

## “CSR in Law and Practice in Saudi Arabia Compared with The UK Model”

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## Declaration

## Abstract

## Acknowledgments

## Chapter One

## Introduction

### 1.1 Background

In developed economies, the adoption by companies of CSR policies<sup>1</sup> is no longer a desirable extra but a necessity.<sup>2</sup> Very briefly, CSR, according to Zerk, means the 'company's responsibility to act ethically and in accordance with law, and to minimise any adverse effects of its operations on the environment, on society, or on human health'.<sup>3</sup>

CSR has, therefore, become a part of the regulatory and business debate around the world. While before CSR was regarded as an indicator of companies' goodwill towards the society, today, any cases of non-compliance with existing CSR standards are viewed as a source of risk to corporate reputation and may lead to substantial organisational losses.<sup>4</sup> Nevertheless, international corporations from different national contexts and different violations of aspects of CSR (e.g. Volkswagen,<sup>5</sup> Zara, etc.<sup>6</sup>) become regularly and repeatedly involved in CSR scandals and 'greenwashing'.<sup>7</sup>

Essentially, corporate responsibility involves 'a shift in the focus of corporate governance from profit maximisation for shareholders' to responsibility to a broader range of stakeholders.<sup>8</sup> It has become natural to perceive corporate governance as a moderator between green organisational practices and CSR reporting but, in modern times, it is more usually accepted that corporate governance is in fact a pervasive system of standards which seek to work in a holistic way, both to govern the company's internal management and to promote this, by enhancing transparency and accountability so that the company outsiders (the shareholders) are better placed to exercise control over the company's long-term direction.

The discussion of CSR has become increasingly important in the Kingdom of Saudi Arabia (KSA). There is evidence that corporations in the KSA started experiencing institutional pressures associated with the implementation of CSR practices.<sup>9</sup> This may be a little behind the situation in the UK, for example, which practices social responsibility as a strategic behaviour. For this very reason, the importance of this topic appeared to the author.

<sup>1</sup> See for example, Marks & Spencer plc, 'Sustainability Policy' available online at; < <https://corporate.marksandspencer.com/sustainability>> accessed 13 May 2020. or BOE plc, 'Corporate Social Responsibility' available online at; < <https://www.boe.com/en/about/shzr/>> accessed 13 May 2020.

<sup>2</sup> Saud Mandurah, Jamal Khatib and Saleh Al-Sabaan, 'Corporate Social Responsibility Among Saudi Arabian Firms: An Empirical Investigation' (2012) 28 Journal of Applied Business Research (JABR), 1049.

<sup>3</sup> Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge Studies in International and Comparative Law) (Cambridge University Press 2006), 299.

<sup>4</sup> He-Boong Kwon and Jooh Lee, 'Exploring The Differential Impact of Environmental Sustainability, Operational Efficiency, And Corporate Reputation On Market Valuation in High-Tech-Oriented Firms' (2019) 211 International Journal of Production Economics, 1.

<sup>5</sup> See the Volkswagen Emissions Scandal etc available online at; < <https://www.bbc.com/news/business-34324772>> accessed 13 May 2020.

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

<sup>7</sup> Larry Li and others, 'Industry-Wide Corporate Fraud: The Truth Behind the Volkswagen Scandal' (2018) 172 Journal of Cleaner Production, 3167.

<sup>8</sup> Friedman M, The Social Responsibility of Business Is to Increase Its Profits (New York Times Magazine 1970), 1.

<sup>9</sup> Nourh Altobashi, 'An Investigation of Corporate Governance Practices in Saudi Arabia Listed Companies: Adoption and Policy Challenges' (PhD thesis, University of Essex 2019 2019).

## 1.2 Preamble & Research Questions

The primary question of the doctoral study is formulated as follows:

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

Four questions arose from this question:

- What is the current status of CSR in British and Saudi literature?
- What effects do the direct laws of CSR have in Saudi Arabia and the UK?
- How do CSR practitioners evaluate the current implementation of CSR in both the UK and Saudi Arabia? What are their reasons?
- What are the proposed solutions to improve CSR in Saudi Arabia in law and practice? What is the significance of these solutions? And how can they be implemented?

## 1.3 The Importance of the research and Contribution

### 1.3.1 Contribution to Knowledge

The analysis of literature has revealed (chapter two) that there is no systematized comparison on CSR from a legal perspective between the KSA and the UK. Al-Janadi, Rahman and Oma<sup>10</sup> examined only the Saudi corporate governance mechanisms in terms of voluntary disclosure and ran a brief comparison with the British context. In their research, Al-Ghamdi and Rhodes<sup>11</sup> raised the issue of board effectiveness from the standpoint of corporate governance in Saudi listed companies, but did not build elaborated links between CSR and international and private law in both context, only providing quick examples from the UK, US and French experience. This research, by providing a direct comparison in Law and Practise, can fill this gap. This is important, especially in KSA, because it can in turn contribute to a more coherent basis on which to consider the development of laws in the KSA in the future to improve CSR practises, by reference to lessons taken from the western perspective, and examine if the UK model consider as a good driver of CSR standards worldwide including KSA.

### 1.3.2 Contribution to Theory

This doctoral study will contribute to building an interdisciplinary framework of CSR in KSA, because it will consider the impact of Islam and socio-cultural factors on CSR. Such attempts to connect Islam, socio-cultural factors and organisational CSR in the KSA were made before, but they may be characterised as rudimentary and purely theoretical reviews. Specifically, Hill, Lunn, Morrison, Mueller and Robertson<sup>12</sup> admitted simply that Islam had significantly contributed to CSR in KSA.. Similarly, the study conducted by Gelmini<sup>13</sup> focused on Islam and CSR challenges in the financial sector of the KSA, but failed to apply any cultural frameworks for a more elaborated analysis. This work will assess the impact of religio-cultral factors on CSR, and this will fill a gap in the present literature. Based on that, the author suggests in Chapter six improvements to the theory of Islamic corporate social responsibility (i-CSR), that was proposed by Muhammad Adnan Khurshid<sup>14</sup>, to make it suitable for application in Saudi Arabia.

### 1.3.3 Contribution to Methodology

This thesis is presented as a unique mixture of legal methods (i.e. functionalism and black letter analysis) and a qualitative research from 30 interviews that provides access to individual perceptions of CSR and its impact on sustainable performance in a real Saudi organisation. Previously, researchers studying CSR framework and its implications for the KSA context were

<sup>10</sup> Al-Janadi Y, Abdul Rahman R, and Haj Oma N, 'Yaseen Al-Janadi, Rashidah Abducorporate Governance Mechanisms and Voluntary Disclosure in Saudi Arabia' (2013) 4 Research Journal of Finance and Accounting, 25.

<sup>11</sup> Mohammed Al-Ghamdi and Mark Rhodes, 'Family Ownership, Corporate Governance and Performance: Evidence from Saudi Arabia' (2015) 7 International Journal of Economics and Finance, 78.

<sup>12</sup> Hill B and others, 'Saudi Arabia: An Overview of Executive Compensation, Board Structure, And Sustainability' (2015) 4 Drake Management Review, 20.

<sup>13</sup> Lorenzo Gelmini, 'Islamic Banks: Sustainability, Integrated Reporting and Religion' (2017) 1 Corporate Governance and Sustainability Review, 35-42.

<sup>14</sup> Muhammad Adnan Khurshid and others, 'Developing an Islamic Corporate Social Responsibility Model (ICSR)' (2014) 24 Competitiveness Review, 258-274.

involved predominantly in reviewing literature.<sup>15</sup> Alshareef and Kamaljeet Sandhu<sup>16</sup> went beyond this and added a qualitative analysis of interviews to their review of corporate governance structure in KSA. A case study conducted by Issa<sup>17</sup> failed to include an in-depth qualitative data analysis and a comparative scope, which is also compensated by the methodological set of this investigation.

### 1.3.4 Contribution to Practice

This thesis is expected to contribute to developing an enhanced framework of CSR regulations for Saudi companies. The target companies will benefit from the investigation into managerial and non-managerial opinions on the connection between CSR and sustainable performance. The author will provide the full text of this thesis to the middle managers in the large Saudi companies, and they will be able to use it for strategic insight and further decision-making of CSR. Expatriate managers employed by Saudi companies will benefit from a profound understanding of how Islam and socio-cultural factors have influenced the current practice of CSR in the company. Saudi companies will also benefit from the practical solutions proposed by the author in Chapter Six, such as a model for a comprehensive code of conduct fully proposed by the author, and a code for improving demographic diversity in Saudi companies is proposed. Ultimately, the long-term aim of this thesis is to share this thesis with the Ministry of Human Resources,<sup>18</sup> Ministry of Commerce<sup>19</sup> and Capital Market Authority<sup>20</sup> in the KSA, in order to create a future code of CSR. This work could be potentially significant for these reasons.

### 1.4 Aim and objectives of the research

This doctoral study aims to analyse the challenges of CSR in Law and practise in KSA and the UK and suggest the proposed solutions to improve CSR regulations and practices in KSA.

The research objectives are formulated as follows:

1. To compare some Islamic practices such as Zakat with CSR, and framing this with broad guidelines that link religious commitment with CSR.
2. To identify weaknesses and points of criticism in the UK laws in their support for CSR and testing if the UK (Western in general) experience of CSR is a good example that can be transferred to the Saudi environment.
3. To evaluate the role of internal CSR rules in supporting CSR and profitability of Saudi corporations in practise. Therefore, CSR laws will be linked to implementation, and the gap between law and practice will be identified.
4. To develop practical recommendations for how CSR can be enhanced legally and practically in the KSA in light of comparisons with the western version, given "motivation" as an example of different social, cultural and religious practices of CSR in both contexts.

<sup>15</sup> Hill B and others. (n12).

<sup>16</sup> Mohammed Naif Z Alshareef and Kamaljeet Sandhu, 'Integrating Corporate Social Responsibility (CSR) Into Corporate Governance Structure: The Effect of Board Diversity and Roles-A Case Study of Saudi Arabia' (2015) 10 International Journal of Business and Management.

<sup>17</sup> Ayman Issa, 'The Factors Influencing Corporate Social Responsibility Disclosure in The Kingdom of Saudi Arabia' (2017) 11 Australian Journal of Basic and Applied Sciences, 1.

<sup>18</sup> The Ministry of Human Resources in KSA is legally responsible for organising institutional work in applying CSR and measuring social responsibility practices and creating the necessary incentives for companies to raise the level of disclosure of their non-financial practice.

<sup>19</sup> The Ministry of Commerce is responsible in Saudi Arabia for the regulation of unlisted companies.

<sup>20</sup> The Capital Market Authority in Saudi Arabia is responsible for regulating companies listed on the stock exchange.

## 1.5 Methodology

### 1.5.1 Analytical methodologies

To assess Saudi Arabia's compliance with CSR rules and identify the challenge's that Saudi firms are facing in their CSR theoretically in laws and legislations, this thesis uses two methodologies. A) a functionalism approach based on the analysis of two markets, the Kingdom of Saudi Arabia (KSA) and the United Kingdom (UK). The purpose of this methodology is to compare the regulatory framework existing in the UK and on the international level with the laws enacted in Saudi Arabia in a functional way, it means that although the laws are different, their purpose is to reach the same result. Saudi Arabia and the UK were chosen because they take different approaches to CSR. As a result of certain critical aspects of the legal systems under study being substantially similar, a comparison is feasible between them.<sup>21</sup> B) a legal doctrinal or black letter analysis of primary sources. Legal scholarship is traditionally conducted through doctrinal methodology. A normative methodology (or "black letter"), is viewed as a method that is usually associated with legal research.<sup>22</sup> Therefore, a doctrinal approach evaluates legal sources. A doctrine-exclusive approach examines law separately. It means that a doctrine is viewed as a set of written rules and principles which can be studied and analysed by using only legal sources, while ignoring its effects and application. Through this method, Saudi regulations, if any, are analysed to identify gaps in the promotion of CSR.

#### Comparative Study (Functionalism)

Using the functional method, the thesis intends to conduct a comparative study. Historically, this concept was first developed by Konrad and Zweigert, who suggested in 1971 that functionalism is the fundamental principle of comparative law.<sup>23</sup> Functionalist approaches to the study of comparative law have been controversial ever since.<sup>24</sup> Ralf Michaels claims that "Functional Method has become a mantra as well as a *bête noire* of comparative law." He also claims that functionalism is seen by its proponents as the ultimate method for getting the best results, but by critics it is not a sound enough methodology.<sup>25</sup> Moreover, he goes on to argue that the functional method is a "chimera" when viewed from the perspective of theory and practice of comparative law. It occupies only a marginal position in theory.<sup>26</sup> While Ralf Michaels is right in his analysis that functionalism still provides a way of comparing that is not available through other methods. It means that among the various approaches to micro-comparison is functionalism, which Ralf Michaels acknowledges.<sup>27</sup> Since this thesis does not aim at macro-comparison but rather focuses on a very specific aspect of CSR regulation, functionalism seems adequate. Moreover, this research focuses on the manner firms respond to the problems of CSR which is in line with functionalism.

Although functionalists admit that there is no single functional method, they agree that functionalism is factual; it focuses on the effects of the rules, not the rules themselves. As part of a functional analysis, legal rules seek to solve social problems connected to economics.<sup>28</sup> Functionalists tend to value events more than doctrinal arguments. Usually, it analyses the decisions that are representative of real scenarios and compares the responses of different legal systems to the same type of scenario.<sup>29</sup> This is exactly the 'function' of this thesis; find a legal solution to a real-life problem. Moreover, because of the role of Islam in Saudi's society and legislation, understanding it from the perspective of its relationship to society is crucial. Indeed, compared to the Western vision of Corporate Social Responsibility (CSR), in Saudi Arabia religious concepts still dominates the motivation and understanding of CSR.

Ralf Michaels distinguishes seven different concepts of functionalism;

(1) finalism, a neo-Aristotelian functionalism based on inherent teleology, (2) adoptionism, an evolutionary functionalism in a Darwinian tradition, (3) classical (Durkheimian) functionalism, explaining institutions through their usefulness for society,

<sup>21</sup> Rafael La Porta and others, 'Law and Finance' (1998) 106 Journal of Political Economy, 1117.

<sup>22</sup> Tiller E, and Cross F, 'What Is Legal Doctrine?' [2005] SSRN Electronic Journal.

<sup>23</sup> Zweigert K, and Kötz H, *An Introduction to Comparative Law* (3rd edn, Oxford University Press, Oxford 1998), 34.

<sup>24</sup> Ralf Michaels, *The Functional Method of Comparative Law* (Oxford University Press 2006).; Richard Hyland, "Comparative Law", In Dennis Patterson (Ed), *A Companion to Philosophy of Law and Legal Theory* (Blackwell Publishers 1996), 188.

<sup>25</sup> Ralf Michaels. (n24), 340.

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*, 341.

<sup>28</sup> Mathias Siems, *Comparative Law* (2nd edn, Cambridge University Press 2018), 32.

<sup>29</sup> Ralf Michaels. (n24), 342.

(4) instrumentalism, a normative theory of using law for social engineering, (5) refined functionalism, a functionalist method that replaces certain postulates of classical functionalism with empirically testable hypotheses, (6) epistemological functionalism, an epistemology that focuses on functional relations rather than on the ontology of things, and (7) equivalence functionalism, building on these concepts but emphasizing the non-teleological, non-causal aspect of functional relations.<sup>30</sup>

Mainly, this thesis is based on classical (Durkheimian) functionalism. Its elements include; Scientific research, an understanding of society that incorporates its interconnections, the belief that society has a particular need, the belief that legislation should be based on the needs of society (not on book theory).<sup>31</sup> Due to its explicit rejection by Durkheim, equivalence functionalism<sup>32</sup> will not be relied on in the thesis, because it is incompatible with the classical approach. Nevertheless, following the classical approach does not mean the concept of functional equivalent entirely, which has a central place in functionalist comparative law, is to be rejected. Instead, it implies that functional equivalence is just a step of comparison process and not considered final.<sup>33</sup>

Traditionally, classical functionalism is based on three premises: first, legal systems encounter similar problems; second, legal systems take different legal measures to solve the same problem; third, despite diverse legal measures, legal systems achieve similar outcomes. In comparing the solutions, the comparator might find that, sometimes, a solution seems clearly superior, and at other times, the differing solutions seem to be equally valid. As a result, the definition of functionalism is flexible, since it cannot be described in a formal way. Rather than focusing on formal comparison requirements, functionalism is concerned with how foreign law operates in the relevant area.<sup>34</sup> Functional analysis, therefore, makes it possible to meaningfully compare across countries legal systems and institutions that are otherwise incompatible and unrelated.<sup>35</sup> In connection with this point, Zweigert and Kötz argue that the comparatist should sometimes look for functional equivalents outside of purely legal devices.<sup>36</sup>

Functionalism recommends studying a law's function, specifically its social purpose, when conducting comparative legal research. According to this principle, things are comparable if they serve similar purposes in law.<sup>37</sup> Whytock argues that comparative law scholars should argue that countries have similar legal systems that can address any social problems.<sup>38</sup> Zweigert and Kötz claim that the legal systems of societies face broadly similar challenges.<sup>39</sup> This assumption has been contested by a number of authors. For example, the assumption that all societies suffer from the same problems is criticised by Richard Hyland, who suggests that this assumption is an attempt to avoid determining if the societies under comparison deal with the same issues or not.<sup>40</sup> Moreover, societies may give a problem a different level of importance. Developing countries, for instance, may not be concerned about investor protection as much as developed countries.<sup>41</sup>

It can be said that a functionalist approach to comparative law can serve as a guide for the development of applied comparative law as well as a methodological guide.<sup>42</sup> It is due to the fact that functionalists suggest ways of resolving a specific problem based on circumstances and conditions.<sup>43</sup> Functionalism was chosen for these exact reasons; to look at how The UK Laws operate with regard to CSR and apply some of the solutions found in The UK regulations to Saudi Arabia if

<sup>30</sup> *ibid*, 344-345.

