsibility*. Pretoria: SABS.
Tereblance, A. (2012). Raamwerkwetgewing ter verwesenliking van die reg op toegang tot voldoende voedsel (*Framework legislation for realisation of the right to access to sufficient food*). Potchefstroom: North-West University. (Thesis - LLD).
Van der Vyver, J. (1976). The function of legislation as an instrument for social reform. *South African Law Journal* 56–67.
Vogel, D. (2005). *The market for virtue: The potential and limits of corporate social responsibility*. Washington: Brookings Institution Press.
Wan-Jan, W. (2006). Defining corporate social responsibility. *Journal of Public Affairs, 6,* 176–184.

WBCSD see World Business Council for Sustainable Development

World Business Council for Sustainable Development. (s.a.). *About the WBCSD*. Retrieved October 25, 2011, from https://wbcsd.org/templates/TemplatesWBCSD5/layout.asp?type=p&MenuId=NjA&doOpen=1&ClickMenu=LeftMenu.

Chapter 7
Financial Integration: The Tunisian Context

Hela Ghabara and Nadia Abaoub Ouertani

Abstract The systemic nature of financial shocks has prompted much theoretical work on the channels of transmission of shocks between capital markets and other macroeconomic elements, and the transmission of volatilities within the capital market itself. It is within this framework of analysis that our research is written. We try to study the transmission of volatility shocks between stock markets and the interactions between these markets. In this framework of analysis, it is particularly necessary to study to what extent financial globalization and financial integration have led to a stronger correlation of global financial markets and more particularly between those of advanced and emerging countries? We focus here on the issue of the financial integration of emerging countries by proposing complementary econometric approaches. For this, we establish OLS regressions in slippery windows—which make it possible to evaluate the extent to which shocks in regional or advanced markets are transmitted to emerging countries, and the CCC-GARCH model estimating the dynamics of the integration of these markets emerging. For the period between 2008 and 2018, refer to empirical data from the Tunisian stock market.

Keywords Transmission of volatility · Tunisian stock markets · Financial integration · GARCH

7.1 Introduction

Capital inflows in the form of foreign direct investment (FDI) and portfolio flows resulting from financial integration may imply greater access to financing for local firms and households. Financial integration is also known to accelerate the depth of domestic financial markets, so it is reasonable to assume that financial integration improves access to finance.

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Although the vast literature shows that well-developed financial markets in industrialized economies facilitate access to finance, a survey on the impacts of financial integration on the European market shows that even if financial developments do not necessarily improve the financing conditions of the local private sector. A well-financed private sector boosts growth through technological innovations, investments in high-performance projects, and professional creativity, among other benefits. Some researchers argue that lack of access to financing for households and emerging market companies has a negative impact on economic growth and poverty reduction.

The empirical work on capital market interactions is much richer in explaining their co-movement and information transmission than in transmitting their volatility, and the correlation, dependence, and interdependence between the volatility of capital markets. By revisiting the debate on the benefits of financial integration in a country, Coeurdacier et al. (2019) show that integration gains from a more efficient distribution of capital and profits risk sharing. The gains are quantitatively minimal, as these countries import capital for efficiency reasons before exporting it for self-insurance purposes.

Inekwe and Valenzuela (2018) measure financial links between emerging markets and their financial relationships by an index of integration. The results reveal that financial integration is beneficial for reducing market income inequality.

Zhang and Matthews (2018) assess the degree of financial integration of the ASEAN economies by examining the developments and convergence properties of the banking market's competitiveness over the period 1994–2016. The competitiveness of the banking market is measured by the estimated competitiveness model (H statistics) and is then used to test the convergence β and σ. Greater financial integration does not improve competition but provide evidence of convergence toward a monopolistic and competitive market structure between countries.

Zhang and Matthews (2018) find that competitiveness has weakened, and the speed of convergence slowed as a result of the Asian financial crisis and global financial crisis, but in general, the financial integration policy has been moderately successful.

Nevertheless, Bekaert et al. (2005) conclude that financial integration creates shared risks between markets, resulting in lower capital costs and increased investment, which implies better access to finance.

The latest financial crisis marks an important step in the evolution of the financial markets. This is a time when it was possible to observe a booming stock market. This financial crisis, which began in 2007 in the real estate loans sector, has had repercussions on the financial system, causing a systemic crisis and the financial difficulties of the stock market sector. Faced with such a phenomenon, theorists have agreed on the need to resume the debate on the transmission of shocks from the volatility of a financial sector to another sector.

According to Coudert et al. (2011), there is a positive relationship between the financial crisis and volatility. Thus, it is normal to question the causes and consequences of financial crises and to ask in what context the processes of financial liberalization and financial integration contributed to this phenomenon by transmitting volatilities between the stock markets.

By studying the phenomenon of transmission of volatility, Souček and Todorova (2013) show that the integration of financial markets resulting from the free movement of capital has promoted the transmission of shocks and that this transmission characterizes the financial markets very volatile

As a result, some authors such as Jeon et al. (2013) present the contribution of multinational banks in domestic capital markets to the transmission of financial shocks from parent banks to foreign affiliates. It is in this framework of analysis that our research work is written, we try to study the transmission of volatility shocks between the stock markets and the oil market, and the interaction between these markets.

Bensafta and Semedo (2013) show that the co-evolution of financial market volatilities is influenced by transmitted shocks, and that the interdependence of financial market volatilities leads to the transmission of shocks between these markets.

In this framework of analysis, it is in particular to study in which measures financial globalization and financial integration have led to a stronger correlation of global financial markets and more particularly between those of advanced and emerging countries?

We focus here on the issue of the financial integration of emerging countries by proposing complementary econometric approaches. For this, we establish OLS regressions in sliding windows, which make it possible to evaluate the extent to which shocks in regional or advanced markets are transmitted to emerging countries and the CCC-GARCH model estimating the dynamics of the integration of these emerging markets. For the period between 2008 and 2018, it relates to empirical data from the Tunisian stock market. Regional integration is emerging as a central feature of most emerging countries, although the transmission of shocks varies substantially from country to country as well as over time.

The article is structured as follows: In the first section, we will discuss the variables used in the data source and the statistical properties of these time series. Then, in the second section, we discuss the methodology adopted. Finally, in the third section, we examine the impact of financial integration on emerging equity markets and the economic and financial interpretations of the results.

7.2 Theoretical Framework

On the basis of the CAPM model, Coudert et al. (2013) present yields in constant decline.

Obviously, the CAPM model cannot work with a single asset as in the old simplification framework, because it links the return of a specific asset to that of the wealth portfolio. The CAPM model applies directly to an international framework in the two polar cases of fully integrated or fully segmented markets.

First, if the financial markets were fully integrated, the market portfolio would be a global market portfolio made up of all the assets in the world. The expected return on an asset in country i therefore depends on its covariance with that of the global portfolio.

Now we can express the performance of the stock market index of country i as a function of that of the world portfolio:

$$E_t\left[r_t^i\right] = r_f + \frac{\lambda_t^w \mathrm{Cov}\left[r_t^i, r_t^w\right]}{\mathrm{Var}_t\left[r_t^w\right]} \quad (1)$$

where r_t^i represents the return on the domestic market portfolio of country i, r_t^w is the return on the world market portfolio, and λ_t^w is the global price of risk as a function of the variance of the world return on the market portfolio.

Second, if the financial markets were completely segmented from one country to another, the same model would apply directly by restricting the market portfolio to all the assets available in the country.

In this case, the wealth portfolio would depend solely on the performance of the stock market index of country i and this stock market index would be determined as follows:

$$E_t\left[r_t^i\right] = r_f + \lambda_t^i \quad (2)$$

where λ_t^i represents the price of risk in country i.

None of these polar approaches—fully integrated or completely segmented—applies to emerging economies. In this case, the appropriate assumption to make is that their level of financial integration is partial and variable over time.

Therefore, the appropriate model is a weighted average of the two cases represented in Eqs. (1) and (2)—fully integrated and fully segmented—with time-varying weights

$$E_t\left[r_t^i\right] = r_f + \Phi_{it}\lambda_t^w \mathrm{Cov}\left[r_t^i, r_t^w / Var_t\left[r_t^w\right]\right] + (1 - \Phi_{it})\lambda_t^i \quad (3)$$

where the weighting Φ_{it} represents the degree of financial integration of country i. Determine whether a country's stock index reacts differently to shocks to stock returns from its own region or from the rest of the world.

We assume that the regional component varies from country to country because it only affects the neighboring area of the given emerging country, while the international component consists of the stock index of developed countries for all countries. The weight devoted to regional or developed countries should reflect the capital value of these assets, divided by the total capital value of the entire market.

$$r_{it}^{w} = w_t^{\mathrm{RI}} r_t^{\mathrm{RI}} + \left(1 - w_t^{\mathrm{RI}}\right) r_t^{D} \tag{4}$$

where r_t^{RI}, (w_t^{RI}) is the return (weight) of the market portfolio, including all the assets of region RI, RI being the region to which the country belongs and r_t^{D}, the return (weight) of the market portfolio, including all developed countries.

The estimate aims to measure how a shock on regional or developed equity markets will be passed on to emerging countries. Thus, beforehand, all yields are regressed on a constant in order to be degraded.

$$R_t^k = a_k + \xi_t^k \tag{5}$$

with risk premium

k = {TUN, MENA, DEV}

- $\boldsymbol{a_k}$ a constant
- ε_t^k are the residuals of the regression and are defined as the shocks *on the market k*

In addition, regional returns r_t^R are regressed on returns from developed countries in addition to the constant, in order to capture their specific component. The explanatory variables can be taken at t or at $t - 1$, to take into account the time difference between the countries in the sample (in particular, between Asia and the Western countries).

$$r_t^R = \mu^R + \zeta_0 r_t^D + \zeta_1 r_{t-1}^D + \varepsilon_t^R \tag{6}$$

7.3 Empirical Approach

7.3.1 Data

The purpose of this article is to examine the evolution of the integration of the Tunisian market with developed and regional financial markets.

It is a question of measuring the impact of the indexes of the advanced countries as well as that of the regional indices on the Tunisian market. To answer this problem, we refer to the recent works of Coeurdacier et al. (2019). We applied:

An OLS econometric technique to estimate how a shock on the stock market index of the advanced countries has repercussions on the Tunisian stock market index.

As this impact varies continuously over time, we make estimates for the OLS regressions, which assess the extent to which shocks to regional or advanced markets are transmitted to Tunisia, on a daily basis over two slippery periods between 2008 and 2018.

In the same regression, we also estimate the impact of the MENA stock market index on the Tunisian stock market index. To do this, we applied the CCC-GARCH model that provides a measure of financial integration by estimating conditional correlations.

7.3.2 Description of the Sample

The selected sample is made up of 32 countries belonging to different financial regions.

Tunisia, Egypt, Qatar, Morocco, Jordon, Saudi Arabia, Lebanon, Oman, and United Arab Emirates belong to emerging countries, which are main MENA countries whose GDP per capita is lower than that of developed countries, but which are experiencing rapid economic growth, and whose standard of living and economic structures converge with those of developed countries.

We also speak of "emerging economies": The emerging countries as a whole are experiencing an increase in their per capita income and therefore an increase in their share in world income. They are characterized by their rapid integration into the world economy from a commercial (significant exports) and financial (opening of financial markets to external capital) points of view. Thus, these countries are investing more and more abroad: $117 billion in 2005, or 17% of the world total compared to 10% in 1982.

Germany, Australia, Austria, Belgium, Canada, Denmark, Spain, United States, Finland, France, Hong Kong, Ireland, Italy, Japan, New Zealand, Norway, Netherlands, Portugal, Singapore, Sweden, Switzerland, and Kingdom United belong the developed countries, which are the countries where the majority of the population has access to all their basic needs as well as a certain comfort and education. Developed countries being those with a strong gross domestic product. We are now thinking in terms of human development. These are countries which, during the industrial revolutions, benefited from an extremely cheap labor force and raw materials which made it possible to develop the industrial tool, knowledge, and economy.

This empirical study covers the period from 2008 to 2018; this period covers the third oil shock, the financial crisis, and the Tunisian revolution.

The choice of such a sample is explained by the continuity and availability of data over this period.

7.3.3 Origin and Frequency of Data

The empirical study conducted in this chapter focuses on only one variable: stock market indices.

We work with daily data. Our data is collected from different sources. The stock market indices were taken from the official website of the World Bank and BVMT.

During this empirical investigation, we tried to study the behavior of only one variable: the stock market index; four indices belonging to different financial regions will be noted, respectively, by

- I_{DEV} the average of 22 main stock market indices of economically developed countries: Germany, Australia, Austria, Belgium, Canada, Denmark, Spain, United States, Finland, France, Hong Kong, Ireland, Italy, Japan, New Zealand, Norway, Netherlands, Portugal, Singapore, Sweden, Switzerland, and United Kingdom;
- I_{MENA} the average of nine stock market indices from countries belonging to the MENA region "Middle East and North Africa": Egypt, Qatar, Morocco, Jordon, Saudi Arabia, Lebanon, Oman, and United Arab Emirates;
- I_{TUN}, the stock market index of Tunisia.

7.3.4 Econometric Software and Techniques Used

Statistics and results are obtained using EViews software: version 4.0, 6.0.

This software provides us with detailed results and specifies as well as graphical representations.

7.3.5 Stationarity Tests: The ADF Test

To test the stationarity of the series of stock market returns studied, we use the ADF test. The ADF test application requires, beforehand, the choice of the number of delays p to be introduced so as to whiten the residues (Table 7.1).

To identify the order p, we use the correlogram of the partial autocorrelation function, series of stock returns. This test consists of several steps that must be performed in order.

We begin by estimating the general model, model 1 with constant and deterministic trends.

By testing the significance of the trend and the constant, we note that the trend for stock market returns I_{TUN}, and I_{MENA} is significant, with the t-statistic higher than the critical value at the threshold of 5%.

Then we test the null hypothesis H^0, the I_{TUN} stock market t-statistic, and I_{MENA} is below the critical value at the thresholds (1%, 5%, 10%).

Table 7.1 Stationarity tests for stock market returns series

Variable	Statistical value	Selected model	Classification I (0) ou I (1)
I_{MENA}	−13.75506	Modèle (3)	I (0)
I_{DEV}	−9.324335	Modèle (3)	I (0)
I_{TUN}	−21.40174	Modèle (1)	I (0)

Table 7.2 Descriptive statistics on series of stock market returns

Pays	Model	Persistence	AIC	BIC
I_{MENA}	MA (6)	0.7326	2.4568	2.3456
I_{DEV}	AR (3)	0.8452	1.5758	1.5359

From this table, we can conclude that the series of I_{TUN} and I_{MENA} stock market returns are stationary since the t-statistic is significantly lower than the critical values for the three thresholds (1%, 5%, 10%).

For the I_{DEV} stock market return, there is a unit root presence and the non-significance of the trend, so we repeat the procedure in model 2, the model without trend, and we execute this operation up to the simplified model, the model 3, the model without trend and without constant.

From model 3, we test the null hypothesis H^0; the t-statistic of the equity return I_{DEV} is lower than the critical value at the thresholds (1%, 5%, 10%).

From this table, it can be concluded that the I_{DEV} equity yield series is stationary since the *t*-statistic is significantly lower than the critical values for the three thresholds (1%, 5%, 10%).

This table shows that the returns of the three stock indexes are stationary, which makes it possible to reject the null hypothesis of unitary root.

7.3.6 ARMA Model Estimation

The characteristics of the series of stock market returns justify the proper use of a non-linear ARMA model.

To identify the order p and q of an ARMA process, we use the correlogram of the autocorrelation function and the partial autocorrelation function.

The correlogram of the autocorrelation function makes it possible to identify a model MA (q), whereas the correlogram of the partial autocorrelation function enables us to determine an AR model (p). According to the correlograms, we retain the following models (Table 7.2).

7.3.7 Criterion for Choosing the Model

The residuals of the three models are white noise for stock market returns, I_{DEV}, and I_{MENA} since they are not autocorrelated and heteroscedasticities, so all models must be validated.

On the other hand, for the stock market returns, I_{TUN}, only the residues of the models AR and MA are of white noises and therefore, must be validated.

Nevertheless, to choose the model to use for forecasting, we will use information criteria and log-likelihood. These criteria are used to evaluate the quality of a model, retaining the model that has the highest value of the lowest likelihood and value functions of the AIC.

Hence, we retain the following models: AR (6) and MA (3), which are respective stock market returns I_{DEV} and I_{MENA}.

7.4 Methodology Adopted: Presentation of the Model

7.4.1 Estimation with Rolling OLS

To estimate to what extent a shock on the stock market index of other countries is transmitted to the Tunisian stock market index, we apply the OLS technique to this regression (Table 7.3).

$$\varepsilon_t^{TUN} = b_{TUN} + \beta_t^{DEV}\varepsilon_t^{DEV} + \beta_t^{REG}\varepsilon_t^{REG} + \beta_t^{EMER}\varepsilon\beta_t^{EMER} + \mu_{TUN,t} \quad (7)$$

β_t^{DEV} Coefficient indicates to what extent a Tunisian market will react to a shock occurring in developed countries.

β_t^{MENA} Coefficient indicates to what extent the Tunisian market will react to a shock on the regional market.

$\boldsymbol{b_{TUN}}$ is a constant.

ε_t^{DEV} are the residues of the regression, are defined as the shocks on the developed market.

ε_t^{MENA} are the residues of the regression, are defined as the shocks on the regional market.

$\boldsymbol{\mu_{TUN,t}}$ are the residuals of the regression.

A fundamental feature of emerging markets is the financial integration structure that varies over time.

Therefore, the regression coefficient β_{it}^K, depends on time.

Indeed, the stability tests carried out on the coefficients estimated over the whole period leads us to reject the null hypothesis of the absence of structural rupture.

The coefficients are statistically significant at the 5% level.

$\beta_t^{\text{DEV}} > \beta_t^{\text{MENA}}$, which means that developed markets have a greater impact on the Tunisian market than regional markets.

Table 7.3 Estimation of the coefficients β_{it}^D and β_{it}^R, of the OLS regression

Variable	Coefficient	Std. error	t-Statistic	Prob.	Adj. R^2
β_t^{DEV}	0.725374	0.027608	26.27369	0.0000	0.759042
β_t^{MENA}	0.332663	0.025441	13.07584	0.0000	

Table 7.4 Test the bias due to the inclusion of emerging market equities in regional indices

	Coefficient	Std. dev	*t*-Stat
TUNINDEX inclus	0.7248	0.09152	1.76167
TUNINDEX exclu	0.1468	0.07133	

Since the estimation procedure must take into account the dynamic nature of the integration process, we use a sliding window OLS regression.

The estimated coefficients β_t^{DEV} and β_t^{MENA} indicate to what extent a local emerging market will respond to a shock in a regional market or in developed countries.

This would not have been necessary if the financial markets were fully effective, since a market shock would be immediately passed on to the emerging market.

The OLS estimates made on a fixed window show that the coefficients are often significantly different from zero over the entire period (2008–2018).

Inclusion of an emerging country's shares in the regional index may lead to an upward bias in the estimation of financial integration between the country and the region, particularly for countries with large market capitalization.

We then made two estimates of the financial integration between the country and its region: one with the regional index including the country, and the other with the regional index excluding the country.

Finally, we checked whether the estimated coefficient β_t^{DEV}, by evaluating the degree of financial integration, was significantly different from each other.

To do this, we perform a Student's test on the difference of the estimated coefficients with the two indices, using coherent standard errors of heteroscedasticity and autocorrelation (Newey 1987).

In any case, we cannot reject the null hypothesis that coefficient estimates are not significantly different from each other.

Thus, our objective is to highlight the transmission of shocks from regional and developed stock markets to emerging equity markets.

The table below presents the coefficients of the degree of financial integration of the Tunisian stock market with the market and the MENA region.

The first line is the OLS estimate of the country's regional integration when the country's stocks are included in the regional index, while the second row represents this estimate when it is not (Table 7.4).

7.4.2 Multivariate Analyzes: CCC-GARCH Model Estimation

In the same regression, we also estimate the impact of the stock market index of the emerging region on the stock market index of each country in the region.

The bivariate GARCH model is the development of the univariate GARCH process to a multivariate framework where the conditional variance–covariance matrix of the error term εt is a function of the information given at time $t - 1$.

Bollerslev (1990) proposes GARCH (1,1) bivariate with constant conditional correlation (CCC-GARCH). The conditional variance–covariance of this model takes the following form:

$$\sigma_{jj,t}^2 = \omega_j + \alpha_{jj}\varepsilon_{j,t}^2 + \beta_{jj}\sigma_{jj,t-1}^2 \quad j = 1,\ 2$$
$$\sigma_{12,t} = \rho\left(\sigma_{11,t}\sigma_{22,t}\right)$$

Measure financial integration by estimating cross-correlations between markets, which vary over time.

We consider that the conditional correlation coefficient is a measure of financial integration.

Let Const (v) be the constant of the variance processes (Table 7.5).

We then extended the univariate GARCH models above for a two-variable framework with a constant conditional correlation parameter, to examine the transmission of volatility between stock market returns and US market performance.

We consider the CCC-GARCH two-variable model (1, d, 1) where innovations in returns follow the normal distribution. The estimation results for the CCC-GARCH bivariate model are presented in Table 7.5.

The results show that all the estimated parameters of the GARCH model for I_{DEV} returns, and I_{MENA} with the I_{TUN} yield, are important.

Table 7.5 CCC-GARCH model estimation results for stock return series with "S & P 500" stock return

	I_{TUN}	I_{DEV}	I_{TUN}	I_{MENA}
Estimation results				
Const (v) t-student	8.21E-05*	0.000106*	0.000107	0.00011
	(3.410658)	(2.070032)	(2.167246)	(1.905959)
ARCH	0.468842*	0.134105*	0.098842*	0.121257*
t-student	(5.133382)	(4.891617)	(2.16831)	(2.832229)
GARCH	1.022746*	0.871979*	0.520644*	0.487636
t-student	(287.4796)	(29.05203)	(−3.164176)	(1.317261)
Conditional correlations				
ρ	0.495489*		0.169602*	
t-student	(3.554815)		(3.936048)	
Diagnostic tests				
Log-likel	1646.002		1522.685	
AIC	−8.094538		−7.52082	
H-Q	−8.019751		−7.477523	

*Indicates the significance at the 5% threshold. () The t-student values are indicated in parentheses

Student's t, of the variance constant and the ARCH and GARCH coefficients for the I_{DEV} yields, and I_{MENA} with the I_{TUN} yield are significantly different from 0 (the Student's t is greater than 1.96), and the *P*-values are less than 0.05.

Because of the parameters of the GARCH model, they are statistically significant at the 5% level.

The value of the GARCH coefficient is high, ranging between 0.50 (I_{MENA} index) and 0.80 (I_{DEV} index), which indicates that the volatility of stock market returns does not disappear over time. This result suggests that the volatility process is very persistent.

Table 7.5 indicates that stationarity is also ensured, since ARCH + GARCH < 1.

The results of the estimation of the multivariate GARCH model in the opposite direction, presented in Table 7.5, indicate that all the estimated parameters of the GARCH model for the I_{TUN} yield with the returns of the I_{DEV}, and I_{MENA} are important.

Our results show strong evidence of a bidirectional causal link between developed markets and the Tunisian market.

The constant conditional correlations (CCC) between the Tunisian stock market and the variations in developed markets and MENA markets are significant, which is instructive of a bidirectional causal link between the two markets.

The empirical results are presented as follows:

The parameters of the GARCH model are statistically significant at the 5% level.

The correlation coefficient between Tunisia and the developed markets is greater than the correlation coefficient between Tunisia and the MENA markets. This indicates that I_{DEV} has a great influence on I_{TUN} that I_{MENA}.

The results obtained with the two methods, the OLS regression and the GARCH model, are the same.

The results show that the process of financial integration is not influenced by regionalization: Tunisian stock prices are mainly affected by the shocks of the developed stock markets.

Our results are therefore in line with several articles in the previous literature.

7.4.3 Economic and Financial Interpretations of the Results

The results are logical since Tunisia's main economic partner is the European Union countries and France is Tunisia's main trading partner.

Tunisia has long chosen the path of openness and international trade for its economic development. Openness is not without reform and continuous adaptation to internal and external realities which are today an absolute imperative.

However, one of the weaknesses is its concentration on a few customers: the first four (France, Italy, Germany, and Spain) represent more than 60% of exports.

The Maghreb receives just 10% of exports, while sub-Saharan Africa, although growing, receives only 3% of Tunisian exports.

Exports of clothing, finished semi-finished products and textiles, agricultural products, mechanical goods, phosphate and finished products, hydrocarbons, and electrical equipment brought this country no less than $13.82 billion in 2017. Main countries where they sold their goods were France which occupied 32.1% of the market, Italy which occupied 17.3% of the market, and Germany which occupied 12.4% of the market.

In contrast, in 2017 imports were valued at $19.09 billion. The main imported goods were machinery, equipment, oil, chemicals, and food. Tunisia (15.8%), France (15.1%), China (9.2%), and Germany (8.1%) were Tunisia's main suppliers.

Unfortunately, Tunisia does not take enough advantage of this opportunity which the American market represents to carry out interesting commercial exchanges.

Tunisian businessmen are often discouraged by the distance and complexity of administrative procedures and are more likely to deal with Europe, which they have more control over.

As part of the promotion of bilateral relations between Tunisia and the United States, the Export Market Access Fund (Famex), as well as several Tunisian institutions in cooperation with the Embassy of the United States in Tunisia, organizes seminars under the theme "Doing business with USA".

In order to inform young people, business leaders and foreign trade professionals about the possibilities of exchanges between the United States of America and Tunisia, the United States has exempted 3400 products from tax Generalized System of Preferences (GSP). Olive oil, jewelry, metals, skins, agricultural products, chemicals, electronics are among the eligible products. For example, Tunisia took advantage of the SGP to export the equivalent of 51.9 million in virgin olive oil in 2008 (until August), 12.6 million in gold jewelry, 1.7 M for dates and 2.7 M for Chewing gum. Apart from textiles and shoes which are not covered by the system, the list of exempt products is very long and poorly used.

Despite the distance and cultural differences, some Tunisians have tried to export to the United States.

Revenues from Tunisia's exports to that country were in the order of $325.8 million in 2009, while imports were valued at $502.1 million.

Our country mainly exports packaged olive oil, vegetable and animal oils, natural pearls, fuels, fruits, cereals, equipment, fats and, various metals and electronic components.

As for the United States, they export to Tunisia, seeds and seeds, machines, machines, vehicles, and oils.

Although Tunisian exports to Uncle Sam's country increased by 30% between 2004 and 2008, the fact remains that Tunisian products are barely visible on the American market.

In 2010, the United States was Tunisia's fifth-largest trading partner. Between 2009 and 2010, bilateral trade (exports and imports) increased by 18%, as it had moreover increased throughout the previous decade.

Bilateral trade between the United States and Tunisia was estimated at $976 million in 2010, the 96th commercial relationship of the United States.

Exports from the United States to Tunisia amounted to $571 million in 2010, while imports from that country amounted to $406 million.

Tunisia mainly exports mineral fuel, fats and oils, woven clothing, electrical equipment, and precious stones to the United States. Direct investment by the United States in that country reached 220 million in 2009, the latest year for which data are available.

Tunisia is an oil-importing country; therefore, an increase in the price of oil decreases economic growth.

The change in crude oil prices negatively affects Tunisia's real GDP and many other factors.

The results of research studies indicated that a permanent increase of 10% in the price crude oil causes a reduction of 3.36% in the real GDP of Tunisia and causes an additional inflation understood between 1.5% and 2% in 2008, which is 10% in 2010, which is compatible with expectations.

Thus, relations between Tunisia and the United States have experienced a new dynamic since the outbreak of the revolution.

7.5 Conclusion

A large number of financial crises that have affected emerging and developed markets in the past two decades have attached crucial importance to the problems of financial integration, particularly with regard to financial stability. Financial integration can bring significant benefits to emerging countries by expanding their access to international finance.

Financial integration generally influences economic growth by encouraging cross-border capital flows, transferring management technologies and skills, and promoting risk sharing. However, increased dependence on global financial markets exposes these countries to the effects of contagion and, in particular, to abrupt capital withdrawals.

Consequently, many governments in emerging countries are careful not to go too fast toward financial integration and opt for a gradual opening. In many countries, the process of financial integration has not yet been completed. Tunisia has long chosen the path of openness and international trade for its economic development. Openness is not without reform and continuous adaptation to internal and external realities which are today an absolute imperative.

In this chapter, we have sought to assess the evolution of the integration of the Tunisian market into developed, emerging, and regional financial markets. We focused on a sample of 51 countries from different financial regions. It is a question of measuring the impact of stock market indices of developed countries as well as that of MENA indices on the Tunisian market.

First, we estimated how a shock to the developed country stock index affects the Tunisian stock index. As this impact varies continuously over time, we make estimates for the OLS regressions, which allow us to assess the extent to which

shocks on regional or developed markets are transmitted to emerging countries, on a daily basis over slippery periods of 2 years between 2008 and 2018.

In the same regression, we also estimated the impact of the MENA region stock market index on the Tunisian stock market index.

Our results are similar to several articles in the previous literature, exploring financial integration between the stock markets. But this test can only give the intuition of financial integration between the stock markets without confirming their existence.

The question now is whether the dynamic interaction between the stock markets is such that each market could react to a shock in another given market. Therefore, it makes sense to use the second test, bivariate GARCH, which identifies the empirical relationship between the stock markets and decides on the meaning of this relationship.

This test provides a measure of financial integration by estimating a conditional correlation parameter between the markets varying over time. Thus, we simultaneously estimated the dynamic correlations between the stock markets of developed, regional, and emerging countries, and that of Tunisia, using a CCC-GARCH model. Our estimates have shown that financial integration has different profiles over the period 2008 and 2018 depending on the region.

The results also show that the process of financial integration is not accompanied by regionalization: the Tunisian stock index is mainly affected by shocks from the developed stock markets. The Tunisian stock market was strongly correlated with regional markets, the correlation between the stock market of developed countries, and Tunisia was already high and remained stable over time.

The results obtained with the two methods, the MCO regression and the GARCH model, are the same, and show that the financial integration process is not influenced by regionalization: since Tunisia's stock prices are mainly affected by shocks from developed stock markets.

Thus, financial integration is the main factor in the transmission of shocks, which will be our future avenue of research, and we examine the phenomenon of financial contagion and its intensity by adopting the copula approach.

References

Bekaert, G., Harvey, C. R., & Ng, A. (2005). Market integration and contagion. *The Journal of Business, 78,* 39–70.

Bensafta, K.M., & Semedo, G. (2013). Market volatility transmission and central banking: What happened during the subprime crisis? *International Economic Journal, 28*, 559–588.

Bollerslev. (1990). Modelling the coherence in short-run nominal exchange rates: A multivariate generalized ARCH model. The Review of Economics and Statistics, 72, 498–505.

Coeurdacier, N., Rey, H., Winant, P. (2019). Financial integration and growth in a risky world. *Journal of Monetary Economics*. https://doi.org/10.1016/j.jmoneco.2019.01.022

Coudert, V., Couharde, C., & Mignon, V. (2011). Exchange rate volatility across financial crises. *Journal of Banking & Finance, 35,* 3010–3018.

Coudert, V., Hervé, K., & Mabille, P. (2013). *Internationalization versus regionalisation in the emerging stock markets* (p. 08). Papers: CEPII research center.

Inekwe, J.N., & Valenzuela, R. (2018). A new approach to financial integration and market income inequality. Ememar (2018), https://doi.org/10.1016/j.ememar.2018.07.002

Jeon, B. N., Olivero, M. P., & Ji, W. (2013). Multinational banking and the international transmission of financial shocks: Evidence from foreign bank subsidiaries. *Journal of Banking & Finance, 37,* 952–972.

Newey. (1987). A simple, positive semi-definite, Heteroskedasticity and autocorrelation consistent covariance matrix. Econometrica, 55(3), 703–708.

Souček, M., & Todorova, N. (2013). Realized volatility transmission between crude oil and equity futures markets: A multivariate HAR approach. *Energy Economics, 40*, 586–597.

Zhang, T., & Matthews, K. (2018). Assessing the degree of financial integration in ASEAN—A perspective of banking competitiveness. *Research in International Business and Finance.* https://doi.org/10.1016/j.ribaf.2018.09.00

Chapter 8
CSR, Corporate Heritage Identity and Social Learning

Abosede Ijabadeniyi and Heila Lotz-Sisitka

Abstract Prevailing approaches to the structural challenges of Corporate Social Responsibility (CSR) tend to be monolithic and skewed towards CSR at the organisational level. Albeit, mirroring CSR at the organisational level with activities of practitioners at the social level can offer new reflexive approaches for identifying capabilities for and understanding thresholds of social learning. This chapter maps out how identity perspectives to CSR can offer new approaches for surfacing emergent properties inherent in the uptake of CSR institutionally and in practice. The chapter also presents an overview of the interplay between structure and agency (prescribed and actual CSR practices) and its underlying instrumental role for illuminating systemic factors which perpetuate such capabilities and thresholds. Using a morphogenetic theory of change, the chapter offers a framework for approaching CSR-based corporate identity. Empirical evidence from the applied framework is thereafter presented, in the context of the agro-processing industry based on a content analysis of annual reports, in-depth-interview data generated from four sustainability managers and corporate communication officers and the practices of extension and Local Economic Development (LED) officers. The framework demonstrates that companies with a disintegrated CSR identity inherently have more capacity to be change agents. Similarly, a strong corporate heritage identity is not indicative of a reciprocal link between espoused values and activity. Conversely, an enduring corporate heritage identity may not necessarily be improvisatory for social learning. In conclusion, the chapter gives an overview of a taxonomy of agential capabilities and associated cognitive resources inherent in the interaction between structural-cultural and personal emergent properties, which can initiate the positioning of social learning at the forefront of organisational deliberations.

Keywords Corporate heritage identity · Corporate social responsibility · Structure · Agency · Local economic development · Social learning

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8.1 Introduction

Increasing interests in the sustainability of business practices have positioned CSR at the forefront of corporate deliberations. This phenomenon has influenced ad hoc adaptation of global practices to national sustainability ratings such as the Financial Times Stock Exchange (FTSE)/Johannesburg Stock Exchange (JSE) responsible investment index. The FTSE/JSE appraises the sustainability practices of companies in South Africa using Environmental, Social and Governance (ESG) practices and performance metrics based on data available in the public domain. Nevertheless, reliance on third-party frameworks in the appraisal of CSR impacts resonates with what Elkington (2018) refers to as an 'alibi for inaction'. Increasing pressure on corporate accountability can equally exacerbate the misfit between espoused CSR and its impacts (Ijabadeniyi 2018).

Moreover, the aftermath of the history of social exclusion of minority groups in South Africa on the triple dilemma of unemployment, poverty and inequality (Ndhlovu 2011) demonstrates the importance of the mindfulness of historical structural conditioning on practices. The reinterpretation of history can however offer an extended notion of the past which can give an expanded and new meaning different from the past (Burghausen and Balmer 2014), which if approached in line with inherent capabilities in organisational structures and activities, can illuminate thresholds of the power of the agent to enable social learning (Sannino et al. 2016).

From a developmental CSR viewpoint, careful consideration of how organisational practices feed into governance and illuminate internal and external constraining and enabling factors (Mapitsa and Khumalo 2018) could enrich our understanding of the capabilities of corporate heritage identity to achieve desired/optimum social identity. CSR in Africa is reckoned to be driven by underlying cultural values of sharing and communal harmony (Dartey-Baah and Amponsah-Tawiah 2011). The argument here is not on fostering normative approaches for moving the sustainability agenda forward, but on illuminating and understanding the causal factors which underpin intrinsic multi-level organisational relations, emergent properties (Elder-Vass 2010) and its associated transformative agency (Sannino et al. 2016).

Given the volatility of organisational behaviour in response to institutional stimuli, there are tendencies for deviations from the uptake of legitimately sanctioned practices. Organisational behaviour embedded in a communicative approach which is responsive to changing societal expectations and needs has been advocated for legitimising practices (Deegan 2002). From a corporate citizenship viewpoint, ongoing communication is equally instrumental for sensitively engaging in public deliberations (Matten et al. 2003). It is of utmost interest how learning pathways for social change can be derived from ensuing engagement in public deliberations and interactions inherent in the pursuit of legitimacy. It is equally germane how cognitively situated legitimate practices can be activated to co-create and amplify social leadership, through mindfulness of the identity perspectives of CSR.

8.2 Identity Perspectives of CSR and Social Learning

Corporate identity encompasses the soul, voice and mind of the organisation (Balmer and Soenen 1999). History, culture and strategy, therefore, form an integral part of the corporate identity portfolio (Balmer and Greyser 2002). Management's vision and organisational core values, equally play an important role in the approach to CSR. The alignment of CSR into corporate mission and values (Marcus and Anderson 2006) varies across countries and industries, so do approaches to CSR (Aguinis and Glavas 2012). The attributes of a CSR-based corporate identity, as conceived by internal stakeholders, can reveal patterns of historical structural conditioning in practices. For example, Carmeli et al. (2007) found that organisational identity mediates the relationship between CSR and its outcomes, which reveals the pivotal role of organisational culture on the manifestations of CSR-based corporate identity. Mudrack (2007) reports that values are the antecedents of management commitment to CSR, namely, values which relate to supervisor commitment to ethics (Muller and Kolk 2010), organisational pride (Jones 2010) and the sensitivity of managers to equity (Mudrack 2007). Nevertheless, some organisational values have an opportunistic CSR undertone. This notion is supported by Sharma (2000) who argues that CSR engagement can be motivated by the quest for reputational capital. Intangible descriptors such as human capital and prevailing CSR culture can however reveal underlying motives (Surroca et al. 2010).

The extent to which individual values of organisational members are congruent with organisational values (Bansal 2003), and the congruence between individual values and espoused CSR mandate (Mudrack 2007) can also suggest patterns of a CSR identity. Psychological identity traits (Aguilera et al. 2007), such as the extent to which employees are driven by motives other than self-interest (Rupp et al. 2011a), have also been reported to drive CSR engagement. Similarly, Rupp et al. (2011b) advanced that employee autonomy, relations and competence also inform CSR engagement. Reagan et al. (2015) add that higher levels of Leader–Member Exchange (LMX) positively influence valence of donating. In other words, cognitive and motivational attachments to CSR were influenced by the quality of relationship between managers and team members.

Instances of where corporate identity components, which as a consequence relates to communicated, conceived ideal and desired identities, have reinforced CSR engagement have also been reported in the literature. A higher degree of public contact, management emphasis on CSR values (De Luque et al. 2008) and firm size (Godfrey et al. 2009) were reported to harness CSR engagement. Strategic alliances, organisational approach to CSR and CSR communication approach have been reported to drive CSR engagement and outcomes. For example, Theuvsen et al. (2010) found that strategic group membership and the ability to move between groups, significantly influence CSR performance. The entrenchment of the four levels of social responsibilities, viz., social obligation, social responsibility, social impact and social responsiveness, identified by McDonald (2015), have also been reported to reinforce CSR engagement.

The prevalence of strong Future Time Reference (FTR) in CSR communication is an indication of socially irresponsible behaviour; the greater the separation placed between present and future events, the lesser a company's affinity to social responsibility Blanding (2014). Conversely, companies which focus and act less on the future have altruistic motives for engaging in CSR. The exhibition of strong FTR in CSR communication could hamper the ability to espouse ethical behaviour (ibid). Moral silence, moral deafness and moral blindness, which relate to failure to talk about wrong practices, failure to recognise the moral implications of actions and failure to act on prevailing moral issues, have also been identified to impede ethical behaviour (Blundel et al. 2013).

Complexities in business environments and conflicting institutional forces have been identified as major external factors influencing the adoption of CSR practices, particularly in the context of multinational enterprises (Marano and Kostova 2016). The heterogeneity of institutional forces and exposure to CSR best practices positively influence the adoption of CSR practices (ibid). It is therefore, evident that corporate missions and values are instrumental for driving CSR engagement. It is equally important to contextualise our understanding of the drivers of CSR engagements (Dartey-Baah and Amponsah-Tawiah 2011) and the institutional factors which influence the outcomes of CSR corporate identity (Otubanjo 2012), revealing pathways for leveraging institutional legitimacy (Suchman 1995).

8.2.1 Balmer and Soenen's AC^{2}ID Test Framework: A Morphogenetic Approach

Balmer and Soenen (1999) offered the actual, communicated, conceived, ideal and desired (AC^{2}ID) identity test framework as a benchmarking tool against which corporate identity management practices can be appraised, in response to the need to align multiple and conflicting organisational identities in practice. The framework appraises multiple facets of the organisation and provides learning pathways for leveraging long-term viability and social change. While the framework does not explicitly include CSR, it provides a foundation through which business ethics and organisational legitimacy can be reinforced.

The AC^{2}ID test framework is a synthesis of the dimensions of corporate identity, which is a valuable tool for practitioners to detect and prevent potential deleterious corporate identity misalignments in practice, with the aim of ensuring a dynamic congruence between these identity types (Balmer and Greyser 2002). This framework highlights five vital identity types which ought to be aligned to foster sustainability (Balmer and Soenen 1999). These five identity types comprise the actual identity (what we really are), communicated identity (what we say we are), conceived identity (what we are seen to be), ideal identity (what we ought to be) and desired (what we wish to be) identity. The framework is a useful tool for assessing corporate identity

vis-à-vis CSR management (Kleyn et al. 2012), as the core of the framework relates to organisational legitimacy (Suchman 1995).

The AC^2ID test framework has been applied in different contexts and has revealed imminent identity misalignments relating to employee relations and customer relationship management (Balmer et al. 2009). For example, Powell et al. (2009) found misalignments between lower level employees' perceptions of ethical actual and ideal identities as opposed to management's ideal identity in the context of a major financial institution in the United Kingdom. Corporate identity management goes beyond a monolithic phenomenon, but rather one which is dialogical in nature (ibid). Efforts should, therefore, be geared towards bridging the gap between CSR reporting and reality, the practice of which can reveal inherent capabilities for actualising corporate rhetoric narratives.

The essence of corporate identity communication should not be about organisations regurgitating what is written in annual reports, which in most cases is targeted at conforming to regulations, but rather explaining the process involved in initiating and implementing what has been documented. This notion is supported by Tenbrunsel et al. (2000) who found that a conscientious approach to conforming to standards and certification could erode the humanness in CSR, which could result in CSR being a symbolic and cosmetic tool which serve to minimally comply with requirements. Similarly, Kleyn et al. (2012) contend that the reinforcement of a culture of ethics by top management, the conformity of corporate behaviour to mission, codes of ethics and functional standards play a crucial role in creating a strong ethical identity. Besides, emphasis should be placed on ideal identity which is optimum positioning (Balmer et al. 2009).

Organisational restructuring caused by mergers and acquisitions has also been reported to influence misalignments in identity types. For example, the BP-Amoco merger in 1998 resulted in a debacle which revealed the misalignment between BP's post-merger environmentally friendly brand positioning; communicated identity and actual identity (Balmer et al. 2011). BP's post-merger brand promise was at best aspirational in that its rhetoric fell short of reality. The BP case is reflective of the institutional challenges faced by many companies nowadays given the economic turbulence which makes companies more vulnerable to restructuring (ibid). Companies should, therefore, conduct pre-merger analysis to identify potential CSR identity compatibilities which can be used to create new and realistic CSR identities, with implications for change-oriented structural elaboration (Archer 2011).