<sup>31</sup> *ibid*, 350.

<sup>32</sup> Equivalence functionalism focuses on the problems of adapting social systems to changes of the environment. Its goal is to organize a 'context of comparison and substitution' to find 'variation possibilities' in the sense of 'possibilities of the change, substitution and replacement' of equivalent services.

<sup>33</sup> Durkheim É, *Les Règles De La Méthode Sociologique* (5th edn, 1988), 187.

<sup>34</sup> Zweigert K, and Kötz H. (n23), 34-35.

<sup>35</sup> Giesela Ruhl, *Behavioural Analysis and Comparative Law: Improving The Empirical Foundation for Comparative Legal Research* In Hans-W. Micklitz, Anne-Lise Sibony and Fabrizio Esposito, *Research Methods in Consumer Law: A Handbook* (Edward Elgar Publishing 2018), 484.

<sup>36</sup> Zweigert K, and Kötz H. (n23), 38.

<sup>37</sup> *ibid*, 34.

<sup>38</sup> Whytock C, 'Legal Origins, Functionalism, And The Future of Comparative Law' (2009) 2009 BYU Law Review, 1879.

<sup>39</sup> Zweigert K, and Kötz H. (n23), 34.

<sup>40</sup> Richard Hyland. (n24), 188-189.

<sup>41</sup> While this point was made with regard to legal origins scholarship it can still be applied to functionalism. See: Ohnesorge J, 'Legal Origins and The Tasks of Corporate Law in Development' (2009) 2009 BYU Law Review, 1630-1631

<sup>42</sup> Zweigert K, and Kötz H. (n23), 11.

<sup>43</sup> Zweigert K, and Kötz H. (n23), 11.



possible. This thesis includes some support for the idea that functional criteria can be used as assessment criteria. Functionalism is, therefore, also used as a 'better-law comparison' or 'better solutions.'<sup>44</sup>

The 'better solution' or 'better-law comparison' within functionalism is best described by von Mehren. He argues that jurists need to know how other legal systems are dealing with specific issues to aid their imaginations and to see the positives and negatives of different approaches. In doing so, lawyers can identify innovative solutions to problems they encounter in their practice, as well as aid in the reform of the legal system.<sup>45</sup> For Zweigert and Kötz, a comparative legal science allows us to discover new ways to prevent or resolve social conflicts and provide a wider array of solutions than studying one nation's legal system, simply because different approaches to the law offer different possibilities than any one legislator could ever imagine.<sup>46</sup> This is the so called 'better solution.' For Schlesinger, foreign solutions may serve as models or guides.<sup>47</sup> Last but not least, a functionalism legal analysis can contribute to law reform, especially if it aims to address the system of law in the researcher's country.<sup>48</sup>

Some comparative legal scholars have criticised the "best solution" tendency to exaggerate the similarities between different societies.<sup>49</sup> Whitman acknowledges that functionalism is efficacious, but argues that it also draws its strength from a dubious premise: that more or less all societies view social issues in the same way.<sup>50</sup> Another criticism is voiced by Jonathan Hill who asked "on what basis are comparative lawyers qualified (or at any rate better qualified than lawyers whose studies are limited to their own country) to make evaluations of different legal systems?"<sup>51</sup> In his view, functionalists are mistaken in believing that their method allows them to make such an evaluation since it is objective. He argues, instead, that only value judgments can be used to evaluate different legal solutions. Even so, as he noted, comparatists are almost always biased by their value judgments when considering the merits and shortcomings of other legal systems.<sup>52</sup> As long as the researcher and the audience is aware of that deficiency, functionalism can still be applied. Additionally, as Whitman rightly pointed out;

Traditionally minded comparative lawyers write in ways that reflect the concerns and interests of the legal profession, while neglecting the sorts of issues that preoccupy social scientists and political leaders. Thus, they focus on topics like the different jurisprudential approaches and procedures of the common law and civil law traditions, while finding little to say about the role of the law in different socioeconomic systems. The result is that comparative law scholarship often seems out of tune with the dominant issues of the modern world. Accordingly, our first step . . . should be to shake free from our comfortable habit of addressing ourselves to the community of lawyers. Instead, we should write for a wider audience of readers concerned about contemporary differences in social and economic orientation.<sup>53</sup>

Its inherent "naturalness" and the lack of an alternative have made functionality useful for comparative law, despite its limitations. Graziadei argued that functional comparisons are constant hallmarks of everyday life, whether it is working, teaching or learning, and interacting with people from different cultures that share our worldview.<sup>54</sup> Ralf Michaels advised that comparing foreign and domestic laws enables us to better understand our own.<sup>55</sup> By using The UK law lenses, it will

<sup>44</sup> Whytock C. (n38), 1897-1906.

<sup>45</sup> Mehren A, 'The Comparative Study of Law' [1991] 67 TUL. CIV. L.F, 47.

<sup>46</sup> Zweigert K, and Kötz H. (n23), 15.

<sup>47</sup> "[W]hen a problem is viewed in the deeper perspective made possible by the comparative method, a number of alternative solutions may come into sight." See: Schlesinger R and others, *Comparative Law: Cases, Text, Materials* (5th edn, West Academic Publishing 1988), 22.

<sup>48</sup> John Henry Merryman, *The Loneliness of the Comparative Lawyer* (Kluwer Law International 1999), 486.

<sup>49</sup> Whitman J, *The Neo-Romantic Turn*, In Pierre Legrand & Roderick Munday (Eds) *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press 2003), 312-344.

<sup>50</sup> *ibid*, 313.

<sup>51</sup> HILL J, 'Comparative Law, Law Reform and Legal Theory' (1989) 9 *Oxford Journal of Legal Studies*, 102.

<sup>52</sup> HILL J. (n51), 106.

<sup>53</sup> Whitman J, 'Consumerism Versus Producerism: A Study in Comparative Law' (2007) 117 *The Yale Law Journal*, 340.

<sup>54</sup> Graziadei M, *The Functionalist Heritage*" In P Legrand And R Munday (Eds) *Comparative Legal Studies: Traditions And Transitions* (Cambridge University Press 2003), 113. ; Gémar J, *Seven Pillars For The Legal Translator: Knowledge, Know-How And Art*" In S Šarčević (Ed), *Legal Translation: Preparation For Accession To The European Union* (Faculty of Law, University of Rijeka 2001), 121-125. ; Hoecke M, *Deep Level Comparative Law*" In M Van Hoecke (Ed) *Epistemology And Methodology Of Comparative Law* (Hart Publishing 2004), 173.

<sup>55</sup> Ralf Michaels. (n24), 342

help understand better the Saudi approach to CSR. Additionally, functionalism allows to perceive the practical problems and their solutions independently from the doctrinal framework of the compared legal systems.<sup>56</sup> In the same context, Graziadei claims, even the incomparable is comparable.<sup>57</sup> This approach, therefore, allows to compare a common law jurisdiction with a civil law jurisdiction highly influenced by Islamic concepts as long as the same problems arise.<sup>58</sup>

A major criticism against the use of functionalism as a comparison method between the UK and KSA could be the influence of Islamic concepts on CSR understanding in KSA. But Considering von Mehren's viewpoint, when social, political and economic values are shared, the systems as a whole and their intellectual structures can be compared.<sup>59</sup> However, such interpretation of functionalism does not seem to be shared by everyone. For example, Zweigert and Kötz, the 'founding fathers' of the theory, argue that rules can be compared effectively if they serve the same purpose and address the same issue.<sup>60</sup> In the same vein, von Mehren stated that convergence on a functional level represents the criterion of comparability. The principles, rules, and theories of fundamentally different institutions can be compared when their purposes are comparable.<sup>61</sup>

Functionality is not only vague but also lacks a definitive definition. With regard to 'function,' we are not sure whether it refers to the results of a legal rule or its intended purpose. Using Zweigert and Kötz' definition of 'fulfilment,' this thesis defines function as the results of the application of legal rules.<sup>62</sup> The second ambiguity is that linked to the question for whom is the legal rule functional? From the texts of Zweigert and Kötz and Merryman, it seems that the functionality of the legal rules is 'measured' for the society as a whole. While the author acknowledges that a society is composed of diverse groups which have different views on the intended consequences, the views of different groups would not influence so much the research question. Indeed, the thesis will already analyse both private and public companies.

There are three stages in the functional method of comparative law: 1) the researcher describes the issue in terms of its function without applying his own legal framework; 2) a rigorous analytical process that allows objective comparisons across legal systems; 3) the researcher should compare and evaluate the previous analysis from a purely functional perspective. Functionalism uses a problem-based approach to frame research questions, which leaves some room for flexibility.<sup>63</sup>

Despite having fundamentally different meanings and purposes, functionalism can serve a variety of purposes - it can influence the way we understand law, but it can also serve as the common denominator of comparison, the tertium comparationis.<sup>64</sup> It can also explore similarities - the *praesumptio similitudinis*<sup>65</sup> - in order to determine the 'better law'. Functionalism can also be used to build a system or to create a unifying rule. In this thesis, functionalism serves primarily as a tertium comparatist to decide which solution is best for the research problem.

<sup>56</sup> Husa J, Comparative Law, Legal Linguistics And Methodology Of Legal Doctrine” In: M. Van Hoecke, (Ed.), Methodologies Of Legal Research. Which Kind of Method for What Kind of Discipline? (Hart 2011 2011), 221-222. As Zweigert and Kötz noted “the comparatist must eradicate the preconceptions of his native legal system”, Zweigert K, and Kötz H. (n23), 35.

<sup>57</sup> Graziadei M. (n54), 105.

<sup>58</sup> Esin Örüci and David Nelken warn that the functional approach “does not solve the issue of comparability as between a Western legal system and a religious system.” See: Örüci E, and Nelken D, Comparative Law: A Handbook (Bloomsbury Publishing 2007).

<sup>59</sup> Mehren A. (n45), 43.

<sup>60</sup> Zweigert K, and Kötz H. (n23), 34.

<sup>61</sup> Mehren A. (n45), 43.

<sup>62</sup> Indeed, they noted that “Incomparables cannot usefully be compared, and in law the only things which are comparable are those which fulfil the same function.”

<sup>63</sup> Mathias Siems. (n32)

<sup>64</sup> As opposed to popular belief, the term tertium comparationis originated during the Renaissance rather than in classical rhetoric. A distinction was made between similitudo and comparatio according to two approaches: one based on quality-quantity differentiation, while the other centered on comparison pattern. Agricola's second approach was not widely accepted, but it led to the emergence of the term tertium comparationis as an expression of comparisons in general. See for example, Lei Zhu, 'On The Origin of the Term Tertium Comparationis' (2017) 60, 2017, 35-52.

<sup>65</sup> The *praesumptio similitudinis*, namely the axiom that, once legal doctrine is stripped away, developed legal systems tend to reach similar practical results. See for example, Gerhard Dannemann, Hyland, Richard: Gifts. A Study in Comparative Law (1st edn, Oxford University Press 2009).



## Legal doctrinal analysis

The goal of legal doctrine according to Van Hoecke is to interpret texts and documents according to standard methods of interpretation..<sup>66</sup> In his view,

Legal scholars collect empirical data (statutes, cases, etc.), word hypotheses on their meaning and scope, which they test, using the classic canons of interpretation. In a next stage, they build theories...which they test and from which they derive new hypotheses... Described in this way, doctrinal legal scholarship fits perfectly with the methodology of other disciplines.<sup>67</sup>

A doctrinal research study looks at cases using legal reasoning, according to Jain. In legal studies, legally formulated propositions are analysed, organised, and categorised.<sup>68</sup> Ian Dobinson and Francis Johns viewed theoretical legal research as simply asking what the law is in a given field. It means that this approach has to do with the development and application of legal theory and doctrine. This kind of research is sometimes called theory-only research. Depending on the complexity of the situation, this could involve simple research to discover a particular statement of law, or a more in-depth analysis of the relevant legal statute.<sup>69</sup>

The aim of doctrinal law is to clarify, direct, and correct law doctrine, according to Birks.<sup>70</sup> In doctrinal legal research, practical solutions to legal problems are provided, and it is relevant to legal practice, but it is different from practical legal research in that it tries to comprehend the law, not just apply it to the problem at hand.<sup>71</sup> Taking a doctrinal approach, the author verifies current knowledge on legal issues. Therefore, it can be said that a doctrinal research facilitates a reassessment of a specific area of law and identify gaps between the current laws and societies' aspirations. So, building legal knowledge of a specific legal issue is the main goal of doctrinal legal research, which is the first step to resolving the issue. As an example, knowing how the current Saudi law fails to promote CSR in Saudi Arabia will be essential for solving the main research question, which is (How CSR Can be improved in Law and Practise in KSA in the foreseeable future?) The research issue, therefore, cannot be resolved until the gap between what Saudi law says and what it ought to say on this issue is defined.

Since the underlying research question was intended to criticize and direct legal doctrines, the doctrinal approach was deemed appropriate. Indeed, this thesis examines the shortcomings of Saudi CSR legislation by comparing it with UK laws. Section 172 of the UK Company Law, Section 54 of the Modern Slavery Act ...etc., for example, will be discussed extensively by using doctrinal analysis. On the other hand, Brownsword argues that legal doctrinal researchers tend to remain focused on primary source documents, such as legislation and cases, and avoid moving away from mainstream materials (such as "soft law" regulations like codes of practice).<sup>72</sup> However, it does not discredit that the legal doctrinal method is still considered one of the best ways of analysing soft laws, such as corporate governance.

Unlike other methodologies, doctrinal methodology focuses on the law itself. In pure doctrinal view, the law is not addressed in terms of its effects or application, but it is seen as a collection of principles which can be discerned and analysed at the sole consideration of legal sources. Critics have often pointed out that doctrinal does not question or challenge the law's application, and thus is out of touch with reality. To this end, the researcher tried to overcome this problem by using an empirical methodology - qualitative interviews with 30 social responsibility practitioners in both the UK and KSA. The empirical work is discussed further in the following section.

<sup>66</sup> M. Van Hoecke. (n56), 4.

<sup>67</sup> *ibid*, 11.

<sup>68</sup> Jain S, Doctrinal and Non-Doctrinal Legal Research," In: K. Verma & M. Afzal Wani (Eds), Legal Research and Methodology (Indian Law Institute 2006), 68.

<sup>69</sup> Dobinson I, and Johns F, Qualitative Legal Research", In Michael Mcconville & Wing Hong Chui (Eds) Research Methods for Law (Edinburgh University Press 2007), 18-19.

<sup>70</sup> P. Birks P, P. Birks, "Editor's Preface". In: Birks, P (Ed), What Are Law Schools for? (OUP 1996), ix.

<sup>71</sup> Siems M, and S  thigh D, 'MAPPING LEGAL RESEARCH' (2012) 71 The Cambridge Law Journal, 654.

<sup>72</sup> R Brownsword, 'An Introduction to Legal Research' (2006) available at < <https://fr.scribd.com/document/14260230/An-Introduction-to-Legal-Research> > (last visited 5 January 2020), 4.

There are not enough CSR laws in Saudi Arabia for this analysis to be comprehensive, so other models such as Chinese, Indian and Indonesian laws have been discussed very briefly. These jurisdictions have been selected in order to enrich the discussion, especially since each country has different applications of CSR, and this may provide useful information when discussing solutions (which is the answer to the underlying research question) later in the thesis.

## 1.5.2 Empirical Methodology

### Qualitative interviews (30 Interviews)

Qualitative research is concerned with collecting, analysing, and interpreting non-numerical information. It can be used to gain a better understanding of how people perceive and interpret reality subjectively.<sup>73</sup> It includes the analysis of qualitative phenomena, including their variety of manifestations and contexts and perspectives within which they may appear, but excludes aspects such as their range, frequency, and place in a chain of causes and effects that is objectively determined. As a practical matter, qualitative research typically consists of words rather than numbers.<sup>74</sup> The aim of qualitative research is to describe, investigate, and explain the phenomenon under study. Common questions of qualitative research include: What is its nature? How does it work? What results can it achieve?<sup>75</sup>

Several benefits of qualitative methods include their ability to examine processes effectively, to consider context factors, to examine symbolic dimensions, and to generate empirically supported ideas that can be applied to practice.<sup>76</sup> Qualitative research methods (interpretation) are used to view experiences holistically within specific contexts, according to some. Dennisen and Lincoln, for instance, pointed out that qualitative research is an interpretive method, therefore, it can be used in interdisciplinary research. Furthermore, qualitative research has developed human knowledge through the use of interpretative methods.<sup>77</sup>

To this end, a 30 series of interviews were being carried out. The interviewees are mainly professionals, managers and working with the management of CSR within the 20 Saudi sector, and 10 UK sectors. This number of participants was chosen precisely because their information became repetitive, signalling saturation in the interviews. It is the saturation criterion that Glaser and Strauss used in their original grounded theory to decide when to stop sampling distinct groups within each category. Saturation means that there have been no additional findings to aid in developing the properties of the category. The author observed similar data over and over again which meant a category is saturated. The author tried to find groups with data diversity that is as wide as possible, so that he can make sure the study is saturated with information from as many sources as possible.<sup>78</sup>

The author got first the ethical approval from the University of Sheffield.<sup>79</sup> An interview was designed around a set of semi-structured questions designed to provide an opportunity for discussion on a number of issues relevant to the study.<sup>80</sup> A semi-structured interview was the best choice for the author, since it laid out logically which topics or questions should be discussed during the interview.<sup>81</sup> It means that by using a semi-structured questions, the author was able to explore more information in a systematic way, and the interviews were kept on track.<sup>82</sup>

<sup>73</sup> Kamal Mahamed Zeed, 'The Difference Between Quantitative and Qualitative Research Studies' (2015) 1 The Journal of Middle East and North Africa Sciences, 7-9.

<sup>74</sup> Loraine Busetto, Wolfgang Wick and Christoph Gumbinger, 'How to Use and Assess Qualitative Research Methods' (2020) 2 Neurological Research and Practice.

<sup>75</sup> J. Ploeg, 'Identifying The Best Research Design to Fit the Question. Part 2: Qualitative Designs' (1999) 2 Evidence-Based Nursing, 36-37.

<sup>76</sup> Alan Bryman and others, 'Qualitative Research and The Study of Leadership' (1988) 41 Human Relations, 13-29.

<sup>77</sup> Denzin, N. K., & Lincoln, Y. S. (2002). The qualitative inquiry reader. London: Sage Publications.

<sup>78</sup> Barney G. Glaser, Anselm L. Strauss and Elizabeth Strutzel, 'The Discovery of Grounded Theory; Strategies for Qualitative Research' (1968) 17 Nursing Research, 364.

<sup>79</sup> See the appendices.

<sup>80</sup> See the appendices.

<sup>81</sup> Barbara DiCicco-Bloom and Benjamin F Crabtree, 'The Qualitative Research Interview' (2006) 40 Medical Education, 14-21.

<sup>82</sup> ibid.

An hour was allotted for each interview. DiCicco-Bloom B and Crabtree BF argue that semi-structured interviews should extend from 30 minutes to no more than an hour.<sup>83</sup> The interviews conducted in both English and Arabic (20 in Arabic and 10 in English). Recording of interviews was done with the consent of the interviewees, and then the transcriptions were done. Since qualitative research is primarily concerned with interpreting meaning, language differences can affect understanding and interpretation at different stages. The translation process can resemble the game of whispering children play if translation issues are not properly addressed. The participants can whisper quietly to each other during the game. A message is whispered by the first player to his neighbour and is passed on to the end of the line by the second. The final message of a successful game differs dramatically from the first one.<sup>84</sup> To this end, the most interviews were translated from Arabic into English by the author and then reviewed by a professional translator to ensure that the translation was correct and the slang was translated correctly. The goal of translation was to share the findings with supervisors.

Usually the first coding coincides with the data since the most of participants and the main researcher speak the same language when collecting data, transcribing, and analysing it. The fragile nature of the interpretation process has led to the discussion of multiple interpretations of the same words, since even the meanings of these words are not fully clear in the source language. To this end, the best English wording is achieved by explaining the first English interpretations and understanding subtle meaning differences.<sup>85</sup> This is exactly what author tried to do. Where she used professional translator to reach the best English wording by determining any difference in translation that may change the meaning.

To the best analysis of this study, the author has chosen a thematic analysis. A Thematic analysis is a method for identifying patterns in qualitative data and analysing them using data sets.<sup>86</sup> Thematic analysis can be applied to have distinct purposes and outcomes, depending on the research paradigm. Thematic analysis can be used to gather insight into the external reality by focusing on a person's meanings and experiences. This analysis helps build conjectural knowledge about reality. It enables the researcher to construct knowledge using interactions between the researcher and participants, revealing the socially constructed meanings embedded within the individual experiences.<sup>87</sup> The author identified 'patterns of interrelationship between many categories'.<sup>88</sup> The study seeks to understand how CSR professionals perceive the existing rules and how they execute them in practice. It was interesting to analyse their vision and understanding of CSR. The interviewees were questioned about the extent of the company's commitment to CSR but also the elaboration of its own rules of conduct and challenges the company is facing, especially with regard to environmental preservation and company's profit. To this end, interpreting complex thoughts and concepts requires a nuanced approach.

Because of a thematic analysis is a middle ground between the two poles, this analysis was chosen by the author. In thematic analysis, certain features of the data are reinterpreted, reinterpreted, and/or connected. With thematic analysis, it is easier for the author to classify and label data than just by using tools. The author has used thematic analysis to develop organisational and classification labels to describe data, in addition to interpreting and transforming the data. Unlike grounded theory, thematic analysis does not focus on interpreting or transforming data to develop theory, despite this, thematic analysis is not solely descriptive. In a sense, it occupies a middle ground between the two poles because it goes beyond mere description and categorization, but doesn't go so far that it forms theories.<sup>89</sup>

- A) By reading through the data repeatedly, Braun and Clarke suggest that the first step in thematic analysis is to become familiar with the entire data set.<sup>90</sup> Before jumping into the coding and theme search right away, the author got familiar with the entire data set provides a valuable context for all subsequent steps and it gave her an idea of how

<sup>83</sup> *ibid.*

<sup>84</sup> Fenna van Nes and others, 'Language Differences in Qualitative Research: Is Meaning Lost in Translation?' (2010) 7 *European Journal of Ageing*, 313-316.

<sup>85</sup> *ibid.*

<sup>86</sup> Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology*, 77-101.

<sup>87</sup> Thematic Analysis. In: Cooper H, Editor. *APA Handbook of Research Methods in Psychology (Research designs)* Washington (DC): American Psychological Association (2012).

<sup>88</sup> Alan Bryman and others, 'The Long Interview.' (1990) 19 *Contemporary Sociology*, 16.

<sup>89</sup> Michelle E. Kiger and Lara Varpio, 'Thematic Analysis of Qualitative Data: AMEE Guide No. 131' (2020) 42 *Medical Teacher*, 849.

<sup>90</sup> Barbara DiCicco-Bloom and Benjamin F Crabtree. (n81).

the data is structured. The author has also used voice-recognition software to facilitate checking the transcript against the original recordings.

- B) Data was sorted specifically and granularly by creating initial codes as part of the process. The author began taking notes as he became familiar with the data and began to establish connections between the items. A code is described by Boyatzis as the numerical component of raw data that can be analyzed with reference to a phenomenon that the data describes.<sup>91</sup> The author made sure that the use of each code, such that it did not conflict with the use of other codes, and that it fitted logically into the larger framework that outlined the codes that was be used. Coding frameworks, that the author has used, reflected the deductive data.
- C) Analysing coding and collation of data extracts reveals broader themes. Braun and Clarke suggest that taking the author's entire analysis as a house, the codes and themes will represent the bricks and tiles, while the themes will represent the walls and roof. The entire process of construction is an interactive and interpretive process to identify the theme.<sup>92</sup> Developing themes rather than relying solely on data required analyzing, combining, comparing, and mapping the relationships between codes graphically.<sup>93</sup> Accordingly, the author derived themes directly from the coded data, so that the identified themes were more closely related to the original data and more representative of the entire dataset. The author examined the coding within each theme to make sure the data matched. Her first question after reviewing all codes and extracts for each theme was: Are there sufficient supporting materials for each theme? Do the data included correspond to the theme? Are there any themes that can be combined? To better capture data coding, the automated extraction of data and theme reorganization were undertaken.
- D) In a narrative description, the author presented a theme map and explained why each theme is important to the study question. Each theme has been reviewed for succinctness and descriptively. All themes have been deconstructed into their most important aspects and the factors of the data set that they are relevant to, establishing a coherent narrative of what each theme is about and why it is important.<sup>94</sup> In the previous steps, the author noted and described themes and chose representative data extractions as part of the writing process. In the final step, the results and analysis were presented in a summary, and submitted to supervisors.

It is considered a flexibility a disadvantage of thematic analysis. Thus, thematic analysis is often perceived as being indiscriminate in its application.<sup>95</sup> Moreover, given the flexibility of this method, it was challenging for the author to select which aspects of the data to analyse or which theoretical or epistemological framework to apply. The terminology used often varies from methodology to methodology and is less well defined than the methodologies with more flexible and well-defined frameworks. Therefore, manuscripts claiming to use thematic analysis maybe difficult to evaluate due to their vagueness.<sup>96</sup>

## 1.6 The scope of the research

This thesis mainly focuses on the legal system and practices of CSR in the Saudi context in particular. So the main scope is not on the UK. However, using comparative functionalism and analysis, the author devoted two background chapters to reviewing:

First, presenting selective laws from the UK related to CSR. The environmental system was chosen first, because of the environmental problems are almost universally similar. Therefore, the presentation and discussion of this British system may be useful in improving its Saudi Counterpart, note that this thesis does not focus on environmental law specifically, but rather on the comprehensive practice of CSR in Saudi Arabia (challenges and solutions). The author also touched on the social and political objectives of corporate social responsibility in the UK, and the position of the European Union Commission: from 2001 to 2021. A discussion of this is useful for researching the social and fundamental driver of social responsibility laws in the United Kingdom and its later functional comparison with the Saudi context. Then the author discussed in detail The Companies Act 2006, The UK 2015 Modern Slavery Act, so that he touched on the defects of the two systems in order to avoid them when transferring such laws to Saudi Arabia in the future. The author also very briefly touched upon, the consumer protection and competition laws, criminal liability of the company and he Bribery Act 2010, in order to point out to future researchers the importance of these laws to discuss and compare them functionally later. Finally, the author

<sup>91</sup> 'Transforming Qualitative Information: Thematic Analysis and Code Development.' (Psycnet.apa.org, 1998)  
<<https://psycnet.apa.org/record/1998-08155-000>> accessed 2 April 2022.

<sup>92</sup> Virginia Braun and Victoria Clarke. (n86).

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*

<sup>95</sup> *ibid.*

<sup>96</sup> Michelle E. Kiger and Lara Varpio. (n89).

discussed The UK CSR agenda in the post-Covid time because the author has been witnessed to this epidemic during her Ph.D. Therefore, she found it important to mention how British CSR laws dealt with this health crisis and what this means, and how this will develop CSR laws in the UK in the future. Note that the thesis does not aim to improve CSR in the UK, but rather presents the defects of the British application of CSR for Saudi Arabia to benefit from.

Second, the author devoted an entire chapter to focus on a summary of CSR in the main contextual scope of the research, which is Saudi Arabia, where she first discusses A. Comparative Analysis: Jurisdictions Where Legislative CSR has been Pursued and Overview: CSR in the Middle East and North Africa. The author found that the beginning of the discussion should be broader to include all the regions surrounding Saudi Arabia. Subsequently, the author focused on placing CSR in Saudi Arabia in particular in three sections. Overview: CSR in Saudi Arabia, Challenges to the Adoption of CSR in Saudi Arabia and CSR: Saudi Arabia and International Law. This is a theoretical analysis of the problems facing the Saudi implementation of CSR. Then the author dealt with Overcoming Challenges to the Adoption of CSR in Saudi Arabia, A Path Towards the Legal Embrace of CSR, and CSR Legislation in Saudi Arabia: 'Mandating' Certain Types of CSR Activities, which are initial theoretical solutions to improve CSR in Saudi Arabia. Finally, the author mentioned applied models of CSR (case studies) such as Chinese, Indian and Indonesian law, in order to enrich the discussion, especially since each country has a different application of CSR, and this may be useful when discussing solutions (which is the answer to the basic research question) later in the thesis.

The author's contribution is in the next two chapters, which present, analyse and compare thirty interviews with CSR practitioners in both Saudi Arabia and the UK and then hypothesise solutions to improve CSR in the Saudi jurisdiction.

First, the author presents the results, analyses them by stating the basis of these results, compares them between the two contexts (British and Saudi), then states the reasons for this difference, and finally discusses the problems facing the Saudi context due to the current application of CSR.

Second, after a comprehensive analysis of the current application of CSR in Saudi Arabia and its comparison with the British situation (according to 30 interviews), five recommendations are proposed in order to answer the main thesis question: How can Saudi CSR be promoted in regulations and practices?

## Chapter Two

### Literature Review

#### 2.1 Introduction

Corporate social responsibility (CSR) is a worldwide practice that has become well known. At the same time, as Jeremy Moon pointed out, since it overlaps with other definitions, CSR is a hard concept to identified. Increasingly, the theoretic and practical perspectives of CSR are being explored.<sup>97 98</sup> Since its emergence in the late 1980s, CSR has rapidly gained importance. According to The Economist, CSR is now a thriving industry with dedicated staff, "newsletters, professional associations, and armies of consultants".<sup>99</sup>

The research question of this chapter is what the current situation of CSR in law and practices in the UK and Saudi literature? The aim of this chapter is threefold. First, it summarizes the history of CSR, then analyse critically the definitions of CSR. The review of such debate allows the author to clearly state the definition of CSR used in this thesis and explain why the others have been discarded. Second, this chapter provides an overview of the legal framework for CSR at the level in the UK and Saudi Arabia, which defines the essence of the thesis. This review helps in developing understanding about the difference and similarities between CSR policies in the UK and Saudi Arabia, and to what extent they promote CSR. Finally, this chapter critically reviews the problems of the existing literature on CSR practices in Saudi Arabia and how the problems can be resolved. This review helps this thesis to avoid the limitations of the previous literature, and summarizing the solutions is

<sup>97</sup> Moon J, 'Government as A Driver of Corporate Social Responsibility' [2004] International Centre for Corporate Social Responsibility (ICCSR), Research paper Series. No. 20.

<sup>98</sup> For instance, Renginee Pillay and Paddy Ireland.

<sup>99</sup> Ireland P, and Pillay R, Corporate Social Responsibility in A Neoliberal Age in Peter Utting & Jose Carlos Marques (Eds) (Corporate Social Responsibility and Regulatory Governance UNRISD 2010), 86.



a practical mechanism for the author to fill the large gap in the current Saudi literature on linking law to CSR, especially in supply chains.

This chapter demonstrates that measures at international level have so far only been soft law instruments. The lack of an international 'hard law' instrument can partially be explained by the lack of a uniform definition and understanding on this concept. At the UK level, the applicable provisions have been criticized for lacking of enforcement. It also demonstrates that the understanding by Saudi's scholars of CSR and lacks of CSR policies, especially in supply chains, are not in line with the international framework, which results in a failure to promote CSR as expected at the international level. Therefore, there is a gap in understanding the most effective strategies and policies of CSR that can promote CSR in supply chains in Saudi Arabia, and therefore, this review will provide an evidence-based understanding of the problem.

## 2.2 History of CSR

Corporate donations for social causes have a long history, and philanthropists and companies have made a considerable impact on society. The term was first used in 1953 by Howard Bowen, who coined the term in his publication *Social Responsibilities of the Businessman*,<sup>100</sup> and he is called the father of CSR in the world. This section explores the brief history of CSR, this is important because of two reasons: First, the historical review of CSR in the literature is missing in relation to linking the development of the concept together with the behavior of the company.<sup>101</sup> Second, by exploring its roots throughout history, it becomes possible to adopt a historical concept of CSR for use in Saudi firms if possible. This is because the historical concept of CSR has been tested, along with its effects, purposes, and problems. Accordingly, this definition is based on historical data that is the most important evidence in the quest to figure out how companies and societies have used the concept of CSR in the past. In other words, historical definitions of CSR are taken from historical data, and can be used as the only comprehensive evidence base for thinking and analysing how companies operated in societies in the past with CSR, in order to benefit from this knowledge in the future of Saudi Arabia.