Bravo et al. (2012) argue that organisations tend to create distinctive identities through CSR activities and to establish ethical and social values within their corporate statements and cultures. While this approach is influential for building competitive advantage, efforts should be geared towards building distinctive but congruent identities. This notion is evidenced by the findings reported in the branding strategy implemented in Bradford city, United Kingdom (Verbos et al. 2007). The findings of the study revealed the inconsistencies in the perceptions of the Bradford brand across various communities in the city which reveal a mismatch between actual and communicated identities.

Balmer (2009) further argues that a lack of alignment between key corporate-level concerns such as corporate identity, corporate image and reputation can be caused by institutional difficulties. Companies therefore, often use corporate philanthropy to redress corporate ills or misconduct. For example, Cadbury contributed its profit between 1902 and 1908 to charitable causes upon allegations of human rights abuse involving African slave labour (ibid). In a conceptual study which reviewed 102 books and book chapters and 588 journal articles, Aguinis and Glavas (2012) argue that institutional pressures, mainly from stakeholders, induce firms' engagements in CSR. An investigation into ethical corporate identity based on a case study of one of the best practices in the South African manufacturing sector, South African Breweries Ltd (SAB), revealed that the company pragmatically reinforces ethical values amongst its employees which makes it a good example of a company with a strong ethical identity through its ethos of social connectedness and responsiveness (Kleyn et al. 2012).

8.3 Corporate Identity Management

The ability of management to incorporate a CSR culture into the corporate identity mixes namely, soul, mind and voice of an organisation (Powell 2011), coupled with the dynamic integration of the interests of contingent stakeholders (Kohli and Jaworski 1990), can be instrumental for fostering social change. Fundamental to the management of corporate identity programmes is Balmer's AC^2ID test framework (Balmer et al. 2007). While the framework comprises actual, communicated, conceived, ideal and desired identities (Balmer 2007), the complexities eminent in the formation of corporate identity (Cornelissen 2014) as well as the influence of institutional and environmental factors in which companies operate could influence the formation of a CSR-based corporate identity (Balmer and Greyser 2002). Balmer's AC^2ID test framework addressed the gaps eminent in previously advanced corporate identity frameworks such as the corporate identity mix by Birkigt and Stadler (1986) and Balmer and Soenen (1997), based on the need to account for the multifaceted and evolving nature of corporate identity. While the framework raises a fundamental issue which draws attention to the interconnectedness between the ideal identity of the organisation, capabilities, social, economic, political and technological environment of the organisation, the framework fails to acknowledge the overarching role of CSR, as opposed to a focus on merely the ethical dimension of CSR in a subsequent contribution relating to the management of corporate identity programmes (Balmer et al. 2007). Given that the framework aims at corporate sustainability, it was deemed fit to incorporate CSR in organisational DNA (Otubanjo 2012), which necessitated an extension of the framework to account for the evaluation of a CSR-based corporate identity profile as explicated in Table 8.1.

In line with the adapted Balmer's AC^2ID test framework, Archer's morphogenetic theory of change is foregrounded on the processes through which social change can occur over time (T1–T4, with T1 being Time 1, and T4 being Time 4), via structural

Table 8.1 A morphogenetic framework for evaluating CSR Corporate Identity

T1: CSR Actual Identity—The current, structural, organisational and philosophical CSR attributes of a company. Values, management style, history and corporate behaviour
T2–T3: CSR Communicated Identity—CSR image and reputation influenced by company's CSR communication strategy. Organisational communication and non-controllable communication such as employees' behaviour and media relations
T2–T3: CSR Conceived Identity—CSR corporate image and reputation held by relevant stakeholders whose perceptions are most important
T4: CSR Ideal Identity—Vision held by founders, senior executives and major shareholders regarding CSR. It entails optimum corporate positioning, optimum core values and corporate philosophy, behaviour and responsiveness to environmental trends with regard to CSR, in a given timeframe
T4: CSR Desired Identity—Managements' bigger picture of CSR and implementation strategy for the ideal identity

Adapted from: Archer (1995), Balmer and Greyser (2002), Balmer et al. (2007), Otubanjo (2012)

conditionings (at T1), social interactions (T2–T3) and structural elaboration (at T4) (Archer 1995). Similarly, actual identity explicates the parameters through which structural conditionings can occur, communicated and conceived identity can reveal the mechanisms involved in the process of social interactions. The components of ideal and desired identity can signal possible structural elaboration (see Table 8.1).

While acknowledging the importance of ensuring congruence between the identity types advanced by the Balmer's AC^2ID test framework, inherent systemic factors which threaten organisational legitimacy (Nazari et al. 2012), can equally hamper the positioning of CSR for sustainable development. Intrinsic CSR factors can mitigate against the ability of a company to approach CSR from a value-driven viewpoint, given institutional complexities (Hildebrand et al. 2011).

Corporate rhetoric matches corporate behaviour when CSR is incorporated into business models. However, institutional and environmental factors which stem from corporate identity traits such as company history, structure and strategy (Balmer and Greyser 2002) can hamper the integration of CSR into business models. Given this typology, it is apparent that the ability of companies' to implement value-driven CSR initiatives depends on organisational behaviour towards CSR. Since the main goal of corporates is value creation (Hildebrand et al. 2011), the extent to which contextualised value-driven CSR initiatives is integrated into overall corporate strategy is pivotal for its optimisation.

While the core foundations of business have historically been built around the 'spirit of capitalism', which is centred on value creation for shareholders, the increase in the depletion of economic, social and environmental values resulting from business operations is gradually increasing awareness of responsible or irresponsible business practices (Kibert et al. 2012), which has also made marketing claims vulnerable to criticisms of greenwashing (Powell et al. 2009). The extent to which organisations identify with responsible business practices which extend beyond mere compliance with sustainability legislations and reporting standards (Ionescu-Somers and

Steger 2008) can reveal the morally conscious nature of its CSR corporate identity (Kleyn et al. 2012), as opposed to the use of CSR as a defensive strategy (Bruhn 2013). Higher stakeholder satisfaction and financial performance have been identified amongst organisations with a 'strong' morally conscious CSR corporate identity (ibid).

8.4 Conceptual Framework

Following Albert and Whetten (1985), core organisational attributes are those which give an organisation centrality, distinctiveness and endurance, which resonate with Archer's (1995) conception of morphostasis in the morphogenetic cycle. This study is foregrounded on the notion that there is a dialectical relationship between structurally conditioned and unconditioned emergent practices. We refer to structurally conditioned influences on project administration as the 'terrain of micro-level agency' while structurally unconditioned practices are referred to as 'terrain of macro-level agency' and the dialectical relationship between the two terrains as the 'terrain of meso-level agency'. The following question emerges as a result: Where are the emergent properties in the contested terrain of CSR learning situated? While taking cognisance of the significance of ideological underpinnings to resist change, it is anticipated that patterns across these taxonomies could inspire deliberations and reflexive practices geared towards enabling sustainable project outcomes and offer guidelines into how new practices can emerge. These taxonomies micro, meso and macro terrains are positioned as underlying mechanisms of change as they recognise the significance of diversity and social conditioning in the ability to bring about change in institutions. Since historically contingent social practices are ideologically motivated and collectively created (Jäger 2001), co-engaged deliberations and the ability to facilitate ongoing communicative processes and practices could gradually bring about desirable change.

Balmer and Burghausen have over the years contributed to the evolutionary and instrumental nature of the corporate heritage identity construct. Corporate identity is augmented when multiple identity roles in the present are symbolic of the past, present and future (Balmer 2013), reinterpreted when symbolic relevance to the past is extended to give a new meaning in the present and future (Burghausen and Balmer 2014), appropriated when organisational stakeholders actively accept the past as an inheritance in the present and legacy for the future (Balmer and Burghausen 2015) and valorised when organisations selectively and meaningfully harness the past for institutional value for the present and potential worth for the future (Balmer and Burghausen 2018). From this analogy, it follows that given historically contingent social practices (structural conditioning), the will of the agent inherently has emergent capabilities. There is therefore, room for the power of the agent to bring about change in highly contested terrains and complex social structures (Archer 1995).

Drawing on the morphogenetic theory of change, the methodological approach termed 'analytical dualism' helps to analytically identify[1] personal, social and cultural emergent properties inherent in the critical realist dialectic of structure and agency (Archer 1995), which is foregrounded on how morphostasis and morphogenesis explicate the resistance and elaboration of an entity, respectively (Elder-Vass 2010). The morphogenetic model of change acknowledges that change is inherent in structural preconditions which is independent of an agent, but that agents are potentially capable of mobilising social networks and processes for change, in order to bring about structural elaboration. This may not happen, in which case Archer names this morphostasis. In line with Archer's argument, this study seeks to understand forms of interactions in which structural causal powers interfere with agential activities and the emergent properties of agents.

The structure of an entity is multi-layered, and the recognition of its causal powers is dependent on interactions with other entities (Elder-Vass 2010). Communicative processes of social systems (i.e. organisations and their interactions) can shape and be shaped by historically contingent social practices, which can produce the criteria for transformation. A deeper understanding of the problems of interpretation and communication of historically contingent practices is a precondition for the development and functioning of complex societies (King and Thornhill 2003). Social change is at best rhetorical in contemporary organisations going through constant structural changes, the skill of the agent to influence structure is particularly relevant within organisations with oligopolistic powers (Whittington 2010). It then follows that there exist possibilities for multiple perspectives of the interpretation and implementation of the communicative processes inherent in historically contingent practices.

As Van Assche et al. (2014) notes, new structures are foregrounded in previous ones and generic concepts enable the reproduction of governance by interpreting differences between world construction and discourses. As such, structure plays a major role in governance. Porpora (2007) views emergent structure as being autonomous of the behaviour of the parts of the whole. Emergent properties, as opposed to the properties of its parts, are anticipated to most decisively explain the behaviour of 'new wholes'. In other words, agents can independently exert influence on the outcome of emergent structures in governance, while taking cognisance of structural constraints on the autonomy and exercise of willpower. The effects of these constraints could most decisively be limited between T2 and T3 (meso-level agency) as shown in Fig. 8.1. The essence of synchronic (time-specific) emergence is its potential to explain the process through which an entity can have a causal impact on the world, over a diachronic period of time (Elder-Vass 2010). The causal powers of structure and agency in the context of CSR-based identity can, therefore, be understood along morphogenetic dimensions (see Fig. 8.1).

To this end, this study takes a deeper look at the institutional embeddedness of the culture of CSR in the context of corporate identity and how much such culture is manifested in the practice of Local Economic Development (LED) projects. In other

[1] Note that Archer does not separate these in reality, but only analytically.

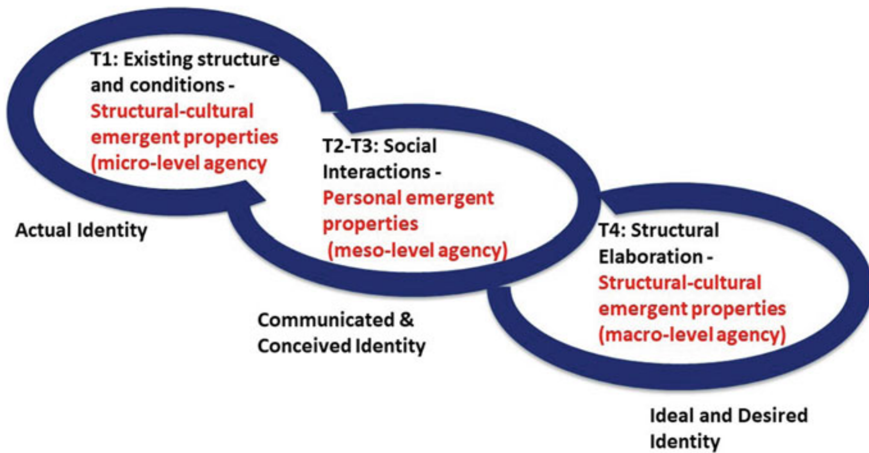

Fig. 8.1 Towards a morphogenetic framework for CSR corporate Identity Adapted from Archer's morphogenic framework (1995) and Balmer et al. (2007)

words, we aim to understand the mechanisms through which activity is institutionally situated to motivate environmentally conscious behaviour (Ellen et al. 1991).

8.5 Application of the Framework

The robust sugarcane industry in South Africa is positioned as a catalyst for economic development being a major source of livelihood for one million rural farmers, who are mostly located in the KwaZulu-Natal province (SASA 2017). The second-largest number of households involved in subsistence and small-scale farming is found in the KwaZulu-Natal province, after the Eastern Cape (StatsSA 2013). The inability of small-scale farmers to participate in modern agricultural value chains in South Africa (Von Loeper et al. 2016) is one of the key challenges to food security (FAO et al. 2010), amidst high unemployment, poverty and inequality rates (Babarinde 2009). Ironically, community-based interventions are not always designed to adequately address community development needs (Aucamp 2015). Multi-stakeholder LED projects in the agricultural sector have primarily failed due to design flaws and governance issues (James and Woodhouse 2017). It was, therefore, deemed fit to apply this framework in the context of LED projects targeted at farming cohorts in the Northern and Southern regions (North and South coasts) of KwaZulu-Natal, where the main factories of the two agro-processing companies included in this study are situated.

8.6 Methods

Archer (1995) advances that time (T1–T4) is an important determinant factor of change in the morphogenetic model on the account that change happens over time. Structural conditions precede social interactions at time 1 (T1), which are influential on the change that may occur through social interactions at time 2 (T2) and may then lead to subsequent structural elaboration from time 3 to 4 (T3–T4). The morphogenetic analysis was operationalized using the AC^2ID test framework. Analysis at T1 was based on the attributes of Actual CSR identity which was supported by a content analysis of annual reports which assessed situated CSR-based corporate identity. Since the structure of an entity constitutes a number of layers, it was deemed fit to further assess situated institutional notions of CSR from an Industry Association perspective, which required consultation with the Chief Executive Officer (CEO) of the Association.

The analysis of social interactions between T2 and T3 was based on insights drawn from conceived and communicated identity, alongside local consultations with extension officers, local economic development managers and farmers to assess the notions of CSR in practice. Context analysis of selected multi-stakeholder projects targeted at small-scale sugarcane farming was conducted based on the review of periodical reports. Personal in-depth interviews were also conducted with extension officers and managers at two sugar agro-processing companies, key informants at industry association bodies, an agricultural officer at the provincial department of agriculture and rural development as well as focus group discussions with small-scale sugarcane farmers in two sugarcane farming cohorts. Context analysis was necessary to assess socially constructed challenges facing multi-stakeholder LED projects at grass root level with the aim of identifying context-specific strategies designed to address such challenges, with particular attention paid to deviations from structural conditioning at T1.

The analysis thereafter involved the process of assessing changes which had occurred at T4 with reference to identifying emergent properties situated in the possible structural elaboration which could be evident through skills, knowledge, capital accumulation and demographic distribution. The analysis of structural elaboration at T4 was based on the components of the ideal and desired identity and supported with data obtained from involvement in an ongoing multi-stakeholder LED project which required consultations with project administrators and beneficiaries of the project. Project interventions constitute prior field-tested needs assessment in consultation with project beneficiaries to reflexively verify the effectiveness and contribution of interventions to projects. An iterative assessment was also conducted on the cognitive resources which the people in project interaction draw on when they produce project-related discourses in reports. A socio-economic impact assessment approach was thereafter employed to offer monitoring, evaluation and learning support for the project, which was targeted at small-scale farmers across four rural municipalities.

8.7 Surfacing Situated Social Learning Capabilities in Contested CSR Terrains

The antecedents and components of a CSR corporate identity are largely determined by organisational adeptness to localised ideologies of nurturing and exhibiting a morally conscious CSR profile. The findings generated in the analysis of structural conditioning (T1) reveal that actual identity serves as the antecedents of CSR corporate identity (see Figs. 8.2 and 8.3).

It was further observed that the attributes of communicated, conceived, ideal and desired identities constitute the components of CSR corporate identity profile. The core components of CSR corporate identity can be further divided into two, namely, core components and aspirational components which explicate social interactions (T2) and structural elaboration between T3 and T4, respectively (see Figs. 8.2 and 8.3).

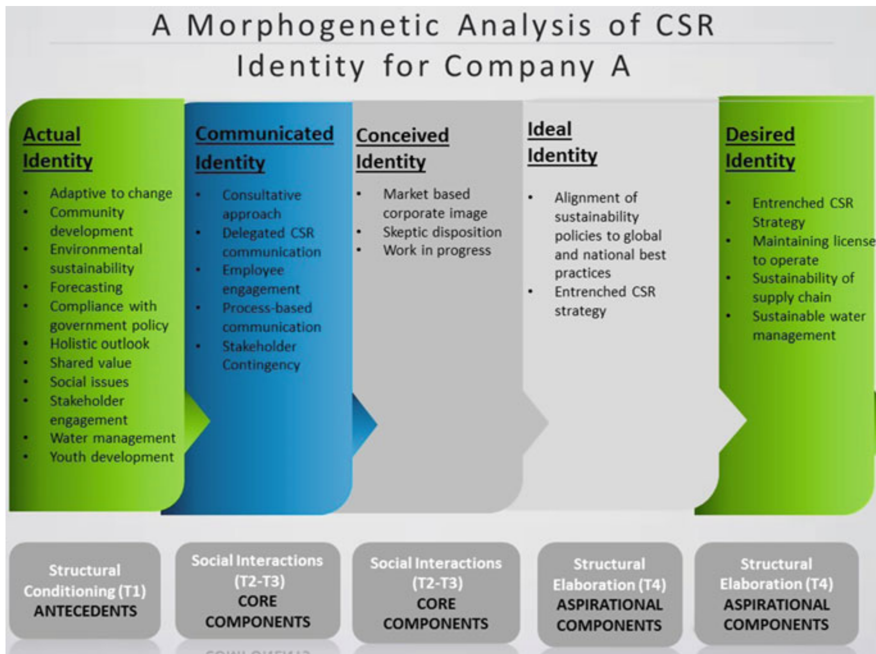

Fig. 8.2 Overview of morphogenetic analysis for company A

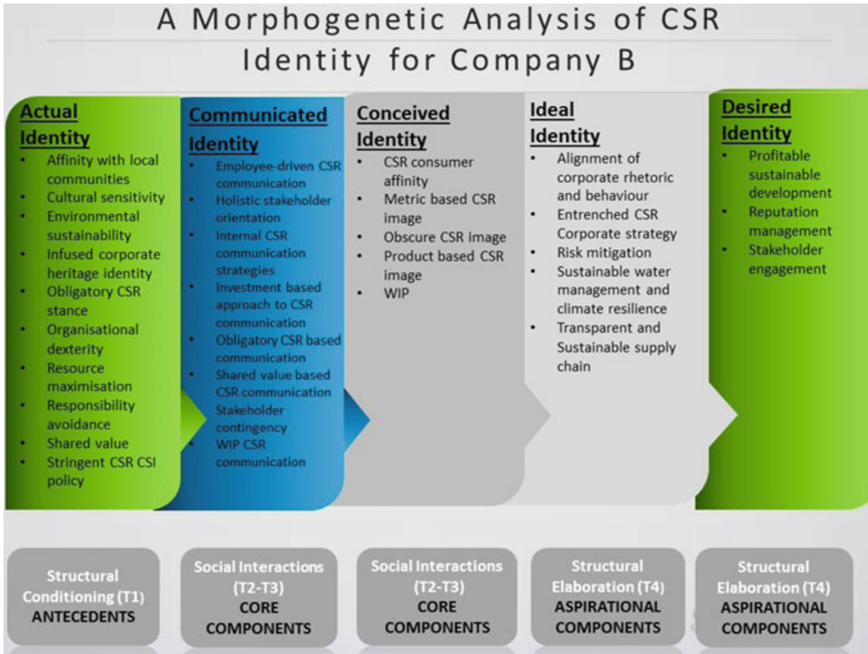

Fig. 8.3 Overview of morphogenetic analysis for company B

8.8 Structure

Top-level managers deal more closely with wider institutional frameworks/legislation and will therefore, act more stringently to compliance for risk mitigation. Evident in this, are the structural-cultural emergent properties of power relations and resilient adherence to legislation. Lower level managers approach institutional frameworks/legislation narrowly and have the power to act in accordance to their level of knowledge/involvement. This points to the efficacy of personal emergent properties of agents, since all structures manifest temporal resistance through the conditioning of actions in context (Elder-Vass 2010).

Further analysis of structural conditioning reveals how antecedents can be demonstrated discursively. Table 8.2 gives a snapshot of a content analysis of annual reports which sought to assess meanings derived from repetitive reference to company name and use of institutionally and socially acceptable legitimation adjectives such as sustainability, stakeholder(s) and shareholder(s). It was found that repetitive reference to company name in discursive practices could have a narcissistic undertone, which could also be intentionally used to subliminally foster affinity. The prevalence of such phenomena could also be a manifestation of attributes of inherently resilient structures or an attempt to reinforce coherence and pride in heritage identity and ethos. Preference for the plural form of legitimation adjectives, which is this case

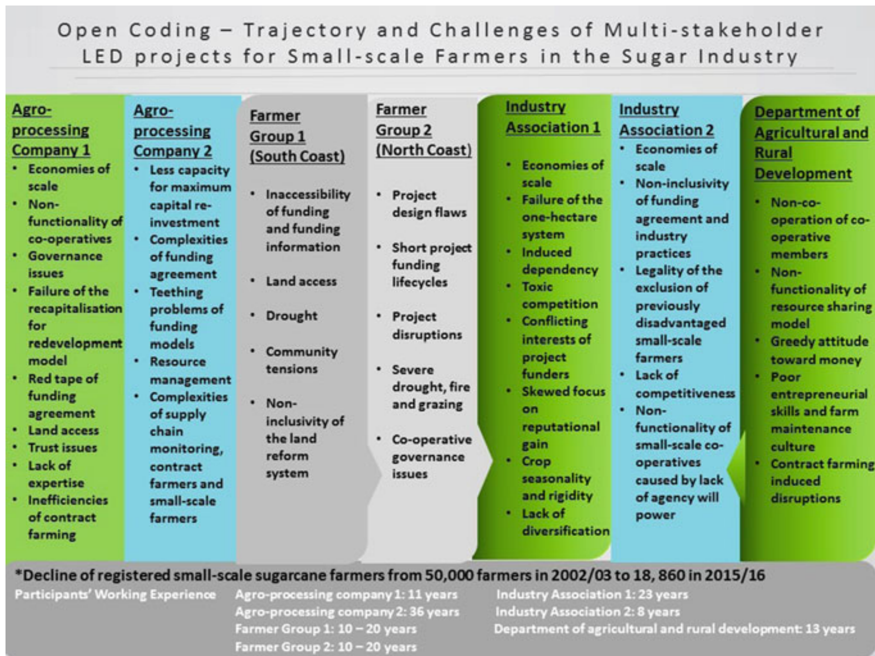

Fig. 8.4 Overview of context analysis

Table 8.2 Content analysis of annual reports

Search criteria	Company A	Company B
Company name	Count: 398 Percentage: 0.91%	Count: 337 Percentage:0.85%
Top 50 word search: 'Sustainability'	Count: 0 Percentage: 0%	Count: 28 Percentage:0.20%
Text search: 'Sustainability'	Count: 51 Percentage: 0.09%	Count: 49 Percentage:0.09%
Text search: 'Shareholder/Shareholders'	Count: 24/57 Percentage: 0.03%/0.08%	Count: 32/91 Percentage: 0.05%/0.14%
Text search: 'Stakeholder/Stakeholders'	Count: 16/49 Percentage: 0.02%/0.07%	Count: 27/33 Percentage: 0.04%/0.05%

in this study, could portray structurally conditioned dispositions towards fostering inclusivity and acceptance.

The ability to resiliently harness internal structures and power relations as structural-cultural emergent properties is largely influenced by company-specific factors arising from the diversity in corporate history, structure, culture, vision,

mission and ethos. This points to the significance of deeply seated causal powers to bring about change. There were pronounced trends which indicate that the acquisition of the license to operate, sustainability of business practices and conformity with national and global best practices mediate the willingness and ability to enable emergent properties for change. In addition, the entrenchment of CSR corporate identity was indicative of the strength of corporate heritage identity while weak organisational structure was typically associated with disintegrated CSR corporate identity. A 'strong' corporate heritage identity may reinforce compliance and capitalistic approaches to CSR (Table 8.3).

8.9 Interaction

Espoused CSR at the organisational level is narrowly reflected in the social context as practitioners and project beneficiaries developed contextualised approaches to address prevailing issues, which imbibed the culture of self-reliance and entrepreneurship in the context of Company A and dependency in Company B. As Archer (1995) notes, agency exerts two independent influences between T2 and T3: temporal and directional influences. Practitioners generally prioritise the execution of business plans, irrespective of the applicability of project plans to prevailing beneficiary realities. Implicit assumptions such as the taken-for-granted and poverty-induced vulnerability of project beneficiaries leading to disguised social exclusion and dependency of small-scale farmers to project funding, constitute the main systemic factors hampering social change. There is room for improved capacity to unlearn the practices which result in project-induced socio-economic displacements and psycho-social impacts such as loss of entrepreneurial drive, rivalry and high dependency due in part to flawed project designs and project disruptions. There is evidence which suggests that the more the autonomy possessed by practitioners, the lower the tendency for project disruptions and shocks.

The capacity for social learning is moderated by the power vested in agency, which is mediated by intrinsic resilient capabilities. Practitioners are predisposed to enable social learning in practice even in the absence of espoused CSR legislation. This points to the significance of how 'good' CSR practices can be independent of legislation and espoused company ethos. As such, there is evidence which suggests that good CSR ethos are not necessarily always passed from top–bottom but also from bottom-top. The efficacy of prescriptive and obligatory CSR legislation to foster social learning and change at both the institutional and practice levels is limited, which emphasises the significance and capacity of agency to enable deliberations which encourage reflexivity.

For example, the vulnerability of project beneficiaries (in both North and South coasts) to dependency, project disruptions and project-induced displacements is moderated by the variety of land quality, accessibility to alternative sources of income and proximity to metropolitan cities. The magnitude of the negative impacts of these projects outweighs its contribution to the socio-economic development of small-scale

Table 8.3 A morphogenetic analysis of CSR practices across two agro-processing companies in the sugar industry

T1: existing structures (Actual identity)	T2—T3: Social interactions (Communicated and conceived identities)	T2—T4: structural elaboration (Ideal and desired identities)	Structural emergent properties (Supporting evidence from Table 8.2 and Figs. 8.2, 8.3 and 8.4)	Cultural emergent properties (Supporting evidence from Table 8.2 and Figs. 8.2, 8.3 and 8.4)	Personal emergent properties (Supporting evidence from Table 8.2 and Figs. 8.2, 8.3 and 8.4)
Company A: Compliance and lifelong learning **Company B:** Capitalistic CSR **Industry Association** Regulatory compliance Social-economic development Land reform Partnerships and collective interests Environmental sustainability Declining global competitiveness	**Company A:** Procedural strategy Corporate image **Company B:** Investment orientation Reputation myopia	**Company A:** License to operate Global best practices **Company B:** Good corporate governance Business case for CSR	The set of networks, policies and practices which ensure compliance to localised legislation. For example: Adherence to the Broad-based Black Economic Empowerment (B-BBEE) legislation and Land reform Creative competences to strategically and competitively engage in CSR [a]Anthropocene/Capitalocene	Values which uphold and enable lifelong learning in the organisation Ability to navigate power relations across multiple stakeholders, amidst conflicting interests	Entrepreneurial skills and know-how exhibited in LED projects Ability to overcome structural constraints. For example, funding requirements of the one-hectare system and co-operatives Tenacity to withstand disruptions arising from lack of co-operation governance amongst farmers

(continued)

Table 8.3 (continued)

T1: existing structures (Actual identity)	T2—T3: Social interactions (Communicated and conceived identities)	T2—T4: structural elaboration (Ideal and desired identities)	Structural emergent properties (Supporting evidence from Table 8.2 and Figs. 8.2, 8.3 and 8.4)	Cultural emergent properties (Supporting evidence from Table 8.2 and Figs. 8.2, 8.3 and 8.4)	Personal emergent properties (Supporting evidence from Table 8.2 and Figs. 8.2, 8.3 and 8.4)
Central Themes **Company A:** Compliance and lifelong learning-based CSR organisational philosophy **Company B:** Infused corporate heritage identity of business-oriented CSR	**Central Themes** **Company A:** Process and resource-based CSR communication approach Market based corporate image **Company B:** Investment oriented CSR communication approach Corporate image and reputation myopia	**Central Themes** **Company A:** Sustainability of the license to operate and managerial entrenchment of CSR strategy Conformity to global sustainability best practices **Company B:** Entrenched CSR corporate strategy Profitable CSR	Policies and practices designed to earn and sustain a license to operate Capabilities to imbibe CSR across management levels and practices amidst conflicting beliefs Ability to mediate CSR expectations across multiple stakeholder groups for the license to operate	Networks which resolve conflicts between external (international) and local forces—CSR being socially-constructed Potential ability to mediate the disconnect between local CSR mandate and international standards	Managerial skills and know-how required of funding proposals Ability to navigate bureaucratic project designs and processes

[a]Planetary crises resulting from human activities/business practices

farmers, especially in relation to the long-term return on investment and sustainability of these projects.

8.10 Structural Elaboration

Morphogenetic analysis can account for the gradual inception of new social possibilities and change facilitating factors between T2 and T4. Espoused CSR at the organisational level and practices at the social level are dependent on legitimation. This points to the lower tendencies for structural autonomy and conditioning to bring about change. The structural conditioning of a skewed focus on legitimation has influenced familiarity with and mastery of structure and social problems and ways of dealing superficially with deeply seated problems. Such structural conditions enable and reinforce a prescriptive culture towards practices.

The notion of a capitalisitic CSR approach could induce competitive organisational learning which consequently results in vulnerability to power struggles in the quest to remain competitive and profitable, and set the tone for another morphogenetic cycle. While such vulnerability could foster adeptness to the system in the short run, it could equally trigger self-reflexive practices in the long run. Continued co-engagement between actors could encourage the reciprocity of practices, which could foster social learning at both the organisational and social practice levels. Albeit, the ability of CSR corporate identity to foster social learning at the organisational level will largely be influenced by company-specific factors arising from the diversity in corporate history, structure, culture, vision, mission and ethos which could signal a new morphogenetic sequence (Archer 2011).

The emergent properties (rigorous and resilient policies and practices) inherent in the quest to acquire the license to operate, ensure sustainability of business practices and to conform to national and global best practices play a crucial role in the capacity to harness social learning for a new social reality. In addition, the entrenchment of CSR corporate identity was indicative of the strength of corporate heritage identity for company A, while weak organisational structure was typically associated with disintegrated CSR corporate identity in the context of company B.

These findings reveal that a company with a disintegrated CSR identity can have more resilient capabilities to bring about change, given its openness to learning, desperation for stability and hence more room for structural elaboration. Similarly, a strong corporate heritage identity is not necessarily indicative of a reciprocal link between espoused values and activity. Conversely, an enduring corporate heritage identity may not necessarily be improvisatory for autonomous capabilities to bring about change, but for the willingness of actors to enable co-engaged learning.

Governance issues especially in relation to dealings with small-scale farmers constitute key sources of conflict and power struggles. The social reality of CSR is mainly reinforced by conflicting mandates and interests of sustainability managers

and practitioners; the contested terrain of a skewed focus on reputational risk mitigation with less focus on ethical investment and project design flaws such as undue homogenisation of farming cohorts, respectively.

Emerging evidence from the case studies reveals that small-scale farmers, being minorities in the value-chain have been negatively affected by the contested ideological terrain of power struggles—amidst poor climate conditions (see Fig. 8.4). There has also been a steep decline of registered small-scale sugarcane farmers from 50,000 farmers in 2002/03 to 18,860 growers in the 2015/16 farming season; being the season which recorded the most devastating drought in 100 years. While increase in input prices, severe drought resulting in poor land quality, inadequate financing opportunities and access to new market opportunities are partly responsible for the decline in the number of small-scale farmers, threats to economies of scale such as the failure of the one-hectare system, tribal and communal land system, inadequacies of co-operative and contract farming, and poor governance practices are chief among the underlying constraints to sustainable farming.

There are patterns which show that CSR in practice is focused on documenting positive project impacts (with little or no attention to underlying processes of and interventions for social learning), fostering reputational capital and legislative compliance, to secure future project funding. It was also observed that attention is gradually shifting away from fostering project outcomes and life-cycles for sustainable development to the struggle for maintaining project-funding cycles amidst turbulence in the agricultural sector. Following the foregoing observation, monitoring, evaluation and learning interventions which offer context-specific guidelines for uncovering existing and potential behaviour which mitigate against the culture of social learning for sustainable development in local economic development projects would be a welcome addition to structural elaboration.

8.11 Conclusion

This study has demonstrated that the potential for organisational learning for change is at the crossroad of social responsibility and heritage identity. The uptake of CSR institutionally and in practice illuminates the efficacy of the taken-for-granted mechanisms which foreground the essence of CSR in practice. Insights into how social learning can occur were buttressed by the efficacy of social interaction and reflexive deliberations which can give room for the emergence of new practices.

The interaction and negotiation between structural conditionings and the will of the agent reveal that the positioning and autonomy of agents determine their ability to enable institutional changes. While the relationship between the structural-cultural and personal emergent properties identified in this study is not linear, as cognitive resources which can facilitate the necessary change are inherent in implicit assumptions which advance productive diversity in the terrain of meso-level agency. Future research should explore how the terrain of meso-level agency can be harnessed to exert power for the greater good, given contextualised institutional setbacks and

complexities. The onus is on corporate citizens to develop new lenses for approaching and embracing the multi-layered co-engagements which structural conditionings foster or endanger in order to develop new ways of seeing, thinking and relating to structure and power.

The ability of CSR corporate identity to foster social learning at the organisational level is largely influenced by company-specific factors arising from the diversity in corporate history, structure, culture, vision, mission and ethos. Willingness to actively and sensitively channel external and enabling aspirational identities which transcend prescriptive ambitions can foster a change in attitudes towards sustainability amongst corporates. Skewed focus on the acquisition of the license to operate, sustainability of business practices and the quest to conform to national and global best practices can undermine the capacity to harness social reality to leverage social learning.

Governance issues especially in relation to dealings with small-scale farmers constitute key sources of conflict and power struggles. The social reality of CSR is mainly reinforced by conflicting mandates and interests of sustainability managers and practitioners; the contested terrain of a skewed focus on reputational risk mitigation with less focus on ethical investment and project design flaws such as undue homogenisation of farming cohorts, respectively. Management functions at varied hierarchical structures draw on diverse resources and rules in different institutional and social contexts to produce mandate-orientated change learning and outcomes. For example, sustainability managers and communication officers, extension officers and local economic development officers all perceive legitimation differently and have the power to enable/disable associated structural conditioning at will. Practitioners' transformative agency is largely dependent on the willpower to bring about desired change(s) in practice, which demands persistent interventions for gradual changes via structural elaboration.

As such, CSR is predominantly influenced and redefined by the activities of practitioners, which has implications for understanding inherent agential capabilities and facilitating the culture of social learning. Espoused CSR at the organisational level and practices at the social level are significantly dependent on legitimation, with lower tendencies for autonomy, creativity and reciprocity from actors to structure. Familiarity with and mastery of structural conditionings as well as the prescriptive nature of practices hamper the capacity of agents to learn and enable organisational and social learning for social change. However, vulnerability to power struggles can induce the quest for social learning and equally enable reflexive deliberations and awareness of the urgency and particularity of situated problems. Continuous integration between actors could encourage the reciprocity of practices at both the organisational level and social context.

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References

Aguilera, R. V., Rupp, D. E., Williams, C. A., & Ganapathi, J. (2007). Putting the S back in corporate social responsibility: A multilevel theory of social change in organizations. *Academy of Management Review, 32,* 836–863.

Aguinis, H., & Glavas, A. (2012). What we know and don't know about corporate social responsibility: A review and research agenda. *Journal of Management, 38,* 932–968.

Albert, S., & Whetten, D. A. (1985). *Organizational identity*. Greenwich: CT JAI Press.

Archer, M. S. (1995). *Realist social theory: The morphogenetic approach.* Cambridge: Cambridge University Press.

Archer, M. S. (2011). Morphogenesis: Realism's explanatory framework. In: M. S. Archer (Ed.), *Sociological realism.* New York: Routledge.

Aucamp, I. C. (2015). *Social Impact Assessment as a tool for social development in South Africa: An exploratory study.* PhD thesis, University of Pretoria.

Babarinde, O. A. (2009). Bridging the economic divide in the Republic of South Africa: A corporate social responsibility perspective. *Thunderbird International Business Review, 51,* 355–368.

Balmer, J. M. (2007). Identity studies: Multiple perspectives and implications for corporate-level marketing. *European Journal of Marketing, 41,* 765–785.

Balmer, J. M. (2013). Corporate heritage, corporate heritage marketing, and total corporate heritage communications: What are they? What of them? *Corporate Communications: An International Journal, 18,* 290–326.

Balmer, J. M., & Burghausen, M. (2015). Explicating corporate heritage, corporate heritage brands and organisational heritage. *Journal of Brand Management, 22,* 364–384.

Balmer, J. M., & Burghausen, M. (2018). Marketing, the past and corporate heritage. *Marketing Theory.* 1470593118790636.

Balmer, J. M., Fukukawa, K., & Gray, E. R. (2007). The nature and management of ethical corporate identity: A commentary on corporate identity, corporate social responsibility and ethics. *Journal of Business Ethics, 76,* 7–15.

Balmer, J. M., & Greyser, S. A. (2002). Managing the multiple identities of the corporation. *California Management Review, 44,* 72–86.

Balmer, J. M., Powell, S. M., & Greyser, S. A. (2011). Explicating ethical corporate marketing. Insights from the BP Deepwater Horizon catastrophe: The ethical brand that exploded and then imploded. *Journal of Business Ethics, 102,* 1–14.

Balmer, J. M., & Soenen, G. B. (1997). *Operationalising the concept of corporate identity: Articulating the corporate identity mix and the corporate identity management mix*. Strathclyde: Department of Marketing, University of Strathclyde.

Balmer, J. M., & Soenen, G. B. (1999). The acid test of corporate identity management™. *Journal of Marketing Management, 15,* 69–92.

Balmer, J. M. T. (2009). Corporate marketing: Apocalypse, advent and epiphany. *Management Decision, 47,* 544–572.

Balmer, J. M. T., Stuart, H., & Greyser, S. A. (2009). Aligning identity and strategy: Corporate branding at British airways in the late 20th century. *California Management Review, 51,* 6–23.

Bansal, P. (2003). From issues to actions: The importance of individual concerns and organizational values in responding to natural environmental issues. *Organization Science, 14,* 510–527.

Birkigt, K., & Stadler, M. M. (1986). *Corporate identity, grundlagen, funktionen und fallspielen.* Landsberg an Lech: Verlag Moderne Industrie.

Blanding, M. 2014. *The surprising link between language and corporate responsibility.* Forbes. https://www.forbes.com/sites/hbsworkingknowledge/2014/03/24/the-surprising-link-between-language-and-corporate-social-responsibility/#30bb5d211660. Accessed on July 3 2020.

Blundel, R., Ippolito, K., & Donnarumma, D. (2013). *Effective organisational communication: Perspectives, principles and practices.* Pearson Education: Harlow.

Bravo, R., Matute, J., & Pina, J. M. (2012). Corporate social responsibility as a vehicle to reveal the corporate identity: A study focused on the websites of Spanish financial entities. *Journal of Business Ethics, 107,* 129–146.

Bruhn, S. (2013). *Corporate social responsibility: A case study of consumers' perception of McDonald's use of CSR in relation to image and reputation.* Bachelors Degree, Aarhus University.

Burghausen, M., & Balmer, J. M. (2014). Corporate heritage identity management and the multi-modal implementation of a corporate heritage identity. *Journal of Business Research, 67,* 2311–2323.

Carmeli, A., Gilat, G., & Waldman, D. A. (2007). The role of perceived organizational performance in organizational identification, adjustment and job performance. *Journal of Management Studies, 44,* 972–992.

Cornelissen, J. (2014). *Corporate communication: A guide to theory and practice.* Los Angeles: SAGE.

Dartey-Baah, K., & Amponsah-Tawiah, K. (2011). Exploring the limits of Western corporate social responsibility theories in Africa. *International Journal of Business and Social Science, 2,* 126–137.

De Luque, M. S., Washburn, N. T., Waldman, D. A., & House, R. J. (2008). Unrequited profit: How stakeholder and economic values relate to subordinates' perceptions of leadership and firm performance. *Administrative Science Quarterly, 53,* 626–654.

Deegan, C. (2002). Introduction: The legitimising effect of social and environmental disclosures—A theoretical foundation. *Accounting, Auditing & Accountability Journal, 15,* 282–311.

Elder-Vass, D. 2010. *The causal power of social structures: Emergence, structure and agency.* Cambridge: Cambridge University Press.

Elkington, J. 2018. *25 Years ago I coined the phrase "Triple Bottom Line." here's why it's time to rethink it*. https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it. Accessed on July 4 2020.

Ellen, P. S., Wiener, J. L., & Cobb-Walgren, C. (1991). The role of perceived consumer effectiveness in motivating environmentally conscious behaviors. *Journal of Public Policy & Marketing, 10*, 102–117.

FAO, IFAD, & ILO. (2010). Agricultural value chain development: Threat or opportunity for women's employment?. In: S. D. Villard (Ed.), *Gender and rural employment policy brief.*

Godfrey, P. C., Merrill, C. B., & Hansen, J. M. (2009). The relationship between corporate social responsibility and shareholder value: An empirical test of the risk management hypothesis. *Strategic Management Journal, 30,* 425–445.

Hildebrand, D., Sen, S., & Bhattacharya, C. B. (2011). Corporate social responsibility: A corporate marketing perspective. *European Journal of Marketing, 45,* 1353–1364.

Ijabadeniyi, A. (2018). *Exploring corporate marketing optimisation strategies for the KwaZulu-Natal manufacturing sector: A corporate social responsibility perspective. Marketing and Retail Management*. Durban: Durban University of Technology.

Ionescu-Somers, A., & Steger, U. (2008). *Business logic for sustainability.* Basingstoke: Palgrave Macmillan.

Jäger, S. (2001). Discourse and knowledge: Theoretical and methodological aspects of a critical discourse and dispositive analysis. In: R. Wodak & M. Meyer (Eds.), *Methods of critical discourse analysis.* London: SAGE.

James, P., & Woodhouse, P. (2017). Crisis and differentiation among small-scale sugar cane growers in Nkomazi, South Africa. *Journal of Southern African Studies, 43,* 535–549.

Jones, D. A. (2010). Does serving the community also serve the company? Using organizational identification and social exchange theories to understand employee responses to a volunteerism programme. *Journal of Occupational and Organizational Psychology, 83,* 857–878.

Kibert, C., Monroe, M., Peterson, A., Plate, R., & Thiele, L. (2012). *Working toward sustainability: Ethical decision making in a technological world*. New Jersey: Wiley.

King, M., & Thornhill, C. J. (2003). *Niklas Luhmann's theory of politics and law.* Basingstoke: Palgrave Macmillan.

Kleyn, N., Abratt, R., Chipp, K., & Goldman, M. (2012). Building a strong corporate ethical identity. *California Management Review, 54,* 61–76.

Kohli, A. K., & Jaworski, B. J. (1990). Market orientation: The construct, research propositions, and managerial implications. *The Journal of Marketing, 54,* 1–18.

Mapitsa, C. B., & Khumalo, L. (2018). Diagnosing monitoring and evaluation capacity in Africa. *African Evaluation Journal, 6,* 1–10.

Marano, V., & Kostova, T. (2016). Unpacking the institutional complexity in adoption of CSR practices in multinational enterprises. *Journal of Management Studies, 53,* 28–54.

Marcus, A. A., & Anderson, M. H. (2006). A general dynamic capability: Does it propagate business and social competencies in the retail food industry? *Journal of Management Studies, 43,* 19–46.

Matten, D., Crane, A., & Chapple, W. (2003). Behind the mask: Revealing the true face of corporate citizenship. *Journal of Business Ethics, 45,* 109–120.

Mcdonald, L. M. (2015). Corporate Social Responsibility (CSR) in banking: what we know, what we don't know, and what we should know. In: *The Routledge companion to financial services marketing.* New York: Routledge

Mudrack, P. (2007). Individual personality factors that affect normative beliefs about the rightness of corporate social responsibility. *Business & Society, 46,* 33–62.

Muller, A., & Kolk, A. (2010). Extrinsic and intrinsic drivers of corporate social performance: Evidence from foreign and domestic firms in Mexico. *Journal of Management Studies, 47,* 1–26.

Nazari, K., Parvizi, M., & Emami, M. (2012). Corporate social responsibility: Approaches and perspectives. *Interdisciplinary Journal of Contemporary Research, 3,* 554–563.

Ndhlovu, P. T. (2011). Corporate social responsibility and corporate social investment in South Africa: The South African Case. *Journal of African Business, 12,* 72–92.

Otubanjo, O. (2012). Theorising the interconnectivity between corporate social responsibility (CSR) and corporate identity. *Journal of Management and Sustainability, 3,* 74–94.

Porpora, D. (2007). On Elder-Vass: Refining a refinement. *Journal for the Theory of Social Behaviour, 37,* 195–200.

Powell, S. M. (2011). The nexus between ethical corporate marketing, ethical corporate identity and corporate social responsibility: An internal organisational perspective. *European Journal of Marketing, 45,* 1365–1379.

Powell, S. M., Elving, W. J. L., Dodd, C., & Sloan, J. (2009). Explicating ethical corporate identity in the financial sector. *Corporate Communications: An International Journal, 14,* 440–455.

Reagan, P. M., Tekleab, A. G., Levi, A., & Lichtman, C. (2015). Translating CSR into managerial behavior: Determinants of charitable donation. Academy of Management Proceedings, 2015.

Rupp, D. E., Williams, C. A., & Aguilera, R. V. (2011). Increasing corporate social responsibility through stakeholder value internalization (and the catalyzing effect of new governance): An application of organizational justice, self-determination, and social influence theories. *Managerial Ethics: Managing the Psychology of Morality*, pp. 69–88

Rupp, D. E., Wright, P. M., Aryee, S., & Luo, Y. (2011). Special issue on 'behavioral ethics, organizational justice, and social responsibility across contexts.' *Management and Organization Review, 7,* 385–387.

Sannino, A., Engeström, Y., & Lemos, M. (2016). Formative interventions for expansive learning and transformative agency. *Journal of the Learning Sciences, 25,* 599–633.

SASA. (2017). *The South African Sugar Industry.* https://www.sasa.org.za/HomePage1.aspx. Accessed on July 4 2020.

Sharma, S. (2000). Managerial interpretations and organizational context as predictors of corporate choice of environmental strategy. *Academy of Management Journal, 43,* 681–697.

StatsSA. (2013). A giant step in agriculture statistics. http://www.statssa.gov.za/?p=1447. Accessed July 2 2020.

Suchman, M. C. (1995). Managing legitimacy: Strategic and institutional approaches. *Academy of Management Review, 20,* 571–610.

Surroca, J., Tribó, J. A., & Waddock, S. (2010). Corporate responsibility and financial performance: The role of intangible resources. *Strategic Management Journal, 31,* 463–490.

Tenbrunsel, A. E., Wade-Benzoni, K. A., Messick, D. M., & Bazerman, M. H. (2000). Understanding the influence of environmental standards on judgments and choices. *Academy of Management Journal, 43,* 854–866.

Theuvsen, L., Heyder, M., & Niederhut-Bollmann, C. (2010). *Does strategic group membership affect firm performance? An analysis of the german brewing industry*. Göttingen: GJAE.

Van Assche, K., Beunen, R., & Duineveld, M. (2014). *Evolutionary governance theory: An introduction.* Berlin: Springer.

Verbos, A. K., Gerard, J. A., Forshey, P. R., Harding, C. S., & Miller, J. S. (2007). The positive ethical organization: Enacting a living code of ethics and ethical organizational identity. *Journal of Business Ethics, 76,* 17–33.

Von Loeper, W., Musango, J., Brent, A., & Drimie, S. (2016). *Analysing challenges facing small-holder farmers and conservation agriculture in South Africa: A system dynamics approach, 2016*(19), 27.

Whittington, R. (2010). Giddens, structuration theory and strategy as practice. In: *Cambridge handbook of strategy as practice* (pp. 109–126). Cambridge: Cambridge University Press.

Part II
The International Dimension

Chapter 9
Features of Functioning of Corporate Entrepreneurial Structures in Agribusiness of Belarus

Natallia V. Maltsevich, Valery M. Maltsevich, and Tatiana V. Proharava

Abstract The article analyzes the state and prospects of corporate management development in modern conditions, describes the distinctive features of the formation of agro-industrial structures; factors of functioning of agro-industrial associations are systematized; analyzed the evolution; and identified promising directions for the development of integration in the AIC of the Republic of Belarus.

Keywords Corporations · Agribusiness · Privatization · Reform · Investment · Joint stock companies

9.1 Introduction

The phenomenon of corporations has been studied for a long time, but at the same time, it should be noted that at this stage in the development of economic science, researchers do not have an unambiguous opinion on this problem. Famous Russian corporate relations researcher Milner B.Z. states that the twentieth century was a century of corporatization, the starting point, which is the moment of separation of company management from the property. Each stage of corporatization is a change in the system of economic relations in response to the challenge of time, the dynamism of consumer demand, production and communications, the increasing complexity, and knowledge-intensive products. Images of previously unknown corporations appear—networked, democratic, intellectual, global, and, finally, virtual (Milner 1998).

The corporation as a form of entrepreneurship was formed at the end of the nineteenth century, at the time of the need for significant amounts of capital for the construction of mines and railways. The solution to the problem of attracting large amounts of capital was the sale of a share of the future enterprise to individual investors. To protect the investor from the risk of liability, it was limited to the share of the contribution. The concept of "corporation" usually refers to the optimal form of

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organization of large-scale production and provision of services. Many researchers, including such authoritative ones as J. Galbraith, defined the industrial system itself as part of the economy, which is characterized by the activity of large corporate structures (Galbraith 1967).

At this stage in the development of the global economy, corporations are the main legal form of a large business. Corporate organization of production has shown high economic efficiency at the national and world level. According to estimates, corporations account for two-thirds of the global gross domestic product (Sadykova 2011).

A comparative analysis of existing forms of the business organization suggests that the following advantages of corporate business associations are distinguished in modern economic literature: unlimited opportunities to attract cash capital; a clear delineation of ownership and management; attracting professional managers to perform managerial functions; stability of the corporation.

The above advantages have enabled corporations operating in the form of entrepreneurial entities that are most diverse in terms of industry and territorial location to largely determine the dynamics of economic development, as well as the socio-economic stability of states.

At the same time, I highlight the negative aspects in the functioning of corporations: discrepancies between the functions of ownership and control; the need for periodic reporting in the media; high competition; increased requirements for registration and reporting; high level of taxation, double taxation (income from shareholders, corporate income tax). Many scientists also refer to the negative side of the functioning of large corporations as monopolization of markets, higher prices for goods, and a negative impact on the development of small- and medium-sized businesses (Schwab and Sala-i-Martin 2011).

Such distinguishing features characterize large corporations, as a rule, as a high market share, the presence of several interconnected enterprises, the practical application of raising capital through the issuance of securities, and the company's high capitalization.

The general state of their economies, as well as the chosen strategy of socio-economic development, have a significant impact on the process of establishing corporate entrepreneurship in a country. Over a long period of time, the economic model in Belarus was characterized by the hypertrophied role of the state and the pronounced dominance of the state form of ownership. The notion that entrepreneurial activity based on private capital was opposed to the development of the public sector of the economy took root in public consciousness.

Corporate entrepreneurial structures are a relatively new form of organizational associations in the Republic of Belarus that arose during the mass privatization of state enterprises. At the same time, it should be noted that in the world economy the processes of concentration of production, providing not only the concentration of capital but also a change in property relations, have been going on for centuries. Large corporations are the most important structural element of the economies of developed countries, ensuring their sustainable development and competitiveness on a global scale. They occupy a dominant position in the economies of the developed

countries of the world, form an increasing share of gross domestic product, and, as a result, become a system-forming element of the national economies of states. Moreover, modern large corporations are increasingly positioned as direct participants in world economic relations, and transnational corporations in their importance and contribution to the global total gross domestic product significantly surpass the national economies of many countries of the world (Karantininis et al. 2010).

According to experts from the European Bank for Reconstruction and Development, in 2018, the share of products produced by state-controlled enterprises amounted to 70% of GDP. According to the Securities Department of the Ministry of Finance of the Republic of Belarus, out of 2387 open joint-stock companies registered in the national economy, in 1738 the state owns blocks of shares. It should be noted that the level of economic efficiency of the realization of the rights of the state as the owner of the share capital, even in cases where the state has a controlling stake, is very low. In 2018, joint-stock companies with a state share were transferred to the budget in the form of dividends on state-owned shares of 1.5 trillion BYN rub. At the same time, the level of state support in 2018, which these same enterprises received, amounted to 3 trillion BYN rub.

Corporations today operate in various industries and sectors of the economy, at all levels of the economic system—from regional to transnational. An analysis of the world experience in the formation of corporate structures in agricultural production indicates that the modeling of corporate associations in the agricultural sector is based on the general laws of agricultural development, and the content of the agro-industrial corporation is largely determined by the forms and types of agro-industrial integration (Setiawan et al. 2012).

9.2 The Specifics of Agribusiness in Belarus

In a modern economy, corporate governance is one of the most important factors that determine not only the level of economic development of a country but also the social and investment climate. Professional corporate governance is becoming a decisive factor in reducing risks in companies, increasing their capitalization, competitiveness, and economic efficiency. In a globalized economy, good corporate governance is becoming a source of competitiveness for countries.

A study of the theoretical aspects of corporate governance indicates that the fairly new area of research on corporate governance for the Belarusian economic science originated in 1932. In the work of A. Burley and J. Minza, “Modern Corporation and Private Property,” the problem of separation of control from property in public joint-stock companies was first considered (Berle and Means 1932). The authors found that the development of corporations and the stock market led to the separation of property from management.

The above studies laid the foundation for the formation of one of the concepts of agent theory that dominates in corporate governance today, developed by American economists M. Jensen and W. Meckling to explain relationships within corporations

Table 9.1 Comparative characteristics of corporate governance models

Factors	Model	
	Anglo-Saxon	German–Japanese
Ownership concentration	Deconcentrated (atomized)	High concentration
Principal owners	Institutional and individual investors	Banks, companies, financial and industrial groups
Dominant external source of financing	Capital market	Bank loans
Who controls	Outsiders	Insiders
Agent problem	Conflict of interests of shareholders and managers	Conflict of interests of large and small shareholders
Disclosure requirements	Hard	Low

Source Gusakov (2009)

(Jensen and Meckling 1976). Agency costs represent the amount of losses of the investor, which is associated with the separation of property rights and control, with the mismatch of the interests of the owners of capital and agents managing this capital.

There are various approaches to the classification of corporate governance models. The most widespread classification, which is based on such a classification feature as the relationship of ownership and control. In accordance with this feature, the Anglo-Saxon and German–Japanese models of corporate governance are distinguished (Table 9.1).

A study of global corporate governance experience suggests that, despite the growing importance of corporate governance around the world, there is no universal set of rules that would be acceptable to economies of all countries. The Russian corporate governance model, which is in its infancy, on the one hand, has its own specific features that distinguish it from the two main world models, on the other hand, there are similar features with each of them. For example, in terms of ownership concentration, the Belarusian model is close to Germany and Japan, but this model is not characterized by the equally significant influence of banks.

The outsider model of corporate governance is characterized by the predominant influence of management since the capital of most large- and medium-sized firms is dispersed. The shares are in the hands of many small owners who do not have a close relationship with the company, each of them individually cannot have a significant impact on decision-making in the company. The role of work collectives is also limited. However, the impact of the institutional environment is such that management is forced to take into account the interests of the owners since otherwise, the risk of absorption of the company increases. The priority mechanism for the redistribution of company funds in an outsider model is the payment of profit to shareholders, each of which can then effectively diversify its investment portfolio by acquiring small shares in a large number of corporations.

The insider model of corporate governance, on the contrary, is characterized by a limitation of management capabilities with a stronger influence on decision-making by large owners, closely associated with the company, and labor collectives. In the insider model, corporate capital is concentrated, which allows large shareholders to have a significant impact on corporate governance through the board of directors. At the same time, there are internal company procedures that enable labor collectives to influence decision-making in the corporation, which also limits the freedom of action of management. The priority mechanism for the redistribution of company funds in the insider model is the creation of new company businesses through reinvestment of profits.

Thus, a common interest in the success of a business does not imply a commonality of the individual goals of each group. As a result, a conflict of interest arises between "principal–agent" or "manager-owner." Acting strictly in the interests of the owner, the manager can infringe on his interests, and, acting in his own interests, the manager infringes on the interests of the owner. The comparative institutional analysis shows that in developed countries, depending on the characteristics of the institutional environment, there are two basic versions of corporate governance models. Conventionally, they can be called their outsider and insider models of corporate governance.

Traditionally, corporate governance in different countries of the world has been regulated through corporate law. However, with the development of corporate relations, it became obvious that legislative acts are not enough to build an effective corporate governance system; it is necessary that the participants in these relations assume voluntary obligations in this area, which will allow more flexible building of relations and increase the level of investor confidence. Thus, another form of corporate governance regulation appeared—corporate governance codes (OECD 2019).

By the degree of development of the stock market, the Republic of Belarus is significantly inferior to these countries, due to insufficient conditions necessary for the formation of the securities market. It is obvious that the formation of the Belarusian model of corporate governance in the short and medium terms will proceed under conditions of a significantly higher level of state regulation of economic processes, compared with the countries' representatives of the above models. The Russian corporate governance model, as well as the degree of integration of the Republic of Belarus into various interstate economic entities, has a significant impact on the domestic corporate governance system.

Agricultural production, due to its specificity, differs from other sectors of the national economy by a number of features. Among them, we can distinguish those that are of a general nature and those that are specific to the agricultural production of the Republic of Belarus. In turn, the general features, in our opinion, should be divided into technological and economic.

Technological features of agricultural production:

1. Agricultural production involves the use of biological means of labor, living organisms, such as land, plants, animals. The production process here represents

the change and development of these living organisms, and the content of human labor is in creating favorable conditions for such development.

2. In agricultural production, the main means of production are land resources. Land acts as a means of production and a subject of labor.
3. The dependence of agricultural production on soil and climatic conditions, which involves finding agricultural producers in conditions of risk and uncertainty.
4. In agriculture, the production period does not coincide with the working period, which leads to the problem of seasonality in the production of, especially crop products.
5. The process of reproduction is closely intertwined with the natural, that is, production here is associated with the biological cycle of growth and development of plants and animals, with natural reproduction. The cessation of biological processes characteristic of agriculture is the beginning of industrial production. So, the cultivation of plants and animals, the collection of fruits and the production of milk are attributed to agriculture, and the grinding of grain, processing of fruits, oil production, slaughter of livestock—to industrial.

Economic features of agricultural production:

1. Low price elasticity of demand for agricultural products, which significantly worsens the financial conditions for the development of the industry.
2. Manufacturers of agricultural products specializing in the production of certain, as a rule, finished types of marketable products in accordance with the natural and economic conditions of the zone, which are taken into account when placing and specializing. In industry, enterprises specialize most often in the production of a separate part of any type of product.
3. In agriculture, the finished product is included in the subsequent production cycle as a means of production (seeds, feed, offspring of animals), in connection with which there are features in the formation of fixed and circulating assets, as well as a lower level of marketability of products than in industry.
4. Agricultural production is less attractive to investors, which is due to the length of the production process and, as a consequence, the low turnover of resources.
5. Agriculture is the main producer of food, whereby it directly affects the country's food security.
6. The close interindustry relationship of the agricultural sector with enterprises of the first sphere and the second sphere of the agro-industrial complex suggests that investments in agriculture cause multiple increases in additional aggregate demand in other sectors.
7. Agriculture is significantly less involved than other sectors in the process of financial globalization. Processing enterprises through stock quotes and bonds on world exchanges have access to borrowed financial resources.
8. Agricultural production is limited in terms of the possibility of intensification of production, as well as the concentration of capital in comparison with other sectors of the economy.

Thus, the above features of agricultural production affect the formation and functioning of agribusiness entities, including corporations, regardless of the state in which they carry out economic activities (Belsky et al. 2010).

A study of the experience of establishing the corporate sector in the agricultural sector of the Republic of Belarus suggests that, along with the general features of agricultural production, the specific features of domestic agricultural production, which are presented below, should be taken into account:

- The agro-industrial complex is a significant sector of the national economy for the republic, since, in addition to ensuring food security, it is, in the conditions of a negative balance of foreign trade, a significant source of foreign exchange earnings.
- Currently, in the economy of the Republic of Belarus there is a process of concentration of enterprises within the framework of actively forming large holding structures. The main goal pursued during the creation of holdings is to improve the manageability and economic efficiency of the public sector by increasing production capacities, combining financial flows, human and information resources of individual enterprises and effectively managing them.
- The functioning of corporate entrepreneurial structures in the agricultural sector of the Republic of Belarus in conditions of significant state support, which, in accordance with agreements on the formation of the Common Economic Space, will be gradually reduced from 16 to 10% of the cost of agricultural products in 2018.
- The domestic stock market is in its infancy, and the secondary market is almost completely absent. This is confirmed by the fact that in 2018, the volume of the stock market at the cost of transactions decreased by almost 7 times compared to 2012. The lack of a secondary market deprives investors of the opportunity, if necessary, to sell securities. As a result, there is low liquidity of investments in this financial borrowing instrument and, as a result, low investment attractiveness of the corporate stock and bonds market.
- Lack of institutional investors in the economy of the Republic of Belarus (investment agencies, investment funds), who traditionally invest financial resources in corporate securities. An analysis of the situation in the bond market shows that banks are the main investor in corporate bonds. In fact, such activities of banks can be considered as an alternative to bank lending. Securities to maturity are held by the bank and, accordingly, do not enter the secondary market, thereby not contributing to the growth of liquidity of the corporate bond market. Among individuals, corporate non-bank bonds are not popular, as the situation in the monetary system in recent years has made bank deposits more profitable for investing.
  So, despite the fact that according to the ease of doing business index published by the World Bank, the Republic of Belarus moved from 129th place that it occupied in 2007 to 37th in 2019, gaining 75.77 points out of 100 possible in terms of favorable business environment (+0.72) (Zapolsky 2010).
- Lack of private ownership of agricultural land.

- Information on the assets offered for sale is incomplete, access to it is difficult, its reliability is limited, and not least due to the non-compliance of the financial statements with the International Financial Reporting Standards. The valuation of assets offered for sale is unreliable and, as a rule, is close to or exceeds the book value of assets. The carrying value of state-owned enterprises is usually an overestimation of the market value of the company. The presence of this circumstance in the practice of privatization leads to a reduction in the circle of potential investors.

According to the Ministry of Economy of the Republic of Belarus, as of the beginning of 2018, 102 holdings were registered in the State Register, of which 16 are operating in the agro-industrial complex. On average, a Belarusian holding company unites from 6 to 14 participants, its average number of employees varies from 97 to 28,329 employees. 5.1% of the total number of people employed in the economy work in these integration structures, 7.5% of revenue is generated, 11.8% of industrial production is produced, 11.9% of export products are created.

Thus, the studies performed indicate that in the formation of corporate entrepreneurial structures in the agricultural sector of the Republic of Belarus, it is necessary to take into account the historical features of domestic agricultural production. At the same time, along with the general characteristics of agricultural production, individual, relevant directly to domestic agricultural production should be taken into account (Schwab and Sala-i-Martin 2011).

Belarus as a sovereign state inherited from the USSR, in fact, a one-layered economy with a pronounced dominance of the industrial sector. Its core was made up of large state-owned enterprises, deeply integrated into the Union national economic complex. The formation of the corporate sector in the economy of Belarus began with the development of privatization processes in the post-Soviet space (Table 9.2).

The opening of joint-stock companies in the agro-industrial complex of the Republic of Belarus was initiated by the Decree of the Cabinet of Ministers of December 28, 1994, "On the transformation of agricultural processing enterprises and agricultural enterprises into open joint-stock companies." An analysis of the dynamics of transformation of processors and servants of agriculture in the Republic of Belarus allows us to identify three stages of corporatization of the above enterprises (Table 9.3).

Thus, the corporate sector was formed in the structure of the agro-industrial complex of the Republic of Belarus, as of 01/01/2018, 624 open joint-stock companies (Table 9.4).

At the same time, 141 joint-stock companies whose shares are in republican ownership are transferred to the management of the Ministry of Agriculture and Food of the Republic of Belarus, the remaining communal property is transferred to local executive authorities. It should be noted that from 2011 to 2018 the number of open joint-stock companies increased from 374 to 624.

It should be noted that in the structure of agricultural production the share of large-scale production accounted for 79.1% in 2018, the share of peasant (farmer)

Table 9.2 Stages of formation of the corporate sector in Belarus

Stages	Period	Activity
I	1991–1992	The beginning of this stage of privatization was the adoption of September 23, 1991, by the Council of Ministers of the Byelorussian USSR Resolution №. 360 "On denationalization of the economy and privatization of state property of the Republic of Belarus in 1991." This ruling regulated the provisional procedure for the proclamation and privatization of state property in Belarus. These were the first regulatory documents on the transformation of state property. They also contained a list of associations, enterprises, and organizations subject to denationalization in 1991. On the basis of the adopted documents, 19 enterprises of republican ownership and 42 enterprises of communal ownership were transformed in 1991
II	1993–1998	The stage of reforming state property in Belarus began in 1993 after the adoption of the laws "On Denationalization and Privatization of State Property in the Republic of Belarus" and "On Personalized Privatization Checks." The new laws determined the legal basis for the transformation of property in the country, and personalized privatization checks "Property" was added to the funds for the redemption of state property. Privatization legislation allowed enterprises to buy shares into ownership. Moreover, in the process of privatization, employees of enterprises were allowed to acquire 50% of shares for personalized privatization checks "Property," and the rest for money, including using borrowed funds, including loans. The end of this stage was the adoption of March 20, 1998, by the Decree of the President, which prohibited the use of borrowed funds for the redemption of state-owned shares and imposed moratoria on the sale of shares acquired by employees of privatized enterprises on preferential terms. A decree dated November 14, 1997 "On the special right ("golden share") of the state to participate in the management of joint-stock companies" was also signed
III	1998–2002	Observed the process of folding and inhibition of privatization processes
IV	2002–2008	Characterized by the revitalization process of privatization. Large industrial enterprises, including strategically important enterprises of the petrochemical complex, were incorporated. The state policy during this period was aimed at consolidating shareholdings in the hands of the state with a view to their subsequent sale to a strategic investor. It should be noted that for the given period of time, the first attempts of the state to take control of the previously privatized large enterprises fall
V	2008–until now	Characterized by imitation is the activation of privatization processes associated with the fulfillment of obligations under the terms of credit institutions. The cases of nationalization of previously privatized enterprises continued through the revision of earlier decisions on privatization, as well as the additional issue of shares with the subsequent sale of them to the state. In 2008, it was decided to lift the moratorium on the sale of shares acquired in the course of preferential privatization, according to which, since 2011, all restrictions on the purchase and sale of shares were lifted. As a result, many minority shareholders began selling their shares, which could lead to an uncontrolled change of ownership in a number of enterprises. As a result, on March 14, 2011, the President signed Decree № 107, which restricted the free movement of shares. New restrictions concerned, first, agricultural processing enterprises of the republican and municipal level. Such companies were classified as strategically important, ensuring the food security of the country. And, the regional executive committees and the Minsk city executive committee received a preferential right to purchase their shares. In the event that the local government did not repurchase shares of such enterprises within 90 calendar days, then an outside investor could buy them

Source Gusakov (2009)

Table 9.3 Stages of the transformation of processing and service organizations in the Republic of Belarus

Stages	Period	Activity
I	1995	Dairy and butter and cheese factories, flax plants, food industry enterprises are transformed into open joint-stock companies
II	1996	The incorporation of most of the regional associations of agricultural chemistry and some grain-receiving enterprises
III	1997	The remaining part of district associations of agricultural chemistry and grain-receiving enterprises, as well as enterprises of agro-technical service and district agricultural supply, was transformed into joint-stock companies of open type. At the same time, 40% of the shares were transferred to agricultural producers

Source Schwab and Sala-i-Martin (2011)

Table 9.4 The organizational and legal forms of enterprises in the agricultural sector of the Republic of Belarus

Indicators	2011	2014	2016	2017	2018	Change, 2018–2011
Total legal entities, of which	1613	1497	1469	1509	1357	−256
Joint stock companies	400	545	612	710	652	252
Open joint stock companies	374	510	580	680	624	250
Closed joint stock companies	26	35	32	30	28	2
Limited liability companies	117	152	168	207	204	87
Additional liability companies	20	13	12	10	8	−12
Production cooperatives	541	348	225	58	38	−503
Unitary enterprises	535	439	452	524	455	−80

Source Agriculture of the Republic of Belarus (2018)

Table 9.5 Structure of agricultural production by categories of farms (in percent)

Categories	2010	2015	2016	2017	2018	Change, 2018–2010
Households of all categories, including:	100	100	100	100	100	–
Agricultural organizations	64.4	78.3	79.1	79.3	79.1	14.7
Peasant (farmer) farms	1.0	1.9	1.9	2.0	2.2	1.2
Households	34.6	19.8	19.0	18.7	18.7	−15.4

Source Agriculture, Forestry and Fishery (2019)

farms was 2.2%. The control system of the agro-industrial complex is presented in Fig. 9.1. It is based on the territorial principle of construction.

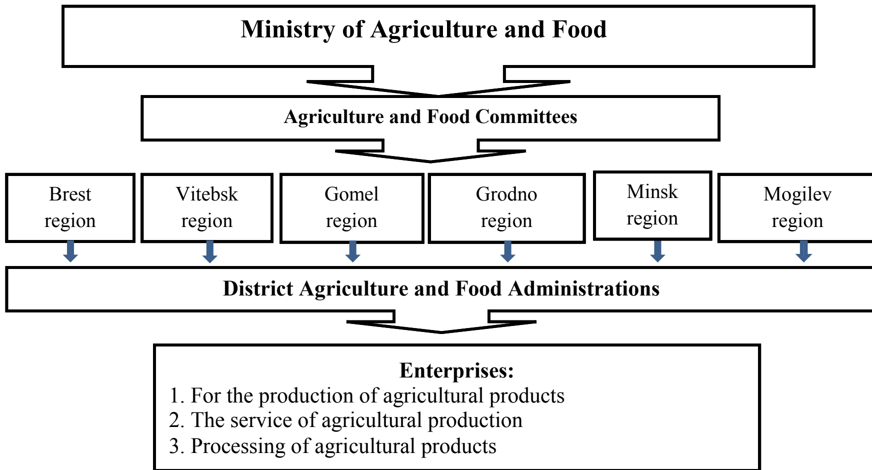

Fig. 9.1 The management structure of the AIC of Belarus

9.3 Formation of the Corporate Sector in the Agribusiness of Belarus

Currently, it is becoming increasingly apparent that the consistent introduction of modern corporate governance models will be one of the most important conditions for improving the investment and business climate in the economy of any state and, as a result, will create the prerequisites for high-quality economic growth. Moreover, corporate governance and its improvement at the micro and macro levels is an effective lever contributing to the transformation of the domestic business into a global competitive environment.

At the same time, it should be noted that corporate governance problems are actively studied in economic circles, starting from the 30 s, of the last century, when the process of separation of ownership and management of this property began to develop actively in large corporations. A study of the essence of the concept of "corporate governance" indicates that there are many definitions of this economic category. At the same time, the essence of corporate governance is to enable shareholders to effectively control and monitor management activities and thereby contribute to increasing the company's capitalization. This control implies both internal management procedures and external legal and regulatory mechanisms.

The following aspects are traditionally distinguished in which corporate governance plays an important role:

- increasing the efficiency of the company;
- facilitating access to capital markets;
- reducing the cost of raising capital and increasing the market value of the company;
- increasing the reputation of the company.

The strategy of forming holdings in the agro-industrial complex of the Republic of Belarus is currently aimed at restructuring the enterprises of the meat and dairy industry of the republic, their industrial integration, and the creation of strong, cost-effective companies in each of the six administrative areas.

The typical structure of meat and dairy products processing holdings forming in the Republic of Belarus includes a set of enterprises engaged in the processing of meat and dairy products, as well as trading houses, the controlling company of the holding will own a controlling stake.

Similar holding companies have already been created in five regions of the republic. In the Mogilev region, the Mogilev Dairy Company "Babushkina Krynka" holding was created, which included milk-processing enterprises of the region. In this case, the creation of the holding is based on the association of milk processing enterprises on the basis of the brand image of a large and influential structure, which was OJSC Babushkina Krynka. It should be noted that the creation of holding structures will affect not only the enterprises of the meat and dairy industry but also other areas of the country's agricultural sector (Funk 2010).

The process of creating large holding corporate structures carries a powerful potential for the effective development of domestic agribusiness. It should be noted that due to the lack of empirical data on the activities of holdings, it is not possible to determine the economic efficiency of the functioning of these structures at this stage.

Investment attractiveness in modern economic conditions is one of the fundamental characteristics of the activities of any business entity, as it directly affects the prospects for its development, competitiveness, and financial stability. Moreover, the stable and sustainable development of the state economy as a whole also depends on the state and effectiveness of the investment process. In the context of globalization and increasing competition, the need to integrate financial capital and intensify investment activity becomes apparent. World experience indicates that an effective investment policy solves a set of economic problems at the micro-, macro-, and mesoscale levels, and also creates favorable conditions for economic reform and restructuring.

Thus, it is undoubted that attracting investment in the company gives it additional competitive advantages and, as a rule, acts as a powerful impetus for further economic growth. When attracting or placing investments, there is a need for an objective assessment of the investment attractiveness of a company, a specific market, the economy of the state as a whole. This is due to the fact that one of the main problems in managing economic systems is the need to systematically increase their investment attractiveness.

1. Any decision aimed at increasing the level of investment attractiveness is a process of converting information into an action of a certain orientation. Undoubtedly, the optimal solution can be made only on the basis of the analysis of reliable and complete information. It should be noted that the assessment of investment attractiveness, on the one hand, allows the investor to make an informed decision on the direction of capital, and on the other hand, it is an investment support tool,

since it allows you to see the results and, if necessary, make appropriate changes to the existing investment policy (Agriculture, forestry and fishery. National Statistical Committee of the Republic of Belarus. Retrieved May 10 2019).

2. In this regard, it should be recognized that investment attractiveness is a very complex and multifaceted indicator that depends on many factors, including the political and economic situation in the country, the perfection of the legislative and judicial authorities, the level of corruption in the state, the qualifications of staff, financial condition, etc. A study of existing approaches to the classification of the above factors indicates that most authors identify internal and external factors that influence investment attractiveness.

External factors—these are factors that are not dependent on the results of the economic activity of the enterprise. These factors include:

1. The investment attractiveness of the state, which includes the following parameters: the political, economic situation in the country, the perfection of the legislative and judicial powers, the level of corruption, the development of infrastructure, human capital of the state. As a rule, rating agencies deal with it, the influence of which on the course of economic processes in recent years has significantly increased.
   On the negative side, the tax payment system (156th place) should be noted. Foreign trade legislation does not meet international standards in our country. The preparation of documents necessary for the implementation of export–import operations requires a lot of time and human resources. According to the first introduced parameter "connection to the power system" (how much time is needed for a stable connection of the warehouse to the electric network), the Republic of Belarus takes 175th place.
   In its report, the World Bank noted a number of actions to improve the business climate in our country: simplifying the transfer of property, abolishing several taxes, simplifying the procedure for paying income tax and VAT, reducing the number of tax payments, and introducing an electronic form of tax payment. The report also notes that for the analyzed period, the rights of investors are strengthened in the Republic of Belarus by introducing a requirement for greater transparency of corporate information for the board of directors and the public (Belarus in the Doing Business Rating 2019).
2. Investment attractiveness of the industry, including:

   - The level of competition in the industry;
   - Current industry development;
   - The dynamics and structure of investment in the industry;
   - Stage of development of the industry.

Internal factors include factors that depend directly on the result of the economic activity of the enterprise. Therefore, internal factors are the main lever of influence on the investment attractiveness of the enterprise. These include:

1. The financial condition of the enterprise, recovered on the basis of the following indicators: loan to equity ratio, current liquidity ratio, asset turnover ratio, return on sales, net profit, return on equity, net profit.
2. Organizational structure of company management: the share of minority shareholders in the structure of company owners, the degree of state influence on the company, the degree of disclosure of financial and management information, the share of net profit of the tearing off a company in recent years.
3. The degree of innovation of the company's products.
4. Stability of cash flow generation.
5. The level of diversification of company products.

Thus, the above factors affect the investment attractiveness of all enterprises, regardless of the legal form of business. At the same time, the investment attractiveness of corporate entrepreneurial structures has its own characteristics, which are determined by the nature of equity. World experience indicates that the key guideline for corporate development has been the growth of capitalization. In turn, the company's share price reflects its value, based on the available data on the company's earnings and its business prospects.

In this regard, for an objective assessment of the investment attractiveness of securities-based companies, it is necessary, along with the above parameters, to use ratios, which can conditionally be divided into three groups. The first group of ratios includes the coefficient of coverage of current liabilities with liquid assets and the debt on capital, which the business structure has. The second group of indicators includes coverage ratios for ordinary and preferred shares. The third group of ratios includes odds related to dividend payments. The experience of countries with developed market economies also indicates that a unique feature of corporate entrepreneurial structures is the possibility of attracting investment capital through an IPO. The use of this effective instrument for attracting investments by domestic corporate structures in the Republic of Belarus is at the initial stage.

9.4 Capitalization as a Criterion for the Effectiveness of the Functioning of Corporations in Belarus

The world experience in the functioning of corporate structures indicates that the formation and implementation of an effective dividend policy help to increase the investment attractiveness of both the issuer's shares and the corporation itself. It should be noted that it is subjective in nature since there is no single dividend policy of companies in the modern economy. At different stages of their formation and development, depending on the situation prevailing in the market, corporations seek to either accelerate accumulation or increase dividend payments to shareholders.

The formation of the corporation's dividend policy is carried out taking into account the peculiarities of the company, its growth rate, sustainability of received income, the availability of investment opportunities from external sources, the scale

of production, shareholder preferences, and other factors. At the same time, despite the large number of factors influencing the dividend policy of the corporation, it should be noted that the choice of the dividend policy implemented by the company comes down to the need to solve two main interrelated tasks:

- maximizing the aggregate wealth of shareholders in the form of dividend payments and an increase in the capitalized value of the company;
- ensuring the necessary amount of the company's own capital for the implementation of expanded reproduction.

It is obvious that the solution to the above problems involves establishing a balance between the current consumption of profit by the owners and its accumulation, and the role of the dividend policy is to optimize the proportions between the consumed and reinvested parts of the profit.

Thus, the dividend policy is one of the most difficult problems that lies in the plane of corporate relations, and its significance is primarily due to the fact that it is directly related to the use of the corporation's net profit. Moreover, the dividend policy is a combination of methods and principles for making managerial decisions aimed at choosing the optimal proportion of profit distribution. The desired optimal proportion should contribute to the growth of the company's capitalization and provide a financial basis for its sustainable development in the long term.

Under the conditions of global changes in the institutional environment and the financial sphere of the world economy, the importance of capitalization is increasing, thereby significantly determining the level of development of national economies. A consequence of the above trend is the allocation by the level of aggregation: company capitalization, market capitalization, regional capitalization, country capitalization. Of greatest interest is the lower level of aggregation (micro-level), which is characterized by the concept of "company capitalization" since this level is a component for the next three levels (macro-level).

The concept of "capitalization" is not new, but the study of the essence of this category began only at the end of the past—the beginning of this century. Studies of the theoretical aspects of "capitalization" indicate that the modern theory of capitalization is based on the works of foreign scientists. Among the researchers who made the greatest contribution to the study of this problem, one can single out such as J. Greenblatt, T. Koller, S. Cottle, T. Cowland, R. Murray, W. Sharp, J. Soros, and others. Capitalization, in the interpretation of the data of scientists, is an integrated indicator of the market value of the corporation, based on the market value of shares.

Russian scientists, including A.S. Permyakov, A.N. Ovsyannikov, G.I. Khotinskaya, Yu.V. Ezhov, V.V. Kazintsev, V.V. Piven, E.V. Galtseva, M.V. Dedkova et al. Are inclined to the definition of capitalization given by representatives of foreign scientists, but, at the same time, consider capitalization to a greater extent from the position of increasing the corporation's own capital.

Thus, summarizing the existing approaches to determining the essence of the concept of "capitalization," we can state that the market capitalization of a company is the value of all its shares, which is defined as the product of the market price of one share and the total number of shares issued by this company. The capitalized value

of the company is formed in the stock market and depends on financial stability, profitability, competitiveness of the company's products, novelty of equipment, staff qualifications, management system, and many other characteristics.

A study of the theory and practice of forming an effective dividend policy of a corporation indicates that it is characterized by individual stages of construction for each specific company. At the same time, a generalization of these features allows us to distinguish three general stages that are present in the algorithm for the formation of the dividend policy of all companies:

- the choice of the type of dividend policy;
- determination of the form of dividend payment;
- assessment of the effectiveness of dividend policy.

At the first stage, the corporation must determine the type of dividend policy. There are three main types of corporate dividend policy: conservative, moderate, and aggressive.

The conservative type involves the use of the residual dividend principle, in which most of the profits are reinvested in the business. As a rule, it is focused on the payment of fixed dividends.

The moderate type provides for a constant percentage distribution of net profit on payment of dividends and development of production in equal shares, with minor adjustments in the long term.

An aggressive type of dividend policy implies a desire to maximize dividend payments. Moreover, it provides for a systematic increase in the size of dividend payments.

The second stage in the formation and implementation of the dividend policy is the choice of the form of dividend payment. The main of these forms are payment of dividends in cash, payment of dividends by shares, automatic reinvestment of dividends in additional shares, redemption of own shares by a joint-stock company.

In the third stage, the effectiveness of the dividend policy is assessed. The following indicators are used to assess the effectiveness of the corporation's dividend policy: dividend yield ratio, dividend income, share price to earnings ratio, market price to earnings ratio per ordinary share, dividend payout per ordinary share.

For the Republic of Belarus, where corporate forms of organization of business entities are still in their infancy, and domestic capital is poorly involved in the process of globalization, a serious mistake of domestic corporate management and relevant government structures would be to focus exclusively on the problems of business survival within the framework of national households. This is largely due to the need to take strategic steps to overcome the consequences of the global financial crisis, aimed at using the difficult economic and geopolitical situation in the world to find ways to solve the issue of competitive advantages of the Republic of Belarus and positioning on the world market.

The preference for any organizational form of association of capital (concerns, financial and industrial groups, holdings) is associated with goals, as well as with the willingness of participants to transfer the management function of the parent

organization, with antitrust restrictions. Practice shows that enterprises can immediately move to some form of association (for example, the formation of concerns in the Republic of Belarus, carried out on the basis of ministries and their subordinate enterprises), or move forward to it sequentially through corporatization with the subsequent pooling of capital in the process of formation corporate structures of various degrees and forms of control.

The formation of concerns in the republic did not lead to the formation of classical corporate structures, but rather served as a new name for previously existing relations, therefore for many of them, the question of effective financial, material, and human resources management remains open.

In addition, the need to create an effective dividend policy in the agricultural sector of the Republic of Belarus is due to the fact that the organization of economic activity in the form of joint-stock companies has become widespread in comparison with other legal forms of business. Moreover, in the structure of the agro-industrial complex, there is a steady tendency to increase the number of joint-stock companies. At the same time, while the dominance of corporations in countries with developed economies takes place against the background of an adequately developed stock market, the Belarusian economy is characterized by significant imbalances, primarily due to the insufficient development of the system of basic market institutions. Accordingly, the formation of an effective and efficient dividend policy should be carried out in parallel with the improvement of the stock market.

The capitalized value of the largest corporations of the Republic of Belarus is significantly inferior to the leading corporations of the world in this indicator. According to the Securities Department of the Ministry of Finance of the Republic of Belarus, the value of the 10 largest companies in the country amounted to $5.782 billion based on the nominal value of shares (Fig. 9.2).

Analysis of the effectiveness of the functioning of corporate structures in the economy of the Republic of Belarus suggests that in order to improve the business reputation of domestic corporate companies, including in global markets, it is necessary to use modern corporate governance tools in practice, including increasing the transparency of companies, attracting independent directors, regular payments dividends and IPOs in the domestic and international markets. A significant factor hindering the efficient functioning of domestic corporations is the poor development of the financial market, including the stock market and the derivatives market, the lack of necessary conditions for the development of institutions to support corporate governance, and the lack of mechanisms for redistributing property in favor of effective owners.

Thus, the studies performed indicate that in a modern economy, market capitalization is positioned as the main criterion for the effectiveness of a corporation. Its role and importance in the economy are constantly growing since the use of market capitalization mechanisms makes it possible to create an integrated system that can ensure sustainable development based on the company's own potential. An increase or decrease in its value depends solely on stock prices on the stock market.

The development trend of the global economy indicates that the concept of capitalized value is considered as the basic paradigm of business development. Due to

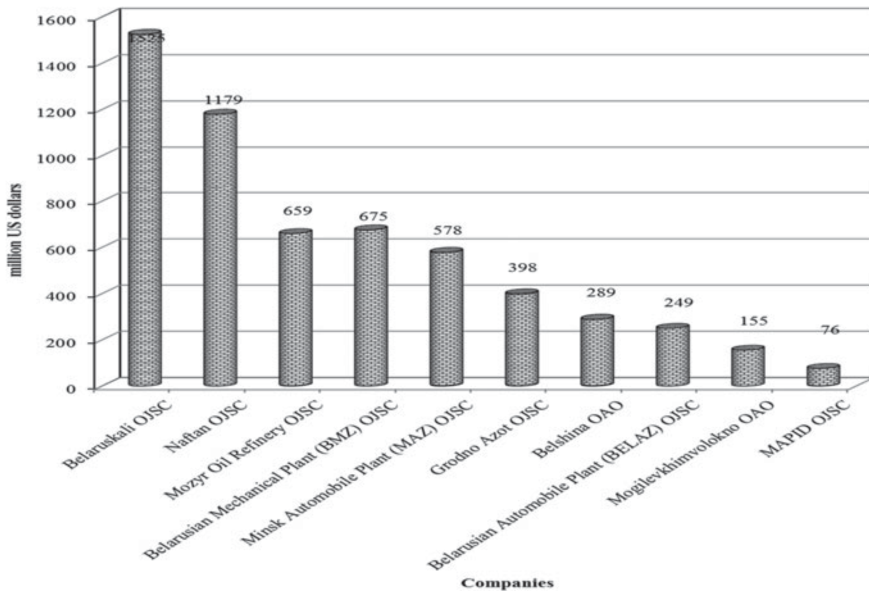

Fig. 9.2 Capitalized cost of the 10 largest companies of the Republic of Belarus (Belsky et al. 2010)

the insufficient development of institutional mechanisms, as well as the imperfection of the economic conditions governing the interaction of subjects of capitalization, the functional impact of the capitalization process in the economy of the Republic of Belarus is not fully realized (Maltsevich 2015).