### 2.2.1 CSR prior to 1970s

After World War II, CSR emerged as an anti-communist idea.<sup>102</sup> For example: prior to the 1950s, J.M. Clark's business social control was considered an effective tool for CSR in the United States of America.<sup>103</sup> From the middle to the end of the nineteenth century, most of the companies' interests, especially the startups, were with their employees, and the monitoring organizations did not show whether the goal of the companies at the time was to increase the production of their employees for purely commercial purposes, or it was for humanitarian goals with the growth of the "industrial welfare movement."<sup>104</sup> For example, British factories were in a position miserable, especially with regard to the employment of women and children, and when the industrial welfare movement emerged, what did the industrial companies gain? was a kind of commercial profit under the cover of charitable works.<sup>106</sup>

<sup>100</sup> Gerald J. Schnepf and Howard R. Bowen, 'Social Responsibilities of the Businessman' (1954) 15 *The American Catholic Sociological Review*, 42.

<sup>101</sup> See generally: Mauricio Andrés Latapí Agudelo, Lára Jóhannsdóttir and Brynhildur Davíðsdóttir, 'A Literature Review of the History and Evolution of Corporate Social Responsibility' (2019) 4 *International Journal of Corporate Social Responsibility*.

<sup>102</sup> See generally: Nicholas N. Eberstadt, 'What History Tells Us About Corporate Responsibility' (*EconBiz*, 1977) <<https://www.econbiz.de/Record/what-history-tells-us-about-corporate-responsability-eberstadt-nicholas/10002093979>> accessed 25 January 2022.

<sup>103</sup> See for example: Robert Kramer, 'Book Review: The Social Control of Business. John Maurice Clark' (1926) 4 *University Journal of Business*, 1, 307.

<sup>104</sup> See for example: Smriti Chand, 'Welfare Work Movement for Factory Workers in The 19Th and Early 20Th Centuries' (*Your Article Library*) <<https://www.yourarticlelibrary.com/human-resources/the-welfare-work-movement-for-factory-workers-in-the-19th-and-early-20th-centuries/2414>> accessed 25 January 2022.

<sup>105</sup> Archie B Carroll, 'A History of Corporate Social Responsibility: Concepts and Practices' (*ResearchGate*, 2008) <[https://www.researchgate.net/publication/282746355\\_A\\_History\\_of\\_Corporate\\_Social\\_Responsibility\\_Concepts\\_and\\_Practices](https://www.researchgate.net/publication/282746355_A_History_of_Corporate_Social_Responsibility_Concepts_and_Practices)> accessed 25 January 2022.

<sup>106</sup> See generally: Ni Made Suci, 'THE EVOLUTION OF MANAGEMENT THOUGHT Oleh Daniel A. Wren Dan Arthur G. Bedeian (SUATU KAJIAN KRITIS)' (2019) 1 *Prospek: Jurnal Manajemen dan Bisnis*, 7.

There is no dispute that the procedures of companies in 1950s were very easy despite the growing social concern about the behavior of companies, especially the procedures for monitoring the social behavior of the company or what is known as the common value.<sup>107</sup> Interestingly, the situation has changed dramatically when Howard Bowen published his landmark book, "The Social Responsibilities of the Businessman" in 1953.<sup>108</sup> Although there is no evidence of improvement in CSR practices in the fifties, Bowen suggested suggestions that he saw as advanced at the time, for example, he proposed a structural change in boards of directors to reflect social attitudes as a result of their decisions, and he suggested social audit as a means of measuring corporate social performance.<sup>109</sup>

In the 1960s Keith Davis was the first to link CSR as a corporate action and management context, and also argued that socially responsible business would be profitable for companies in the long-term.<sup>110</sup> William C. Frederick was also one of the influential at that time, especially as he saw that CSR is basically the final outcome of a general social purpose that is not limited to any individual or company.<sup>111</sup>

Given that CSR has grown widely across the global community over the last few decades through the activities of both professionals and researchers. A new CSR institutional infrastructure seems to have arisen.<sup>112</sup> A variety of international attempts has been made since the 1970s to introduce detailed legally binding documents governing corporate activity. These attempts have resulted in a number of instruments addressing CSR, predominately soft law instruments.<sup>113</sup> For example, Morrell Heald's path-breaking book, "The Social Responsibilities of Business: Company and Community", was published in 1960s, and although it does not provide any new definition of CSR, it seems that he views it from the perspective of businessmen, given that they tested it themselves and they should put in place the appropriate mechanism for CSR.<sup>114</sup>

Johnson developed the so-called conventional wisdom of CSR, which is the balance between all the interests of stakeholders, including employees.<sup>115</sup> Johnson is considered one of the most prominent pioneers in the creation and development of "stakeholder theory", and one of its strongest supporters.<sup>116</sup>

Education development, pollution control, support for minorities were the most prominent issues of CSR by the end of 1970s.<sup>117</sup> Interestingly, Carroll argued that CSR, including its ethics and care for society, is primarily an economic responsibility, as once the company continues to work and earns profits, it contributes to the growth and welfare of society.<sup>118</sup>

<sup>107</sup> Archie B Carroll, 'A History of Corporate Social Responsibility: Concepts and Practices' (*ResearchGate*, 2008) <[https://www.researchgate.net/publication/282746355\\_A\\_History\\_of\\_Corporate\\_Social\\_Responsibility\\_Concepts\\_and\\_Practices](https://www.researchgate.net/publication/282746355_A_History_of_Corporate_Social_Responsibility_Concepts_and_Practices)> accessed 25 January 2022.

<sup>108</sup> Olga Sz., 'Corporate Social Responsibility and Sustainability – An Indispensable Deal-Breaker?' (*Olga's PR Thoughts*, 2016) <<https://olgasprthoughts.wordpress.com/2016/03/21/727/>> accessed 25 January 2022.

<sup>109</sup> See for example: Harwood F Merrill, *The Responsibilities of Business Leadership* (Harvard University Press 1948).

<sup>110</sup> See for example: Keith Davis, *Human Relations at Work* (McGraw-Hill 1967).

<sup>111</sup> See generally: William C Frederick, Keith Davis and James E Post, *Business and Society* (McGraw-Hill 1992).

<sup>112</sup> Waddock S, 'Building A New Institutional Infrastructure for Corporate Responsibility' (2008) 22 *Academy of Management Perspectives*, 87.

<sup>113</sup> Cragg B, 'Home Is Where the Halt Is: Mandating Corporate Social Responsibility Through Home State Regulation and Social Disclosure' (2010) 24 *Emory International Law Review*, 735-744.

<sup>114</sup> See generally: Morrell Heald, *Company and Community: The Responsibilities of Business in Society* ([Place of publication not identified] 1967).

<sup>115</sup> See generally: Harold L Johnson and Harold L Johnson, *Business in Contemporary Society* (1971).

<sup>116</sup> Archie B Carroll, 'A History of Corporate Social Responsibility: Concepts and Practices' (*ResearchGate*, 2008) <[https://www.researchgate.net/publication/282746355\\_A\\_History\\_of\\_Corporate\\_Social\\_Responsibility\\_Concepts\\_and\\_Practices](https://www.researchgate.net/publication/282746355_A_History_of_Corporate_Social_Responsibility_Concepts_and_Practices)> accessed 25 January 2022.

<sup>117</sup> See for example: Sandra L. Holmes, 'Executive Perceptions of Corporate Social Responsibility' (*Econpapers.repec.org*, 1978) <<https://econpapers.repec.org/RePEc:eee:bushor:v:19:y:1976:i:3:p:34-40>> accessed 25 January 2022.

<sup>118</sup> See generally: Archie B. Carroll, 'Corporate Social Responsibility (CSR) Is On A Sustainable Trajectory' (2015) 05 *Journal of Defense Management*.

### 2.2.2 CSR after 1970s

In the 1980s, the idea of obligating CSR was first proposed, and if it was seen as a voluntary commitment, it was discussed as a commitment not only towards shareholders, but even towards employees, suppliers, customers and others. CSR has become discussed as a routine process for the company and not the sum of the results of a business,<sup>119</sup> and this contradicts with the social performance model,<sup>120</sup> although the hierarchy of CSR was a springboard for discussions and suggestions for the development of concepts and practices of CSR.<sup>121</sup>

In the 1990s, philanthropy around the world fueled the concept of CSR, this greatly enhanced the stakeholder theory.<sup>122</sup> For example, McDonald's<sup>123</sup> company expanded greatly in that period because of its social practices. On the other hand, "business ethics"<sup>124</sup> was a common practice as an institutional work within CSR, and it was viewed as a commitment tool, especially with regard to supply chains rather than mere charitable initiatives.

2000s was a starting point for empirical research conducted in this century that links CSR with a number of factors. For example, the positive relationship between social performance and the attractiveness of the employer was discovered.<sup>125</sup> This did not contradict the another result is that the accidents negatively influence the company's reputation.<sup>126</sup> Hence, the "business case" for CSR appeared,<sup>127</sup> while it was from the point of view of business owners an economic necessity<sup>128</sup> the social institutions have argued that CSR should be a mandatory act of the company regardless of any profits or losses as a result.<sup>129</sup>

Integrating CSR with corporate systems in the EU and US was a necessity due to the spread of social unrest in the 1980s and 1990s,<sup>130</sup> and some have argued that increased social reporting is a clear example of the realization by Western society, particularly in the US and the UK, of the importance of institutionalizing CSR.<sup>131</sup> Despite this realization, many have questioned the success of CSR in the short and medium term. They stressed that the only proof of the development and improvement of CSR must be based on companies publishing their work in CSR, especially influential companies.<sup>132</sup>

<sup>119</sup> Thomas M. Jones, 'Corporate Social Responsibility Revisited, Redefined' (1980) 22 California Management Review, 59-67.

<sup>120</sup> See for example: Marjo Elisa Siltaoja, 'Revising The Corporate Social Performance Model - Towards Knowledge Creation for Sustainable Development' (2013) 23 Business Strategy and the Environment, 289-302.

<sup>121</sup> See for example: Patty Bick and others, 'Corporate Social Responsibility and ASC 820 Hierarchy: Evidence from Responsible CSR Activities' (2015) 8 International Journal of Revenue Management, 299.

<sup>122</sup> See for example: Jeff Frooman, 'Stakeholder Influence Strategies' (1999) 24 The Academy of Management Review, 191.

<sup>123</sup> McDonald's is an American fast food company, founded in 1940 as a restaurant operated by Richard and Maurice McDonald, in San Bernardino, California, United States.

<sup>124</sup> See for example: Jane Collier, 'FOCUS: Research in Business Ethics Business Ethics Research: Shaping The Agenda' (1995) 4 Business Ethics: A European Review, 6-12.

<sup>125</sup> Kristin B. Backhaus, Brett A. Stone and Karl Heiner, 'Exploring the Relationship Between Corporate Social Performance and Employer Attractiveness' (2002) 41 Business & Society, 292-318.

<sup>126</sup> Stelios C. Zyglidopoulos, 'The Impact of Accidents On Firms' Reputation for Social Performance' (2001) 40 Business & Society, 416-441.

<sup>127</sup> Michael Hopkins, 'The Business Case for CSR: Where Are We?' (2003) 5 International Journal of Business Performance Management, 125.

<sup>128</sup> See for example: LAURA J. SPENCE, 'CSR and Small Business in A European Policy Context: The Five "C"'S of CSR and Small Business Research Agenda 2007' (2007) 112 Business and Society Review, 533-552.

<sup>129</sup> See generally: Waris Ali and Jędrzej George Frynas, 'The Role of Normative CSR-Promoting Institutions in Stimulating CSR Disclosures in Developing Countries' (2017) 25 Corporate Social Responsibility and Environmental Management, 373-390.

<sup>130</sup> Dirk Matten and Jeremy Moon, '"Implicit" And "Explicit" CSR: A Conceptual Framework for A Comparative Understanding of Corporate Social Responsibility' (2008) 33 Academy of Management Review, 404-424.

<sup>131</sup> See generally: Wendy Chapple and Jeremy Moon, 'Corporate Social Responsibility (CSR) In Asia' (2005) 44 Business & Society, 415-441.

<sup>132</sup> See generally: David Vogel, The Market for Virtue (Brookings Institution, US 2006).

### 2.2.3 The historical context of international efforts to frame CSR

From 1976 to 2000 has been established two of the most influential international instruments on CSR, which is the "Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises established."<sup>133</sup> Some have argued that these guiding principles helped the business community build an environment of trust and reciprocity. However, the "should"<sup>134</sup> contained in the provisions of the principles undoubtedly cancels any binding force.<sup>135</sup> In 2000, after Kofi Annan presented the compact of the UN, he emphasized the voluntary nature of the compact by calling on business leaders to voluntarily adopt it. Cooperation between UN agencies and business actors is the result of the UN Global Compact.<sup>136</sup> CSR initiative that encourages businesses to conduct business responsibly in line with agreed upon human rights, labour, environmental and anti-corruption standards for corporate policies and practices.<sup>137</sup> 17 Sustainable Goals was one of the highlights of the Charter in this regard.<sup>138</sup> It was clear that the Global Compact was intended to be a "code of conduct" as a soft, non-binding law.<sup>139</sup> Moshkin has Saied expressly: "one reason the initiative has been so successful is the UNGC's extensive toolbox, which includes action platforms to establish partnerships and solve challenges, an online UN Business Action Hub and other resources, such as a reporting partnership with GRI, which helps businesses share information, engage in open dialogue and take action to accelerate tangible progress toward a more sustainable world".<sup>140</sup>

Remarkably, CSR measures at organizations committed to UNGC principles are much better compared to others according to a Report on the UN Global Compact Performance.<sup>141</sup> The main drawback of this instrument is the lack of any sanctions for non-compliance, which is one of the criticisms of the principles. To remedy to this failure, a mechanism enabling to exclude members who severely violated the principles was introduced.<sup>142</sup> This instrument is so far having the best results in term of influencing companies to adopt CSR principles. In 1977, one of the important international instruments was adopted (The ILO Tripartite Declaration) and it is related to the responsibility of companies for human rights (mainly including their employees and suppliers).<sup>143</sup> This declaration has been strongly criticized by some workers' organizations, who assert that it contributes to undermining the establishment of companies due to the current implementation mechanism of the periodic reports of companies.<sup>144</sup> Although some argue that the declaration effectively contributes to improving the performance of

<sup>133</sup> OECD, 'Guidelines for Multinational Enterprises'

<[http://www.oecd.org/document/28/0,3746,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html)> accessed 24 January 2020.

<sup>134</sup> *ibid*; Principle IV.

<sup>135</sup> Heather Bowman, 'UW School of Law' (Law.washington.edu, 2006)

<<https://www.law.washington.edu/winlj/issues/15/1/331/39/>> accessed 25 January 2022.

<sup>136</sup> UN Global Compact, 'Global Compact Participants,'

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

<sup>137</sup> UN Global Compact, '2010 Annual Corporate Sustainability Report'

<<https://www.unglobalcompact.org/participation/report/cop/create-and-submit/active/13668>> accessed on 24 January 2020; UN Global Compact, 'UN Global Compact Progress Report 2018' <<https://www.unglobalcompact.org/library/5637>> accessed on 24 January 2020.

<sup>138</sup> No poverty, zero hunger, quality education, decent work and economic growth, responsible consumption and production and reduced inequalities. See: UN Global Compact 2018. (n 137).

<sup>139</sup> Jennifer A. Zerk. (n 3), 259.

<sup>140</sup> Julia Moshkin, 'Why the UN Global Compact is a CSR commitment that works' (1 May 2019)

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

<sup>141</sup> Ecovadis, 'Commitment vs. Practice: A Comparison of CSR Performance of the UN Global Compact Signatories and Non-Signatories' <<https://www.ecovadis.com/library/commitment-vs-practice-comparison-csr-performance-un-global-compact-signatories-non-signatories/>> accessed on 25 March 2020.

<sup>142</sup> UN Global Compact, 'Integrity Measures No. 4', available at:

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

<sup>143</sup> ILO, 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy' (1977) ILO Doc. 28197701, OB Vol. LXI, 1978, ser. A, no. 1; ILO, 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,' (3d ed. 2001); ILO, 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy', (4th ed. 2006).

<sup>144</sup> Jernej Letnar Cernic, 'Corporate Responsibility for Human Rights: Analyzing The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' (Papers.ssrn.com, 2009) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1459548](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1459548)> accessed 25 January 2022.



multinational companies, especially with regard to human rights.<sup>145</sup> On the other hand, the United Nations discussed draft laws binding on multinational corporations through “Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with regard to human rights obligations.”<sup>146</sup> The draft Norms sought to essentially impose the same set of human rights obligations that states have under treaties ratified by them on companies.<sup>147</sup> The document was too much criticized and was never adopted.<sup>148</sup> Interestingly, in 2011, the “Guiding Principles on Business and Human Rights” have become a key milestone to guide CSR practices on both scales inside and outside the company.<sup>149 150</sup> Many see the Guiding Principles as an appropriate tool for the global economy in direct line with human rights, and some consider the Guiding Principles to be nothing but a management tool for the company to clearly express its control and power.<sup>151</sup> We must be aware that the creation of public awareness for companies is not through the imposition of laws and regulations in stark contrast to the principles of capitalism, but rather through civil society organisations.