9.5 Conclusions

The studies carried out to identify the features and main trends in the development of corporate entrepreneurial structures in the agribusiness of Belarus allow us to conclude that market principles of management, regardless of the specifics of the national integration model, require the creation of appropriate conditions for the development of effective forms of cooperative integration in the agricultural sector. The implementation of the identified prospects for improving the integration mechanism will ensure the formation of a qualitatively new agro-industrial production, increasing innovative activity in the agricultural sector, and gaining a stable competitive position in foreign markets in order to enter the global food system.

To form an effective corporate sector in the economy of the Republic of Belarus at the initial stage, the following measures should be taken.

Firstly, the formation at the macro level of a favorable business environment as a combination of socio-economic and legal conditions, including guarantees for the

protection of investor rights, effective anti-corruption, legislative differentiation of property and control, the formation of stable legislation.

Secondly, in order to bring corporate governance practices closer to effective corporate governance standards, amend legislative acts that conflict with the basic principles of corporate governance.

Thirdly, to develop the necessary regulatory framework, including the adoption by each corporation of a code of corporate conduct, create the necessary conditions for the development of corporate governance support institutions in the Republic of Belarus.

Fourth, in order to increase the efficiency of the functioning of corporations with state participation, it is necessary to change the qualitative composition of boards of directors by including independent directors and gradually replace state representatives from among public servants by professional managers.

The above arguments indicate, on the one hand, the incompleteness and high dynamism of the development processes of corporate entrepreneurial structures, and on the other hand, the great potential of this area of improving the organizational structure of the national agro-industrial complex.

References

Agriculture, Forestry and Fishery. *National statistical committee of the Republic of Belarus*. Retrieved May 10, 2019, from http://www.belstat.gov.by/ofitsialnaya-statistika/realny-sector-ekonomiki/selskoe-hozyaistvo/ (in Russian).

Agriculture of the Republic of Belarus: Statistical Book (2018). Minsk: National Statistical Committee of the Republic of Belarus. Retrieved May 10, from http://www.belstat.gov.by/upload/iblock/3a6/3a6d1b3c48f18f3a5e2465324d198df8.pdf.

Belarus in the Doing Business Rating. *Ministry of Economy of the Republic of Belarus*. Retrieved April 8, 2019, from https://www.economy.gov.by/ru/doing_busines-ru (in Russian).

Belsky, V. I., Shpak, A. P., Bychkov, N. A., & Zapolsky, M. I. (2010). Economic efficiency of performed integration of organizations in the agroindustrial complex. In *Proceedings of the National Academy of Sciences of Belarus. Agrarian Series* (No. 1, pp. 17–26) (in Russian).

Berle, A. A., & Means, G. C. (1932). *The modern corporation and private property*. New York: The Macmillan Company.

Funk, Y. (2010). Holding in Belarusian law. *Economic newspaper. Informbank*, February 9, pp. 24–26 (in Russian).

Galbraith, J. K. (1967). *The new industrial state*. Boston: Houghton Mifflin Company.

Gusakov, V. G. (2009). What cooperative-integration associations in agrarian and industrial complex will be in Belarus. *Agrarian Economics, 10,* 2–9. (in Russian).

Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics, 3*(4), 305–360. https://doi.org/10.1016/0304-405x(76)90026-x.

Karantininis, K., Sauer, J., & Furtan, W. (2010). Innovation and integration in the agri-food industry. *Food Policy, 35*(2), 112–120. https://doi.org/10.1016/j.foodpol.2009.10.003.

Maltsevich, V. M. (2015). Corporate value management. *Sustainable development of the economy: Status, problems, prospects: Proceedings of the IX International Scientific and Practical Conference, Polessky State University, Pinsk, May 22, 2015* (pp. 117–119). Pinsk (in Russian).

Milner, B. (1998). Large corporations—The basis of the upswing and accelerated development of the economy. *Voprosy Ekonomiki, 9,* 66–76. (in Russian).

OECD Corporate Governance Principles. Retrieved Oct 9, 2019, from http://elitclub.ru/kkzs/view/3#3 (in Russian).

Sadykova, R Sh. (2011). Corporation and state: Alternative models. *Actual Problems of Economics and Law, 1*(17), 35–39. (in Russian).

Setiawan, M., Emvalomatis, G., & Lansink, A. O. (2012). The relationship between technical efficiency and industrial concentration: Evidence from the Indonesian food and beverages industry. *Journal of Asian Economics, 23*(4), 466–475. https://doi.org/10.1016/j.asieco.2012.01.002.

Schwab, K., & Sala-i-Martin, X. (Eds.). (2011). *The global competitiveness report 2011–2012*. Geneva: World Economic Forum. Retrieved May 23, from http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf.

Zapolsky, M. I. (2010). *The effectiveness of cooperative integration relations in the field of agricultural production.* Minsk: The Institute of System Research in Agroindustrial Complex of NAS of Belarus (in Russian).

Chapter 10
Workplace Bullying: A Critical Look at Legal Protection in Brazil and Portugal

Alisson Renato Medeiros de Araújo, Iva Alberta Teixeira Faria, and Rosana Muniz de Medeiros

Abstract *Work saves us from three great evils: boredom, vice, and necessity* (Voltaire). The present study deals with intersubjective relationships in the workplace, which are naturally conflicting and potentially capable of affecting individuals, both physically and psychologically, and results from the realization that some behaviors in the workplace can configure situations of harassment in the workplace, curtailing dignity, self-esteem, quality of life and workers' rights. Faced with this objective reality, it is possible to perceive the legal protection existing in countries such as Portugal and Brazil, in the application of the law, regarding the protection and guarantee of a dignifying workplace. To that end, the question of this research lies in the analysis of the relevant legislation in the two countries, in the search of the gaps that favor, in a certain way, the practice of these harassing behaviors. The methodology adopted for the study is a review of the literature. The results point to the existence of broad protection legislation in both countries, but with little use and low effectiveness. It is hoped that this study will disseminate knowledge in order to stimulate new and in-depth studies in the area.

Keywords Workplace bullying · Harassment · Legal Protection Brazil · Legal Protection Portugal

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10.1 Introduction

The present study is configured as an exploratory exercise, both critical and descriptive, about a controversial and conflicting theme such as workplace bullying in an employment situation.

Regarding the critical eye, we do not intend to propose conjectures based on beliefs or common sense value judgments, but rather propose thinking about the situation in question, critically, because we realize that this “does not configure as a simple recurrent thinking, on the contrary, this kind of activity requires analysis, knowledge and evaluation criteria on thinking” (Medeiros et al. 2014, p. 343) reflexively, in other words, as a critical thinker.

From the perspective of the critical thinker, we agree with Cohen when he states that the true critical thinker “looks forward to solid evidence, coldly ponders the statements and resists the calls of prejudice” (Cohen 2017, p. 63) because “one of the main goals of critical thinking is to reach true conclusions based on sound reasoning and true premises” (Warburton 2011, p. 54). In this expectation, we will conduct the theme of the study.

In the current context, we can still consider workplace bullying a frightening, silent, and worldly issue and, therefore, indispensable to be studied because it is only from the visibility of a given phenomenon that “the study is feasible and can be analyzed comparatively, even though we should be vigilant not to trivialize the subject and make it more a fashion theme that dies in irrelevance and practical sterility” (Freitas 2007, p. 3).

In a review of the specific literature on the subject, Andrade and Baptista (2013) highlight three dimensions that delimit the phenomenon of workplace bullying which we briefly present: first—workplace bullying is characterized by repeated, persistent, and aggressive behaviors continued over time; second—that workplace bullying procedures have an intimidating, humiliating, and offensive character; third—indicates that in the situation of being harassed, the victim has difficulty defending herself (Andrade and Baptista 2013, p. 112).

Faced with this reality we seek to answer the research question: in terms of legislation/legal apparatus, Portugal and Brazil have contributed to ending or minimize workplace bullying?

With the purpose of this question, we seek with this study, appropriate points of a critical analysis of legislation in both countries, using a qualitative case study.

10.2 Theoretical Reference

10.2.1 Critical Thinking

It has become consensual among some authors the importance of critical thinking in citizen life. For Paul and Elder, critical thinkers use their skills generic in all the fields

and subjects in which they are involved and they "question information, conclusions and points of view" (Paul and Elder 2006, p. 2) and not to obey a rule of logic and justice, they seek to be accurate and relevant.

Critical thinking (CT) "is decision making in an attentive and thoughtful way and the willingness to become aware of the processes by which we come to conclusions and choose alternatives" (Branco 2013, p. 7). Thus, it can be used in the analysis of any theme, if the logic of the arguments, language transparency, and evaluation of conclusions and sources of information are kept in mind.

In a specific literature review on the topic, we find variants of definitions about the CT pointing to the same matter on the issue of relevance and prestige. For Norris & Ennis, 1989, CT is reasonable, reflective thinking, and focused on deciding what to believe or do. According to Paul and Elder (2006), CT is a way of thinking about any subject, content, or problem. In another definition, we find that the CT is the art of analyzing and evaluating thought with a view to improve it (Paul and Elder 2006).

All these variants of definitions allow us to conclude that the CT involves a reflective thinking about supposed beliefs and value judgments in which we base our daily conclusions and considerations. We have learned to prioritize the development of skills for the use of rational thinking strategies.

10.2.2 Workplace Bullying in Portugal

The definition of workplace bullying is enshrined in the Portuguese legal system, Article 29 of the Labor Code (LC). Workplace bullying, therefore, is an:

> "unwanted behavior, namely that based on practiced when accessing employment or on one's own employment, work or vocational training, for the purpose or effect of disturb or embarrass the person, affect his or her dignity, or create an intimidating, hostile, degrading, humiliating or destabilizing environment.[1]

The Portuguese concept of workplace bullying is therefore presented to us as a broad concept that can be subsumed in a vast number of conducts. Therefore, as regards to this issue, we present a Table 10.1 taken from the study[2] developed by the Interdisciplinary Center for Gender Studies (CIEG) and the Institute Of Social Sciences and Politics (ISCSP) promoted in 2015 by the Commission for Equality in Labor and Employment (ISCED) which operationalizes the concept of workplace bullying.

The socially relevant interest at stake in workplace bullying is moral integrity. However, this broad notion still fit other typologies such as discriminatory workplace

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[1] https://cite.gov.pt/pt/legis/CodTrab_indice.html.

[2] Torres, A., Costa, D., Sant'Ana, H., Coelho, B. & Sousa, I. (2016). Sexual and moral harassment in workplace in Portugal. Lisbon: Commission for Equality at Work and Employment (ISCED), available in: https://cite.gov.pt/asstscite/downloads/publics/Assedio_Sexual_Moral_Local_Work.pdf:accessed 05/19/2018.

Table 10.1 Operationalization of the concept of workplace bullying

Workplace bullying	
Social isolation Have promoted their isolation or lack of contact with colleagues; Have promoted their isolation or lack of contact with bosses	**Professional pursuit** Definition of goals impossible to achieve; Systematic devaluation of job; Inadequate functions
Workplace bullying Systematic threats of dismissal; Situations have been the target of *stress* with the goal of provoking uncontrollability	**Personal humiliation** Have been humiliated due to psychological or physical characteristics

Source Figure taken from the Commission for Equality in Work investigation, Harassment. Sexual and moral behavior at work in Portugal, Lisbon, February 2016, p. 6

bullying and simple workplace bullying if it is based on a discrimination factor or not.

Workplace bullying is reflected in practice, by a harassing, hostile behavior, and humiliating character in order to undermine, weaken the worker, causing him to adopt behaviors that he does not want.

The behaviors that are put into practice by the harassing agent may or may not be based on some established discriminatory factors enshrined as such in Article 24, LC # 1:

> […] Descent, age, gender, sexual orientation, gender identity, status family situation, economic situation, education, origin or condition, genetic heritage, reduced working capacity, disability, chronic disease, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological beliefs and union membership […]

The discriminatory factor is then the element that distinguishes the two modalities of workplace bullying, so if workplace bullying is based on a discriminatory factor, we will be facing discriminatory workplace bullying and, if that if there is no such basis, we will be facing a case of simple workplace bullying.

Another possibility of classifying workplace bullying is based on the motivation of the conduct of the aggressoragent and distinguishes three modalities: the emotional workplace bullying, the strategic, and the institutional one.

Emotional workplace bullying, also known as psychological workplace bullying is, as a rule, in practice by a subject who shows a tendency to provoke conflict and is especially aimed at obtaining a psychological effect on the victim, by provoking episodes of anxiety, emotional tension and physical exhaustion and psychological.

Strategic workplace bullying, for its part, is one that is based on aggressive techniques with well-defined strategic objectives. In the words of Julio Gomes, in this type of workplace bullying, we are facing an "economic Darwinism, which imposes a merciless selection of the best, which then emerges as a mechanism of justification of workplace bullying" (Gomes 2008, p. 172).

Finally, institutional workplace bullying, commonly confused with the strategic workplace bullying because they both come from objective decisions by employers,

but which, according to Rita Garcia Pereira[3] is a "resource management strategy" in the wake of new forms of work organization" and differs from the previous typology for targeting "the entire universe of workers, with a view to the implementation of certain procedures or the prohibition of certain behaviors, aiming to achieve better productive results."

10.2.3 Legal Protection in Portugal

The reinforcement of labor legislation implemented by Law 73/2017, of 16 August, which entered into force on 1 October 2017 didn't intend to change or redefine the concept of workplace bullying but rather reinforce the punishments already enshrined in Portuguese legal system by way of greater protection for victims of workplace bullying—noting that the "introduction of innovative norms in the Portuguese legislative system imposed additional duties on the employer, giving it a more active role in preventing, combating and eliminating deviant and illegal behavior in the context of the organizational structure of the company" (Araújo et al. 2018, p. 121).

One of the great innovations of the Legal Diploma comes from the addition of paragraph 6 to Article 29 LC which established a prohibition for the employer to sanction the complainant and his or her indicated witnesses by statements provided or facts established in the judicial or administrative proceedings of workplace bullying until the final decision unless if it is shown that they acted maliciously.

This amendment has addressed one of the main procedural difficulties that exist of witnesses missing the trial hearings for fear or even because of a "threat" from employers and that led to many situations eventually go unpunished. "The measure thus succeeds in preventing employers use disciplinary procedures and sanctions retaliation and can obviate the issue of testimonial absenteeism" (Faria 2019, p. 70).

Article 29 of the LC maintained the wording with regard to the workplace bullying (current paragraph 2) and sexual harassment (current paragraph 3) but the ban on workplace bullying was expressly introduced (current paragraph 1),[4] the right of victims to compensation for property damage and non-material damage (current paragraph 4) and workplace bullying constitutes a very serious offense, without prejudice to any criminal liability provided for by law (a current paragraph 5) which may eventually result in the commission of a stalking crime.[5]

But others were the relevant changes in the field of workplace bullying.

Article 127 of the LC (*Duties of Employers*) now establishes two new points [k) and l]] which give rise, on the one hand, to a new obligation for employers with seven or more employees to adopt codes of good conduct for the prevention and

[3]Pereira, R. (2009). Mobbing ou Assédio Moral no Trabalho—Contributo para a sua conceptualização. Coimbra: Coimbra Publisher, p. 175.

[4]It should be noted that the current wording refers only to the formulation of "harassment" thus encompassing all Harassment formulas.

[5]Article 154-A of the Penal Code.

combat of workplace bullying and, on the other hand, the duty to institute disciplinary proceedings is now established whenever potential workplace bullying situations are known, departing from the traditional discretion of the employer's disciplinary power.

However, of all the changes introduced by Law 73/2017 of 16 August, the one introduced in Article 283 of the Labor Code is perhaps the one with a greater expression, as in paragraph 8, it states that workplace bullying can be a source of occupational diseases by recognizing the figure of the employer as the person responsible for repairing the damage and for all the expenses related to damages that may be reflected in the workers' health that result from workplace bullying.

In addition, paragraph 9 has been added stating that the responsibility for the payment of compensation for this damage is the Social Security that is subrogated workers' rights, to the extent supported by them, plus arrears interest.

Article 331(2)(b) of the LC, in turn, presents a legal innovation to the presumption of the abusive nature of the disciplinary sanction applied until one year after the employee's denunciation or exercise of rights arising from the act of workplace bullying and therefore the amendment raises serious obstacles to employers to resort to such work as a form of retaliation for reporting the practice of acts of workplace bullying.

But the news also came at the level of termination of employment. Thus, if, in the context of the termination of an employment contract by agreement (Article 349(3) of the LC), it is compulsory to mention expressly in addition to from the date on which the agreement is concluded and the effects begin to take effect, the legal deadline for the worker to unilaterally terminate the revocation agreement.

On the other hand, Article 394(2)(f) LC expressly states that workplace bullying, which is duly reported to the "Working Conditions Authority," carried out by the employer himself or his representative, is a just cause for termination of the contract at the employee's initiative, with immediate effect and determines compensation between 15 and 45 days of and diuturnities for each full year of seniority, taking into account the value of retribution and the degree of the unlawfulness of the employer's behavior and cannot be less than three months of basic salary and seniority, in accordance with Article 396 of LC. It should be noted here that 396(3) provides for the possibility of compensation to be higher whenever the worker suffers property damage and not higher assets.

10.2.4 Workplace Bullying in Brazil

Publications around the theme of workplace bullying in the Brazilian reality are relatively recent. The "first texts published in Brazil date from 2001" (Freitas 2007, p. 3), however, in a short time, the issue reached a level of interest in the debates and discussions of publications both in academia and outside this circle.

In Brazil, as in many other countries, the characteristics of workplace bullying are not different aspects and effects and can be "conceptualized as abusive conduct, of a psychological nature, which undermines the psychic dignity of the individual,

reiterated, with the effect of a sense of exclusion from the environment and social life" (Filho et al. 2016, p. 8).

In a literature review, Andrade and Baptista (2013) highlight three dimensions for workplace bullying, where the first is characterized by the occurrence of aggression, repeated and persistent, continuously over time; the second one that workplace bullying procedures are intimidating, humiliating, and offensive. They aim to break the psychological resistance of the victim, attacking their dignity and discrediting it towards other people; and the third—indicates that is being harassed, the victim has difficulty defending himself (Andrade and Baptista 2013, p. 112).

As categorization, workplace bullying presents three different ways of being classified as follows: vertical, horizontal, or mixed. Vertical harassment is that,

> practiced between subjects of different hierarchical levels, involved in a legal relationship of subordination. It is the most commonly used modality. Workplace bullying, given the inequality between the subjects involved. When practiced by the hierarchically superior, in order to achieve his subordinate, is called vertical descending, due to the sense adopted by the ascending vertical [...] conduct will be when the hierarchically inferior act to harass your superior (Filho et al. 2016, p. 11).

In the case of horizontal workplace bullying, the practice of action takes place through workplace bullying that is "triggered by colleagues of the same hierarchical level and are motivated by factors such as: competitiveness for a promotion, feelings of envy, enmity for personal reasons, among others" (Grazina and Magalhães 2011, p. 112).

Mixed workplace bullying occurs when the victim of harassment, in an employment relationship, "abuses both his superiors and his companions—as when the group elects a single culprit for all the inconveniences and problems that happen in the company, for example".[6] In most cases, an author heads the workplace bullying process and urges other colleagues to follow their purpose of harassing the victim.

In some situations, workplace bullying at first becomes imperceptible and the harassed usually does not identify, at first glance, that it is in a situation of workplace bullying because, at first, it occurs as a harmless attitude, "because people they tend to spot the attacks, joking them; then it spreads strongly and the victim is subjected to a greater number of humiliations and games of bad taste" (Heloani 2005, p. 104) that end up generating huge disruptions in life, personal and professional.

10.2.5 Legal Protection in Brazil

The absence of a specific legal order on the issue of workplace bullying in Brazilian law should not be regarded as a delay in the event of protection since the Constitution ensures respect for human dignity, citizenship, image and moral heritage of the worker, including compensation for moral damages (Article 5, V and X, of the SC) (Meneses 2002, pp. 194–195) in any situation.

[6] https://blog.mouraesantana.com/assedio-moral-no-trabalho/.

Under Brazilian law, there is "no unified legislation to combat moral violence in companies, that is, there is no federal law that deals with theme" (Soares and Duarte 2014, p. 35) with the attention that the case requires.

Workplace bullying, despite not having express worker protection, has already focused on proposal initiatives such as Bill No. 4,591/01, authored by the Rita Camata—PMDB/ES, which has in its scope "on the implementation of penalties for the practice of " workplace bullying" by Union civil servants, municipalities and federal public foundations to their subordinates," changing the Law No. 8,112, of December 11, 1990,[7] which was eventually filed.

In the event of dismissal of the worker, where he can prove a workplace bullying behavior in Brazil "besides the nullity of the dismissal and the reintegration into employment (Article 40, I) of Law 9029/95) may give birth to claim for termination of employer's contract for breach of duties and contractual obligations (Article 483, d) of the Labor Code), excessive rigor or demand for services beyond the forces of the worker (CLT Article 483, a) and b) (Meneses 2002, 194).

In these circumstances, the victim has the right to "sue in addition to the amounts resulting from indirect contractual termination but also the compensation for moral damages ensured by item X of Article 5(x)) of the *Lex Legum* "[…], the equality provided for in article 5 of the CF does not restrict the employment relationship to the mere economic relation subordinate: ensures the worker the necessary respect for human dignity, citizenship, image, honesty and self-esteem." ("Moral Harassment – Illness Professional That Can Lead to Permanent Disability and even Death," newspaper Labor-19926/3, Edit. Consulex, 10/05/2002, p. 100, Brasília-DF) (Meneses 2002, p. 195).

Today, one of the greatest harms that has been generated around the worker and configured as workplace bullying is the way companies use to get workers "to achieve goals, which has increasingly led to dire consequences for those who are subjected to this form of aggression, besides generating an increase in the demand for actions claiming compensation for moral consequences of such unlawful conduct" (Soares and Duarte 2014, p. 22).

However, in a country with the population and territorial dimension as the Brazilian, cases of workplace bullying situation records could also accompany this representativeness, however, the data of this reality does not confirm the situation in the records of the first three months of 2017/2018 and 2019 as shown in Table 10.2.

This representation shows that, in the early years of 2019, the cases of workplace bullying records were lower than the first months of 2017 and 2018. Trade unions claim an increase in complaints "between private and public servants on workplace bullying increased significantly in the last months" […]. However, complaints have not turned into formal processes" (Batista 2019, s/p).

From the expert's point of view, we cannot celebrate that the results point to a social inhibiting factor in the situation of workplace bullying at the workplace, on the contrary—it represents "a warning sign about fear or repression, which should not be ignored, or even an effect of the labor reform, which transferred to the worker

[7] https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=28115.

Table 10.2 Workplace bullying records

Month	2017	%	2018	%	2019	%
January	10,422	9.7	2884	5.9	3358	5.4
February	1273	9.2	4013	5.8	4879	5.3
March	15,919	9.0	5094	5.4	4962	5.8

Source Adaptation from: https://www.correiobraziliense.com.br/app/noticia/brasil/2019/05/06/interna-brasil,753261/casos-de-assedio-moral-crescem-nobrasil.shtml

the burden of the costs of lost labor causes" (*idem/ibidem*) which, need further and better investigations.

10.2.6 Methodology

The present study, in methodological terms, is directed as a qualitative study for a case study. From the perspective of qualitative approach research, "it is dedicated to the analysis of concrete cases, in their particularities of time and space, starting from the manifestations and activities of people in their own contexts" (Flick and Parreira 2005, p. 13). The case study, because it was generated through real everyday situations, which were identified "from the researcher's desire to explain some situations from practice.[…], aiming at monitoring and judging the quality and relevance" (Silva et al. 2010, p. 127) of the theme, and situations addressed here.

The research field that guided the study focuses on articles published in annual/national and international scientific events; in bibliographic sources that address the issue of workplace bullying and in legal and news national dissemination means in both countries.

As a category of analysis, in a study involving the critical eye, therefore, directed to critical thinking—we made use of two categories—evidence and meaning that these allow us a reflection capable of responding to the proposed research question.

10.2.7 Final Considerations

In directing a critical eye about workplace bullying regarding legal protection adopted in countries such as Portugal and Brazil and, after consulting articles and legal documents that address the theme, we dare to infer that prevention is the first and most effective form of defense against workplace bullying.

So far, with this finding, we have not added anything new. The wisdom popular saying "prevention is better than cure" fits the question of workplace bullying. Ideally, the respect and dignity of any citizen should be the maxim practiced in society

and particularly in the workplace thus, the printed scars in which he suffered from workplace bullying would, once and for all, pass.

In Brazil, in the absence of specific legislation to address harassment issues evokes the Federal Constitution of 1988 and is contemplated in Title I—Fundamental Principles—Article 1—The dignity of the human person; in Title II—Fundamental Rights and Guarantees—Chapter I—The Rights and Duties of Individuals and Collective—Article 5: All are equal before the law, without any distinction, Brazilians and foreigners resident, in the inviolability of the right to life, liberty, equality, security, and property, as follows: III—no one shall be subjected to torture or to treatment inhuman or degrading.[8]

In this context, all issues involving workplace bullying will be judged and, in light of the Federal Constitution, in judicial precepts and understanding, upon the evidence presented.

We realize in this study that, in Brazil, despite a noticeable drop in the records of workplace bullying in 2019, in the first 3 months compared to the two previous years of the same period we have no reason to celebrate. Workplace bullying still exists but will remain camouflaged about the victim's fear of having to assume the burden of costs, of the labor cause that may eventually be judged as lost.

In Portugal, through the analysis developed in this study, we can conclude that relatively recent legislative changes in the Portuguese law demonstrate that some issues remain unresolved and that the legislator could have seized the opportunity and be bolder.

One such issue was the differential treatment that the law imposes by the form of contractual termination chosen by the worker who is the victim of workplace bullying. The one with the least psychological strength or even with a most fragile family uses the just cause for termination of his contract of labor and ends up being significantly least benefited in the amounts compensation to which he is entitled, that the worker who, for any reason, finds the strength to resist the behaviors directed at him and manages to stay in the job until is finally fired even if that dismissal is revised with illicit character.

Finally, although we consider that changes in recent years in the context of this theme constitute effective mechanisms that act both in the prevention and in repression, the fact is that government inertia regarding the lack of Regulation No. 73/2017 of 16 August continues to foster the climate of legal uncertainty surrounding this phenomenon.

[8] https://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm.

References

Andrade, N. Q. de, & Baptista, T. M. (2013). Práticas de Assédio Moral em Empresas Portuguesas. IC-Online IPL Congresso Internacional de Ciências Jurídico-Empresariais II CICJE, 109–121. Retrieved from https://iconline.ipleiria.pt/bitstream/10400.8/853/1/artigo6_II_CICJE.pdf.

Araújo, A. R. M. de, Faria, I. A. T., & Medeiros, R. M. de. (2018). Assédio Moral e sexual – direito e proteção. Aspetos análogos Brasil e Portugal. In J. S. Fernandes, C. Gonçalves, G. Andraz, J. R. Guerreiro, L. Carvalho, & N. Gustavo (Eds.), *II International Forum on Management* (1a ed., pp. 114–131). Faro - Algarve - PT: Universidade do Algarve. Retrieved from https://hdl.handle.net/10400.1/9857.

Batista, V. (2019). Assédio: queixas aumentam, mas processos diminuem. Retrieved July 26, 2019, from https://www.correiobraziliense.com.br/app/noticia/brasil/2019/05/06/interna-brasil,753261/casos-de-assedio-moral-crescem-no-brasil.shtml.

Branco, N. (2013). Manual do Pensamento Crítico. Retrieved May 7, 2014, from pt.scubd.com/doc/132013663/Manual-Pensamento-Critico.

Cohen, M. (2017). *Habilidades de Pensamento Crítico para Leigos*. Rio de Janeiro: Alta Books.

Faria, I. A. T. (2019). Especialista em Ciências Jurídico-Privatística - Prática Forense. In O Assédio no Trabalho: Alguns Problemas (p. 94). Barcelos, Portugal: IPCA - Instituto Politécnico do Cávado e do Ave.

Filho, R. P., Junior, A. L., & Braga, P. S. (2016). Noções Conceituais sobre o Assédio.

Moral na Relação de Emprego. UNIFACS, 1–35. Retrieved from https://www.revistas.unifacs.br/index.php/redu/article/view/4229.

Flick, U., & Parreira, A. M. (2005). *Métodos qualitativos na investigação científica (1a)*. Lisboa: Monitor.

Freitas, M. E. de. (2007). QUEM PAGA A CONTA DO ASSÉDIO MORAL NO TRABALHO? *RAE-Eletrônica, 6*(1), 1–8. Retrieved from https://www.redalyc.org/articulo.oa?id=205114655011.

Grazina, I., & Magalhães, J. (2011). Assédio Moral no Trabalho: A Relação com a Cultura Organizacional. Psique, (1647–2284), 107–130. Retrieved from https://repositorio.ual.pt/bitstream/11144/2716/1/AssédioMoral no Trabalho.pdf.

Gomes, J. (2008). Algumas observações sobre o Mobbing nas relações de trabalho subordinado. Estudos em Homenagem ao Professor António Motta Veiga. Coimbra: Almedina.

Heloani, R. (2005). Assédio moral: a dignidade violada. Periódicos Eletrônicos Em Psicologia, no 22, 101–108. Retrieved from https://pepsic.bvsalud.org/pdf/aletheia/n22/n22a10.pdf.

Medeiros, R. M. de, Souza, F. N. de, & Mercado, L. P. L. (2014). Facebook: Um Espaço Favorável para o Desenvolvimento do Pensamento Crítico. (R. P. de Aguiar, C. Donato, J. Cardoso, M. C. N. de Queiroz, Juiz G. G. Junior, Fernanda C. Donato, & C. M. C. Ramos, Eds.), 9 n.2, 341–351. Retrieved from https://artefactum.rafrom.com.br/index.php?journal=artefactum&page=article&op=view&path[]=502&path[]=341.

Meneses, C. A. C. de. (2002). Assédio moral e seus efeitos jurídicos. *Revista TST, 68* n.3, 189–195. Retrieved from https://hdl.handle.net/20.500.12178/70732.

Paul, R., & Elder, L. (2006). 27Th international conference on critical thinking. In T. F. of C. Thinking (Ed.), The miniature guide to critical thinking concepts & tools (p. 24). California: University of California at Berkeley. https://doi.org/707-878-9100.

Pereira, R. (2009). *Mobbing ou Assédio Moral no Trabalho – Contributo para a sua conceptualização*. Coimbra: Coimbra Editora.

Silva, A. B. da, Godoi, C. K., & Bandeira-de-Mello, R. (2010). Pesquisa Qualitativa em Estudos Organizacionais: Paradigmas, Estratégias e Métodos. (A. B. da Silva, C. K. Godoi, & R. (Org) Bandeira-de-Mello, Eds.) (2a ed.). São Paulo: Saraiva.

Soares, F. de C., & Duarte, B. H. (2014). O assédio moral no ordenamento jurídico brasileiro. Fórum Trabalhista – RFT |, 3 n.11, 21–47. Retrieved from https://www.editoraforum.com.br/wp-content/uploads/2014/06/O-assedio-moral-no-ordenamento-juridico-brasileiro.pdf.

Warburton, N. (2011). *Pensamento crítico de A a Z*. Rio de Janeiro: José Olympio.

Chapter 11
Influence of Gender Diversity of Boards and Gender of CEO on Financial Performance: The European Case

Liliana Marques Pimentel, Helena Maria Santos de Oliveira, Patrícia do Carmo Vaz Pereira, and Ntoung Agbor Tabot Lious

Abstract The objective of this paper is to analyze the performance of the largest listed companies of the European Union between 2010 and 2017, and how they are affected by the gender influence of the Chief Executive Officer (CEO) and the percentage of women on their Boards of Directors. These companies were chosen due to the lack of studies based on companies in the European Union and because the studies related to this subject have ambiguous results. Those ambiguities relate to the finding of positive, negative, or no relationship between gender diversity and company performance. This study is measured utilizing two indicators: ROA and Tobin's Q. Using a regression model based on a sample of 308 European companies, and the OLS method, a negative relationship was found between having a female CEO and Tobin's Q. When the ROA is analyzed, this relationship is also negative, but not significant. These results suggest that the fact that the position of CEO is occupied by a woman, has no influence on the company when analyzing the accounting results (ROA). It also negatively influences the market value of the company which can be attributed to gender discrimination, an inequality that is still present in society in general, as well as the labor market. The ratio between the percentage of female board members and the performance indicators is positive, but not significant. This suggests that the percentage of women board members remains too low to allow companies to take advantage of the benefits of gender diversity.

Keywords Gender · CEO · Board of directors · Performance · European union

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11.1 Introduction

The growing presence of women in the labor market and, consequently, in companies has given rise to the theme of gender diversity assuming increasing importance in society and get increasingly highlighted in the academic environment. The issue of women's representation on corporate Boards and CEO positions is often debated among policymakers and researchers and has grown considerably in recent years.

Men predominantly hold the positions of CEOs of the largest companies, as well as a large number of their Boards of Directors, but in recent years some women have assumed this position and have become members of this Board and thus become possible and necessary study the financial and social impact on companies of this change.

Several studies have investigated the relationship between gender diversity and company performance, but often don't produce conclusive results and, when they do, are contradictory: many of them show a positive influence of women's participation, while others show a negative influence, and some studies conclude that there is no influence. Although there's a great deal of research on the subject of gender diversity and the impact on business performance, there are very few that address this issue on the basis of EU companies and, to the best of our knowledge, there is no study examining this topic based on the main stock index of each country.

Thus, the main objective of this study is to contribute to the literature by examining the gender influence of the CEO and the percentage of women on the Boards of Directors in the results of the largest listed companies in the European Union.

The objectives summarize what will be achieved with the research and, therefore, the objectives of this study are to test the existence of the relationship between the gender of the CEO and company results, as measured by two alternative indicators (ROA and Q of Tobin), and of the ratio between the percentage of women in the Board of Directors and the company's results, measured by the same indicators. If this relationship exists, it is also intended to examine whether the influence is positive or negative.

11.2 Part I—Literature Review

As a consequence of 2008's financial crisis, the financial scandals and the high failure rate of companies in the last decade, there has been a growing concern in the last years to improve the effectiveness of the Board of Directors (Alvarado et al. 2017). Modern companies are "driven" in uncertain contexts: they face increasing international competitive pressures, unstable markets, new and complex technologies, and drastic changes in society at large.

Gender diversity is a theme that has been highlighted in academia in recent years, with studies that have as their main objective to characterize and/or verify the financial and social impact of the highest occupation of women in leadership positions and

high management in the company (Farrel and Hersch 2004; Parente 2013). Although women have been able to achieve social, professional, cultural, and political achievements in recent decades, they are still discriminated against when it comes to job opportunities, resulting in researchers' continued interest in gender differences in enterprises (Magro et al. 2015).

11.3 Evolution of Women in the Labor Market

Over the past few decades, women have made considerable strides in domains traditionally dominated by men, but remain significantly underrepresented at the top of the corporate hierarchy (Dezso and Ross 2012), both in boards and in leadership positions, such as CEO. These advances have placed a growing focus on issues of female labor market participation as well as gender equality (Laible 2013).

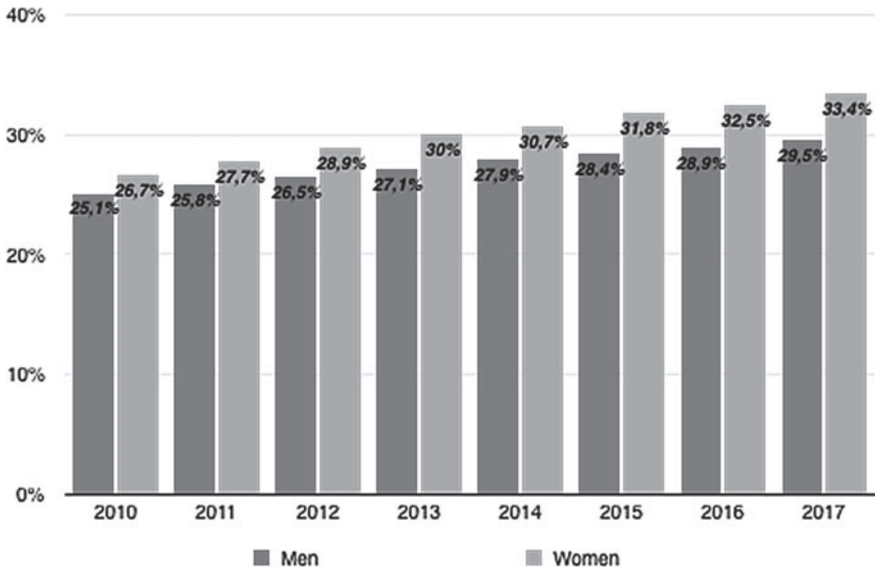
Gender-based discrimination in recent decades has left women underrepresented at the highest corporate levels. Thus, despite the increased female participation in the workforce, this has not prevented differences in wages and equal treatment in gender promotions from remaining (Madalozzo 2011; Thams et al. 2018). According to *EuroStat*,[1] women earn, on average, 16% less than men in most professions, and this value increases to 23% when analyzing the management positions of companies and this scenario of inequality is present in all Member States (European Commission 2018).

In order for women to be members of corporate boards and to hold leadership positions, they must have the educational opportunities and skills necessary to compete with male colleagues (Campbell and Mínguez-Vera 2010). One of the reasons alleged in the past for the lack of women in the labor market was their low qualifications (Madalozzo 2011), which is no longer a valid reason at present, given that in EU countries, in 2017, 33,4% of women had a higher education, compared with 29,5% of men, as shown in Graph 11.1. This majority of women with this level of education is found in almost all Member States European Union and the percentage of women with higher education has increased from year to year since 2010 (European Commission 2018).

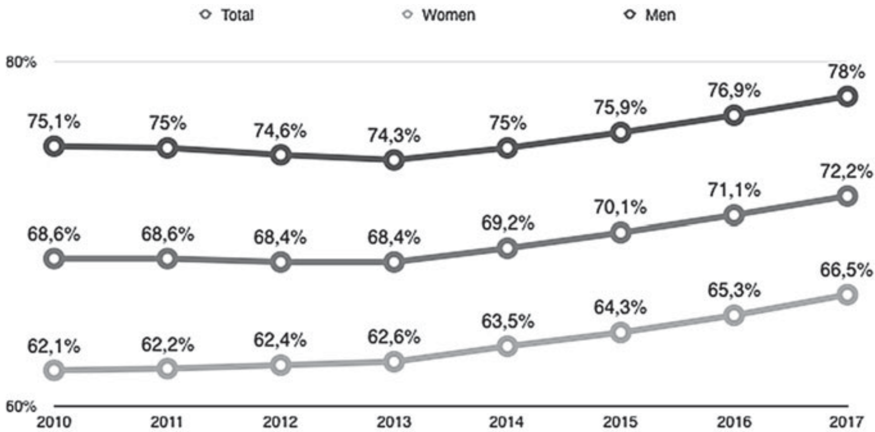
Significant progress has been made over the last decades in terms of gender equality within the European Union. Still, women remain seriously underrepresented in decision-making and leadership positions (Pereira 2013). Graph 11.2 shows the still large difference in the percentage of employability between men and women in the European Union (78% of men against 66,5% of women in 2017). Despite progress, women are still far from achieving full economic independence and, compared to men, women still tend to work in lower wage sectors and receive fewer, slower promotions (European Commission, 2018).

Gender-neutral career opportunities are—in addition to being 'fair'—also in the best interests of companies (Kotiranta et al. 2007). The arguments for greater female

[1] European Union Statistics Office.



Graph. 11.1 Percentage of men and women with higher education in European Union countries (2010–2017)



Graph 11.2 Employability percentage in the European Union (2010–2017)

representation on boards can be divided into two categories: ethical and economic. The ethical argument that it is immoral for women to be excluded from gender-based corporate leadership positions and that companies should hire women for these positions to achieve gender equality in society. The economic arguments, on the other hand, are based on the notion that companies that don't select the best candidates, by excluding women from the possible candidates, maybe selecting a

worse candidate by comparison for these positions and therefore will have worse financial performance (Campbell and Mínguez-Vera 2010).

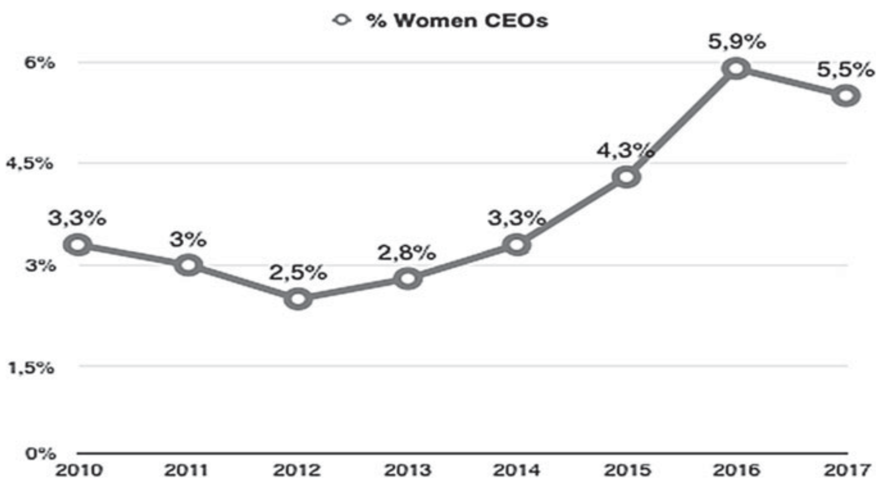
11.4 The CEO Gender

The influence of large multinational corporations, especially Americans, in a globalized world such as the one we live in, has made the term CEO, short for Chief Executive Officer, a common designation for the position of an executive director or general director of a company. Thus, the term CEO is the most common designation to refer to the highest authority within a company's hierarchy, responsible for its supervision, strategies, and vision (Peni 2014).

The CEO position is the one that has the greatest potential to influence companies' long-term financial performance (Jeong and Harrison 2017), so choosing the CEO is a decision that must take into account the inherent characteristics of this position—the CEO position requires unique leadership attributes (Dezso and Ross 2012), which must be considered as determining factors for a company's success (Peni 2014).

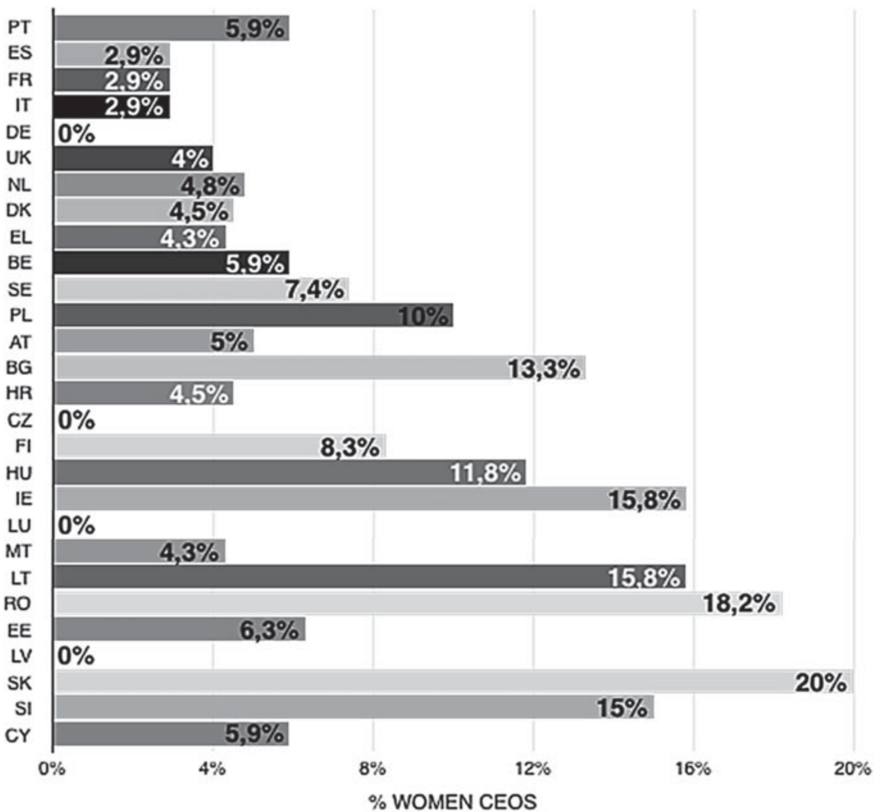
The cultural stereotype of leaders is male and presents a barrier to any woman who aspires to a leadership position, especially a position like CEO, where the symbolic role of the position is particularly important (Oakley 2000). Thus, and despite substantial female progress in recent years, business leadership remains predominantly male (Matsa and Miller 2013).

Women remain underrepresented in leadership positions, notably as CEOs. According to Graph 11.3, the rate of progress in listed companies in the Member



Graph 11.3 Evolution of percentage of women CEOs in the largest listed companies in the European Union (2010–2017)

States of the European Union is low as regards the percentage of women in the CEO position. From 2010 to 2014, the percentage of women decreased and returned to the same level, and only thereafter began to increase. Despite this increase, from 2016 to 2017, the percentage of women in the CEO position decreased by 0.4%, which may be an indicator that further steps are needed to promote women in this position (European Commission, 2018). In the European Union, in 2017, Germany, the Czech Republic, Luxembourg, and Latvia did not have any women as CEOs. Most of the remaining countries had less than 10% women as CEO, and this percentage was only exceeded by Bulgaria (13,3%), Hungary (11,8%), Slovenia (15%), Ireland and Lithuania (15,8%), Romania (18,2%), and Slovakia (20%), as shown in Graph 11.4.



Graph 11.4 Percentage of women in CEO position in the largest listed companies in the European Union in 2017

11.5 The Board of Directors

The Boards of Directors, according to Schwartz-Ziv (2013), are teams that perform complex tasks that require coordination between their members and that emerged from the separation between ownership and management of companies, allowing shareholders to regulate and oversee the management of these. They are usually defined as a relatively small group of influential executives in a company—usually the CEO and those who report directly to him or her (Finkelstein et al. 2009; apud Jeong and Harrison 2017).

The Board of Directors acts as an internal governance mechanism and plays a key role in monitoring the management and strategic direction of companies (Shrader et al. 1997). Members of corporate boards of directors are responsible for influencing the company's strategic decisions (Perryman et al. 2015) and play an important role in achieving its objectives (Krishnan and Park 2005).

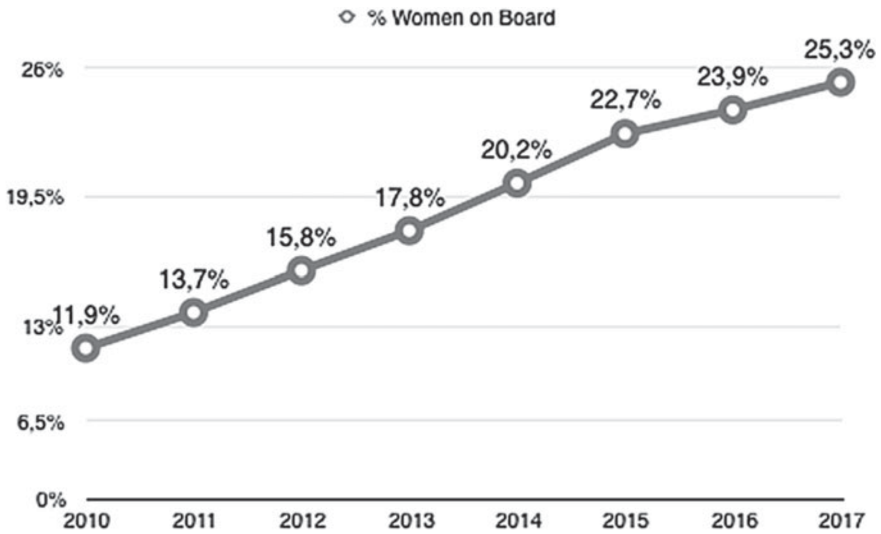
Boards of Directors are identified by several authors (Shrader et al. 1997; Carter et al. 2003; Krishnan and Park 2005; Campbell and Mínguez-Vera 2010; Dezso and Ross 2012; Schwartz-Ziv 2013; Perryman et al. 2015; Júnior and Martins 2015; Jeong and Harrison 2017) as one of the most important internal control mechanisms of companies, giving particular importance to their gender composition. This is also one of the most significant government issues currently facing corporate managers, directors, and shareholders (Carter et al. 2003).

Gender diversity on the boards has generated a debate about the influence of women on management dynamics and corporate performance. On one hand, gender diversity can provide additional perspectives for decision making. On the other hand, women can have a negative impact if the decision to nominate them to the Council is motivated only by social pressure for greater gender equality (Campbell and Mínguez-Vera 2010).

Although the participation of women in large companies increased, this increase was not proportional to the gender composition of the Boards of Directors (Green and Homroy 2017), as can be seen in Graph 11.5. Greater gender diversity in the Boards of Directors of Business is the central theme of corporate governance regulations (Green and Homroy 2017) and the current gender imbalance in corporate governance suggests that there are no equal opportunities for business success for men and women (Kotiranta et al. 2007).

Less than one-third (25.3%) of the Board of Directors of the largest listed companies in the European Union in 2017 belonged to women (Graph 11.5).

Graph 11.6 shows the percentage of women on the boards of directors of the largest listed companies in the European Union in 2017. The percentage of women in this position did not exceed 45% in any of the Member States: the highest percentages were in France (44,1%), Switzerland (35,8%), Italy (35,5%), Finland (33,8%), Germany (33,1%), Belgium (30,9%), Denmark (30,7%), and Latvia (30,1%). The lowest percentages were found in Estonia (7,4%), Romania (8,2%), Malta (8,4%), and Greece (9,8%).



Graph 11.5 Evolution of the percentage of women on the boards of the largest listed companies in the European Union (2010–2017)

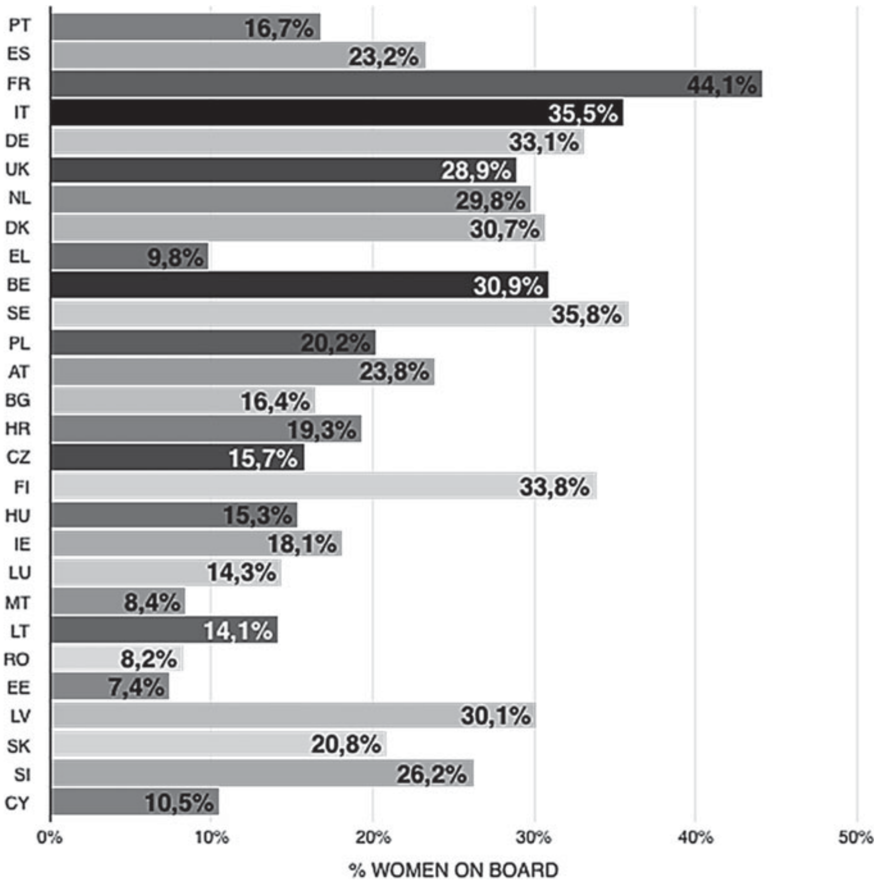
Arguments in favor of increasing the representation of women on boards have traditionally stemmed from concerns about discrimination and ethical and social justice. The apparent incongruity of female representation in councils and female representation in the workforce may be due to supply constraints, discrimination, or a combination of both (Green and Homroy 2017). As shown in Graphs 11.5 and 11.6, there are few women in leadership and high-level positions in companies (Jeong and Harrison, 2017). Although there is a growing tendency to increase female representation, which has led women to hold Board positions, they are still disproportionately composed of male members (Dezso and Ross 2012; Alvarado et al. 2017).

11.6 The Effects of Gender Quotas on Business

Gender diversity of boards has been a hotly debated topic and has become an important topic for policymaking due to the recent gender quota movement in these boards (Schwartz-Ziv 2013; Adams 2016).

The first laws relating to gender diversity in the Boards of Directors came into existence in 1993 in Israel, such as the Government of Israel Companies Act, which required the Boards of Governments for the government to hold at least 50% of actions were composed in such a way as to "give women adequate representation" (Schwartz-Ziv 2013; Júnior and Martins 2015).

Following this, a growing awareness of the under-representation of women in top positions in the business world has led many companies to review their policies and



Graph 11.6 Percentage of women on Boards of Directors in the largest listed companies of the European Union in 2017

practices (Oakley 2000) in relation to gender diversity, and therefore in recent years, several countries have adopted mandatory recommendations and/or laws to increase the presence of women on corporate boards. However, and despite the progress made, female representation on boards remains far from desired levels (Alvarado et al. 2017).

In recent years, companies have faced increasing pressure from government regulators to increase gender diversity in Boards (Liu et al. 2014), because while Boards may have an internal taste for gender diversity, also seem to respond to external pressure to introduce women to the Board of Directors (Farrel and Hersch 2004). This pressure stems from growing concerns about gender equality, which has led to the emergence of a large number of regulations around the world aimed at increasing female representation on boards (Green and Homroy 2017).

These initiatives may have associated disadvantages, as the obligation of female representation may lose the actual integration of women in company decisions. In the absence of consistent evidence on the impact on corporate performance of female representation on corporate boards, the economic implications of gender diversity on the board may be ambiguous if decisions to increase female representation on these boards are driven by social pressures and policies that raise concerns about symbolic representation. Although regulatory and institutional pressures may lead to the appointment of women to boards, they do not guarantee their participation in the decision-making mechanism of companies (Green and Homroy 2017). Ensuring that women are represented on boards through gender quotas can alter the selection and recruitment processes (Matsa and Miller 2013), which can have direct effects on board efficiency. In addition, Green and Homroy (2017) suggest that regulatory efforts focused exclusively on greater female representation on boards are unlikely to unlock the benefits of gender diversity.

Despite this, additional efforts by companies to improve women's representation are seen as socially necessary and beneficial to the company as a whole (Perryman et al. 2015) but business decisions do not respect the logic of democracy or the altruistic struggle for gender equality. Business owners and those who represent their interests are obviously concerned about the issue in the name of social responsibility, but while gender equality can be considered a business goal, ultimately only its relationship to financial success (Kotiranta et al. 2007).

11.7 Current Situation of the European Union

Equal treatment between women and men is a core value of the European Union and implies that women benefit from the same opportunities as men to achieve leadership positions (European Commission 2018). However, only 25,3% of the members of the boards of the largest listed companies in the EU-28 Member States were women in 2017.

France (44,1%) was the only Member State that in 2017 had at least 40% of each gender on the Boards, a percentage achieved with the introduction of a gender quota in 2011, which required companies reached a target of 40% by January 2017. Another ten countries had at least 25% women on the boards (IT, DE, UK, NL, DK, BE, SE, FI, LV, and SI). In almost half of the Member States, men continue to outnumber women on the boards of large companies by 4 to 1 (i.e. less than 20% women), and in four of these Member States Members the Boards of Directors have less than 10% of women (EL, MT, RO, and EE).

Several Member States have already introduced mandatory legislative quotas for the Boards of Directors, namely Belgium (at least one-third of each gender, 33%), Germany (30%), France (40%), and Italy (33%). France, Germany, and Italy have already met their targets, but Belgium—where the deadline to reach the 33% target is the financial year 2017/2018—is not yet met (30.9%). In 2017, Austria (AT) and Portugal (PT) also adopted gender quota legislation (European Commission, 2018).

Some Member States, while not having gender quota legislation, have developed action plans or other policy measures. In 12 of the Member States, corporate governance codes contain gender balance clauses in company boards (ES, UK, NL, DK, EL, SE, PL, BG, FI, IE, LU, and SI). As these are established by public agencies and stakeholders together, they can be qualified as self-regulatory approaches. In some of these approaches, companies are also required or encouraged to set their own goals.

Thus, in the 28 Member States of the European Union, only 6 have mandatory legislative quotas, 5 have self-regulatory measures with defined objectives, 7 possess them but without defined objectives, 4 are in the process of developing these self-regulatory measures, and 6 have no quota or measure.

Many countries have recently incorporated recommendations for gender equality in both corporate governance codes and disclosure regulations (Ahern and Dittmar 2012). Public policymakers in Europe have begun to accelerate the rise of women in business leadership by imposing gender quotas on corporate boards (Matsa and Miller 2013).

The EU has several initiatives aimed at increasing gender equality, including plans to tackle the gender pay gap and the adoption of a directive, proposed on 14 November 2012 by the European Commission to "accelerate progress towards a better gender balance on the boards of European companies." The proposal aims to reach the 40% presence, of the underrepresented sex, among non-executive directors of listed companies. This target should be achieved by 2018 for public enterprises and by 2020 for other enterprises (European Commission 2018).

This directive is not intended to dissociate the concepts of competence and appointment, i.e. women should not be appointed by the mere fact that they are women, but rather to ensure that women have an opportunity to apply—appointment should always be based on the qualifications of each candidate. In case of equal qualification, preference should then be given to the underrepresented sex (European Commission, 2018).

The results of the study by Alvarado et al. (2017) confirm the power of mandatory laws in increasing the presence of women in councils. The promotion of mandatory laws by governments is a key factor that contributes to balancing the effective equality between men and women on boards and, therefore, is a mechanism that should be instituted in countries where the presence of women on boards remains low.

Many European countries are not complying with the gender quotas that they have enacted. Therefore, there remains a need to demonstrate to society and the business sector that the presence of women should not necessarily be enforced by legal regulation, but should be a common practice justified by their professional capabilities (Alvarado et al. 2017), i.e. companies should increase the percentage of women, both from an economic and an ethical perspective.

Women may hold the key to a more balanced economy, but more research and studies are needed to understand the benefits of board diversity (Adams 2016).

11.8 Empirical/Previous Studies

As noted earlier, gender diversity has been a prominent issue in academia in recent years, mainly due to the persistent under-representation of women in leadership and senior management positions (Dezso and Ross 2012). The studies carried out to seek to verify and characterize the financial and social impact of this representation on companies and, given the growing concerns and legislative advances toward increasing gender diversity in the Board of Directors, these studies have focused on the effect of this increase on business performance improvement.

The literature on the effect of gender diversity on business performance is inconclusive. Some studies conclude that there is a positive relationship, while others report a negative or even nonexistent relationship between gender diversity and performance (Laible 2013; Schwartz-Ziv 2013; Bennouri et al. 2018).

Despite these unclear empirical results (Carter et al. 2003), several arguments support gender diversity and allow for a positive influence on business economic outcomes (Alvarado et al. 2017) and, given the magnitude and the popularity of recent policy interventions related to the gender diversity of boards and expectations placed on women, it's important to review the scientific evidence on this subject—a better understanding of the literature can help inform policy and shape expectations on the impact of gender diversity policies on business economic outcomes (Adams 2016).

The following are the various studies analyzed, which provided a clear view of the state of the art of this theme, from 1997 to 2018, thus also allowing us to observe the evolution of conclusions over 20 years. The studies are divided into "samples," that is, firstly the studies in which the sample consists of companies from the United States are presented, then the studies in which this sample consists of companies from Europe and, finally, studies that focus on the rest of the world.

11.9 United States of America

Shrader, Blackburn, and Iles (1997) investigated the relationship between the percentage of women in management, top management and the board of directors and two financial performance accounting measures (ROA and ROE) using data from 200 US companies with highest market value, reported by the Wall Street Journal in 1994. The authors found a significant **negative relationship** between the percentage of women on boards and financial performance indicators.

Oakley (2000), in his study, examines the various explanations for why women are not promoted to higher level positions in the corporate hierarchy, such as the CEO position. Explanations included lack of experience, inappropriate career opportunities, gender differences in language and socialization, gender-based stereotypes, the *old boys club network,* and *tokeism.* Based on an analysis of the literature, it concludes that gender-based stereotypes and the closed circle of the *old boys club network* are

strong social forces that are changing very slowly and that the absence of women in senior management positions and CEOs are indicative that the whole process of selection, recruitment, and promotion in large companies needs a big change.

Erhardt, Werbel, and Shrader (2003) examine the relationship between the gender diversity of the Board of Directors and corporate financial performance as measured by ROA and ROI. Using data from the 127 largest US companies, between 1993 and 1998, they conclude that Board diversity is **positively** associated with the two performance indicators used.

Carter, Simkins, and Simpson (2003) examine the relationship between gender diversity on boards and company value using Fortune 1000 companies. The authors conclude that there is a **positive relationship** between the presence of women on board management and company value, as measured by Tobin's Q.

Farrell and Hersch (2005) developed a study in which they try to prove that gender has an impact on the selection of council members and that a woman is more likely to be seen joining the council if the number of women on the board is low. Fortune 500 companies were analyzed from 1990 to 2000. They conclude that gender influences the choice of board members: the likelihood of a company hiring a woman to the board in a given year is negatively affected by the number of women already on the board. Despite this, there is evidence that women tend to work in better-performing companies but there is no evidence that gender diversity on boards is, on average, a strategy for better performance.

Krishnan and Park (2005) study the direct impact of women's representation on TMT (Top Management Teams) on ROA performance of 679 Fortune 1000 companies in 1998. The results show a **positive relationship** of this representation, concluding that companies with a higher representation of women in TMT are more likely to perform better financially.

Adams and Ferreira (2009) carry out a study that aims to answer several questions, namely: Does the attendance of directors and their appointment vary with gender diversity? Does the composition of the Board of Directors affect corporate governance measures? Is the effect of gender diversity on governance significant enough to affect company performance? Using US companies from 1996 to 2003, they concluded that women have a significant impact on company boards and performance, but this impact is **negative**, suggesting that gender quotas may reduce the value of companies with good corporate governance.

Dezso and Ross (2012) carry out a study in which the objective is to answer the question: Does women's representation in top management have a positive effect on company performance? If so, is the effect general or does it only apply to particular contexts? Standard & Poor's 1,500 data were used and analyzed over 15 years (1992–2006). The study reveals that female representation in top management leads to **superior** performance, measured by Tobin's Q, but only when the company is focused on innovation as part of its strategy.

Jalbert, Jalbert, and Furumo (2013) examine the relationship between CEO gender and the performance of Forbes Compensation List companies between 1997 and 2006. The study results show that CEO gender is related to corporate

performance, namely that women CEOs have a **positive effect** on ROA, ROI, and sales.

Khan and Vieito (2013) elaborate a study based on a sample of US companies (S&P1500 Indexes) between 1992 and 2004 to assess whether companies run by female CEOs exhibit the same performance, as measured by ROA and two other variables, that companies run by male CEOs. The authors conclude that companies with a female CEO are associated with **better performance** compared to companies with a male CEO. Thus, it is concluded that the CEO's gender influences the company's performance.

Peni (2014) conducts a study focused on the relationship between CEO characteristics and the performance of 305 S&P500 companies between 2006 and 2010. The author concludes that women-owned companies **perform better**, measured by ROA and Q of Tobin than men-owned companies.

Borghesi, Chang, and Mehran (2016) conduct a study to analyze whether diversity in the Board of Directors and in the gender of the CEO (the CEO belonging to a minority, which includes being female) increases the value of companies. Using data from 3065 US companies between 2003 and 2009, they found that when diversity is only on the board, the value of the company is higher, but that is not the case when there is diversity on the board and the position of CEO.

Perryman, Fernando and Tripathy (2016) investigate the impact of gender diversity on top management teams (TMT) on business performance and risk while examining the moderating effect of gender diversity on executive salaries of 2566 US companies from 1992 to 2012. The study suggests that increasing gender diversity reduces the company's risk and has a **positive effect** on performance, as measured by Tobin's Q while narrowing the pay gap between male and female executives.

Conyon and He (2017) investigate the relationship between company performance and gender diversity on boards, using data from 3000 US companies between 2007 and 2014. They conclude that, in general, the presence of women on the board has a p**ositive impact** on company performance. The positive effect of the presence of women on the Board has been shown to be heterogeneous, and in low-performing companies, this positive effect is lower than in high-performing companies.

11.10 Europe

Du Rietz and Henrekson (2000) test the evidence that women outperform men, using data from Switzerland of 4200 entrepreneurs, where 405 are women. They test the hypothesis that, by keeping everything else the same, women entrepreneurs tend to be less successful than men in terms of performance indicators (sales, productivity, employment, and orders). The study does not support the hypothesis that women actually perform worse than men, despite proving the existence of this trend.

Smith, Smith, and Verner (2005) analyze the presence of women on boards and whether they have a significant effect on company performance as measured by four performance indicators using the 2500 largest Danish companies between 1992 and

2001. They conclude that the proportion of women in top management tends to have a **positive effect** on company performance, even after controlling for numerous company characteristics.

Kotiranta, Kovalainen, and Rouvien (2007), analyzing Finnish companies in 2003, conclude that companies with a woman in the CEO position are slightly **more profitable** (ROA, ROI, and operating margin) than companies with a man in this position and that the percentage of women on the board has a similar effect, i.e. **positive**.

Campbell and Mínguez-Vera (2008) investigate the relationship between the gender diversity of the Spanish Board of Directors and its financial performance between 1995 and 2000. The results show that gender diversity has a **positive effect** on company value and investors in Spain do not penalize companies that increase the number of women in the Councils, which means greater gender diversity can generate economic gains. The same authors carry out, in 2010, another study analyzing the short- and long-term effects of women joining the boards of Spanish companies between 1989 and 2001. They concluded that the stock market reacts **positively** to the announcement, in the short term, to women on boards, suggesting that investors, on average, believe that women add value to the company.

Cardoso and Winter-Ebmer (2007) explore whether the gender of the CEO affects the gender pay gap in Portuguese companies between 1987 and 2000. They conclude that women benefit from higher pay when companies are led by women and that this difference is reduced by 1,5%, regardless of the gender composition of the workforce.

Luckerath-Rovers (2011) investigates the financial performance of 99 Dutch companies from 2005 to 2007 by analyzing the differences between companies with women on their boards and companies without women on them. They conclude that companies with women as members of the Board **perform better**, measured by several indicators, including ROE, ROS, and ROIC than companies without women in the Board.

Ahern and Dittmar (2012) examine the impact of gender quotas on the value of Norwegian companies, analyzing 248 public enterprises from 2001 to 2009. The results showed that there is a **negative impact** of gender quotas on company value, particularly on Tobin's Q.

Kolev (2012) conducts a study that aims to prove that women in the CEO position perform worse than men in the same position. The results show that female CEOs **outperform** male CEOs in terms of shareholder returns. The relationship found is negative and significant. Nonetheless, it should be borne in mind that if shareholders believe that women are less efficient than men, this worse performance can be considered a "self-fulfilling prophecy."

Parente (2013) conducts a study focused on the impact that gender diversity on Boards of Directors of Euronext Lisbon listed companies has on their financial performance between 2007 and 2011. The conclusion of the study is that gender diversity **has no impact** on the company's financial performance as measured by Tobin's Q, ROA, and ROE.

Pereira (2013) studies the relationship between women's participation on the boards of directors and the performance of Portuguese listed companies between 2005 and 2011. The study's conclusion is ambiguous, depending on the performance measure under analysis. The study suggests that there is a **negative relationship** between women's participation on the Board of Directors and company performance as measured by Tobin's Q (market measure). When performance is measured by the ROA (accounting measure), the model suggests that there is **no impact**.

Matsa and Miller (2013) analyze the impact of gender quotas on Council decisions, analyzing their introduction in Norway, comparing companies affected and unaffected by quotas. They conclude that companies affected by the quota showed a reduction in profits in the short term, i.e. that the effect of gender quotas is **negative** on the companies' financial performance.

Laible (2013) explores the effects of gender diversity on top management on the performance of 7673 companies in Germany between 2007 and 2009. The study suggests that there is a **negative relationship** between gender diversity and the performance of German private companies.

Isidro and Sobral (2015) analyze the direct and indirect effects of women on boards of directors on the value of companies, namely on financial performance and compliance with adopted ethical and social codes. The top 500 European companies were analyzed according to the Financial Times 2011 from 2010 to 2012. No evidence was found that a higher percentage of women on boards affect the value of companies but concluded that there were **positive indirect effects** of the percentage of women in these boards on financial performance and compliance with ethical and social codes.

Flabbi et al. (2016) study the hypothesis that female leadership has an impact on companies' performance. Italian companies were studied from 1982 to 1997. Empirical analysis suggests that female leadership makes a difference in companies. According to the study's findings, the interaction between female leadership and the proportion of women in the company has a **positive impact** on women's performance and that the impact of female leadership on women's salaries is heterogeneous: positive at the top of the wage distribution and negative at the bottom of this distribution. The authors conclude that non-female representation in companies can be costly in terms of company productivity.

Alvarado, Fuentes, and Laffarga (2017) examine the relationship between gender diversity in the Boards of Directors of 125 non-financial companies listed on the Madrid Stock Exchange from 2005 to 2009, with their economic results and the impact of gender quotas in the Councils. They conclude that compulsory gender quotas have increased the number of women in Councils by 98% and that this increase has led to **better economic outcomes**, suggesting that diversity in boards should be implemented, and gender quotas are an important "tool" to make that happen.

Green and Homroy (2018) examine the impact on company performance of the presence of women as members of the Board of Directors, which enables them to assess the impact of women on company performance when they are in a position to influence the mechanisms of corporate governance. EuroTop 100 companies (100 largest companies in terms of market capitalization in Europe) are used between

2004 and 2015. The conclusion is that the representation of women on the boards has a **positive** and economically significant effect on company performance.

Bennouri et al. (2018) study the relationship between the percentage of women on the Board of Directors and the accounting and market results of 394 French companies between 2001 and 2010. They conclude that accounting measures (ROA and ROE) increase as the number of women increases, while the market measure (Tobin's Q) decreases as their number decreases, but this **negative effect** disappears when women's characteristics and attributes are added to the study.

11.11 Rest of the World

Madalozzo (2011) investigates the existence of a glass ceiling in promoting the position of CEO of women in Brazil, examining 370 companies in 2007. The results show that there is a positive relationship between the difficulty of promoting women and the existence of a Board. This relationship is because the Board chooses a CEO who represents it as much as possible and being mostly male, women will find it more difficult to promote this position.

Schwartz-Ziv (2013) examines 11 Boards of Directors of Israeli companies, which are required to have a relatively gender-balanced Board from 1993, between 2007 and 2009. The author concludes that companies with gender-balanced Boards of Directors exhibit higher financial performance and whereas Boards with at least three women exhibit a higher ROE and a higher profit margin.

Lam, McGuinness, and Vieito (2013) examine the relationship between CEO gender and the performance of listed Chinese companies between 2000 and 2008. The results are **inconclusive** regarding the existence of a relationship between CEO gender and company performance, measured by ROA and ROE.

Lee and Marvel (2014) conducted a study using 4540 Korean companies in 2002, investigating whether women-owned companies perform worse than men-created companies in relation to three business characteristics: resources, industry, and location. Results indicate that gender is not a determinant of performance, although male-owned companies perform better.

Liu, Wei. and Xie (2014) examine the effect of gender diversity on Boards on the performance of listed companies in China between 1999 and 2011. The results suggest a **positive** and significant relationship between gender diversity on Boards and performance, measured by ROA.

Júnior and Martins (2015) analyze the influence of female participation on Boards of Directors on the performance of companies listed on the BMF & BOVESPA, from 2010 to 2013. It was observed that companies that have women on their Boards present a better performance, measured by Tobin's Q and ROA. It was also noted that the relationship between CEO gender and financial performance was **positive**, but without statistical significance.

Post and Byron (2015) analyze 140 studies from around the world on the relationship between women on boards and the financial performance of companies. The

results of this analysis were that female representation on boards is **positively** related to corporate accounting measures and that this ratio is more positive in countries with higher shareholder protection.

Magro et al. (2015) conducted a study to identify the influence of the glass ceiling on the Board of Directors on the performance of 61 Brazilian companies listed on the BM&FBOVESPA IBrX100 index. They conclude that investors do not create barriers to the valuation of companies that promote gender equality in the Board of Directors and that, when there is no glass ceiling in the Board of Directors positions, the companies analyzed present a better financial performance when compared to those without women in these positions.

Faccio, Marchica, and Mura (2016) investigate how CEO gender relates to the level of risk of company choices, using data from AMADEUS from 1999 to 2009 from 18 different countries. The bottom line is that companies headed by a female CEO tend to make less risky financial and investment choices than similar companies headed by a male CEO. This risk aversion of women has implications for the efficiency of the capital allocation process, so women in the CEO position do not seem to allocate capital as efficiently as men in this position.

Adams (2016) characterizes the influence of women, trying to understand what women bring to boards and how diversity affects company results. By analyzing the existing literature and after analyzing all the problems inherent in this type of study (endogeneity, reverse causality, negative stereotypes, sample quality, and causal inference), it concludes that, from a theoretical perspective, a board of directors with diversity gender can lead to **higher company performance**.

Jeong and Harrison (2017) provide a comprehensive synthesis of the literature on how female representation in senior management teams and CEO roles can affect corporate performance. They used 146 studies conducted in 33 different countries and concluded that female representation in the upper echelons is generally **positively** related to short-term stock market returns.

Although several studies are examining the relationship between women in leadership positions and boards of directors and the financial performance of companies (Post and Byron 2015), the results are inconclusive and thus empirical studies do not allow us to draw an unequivocal conclusion regarding the potential impact of increasing the number of women on business value. This ambiguity of results may result from the heterogeneity of the samples used, differences in empirical methodologies, performance measures, statistical models, time horizons, omitted variables, among others, as well as uncertain theoretical predictions and different methods of analysis. estimation (Smith et al. 2005; Laible 2013; Conyon and He 2017). Despite the different results of the various studies, it can be concluded that gender is linked to the company's financial results (Carter et al. 2003; Madalozzo 2011), although it is not yet clear whether gender diversity has a significant impact on Board and company performance and how this impact can be measured (Schwartz-Ziv 2013).

The literature faces several challenges in this type of study, including data limitations, sample quality, endogeneity, reverse causality, and causal inference (Adams 2016). Recognizing and addressing these challenges is important for the development of informed research and policy. Thus, although there are many studies on the

subject and, mainly due to its complexity, they have not obtained conclusive results, and there are many contradictions.

Research should work towards understanding the boundaries of gender differences and how this affects outcomes at company, group, and individual levels in relation to gender diversity (Perryman et al. 2016).

11.12 Part II—Sample and Metodology

11.12.1 Sample

The sample was collected from Thomson Reuter's Datastream database. It's a database that provides historical and global data on futures, currency, options, capital markets, financial data, and business economic data. All the information used in this study was taken from this database, with the exception of the FEMALECEO variable, which was removed by another method, explained in the following section.

It started by taking data from all listed companies in the 28 countries of the European Union. Due to the size of the sample, which was too wide for the study in question, the main capital index and the companies that constitute them were selected in each country.

After this selection, all the companies which, according to Datastream, belonged to a market other than that of the country (for example, in the FTSE100 index belonging to England, companies belonging to the German market) were excluded from each index, companies that were considered as investment funds, that belonged to the banking sector, life and non-life insurance, the financial sector, REIT (Real Estate Investment Trusts), and REIS (Real Estate Investment and Services).

Companies that didn't present data for one of the independent variables, FEMALEONBOARD, were also withdrawn because their analysis was considered useless for the study in question. In this exclusion, ten countries, namely Bulgaria, Croatia, Malta, Lithuania, Romania, Estonia, Latvia, Slovakia, Slovenia, and Cyprus, shown in Table 11.2 under shading, were excluded due to this lack of data.

Our final sample consists of 2464 observations of 308 companies divided into 18 countries (Portugal, Spain, France, Italy, Germany, England, Holland, Denmark, Greece, Belgium, Switzerland, Polonium, Austria, the Czech Republic, Finland, Hungary, Ireland, and Luxembourg) belonging to the European Union for a period of 7 years from 2010 to 2017.

11.13 Variables

11.13.1 Dependent Variables

The concept of financial performance can be defined as the ability to create value in companies or as a way to evaluate the use of their assets.

The financial performance of companies is one of the most important perspectives in evaluating their performance since it synthesizes the impact of all management decisions on the capacity to create value. This performance evaluation is usually done through financial indicators and allows to compare companies among themselves.

Performance evaluation can be done in two ways: measured on the basis of the accounting performance and market performance (Peni, 2014), both forms being used in this study through two indicators: ROA (accounting measure) and Q of Tobin (market measure).

11.14 ROA

The ROA, or rate of return on the asset, is a financial ratio that demonstrates the ability of the company's assets to generate results and, overall, the company's performance (Carter et al. 2003). The ROA is available in the DataStream database as a percentage using the following expression:

$$ROA = \frac{(netincome - bottomline) + (interestexpenseondebt - interestcapitalized) \times (1 - Taxrate)}{averageoflast'syearsandcurrentyear'stotalassets \times 100}$$

The ROA is seen by many researchers as a stable and indicative variable for the efficient use of a company's assets (Keck 1997; apud Krishnan and Park 2005), that is, it indicates how efficient the company's management is.

The ROA value is measured as a percentage and the higher the value, the higher the return obtained for each monetary unit invested in the company.

The choice of this indicator as a performance measure is consistent with several studies that investigate the effect of gender on company results, namely Shrader et al. (1997), Erhardt et al. (2003), Farrel and Hersch (2004), Krishman and Park (2005), Kotiranta et al. (2007), Khan and Vieito (2013), Jalbert et al. (2013), Lam et al. (2013), Matsa and Miller (2013), Liu et al. (2014), and Magro et al. (2015).

11.15 Q of Tobin

Tobin's Q is defined as the relationship between the market value of a company's assets and their replacement value (Tobin 1969; apud Dezso and Ross 2012) and

underlies the idea that better firms create more economic value from a given quantity of assets. It's a prospective measure that captures the value of a company as a whole and not as the sum of its parts and implicitly includes the expected value of future cash flows that are capitalized to the market value of the company's assets (Dezso and Ross 2012).

Several studies discuss the advantages of using Tobin's Q to assess corporate performance, such as Cartet et al. (2003), Campbell and Mínguez-Vera (2008), Campbell and Mínguez-Vera (2010), Ahern and Dittmar (2012), Dezso and Ross (2012), Perryman et al. (2016), and Alvarado et al. (2017). These studies use, in general, the value of Tobin's Q as a dependent variable, with the objective of finding causal relationships between the value of companies and other variables, such as the gender of the CEO and the percentage of women in the Boards of Directors.

The Tobin's Q indicator was not available in the DataStream database, which is why it was constructed from three variables: Market Capitalization, Total Liabilities, and Total Assets. The Market Capitalization variable corresponds to the market value at the end of each year multiplied by the outstanding shares, i.e.:

$$MarketCapitalization = marketpriceyearend \times commonsharesoutstanding$$

The variable Total Liabilities corresponds to all the short- and long-term obligations expected to be met by the company and the Total Assets variable corresponds to the sum of total current assets, long-term receipts, investments in non-consolidated subsidiaries, others investments, net assets, equipment, and other assets of the company.

Thus, in this study, Tobin's Q is defined by the following expression (Campbell and Mínguez-Vera 2008):

$$QofTobin = \frac{MarketCapitalization + TotalLiabilities}{TotalAssets}$$

Due to these characteristics of both indicators, several studies use them simultaneously as performance measures, such as Adams and Ferreira (2009), Parente (2013), Pereira (2013), Peni (2014), Post and Byron (2015), Júnior and Martins (2015), Borghesi et al. (2016), Faccio et al. (2016), Jeong and Harrison (2017), Conyon and He (2017), Green and Homroy (2017), and Bennouri et al. (2018).

11.16 Independent Variables

The main objective of this study is to relate the performance of the companies with the gender diversity of these, namely with the gender of the CEO and the percentage of women in the Boards of Directors. Gender is a more complex demographic variable and therefore richer than other demographic variables (Krishnan and Park 2005). Thus, the two independent or explanatory variables that are used in this study and

which seek to explain the performance of firms are the FEMALECEO variable and the FEMALEONBOARD variable. In addition, control variables are used to control effects, already tested and documented in the literature and that may exert influence on company performance.

11.17 FEMALECEO

Because they are, in many ways, the most powerful and visible figure in the business, CEOs are important research targets when examining the performance of a company (Peni 2014).

The gender of the CEO is an important measure of gender diversity and female leadership and has been used in previous literature in studies such as Smith et al. (2005), Kotiranta et al. (2007), Adams and Ferreira (2009), Cardoso and Winter-Ebmer (2007), Ahern and Dittmar (2012), Kolev (2012), Jalbert et al. (2013), Khan and Vieito (2013), Lam et al. (2013), Peni (2014), Liu et al. (2014), Júnior e Martins (2015), Borghesi et al. (2016), Flabbi et al. (2016), Faccio et al. (2016), Perryman et al. (2016), Jeong and Harrison (2017), Conyon and He (2017), and Bennouri et al. (2018).

This variable is not available in the DataStream database and was therefore constructed as a dummy variable that assumes the value of 1 when the company CEO is female and 0 when the company CEO is male.

The attribution of this variable to each company was done according to the following process:

1. Firstly, the name of the current CEOs of the 308 companies present in this study was researched, with reference to the end of 2017, on the official websites of the companies. When the CEO's name was sufficiently elucidative about his gender, the research was completed for this company; when the CEO's name was not sufficiently elucidative about their gender, the research was made from photos and/or texts containing pronouns (his/her), in which it was possible to conclude the gender. In this way, it was possible to conclude the gender of all CEOs in 2017.
2. For the remaining years, during the previous survey, the year in which the "current" CEO began his duties in this position was withdrawn. If the year of commencement of functions was earlier or equal to 2010, the survey was completed for the company for all the years of the study; if not, we researched, again using the process of point 1, for the missing years (2010–2016) the gender of the CEO.
3. In companies where there were doubts about the change of CEO midway through the study period (2010–2017), news and/or interviews of the missing years were consulted to see what month the change really took place: whether a CEO resigned his position before July of that year, it was considered that the CEO for that year

would be the new CEO; otherwise, it was considered that the CEO for that year would be the former.

With this process, it was possible to conclude the genre of all the CEOs of the 308 companies analyzed throughout the study period.

11.18 FEMALEONBOARD

The percentage of women in the Board of Directors is one of the variables most used in the literature that studies the relationship between gender diversity and company performance, such as the study by Shrader et al. (1997), Erhardt et al. (2003), Farrel and Hersch (2005), Krishnan and Park (2005), Kotiranta et al. (2007), Campbell and Mínguez-Vera (2008), Adams and Ferreira (2009), Campbell and Mínguez-Vera (2010), Luckerath-Rovers (2011), Dezso and Ross (2012), Parente 2013), Laible (2013), Liu et al. (2014), Júnior and Martins (2015), Magro et al. (2015), Perryman et al. (2016), Jeong and Harrison (2017), Conyon and He (2017), Alvarado et al. (2017), Green and Homroy (2018), and Bennouri et al. (2018).

This variable is automatically calculated in the DataStream as the total percentage of women in the Boards of Directors of each company and is the variable that defined the study sample: only the companies that had data on the percentage of women on the Boards of Directors in one or more years of the study period were included in the sample, as explained above.

11.19 Control Variables

The model includes other variables, considered variables of control that, according to the literature, are likely to affect the performance of the company or to be related to it. These variables were taken from DataStream and are divided into two groups: Board characteristics and Company characteristics.

The first group was used as controlling variables, the variable **BOARDSIZE**, which is defined by the total number of Board members at the end of each year, the **CEOBOARDMEMBER** variable, which is a dummy variable that assumes the value of 1 if the CEO is a member of the Board of Directors and 0 if it is not (this variable in the DataStream is generated differently, and if the CEO is a member of the Board of Directors, the letter Y is generated, otherwise the letter N is generated), the variable **INDEPENDENTBOARDMEMBERS**, which is defined by the percentage of Council members who are independent of the company, and the variable **BOARDSPECIFICSKILLS**, which is defined as the percentage of Council members with a higher specific industry or higher education in the financial area.

In relation to the second group, were used as controlling variables the variable**WOMENMANAGERS**, which is defined by the percentage of women managers

in the company, in relation to the total number of managers in the company, the variable **WOMENEMPLOYEES**, which is defined by the percentage of female workers in relation to the total number of employees in the company, the variable **LEVERAGE**,[2] which is defined by dividing the total of the company's debts (short-term debt, current debt, and long-term debt) by the total assets of the same, the variable **FIRMSIZE**, which is defined by the logarithm of the total assets of the company, and the variable **LOCATION**, which is a dummy variable that assumes the value of 1 when the company is in a country belonging to the South of Europe and 0 when it belongs to Northern Europe.

11.20 Regression Models

In order to test the influence of the explanatory variables on the performance of the companies, the models were constructed using the GRETL software (Gnu Regression, Econometrics, and Time-series Library) and were estimated using panel data.

The pooling models are estimated by the application of the Ordinary Least Squares (OLS) method, once the classical assumptions of the linear regression model are met, and it's known as pooled OLS and is represented as follows:

$$\Upsilon_{it} = \beta_0 + \beta_1 X_{it} + \sum_{j=2}^{\mathrm{N}} \beta_j VC_{jit} + \varepsilon_{it}$$

where Υ_{it} represents the dependent variable, which will be alternatively the ROA and Q of Tobin, of company i in year t, with $i = 1,2,3, \ldots 308$ and $t = 1,2,3, \ldots 8$; β_0 represents the value of the dependent variable when all the independent variables are equal to 0, that is, it represents a constant; β_j represents the coefficient to be estimated for each independent variable $j = 1,2,3, \ldots 10$; X_{it} represents the independent explanatory variables, which will be alternatively the FEMALECEO variable and FEMALEONBOARD variable; VC_{jit} represents the control variables of the model, where $j = 2,3,4, \ldots 10$ is the control variable in the firm $i = 1,2,3, \ldots 308$ in year $t = 1,2,3 \ldots 0.8$; ε_{it} represents the error term in the model, that is, it represents the effects that are not explained by any of the independent variables.