Finally, in 2011, The European Commission has played a key role in guiding CSR practices. For example, it has advised companies to consider environmental and social concerns an integral part of corporate strategy.<sup>152</sup> The European Declaration has been criticized as providing for enforceable measures when in fact it does not, in the sense that there is no legal mechanism to compel companies to integrate the company's environmental and social concerns.<sup>153</sup>

In brief, CSR has been historically limited to generating profits; however, it now encompasses a broader range of responsibilities, with companies viewed as primarily responsible for delivering shared value. Furthermore, social expectations of how corporations should behave have also changed in relation to CSR, and for the foreseeable future, CSR will remain relevant in historical academic literature.

## 2.2 Definitions of CSR

The purpose of this section is to provide a clear and comprehensive definition and understanding about what is CSR by two ways: First, distinction between the traditional definition of CSR and the contemporary definition of stakeholder capitalism, distinction also between the concept of CSR and corporate sustainability. Second, through review the debate about the definitions of CSR. This is important to justify why the author used the term of CSR in the thesis rather than any other similar term, as well as this review explains the expansion of definitions of CSR, to give the conclusion that even with diverse concepts, interpretations of these concepts may not vary greatly.

### 2.3.1 Stakeholders Capitalism vs traditional definition of CSR

It is currently being accepted that stakeholders capitalism philosophy does not diminish the profits of a corporation but it is likely to increase them due to social and brand popularity gains. However, this is far from the established in the 1970s economic definition of CSR, most notably supported by Milton Friedman, who argued that profit is the most important objective for a corporation and this can only be restricted by two factors: law and ethics.<sup>154</sup> This definition of CSR is

<sup>145</sup> ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, (4th ed. 2006) at 2.

<sup>146</sup> UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 of 26 August 2003.

<sup>147</sup> *ibid*

<sup>148</sup> Ruggie J, The Construction of The UN "Protect, Respect and Remedy" Framework for Business and Human Rights: The True Confessions of a Principled Pragmatist (EHRLR 2011), 127.

<sup>149</sup> Ames J, 'Taking Responsibility' [2011] European Lawyer, 15.

<sup>150</sup> These principles are organized in three pillars: “the state duty to protect human rights, the corporate duty to respect human rights, and the need for access to effective remedy mechanisms when abuses occur”.

<sup>151</sup> Brigitte Hamm, 'The Struggle for Legitimacy in Business and Human Rights Regulation—A Consideration of the Processes Leading to The UN Guiding Principles and an International Treaty' [2021] Human Rights Review.

<sup>152</sup> Communication from the Commission, 'A Renewed EU Strategy for Corporate Social Responsibility,' (2011) COM (2011) 681 final, at 3.

<sup>153</sup> Nirusha Devi Keerpaul, 'An Analysis of Corporate Social Responsibility in Mauritius from A Legal Perspective' [2010] SSRN Electronic Journal.

<sup>154</sup> Milton Friedman, 'A Friedman doctrine-The Social Responsibility of Business is to Increase its Profits' (1970) New York Times Magazine, available: <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> accessed 9 January 2022.



interesting because it is consistent with the principles of agency in Islam, whereby the agent serves the interests of the principal in the first place.

The gist of Milton Friedman's definition<sup>155</sup> is that it is not possible to talk of stakeholders interests because companies are fictions, and it is their executives, who are, nonetheless, employees, who should be liable for their actions. When performing their professional duties, they are restrained only by what is acceptable to them legally and ethically as company employees.<sup>156</sup>

This is another interesting point because while Friedman's definition was largely driven by a fear of socialism, it makes a very current link to the personal responsibility of the decision-makers. Distinguishes between the social stance of the executive and what he is "permitted" to do in performing his duties.<sup>157</sup> Friedman argues that in every case when the upper-level executive engages in a cause that he considers socially responsible, he is spending other people's money for the benefit of the common good. In this case, if his policies reduce the return to shareholders, he would be wasting their money.<sup>158</sup> The sum total of such actions would, in Milton Friedman's view, amount to both imposing taxes 'and deciding how the tax proceeds shall be spent'.<sup>159</sup>

The point of the above is that appropriating the money of the company's stakeholders is unjustified because every single one of said stakeholders can decide what socially responsible causes (if any) they would like to spend their money on.<sup>160</sup> Furthermore, not only is the act of embracing stakeholders capitalism causes an act of appropriation of money and power, it is against the principle of agent and principal whereby the executive is expected to act on behalf of the owners of the company.<sup>161</sup> Friedman argues that the justification to put an executive ahead of a corporation is to serve the interests of the company's shareholders (his principal). Once the executive starts chasing a social purpose, however virtuous it may be, he deviates from the core purpose for which he had been employed and becomes a public servant rather than a servant of the company.<sup>162</sup> This becomes even more relevant once one appreciates that the resources that such socially responsible practices serve to reallocate are by definition scarce; which makes it even more crucial to ensure that their reallocation is carried fairly.<sup>163</sup>

The above arguments adopt greater force once it is considered that much of what was happening in the 1970s' CSR was of almost no consequence compared to the effect an active- corporation on stakeholder capitalism principals, may have today on the developments of a country. Suffices to recall the handling of the Covid-19 pandemic,<sup>164</sup> or any other matter that causes social controversy.<sup>165</sup> The fact that corporations are getting bigger, stronger and more impactful only reinforces the valid arguments made by Friedman. This suggests that some reflection on the effect of going too far with stakeholders capitalism policies<sup>166</sup> should not be out of order not just for company executives but also for those who push for a change; at the very least, one should question whether concentrating so much power in the hands of executives is what progressives really want to see.

Last but not least, concentrating so much power in the hands of corporate executives should bring up the question of competence – how competent such people are to solve the pressing social problems of our time and are they using the scarce

<sup>155</sup> See for example: Thomas Carson, 'Friedman's Theory of Corporate Social Responsibility' (1993) 12 Business and Professional Ethics Journal.

<sup>156</sup> Milton Friedman. (n 154).

<sup>157</sup> See for example: Johannes Jahn and Rolf Brühl, 'How Friedman's View On Individual Freedom Relates to Stakeholder Theory and Social Contract Theory' (2016) 153 Journal of Business Ethics, 41-52.

<sup>158</sup> Milton Friedman. (n 154).

<sup>159</sup> Milton Friedman. (n 154).

<sup>160</sup> Milton Friedman, *Capitalism and Freedom* (1962 University of Chicago Press).

<sup>161</sup> *ibid.*

<sup>162</sup> *ibid.*

<sup>163</sup> This point is discussed at length in the next section.

<sup>164</sup> Shira Ovide, 'How Big Tech Won the Pandemic' (2021) New York Times, available:

<https://www.nytimes.com/2021/04/30/technology/big-tech-pandemic.html> accessed 13 January 2022.

<sup>165</sup> *ibid.*

<sup>166</sup> See generally: 'Corporate Social Responsibility: Woke and Morally Broke' (*Catholic Business Journal*, 2022)

<<https://www.catholicbusinessjournal.com/news/money-and-ethics/csr-catholic-social-responsibility/corporate-social-responsibility-woke-and-morally-broke/>> accessed 18 January 2022.

resources placed at their disposal in the best possible way?<sup>167</sup> Furthermore, any action that has been taken by the management in direction of effecting social change should be questioned in terms of how much investment has been allocated to such a cause, who decides how much investment would suffice,<sup>168</sup> what would determine that the executive has gone too far in investing the money and the time of the company in the pursuance of such objectives? Considering that whatever the investment, this is a cost which the executive imposes on the company's stakeholders (shareholders, employees and customers) it is worth asking what is the appropriate share of involvement and where the involvement of other (corporations) should start.<sup>169</sup>

A not insignificant issue to consider is the effect of such actions on the future of those executive – his continuous or future employability and the degree to which he may be held to account for the actions he has taken.<sup>170</sup>

The arguments detailed above have been countered by stating that with all the weaknesses of stakeholders capitalism philosophy, this is a far faster and efficient way of effecting social change than having to wait on the slow regulatory system. Indeed, this is true. However, Friedman reminds his readers that there is no way to determine whether the ideas CEOs are trying to push forward are good for society or at least that they will have beneficial long-term consequences. Once again the problem here is with the lack of oversight over the content of the ideas that are being pushed forward. While climate change, diversity and poverty may all be good and worthy causes, the moral content is consequential, it can change depending on the faction pushing the cause. In any case, the very fact that such ideas are advanced by a monopolistic power (the large corporation) through a process invokes the language of morality and ethics and invites a moral judgment.<sup>171</sup> To this end, the one proposed by Friedman - that 'one man's good is another's evil' arguably asks us, among other things, to revisit the content of the ideas so often submitted as an unquestionable human good.<sup>172</sup>

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

Friedman's definition had been confronted with a number of counter-arguments from modern economists. For example, Marianne Bertrand, a professor at the University of Chicago suggested Friedman's argument that 'the what is good for shareholders is good for society ethos that the article represents only works when markets perform perfectly.'<sup>173</sup> Markets, however, never work perfectly, which is something Bertrand acknowledged that Friedman agreed on.<sup>174</sup> Be that as it may, it is unclear what the perfect performance of the market has to do with accepting or rejecting stakeholders capitalism approach in corporate business. If anything, any crisis in the market would by definition turn the attention of the CEO towards the problems facing the corporation rather than towards spending scarce resources in the pursuance of social causes.

The critique mounted by Milton Friedman had been rebutted in two interesting ways. First, it has been argued that it would only hold on the premise that economic and social are necessarily distinct and in any case, that social goals can be equally

<sup>167</sup> Milton Friedman (n 154).

<sup>168</sup> See generally: Olga Brezhneva-Yermolenko, 'Social Investments as A Tool for Increasing the Social Capital of the Company' (2015) 58 International Letters of Social and Humanistic Sciences, 58-67.

<sup>169</sup> Milton Friedman (n 154).

<sup>170</sup> *ibid.*

<sup>171</sup> See for example: Ruth Breeze, 'Legitimation in Corporate Discourse: Oil Corporations After Deepwater Horizon' (2012) 23 Discourse & Society, 3-18.

<sup>172</sup> Milton Friedman (n 154).

<sup>173</sup> Taylor Tepper, 'Milton Friedman On The Social Responsibility of Business, 50 Years Later' (2020) Forbes, available: <https://www.forbes.com/advisor/investing/milton-friedman-social-responsibility-of-business/> accessed 9 January 2022.

<sup>174</sup> *ibid.*

well achieved by individuals as opposed to corporations.<sup>175</sup> This can only be true in cases where the corporation in question acts in a diffused and piecemeal way, which as will be seen in the next section, has been the case in the past.<sup>176</sup>

Another interesting response, published by the New York Times in commemoration of Friedman's article came from Johnson & Johnson CEO Alex Gorsky, who noted that his company had never put shareholders first but had 'prioritised "patients, doctors and nurses, mothers and fathers and others who use our products and services" and then "our customers and business partners, our employees and our communities"'.<sup>177</sup> If true, this is concerning, for Johnson & Johnson shareholders at least, particularly in light of the shareholders' primacy model, which has been dominant on the West market for decades (and still is, to a big extent). However, the fact that Mr. Gorsky feels emboldened to state what he did is a manifestation of how much has changed in corporate culture and how detached corporate executives have become from the responsibilities traditionally weighing over them.

His statements should be seen in the context of the \$2 Billion Baby Powder Lawsuit against Johnson & Johnson which was won by 22 women who had developed ovarian cancer 'linked to the company's talcum powder'.<sup>178</sup> Importantly, the presiding judge ruled that the company 'had "misrepresented the safety of these products for decades" and the evidence shown at the trial demonstrated "particularly reprehensible conduct on the part of Defendants."'<sup>179</sup> New York Times reported that 'more than 9,000 women had so far been named as plaintiffs in lawsuits against the company'.<sup>180</sup> This comes on the heels of a bad track record in safety, most notably starting in 1982 with the death of 7 customers 'who took extra-strength Tylenol capsules laced with cyanide'.<sup>181</sup>

The overall effect of the above was that Johnson & Johnson hit a very rough financial spot, which was only barely alleviated by the vaccine against Covid-19, produced in 2021, particularly considering that the latter had its share fair of issues,<sup>182</sup> including that it 'has been linked to deadly side effects'.<sup>183</sup> Curiously, the company's CEO's statement was to the effect that patients are at the core of the company's attention (as opposed to its shareholders); however, it appears that the firm has traditionally been negligent with respect to patients it serves. Last but not least, very recently the CEO in question, who was famous for being the second-highest paid CEO in healthcare,<sup>184</sup> had actually left Johnson & Johnson in order to become a member of the Board of Directors in Apple.<sup>185</sup>

<sup>175</sup> Michael E. Porter and Mark R. Kramer, 'The Competitive Advantage of Corporate Philanthropy' (2002) Harvard Business Review, available: <https://hbr.org/2002/12/the-competitive-advantage-of-corporate-philanthropy> accessed 10 January 2022.

<sup>176</sup> *ibid.*

<sup>177</sup> Taylor Tepper (n 173).

<sup>178</sup> Alison Durkee, 'Supreme Court Won't Hear Johnson & Johnson Challenge Of \$2 Billion Baby Powder Lawsuit' (2021) available: <https://www.forbes.com/sites/alisondurkee/2021/06/01/supreme-court-wont-hear-johnson--johnson-challenge-of-2-billion-baby-powder-lawsuit/?sh=26f3c593d6eb> accessed 9 January 2022.

<sup>179</sup> *ibid.*

<sup>180</sup> *ibid.*

<sup>181</sup> Edward Segal, 'Johnson & Johnson Faces Yet Another Crisis Situation This Year' (2021) Forbes, available: <https://www.forbes.com/sites/edwardsegal/2021/12/17/johnson--johnson-faces-yet-another-crisis-situation-this-year/?sh=6d5e78f511c7> accessed 9 January 2022.

<sup>182</sup> BBC, 'US panel recommends J&J shots be sidelined after clot deaths' (2021) available: <https://www.bbc.com/news/world-us-canada-59692776> accessed 9 January 2022.

<sup>183</sup> Edward Segal, 'Johnson & Johnson Faces Yet Another Crisis Situation This Year' (2021) Forbes, available: <https://www.forbes.com/sites/edwardsegal/2021/12/17/johnson--johnson-faces-yet-another-crisis-situation-this-year/?sh=6d5e78f511c7> accessed 9 January 2022.

<sup>184</sup> Ayla Ellison, '18 highest-paid CEOs in healthcare' (2021) Becker's Hospital Review, available: <https://www.beckershospitalreview.com/compensation-issues/18-highest-paid-ceos-in-healthcare.html> accessed 9 January 2022.

<sup>185</sup> Johnson & Johnson, 'Alex Gorsky to Serve as Executive Chairman and Transition Role of Chief Executive Officer of Johnson & Johnson to Joaquin Duato, Effective January 3, 2022' (2021) available: <https://www.jnj.com/alex-gorsky-to-serve-as-executive-chairman-and-transition-role-of-chief-executive-officer-of-johnson-johnson-to-joaquin-duato-effective-january-3-2022> accessed 9 January 2022.

The above puts at least some of the critique against Friedman, and in particular the statement of Gorsky, in perspective. However, there have been other arguments against Friedman's definition such as that corporations contribute to social ills (for example, 'ever-expanding gap of income inequality') and should, therefore, bear the price of correcting them.<sup>186</sup> Alternatively, it has been suggested that Friedman's definition is two-dimensional because shareholders in a company that is situated in their own city would benefit from any socially-oriented activities by the company and, the argument goes, would prefer a lower income on their investment rather than losing these non-tangible benefits.<sup>187</sup> It is arguable that from an economic perspective at least, such claims are difficult to prove and in addition, if this works in scenarios where shareholders invest in their city it will not apply to shareholders investing at a distance. The truth of the matter is that Anglo-Saxon shareholding, unlike its European Continental counterpart, is dispersed and there are many smaller shareholders who build up a diverse portfolio of investments, spread across a country and even an economic region.<sup>188</sup> It would be hard to convince such shareholders to care about the socially responsible causes supported by the CEOs of the companies where they have invested.

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

### 2.3.2 Corporate Sustainability vs CSR

Considering that 'Corporate Sustainability' and 'CSR' are two terms that lack a specific and fixed definition, they have remained an open door to many interpretations, most notably that they are two separate terms that mean slightly different things, albeit theoretically.<sup>189</sup> They argue that some activities are either responsible or sustainable, but they cannot be both.<sup>190</sup> While the concepts of sustainability refer to the environmental scenario and climate change, the concepts of CSR refer to the ethical aspect of companies, as a transparent tool for managing human and financial resources.<sup>191</sup> CSR often aims to improve social welfare in a way that does not conflict with increasing the value of the company, and this does not necessarily mean increasing the welfare of the shareholders themselves, he company may sacrifice short-term profits for purely social goals, which may later benefit the company in the long-term.<sup>192</sup> Whilst many argue, especially in the operations management literature, that sustainability aims primarily to reduce energy costs and pollution.<sup>193</sup> The problem of this approach is that it sticks to a narrow vision of sustainability mainly linked to natural resource economics. While CSR encompasses broader corporate programs that benefit the community.<sup>194 195</sup> Moreover, CSR is affected by "social power; accountability; public image and business ethics."<sup>196 197</sup> Some argued that executive motives are key to a better understanding of CSR. For example, when the company presents a certain social characteristic to become for the company a competitive tool, it practices CSR.<sup>198</sup> Conversely, some have argued that sustainability has become a corporate synonym for all that is positive, so that the term

<sup>186</sup> Taylor Tepper (n 173).