For each model of the study, the most convenient estimation approach between pooled, the random effects model, and the fixed effects model were selected, using the F statistical test, the Breusch–Pagan test, and the Hausman test, which are statistical tests that consist of testing two alternative hypotheses. In this way, the four models were estimated in the GRETL software, using panel data with 308 cross-sectional units observed during 8 periods, and the three statistical tests were carried out, to

[2]This financial ratio, when less than 0.5, means that most of the company's assets are financed through equity. If it is greater than 0.5 it means that most of the company's assets are debt financed.

Table 12.1 Results of statistical tests on models (1–4)

Tests	Model 1 (p-value)	Model 2 (p-value)	Model 3 (p-value)	Model 4 (p-value)
F statistical test	OLS "pooled" (0,882199)	OLS "pooled" (0,96893)	OLS "pooled" (0,84285)	OLS "pooled" (0,933671)
Breusch-pagan test	OLS "pooled" (0,865505)	OLS "pooled" (0,365496)	OLS "pooled" (0,84285)	OLS "pooled" (0,558878)
Hausman test	Random Effects (0,0754837)	Random Effects (0,0591602)	Fixed Effects(0,0339456)	Fixed Effects (0,0273218)
Model best suited for model estimation	OLS "pooled"	OLS "pooled"	OLS "pooled"	OLS "pooled"

ascertain the most appropriate estimation method for each one. The results of the tests performed are shown in Table 11.1.

Model 1: $ROA_{it} = \beta_0 + \beta_1 FEMALECEO_{it} + \sum_{j=2}^{10} \beta_j VC_{jit} + \varepsilon_{it}$;

Model 2: $QTOBIN_{it} = \beta_0 + \beta_1 FEMALECEO_{it} + \sum_{j=2}^{10} \beta_j VC_{jit} + \varepsilon_{it}$

Model 3: $ROA_{it} = \beta_0 + \beta_1 FEMALEONBOARD_{it} + \sum_{j=2}^{10} \beta_j VC_{jit} + \varepsilon_{it}$

Model 4: $QTOBIN_{it} = \beta_0 + \beta_1 FEMALEONBOARD_{it} + \sum_{j=2}^{10} \beta_j VC_{jit} + \varepsilon_{it}$

On what: $\sum_{j=2}^{10} \beta_j VC_{jit} = \beta_2 BOARDSIZE_{it} + \beta_3 CEOBOARDMEMBER_{it} + \beta_4 INDEPENDENTBOARDMEMBERS_{it} + \beta_5 \text{BOARDSPECIFICSKILLS} + \beta_6 WOMENMANAGERS_{it} + \beta_7 WOMENEMPLOYEES_{it} + \beta_8 LEVERAGE_{it} + \beta_9 FIRMSIZE_{it} + \beta_{10} LOCATION_{it}$;

It is concluded that the most suitable method to estimate the models will be the ordinary least squares method, using the OLS pooled model. This conclusion is in line with the literature since most studies that relate gender diversity to company performance using this method.

11.21 Part III—Results

11.21.1 Descriptive Statistics

Table 11.2 shows the descriptive statistics of the variables used in this study. Note that the variables FEMALECEO, CEOBOARDMEMBER, and LOCATION are dummy variables, so the minimum will always be 0 and maximum 1 and the variables FEMALEONBOARD, ROA, INDEPENDENTBOARDMEMBER, BOARDSPECIFICSKILLS, WMANAGERS, and WEMPLOYEES are measured in percentage.

Table 12.2 Descriptive statistics

Variable	N.ºobservations	Average	Standard deviation	Minimum	Maximum
FEMALECEO	2464	0,034497	0,18254	0	1
FEMALEONBOARD	2150	20,514	12,057	0	63,64
ROA	2414	69,083	11,758	−417,73	128,42
QTOBIN	2387	18,065	12,973	0,60448	19,966
BOARDSIZE	2085	11,868	3,882	5	26
CEOBOARDMEMBER	1919	0,70245	0,4573	0	1
INDEPENDENTBOARDMEMBER	2089	51,62	25,169	0	100
BOARDSPECIFICSKILLS	2073	40,524	19,672	0	100
WOMENMANAGERS	1368	25,066	12,695	0	82,63
WOMENEMPLOYEES	1799	32,464	15,892	5	94,82
LEVERAGE	2446	0,5791	0,2262	0	37,137
FIRMSIZE	2446	71,177	0,69413	45,222	96,946
LOCATION	2464	0,47727	0,49958	0	1

Note FEMALECEO—CEO gender dummy; FEMALEONBOARD—percentage of women on boards; BOARDSIZE—size of the board; CEOBOARDMEMBER—dummy for CEO presence on board; INDEPENDENTBOARDMEMBERS—percentage of independent board members; BOARDSPECIFICSKILLS—percentage of board members with specific or business studies; WOMENMANAGERS—percentage of women managers in the company; WOMENEMPLOYEES—percentage of women workers in the company; LEVERAGE debt ratio; FIRMSIZE—firm size; LOCATION—company country location dummy

It is verified that the dependent variables, QTOBIN and ROA, present an average of 1,8065 and 6,9083%, respectively.

According to the definitions already presented, a Q of Tobin equal to 1,8065 indicates a potentially favorable valuation of the company by 80,65% in relation to the total investment, i.e. the average of the European companies in relation to this indicator is considered favorable to the likelihood of investment, which would be expected given that they are large listed companies. Despite this, a large amplitude is observed in this variable, considering that the minimum is equal to 0,60,448 (which suggests that there are companies whose assets are worth less than their replacement value) and the maximum equal to 19,966.

A ROA of 6,9083% means that for every 100 monetary units invested, on average, the European companies analyzed generate approximately 6,91 monetary units of results. Also, in this variable, a great amplitude of results is verified, observing a minimum of -417,73% and a maximum of 128,42%.

Regarding the independent variables related to gender diversity, there is an underrepresentation of women in both, with the FEMALEECEO variable averaging 0,034,497, which is equivalent to an average of 3,4497% women occupying the CEO position in the companies analyzed. This average is slightly below the EU average in the period 2010–2017, which was 3.825%, although the difference is not significant

and can be justified by the fact that many companies have been removed, which could influence this average.

Regarding the FEMALEONBOARD variable, an average of 20,514% is observed, which is still quite far from the objective (40%), it's compared to the European average (25.3%), although a little lower, which can be justified by the selection of the sample, in which several companies were withdrawn that could possibly influence this average. There is a wide range in this variable, with at least one company having no women on its Board, while at least one company having a percentage of women in the Council equal to 63,64%.

Regarding the control variables, it's verified that the variables related to the percentage of women, managers, and workers, of the company (WOMENMANAGERS and WOMENEMPLOYEES) have averages above the FEMALEONBOARD variable, respectively, 25,066% and 32,464%, which may be an indicator that the percentage of women on Boards of Directors and CEO positions will increase in upcoming years. Again, there is at least one company that doesn't have any woman as a manager and at least one company that doesn't own any working women. Conversely, there is at least one company that owns 82,64% female managers, and at least one company with 94,82% female workers.

The size of the Board (BOARDSIZE) varies between 5 and 26 members, with the average number of members being equal to 11,868. Regarding the variable CEOBOARDMEMBER, it is observed that in 70,245% of the analyzed companies the CEO is part of the Board of Directors.

On average, the Boards of Directors of the European companies analyzed have 51,62% of independent members (INDEPENDENTBOARDMEMBER), with at least one company having no independent member and at least one company having a Board with 100% independent members.

Regarding the variable BOARDSPECIFICSKILLS, it can be verified that, on average, only 40,524% of Council members have industry-specific knowledge or knowledge of the financial area. It should be noted that there is at least one company that doesn't have any member with this knowledge in its Board and that there is at least one company in which all members have this knowledge.

Regarding debt (LEVERAGE), the average is 0,5791, suggesting that, on average, companies present in the sample have 57,91% of their assets financed through debt. Still, there is at least one company that does not have any type of debt, since the minimum of the variable is equal to 0.

The size of the companies, measured by the variable FIRMSIZE, which in turn is measured by the natural logarithm of the assets, is on average 7,1177, having a minimum of 4,5222 and a maximum of 9,6946.

Regarding the variable LOCATION, it is observed that 47,727% of the companies that are included in this study are in Southern Europe and the remaining in the North, suggesting a balanced division in the location of the countries present in the study.

11.22 Correlations

Before the regression of the models, the Pearson correlation matrix was analyzed between the variables, to test the existence of multicollinearity. Pearson's correlation evaluates the linear relationship between two variables. The existence of multicollinearity exists if this value is high (greater than 0.8). When the value of the matrix is positive, it means that the two variables increase or decrease together, whereas if this value is negative, if one variable increases the other decreases and vice versa.

Observing the correlation matrix (Table 11.3), we can conclude that there are many significant correlations between the variables, but in general, all have a low value and, therefore, the hypothesis of the existence of multicollinearity is rejected. Thus, we can include all variables in the regression models.

The most significant relationship (0,759) is between the variable WOMENMANAGERS and WOMENEMPLOYEES, which makes sense, since the female managers of a company are also female workers, and thus, the greater the percentage of female managers, the higher will also be the percentage of female employees of the company. Regarding the dependent variables, the ROA is positively correlated with the QTOBIN, which, being both variables that measure the performance of the companies, is an expected relation. Both are positively related to the variable FEMALEONBOARD, which is a good indicator that a percentage of women in the Board of Directors increases the performance of companies. They are also positively correlated with the variables WOMENMANAGERS and WOMENEMPLOYEES, which reinforces the previous idea that the increase of women, this time in the company in general, increases the performance of companies. In relation to the negative correlations, we highlight the correlation between both (ROA and QTOBIN) and the variables BOARDSIZE, LEVERAGE, FIRMSIZE, and LOCATION, which allows us to conclude that the best performers have a smaller Board, have less debt, are smaller and are located in Northern Europe. Regarding the FEMALECEO variable, it is positively correlated with ROA, although this correlation is not significant and negatively correlated with QTOBIN.

Regarding the FEMALECEO and FEMALEONBOARD-independent variables, the positive and significant correlation to 1% between these variables suggests that women in the CEO position increase as the percentage of women in the Board increases. The FEMALEECEO variable is negatively correlated, at 1%, with the variables BOARDSIZE and LOCATION and positively correlated with the variables INDEPENDENTBOARDMEMBERS, at 5%, and with BOARDSPECIFICSKILLS at 1%. The FEMALEONBOARD variable is positively correlated, at 1%, with the INDEPENDENTBOARDMEMBERS, WOMENMANAGERS, and FIRMSIZE variables and at 5% with the BOARDSIZE variable, which suggests that the larger the Board of Directors, the greater the percentage of women the company will have. This variable is negatively correlated to 1% with the LOCATION variable, which leads to the conclusion that the companies with the highest percentage of women on the Board of Directors are in Northern Europe.

Table 12.3 Pearson correlation matrix

	1	2	3	4	5	6	7	8	9	10	11	12	13
1—FEMLAECEO	1												
2—FEMALEONBOARD	0,137**	1											
3—ROA	0,017	0,089*	1										
4—QTOBIN	−0,030	0,104**	0,400**	1									
5—BOARDSIZE	−0,086**	0,095*	−0,187**	−0,213**	1								
6—CEOBOARDMEMBER	0,008	−0,087*	−0,027	−0,102**	0,161**	1							
7—INDEPENDENTBOARDMEMBERS	0,086*	0,253**	0,083*	0,084*	−0,447**	0,078*	1						
8—BOARDSPECIFICSKILLS	0,144**	−0,013	0,098*	0,076	−0,115**	0,315**	0,279**	1					
9—WOMENMANAGERS	−0,014	0,209**	0,204**	0,312**	0,075*	−0,016	0,144*	−0,068	1				
10—WOMENEMPLOYEES	0,053	0,064	0,173**	0,311**	−0,003	0,048	−0,110*	0,098	0,759**	1			
11—LEVERAGE	−0,018	−0,009	−0,072**	−0,216**	0,122**	0,104**	0,009	0,075	−0,119**	−0,070*	1		
12—FIRMSIZE	−0,034	0,158**	−0,058**	−0,229**	0,422**	0	−0,233**	−0,192**	−0,017	−0,130**	0,049*	1	
13—LOCATION	−0,087**	−0,142**	−0,101**	−0,164**	0,306**	0,245**	−0,173**	−0,225**	0,116**	0,033	0,089**	0,087**	1

Note * and ** indicates statistical significance at level 5% and 1%, respectively. FEMALECEO—CEO gender dummy; FEMALEONBOARD—percentage of women on board; BOARDSIZE—size of the board; CEOBOARDMEMBER—dummy for CEO presence on board; INDEPENDENTBOARDMEMBERS—percentage of independent board members; BOARDSPECIFICSKILLS—percentage of board members with specific or business studies; WOMENMANAGERS—percentage of women managers in the company; WOMENEMPLOYEES—percentage of workers in the company; LEVERAGE debt ratio; FIRMSIZE—firm size; LOCATION—company country location dummy

11.23 Discussion

The presented results show the coefficients with robust standard errors. The regression of the models was performed in the GRETL software, the data were organized in a panel, unbalanced, with cross sections stacked and the models were estimated by the pooled model OLS or Least Square Method.

11.24 ROA

Table 11.4 presents the results of OLS pooled regression for models 1 and 3, where ROA is the dependent variable. The effect of gender diversity is alternatively captured by a dummy variable, which is equal to 1 if the company CEO is a woman and 0 if it isn't, designated by FEMALECEO (models 1 and 2) and by the percentage of women on the Board, designated by FEMALEONBOARD (models 3 and 4).

The negative coefficient, although not significant, between the ROA and the FEMALECEO variable is highlighted, suggesting that the presence of a woman in the position of CEO has a negative but not significant impact on the ROA, thus suggesting that there is no impact on the company's financial performance. This result is in agreement with the study of Jalbert et al. (2013) and Faccio et al. (2016), although in this one the relationship is significant, but contradicts many studies analyzed, such as the study by Peni (2014), Khan and Vieito (2013), Liu et al. (2014), Lam et al. (2013), who report a positive and significant relationship.

Regarding the percentage of women on the Board of Directors, the relationship is positive, but it's still not significant, suggesting that there is also no impact on the company's performance. These results are in agreement with those obtained in the study by Parente (2013), Magro et al. (2015), and Jeong and Harrison (2017). Many of the studies analyzed had a positive and significant relationship, such as Erhardt et al. (2003), Krishman and Park (2005), Adams and Ferreira (2009), Liu et al. (2014), Green and Homroy (2018), and Bennouri et al. (2018), suggesting that perhaps the sample used in this study doesn't have enough women in the Board of Directors to make the relationship meaningful. Regarding the remaining independent variables, which function as control variables, the negative relationship between the ROA and the BOARDSIZE variable is significant, suggesting that the larger the size of the Board of Directors, the worse the financial performance of the company and this relationship was verified in both models. This relationship was found in several studies analyzed, such as Adams and Ferreira (2009), Liu et al. (2014), Conyon and He (2017), and Green and Homroy (2018).

The WOMENMANAGERS variable, on the other hand, has a positive and significant relationship to 1%, which suggests that the more female managers in the company, the better their financial performance measured by the ROA, a relationship once again verified in both models and according to the results found by Shrader et al. (1997). This relationship may be a good indicator of the potential positive impact of

Table 12.4 Regression results of models 1 to 4

Variables	Model 1	Model 2	Model 3	Model 4
FEMALECEO	−1,09191 (−1,043)	−0,670064*** (−6,069)	–	–
FEMALEONBOARD	–	–	0,03004836 (1,359)	0,00559900 (1,616)
BOARDSIZE	−0,297233*** (−5,936)	−0,0548511*** (−7,392)	−0,285385*** (−5,862)	−0,0502839*** (−6,786)
CEOBOARDMEMBER	−0,641834 (−0,8549)	−0,202999 (−1,512)	−0,574531 (−0,7608)	−0,182489 (−1,364)
INDEPENDENTBOARDMEMBERS	−0,000653648 (−0,07975)	−0,000797929 (−0,7461)	−0,00315917 (−0,3687)	−0,00135114 (−1,254)
BOARDSPECIFICSKILLS	0,0149599 (0,8115)	0,00106649 (0,3044)	0,0148544 (0,8229)	0,000406541 (0,1161)
WOMENMANAGERS	0,111989*** (4,159)	0,0244368*** (5,514)	0,104741*** (3,91)	0,0232316*** (5,344)
WOMENEMPLOYEES	0,00587266 (0,2643)	0,00521418 (1,440)	0,0070627 (0,3236)	0,00511613 (1,428)
LEVERAGE	−0,073513*** (−4,031)	−0,0104104*** (−3,460)	−0,0724289*** (−3,994)	−0,0102314*** (−3,322)
FIRMSIZE	−1,33717*** (−3,694)	−0,282229*** (−4,775)	−1,40128** (−3,966)	−0,298500***(−5,132)
LOCATION	−0,622995 (−1,039)	−0141899 (−1,239)	−0,589278 (−0,9835)	−0,129497 (−1,116)
constant	19,8091*** (6,574)	4,29099*** (8,694)	19,5651*** (6,413)	4,26079*** (8,312)
Adjusted R^2	0,117994	0,200847	0,119087	0,193596
N	1174	1179	1174	1179

Note *** indicates statistical significance at level 1%. FEMALECEO—CEO gender dummy; FEMALEONBOARD—percentage of women on boards; BOARDSIZE—size of the board; CEOBOARDMEMBER—dummy for CEO presence on board; INDEPENDENTBOARDMEMBERS—percentage of independent board members; BOARDSPECIFICSKILLS—percentage of board members with specific or business studies; WOMENMANAGERS—percentage of women managers in the company; WOMENEMPLOYEES—percentage of women workers in the company; LEVERAGE debt ratio; FIRMSIZE—firm size; LOCATION—company country location dummy

women on the performance of the company, since the non-significant relationships observed in the two diversity variables (FEMALECEO and FEMALEONBOARD) may not be significant due to the quantity, still reduced, of women in these positions.

Also note the negative and significant relationship to 1% between the dependent variable ROA and the variables LEVERAGE and FIRMSIZE, suggesting that the more indebted a company is and the bigger it is, the worse its financial performance will be. These results are in agreement with several studies, and the negative and significant relationship between the ROA and the LEVERAGE variable can be found in the study by Liu et al. (2014), Peni (2014), Faccio et al. (2016), Conyon and He (2017), and Bennouri et al. (2018) and this relationship with the variable FIRMSIZE can be found in the study by Faccio et al. (2016).

11.25 Q of Tobin

The results found are similar to those found with the ROA variable. The most relevant difference is the negative and significant 1% relationship between Tobin's Q and the FEMALEECEO variable, which suggests that a woman occupying the CEO position has a negative impact on the company's performance. This result is in agreement with the study of Conyon and He (2017) and Bennouri et al. (2018), although the relationship found in these studies is not significant, but contradicts several studies, such as the study by Borghesi et al. (2016) and Júnior e Martins (2015), who find a positive but not significant relationship and Peni's (2014) study, which finds a positive and significant relationship.

As with the ROA variable, the variable FEMALEONBOARD is positively related to the Q of Tobin, and this relationship is not significant, suggesting that the percentage of women on the Board of Directors has no impact on the company's performance. This result is in agreement with the study by Parente (2013), Júnior e Martins (2015), Jeong and Harrison (2017), and Bennouri et al. (2018). Several studies find a positive but significant relationship, such as Carter et al. (2003), Campbell and Vera (2008), Adams and Ferreira (2009), Campbell and Mínguez-Vera (2010), Dezso and Ross (2012), Borghesi et al. (2016), Perryman et al. (2016), Conyon and He (2017), and Alvarado et al. (2017). This difference may be due, again, to the size of the sample.

Regarding the control variables, the relationships found are the same as those found with the ROA: the variable BOARDIZE is negative and significantly related to the Tobin Q, at 1%, which suggests once again that the size of the Board of Directors has a negative impact on the performance of the company, being this result according as study by Carter et al. (2003), Adams and Ferreira (2009), Campbell and Mínguez-Vera (2010), Conyon and He (2017), and Bennouri et al. (2018); the WOMENMANAGERS variable is positively and significantly related to Tobin's Q, at 1%, suggesting once again that the more women as managers there are in the company, the better their performance, being a good indicator of the positive impact of women in the company's performance; in relation to the variable LEVERAGE, there

is a negative and significant relationship to 1%, which suggests that the indebtedness has a negative impact on the performance of the company, a conclusion that is in agreement with the study of Campbell and Mínguez-Vera (2008), Campbell and Mínguez-Vera (2010), Dezso and Ross (2012), Júnior e Martins (2015), Conyon and He (2017), and Bennouri et al. (2018); Finally, in relation to the variable FIRMSIZE, it's negatively and significantly related to the Q of Tobin, at 1%, which suggests once again that the size of the company has a negative impact on the company's performance and that in this study the smaller companies are the best-performing companies, being this result in according to the study of Campbell and Mínguez-Vera (2008), Campbell and Mínguez-Vera (2010), Dezso and Ross (2012), Peni (2014), Júnior and Martins (2015), and Perryman et al. (2016). These results are the same for models (2) and (4).

The adjusted R^2 observed in these four models are quite reduced, which means that the independent variables have a weak explanatory power of the performance of the companies when this is measured by the ROA and the Q of Tobin. However, it is often the case in this type of studies that use regressions with performance indices. In any case, both models are considered valid to explain the performance of firms, since the p-value of the F-test is approximately 0 and the joint-null hypothesis of the independent variables is rejected.

In all the estimated models, the coefficient signals were similar to those predicted: the FEMALEECEO variable always presents a negative signal and the FEMALEONBOARD variable always presents a positive signal; the variable CEOBOARDMEMBER and LOCATION present a negative signal on all models and the variables WOMENMANAGERS and WOMENEMPLOYEES a positive signal; the only variable contrary to the predicted signal is the variable FIRMSIZE, which indicates that, in the sample used, small companies perform better than large companies.

The following table is a summary of the results obtained in the relationships between the variables that measure gender diversity and the variables that measure company performance, by the model (Table 11.5).

It is concluded that the influence of the percentage of women in the Boards of Directors is positive in the performance of the analyzed companies, although it's not significant. This non-significance may be due to the low representation of women in these councils in the sample used, but the fact that the relationship between the

Table 12.5 Summary of results obtained

	FEMALECEO	FEMALEONBOARD
ROA	**Negative** but not significant relationship	**Positive** but not significant relationship
Q of Tobin	**Negative** and **significative** to 1% relationship	**Positive** but not significant relationship

Note FEMALECEO—CEO gender dummy; FEMALEONBOARD—percentage of women on boards ROA—return on assets; QTOBIN—Tobins' Q ratio

performance variables and this percentage is positive is a good indicator of the potential advantages of gender diversity in the Boards of Directors.

In relation to the influence of the CEO position of the companies being occupied by a woman in the performance of these, this proves to be negative and, in the case of a performance being measured by the Q of Tobin, the influence is negative and significant, suggesting that a woman in charge of CEO influences negatively and significantly the company's market value. Although negative, the influence on performance, when measured by ROA, is not significant, suggesting that this result (the negative and significant influence on market value) derives mainly from the discrimination made by market participants (shareholders, investors, among others) in relation to the occupation of the position of CEO by a woman, causing the market value to be lower, thus not being the performance of the company influenced directly by the female leadership but by the reaction of the market to it.

The results, in general, suggest that the percentage of women on the Board of Directors of companies has no influence on both their accounting and market performance, but that the fact that the position of CEO is occupied by a woman, although it has no influence on the accounting performance, negatively influences the market performance, or market value, of the companies.

11.26 Concluding Remarks and Future Research

Given the results obtained, in general, this study does not appear that women on boards lead to better performance—at least over the time period studied.

The main question is: Does gender diversity in top management or in the Board of Directors lead to value creation?

This question has been investigated several times in the past, leading to somewhat mixed results. Often, these studies have used an observable and quantifiable (demographic) definition of diversity, such as gender, age, and race, and ignored non-observable (cognitive) diversity, such as knowledge and education, that represent quality differences (Erhardt et al. 2003), independence. However, this choice was not intentional; it was mostly due to a lack of data. This study, facing the same challenge, focus also on the demographic definition of diversity.

The traditional hypothesis states that gender diversity has a positive impact on firm performance. There are several reasons why we should expect diversity, particularly the gender diversity of a board of directors, to have a positive impact on firm performance. First, it is assumed that a heterogeneous board will better understand the Management Decision marketplace, and hence the market segmentation needs for the product or service, with a potentially positive effect on performance. In addition, there will be higher creativity and innovation under a heterogeneous board. Second, a higher level of diversity may lead to a better corporate image and hence to a higher performance. Third, if the selection process for top management and board members includes only male candidates, firms are selecting managers and directors among a smaller sample, and thus may be missing the best available. Therefore, a selection

process that includes both genders is expected to lead to better management with a potentially higher performance. Fourth, because a diverse board or top management will have a broader view of the business environment, diversity is expected to improve the decision-making process through the evaluation of more alternatives. In addition, diversity may lead to a more effective global relationship (Carter et al. 2003; Smith et al. 2005; Singh and Vinnicombe 2004; Hambrick et al. 1996). Finally, without diversity, one can argue that firms may not be able to recruit and retain the best female employees (Daily et al. 1999).

On the other hand, Solakoglu and Demir (2016) should also underline the possibility that diversity might lead to lower firm performance if decision making becomes more time-consuming because of diversity. Heterogeneity of the board, in that case, might lead to different objectives and more conflict in the board that lowers the effectiveness of the decision-making process. In particular, for firms operating in sectors that require a quick response to market shocks, diversity might be associated with value destruction rather than value creation (Smith et al. 2005; Hambrick et al. 1996; Petrovic 2008).

The findings of earlier studies, however, do not provide strong evidence in favor of or against gender diversity having a positive effect on firm performance, as it was analyzed in the point “Empirical/Previous Studies” in this study.

In addition, using new additions of female directors/managers as a measure of gender diversity for Turkish firms, Solakoglu (2013) show that gender diversity has different effects on firm performance over the different points of the conditional distribution. Hence, the effect might be negative, positive, or zero depending on the quantile analyzed. Solakoglu and Demir (2016) investigate the effect of gender diversity on firm performance for an emerging market, Turkey, using three measures of diversity and three measures of performance. Given the higher presence of women in the workplace and the reforms are undertaken, Turkey provides a unique sample of firms to investigate the role of gender diversity on firm performance. Furthermore, different from the existing literature, the authors also consider the effect of block ownership and export dependence on the role of gender diversity on firm performance. The study also considers the effect of industry differences, export dependence, and ownership structures of firms on the diversity—performance relationship. Solakoglu and Demir (2016) find some evidence that gender diversity influences firm performance for firms in the financial sector, for local market-oriented firms, and for firms with block ownership. In addition, the findings of this study provide some explanation of why the existing literature provides mixed results on the relationship between gender diversity and firm performance.

Overall, the results indicate that diversity has a weak impact on firm performance. Moreover, the effect of gender diversity on firm performance is fragile with respect to the measures of diversity and performance criteria selected, as their findings change significantly based on the chosen measure.

The authors consider the following reasons for the weak evidence that our results provide. First, there might be a threshold number of female directors needed before they can add new perspectives to improve future performance (Shrader et al. 1997; Joecks et al. 2013). In the sample, not many firms had more than one female director

on the board. The second reason is related to the stability of female directors/managers in the same position. It may take some time for women directors to influence the board members to affect the firm strategy and hence the firm performance. In our future work, we intend to pursue these lines of research.

11.27 Conclusions

In recent years, women have begun to play a greater role in the economies of countries, which has made it necessary to understand their impact on society. The impact of gender diversity on company performance has thus become a well-discussed and studied subject, with a lot of literature with contradictory results.

In this context, this study analyzes the influence of gender diversity, measured by the percentage of women in the Boards of Directors and by the gender of the CEO, in the performance, accounting and market, measured by the ROA and Q of Tobin, respectively, of 308 companies listed on the stock exchange and present in the main stock index of each EU member state.

This study is important because it uses the largest listed companies in the EU, which means that the companies analyzed in the study perform well and are a great source of employability, whose Boards of Directors are fundamental for their performance and that the presence of women in these can influence their functioning and their decisions.

The main conclusions to be drawn from this study are that, although there is no influence of the CEO position being occupied by a woman in the accounting results, a woman in this position negatively influences the market value of the company. The fact that the influence of a CEO's position being occupied by a woman is only significant when analyzing Tobin's Q suggests that this "loss of value" is due to discrimination by shareholders and investors when it is a woman to assume this position the market value of the company decreases even though the accounting results (in this case, the ROA) remains unchanged.

Regarding the percentage of women on the Board of Directors of companies, the results suggest that there's no influence of this on the performance of companies, either in relation to accounting performance (ROA) or market value (Tobin Q). This non-existent relationship suggests that women's influence on the performance of companies, as members of the Board of Directors, is conditioned by their involvement in the decision-making, i.e. if women are not treated as equal members within the council, it is unlikely that their representation has an impact on the company's performance, suggesting again that this result was caused by discrimination.

Given that the results derived from forms of gender discrimination, it's necessary for businesses and governments to continue to implement measures to eradicate this discrimination, both in society in general and in the business world, which will allow companies to benefit from the advantages of gender diversity, suggested by the positive signal between the percentage of women in the Boards of Directors and the performance indicators. The fact that these relationships aren't significant may

be due to the low representation of women in these councils, which doesn't allow companies to benefit from diversity.

The remaining significant relationships found to suggest that the larger the boards of directors of the companies, the worse their performance, as measured by both indicators and that the percentage of female managers present in the company has a positive impact on the company's performance, as measured by both indicators, which could be a good indicator of the potential positive impact of women in higher positions in the future. The firm's indebtedness and size negatively influence its performance, suggesting that, in the analyzed companies, the most indebted companies and the largest companies are those who perform poorly. In terms of size, it should be noted that all the companies used are considered "large companies," since the largest listed companies were used in the main index of each EU country, and thus this result only suggests that, in this sample, the smaller companies, by comparison, have on average a better performance, and this result can't be generalized to most companies.

There is no influence of the CEO as a member of the Board of Directors, of independent members of this Board and of the percentage of members with specific knowledge and/or business in the performance of the company.

Finally, women continue to assume positions of leadership and, therefore, this study contributes to the literature and to this current and relevant topic of gender diversity in the business world.

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References

Adams, R. B. (2016). Women on boards: The superheroes of tomorrow? *The Leadership Quarterly,* 371–386.

Adams, R. B., & Ferreira, D. (2009). Women in the boardroom and their impact on governance and performance. *Journal of Financial Economics, 94,* 291–309.

Ahern, K. R., & Dittmar, A. K. (2012). The changing of the boards: The impact on firm valuation of mandated female board representation. *Quartely Journal of Economics,* 137–197.

Alvarado, N. R., Fuentes, P. D., & Laffarga, J. (2017). Does board gender diversity influence financial performance? Evidence from Spain. *Journal of Business Ethics*

Bennouri, M., Chtioui, T., Nagati, H., & Nekhili, M. (2018). Female board directorship and firm performance: What really matters? *Journal of Banking and Finance,* 267–291.

Borghesi, R., Chang, K., & Mehran, J. (2016). Simultaneous board and CEO diversity: Does it increase firm value? *Applied Economics Letters, 23,* 23–26.

Campbell, K., & Mínguez-Vera, A. (2008). Gender diversity in the boardroom and firm financial performance. *Journal of Business Ethics, 83,* 435–451.

Campbell, K., & Mínguez-Vera, A. (2010). Female board appointments and firm valuation: short and long-term effects. *Journal of Management and Governance.*

Cardoso, A. R., & Winter-Ebmer, R. (2007). *Female-led firms and gender wage policies.* ILRReview: Cornell University, ILR School.

Carter, D. A., Simkins, B. J., & Simpson, G. W. (2003). Corporate governance, board diversity, and firm value. *The Financial Review,* 33–53.

Conyon, M. J., & He, L. (2017). Firm performance and boardroom gender diversity: A quantile regression approach. *Journal of Business Research,* 198–211.

Dezso, C. L., & Ross, D. G. (2012). Does female representation in top management improve firm performance? A panel data investigation. *Strategic Management Journal,* 1072–1089.

Du Rietz, A., & Henrekson, M. (2000). Testing the female underperformance hypothesis. *Small Business Economics,* 1–10.

Erhardt, N. L., Werbel, J. D., & Shrader, C. B. (2003). Board of director diversity and firm financial performance. *Corporate Governance: An International Review,* 11.

European Comission. (2018). Report on equality between women and men in the EU.

Faccio, M., Marchica, M.-T., & Mura, R. (2016). CEO gender, corporate risk-taking, and the efficiency of capital allocation. *Journal of Corporate Finance,* 193–209.

Farrel, K. A., & Hersch, P. L. (2005). Additions to corporate boards: The effect of gender. *Journal of Corporate Finance,* 85–106.

Flabbi, L., Macis, M., Moro, A., & Schivardi, F. (2016). Female executives make a difference? The impact of female leadership on gender gaps and firm performance. NBER WORKING PAPER SERIES.

Green, C. P., & Homroy, S. (2018). Female directors, board committees and firm performance. *European Economic Review,* 19–38.

Isidro, H., & Sobral, M. (2015). The effects of women on corporate boards on firm value, financial performance, and ethical and social compliance. *Journal of Business Ethics,* 1–19.

Júnior, C. P., & Martins, O. S. (2015). Mulheres no Conselho Afetam o Desempenho Financeiro? Uma Análise da Representação Feminina nas Empresas Listadas na BM&FBOVESPA. *Contabilidade e Controladoria no Século XXI.* São Paulo: XV Congresso Controladoria e Contabilidade. 46

Jalbert, T., Jalbert, M., & Furumo, K. (2013). The relationship between CEO gender, financial performance and financial management. *Social Science Research Network*

Jeong, S.-H., & Harrison, D. A. (2017). Glass breaking, strategy making, and value creating: Meta-analytic outcomes of women as CEOs and TMT members. *Academy of Management Journal,* 1219–1252.

Khan, W. A., & Vieito, J. P. (2013). CEO gender and firm performance. *Journal of Economics and Business,* 55–66.

Kolev, G. I. (2012). Underperformance by female CEOs: A more powerful test. *Economic Letters,* 436–440.

Kotiranta, A., Kovalainen, A., & Rouvinen, P. (2007). Female Leadership and Firm Profitability. EVA Analysis.

Krishnan, H. A., & Park, D. (2005). A few good women—On top management teams. *Journal of Business Research,* 1712–1720.

Lückerath-Rovers, M. (2011). Women on boards and firm performance. *Journal of Management and Governance,* 491–509.

Laible, M. -C. (2013). Gender diversity in top management and firm performance: An analysis with the IAB-Establishment Panel. CAED Conference Paper.

Lam, K. C., McGuinness, P. B., & Vieito, J. P. (2013). CEO gender, executive compensation and firm performance in Chinese-listed enterprises. *Pacific-Basin Finance Journal,* 1136–1159.

Lee, I. H., & Marvel, M. R. (2014). Revisiting the entrepreneur gender-performance relationship: A firm perspective. *Small Business Economics,* 769–786.

Liu, Y., Wei, Z., & Xie, F. (2014). Do women directors improve firm performance in China? *Journal of Corporate Finance,* 169–184.

Madalozzo, R. (2011). CEOs e Composição do Conselho de Adminstração: a Falta de Identificação Pode Ser Motivo para Existência de Teto de Vidro para Mulheres no Brasil? *Revista de Administração Contemporânea, 15*(1), 127–137.

Magro, C. B., Verghi, D. P., Silva, M. Z., & Dani, A. C. (2015). Glass Ceiling em cargos de Board e seu impacto no Desempenho Organizacional.
Matsa, D. A., & Miller, A. R. (2013). A female style in corporate leadership? Evidence from quotas. *American Economic Journal: Applied Economics,* 136–169.
Oakley, J. G. (2000). Gender-based barriers to senior management positions: Understanding the scarcity of female CEOs. *Journal of Business Ethics,* 321–334.
Parente, M. A. (2013). *A Diversidade de Género nos Conselhos de Administração e a sua Relação com os Resultados das Empresas Cotadas na Euronext Lisbon.* Instituto Superior de Economia e Gestão: Universidade Técnica de Lisboa.
Peni, E. (2014). CEO and Chairperson characteristics and firm performance. *Journal of Management & Governance,* 185–205.
Pereira, J. S. (2013). *Mulheres nos Conselhos de Administração Medida Social ou Fonte de Valor?* Faculdade de Economia: Universidade do Porto.
Perryman, A. A., Fernando, G. D., & Tripathy, A. (2016). Do gender differences persist? An examination of gender diversity on firm performance, risk and executive compensation. *Journal of Business Research,* 579–586.
Post, C., & Byron, K. (2015). Women on boards and firm financial performance: A meta-analysis. *Academy of Managament Journal,* 1546–1571.
Schwartz-Ziv, M. (2013). Does the gender of directors matter? Harvard University.
Shrader, C. B., Blackburn, V. B., & Iles, P. (1997). Women in management and firm financial performance: An exploratory study. *Journal of Managerial Issues,* 355–372.
Smith, N., Smith, V., & Verner, M. (2005). *Do women in top management affect firm performance? A panel study of 2,500 Danish firms.* Discussion Paper: IZA.
Thams, Y., Bendell, B. I., & Terjesen, S. (2018). Explaining women's presence on corporate boards: The institutionalization of progressive gender-related policies. *Journal of Business Research,* 130–140.

Chapter 12
Ethics of Sugar Cane Farming and Crushing in Maharashtra

Prabir Kumar Bandyopadhyay, Jacob Dahl Rendtorff, and Bhavna Pandey

Abstract In this article, we present the case of sugar cane farming and crushing in Maharashtra in India. This is an Arche-typical case of ethical dilemmas and climate justice in the transition of industrial civilization to become a more environmentally sustainable society. The dilemmas of the case are central to the challenges that we face with regard to the need to change our life-styles and modes of production in the contemporary industrial civilization. The sugar cane farming and agriculture of Maharashtra are central to the economy of the region. Sugar cane cultivation is important for the mode of production of the region. The government has been promoting this agriculture as a part of development of the region in the country. Sugar production has become central to industrialization and survival of stakeholder in the region. However, this production is also very costly for the environment, in particular with regard to use of water, which has led to shortage of water and depletion of ground water. Moreover, the farmers involved in sugar cane farming are also facing distress because of reduction of the price of sugar due to overproduction. In addition, the production has led to increased destruction of the soil in the region, In this situation, government faces many dilemmas of policy. A ban on sugar cane production has been recommended, but local stakeholders are critical to this because of the damage for the farmers who will lose their grounds of existence. Another option is slower transition to sustainability, but it is not clear how such change can be implemented. Thus in this paper, with a hermeneutic case-study we discuss the ethical dimensions of this situation. We discuss the case in terms of cosmopolitan business ethics, sustainability, responsibility, consequentialism, theory of justice and Sen's justice approach of the development in order to find the correct sustainable solution

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for the future. We conclude that the practice of sugar cane farming and agriculture of Maharashtra is unethical and should be stopped immediately.

Keywords Sugar cane · Maharashtra · Sustainable farming · Anthropogenic · Ethics · Justice approach · Utilitarian approach

12.1 Introduction

In this article, we present the case of sugar cane farming and crushing in Maharashtra in India. Sugar cane farming is an Arche-typical case of ethical dilemmas and climate justice in the transition of industrial civilization to become a more environmentally sustainable society. The dilemmas of the case are central to the challenges that we face in sugar cane farming concerning the need to change our lifestyles and modes of production in the contemporary industrial civilization.

The sugar cane farming and agriculture of Maharashtra are central to the economy of the region. Sugar cane cultivation is essential for the mode of production of the region. The Government has been promoting this agriculture as a part of the development of the region in the country. Sugar production has become central to industrialization and survival of stakeholder in the region. However, sugar farming is very costly to the environment due to its massive consumption of water, which has led to a shortage of water and depletion of groundwater.

Moreover, the farmers involved in sugar cane farming are also facing distress because of reduction of the price of sugar due to overproduction. Besides, the production has led to increased destruction of the soil in the region.

In this situation, the Government faces many dilemmas of policy. A ban on sugar cane production has been recommended, but local stakeholders are critical to this because of the damage for the farmers who will lose their grounds of existence. Another option is a slower transition to Sustainability, but it is not clear how much change can be implemented. Thus in this chapter, we discuss the ethical dimensions of this situation. We discuss the case in terms of consequentialism, Rawlsian theory of justice, and Sen's capability approach of the development in order to find the correct sustainable solution for the future.

The methodology of the chapter is a hermeneutic case study, where we have worked together on the ethical implications for sustainability and social responsibility of the case of sugar cane farming and crushing in Maharashtra in India. Case studies can be proposed as an important methodology for business, management, and social sciences because they integrate a deeper reflective ethical understanding of the organization with business and economics. Accordingly, the idea of the chapter has been that the colleagues from India (Prabir Kumar Bandyopadhyay and Bhavna Pandey), have provided the case and analysis in terms of ethics and CSR. The colleague from Denmark (Jacob Dahl Rendtorff) has contributed with theory and reflections on the case, analysis in terms of ethics. This collaborative work began, when Jacob Dahl Rendtorff as one of the keynote speakers in December 2018 visited the Symbiosis

International advanced conference on business and management, in Pune in India, invited by Prabir Kumar Bandyopadhyay. Later, on the basis of common reflection Jacob Dahl Rendtorff made a presentation of the case study at the 18th international conference on corporate social responsibility (CSR) and the 9th organizational governance conference in Barcelos, Portugal. During the discussion of the case at the conference, there was agreement among participants and contributors to the discussion that this was a test case of unethical and irresponsible business. In this sense the case presented a good example of the challenges to sustainability in the contemporary world where humanity with its lifestyle and businesses contribute to the destruction of its own basis for living at the planet in times of the Anthropocene where humanity is a geological force that changes its own natural basis for existence. This kind of case study of ethical dilemmas in business can be called "hermeneutic case-study," inspired by hermeneutic philosophers like Hans Georg Gadamer and Paul Ricoeur (Rendtorff 2015). Here, the problem is whether theory and cases can be related to each other so that they fit with each other? And the challenge is what kind of general validity does this method provide? To this, we can answer that the case is a case study of criteria's for decision-making with regard to dilemmas of ethics, responsibility, and sustainability. With this in mind, the task that we proposed the critical audience at the conference in Barcelos, Portugal was to reflect on the following questions in the relation to the case of sugar cane farming and crushing in Maharashtra in India: 1. Interpretation and explanation of ethical dilemmas 2. Analysis in terms of ethical theory and ethical principles 3. Analysis in terms of sustainability, corporate social responsiblity, and corporate citizenship obligations 4. Analysis in terms of stakeholder theory 5. Analysis in terms of corporate compliance standards and codes of conduct 6. Suggestions for decision-making and evaluations (Rendtorff 2015). And we could add, that all this has to be evaluated with the help from a strong critical mind, using critical theory for reflections. So now, we proceed with the presentation of this critical case of unethical business and agriculture.

12.2 Agriculture in Maharashtra and Contribution of Sugar Cane Farming

As per the UNDP development indicators for Maharashtra (Directorate of Economic Survey 2011), only 8.57% NSDP (National State Domestic Product) contributed by the agricultural sector, which is not an eye-catching contribution. Nevertheless, about 60–70% of its labor employment is provided by the agricultural sector. Thus sugar farming makes the agriculture sector in Maharashtra a significant economic and political entity in Maharashtra. And this makes, except for a few districts, Maharashtra predominantly an agrarian economy. In other words, the livelihood of the rural population largely depends on agricultural activity (ibid).

In 2010–2011, Food crops, including cereals and pulses, occupy 6.9 million ha (46.9% of the gross cultivated area), while sugarcane and cotton occupy 4.9 million

ha (32.7% of gross cropped area) and the corresponding figures in 1998/99 were 13.4 and 3.8 million (18% of gross cropped area) ha, respectively. In sugar alone, the area of cultivation was 6.33 lakh hectares in 2016–17, and in 2017–18, it is 9.04 lakh hectares with 45.02% (Y/Y) growth. (commodities control 2017).

This is a grave concern for Maharashtra. Sugar cane farming is water-hungry. It is a water intensive crop, requiring an estimated 20,000 m3 of water per hectare (Shrivastava et al. 2011). The water requirement of sorghum is 250–450 mm, pearl millet 200–350 mm, rice 1200 mm, and wheat 450 mm, while for sugarcane, it is 2500 + mm of rainfall. Over and above, Maharashtra uses more water than other parts of India in sugar farming. Maharashtra uses 2068 L of water per Kilogram of sugar, which is double of what Uttar Pradesh uses (Thakkar 2013).

Further, the average water productivity of sugarcane in Maharashtra is 0.403 T/ha/month/'000 m3 water, while that of UP is 1.11 T/ha/month/'000 m3 water (ibid). It is estimated that about 32 billion cubic meters of water are consumed by sugarcane, which can cultivate 45 lakh hectare of other suitable drought-tolerant crops. As per the Economic Survey of Maharashtra 2014–15, 2015, about 6% of all farmers cultivate sugarcane, but they consume 76% of all the irrigation water (Pawar 2014). It may be mentioned that despite having the largest number of dams in the country, Maharashtra has only 17.9% of the cropped land under irrigation compared to 45% of the national average. Therefore, irrigated land has significant opportunity costs. More than 75% of the area remains dependent on rainfall. What is significant is that the State's sugar cultivation area is increased from 938,400 to 1,162,834 ha from 2012 to 2018—a 24% increase.

12.3 Irrational Location of Sugar Mills and Concentration of Sugar Farming

Out of 178 sugar factories of Maharashtra, 48 are in Ahmednagar, Sangli, and Solapur. These districts receive an annual rainfall of 567, 673, and 614 mm, respectively, and are one of Maharashtra's most drought-prone regions. The region of Marathwada in Maharashtra, comprising of the districts of Aurangabad, Beed, Hingoli, Jalna, Latur, Nanded, Osmanabad, and Parbhani, are the most drought-prone region in the State with an average annual rainfall of 810 mm yet the region has 49 sugar mills and 27% of the sugar cultivated area of Maharashtra. The average annual rainfall in Marathwada is 810 mm, which is below the 1,000 mm requirement for sugarcane cultivation as per Chitale Commission Report (NCIRD 1999) and Position chapter by West Zone Water Partnership (WZWP 2016). Water required for 1 ha of sugarcane can satisfy the requirement of a thousand people. Various steps have been taken to woo the shortage of drinking water and to ensure other crops, but most of the water is used by sugar farming resulting in the common man to depend on water supply by water tanker to meet the drinking water and domestic demand. 76% of irrigation water in Maharashtra is consumed by sugarcane (ibid). The small farmers do not

get enough water to grow food crops. At present, to get groundwater, the borewell drilling goes deep up to 1200 ft. In Marathwada and every year, the level is going down by 3 Mt. As informed by the commissioner of sugar, the groundwater bill will restrict the drilling up to 200 ft maximum.

12.4 The Plight of the Common Man

The irrigation used by sugar farming is through groundwater, which resulted in the depletion of groundwater levels. 71% of irrigated land in the State is not irrigated by large dams or canals, but by wells. Water has been so exploited that despite Marathwada had reservoir storage of 47%; it still faced a drought. It is reported that in the year of drought, Marathwada has been drilling as many as 10,000 borewells per month. Each bore well is 800–900 ft deep [Is thriving sugarcane crop responsible for Maharashtra's Marathwada and Vidarbha's water woes? The Economic Times, September 9, 2015]. In the State, 90% of the rural population is using groundwater resources. In the agriculture sector, groundwater utilization is 85%. Some 10% of the groundwater is utilized for industrial purposes, and only 5% is used up for drinking. Due to crop failure and chronic water shortage, many small and marginal farmers sold out their land and became agricultural laborer working in sugar cane farming. However, their period of employment is very short, as the sugar cane does not require regular caring. In a way, small farmers are victims of sugar cane cultivation, yet it depends on it (Ghadyalpatil 2016).

With the increase in the area of cultivation of sugar cane, Maharashtra witnessed a decline in the production of nutritious crops: jowar and bajra, which are the staple diet of marginalized populations. Jowar and bajra production fell by 49 and 51%, respectively. This forced the poor farmers to purchase more expensive grain. Furthermore, this has added to their distress, Bhaskar R N (2017). The irony is that now the farmers involved in sugar cane farming are also facing distress, as the supply of sugar has gone up, and the demand has reduced, resulting in low prices, while the sugar crane price is fixed by the Government. This resulted in sugar manufacturing loss-making, resulting in delayed payment to the farmers. At all India level, the outstanding bill for farmers stands at Rs. 21,000 crore, Srinivas N N (2015). *As on July 29, 2019, Rs. 19,000 crore FRP (*fair and remunerative price*)* is pending for payment to the Farmers at all India level (as per discussion with the Commissioner of Sugar, Maharashtra on July 29, 2019). The cost of sugar production is about Rs. 3400 to 3500 per 100 kg of sugar. The cost of sugar cane is Rs. 275 per 100 kg, as per regulated FRP. The selling price of sugar is Rs. 3100 per 100 kg of sugar. The international price is only 2000–2100 per 100 kg. At present, according to the sugar expert bodies, two year's consumption level stock is there. A discussion with the Executive Director of West Indian Sugar Mills association, closing the sugar factories will create a more socio-economic problem as 50% of the sugar mills are cooperative mills where 30,000–40,000 farmers are investors. Even in the privately owned mills, farmers' stock is also quite high. The mills cannot reduce the capacity,

because as per the sugar cane crushing license, the mills are mandated to crush till the last cane arrives in the mill. The Government has now allowed 25% of the capacity to use for the production of ethanol as biofuel. To remove the considerable surplus stock from the market, the Government has decided to create four million tons of sugar over one year at the cost of Rs 1,674 crore for which the Government would be reimbursing the carrying cost of about Rs 1,674 crore to participating sugar mills. This reimbursement amount will be paid to the farmers' account directly against the pending payment of FRP by mills, and any excess amount will be transferred to the mills' account, The Hindu Business Line (2019). This helps the liquidity problem of the mills and will enable the mills to get more working capital loans from banks.

12.5 Impact of Climate Change

Past data analysis shows that the rainfall pattern is changing—the share of monsoon rainfall in July reducing and August rainfall is increasing, Guhathakurta and Rajeevan (2008), Sinha Ray and Srivastava (2000). Extreme rainfall events are increasing during monsoon, while low-intensity rainfall is reducing. Extreme rainfall does not help groundwater recharging as the water runoff to the sea. This indicates Maharashtra most likely to face a cycle of drought and dry spell followed by flood. This effect of climate change will worsen the condition of an already depleting level of groundwater, and also it's quality. Of the State's 35 districts, 29 have nitrate levels that are more than double the permitted limit. Both agriculture and drinking water will get severely affected.

The World Bank's (2008) study using the Integrated Modeling System (IMS) predicts that there will be an increase in the frequency of droughts in the future through the hydrological cycle, which will affect crop water requirement and making future planning and management of water resources more challenging. The study also concludes that the marginal increase in evapotranspiration (ET) due to global warming would have a more significant impact on the arid zone ecosystem that constitutes a large area of Maharashtra.

12.6 Sustainability of Sugar Farming in Maharashtra

Tilman D et al. (2002) has defined Agricultural Sustainability as "practices that meet current and future societal needs for food and fiber, for ecosystem services, and healthy lives, and that do so by maximizing the net benefit to society when all costs and benefits of the practices are considered." While this definition of Sustainability is a quite broad but more intuitive and operationalizable concept of agricultural. Sustainability is given by Cai Yunlong and Barry Smit (1994), which is more directly aligned to the concept of sustainable development proposed by WCED (1987). As per WCED, sustainable development is defined as "development that meets the needs

of the present without compromising the ability of future generations to meet those of the future." The framework proposed by Smit Barry (1994) is based on three sets of factors: Biophysical environment, Socio-political environment, and Economic and technological environment. From a sustainability perspective, the Biophysical component demands the retention of productive capacity of resources, mainly soil and water by natural biological process of replenishing themselves. From socio-political aspect stresses an adequate and secure supply of food items and agricultural practices that do not reduce the rights and opportunities of future generations to derive benefits from natural resources like soil and water to attain Agricultural Sustainability. The economic and technological factor can not be evaluated in isolation. It is deeply integrated with the ecological impact of agricultural activities. But here the stress is given on the effect on future productivity and production. Another essential consideration under the economic factor is to what extent the agricultural activity is economically viable. In other words, Agricultural Sustainability depends on the reward it gives to the producers so that farming becomes self-sustainable without the intervention of other than market forces.

In the case of Maharashtra, we have seen earlier in this chapter, about 45% increase in sugar cane cultivation area on Year basis. The area is drought-prone. Sugar cane is a water-hungry crop—32 billion cubic meters of water consumed by sugar cane in Maharashtra, which can cultivate 45,00,000 ha of other crops. In the select area, the water table is going down by 3 Mt. every year. There is a vast shortage of potable water in the region. Due to water shortage and cultivation of the single crop, crop failure is widespread, which forces marginal farmers to sell their land and become a landless laborer.

Nevertheless, their employment period is only for a few months, as sugar cane does not need much caring. We have also mentioned that due to sugar cane cultivation, there is a 50% reduction of nutritious grain production, and these forces the poor farmer to purchase expensive grains, causing farmers distress. Due to over-cultivation of sugar cane, sugar production has gone up—more than the demand. Market prices have come down, even less than the production cost. This has resulted in delayed payment to the farmers, causing further distress. Due to the shortage of water and the monoculture nature of sugar farming, land degradation happens. In terms of ecosystem services, researchers have found a strong linear negative relationship between sugarcane farming and loss of ecosystem services, which is in line with the conventional understanding of the adverse effects on plantation monocultures. Thus it may be concluded that sugar cane cultivation is not sustainable from all three aspects—Biophysical, socio-political, and Economical.

Across the world, the contribution of Sugar farming to broader society is a significant concern. Extant literature points out that farmers in Kenya (Waswa et al. 2014) are trapped in distress. Researchers have found a direct linkage of sugar farming to poverty in Brazil (Schneider 2010) and South Africa (Lorentzen 2009).

12.7 Corrective Actions Are Undertaken/Proposed

From the above discussion, it may be concluded that in Maharashtra, the majority of the sugar factories and farming are concentrated in drought-prone areas. Sugar cane farming takes a very high amount of water, and the water is drawn mainly from groundwater resulting in depletion of groundwater level. Moreover, water availability for other crops is becoming scarce, so is the position of drinking water and water for domestic use. The small and marginal farmers are worse affected. Climate change is adding further worry to this distracting situation.

In order to ensure the supply of sugar cane to sugar factories and to limit the cultivation of sugar cane, the existing law requires to keep the minimum distance of 25 km between the two factories. However, this is violated in many cases. The Government also realizes the issue of water shortage and the consumption of water in irrigating sugar farming. To encourage drip irrigation and sprinkler irrigation, as per Maharashtra Economic Survey, Maharashtra Government "has provided a subsidy for drip irrigation in 5.68 lakh ha and sprinkler irrigation in 2.33 lakh ha between 2005–06 and 2011–12, thus providing subsidy for covering 8.01 lakh ha for these two techniques in these seven years."

Nevertheless, it is reported that while the subsidy has been used but the schemes are not implemented. Furthermore, the monitoring of the scheme is also very weak, Thakkar, H (2013). The small farmers are not ready to spend the remaining 50% of the investment. The drip irrigation also improves the farm productivity–the production of sugar cane in 6 acre land under conventional irrigation can be produced in 2 acre land with drip irrigation, as per discussions with sugar experts.

It is being argued by different policymakers that sugarcane cultivation and crushing needs to be regulated and even may be considered to be banned at this time considering the drought condition. It is not the first time such a ban is considered. Back in 1999, the Maharashtra Water and Irrigation Commission had recommended such a ban. Especially for Solapur, but later extending their suggestion to other districts, the Commission had stated: "It is desirable to impose a total ban on water intensive crops like sugarcane in these deficit sub basins… less water intensive crops only and less water intensive economic activities only should be permitted," Scroll.in (2019).

While expert bodies are of the opinion to regulate the sugar factories, which Government also agrees to, but in 2014 Government of Maharashtra was planning, though not implemented, to reduce the distance between two factories from 25 to 15 km to increase competition between sugar factories resulting more efficient sugar manufacturing. In another move, Government of Maharashtra, to support India's commitment to export 15,000 tons of raw sugar to China from next year, the State government plans to revive 40 defunct sugar mills and set new criteria for assisting "sick and closed" sugar cooperatives by giving financial aid, which the factory owners welcomed, Vyas S (2018).

So we are not sure what sort of regulation will be considered and implemented. However, we are, to some extent, sure if this situation is allowed to go, the occupants

of these habitats are engaged in an activity, which may be called anthropogenic, resulting in the zone inhabitable by humans. It may be mentioned that the word "Anthropogenic" has come from the word "Anthropocene," which means large scale change in climatic conditions created by human activity. Such things happened earlier too. It is now believed that the Harappans were forced to resettle far away from the floodplains of Indus about 4000 years back due to shifting in the weather pattern and temperature resulting from a long spell of drought, India Today (2018). Should such a phenomenon takes place, everybody will suffer, of course, the impact of climate change together with the anthropogenic effect more profoundly on the most vulnerable, the small and marginal farmers.

Keeping this background in mind, our question is—is it ethical to cultivate sugarcane in Maharashtra, particularly in Marathawada and Vidarbha zone?

12.8 Is It Ethical?

Having presented the case, we can now go on with the proposed analysis of the case study. Here, we can once again refer to the criteria of analysis that were proposed in the beginning of the article. 1. Interpretation and explanation of ethical dilemmas 2. Analysis in terms of ethical theory and ethical principles 3. Analysis in terms of sustainability, corporate social responsibility, and corporate citizenship obligations 4. Analysis in terms of stakeholder theory 5. Analysis in terms of corporate compliance standards and codes of conduct 6. Suggestions for decision-making and evaluations (Rendtorff 2015). All this should be presented with help from critical theory and critical approach to the case.

We propose to take up this issue more from a decision-making point of view and will avoid philosophical rhetoric. Indeed, the case is not only a case of local business ethics, but the challenges to sustainability may have national and also cosmopolitan implications. So this is a case of cosmopolitan business ethics (Rendtorff 2018). Cosmopolitan business ethics means that decisions should be justified, not only from the point of view of local stakeholders, but indeed also from the point of view of what is good for the planet for global justice and the future of humanity (Rendtorff 2018).

We propose a framework of decision-making in business ethics based on five sources of ethical standards: The Utilitarian Approach, The Rights Approach, The Justice Approach, The Common Good Approach, and The Virtue Approach (Rendtorff 2009). The Utilitarian Approach demands a decision should produce the most good and do the least harm. The Rights Approach seeks the decision should best respect the rights of all who have a stake. The Justice Approach demands a decision should treat people equally or proportionately. The Common Good Approach examines whether the decision best serves the community as a whole, not just some members, and The Virtue Approach examine the decision from an individual's point of view—whether the decision leads me to act as the sort of person you would want

to be. As our situation is not individual-centered, we will better not consider the Virtue Approach.

One way to sum up these different concepts of ethics would be to refer to Justice approach as a comprehensive approach to ethical issues. Dealing with a complex issue like justice and its relevance in the practical sense, Amartya Sen has suggested that one might revert to the ancient Hindu thought, which examines the concept of *Niti* and Nyaya. *Niti* in Sanskrit legal thinking deals with just rules and institutions, while Nyaya is about their realization. *Niti* is an abstract exercise that, if implemented completely, would result in maximum public welfare and justice. Nyaya, on the other hand, relates to the enforcement of laws and regulations. With this approach to the ethical dilemma of the case, we can introduce justice as a general term for the right decision to make in situations with ethical dilemmas.

In business, this concern for justice relates to the basic concepts of business ethics. These different concepts of ethics need to be integrated into the framework of reflections on the philosophy of management and responsibility in order to reflect over the full consequences of the confrontation between consequentialist, deontological, and virtue ethics approaches to business ethics and CSR (Rendtorff 2017). This combination between ethical theory, responsibility, and philosophical reflection can be related to ethical principles like dignity, integrity, and autonomy. Nevertheless, there is also an important integration of ethics corporate social responsibility. From this perspective the case becomes a case of responsible management of sustainability (Rendtorff 2019) where it is important to be sure to respect future sustainable development in the perspective of the sustainable development goals (SDGs).

Here, sustainability must be accounted for by taking into account the relevant stakeholders of the case, including farmers, employees, local communication, international community, and others in order to understand the ethical dilemmas of sugarcane farming. In order to accomplish this we need the theory of stakeholder management (Bonnafous-Boucher and Rendtorff 2016) where the relevant stakeholders in order to ensure responsible management of sustainability. In terms of stakeholder theory, the aim of management of the sugarcane industry and agriculture would be to ensure the common good for community through communicative processes of justification (Bonnafous-Boucher and Rendtorff 2016). This communicative justification is not only instrumental or strategic. The social legitimacy of corporations cannot be limited to the idea that "good business is good ethics" from the point of view of efficiency and utility. However, now we can ask: How do we apply stakeholder management to the case? How does it make a difference? Who are the relevant stakeholders? Moreover, how do we ensure respect for the stakeholders in the case?

A further question for discussion is then: How can we use business ethics, sustainability, and CSR analysis on this case? What are the implications of concepts of Corporate Philanthropy, Values-driven Management, Corporate Social Responsibility, Corporate Social Performance, Corporate Citizenship,

Integrative Business Ethics, Creating Shared Value, Corporate Citizenship as a new Paradigm for Institutionalization of Responsibility? (Rendtorff 2009, 2018, 2019). Using an interdisciplinary focus, we need to analyze the case in terms of challenges to sustainability in business management and in agriculture, with focus

on global and cosmopolitan concepts of sustainability as proposed in the United Nations' Sustainable Development Goals (SDGs) (Rendtorff 2019).

Accordingly, we suggest applying the theory of business ethics in order to understand the theoretical and practical implications of the case. During the presentation of the case at the 18th international conference on corporate social responsibility (CSR) and the 9th organizational governance conference in Barcelos, Portugal the participants argued that this was very important, but that the particularity of this case was that it showed many problems and ethical dilemmas which gave very little possibility of ethically acceptable solutions. Thus, the confrontation between theory and practice showed that the practice of sugarcane farming was not justifiable in terms of neither deontology, consequentialism, virtue ethics, justice approach or concepts of CSR and sustainability.

The ethical problems of the case were so severe with regard to all stakeholders that it was impossible to justify the practice of sugarcane farming ethically. Surprised by the response of the participants Jacob Dahl Rendtorff started to suggest that the theory-case confrontation of this case of sugarcane farming show the problem of ideal theory confronted with real-life cases. It showed how ethics may be ideal and referring to ideal concepts of truth and justice, but when this is applied to practice there are no easy solutions. However, this also showed the complexity of the relation between ethical theory and theoretical concepts of CSR in relation to their applications to real-life situations. However, the ethical theory of cosmopolitan business ethics, corporate social responsibility, sustainability management for the SDGs, and stakeholder management provides a necessary framework for understanding the complexity and ethical problems of the case. This also leads to a very critical attitude concerning the continuation of sugarcane farming and crushing in Maharashtra in India in the same way as the practice has begun. In fact, the appeal to ethical theory and concepts of CSR and sustainability showed that practice of sugarcane farming must be changed radically in order to be justifiable from an ethical point of view.

12.9 The Factual Scenario of the Case

With this in mind, we can give a more precise description of the factual scenario of the case, which must be taken into account in ethical decision-making. This implies the following:

1. Both Marathawada and Vidarbha are drought-prone zone and adversely affected by climate change.
2. Sugar cane farming and sugar manufacturing both are water intensive activities.
3. Most of the groundwater is used by sugar cane farming, leaving very little for household use, and the poor are worst affected. The water table is going deeper and deeper.

4. Other crops suiting the drought condition, and more nutritional are not cultivable by the small and marginal farmers because of water shortage. The poor have to go for costly grain for survival.
5. Small and marginal farmers mostly have sold the land and have become agricultural laborer and working in sugar cane farming.
6. Continuation of the practice will lead to a possible disaster due to a lack of portable water, and the expansion of sugar mills will make the condition worse.
7. Closing the sugar mills will make the assets idle—not good for the economy of the State. Moreover, the poor will lose the job, which will be a significant problem, at least in the short term.

This leads to the following presentation of the ethical dilemmas in the case based on the ethical theory, facts about the case and concerns for responsibility and sustainability.

12.10 Ethical Dilemma

Thus, we can identify the following ethical issues in the case: We have seen two predominant views:

1. The expert group is of the opinion to stop farming sugar cane in these two zones with immediate effect.
2. The State Government is thinking of increasing the production of sugar to meet the export commitment of the central Government by reviving 40 defunct sugar mills and giving a package to the sick sugar mills to become profitable.

12.11 Solution to Ethical Dilemma: Closing of the Sugar Farming and Sugar Mills

Following the ethical theory and theory of CSR and sustainability in order to provide a comprehensive conception of climate justice in the area of the Anthropocene we came off with the following proposed justified ethical decision on the basis of the dilemmas:

Closing of the sugar farming and sugar mills will make job loss of the workers working in the sugar mills and will make the agricultural laborers jobless in the short term. The investor community will also loose as their assets will be non-performing assists. This will make water available for the community even in the short term. This option will produce the most good and do significant harm to a significant portion of the community. Therefore, there are both consequentialist arguments in favor and against this option, but in the end; this option seems justified in terms of consequentialism.

This option does not best respects the rights of all stakeholders who have a stake, particularly the rights of livelihood for those farmers who are either working in the farm or those who are engaged in farming as well as the rights of the investors. Thus, it does not satisfy the condition of the rights approach. However, continuing sugarcane farming did not justify the rights approach either since these implied violations of basic labor rights of those who worked in the sugarcane farming. However, the option is indeed justified from the point of view of future sustainability and cosmopolitan business ethics: With this option, there is a respect for global sustainability and the future of the planet. Therefore, this option seems to be in line with sustainable development goals (SDGs).

The Justice Approach may fit in this case as the community members who are not involved in either farming sugar cane or not working in the sugar factories, and those who are working will be getting water. This action gets legitimacy according to the Common Good Approach as there is a vast population not involved in the farming and not gaining any benefits from the sugar factories but suffering adversely due to lack of water. Therefore, the community as a whole gets benefited.

12.12 Conclusion

In this article, we have presented the case of sugar cane farming and crushing in Maharashtra in India. This is an Arche-typical case of ethical dilemmas and climate justice in the transition of industrial civilization to become a more environmentally sustainable society. The dilemmas of the case are central to the challenges that we face with regard to the need to change our lifestyles and modes of production in the contemporary industrial civilization. After having presented the case from the perspective of hermeneutic ethics of case study in business ethics, we presented some different ethical concepts of sustainability, responsibility, deontology, virtue, consequentialism, justice, and the common. Applying these theories and principles to the case the framework of the Anthropocene, we concluded that from the point of view of ethics, responsibility, and sustainability, the practice of sugar cane farming and crushing in Maharashtra in India should be stopped. This conclusion was confirmed in the oral presentation of the chapter during the 18th international conference on corporate social responsibility (CSR) and the 9th organizational governance conference in Barcelos, Portugal, where discussion participants after the case study presentation spontaneously shouted “this is unethical!” Accordingly, we propose to relevant decision-makers to follow our conclusion to the ethical dilemma and take necessary action to reestablish social and environmental sustainability in Maharashtra in India.

References

Bhaskar, R. N. (2017). Maharashtra's agriculture conundrum: How sugarcane politics roiled other nutrition crops in the State, FIRSTPOST, June 06, 2017. Retrieved January 2, 2019, from https://www.firstpost.com/business/maharashtras-agriculture-conundrum-how-sugarcane-politics-roiled-other-nutrition-crops-over-years-3522263.htm.

Bonnafous-Boucher, M., & Rendtorff, J. D. (2016). *Stakeholder theory: A model for strategic management*. Springer Science + Business Media B.V., Cham. Springer Briefs in Ethics.

The Businessline. (2019). Government nod to create 4 million tonnes of sugar buffer stock: To bear Rs. 1674 Crore, 24 July 2019. Retrieved July 31, 2019, from https://www.thehindubusinessline.com/economy/agri-business/govt-nod-to-create-4-million-tonnes-sugar-buffer-stock-to-bear-1674-cr/article28700012.ece.

Comoditiescontrol. (2017, August 7). Area under Sugarcane Cultivation Rises 9% In India Y/Y. Retrieved December 8, 2018, from https://www.commoditiescontrol.com/eagritrader/common/newsdetail.php?type=MKN&itemid=486459&cid1=,6,&varietyid=,25.

David, Tilman*., Kenneth, G., Cassman‡, Pamela, A., Matson§||, Rosamond, N., & Stephen P. (2002, August 8). *Nature, 418,* 671–677.

Directorate of Economics, Economic Survey of Maharashtra, 201–2012. Retrieved December 12, 2018, from https://www.indiaenvironmentportal.org.in/files/file/economic%2520survey%2520of%2520maharashtra%25202011-2012.pdf.

Ghadyalpatil, A. (2016). Sugar cane vs Marathwada's drought, Livemint. Retrieved January 2, 2019, from https://www.livemint.com/Politics/nQRjnZEiHI9BWrGb11x51L/Sugar-cane-vs-Marathwadas-drought.html.

Guhathakurta and Rajeevan. (2008). Trends in the rainfall pattern over India. *International Journal of Climatology, 28,* 1453–1469.

India Today. (2018). New details revealed about Indus Valley Civilization: Why did these people disappear? Retrieved Decemer 28, 2018, from https://www.indiatoday.in/education-today/gk-current-affairs/story/new-details-revealed-about-indus-valley-civilization-why-did-the-people-disappear-1389828-2018-11-16.

Lorentzen, J. (2009). Global sugar, regional water and local people: EU sugar regime liberalization, rural livelihoods and the environment in the Incomati River Basin. *South African Journal of Science, 105,* 49–53.

NCIWRD. (1999). Integrated water resources development, a plan for the action, report of the national commission for integrated water resources development. Ministry of water resources, Vol. 1. Government of India.

Rendtorff, J. D. (2009). *Responsibility, ethics and legitimacy of corporations.* Copenhagen Business School Press.

Rendtorff, J. D. (2015). Case studies, ethics, philosophy and liberal learning for the management profession. *Journal of Management Education, 39*(1), 36–55. https://doi.org/10.1177/1052562914562282

Rendtorff, J. D. (Ed.). (2017). *Perspectives on philosophy of management and business ethics: Including a special section on business and human rights* (p. 51). Springer, Cham: Ethical Economy, no.

Rendtorff, JD (2018), *Cosmopolitan Business Ethics: Towards a Global Ethos of Management*. Routledge, London. Finance, Governance and Sustainability: Challenges to Theory and Practice Series.

Rendtorff, J. D. (2019). *Philosophy of management and sustainability: Rethinking business ethics and social responsibility in sustainable development*. Bingley: Emerald Group Publishing.

Schneider, L. (2010). A sweeter alternative for whom? Sugarcane ethanol production and rural livelihoods in Northeast Brazil. American University.

Scroll.in. (2019). Why a temporary ban on sugarcane cultivation in Maharashtra is a good idea. Retrieved Sptember 2, from https://scroll.in/article/753300/why-a-temporary-ban-on-sugarcane-cultivation-in-maharashtra-is-a-good-idea.

Shrivastava, A. K., Srivastava, A. K., & Solomon, S. (2011). Sustaining sugarcane productivity under depleting water resources. *Current Science, 101*(6), 748–754.

Sinha Ray, & Srivastava. (2000, June). Climate changes; extreme rainfall events; flood risk. *Journal of Earth System Science, 120*(3), pp. 359–373.

Smit, B., & Cai, Y. (1994). Sustainability in agriculture: A general review. *Agriculture, Ecosystems and Environment, 49,* 299–307.

Srinivas, N. N. (2015). Sugarcane suicides: Only farmers can solve the crisis, Economic Times Blog. Retrieved January 15, 2019, from https://economictimes.indiatimes.com/blogs/something-fresh/sugarcane-suicides-only-farmers-can-solve-the-crisis/.

Thakkar, H. (2013, June). How efficient is Maharashtra's sugarcane crop? *South Asia Network on Dams, Rivers and People,* 1–3.

Vyas, S. (2018). Maharashtra to revive 40 defunct sugar mills. The Hindu, 24 November. Retrieved December 18, 2018, from https://www.thehindu.com/news/cities/mumbai/maharashtra-to-revive-40-defunct-sugar-mills/article25588703.ece.

Waswa F., & Godfrey, W. (2014, March). Netondo, integrating sustainability ethics in commercial sugarcane farming in the Lake Victoria Basin, Kenya. *Journal of Agriculture and Environmental Sciences, 3*(1), 123–140.

WCED (World Commission on Environment and Develop- ment). (1987). *Our common future.* Oxford: Oxford University Press.

WZWP. (2016). Position paper droughts and sugar industry in Maharashtra—Are we learning from history?

Chapter 13
Review of CSR—Corporate Social Responsibility Initiatives of the Top Three CPSE's—Central Public Sector Enterprises of India

Jagbir Singh Kadyan

Abstract In India, CPSEs—Central Public Sector Enterprises—are the government-owned corporations in which, majority (51% or more) of the paid share capital is either held by central government or by any state government or partly by the central government and partly by one or more state governments. According to the Government of India, Public Enterprise Survey Report—2017–18, the top three CPSE's are IOL—Indian Oil Corporation Ltd, ONGC—Oil and Natural Gas Corporation Ltd, and NTPC—National Thermal Power Corporation Ltd, contributing 13.37, 12.49, and 6.48%, respectively, to the total profit earned by the PSEs during 2017–18. CSR—Corporate Social Responsibility—in India is mandatory in nature. According to section 135 of Companies Act 2013, which came into effect from April 01, 2014, any company with a Net Worth of ₹500 crore or more, or a Turnover of ₹1,000 crore or more, or a Net Profit of ₹5 crore or more during the immediately three preceding financial year are required to spend 2% of their Net Profits on CSR programs as per Schedule VII of the Companies Act 2013. Such companies are required to form a CSR committee, formulate a CSR policy, and implement projects in accordance with Schedule VII of the Act and mandatorily report it in their annual reports in the prescribed format. The mandatory CSR reporting facilitates the company to demonstrate its commitment toward the society and also act as a communication tool to engage with different stakeholders, including shareholders, regulators, communities, customers, and society at large. Several Central Public Sector Enterprises (CPSEs) under the aegis of Government of India are regularly undertaking various social initiatives and fulfill their corporate social responsibility toward the society and the nation. This research paper reviews the corporate social initiatives undertaken by the top three CPSEs of India as per the Public Enterprise Survey report—2017–18. The duration of this research work is for the period of 04 years starting from 2014–15 to 2017–18.

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Keywords CSR—corporate social responsibility · CPSE—central public sector enterprises · Section 135 of Indian companies act 2013 · Schedule VII · NITI Aayog · Sustainable development · Society

13.1 Introduction

Corporate Social Responsibility—CSR is a concept whereby organizations consider the interests of society by taking responsibility for the impact of their activities on customers, employees, shareholders, communities, and the environment in all aspects of their operations. CSR has emerged as an inescapable priority for business leaders of every country. The prevailing approaches to CSR are still fragmented and too disconnected from business and strategy to allow companies to benefit society truly meaningfully, and this is where the future of CSR will lie as we see more and more companies beginning to analyze their prospects for social responsibility using some frameworks that guide their core business choices. In doing this, they will make CSR much more than a cost, or a charitable deed; they will turn it into a competitive advantage.

CSR is one of the prominent forms or a means of giving back to the society, from where the businesses have emerged. Objective of maximization of wealth shall not be possible for a business without the existence of the society in which they operate. The society not only gives an identification and an opportunity to the corporates, but it also let them develop and grow within. In India, CSR can be highly instrumental in effectively addressing the problems of society by supporting the governments in their social, environmental, and economic welfare schemes through the CSR programs. It can facilitate the government in overcoming the rising fiscal deficits and leakages in the welfare schemes and boost to the development of the society, since CSR has the potential to generate ₹35,000–40,000 crores approximately every year.

This chapter aims to review the corporate social initiatives undertaken by the top three profit-making Central Public Sector Enterprises—CPSEs—of India as per the Public Enterprise Survey report—2017–18. The duration of this research work is for the period of four years starting from 2014–15 to 2017–18. The top three profit-making CPSUs of India selected for the study are Indian Oil Corporation Ltd—IOL, Oil and Natural Gas Corporation Ltd—ONGC, and National Thermal Power Corporation Ltd—NTPC.

13.2 Research Methodology

Data collection is primarily done from the annual reports, CSR reports of the selected companies. Similarly, reports of Departments of public enterprises, Ministry of Corporate affairs, National stock exchange, and other regulatory bodies have been

utilized. Data analysis is done using trend analysis, and MS Excel has been used to present, process, analyze the data to form results and conclusions.

The CSR expenditures data of each company has been tabulated year-wise, as per Schedule VII of the Companies' Act 2013, which contains XII items of expenditure. Every company has to structure its CSR activities and programs its allocations based on it. The following three steps have been adopted for trend analysis.

(i) Budgeted CSR Allocation versus Total CSR Budget: Under this heading we are at first, highlighting the total CSR budget of the selected PSE's and then analyzing the allocation of CSR budget toward the twelve components of the Schedule VII of the Companies' Act 2013. Year-wise analysis for all the three selected PSE's has been done individually as well as comparatively, starting from 2015–16 onwards till 2017–18.
(ii) CSR Spent Component versus Total CSR Spent: Under this heading we are at first, highlighting the total amount spent on CSR by the selected PSE's and then analyzing its distribution according to the twelve components of the Schedule VII of the Companies' Act 2013. Year-wise analysis for all the three selected PSE's has been done individually as well as comparatively, starting from 2015–16 onwards till 2017–18.
(iii) Over/Under Spendings on CSR: Under this heading, we are analyzing the position of CSR spendings according to the Budgeted CSR allocation to understand whether there are any Overspendings or Underspendings of CSR. The results of the above-mentioned analysis are presented in the form of tables and charts and accordingly, appropriate conclusions have been made.

13.3 Review of Literature

Moharna (2013) (i) concluded that most of the banks are undertaking CSR initiatives mainly in the area of rural development, education, community welfare, and women and children.

Loura J (2014) (ii) concluded that all the PSUs were having a CSR policy for their organizations. The CSR initiatives were wide ranging from income generation activities for livelihood, health check-up camps, mobile health services, education, adult literacy, agricultural development, provision of drinking water, management and development of natural resources and infrastructural facilities. It was also concluded that there was no link between PSU's CSR agenda and Millennium Development Goals.

Bansal and Rai (2014) (iii) concluded that there has been a remarkable increase in the CSR spending by the companies over the years. However, CSR spending pattern has been largely different across industries.

Athma and Yarragorla (2015) (iv) concluded that the CSR initiatives liabilities of Maharatna companies' remain more or less equal according to both, CPSE Guideline and section 135 of Companies Act 2013. They also concluded that the provisions of section 135 were more flexible as compared with the CPSE Guidelines on CSR.

Narwal and Sharma (2016) (v) concluded that in the market-driven economy, the society has both positive as well as skeptic view on CSR and largely expects a social and ethical behavior from the corporates.

Sawant, P. D. and Patil, M. R. (2017) (vi) concluded that the actual expenditure on CSR differed significantly from the mandated 2% for the sample companies during the period of research. Industries such as Pharma, Auto, Oil and Gas, FMCG, and Chemical are the major defaulters.

Krishnan, A. (2018) (vii) concluded that corporates from the manufacturing sector spent more on environmental sustainability as compared to corporates from the service sector.

13.4 Corporate Social Responsibility in India

As per section 135 of Companies Act, 2013, all profit-making corporates, including Central Public Sector Enterprises (CPSEs) exceeding threshold limits prescribed in the Act regarding Net Worth of ₹500 crore, or Turnover of ₹1000 crore or Net Profit of ₹5 crore in pursuance of its CSR Policy are mandated to spend at least 2% of the average Net Profits (Profit Before Tax) of the company made during the three immediately preceding years for undertaking CSR activities as per items listed in Schedule VII of the Act. CSR Rules 2004, issued by MCA—Ministry of Corporate Affairs—are also required to be complied with, by all the companies falling within the ambit of section 135 of Companies Act 2013.

Every company qualifying threshold limits will constitute a Corporate Social Responsibility (CSR) Committee of the Board consisting of three or more Directors, out of which at least one Director shall be an independent Director. The CSR Committee shall formulate and recommend to the Board a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII; recommend the amount of expenditure on the activities selected to undertake CSR; and monitor the CSR Policy of the company from item to time.

The Board of every such CPSE will, after taking into account the recommendations made by CSR Committee, approve the CSR Policy for the company, disclose contents of such policy in its report, and place it on the company's website. CSR Committee will also ensure that the CPSE undertakes the activities included in CSR Policy of the company.

Apart from the above, CPSEs are also required to comply with the below-mentioned norms toward their CSR activities as prescribed by the Competent Authority.[1]

- A common theme may be identified for each year for undertaking CSR by CPSEs.
- For the current year 2018–19, school education and health care may be taken up as the theme for focused intervention.

[1] Department of Public Enterprises (DPE) Govt. of India.

- CSR expenditure for thematic program should be around 60% of annual CSR expenditure of CPSEs.
- Aspirational districts may be given preference. NITI Aayog has already identified 112 such aspirational districts in India.
- The annual theme for the future will be decided by the Competent Authority separately.

In July 2019, Parliaments of India made amendments to Companies Act 2013 through the Companies (Amendment) Bill, 2019. Among the other major changes, the parliament cleared amendments to the Companies law pertaining to CSR spending by the corporates in India, section 135 of Companies Act 2013.

With the introduction of new sub-sections (6) & (7) to section 135 of the Companies' Act 2013, which attracted heavy penalty as well as possible imprisonment resulted into sharp criticisms from the Indian Corporates. Therefore, a high-level CSR committee, headed by the Secretary, MCA Ministry of Corporate Affairs was formed to address this issue.

Based on the recommendations of the high-level CSR committee, Government of India, on Aug 14, 2019, agreed to the demands by the Indian Corporates to do away with the penalty of possible imprisonment. The other accepted recommendations were.

- CSR violations should be regarded as civil offences that are liable to monetary penalties.
- CSR spending should be eligible for tax deductions and companies are allowed to carry forward unspent balances for three-to-five years
- Banks and limited liability partnerships also to be covered by a mandatory CSR expenditure framework.
- For companies having CSR spend less than ₹50 lakh, proposed exemption from constituting a CSR committee.

13.5 Central Public Sector Enterprises (CPSEs)

In India, CPSEs—Central Public Sector Enterprises—are the government-owned corporations in which, majority (51% or more) of the paid share capital is either held by central government or by any state government or partly by the central government and partly by one or more state governments. According to the Government of India, Public Enterprise Survey Report—2017–18, the top three CPSE's are IOL—Indian Oil Corporation Ltd, ONGC—Oil and Natural Gas Corporation Ltd, and NTPC—National Thermal Power Corporation Ltd, contributing 13.37, 12.49, and 6.48%, respectively, to the total profit earned by the PSEs during 2017–18.

Several Central Public Sector Undertakings (CPSEs) under the aegis of Government of India regularly undertake various social initiatives and fulfill their corporate social responsibility toward the society and the nation. The CPSEs selected for this research are according to the top three profit-making CPSEs as per the Government

of India, Public Enterprises Survey Report 2017–18. The duration of this research work is four years, starting from the financial year 2014–15 to 2017–18.

The top three profit-making CPSEs selected for the study are as mentioned below.

i. NTPC—National Thermal Power Corporation Ltd.
ii. IOC—Indian Oil Corporation Ltd.
iii. ONGC—Oil and Natural Gas Corporation Ltd.

About NTPC—National Thermal Power Corporation Ltd.; Corporate Social Responsibility.

NTPC is India's largest energy conglomerate with roots planted way back in 1975 to accelerate power development in India. Since then it has established itself as the dominant power major with presence in the entire value chain of the power generation business. From fossil fuels, it has forayed into generating electricity via hydro, nuclear, and renewable energy sources. This foray will play a major role in lowering its carbon footprint by reducing greenhouse gas emissions. To strengthen its core business, the corporation has diversified into the fields of consultancy, power trading, training of power professionals, rural electrification, ash utilization, and coal mining as well.[2]

In October 2004, NTPC launched its Initial Public Offering (IPO) consisting of 5.25% as fresh issue and 5.25% as offer for sale by the Government of India. NTPC thus became a listed company in November 2004 with the Government holding 89.5% of the equity share capital. In February 2010, the Shareholding of Government of India was reduced from 89.5 to 84.5% through a further public offer. Government of India has further divested 9.5% shares through OFS—Offer for Sale—route in February 2013. With this, GOI's holding in NTPC has reduced from 84.5 to 75%. The rest is held by Institutional Investors, banks, and Public. Presently, Government of India is holding in NTPC has reduced to 56.41%.[3]

NTPC became a Maharatna Company[4] (companies with three years of Average annual Net Profit of over ₹2500 crore, or Average annual Net Worth of ₹10,000 crore for 3 years, or Average annual Turnover of ₹20,000 crore for 3 years), in May 2010, one of the only four companies to be awarded this status. NTPC was ranked 492nd "Forbes Global 2000" ranking of the World's biggest companies for the year 2019.[5]

NTPC's focusareas of CSR & Sustainability activities are Health, Sanitation, Safe Drinking Water, Education, Capacity Building, Women Empowerment, Social Infrastructure livelihood creation and support through innovative agriculture & livestock development, support to Physically Challenged Person (PCPs), and activities contributing toward Environment Sustainability.

Preference for CSR & Sustainability activities is given to local areas around company's operations, ensuring that majority CSR funds are spent for activities in local areas. However, considering Inclusive Growth & Environment Sustainability

[2]https://www.ntpc.co.in/en/about-us/ntpc-overview.

[3]https://www.ntpc.co.in/en/about-us/ntpc-overview.

[4]https://www.archive.india.gov.in/spotlight/spotlight_archive.php?id=78.

[5]https://www.ntpc.co.in/en/about-us/ntpc-overview.

and to supplement Government effort, activities are also taken up anywhere in the country.

About IOCL—Indian Oil Corporation Ltd.; Corporate Social Responsibility.

Indian Oil, a diversified, integrated energy major with presence in almost all the streams of oil, gas, petrochemicals, and alternative energy sources; a world of high-caliber people, state-of-the-art technologies, and cutting-edge R&D; a world of best practices, quality-consciousness, and transparency; and a world where energy in all its forms is tapped most responsibly and delivered to the consumers most affordably.