<sup>187</sup> *ibid.*

<sup>188</sup> Dennis C. Mueller, 'The Anglo-Saxon Approach to Corporate Governance and its Applicability to Emerging Markets' (2006) 14(4) *Corporate Governance an International Review*, 207.

<sup>189</sup> Ivan Montiel, 'Corporate Social Responsibility and Corporate Sustainability: Separate Pasts, Common Futures' [2008] 21 *Organisation & Environment*, 248.

<sup>190</sup> Ionela Carmen Pirnea, Marieta Olaru, and Cristina Moisa, 'Relationship between corporate social responsibility and social sustainability' [2001] *ETC*, 34.

<sup>191</sup> See generally: Víctor Meseguer-Sánchez and others, 'Corporate Social Responsibility and Sustainability. A Bibliometric Analysis of Their Interrelations' (2021) 13 *Sustainability*, 1636.

<sup>192</sup> Hans B. Christensen, Luzi Hail and Christian Leuz, 'Mandatory CSR and Sustainability Reporting: Economic Analysis and Literature Review' (2021) 26 *Review of Accounting Studies*, 1176-1248.

<sup>193</sup> See for example: Tom Kuhlman and John Farrington, 'What Is Sustainability?' (2010) 2 *Sustainability*, 3436-3448.

<sup>194</sup> Chandler, D., *Corporate Social Responsibility: A Strategic Perspective*. (Business Expert Press, 2015); Khondkar K and others, 'Corporate Social Responsibility: Evidence from The United Kingdom' (2015) 14 *Journal of International Business Research*, 85.

<sup>195</sup> The terms of Corporate citizenship, sustainable business, environmental responsibility are connected with CSR.

<sup>196</sup> Moon. (n 97).

<sup>197</sup> Crowther, D., & Seifi, S. *Redefining Corporate Social Responsibility*. (Emerald Publishing Limited, 2018).

<sup>198</sup> See generally: Marc Orlitzky, 'Strategic Corporate Social Responsibility and Environmental Sustainability' (Sageoup, 2011) <<https://journals.sagepub.com/doi/abs/10.1177/0007650310394323>> accessed 26 January 2022.



has been exploited for profit purposes, and in most cases it means an environmental approach, even economic sustainability has been interpreted as reducing the social costs of providing environmental protection.<sup>199</sup>

While the author acknowledges that both concepts are often used as synonyms,<sup>200</sup> and that to differentiate corporate sustainability and CSR is to overlook a large amount of literature on the topic, the thesis will nevertheless mainly rely on the term CSR. The reason for this choice is that corporate sustainability still conveys a narrower understanding than CSR. Indeed, sustainability has often an environmental connotation.<sup>201</sup> To avoid giving any confusion, the term CSR has been chosen as this allows the author to take into account a broader range of issues.<sup>202</sup>

### 2.3.3 The debate about the definitions of CSR

With the growing academic and public interest for CSR, has come an increasing number of definitions.<sup>203</sup> Consequently, CSR seen as the most important challenge in the 21st century, especially that it has different aspects, and it is dealt with differently. The concept of CSR is also sometimes used to refer to ‘corporate responsibility.’<sup>204</sup> The workable definition of CSR is important in this research, because it will help in providing a perfect scope to the most prominent aspects that should be improved in CSR. Therefore, framing the most essential aspects of CSR will be a key factor in addressing them.

What constitutes CSR has always been a contested concept as all CSR definitions being put forward have been challenged.<sup>205</sup> One of the reasons for challenging the existing definitions is because CSR includes a radical change in the company's behaviour to include the interests of stakeholders in a direct line with maximizing profit for shareholders,<sup>206</sup> this premise made the term overlap with many other corporate behaviours, for example, but not limited, business ethics and corporate citizenship.<sup>207</sup> As Elkington noted CSR is a shift from 'bottom line' to 'triple bottom line'.<sup>208</sup> It means that CSR is not only a compatibility between economic growth and the environmental factor, but it has an important aspect, which is social.<sup>209</sup> The balance between people, planet and profits means that the company has a competitive advantage over its counterparts in the long-term, because it builds a long-term economic environment.<sup>210</sup>

As the author said, because of the different stakeholders such as suppliers, consumers, creditors and others, the definition of CSR becomes in a state of constant controversy.<sup>211 212</sup> On the one hand, some see that CSR is a purely voluntary

<sup>199</sup> See generally: John Morelli, 'Environmental Sustainability: A Definition for Environmental Professionals' (2011) 1 *Journal of Environmental Sustainability*, 1-10.

<sup>200</sup> See for example: CSR Report 2020 of Wordline company:

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

<sup>201</sup> See for example: Cedric Pugh, *Urbanisation, The Environment and Sustainability* (Earthscan 1996).

<sup>202</sup> See for example: Mikito Ishida, 'CSR and Human Rights Policy for Startups' [2015] SSRN Electronic Journal.

<sup>203</sup> C. Villiers, 'Corporate law, corporate power and corporate social responsibility' in N Boeger, R Murray and C Villiers (eds), *Perspectives on Corporate Social Responsibility* (Edward Elgar 2008), 91-93.

<sup>204</sup> For the purpose of this thesis, reference to CSR as corporate responsibility would be used in the same manner as other sources.

<sup>205</sup> Ray Broomhill, 'Corporate Social Responsibility: Key Issues and Debates' (2007) Dunstan Paper N° 1/2007 t <<https://pdfs.semanticscholar.org/a5ce/08f5639582ea6a03bc70b0d2a99b35adf8b9.pdf>> accessed on 24 January 2020; Blowfield and Murray, *Corporate Responsibility* (3rd edition, Oxford University Press, 2014).

<sup>206</sup> Carroll, (n 19, 2000); Friedman, M., 'The Social Responsibility of Business is to Increase its Profits.' (New York Times Magazine, 13 September 1970) < <http://umich.edu/~thecore/doc/Friedman.pdf> > accessed 28 March 2020).

<sup>207</sup> Moon. (n 97).

<sup>208</sup> Elkington, J., *Cannibals with Forks: The Triple Bottom Line of 21st Century Business*. (Capstone, 1997)

<sup>209</sup> See for example: Michael Mitchell, Allan Curtis and Penny Davidson, 'Evaluating The Process of Triple Bottom Line Reporting: Increasing The Potential for Change!' (2008) 13 *Local Environment*, 68.

<sup>210</sup> See generally: Craig R. Carter and Dale S. Rogers, 'A Framework Of Sustainable Supply Chain Management: Moving Toward New Theory' (2008) 38 *International Journal of Physical Distribution & Logistics Management*, 360-387.

<sup>211</sup> Jennifer A. Zerk, (n 3) 299.

<sup>212</sup> B Horrigan, *Corporate Social Responsibility in the 21st century: Debates, Models and Practices Across Government, Law and Business* (Edward Elgar 2010), 34.4



commitment.<sup>213</sup> This approach has as direct consequence that the law and CSR became separate concepts. However, others argue that CSR has legal implications, so it is not enough to express it as voluntary.<sup>214</sup> This means fulfilling social, economic and environmental obligations either voluntarily or by law.<sup>215</sup> For example, the quality of life is one of the aspects that CSR means, even if it does not reach the minimum legal requirements of companies,<sup>216</sup> this may be limited to large companies and not start-ups. From another angle, some argue that CSR is a moral discourse in the first place, companies as a member of society must act ethically in a manner that does not harm humans or the planet.<sup>217</sup>

The definitional framework for CSR has been divided into 4 basic parts: law, economy, charity and ethics. "The relative importance placed by 241 CEOs surveyed on the four components: economic = 3.5; legal = 2.54; moral = 2.22; charitable = 1.30".<sup>218</sup> Legally, CSR rules are considered as a "codified ethic," and some have argued that companies' compliance with the rules is binding for operating purposes.<sup>219</sup> Interestingly, CSR has been defined by making decisions based on arguments and not just for economic reasons, as it is a "reflexive law" that regulates the moral rules on which CSR is based.<sup>220</sup> For example, considering the legality of the law is not limited to the prohibition of discrimination but to the promotion of equality through normative measures.<sup>221</sup>

## 2.4 Practice of CSR

In developed economies, having a CSR program is now required.<sup>222</sup> As Mohammed Naif Z Alshareef and Kamaljeet Sandhu argued "Over the recent years, corporate failures have emphasized the role of good governance, accountability and ethics, shifting the debate towards the areas of corporate governance (CG) and ethical aspects of the economic conduct."<sup>223</sup> CSR has, therefore, become part of the regulatory and business debates around the world. While before CSR was regarded as an indicator of companies' goodwill toward the society, currently, the non-compliance with CSR standards is viewed as a source of risk to their reputations. Following our discussion on the history of CSR and its definition, this section focuses on investigating the different forms of the regulatory frameworks associated with CSR according to literature, at in the UK and Saudi level. This is very important to find out where the literature has reached in analyzing the current legal framework of CSR and its impact on practice, the answer undoubtedly contributes to finding a ground for discussing the current legislation of CSR in Saudi Arabia and the need to improve it, by comparing it with the British model, which is a pioneer in this field.

Smith, Adhikari and Tondkar indicated that factors affecting CSR activities vary from corporate financial reports because CSR is their primary concern and is discussed by larger stakeholder groups.<sup>224</sup> According to Adams, analysing CSR contributing factors would also strengthen the transparency of organizations and, ultimately, contribute to improve

<sup>213</sup> EU definition: "a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis" See: European Commission, 'Green paper: Promoting a European framework for Corporate Social Responsibility', (2001) COM 366 final, 20.0

<sup>214</sup> Andreas Rühmkorf, 'The Promotion of Corporate Social Responsibility in English Private Law' (PhD Thesis, University of Sheffield 2013)

<sup>215</sup> S Sheikh, Corporate Social Responsibilities: Law and Practice (Cavendish 1995) 15

<sup>216</sup> K Campbell and D Vick, 'Disclosure Law and the market for corporate social responsibility' in D McBarnet, A Voiculescu and T Campbell (eds), *The new corporate accountability: Corporate social responsibility and the law* (CUP 2007), 242

<sup>217</sup> Jennifer A. Zerk. (n 3) 32.

<sup>218</sup> See generally: Archie B Carroll, Carroll's Pyramid of CSR: Taking Another Look (1979).

<sup>219</sup> See for example: Anna Beckers, 'Towards A Regulatory Private Law Approach for CSR Self-Regulation? The Effect of Private Law On Corporate CSR Strategies' [2019] SSRN Electronic Journal.

<sup>220</sup> Karin Buhmann, 'Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR' (2006) 6 Corporate Governance: The international journal of business in society, 193.

<sup>221</sup> *ibid.*

<sup>222</sup> Mandurah, S., Khatib, J. & Al-Sabaan, S., 'Corporate Social Reporting among Saudi Arabian firms: An Empirical Investigation' (2012) 28 Journal of Applied Business Research 1049, 1049.

<sup>223</sup> Alshareef, M. N. Z. & Sandhu, K., 'Integration of Corporate Social Responsibility (CSR) into Corporate Governance: A New Model, Structure and Practice: A Case Study of Saudi Company' (2015) 3 European Journal of Accounting Auditing and Finance Research 1, p.1

<sup>224</sup> Joyce van der Laan Smith, Ajay Adhikari and Rasoul H. Tondkar, 'Exploring differences in social disclosures internationally: A stakeholder perspective' (2005) 24 Journal of Accounting and Public Policy 123

organizational results overall.<sup>225</sup> As Adams, Hill and Roberts noted: “In order to improve the quality and quantity of corporate social reporting, it is important to study not only the current extent and quality of disclosure to determine best practice, but also to study the factors influencing corporate social accountability and reporting.”<sup>226</sup> Therefore, the current study is primarily concerned with investigating the CSR policies and their consequences to improve CSR activities in Saudi Arabia relative to the UK. The literature review will therefore concentrate primarily on previous studies into CL & CG and CSR, and CSR policies in supply chains.

#### 2.4.1 UK level

Unlike the post-World War II era, in the UK, the contemporary concept of CSR focuses much more on conservatism.<sup>227</sup> In essence, the priority of shareholders has been shifted from shareholders to employees, consumers, creditors, and society at large, calling for companies to be re-envisioned as social or public institutions with duties to all of these parties along with shareholders.<sup>228</sup> Some Contemporary CSR experts tend to view corporations from the viewpoint that they have no enforceable duties beyond those owed to their shareholders.<sup>229</sup> Accordingly, CSR techniques support neoliberal claims that the government should strive to combat poverty without interfering excessively with economic affairs. CSR business cases often emphasize the long-term value to shareholders of CSR (thus elucidating the idea of enlightened shareholder value in the UK).<sup>230</sup>

#### Companies Act 2006

CSR has never been put into a formal legislation in the UK even though two promising Bills were introduced into Parliament. The first Bill was introduced in 2003 and aimed, among other things, at strengthening the transparency of companies about CSR.<sup>231</sup> It also contained a contractual duty to pay compensation to those harmed as a result of the failures of the management and expanded the duties of the directors to take account of their behaviour's environmental and social effects.<sup>232</sup> Partly because of the continuing process of updating the Companies Act 2006 (CA), this Bill did not succeed. The second Bill also aimed at strengthening the reporting system about social and environmental impacts.

A 'Triple bottom line' approach to CSR instead uses legislation that addresses the social and environmental effects of the business operation<sup>233</sup> along with the criteria outlined in the Companies Act 2006. The Company Law Review Steering Group (CLRSG) was not aware of CSR during the reforms of 2006, but it came up with an "enlightened shareholder value" model,

<sup>225</sup> C. A Adams, 'Internal Organizational Factors Influencing Corporate Social and Ethical Reporting: Beyond Current Theorizing' (2002) 15 Accounting Auditing and Accountability Journal 223

<sup>226</sup> C. A Adams, W-Y Hill and C.B Roberts, 'Corporate social reporting practices in Western Europe: legitimating corporate behaviour?' (1998) 30 British Accounting Review 1, p. 2

<sup>227</sup> See for example: Julia M. Pauschunder, 'Intergenerational Leadership: An Extension of Contemporary Corporate Social Responsibility (CSR) Models' [2018] SSRN Electronic Journal. See also: Daniel Kinderman, 'Corporate Social Responsibility and The Welfare State: The Historical and Contemporary Role of CSR in The Mixed Economy of Welfare' (2013) 43 Contemporary Sociology: A Journal of Reviews, 70, 72.

<sup>228</sup> H. Dodd, 'Treatment of Osteomyelitis' (1932) 2 BMJ, 898, 899.

<sup>229</sup> See for example: Rebecca Chunghee Kim, 'Rethinking Corporate Social Responsibility Under Contemporary Capitalism: Five Ways to Reinvent CSR' [2022] Business Ethics, the Environment & Responsibility. See also: Marie-Laure Djelic and Helen Etchanchu, 'Contextualizing Corporate Political Responsibilities: Neoliberal CSR in Historical Perspective' (2015) 2015 Academy of Management Proceedings, 12193.

<sup>230</sup> Renginee G. Pillay, 'The Limits to Self-Regulation and Voluntarism: From Corporate Social Responsibility to Corporate Accountability' (2016) 2014 Amicus Curiae. See generally: Virginia E. Harper Ho, 'Enlightened Shareholder Value': Corporate Governance Beyond the Shareholder-Stakeholder Divide' [2010] SSRN Electronic Journal.