Indian Oil is much more than just notching up high turnover (₹6,05,924 crore or US$ 87 billion in 2018–19). It's far more than being ranked 117th among the world's largest corporates in Fortune's "Global 500" listing, 2019. Indian Oil's business interests encompassing the entire hydrocarbon value chain from refining, pipeline transportation & marketing to exploration & production of crude oil & gas, petrochemicals, gas marketing, alternative energy sources, and globalization of downstream operations.[6]

Indian Oil accounts for nearly half of India's petroleum products market share, with sales of about 90 million tons in 2018–19. It owns and operates 11 refineries, with a combined refining capacity of 80.7 Million Metric Tons Per Annum (MMTPA). Indian Oil's 14,200-km cross-country pipelines network facilitates the transportation of crude oil to refineries and finished products to high-demand centers in an efficient, economical, and environment-friendly manner. Its throughput capacity of 94.20 MMTPA for crude oil and petroleum products and 21.69 MMSCMD for gas makes it one of the largest pipeline networks in the world.[7]

Indian Oil's key Corporate Social Responsibility (CSR) thrust areas include safe drinking water and protection of water resources, healthcare and sanitation, education and employment-enhancing vocational skills, empowerment of women and socially/economically backward groups, etc.

The CSR projects of Indian Oil are mostly undertaken in the vicinity of its establishments for improving the quality of life of the community, which invariably includes marginalized groups belonging to the under privileged section of the society, viz., SCs, STs, PHs, OBCs, etc.

Indian Oil has a long-standing CSR legacy, which started much before the CSR legislation (Companies Act, 2013) came into force in 2014–15. During the year 2017–18, the entire budget allocation of ₹331.05 crore was spent on CSR activities, thereby achieving 100% budget utilization.

About ONGC–Oil and Natural Gas Corporation Ltd.; Corporate Social Responsibility.

ONGC Ltd. (A Maharatna Company) is the largest crude oil and natural gas company in India, contributing around 75% to Indian domestic production & has been ranked 160th in the coveted Fortune Global 500 list 2019. ONGC maintained its First Position globally in the industry category "Oil and Gas Exploration and Production" and achieved overall ranking of 21st position in the Platts Top 250

[6]https://www.iocl.com/aboutus/profile.aspx.

[7]https://www.iocl.com/aboutus/profile.aspx.

Global Energy Company Rankings-2018. ONGC has been adjudged the winner in the "Oil and Gas Exploration" category of the Dun & Bradstreet Corporate Awards 2019.

ONGC operates with 14 seismic crews, manages 262 onshore production installations, 268 offshore installations, 69 drilling (plus 37 hired), and 54 work-over rigs (plus 25 hired), owns and operates more than 25,500 km of pipeline in India, including 4,500 km of sub-sea pipelines. ONGC has adopted Best-in-class business practices for modernization, expansion, and integration of all Infocom systems.[8]

ONGC's CSR initiative continues its quest to make positive, tangible difference in the lives of the vulnerable and disadvantaged, especially in and around its operational areas. Its business paradigm is based on an interconnected vision of people's welfare, societal growth, and environmental conservation. ONGC with its Corporate Social Responsibility activities in India continues to cater to the developmental needs across the following focus areas[9]:

- Education including vocational courses
- Health Care
- Entrepreneurship (self-help & livelihood generation) schemes
- Infrastructure support: roads, bridges, schools, hospitals in and around the company's operational areas
- Environment protection, ecological conservation, promotion
- Protection of heritage sites, UNESCO heritage monuments, etc.
- Promotion of artisans, craftsman, musicians, artists, etc. for preservation of heritage, art, & culture
- Women empowerment, girl child development, gender sensitive projects
- Water management including groundwater recharge
- Initiatives for physically and mentally challenged
- Sponsorship of seminars, conferences, workshops, etc. and
- Promoting sports/sportspersons; supporting agencies promoting sports/sportspersons.

13.6 Schedule VII of Companies Act 2013, (Section 135)[10]

Schedule VII of the Companies Act 2013 forms the basis of CSR spending in India. The entire CSR program of the company had to be based on it. Any activities undertaken by the companies not falling within Schedule VII does not qualify as CSR activity in India. The Company Law 2013 clearly states the activities which may be included by companies in their Corporate Social Responsibility Program.

[8] https://www.ongcindia.com/wps/wcm/connect/en/about-ongc/ongc-at-a-glance/corporate-profile/.

[9] https://www.ongcindia.com/wps/wcm/connect/en/about-ongc/ongc-at-a-glance/corporate-profile/.

[10] Companies Act 2013, Section 135.

The following are the CSR activities according to Schedule VII of the Co. act 2013. Activities relating to.

S-i [Eradicating hunger, poverty and malnutrition],[11] [“promoting health care including preventive health care”][12] and sanitation [including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water.

S-ii Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

S-iii Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

S-iv Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water [including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga].[13]

S-v Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

S-vi Measures for the benefit of armed forces veterans, war widows and their dependents;

S-vii Training to promote rural sports, nationally recognised sports, Paralympics sports and Olympic sports

S-viii Contribution to the prime minister’s national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

S-ix Contributions or funds provided to technology incubators located within academic institutions which are approved by the central govt.

S-x Rural development projects

S-xi [slum area development. Explanation.- For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.][14]

S-xii [Disaster management, including relief, rehabilitation and reconstruction activities.][15]

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[11] Substituted by Notification Dated February 27, 2014.

[12] Substituted by Notification Dated March 31 2014. For the words “promoting preventive health care” read ‘ ‘promoting health care including preventive health care”.

[13] Inserted by Notification Dated October 24, 2014.

[14] Inserted by Notification Dated August 7, 2014.

[15] Inserted by Notification dated May 30, 2019.

There are twelve sets of Social activities mentioned in the Schedule VII of the Companies Act 2013. Any company falling within the purview of section 135 of the Companies Act 2013 is mandatorily required to undertake only those activities which are mentioned in the Schedule VII of the Companies Act 2013 while planning its CSR activities.

Companies are required to form a CSR Committee for the purpose of planning and implementing their CSR program for the year. The CSR committee of the company shall select the activities listed within Schedule VII only in order to formulate their CSR programs and the allocation of the budgets for the same. The CSR committee shall be submitting the CSR proposal and the budgeted allocation to the BOD for their approval and sanctions. The Board of Directors upon receiving the CSR committees' proposal may approve and sanction it for its execution and implementation for the year.

13.7 CORPORATE SOCIAL RESPONSIBILITY AMONG CPSEs—Central Public Sector Enterprises

During the year 2017–18, 153 CPSEs have spent ₹3442.42 crore on CSR activities. However, 2% of PBT for these CPSEs was ₹3693.47 crore. The break-up CSR Expenditure based on various activities for the year 2017–18 by the CPSEs has been given in Table 13.1.

Table 13.1 CPSEs—Activity wise CSR Expenditure (2017–18)

Sl. no	Sectors	Actual expenditure (Amount in ₹. Crore)
1	Eradicating Hunger and Poverty, Health Care and Sanitation	1119.34
2	Education and Skill Development	1112.65
3	Empowerment of Women and other Economically Backward Sections	66.14
4	Environmental Sustainability	393.47
5	Art & Culture	244.32
6	Armed Forces welfare	8.50
7	Sports	64.98
8	Contribution to funds set-up by Central Government	50.92
9	Contribution to Technology Incubators	0.36
10	Rural Development	374.68
11	Slum Area Development	7.06
12	**TOTAL**	**3442.42**[a]

[a]Public Enterprise Survey Report 2017–18

Table 13.2 CSR expenditure by the selected CPSEs during 2017–18[a] (Amt. in ₹. Crore.)

CPSEs name	Average PBT for last 3 years	2% Average PBT for last 3 years	Amount allocated for CSR (Including the carried forward, if any)	Actual CSR spent	Unspent CSR
NTPC	11,176.77	223.54	220.75	241.54	0.00
IOC	17,047.69	340.95	331.05	331.05	0.00
ONGC	25,123.19	502.46	2017.71	503.44	1514.27

[a]Public Enterprise Survey Report 2017–18

The CSR expenditure incurred by the selected three CPSE for the year 2017–18 is also being shown in Table 13.2.

13.8 Data Analysis & Interpretations

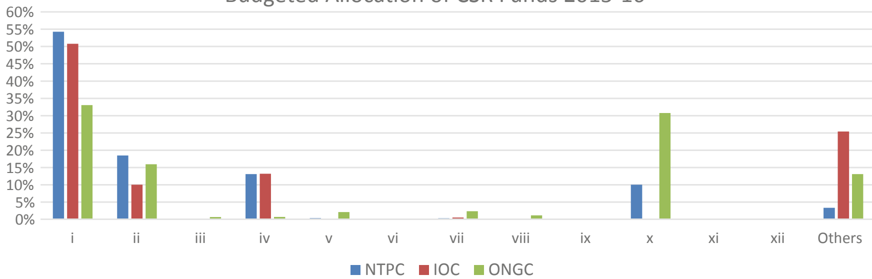
The top three Indian profit-making CPSE's of India for the year 2017–18, NTPC—National Thermal Power Corporation; IOC—Indian Oil Corporation; and ONGC—Oil & Natural Gas Corporation, was selected for this research. The trend analysis is based on the actual data compiled from the annual financial & CSR reports of the respective companies. Even though CSR is mandatory for the financial year 2013–14, the selected three CPSE's had not presented the CSR details in their annual reports in the required prescribed format/manner. We assume, it could be because of the lack of clarity or interpretations on their part or maybe due to the transitory phase/evolutionary phase of CSR reporting in India. Therefore, the period of this research is starting from 2014–15 instead of 2013–14 and ending on 2017–18, thus covering a period of three years only. (From 2015–16 to 2017–18).

13.9 Trend Analysis: Budgeted Components Versus Total Budget

Under this heading we are at first, highlighting the total CSR budget of the selected CPSE's and then analyzing the distribution of their total CSR budget according to the twelve components of the Schedule VII of the Companies' Act 2013. Year-wise analysis for all the three selected CPSE's has been done starting from 2015–16 onwards till 2017–18.

During the year 2015–16, NTPC had a CSR Budget of ₹351.98 crore, which was allocated by the company toward six items only of the Schedule VII of the

Table 13.3 Budgeted allocation of CSR Funds according to the Schedule VII of Cos. Act 2013



Companies' Act 2013. The highest CSR budgeted allocation of 54.27% amounting to ₹190.97 crore was done for item no. S-i, while the lowest allocation of 0.34% amounting to ₹1.21 crore was done toward item no. S-vii. Similarly, an allocation of 3.35% amounting to ₹11.78 crore was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.3.

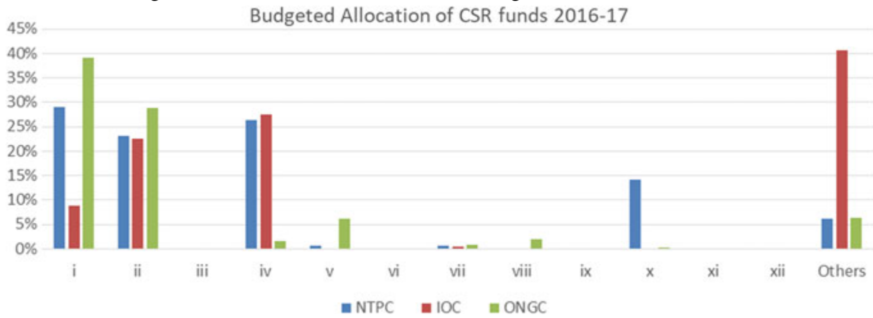
During the year 2015–16, IOC had a CSR Budget of ₹159.69 crore, which was allocated by the company toward four items only of the Schedule VII of the Companies' Act 2013. The highest CSR budgeted allocation of 50.79% amounting to ₹81.11 crore was done for item no. S-i, while the lowest allocation of 0.56% amounting to ₹0.90 crore was done toward item no. S-vii. Similarly, an allocation of 25.41% amounting to ₹40.57 crore was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.3.

During the year 2015–16, ONGC had a CSR Budget of ₹525.71 crore, which was allocated by the company toward eight items of the Schedule VII of the Companies' Act 2013. The highest CSR budgeted allocation of 33.07% was done for item no. S-i, while the lowest allocation of 0.69% amounting to ₹3.63 crore was done toward items no. S-iii. Similarly, an allocation of 13.12% amounting to ₹68.95 crore was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.3.

Of the three companies under the study, during the year 2015–16, ONGC Ltd. is found to have allocated its CSR budget toward maximum numbers of eight items of the Schedule VII followed by NTPC Ltd. with six items and IOC Ltd. with four items only.

During the year 2016–17, NTPC Ltd. had allocated an amount of ₹230.09 crore toward its CSR activities, which is lower by ₹121.79 crore as compared with the previous year allocation of ₹351.88 crore. The company has allocated its CSR Funds toward the same 06 items, as was done during the previous year, from the total 12 items of Schedule VII of the Co. act 2013. The highest CSR budgeted allocation of 28.99% amounting to ₹66.71 crore was done for item no. S-i, while the lowest allocation of 1.28% each was done toward item no. S-vii. Similarly, an allocation of 6.17% amounting to ₹14.19 crore was found to done toward an item mentioned as

Table 13.4 Budgeted allocation of CSR Funds according to the Schedule VII of Cos. Act 2013.



"others", which does not constitute to be a part of Schedule VII, as shown in Table 13.4.

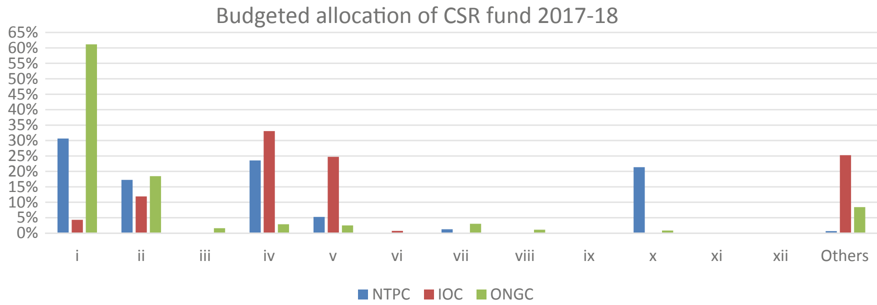
During the year 2016–17, IOC had allocated an amount of ₹206.76 crore toward its CSR activities, which is an increase by ₹47.07 crore as compared with the previous year allocation of ₹159.69 crore. The company has allocated its CSR funds toward the same 04 items, as was done during the previous year, from the total 12 items of Schedule VII of the Co. act 2013. The highest CSR budgeted allocation of 27.52% amounting to ₹56.91 crore was done for item no. S-iv, while the lowest allocation of 0.44% amounting to ₹0.90 crore was done toward item no. S-vii. Similarly, an allocation of 40.62% amounting to ₹83.99 crore was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII as shown in Table 13.4.

During the year 2016–17, ONGC had allocated an amount of ₹858.04 crore toward its CSR activities, which is an increase by ₹332.33 crore as compared with the previous year allocation of ₹ 525.71 crore. The company has allocated its CSR funds toward the same 07 items, as compared with 08 items done during the previous year, from the total 12 items of Schedule VII of the Co. act 2013. This year the company has not allocated any funds for item no. S-iii. The highest CSR budgeted allocation of 39.11% amounting to ₹ 335.54 crore was done for item no. S-i, while the lowest allocation of 0.15% amounting to ₹ 1.31 crore was done toward item no. S-x. Similarly, an allocation of 6.32% amounting to ₹ 54.20 crore was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.4.

It is observed that during the year 2015–16, ONGC ltd had allocated its CSR budget on maximum of seven items of the Schedule VII of the Companies' Act 2013, followed by NTPC ltd with six items and IOC ltd. with five items, respectively.

During the year 2017–18, NTPC Ltd. had allocated an amount of ₹250.45 crore toward its CSR activities, which is an increase of ₹20.36 crore as compared with the previous year allocation of ₹230.09 crore. The company has allocated its CSR Funds toward the same 06 items, as was done during the previous year, from the total 12 items of Schedule VII of the Co. act 2013. The highest CSR budgeted allocation of 30.63% amounting to ₹76.72 crore was done for item no. S-i, while the lowest

Table 13.5 Budgeted Allocation of CSR Funds according to the Schedule VII of Cos. Act 2013



allocation of 1.28% each was done toward item no. S-vii. Similarly, an allocation of 0.65% amounting to ₹ 1.63 crore was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule S-vii, as shown in Table 13.5.

During the year 2017–18, IOC had allocated an amount of ₹316.05 crore toward its CSR activities, which is an increase by ₹109.29 crore as compared with the previous year allocation of ₹206.76 crore. The company has allocated its CSR funds toward the same 05 items, as was done during the previous year, from the total 12 items of Schedule VII of the Co. act 2013. The highest CSR budgeted allocation of 33.07% amounting to ₹104.53 crore was done for item no. S-iv, while the lowest allocation of 0.73% amounting to ₹2.3 crore was done toward item no. S-vi. Similarly, an allocation of 25.25% amounting to ₹79.79 crore was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule S-vii, as shown in Table 13.5.

During the year 2017–18, ONGC had allocated an amount of ₹2.41 crore toward its CSR activities, which is a decrease by 85.63 crore as compared with the previous year allocation of ₹858.04 crore. The company has allocated its CSR funds toward the same 08 items, as was done during the previous year, from the total 12 items of Schedule VII of the Co. act 2013. The highest CSR budgeted allocation of 61.15% amounting to ₹472.35 crore was done for item no. S-i, while the lowest allocation of 0.84% amounting to ₹6.46 crore was done toward item no. S-x. Similarly, an allocation of 8.42% amounting to ₹65.05 crore was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule S-vii, as shown in Table 13.5.

It is observed that during the year 2017–18, ONGC ltd had allocated its CSR budget on maximum of eight items of the Schedule VII of the Companies' Act 2013, followed by NTPC ltd with six items and IOC ltd. with five items, respectively.

13.10 Trend Analysis: CSR Spent Component Versus Total Spent

Under this heading we are at first, highlighting the total amount spent on CSR by the selected CPSEU's and then analyzing its distribution according to the twelve components of the Schedule VII of the Companies' Act 2013. Year-wise analysis for all the three selected CPSEU's has been done starting from 2015–16 onwards till 2017–18.

During the year 2015–16, NTPC had spent 491.80 crore under its CSR program, while the budgeted allocated amount was ₹351.88 crore. Thus, the company has overspent ₹139.92 crore over and above the budgeted amount of CSR. It has spent its CSR funds on the budgeted six items only. The highest CSR spending was found to be done on item no. S-i, amounting to ₹ 327.73 crore, constituting 66.64% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-v, amounting to ₹1.89 crore, constituting 0.38% of the total amount spent for the year. Similarly, a spending of ₹26.46 crore, constituting 5.38% of the total amount spent for the year was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.6.

During the year 2015–16, IOC had spent ₹156.68 crore under its CSR program, while the budgeted allocated amount was ₹159.69 crore. Thus, the company has underspent by ₹3.01 crore from the budgeted amount of CSR. It has spent its CSR funds on the budgeted 04 items only. The highest CSR spending was found to be done on item no. S-i, amounting to ₹ 57.68 crore, constituting 36.81% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-vii, amounting to ₹0.56 crore, constituting 0.36% of the total amount spent for the year. Similarly, a spending of ₹35.45 crore, constituting 22.63% of the total amount spent for the year was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.6.

Table 13.6 CSR spent component versus total spent: 2015–16

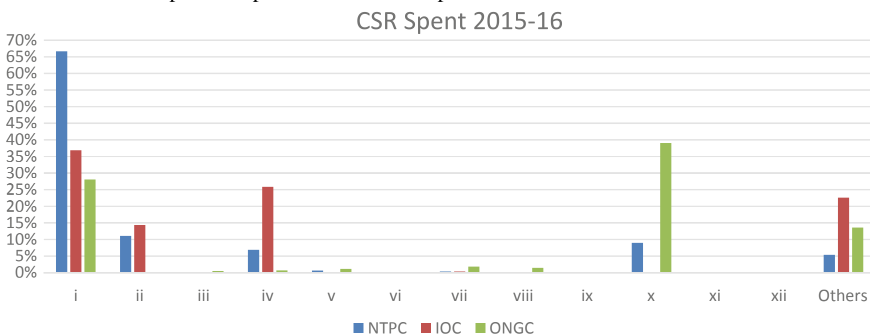
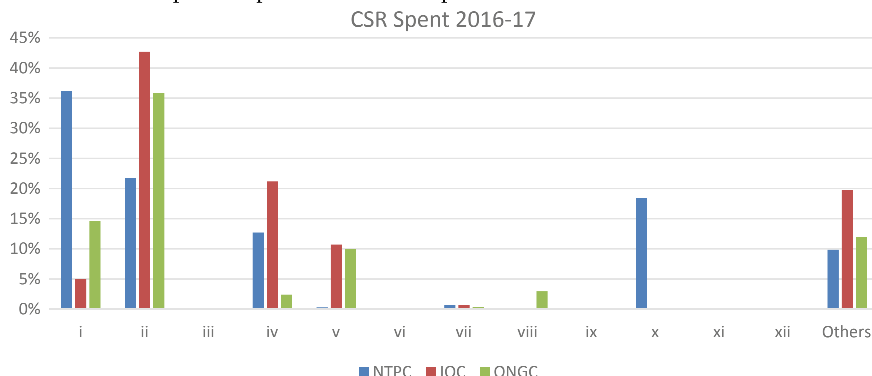


Table 13.7 CSR spent component versus total spent: 2016–17

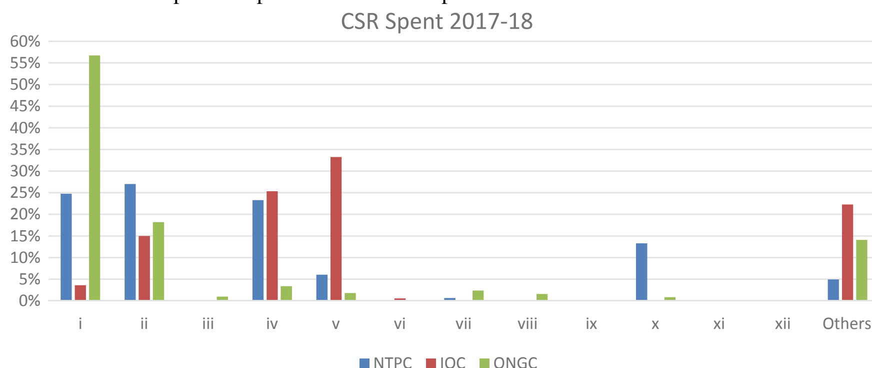


During the year 2015–16, ONGC had spent ₹418.07 crore under its CSR program, while the budgeted allocated amount was ₹525.71 crore. Thus, the company has underspent by ₹107.64 crore from the budgeted amount of CSR. It has spent its CSR funds on the budgeted 08 items only. The highest CSR spending was found to be done on item no. S-x, amounting to ₹ 161.42 crore, constituting 38.61% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-iii, amounting to ₹2.03 crore, constituting 0.49% of the total amount spent for the year. Similarly, a spending of ₹56.19 crore, constituting 13.44% of the total amount spent for the year was found to be done toward an item mentioned as “others”, which does not constitute to be a part of Schedule VII, as shown in Table 13.6.

During the year 2016–17, NTPC had spent 277.81 crore under its CSR program, while the budgeted allocated amount was ₹230.09 crore. Thus, the company has overspent ₹47.72 crore over and above the budgeted amount of CSR. It has spent its CSR funds on the budgeted six items only. The highest CSR spending was found to be done on item no. S-i, amounting to ₹ 100.61 crore, constituting 36.22% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-v, amounting to ₹0.82 crore, constituting 0.30% of the total amount spent for the year. Similarly, a spending of ₹27.40 crore, constituting 9.86% of the total amount spent for the year was found to be done toward an item mentioned as “others”, which does not constitute to be a part of Schedule VII, as shown in Table 13.7.

During the year 2016–17, IOC had spent ₹213.99 crore under its CSR program, while the budgeted allocated amount was ₹206.76 crore. Thus, the company has overspent by ₹7.23 crore from the budgeted amount of CSR. It has spent its CSR funds on the budgeted 05 items only. The highest CSR spending was found to be done on item no. S-ii, amounting to ₹ 91.39 crore, constituting 42.71% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-vii, amounting to ₹1.39 crore, constituting 0.65% of the total amount spent for the year. Similarly, a spending of ₹213.99 crore, constituting 19.74% of the total amount spent

Table 13.8 CSR spent component versus total spent: 2017–18



for the year was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.7.

During the year 2016–17, ONGC had spent ₹514.60 crore under its CSR program, while the budgeted allocated amount was ₹858.04 crore. Thus, the company has underspent by ₹343.44 crore from the budgeted amount of CSR. It has spent its CSR funds on the budgeted 07 items only. The highest CSR spending was found to be done on item no. S-ii, amounting to ₹ 184.41 crore, constituting 35.84% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-x, amounting to ₹0.33 crore, constituting 0.06% of the total amount spent for the year. Similarly, a spending of ₹61.46 crore, constituting 11.94% of the total amount spent for the year was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.7.

During the year 2017–18, NTPC had spent ₹241.54 crore under its CSR program, while the budgeted allocated amount was ₹250.45 crore. Thus, the company has underspent ₹8.91 crore of the budgeted amount of CSR. It has spent its CSR funds on the budgeted 06 items only. The highest CSR spending was found to be done on item no. S-i, amounting to ₹65.26 crore, constituting 27.02% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-vii, amounting to ₹1.58 crore, constituting 0.65% of the total amount spent for the year. Similarly, a spending of ₹11.98 crore, constituting 4.96% of the total amount spent for the year was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.8.

During the year 2017–18, IOC had spent ₹213.99 crore under its CSR program, while the budgeted allocated amount was ₹206.76 crore. Thus, the company has overspent by ₹7.23 crore from the budgeted amount of CSR. It has spent its CSR funds on the budgeted 05 items only. The highest CSR spending was found to be done on item no. S-ii, amounting to ₹ 91.39 crore, constituting 42.71% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-vii, amounting to ₹1.39 crore, constituting 0.65% of the total amount spent for the year. Similarly, a spending of ₹213.99 crore, constituting 19.74% of the total amount spent

for the year was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.8.

During the year 2017–18, ONGC had spent ₹503.44 crore under its CSR program, while the budgeted allocated amount was ₹772.41 crore. Thus, the company has underspent by ₹268.97 crore from the budgeted amount of CSR. It has spent its CSR funds on the budgeted 08 items only. The highest CSR spending was found to be done on item no. S-i, amounting to ₹ 285.62 crore, constituting 56.73% of the total amount spent for the year, while the lowest spending was found to be done on item no. S-x, amounting to ₹4.24 crore, constituting 0.84% of the total amount spent for the year. Similarly, a spending of ₹70.87 crore, constituting 14.08% of the total amount spent for the year was found to be done toward an item mentioned as "others", which does not constitute to be a part of Schedule VII, as shown in Table 13.8.

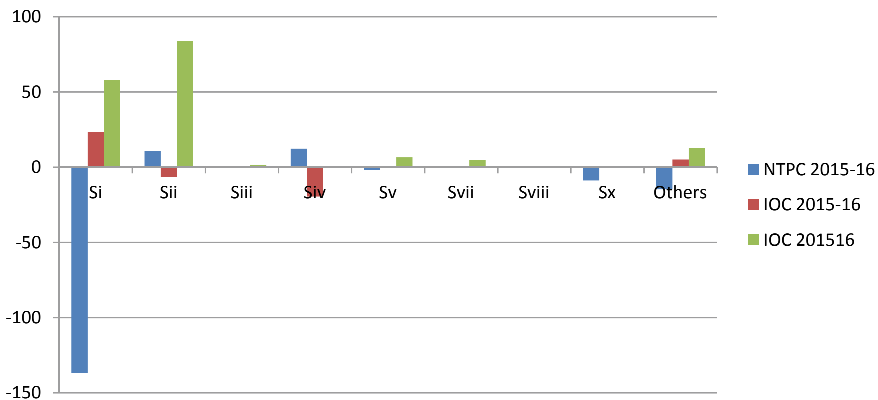
13.11 Over/Under Spendings on CSR

Under this heading, we are analyzing the position of CSR spending according to the Budgeted CSR allocation to understand whether there are any overspendings or underspendings of CSR.

Budgeted allocation and the Actual CSR Spendings, according to the Schedule VII of Cos. Act 2013.

During the year 2015–16, NTPC had made budgeted allocations of ₹351.98 crore, whereas the actual overspent was ₹ 491.80 crore, which were spent only on the selected five activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually overspent on four activities and underspent on two activities. The overspent four activities were S-i amounting to ₹ 136.76 crore, S-v amounting to ₹ 1.84 crore, S-vii amounting to ₹0.68 crore, and S-x amounting

Table 13.9 Over/UnderSpending on CSR for the Year 2015–16

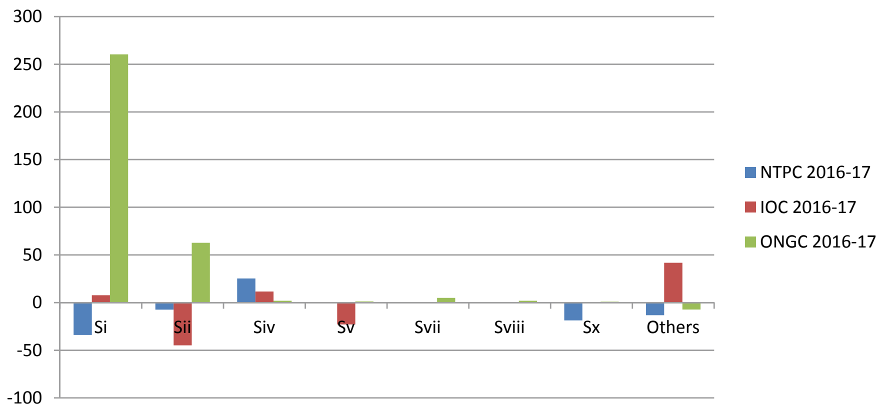


to ₹ 8.84 crore, respectively. The underspent activities were S-ii amounting to ₹ 10.6 crore and S-iv amounting to ₹ 12.28 crore, respectively. Similarly, the company had overspent ₹ 14.68 crore on an activity, mentioned as “Others”, which does not constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.9.

During the year 2015–16, IOC had made budgeted allocations of ₹159.69 crore, whereas the actual underspent was ₹ 156.68 crore, which were spent only on the selected four activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually overspent on two activities and also underspent on two activities only. The overspent two activities were S-i amounting to ₹ 23.43 crore and S-vii amounting to ₹ 0.34 crore. The Underspent activities were S-ii amounting to ₹ 6.4 crore and S-iv amounting to ₹ 19.48 crore, respectively. Similarly, the company had underspent ₹ 5.12 crore on an activity, mentioned as “Others”, which does not constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.9.

During the year 2015–16, ONGC had made budgeted allocations of ₹525.71 crore, whereas the actual overspent was ₹418.07 crore, which were spent on the selected eight activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually underspent on all the eight activities. These underspent eight activities were S-i amounting to ₹57.96 crore, S-ii amounting to ₹ 83.98 crore, S-iii amounting to ₹1.6 crore, S-iv amounting to ₹0.84 crore, S-v amounting to ₹6.59 crore, S-vii amounting to ₹4.79 crore, S-viii amounting to ₹ 0.17 crore, and S-x amounting to ₹ 0.3 crore, respectively. Similarly, the company had also underspent ₹ 12.76 crore on an activity, mentioned as “others”, which does not constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.9.

Table 13.10 Over/Under Spending on CSR for the Year 2016–17



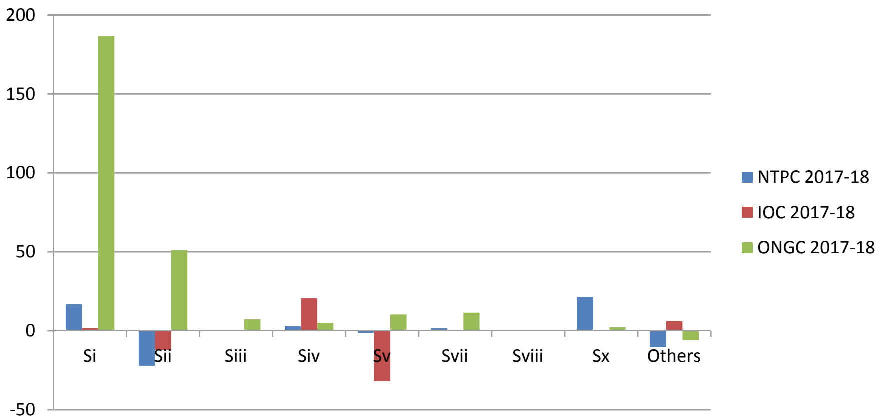
During the year 2016–17, NTPC had made budgeted allocations of ₹230.09 crore, whereas the actual overspent was ₹ 277.81 crore, which were spent on the selected six activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually overspent on four activities and Underspent on two activities. The overspent four activities were S-i amounting ₹ 33.9 crore, S-ii amounting ₹ 7.39 crore, S-vii amounting ₹0.29 crore, and S-x amounting to ₹ 18.64 crore, respectively. The underspent activities were S-iv amounting to ₹ 25.25 crore and S-v amounting to ₹ 0.46 crore, respectively. Similarly, the company had overspent ₹ 13.21 crore on an activity, mentioned as "others", which does not constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.10.

During the year 2016–17, IOC had made budgeted allocations of ₹206.76 crore, whereas the actual overspent was ₹ 213.99 crore, which were spent only on the selected five activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually overspent on three activities and also underspent on two activities only. The overspent three activities were S-ii amounting to ₹ 44.79 crore, S-v amounting to on two activities only. The overspent 22.92 crore, and S-vii amounting to ₹0.49 crore. The two underspent activities were S-i amounting to on two activities only. The overspent 7.66 crore and S-iv amounting to on two activities only. The overspent 11.57 crore, respectively. Similarly, the company had underspent on two activities only. The overspent 41.74 crore on an activity, mentioned as "others", which does not constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.10.

During the year 2016–17, ONGC had made budgeted allocations of ₹858.04 crore, whereas the actual overspent was ₹514.60 crore, which were spent on the selected seven activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually underspent on all the eight activities. These underspent seven activities were S-i amounting to ₹260.39 crore, S-ii amounting to ₹62.72 crore, S-iv amounting to ₹1.86 crore, S-v amounting to ₹1.15 crore, S-vii amounting to ₹4.96 crore, S-viii amounting to ₹1.9 crore, and S-x amounting to ₹0.98 crore, respectively. Similarly, the company had overspent on two activities only. The overspent 7.26 crore on an activity, mentioned as "others", which does not constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.10.

During the year 2017–18, NTPC had made budgeted allocations of ₹250.45 crore, whereas the actual overspent was on two activities only. The overspent ₹241.54 crore, which were spent on the selected six activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually overspent on two activities and underspent on four activities. The overspent two activities were S-ii amounting to ₹22.08 crore and S-v amounting to ₹1.4 crore, respectively. The underspent activities were S-i amounting to ₹16.9 crore, S-iv amounting to ₹2.82 crore, S-vii amounting to ₹1.62 crore, and S-x amounting to ₹ 21.4 crore respectively. Similarly, the company had overspent ₹10.35 crore on an activity, mentioned as "others", which does not

Table 13.11 Over/Under Spending on CSR for the Year 2017–18



constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.11.

During the year 2017–18, IOC had made budgeted allocations of ₹316.05 crore, whereas the actual overspent was ₹ 331.04 crore, which were spent only on the selected five activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually overspent on two activities and underspent on three activities. The overspent two activities were S-ii amounting ₹12.06 crore, and S-v amounting to ₹31.9 crore, respectively. The three underspent activities were S-i amounting to ₹ 1.76 crore, S-iv amounting to ₹ 20.66, and S-vi amounting to ₹0.42 crore, respectively. Similarly, the company had underspent ₹ 6.1 crore on an activity, mentioned as "others", which does not constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.11.

During the year 2017–18, ONGC had made budgeted allocations of ₹772.41 crore, whereas the actual overspent was ₹503.44 crore, which were spent on the selected eight activities of the Schedule VII of the Co. act 2013. As compared with the budgeted amount and the actual amount spent on the selected CSR activities, it is found that the company actually underspent on almost all eight selected activities. The underspent eight activities were S-i amounting to ₹186.73 crore, S-ii amounting to ₹51.06 crore, S-iii amounting to ₹7.29 crore, S-iv amounting to ₹5 crore, S-v amounting to ₹10.39 crore, S-vii amounting to ₹11.52 crore, S-viii amounting to ₹0.58 crore, and S-x amounting to ₹2.22 crore, respectively. Similarly, the company had overspent ₹ 7.26 crore on one activity, mentioned as "others", which does not constitute to be a part of Schedule VII of the Companies Act 2013, as shown in Table 13.11.

13.12 Findings & Conclusions

- It is observed that, even though CSR is mandatory for the select companies with effects from financial year 2013–14, the selected three PSU's were not able to present their CSR information in the prescribed format/manner during the 2013–14. We conclude that this could be due to the transitory phase/evolutionary phase of CSR in India, wherein most of the companies were coping with adoption of CSR reporting & change.
- It is observed that, during the three-year period from 2015–16 to 2017–18, NTPC Ltd. had selected to spend only on six items, viz., S-i; S-ii; S-iv; S-v; S-vii; & S-x for its CSR spending and had not spent on the remaining six items, viz., Item no. S-iii; S-vi; S-viii; S-ix; S-xi; & S-xii from the Schedule VII of the Companies Act 2013.
- In the case of IOC Ltd. it is observed that, during the three year period from 2015–16 to 2017–18, the company had selected to spend on six items, viz., S-i; S-ii; S-iv; S-v; S-vi; & S-vii for its CSR spending and had not spent on the remaining six items, viz., S-iii; S-viii; S-ix; S-xi; & S-xii from the Schedule VII of the Companies Act 2013.
- In the case of ONGC Ltd., it is observed that, during the three-year period from 2015–16 to 2017–18, the company had selected to spend on eight items, viz., S-i; S-ii; S-iii; S-iv; S-v; S-vii; S-viii; & S-x, for its CSR spending and had not spent on the remaining three items, viz., S-vi; S-ix; S-xi; & S-xii from the Schedule VII of the Companies Act 2013.
- It is observed that, as per Schedule VII, item no. S-ix—Contribution/Funds—provided to technology incubators located within academic institutions which are approved by the central governments and item no. S-xi—Slum Area Development—had not been undertaken by any of the companies under the study under their CSR program. If the companies under the study undertake then they shall be facilitating the Research & Development and scientific research temperaments among the students from such academic institution having technology incubators centers. Similarly, a new startup can also be cultivated and developed through the CSR spending by the companies.
- It is observed that the CSR projects at Indian Oil Corporation are executed either directly by the company or through the implementing agency. Similarly, the company has also formed a trust IOF—Indian oil foundation—for the purpose of protecting, preserving, and promoting the glorious heritage monuments, in collaboration with the Archaeological Survey of India (ASI) and the National Culture Fund of the Ministry of Culture, Government of India. IOF is exclusively funded by IOC with an initial corpus of ₹25 crore and an annual contribution of ₹10 crore. IOF adopts at least one heritage site in every State and Union Territory of our country under its CSR programs. This action has resulted in the conservation, preservation, and restoration of glory of the various national heritage monuments in India.

- As per Rule 4(6) of CSR Rules 2014, Companies could build CSR capacities of their own personnel as well as those of their implementing agencies through Institutions, with established track records of at least three financial years but such expenditure, including expenditure on administrative overheads should not exceed 5% of total CSR expenditure of the company in one financial year. It is observed that all the three CPSEs were unable to keep their CSR administrative overhead cost to 5% of the total CSR Expenditure. CPSEs under the study have exceeded the said norm of 5% at least once or in some cases twice during the period of study.
- It is observed that the companies have not done any kind of impact assessment studies on their CSR initiatives/Spendings. Impact assessment studies must be conducted so as to know how the society has benefited from the companies CSR initiatives of the company, and it shall also act as a guiding force for the future course of actions to be undertaken. Similarly, such reports must also find a place in either the annual report of the company or their CSR reports accordingly.
- According to the Department of Public Enterprises, office memo dated, Dec 10, 2018, the CPSEs are required to utilize their CSR funds in a focused manner toward the national priorities by adopting a theme-based approach every year. The selected theme for the year 2018–19 is School Education and Health care, and all the CPSEs are required to spent 60% of their annual CSR spendings on thematic programs and preferences of CSR spendings must also be given to the aspirational districts as identified NITI[16] Aayog. The annual theme for CSR shall be decided by the government every year, and the CPSEs shall have to plan their CSR programs accordingly. The main purpose of this action seems to channelize the CSR funds toward the national priorities for the growth and development of the country.
- It is observed that almost all the companies under the study have spent a sizable amount of sum toward an item mentioned as "others" in their overall CSR expenses. This item "others", basically does not legally comes under Schedule VII of the Companies' Act 2013. Therefore, there is a urgent need to clearly specify the exact nature of this expenditure and put it up in the relevant item of the Schedule VII of the Companies' Act 2013, instead of others.

13.13 Web Resources

i. Ministry of Corporate Affairs, Government of India. https://www.mca.gov.in
ii. National Stock Exchange, India. htps://www.nseindia.com
iii. Securities and Exchange Board of India. https://www.sebi.gov.in/sebi_data/attachdocs/1344915990072.pdf.

[16]The **NITI Aayog** is National Institution for Transforming India. It is a policy think tank that was established to achieve sustainable development goals through cooperative federalism. **NITI Aayog** was established in 2015 replacing Planning Commission of India.

iv. Public Enterprise Survey Report 2017–18. https://dpe.gov.in/public-enterprises-survey-2017-18.
v. Companies Act 2013. https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf
vi. Schedule VII of Companies Act 2003. https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf
vii. Indian Oil Corporation Ltd., https://www.iocl.com
viii. National Thermal Power Corporation Ltd., https://www.ntpc.com
ix. Oil and Natural Gas Corporation Ltd., https://www.ongc.com

References

Moharna. (2013). Corporate social responsibility: A study of selected public sector banks in India. *ISOR Journal of Business and Management, 15*(4), 01−09.

Loura, J. (2014). Corporate social responsibility—A case study of select PSU's role in rural development. *International Journal of Management and Social Sciences Research, 3*(2), 53–57.

Bansal and Rai. (2014). An analysis of corporate social responsibility expenditure in India. *Economic and Political Weekly, 49*(50), 2014.

Athma and Yarragorla. (2015). CSR guidelines: CPSE versus companies Act 2013, (A Case Study of Maharatna Companies). Retrieved from www.icaindia.info/.../Athma_-_CSR_Guidelines__CPSE_Vs_Companies.

Narwal, M., & Sharma, T. (2016). Perceptions of corporate social responsibility in India: An empirical study. *Journal of Knowledge Globalisation, 1*(1, Spring). Retrieved from https://www.researchgate.net/profile/Tejinder_Sharma/publication/255586541.

Sawant, P. D., & Patil, M. R. (2017). Corporate social responsibility performance of select manufacturing companies in India: An empirical study. *International Journal of Engineering and Management Research, 7*(4), 2018, 216–223.

Krishnan, A. (2018). Comparative analysis study on CSR expenditure in India: The case of manufacturing and service industries. *International Journal of Pure and Applied Mathematics, 118*(9), 421–443.