<sup>231</sup> Section 3 of the Bill

<sup>232</sup> Sections 4, 5, 6 and 7 of the 2003 Bill

<sup>233</sup> See for example: Paulina Książak and Barbara Fischbach, 'Triple Bottom Line: The Pillars of CSR' (2018) 4 Journal of Corporate Responsibility and Leadership, 95. See also: Jaroslav Belas and Katarina Zvarikova, 'Triple Bottom Line of The CSR Concept and Its Reporting' (2021) 129 SHS Web of Conferences, 07001. See also: Jimin Shim and others, 'The Impact of CSR On Corporate Value of Restaurant Businesses Using Triple Bottom Line Theory' (2021) 13 Sustainability, 2131.

implicitly assuming corporations will behave responsibly.<sup>234</sup> According to CLRSG, companies must be formed and managed in a way that maximizes shareholder value, with creditors protected, and "public disclosure of information" doing "more good for the community" under current legislation.<sup>235</sup> However, the Companies Act 2006 UK have developed the significant provisions for enhancing the corporate responsibility of the organizations and directors, not only towards the shareholders but towards the wider stakeholders, such as customers, employees, investors, environment and local communities.<sup>236</sup>

Various sections of the Company Act 2006 are relevant for CSR. For instance, the directors' duty in Section 172 needs a director to behave in the manner he thinks it will be most likely, in good faith, to facilitate the company's performance.<sup>237</sup> There are several factors directors need to consider in making decisions as stipulated in the section, but it is not an exhaustive list. It states that paragraph 172 of the revised CA will be a "stakeholder-sensitive", "relational" and "more explicitly long-term" provision.<sup>238</sup> The updated CA failed to propose extending to directors the obligation to consider how their conduct impacts society and the environment in the 2003 Bill. which would have made it more in line with CSR principles.<sup>239</sup> Additionally, the enforceability of the duty has been criticized because as such Section 172 "enshrined shareholder primacy explicitly in law."<sup>240</sup> This primacy is confirmed by the 2018 UK Corporate Governance Code which requires the inclusion of "information enabling shareholders to assess how the directors have performed their duty under section 172 Companies Act 2006."<sup>241</sup> As Keay noted; this section was never fit for its purpose because it only reflects the previous law without going a step further.<sup>242</sup>

Other sections, such as Section 417, for CSR, is also important. Section 417, in fact, includes a reporting requirement requiring directors to include a business review in the report of their directors. In addition to providing advice and assistance to company members, the business review is intended to analyse whether the board of directors has fulfilled its requirement under section 172 CA to ensure the company's success.<sup>243</sup> This report has been criticized for not specifying what companies should exactly report or to what extent it covers all CSR activities. It is a soft disclosure and needs improvement.<sup>244</sup>

Those reforms have led to the shrinking scope of CSR in the UK, argues Andrew Johnston.<sup>245</sup> CSR, he claims, has lost its effectiveness in internalizing externalities as shareholders now have a veto over how much wider interests get considered by companies.<sup>246</sup> In addition to noting that the 2006 reforms are predicated on the belief that shareholder engagement will gently guide companies towards long-term strategies, he reported there is evidence to show such engagement actually undermines

<sup>234</sup> Robert Monks, 'Modern Company Law for a Competitive Economy: The Strategic Framework' (2000) 8 Corporate Governance and International Review 16

<sup>235</sup> § 5.1.4

<sup>236</sup> Kong Shan HO, 'Is section 172 of the Companies Act 2006 the guidance for CSR?.' [2010] 31 CL 207.

<sup>237</sup> See for example: Ernest Lim, 'Judicial Intervention in Directors Decision-Making Process: Section 172 Of The Companies Act 2006' [2016] SSRN Electronic Journal. See also: Amita Chohan, 'Is Section 172 Of The Companies Act 2006 Capable of Delivering for All Stakeholders?' [2012] SSRN Electronic Journal.

<sup>238</sup> See for example: Dr Temitope Omotola Odusanya, 'Directors' Duties: Section 172 Of The UK Companies Act' [2021] SSRN Electronic Journal. See also: Victor Ediagbonya, 'The Scope of Directors Duties Under the Provision of Section 172 Of The Companies Act of United Kingdom' [2017] SSRN Electronic Journal. See also: David Russell and Toby Graham, 'Trustee Investment; Non-Financial Considerations; The Development of Directors' Core Fiduciary in S 172 Companies Act 2006' (2019) 25 Trusts & Trustees, 867, 870.

<sup>239</sup> Zerk, (n 23) 169

<sup>240</sup> Andrew Johnston, 'The Shrinking Scope of CSR in UK Corporate Law' (2017) 74 Wash. & Lee L. Rev. 1001, 1031

<sup>241</sup> Matthew Findley, Deborah Wilcher and Jo Chattle, 'The new shorter and sharper 2018 UK Corporate Governance Code' (July 2018) <<https://www.nortonrosefulbright.com/en-gb/knowledge/publications/93262169/the-new-shorter-and-sharper-2018-uk-corporate-governance-code>> accessed on 25 March 2020

<sup>242</sup> Andrew Keay, 'The Duty to Promote the Success of the Company: Is It Fit for Purpose?' (Univ. of Leeds Sch. of Law, Ctr. for Bus. Law & Practice, Working Paper, 2010), 13; Kong Shan HO, 'Is section 172 of the Companies Act 2006 the guidance for CSR?' [2010] 31 CL 208.

<sup>243</sup> Section 417(2)

<sup>244</sup> See for example: Umakanth Varottil, Jeroen Veldman and Jean J du Plessis, *Globalisation of Corporate Social Responsibility and Its Impact On Corporate Governance*.

<sup>245</sup> Johnston, (n 63)

<sup>246</sup> *ibid*, 1002

such a belief.<sup>247</sup> His critics is backed by two studies by Dallas and Millon who demonstrate the financial pressure on the management to maximize profits.<sup>248</sup> Johnston finally noted that as a result of the reforms that resulted in Section 172 during the twentieth century, CSR is now limited to activities appropriate to shareholders and to the capital markets. On the other hand, it has been noted by Zhao that the changes to the new strategic report's business review requirement are minor. A positive note, however, comes from increased attention being given to workers' and environmental issues, as well as human rights and corporate governance guidelines.<sup>249</sup> Moreover, a UK study indicates, about the impact of ESV, that only Next plc stood out as having the greatest potential for creating shareholder value among the nine companies selected in this study. A primary financial objective stated in the company's Annual Report and Accounts is to provide adequate financing to meet its obligations and provide long-term returns to shareholders.<sup>250</sup>

On the other hand, Cerioni has argued that by adopting the strategic management perspective of s172(1), which defines success as increasing long-term value, directors will be able to use s172(1) to learn how to make their decisions much better. It means that strategic management perspectives might be helpful to a legal analysis and, thus, to a model of operational organization underpinning UK company law. Consequently, s.172.1 introduced an approach that combined law and strategic management, which, as a consequence, can be used, regardless of the business-friendly jurisdiction.<sup>251</sup>

Briefly, Sections 172 and 414 of the British Companies Act are frequently criticized in the UK literature, with Section 172's enforcement mechanism for promoting social responsibility being the most prominent, and Section 414's failure to specify what exactly a strategic report should contain being the most prominent. Therefore, the UK Companies Act in support of CSR have progressed despite the slow improvements.

### Corporate Governance code

In 1992, the Cadbury Report,<sup>252</sup> establishing a voluntary code of practice for public companies in the UK, began an extensive tradition of developing corporate governance guidelines in the UK. As a result of further development and expansion over the following 25 years, the current UK Corporate Governance Code was developed<sup>253</sup> by the Financial Reporting Council (FRC).<sup>254</sup> Following this, the FRC released The UK Stewardship Code,<sup>255</sup> with the purpose of improving the quality of engagement between companies and their institutional investors. As a complement to the UK CG Code, the UK Stewardship Code underscores the principle of 'comply or explain' by creating a stronger link between governance and the investing process.<sup>256</sup> The first version of the SC was released in 2012 with some minor revisions,<sup>257</sup> and as of January 2020, the "second version" took effect.<sup>258</sup>

At the end of 2018, the government commissioned an independent review that found the first version ineffective.<sup>259</sup> Consequently, it is recommended to either scrap or revise the first version in order to place a greater emphasis on engagement

<sup>247</sup> *ibid*, 1033

<sup>248</sup> Lynne L. Dallas, 'Short-Termism, the Financial Crisis, and Corporate Governance' (2012) 37 J. CORP. L. 264, 306–09; David Millon, 'Shareholder Social Responsibility', (2013) 36 SEATTLE U. L. REV. 911, 931

<sup>249</sup> Jingchen Zhao, 'Promoting More Socially Responsible Corporations Through a Corporate Law Regulatory Framework' (2017) 37 Legal Studies, 124.

<sup>250</sup> See generally: Andrew Keay and Taskin Iqbal, 'The Impact of Enlightened Shareholder Value' (2019) 2019 The Journal of Business Law, 304, 327.

<sup>251</sup> LUCA CERIONI, 'THE SUCCESS OF THE COMPANY IN S. 172(1) OF THE UK COMPANIES ACT 2006: TOWARDS AN 'ENLIGHTENED DIRECTORS' PRIMACY'?' (2008) 4 OLR.

<sup>252</sup> See for example: Blenlyth Jenkins, 'Corporate Governance and The Cadbury Report? A Perspective from The Boardroom' (1993) 1 Corporate Governance: An International Review, 11, 13.

<sup>253</sup> FCR 2016.

<sup>254</sup> FRC is the independent regulator responsible for promoting confidence in financial reporting and corporate governance.

<sup>255</sup> FRC, 2012b.

<sup>256</sup> See for example: Subrata Sarkar, 'The Comply-Or-Explain Approach for Enforcing Governance Norms' [2015] SSRN Electronic Journal.

<sup>257</sup> "This edition of the Code does not change the spirit of the 2010 Code." (FRC, The UK Stewardship Code 2012, p 2).

<sup>258</sup> FRC, The UK Stewardship Code 2020.

<sup>259</sup> 6 FRC, Independent Review of the Financial Reporting Council, 2018, Summary, paras 12 and 13. The Review was critical of the FRC as a whole and proposed that it be replaced by standard, statutory regulator, which is likely to happen in 2020. At the time of writing the FRC is still a hybrid, originally established by the accounting and auditing professions as a



outcomes. It is predicted that the second version, in terms of ESG, will result in a more positive impact, especially when it comes to climate change.<sup>260</sup>

On other hand, it has been argued that soft laws such corporate governance are useful in addressing performance, transparency, and CSR.<sup>261</sup> In spite of this, a common scepticism about soft law is that it is assumed to be voluntary and lacks (or is ambiguous) effectiveness.<sup>262</sup> It means a company can edit its CSR report to make it seem more committed to CSR, consequently, it cannot be prevented that companies perform poorly or even collapse, or that they fail to conduct themselves responsibly towards their stakeholders.<sup>263</sup> Furthermore, it has been suggested that good governance should encompass and integrate values as well as rules. It means that value-driven CSR considers the impact of its activities on stakeholders and the broader operating environment and, as such, corporate governance should be enhanced by these impulses.<sup>264</sup> According to Young, CSR is inextricably linked to corporate governance based on behaviour, reputation, risk, and transparency. The context of CSR is vital to its successful integration with governance. This includes the economic environment, national politics, regulatory system, soft law, shareholder relations, political ideology culture, industry impact, and other factors.<sup>265</sup>

Fortunately, within the large sample of companies studied in the UK, CSR and corporate governance are significantly aligned. This convergence was strongly influenced by corporate scandals (due to their effect on business ethics). Accordingly, businesses are starting to look beyond financial performance when determining shareholder value. This development has led to the shift in corporate governance towards a stakeholder-based model with directors balancing short-term accountability with long-term sustainability.<sup>266</sup>

To sum up, the mechanism of "comply or explain" in British CG is regarded as a soft hardly law from the viewpoint of critics. Furthermore, even though improvements of CG are better than nothing to promote CSR, its justification for non-disclosure is not subject to specific evaluation criteria.

### The Modern Slavery Act 2015

It has been argued that the theory of slavery responsibility is a system that includes influences outside of a company's internal control, however, according to management studies and risk-based approaches, companies cannot constantly monitor and control all aspects of their business relationships.<sup>267</sup> Interestingly, the UK has witnessed an increase in the awareness of labour standards in the supply chain in recent years, spurred by legislation requiring businesses to prepare a report on their efforts to combat slavery.<sup>268</sup> The UK Modern Slavery Act 2015 has been described by Stefan as a first step in curbing modern

private body, the government now appoints its Chair and Deputy Chair and its powers are largely derived from delegation to it by the government. The FRC is funded by the audit profession, who are required to contribute under the provisions of the Companies Act 2006 and, with the agreement with HM Government, by other groups subject to, having regard to, or benefiting from FRC regulation." See, <https://www.frc.org.uk/about-the-frc/funding>. This funding arrangement is likely to continue in place under the new arrangements.

<sup>260</sup> See for example: Paul Davies, 'THE UK STEWARDSHIP CODE 2010-2020 From Saving the Company to Saving the Planet?' [2020] SSRN Electronic Journal.

<sup>261</sup> Bede Nwete, 'Corporate Social Responsibility and Transparency in The Development of Energy and Mining Projects in Emerging Markets; Is Soft Law the Answer?' (2007) 8 German Law Journal, 311, 339.

<sup>262</sup> Leyla Davarnejad, 'In The Shadow of Soft Law: The Handling of Corporate Social Responsibility Disputes Under The OECD Guidelines for Multinational Enterprises' (2011) 2011 Journal of Dispute Resolution.

<sup>263</sup> Kerstin Sahlin-Andersson, 'Corporate Social Responsibility: A Trend and A Movement, But of What and for What?' (2006) 6 Corporate Governance: The international journal of business in society, 297.

<sup>264</sup> See for example: Peter J. Stevenson, 'Softly-Softly: A Critical Assessment of the Soft-Law Approach to Corporate Social Responsibility' [2010] SSRN Electronic Journal.

<sup>265</sup> Suzanne Young and Vijaya Thyl, 'Corporate Social Responsibility and Corporate Governance: Role of Context in International Settings' (2013) 122 Journal of Business Ethics, 24.

<sup>266</sup> See generally: Kevin Money and Herman Schepers, 'Are CSR and Corporate Governance Converging? A View from Boardroom Directors and Company Secretaries in FTSE100 Companies in The UK' (2007) 33 Journal of General Management, 1, 11.

<sup>267</sup> See generally: Janne Mende and Julia Drubel, 'At The Junction: Two Models of Business Responsibility for Modern Slavery' (2020) 21 Human Rights Review, 313, 335.

<sup>268</sup> Stefan Schaper and Irene Pollach, 'Modern Slavery Statements: From Regulation to Substantive Supply Chain Reporting' (2021) 313 Journal of Cleaner Production, 127872.



slavery in global supply chains, but the low disclosure levels and wide variance in reports remain serious concerns in the UK.<sup>269</sup> Furthermore, it has been argued that recent governance initiatives to address forced labour in global supply chains have been undermined by the triumph of voluntary reporting over stricter public labour standards, as in the case of the Modern Slavery Act.<sup>270</sup> For example: according to a study, this act did not prevent retailers from exploiting workers in the UK.<sup>271</sup>

The Act covers businesses or commercial organizations whose total turnover exceeds £36 million and are resident in the UK. In spite of this, Voss, Hinrich et al, have noted that the foreign companies with subsidiaries in the UK often ignore this requirement.<sup>272</sup> Furthermore, as compared to measures such as establishing policies and conducting training, the use of more onerous forms of due diligence and risk assessment, such as audits, is less common in the UK. Statements and plans rarely mention tiers in great detail, but it seems that companies are analysing only the first tier of their supply chains at present. As the UK companies 'test the waters' with these early reports, they may study their supply chains more thoroughly over time after they have developed a deeper understanding.<sup>273</sup>

On the other hand, as a result of the UK Modern Slavery Act, it has been argued that NGOs, activists, and civil society organizations are now able to monitor corporate behaviour and collaborate with businesses to address issues.<sup>274</sup> In spite of this, it may not be possible to eliminate slavery right away, but the disclosure provisions of the Act may contribute to a long-term solution. Moreover, it has been argued that although the Act promotes transparency, it is limited in its transparency vision due to limited disclosure requirements, limited reporting entities, and limited enforcement mechanisms to hold regulated organizations accountable.<sup>275</sup>

In summary, despite criticism of Section 54 of the UK's Modern Slavery Act, it is considered a pioneer in protecting human rights in global supply chains. The section's criticism focuses on the fact that disclosure alone is not sufficient to protect human rights, as there is no mechanism to deal with the reports required from companies. Therefore, much of the literature considers the section as only a first step to improve CSR in global supply chains, massive things should be done.

#### 2.4.2 Saudi level

The discussion of CSR in Saudi Arabia has become very significant, though CSR literature is still very limited. There are major organizations working in this country, public, semi-private and non-governmental, to increase the importance of this phenomenon.<sup>276</sup> However, compared to western countries, Saudi Arabia has distinct religious, political, cultural and value structures affecting its social and economic development.<sup>277</sup> This section focuses on the limited policies of CSR in the Saudi context. Its dissection, analysis and criticism are very important for the purpose of improving them in the future. Furthermore, Saudi Arabia's lack of legislation that promotes CSR in supply chains is an important first step to suggest appropriate legislative mechanisms, as the lack of a legislative framework in this area may facilitate the legal transplantation of Section 54 of the British modern slavery law, after addressing the shortcomings and defects in the section.

<sup>269</sup> *ibid.*

<sup>270</sup> See generally: Genevieve LeBaron and Andreas Rühmkorf, 'Steering CSR Through Home State Regulation: A Comparison of the Impact of The UK Bribery Act and Modern Slavery Act On Global Supply Chain Governance' (2017) 8 *Global Policy*, 15, 28.

<sup>271</sup> See generally: Ilse Ras and Christiana Gregoriou, 'The Quest to End Modern Slavery: Metaphors in Corporate Modern Slavery Statements' [2019] *Anti-Trafficking Review*, 100, 118.

<sup>272</sup> See generally: Hinrich Voss and others, 'International Supply Chains: Compliance and Engagement with The Modern Slavery Act' (2019) 7 (s1) *Journal of the British Academy*, 61, 76.

<sup>273</sup> See generally: Fiona McGaughey and others, 'Corporate Responses to Tackling Modern Slavery: A Comparative Analysis of Australia, France and The United Kingdom' [2021] *Business and Human Rights Journal*, 1, 22.

<sup>274</sup> See generally: Muhammad Azizul Islam and Chris J. van Staden, 'Social Movement Ngos and The Comprehensiveness of Conflict Mineral Disclosures: Evidence from Global Companies' (2018) 65 *Accounting, Organizations and Society*, 1, 19.

<sup>275</sup> See generally: Muhammad Azizul Islam and Chris J. Van Staden, 'Modern Slavery Disclosure Regulation and Global Supply Chains: Insights from Stakeholder Narratives On The UK Modern Slavery Act' [2021] *Journal of Business Ethics*.

<sup>276</sup> For example: Ministry of Human Resources and Human Development.

<sup>277</sup> Nalband, N. & Al-Amri, M., 'Corporate social responsibility: Perception, practices and performance of listed companies of Kingdom of Saudi Arabia' (2013) 23 *Competitiveness Review: An International Business Journal* 284

## Shari'a law and CSR

Islam is integrated in all part of the Saudi society, including law, economy and politics.<sup>278</sup> The influence of Shari'a law on people's daily activities and businesses is well-documented.<sup>279</sup> In this institutional and social sense, Islam is not only a personal faith, but also an agency for society and its institutions, as well as a guide to the behaviour of individuals.<sup>280</sup> Socio-economic justice is an integral component of Islam, since Islam's main goal is to create an equal society to comply with the Holy Qur'an.<sup>281</sup> Islam considers economic activities not as the end in itself but rather as a means to an end. Therefore, some of Islamic business values are part of core CSR practices. For instance, the concept of giving with the aim of improving society and the living standards of local communities, Zakat, is enshrined in the religion. The main purpose of the Zakat is a redistribution of wealth.<sup>282</sup> However, often such donation is a one-off initiative and is not sustainable in the long-run.<sup>283</sup>

It has been argued that Islamic teachings deeply enshrine CSR, including the Holy Qur'an. In this process, the Shariah Supervisory Boards (SSBs) play a limited role in an indirect way.<sup>284</sup> For instance, an evaluation of 250 Saudi banks revealed that Islamic banks do have a purpose to improve individuals' lives, but their role is limited, because the Shariah Supervisory over them is limited, and they do not distinguish themselves from traditional banks. This remains the case even if each bank has a different approach to administering their CSR. It could be due to a mix-up between philanthropy and CSR, or a lack of an organized plan to address the client's CSR obligations, or both.<sup>285</sup> Islamic banks are additionally required to disclose CSR as part of their accountability to God and humanity. Nevertheless, some Islamic banks have been criticized for non-compliance with CSR disclosures in their annual reports.<sup>286</sup>

According to an interesting study, firms that are not Shariah compliant have a stronger relationship with their CSR than those that are. It means that CSR activities are being conducted by Shariah firms less frequently than by non-Shariah firms. Hence, managers' ethical behaviour is not significantly influenced by Shariah status.<sup>287</sup> Another valuable study was by Zubairu, Sakariyau and Dauda, who studied the CSR activities of four Saudi Arabia-based Islamic banks. The authors argued that their social aims are as important as profit maximization because of the religious nature of Islamic banks. The fact that Islamic banks must be open and reveal a high level of information is directly related to this assumption. Interestingly, the study demonstrated no significant difference between Islamic and conventional banks in terms of CSR reporting. The study also revealed a poor disclosure practices for the four Islamic banks.<sup>288</sup>

On the other hand, it has been argued that companies in Muslim majority countries are morally obligated to assist governments in advancing human rights and addressing CSR challenges. In order to demonstrate the values of Islamic precepts, this study notes a new normative model is presented to illustrate both fard al 'ayn (obligation upon all citizens) and fard al kifayah (obligation upon some citizens of society) using Islamic business ethics literature, stakeholder theory, and

<sup>278</sup> See for example: J. Gordon Melton and Martin Baumann, *Religions of The World* (ABC-CLIO 2010).

<sup>279</sup> See for example: Rehanna Nurmohamed, 'Shari' A Law and Its Impact On the Development of Muslim and Non-Muslim Business Relations in The United Arab Emirates' (2020) 13 Law and Development Review, 443, 472.

<sup>280</sup> Tinker, T., 'The enlightenment and its discontents: antinomies of Christianity, Islam and calculative science.' (2004) 17 Accounting, Auditing & Accountability Journal 442

<sup>281</sup> The Holy Qur'an S57:25

<sup>282</sup> Lewis, M., 'Islam and accounting.' (2001) 25 Accounting Forum 103

<sup>283</sup> Faruk Sentürk, O., Charity in Islam: A Comprehensive Guide to Zakat. (The Light, 2007), p.18; Fadaak, T., 'Poverty in the Kingdom of Saudi Arabia: An Exploratory Study of Poverty and Female-headed Households in Jeddah City' (2010) 44 Social Policy and Administration 689; Montagu, C., 'Civil society and the voluntary sector in Saudi Arabia' (2010) 64 The Middle East Journal 67

<sup>284</sup> See generally: Sutan Emir Hidayat and Ahmad Rafiki, 'Comparative Analysis of Customers' Awareness Toward CSR Practices of Islamic Banks: Bahrain Vs Saudi Arabia' [2021] Social Responsibility Journal.

<sup>285</sup> Ghaida alzharni and Jamaldeen Faleel, 'THE RELATIONSHIP BETWEEN ISLAMIC BANK AND CORPORATE SOCIAL RESPONSIBILITY' 18 Palarch's Journal of Archaeology of Egypt/Egyptology.

<sup>286</sup> See for example: Haitham Nobanee and Nejla Ellili, 'Corporate Sustainability Disclosure in Annual Reports: Evidence from UAE Banks: Islamic Versus Conventional' [2016] SSRN Electronic Journal.

<sup>287</sup> See generally: Muhammad Azam and others, 'The Moderating Role of shariah compliance On the Relationship Between Firm Profitability and CSR Activities' (2019) 35 International Journal of Ethics and Systems, 709, 724.

<sup>288</sup> See generally: Umaru M. Zubairu, Olalekan B. Sakariyau and Chetubo K. Dauda, 'Evaluation of Social Reporting Practices of Islamic Banks in Saudi Arabia' (2012) 17 EJBO Electronic Journal of Business Ethics and Organization Studies.

corporate governance literature.<sup>289</sup> To this end, Al-Ashammmary explains that the defining aspects of Islamic Corporate Social Responsibility (ICSR) are three fundamental principles: vicegerency on earth, divine accountability of individuals, and the duty of man to promote good and prohibit evil. As such, the ICSR concept adheres closely to the UN Global Compact's Ten Principles, even it exceeds the minimum standards set by this framework in many ways.<sup>290</sup> For example: exceeding the UN principals of CSR, Islam sees the natural environment as having an inherent ethical basis. Humans are responsible for caring for and protecting the environment as Allah's stewards. Allah owns the natural world, not human beings, so if they abuse this responsibility by not protecting Nature, they will be punished.<sup>291</sup> Furthermore, Halmi describes this implementation of CSR as a means of practicing Islamic teachings, and demonstrating obedience to God through acts that are worshipful in nature. He has asserted that compliance with Islamic law and its application in business are different from conventional CSR.<sup>292</sup>

Recently, a study from Saudi Arabia proposed a CSR pyramid based on Islamic principles, such as paying Zakat, acting ethically, and valuing societal goals over shareholder values. According to the study, if Carroll's model is overturned, it would be applicable in Saudi firms. In the proposed pyramid, the economic dimension is placed first, then the legal, and finally the moral.<sup>293</sup> Another Saudi study has revealed that many Saudi companies seem to have a perception that their CSR is largely confined to the local Muslim community.<sup>294</sup> It means that the main catalyst for CSR practices in Saudi Arabia is the Islamic source, as it is a practice that Islam strongly urges and has a reward.<sup>295</sup>

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

### The Saudi company law & corporate governance and CSR

By Royal Decree, Saudi Company Law (CL) was issued,<sup>296</sup> which has been amended since then. The law regulates the conduct of companies in Saudi Arabia for the first time.<sup>297</sup> In general, the CL describes the structure of an organization in which one or more parties agree to conduct business for profit and share profits and losses. Corporate Governance Regulations (CGR) were published in 2006 to replace the CL 1965.<sup>298</sup> While they primarily derived from the SCL 1965, the CGR has been also influenced by the Capital Market Law 2003.<sup>299 300</sup>

2015 marks a turning point in Saudi Arabia with extensive changes being introduced, such as the new company law. Saudi Arabia adopted its 'Vision for 2030' in early 2016,<sup>301</sup> which included many important changes to the economic structure of

<sup>289</sup> See generally: Maurice J. Murphy and Jan M. Smolarski, 'Religion and CSR: An Islamic "Political" Model of Corporate Governance' (2018) 59 Business & Society, 823, 854.

<sup>290</sup> Meshal J. Alshammmary, 'Islamic Corporate Social Responsibility (ICSR) Concept: The Case of 21st Century Middle East' (2014) 10 Corporate Board role duties and composition, 46, 76.

<sup>291</sup> John Zinkin and Geoffrey Alan Williams, 'Islam and CSR: A Study of the Compatibility Between the Tenets of Islam and The UN Global Compact' [2006] SSRN Electronic Journal, 528.

<sup>292</sup> See generally: Helmi MUHAMMAD, 'Islamic Corporate Social Responsibility: An Exploratory Study in Islamic Microfinance Institutions' (2020) 7 The Journal of Asian Finance, Economics and Business, 773, 782.

<sup>293</sup> See generally: Mohammad Nurunnabi, Yazeed Alfakhri and Demah H. Alfakhri, 'CSR in Saudi Arabia and Carroll's Pyramid: What Is 'Known' And 'Unknown'?' (2019) 26 Journal of Marketing Communications, 874, 895.

<sup>294</sup> Gravem, M., 'CSR in Saudi Arabia'. (MSc Thesis, University of Oslo 2010)

<sup>295</sup> As exemplified in Abdul Latif Jameel (ALJ) Co.

<sup>296</sup> Royal Decree No. M/6 in 1965.

<sup>297</sup> See generally: Gillian Rice, 'Doing Business in Saudi Arabia' (2003) 46 Thunderbird International Business Review, 59, 84.

<sup>298</sup> Al Kahtani, 'Current Board of Directors' Practices in Saudi Corporate Governance: A Case for Reform.' In: S. O. Idowu and K. T. Çaliyurt, (eds). *Corporate Governance: An International Perspective*. (Springer, 2014)

<sup>299</sup> Royal Decree No. M/30

<sup>300</sup> Laws and regulation issued by the Capital Market Authority (CMA).

<sup>301</sup> **Saudi Vision 2030** is a strategic framework to reduce Saudi Arabia's dependence on oil, diversify its economy, and develop public service sectors such as health, education, infrastructure, recreation, and tourism. Key goals include reinforcing economic and investment activities, increasing non-oil international trade, and promoting a softer and more secular image of the Kingdom. It also consists of increasing government spending on the military, as well as manufacturing equipment and ammunition.

the country. Saudi Arabia's Vision 2030 will change corporate governance practices and work culture dramatically. Therefore, the private sector will have a greater role in liberalizing the economy from the standpoint of ownership, employment, trade and competition, and facilitate investments.<sup>302</sup> To achieve its target, the government has launched a new laws such as the Company Law 2016 or the Saudi Corporate Governance Regulation 2017 (SCGR 2017).

The new regulation replaces the 2006 one and tackled some of the shortcomings present in the previous SCGR.<sup>303</sup> The major change is that the SCGR 2017 is much more in line with the Company law which was not the case of its predecessor.<sup>304</sup> The SCGR 2017 includes better rights to board members and shareholders but also transparency about their own duties and tasks.<sup>305</sup> To ensure that listed Saudi companies comply with best corporate governance practices and that stakeholder interests are protected, the CGR defines the principles and guidelines for Saudi listed companies on Tadawul, including the regulatory requirements and the rules of management of listed companies.<sup>306</sup>

Good corporate governance and corporate responsibility have become synonymous, argue Mohammed Naif Z Alshareef and Kamaljeet Sandhu.<sup>307</sup> While maximization of shareholder value still predominates, the use of other aspects of corporate performance is increasing. It becomes, therefore, clear that the promotion of fairness, transparency, ethics and accountability is best achieved through CG.<sup>308</sup>

A Saudi research on CSR and CG, using 166 Saudi companies' annual reports, noted that disclosure of CSR was positively linked to the companies' size and profit.<sup>309</sup> Consequently, CSR is actually practiced by some companies and not by others. Furthermore, based on seven categories of issues related to: workers, society, climate, goods and services, energy, customers, and others, Alotaibi measured the levels of CSR activity in Saudi listed companies, based mainly on agency theory and stakeholder theory. In terms of the factors explaining differences in practices, the results of the study indicate that government ownership has a negative effect on CSR.<sup>310</sup> These results contradict the results of a similar Saudi study, that has been suggested that a company's size, its age, and government ownership are all positively related to CSR disclosures, whereas a company's leverage is negatively related.<sup>311</sup> Interestingly, in the same study, disclosure of CSR by 267 Saudi companies was 24% in 2011.<sup>312</sup> The results were significantly better than the rates of CSR disclosure in two Saudi samples taken in 2006-2007 and 2008.<sup>313 314</sup> The CG code may have contributed to these improvements.

<sup>302</sup> Vision 2030, 'about', (2019) Available at: <<https://vision2030.gov.sa/en/node>> accessed 23 January 2020; Al Bakr, A., 'Challenges to Production Base Diversification in Saudi Arabia, Economic Research Department, Saudi Arabian Monetary Agency (SAMA).' (2015) Economic Research Department Saudi Arabian Monetary Agency, SAMA Working Paper WP/15/8

<sup>303</sup> See for example: Lubna Javed Rizvi and Zahid Hussain, 'Review of Saudi Arabia Company Law Reforms and Its Implications On Corporate Governance Framework- An Evidence from Emerging Market' (2021) 64 International Journal of Law and Management, 49, 58.

<sup>304</sup> See for example: Algoere Turki Naif S and Hasani Mohd Ali, 'Saudi Arabia Regulations On Corporate Governance' (2019) 9 International Journal of Asian Social Science, 229, 239.

<sup>305</sup> Article 3

<sup>306</sup> Al-Abbas, 'Corporate Governance and Earnings Management: An Empirical Study of the Saudi Market' (2009) 15 Journal of American Academy of Business 301

<sup>307</sup> Alshareef, & Sandhu (n 31),.2

<sup>308</sup> See generally: Dima Jamali, Asem M. Safieddine and Myriam Rabbath, 'Corporate Governance and Corporate Social Responsibility Synergies and Interrelationships' (2008) 16 Corporate Governance: An International Review, 443, 459.

<sup>309</sup> Abdull Razak, R. 'Corporate Social Responsibility Disclosure and its Determinants in Saudi Arabia,' (2015) 23 Middle East Journal of Scientific Research 2388

<sup>310</sup> Khaleed Alotaibi and Khaled Hussainey, 'Quantity Versus Quality: The Value Relevance of CSR Disclosure of Saudi Companies' (2016) 13 Corporate Ownership and Control, 167, 179.

<sup>311</sup> Habbash, 740, 754.

<sup>312</sup> See generally: Murya Habbash, 'Corporate Governance and Corporate Social Responsibility Disclosure: Evidence from Saudi Arabia' (2016) 12 Social Responsibility Journal, 740, 754.

<sup>313</sup> Yaseen Al-Janadi, Abdul Rahman Rashidah and Normah Haj Omar, 'Corporate Governance Mechanisms and Voluntary Disclosure in Saudi Arabia' (2013) 4 Research Journal of Finance and Accounting.

<sup>314</sup> Fernando Llena Macarulla and Mohammad Ahmad Talalweh, 'Voluntary Corporate Social Responsibility Disclosure: A Case Study of Saudi Arabia' (2012) 8 Jordan Journal of Business Administration.



Moreover, according to a recent thesis, Saudi companies have improved their CSR (from 2015 to 2018 by 30%). Various factors have contributed to CSR programs growing and diversifying in Saudi Arabia, such as "board size, female hiring, government representatives on the board, royal family members on the board, corporate social responsibility awards, a risk management committee, regulatory sanctions, industry sectors, and company size".<sup>315</sup> As an example: Kent and Monem report that women on the board, is positively correlated with CSR.<sup>316</sup> Furthermore, a Saudi study results has argued that the CSR governance model has been beneficial for a number of corporate leaders who utilize social and environmental impacts as critical success factors. The results have also suggested that the board of directors can approach CSR governance in a number of ways, including: Focusing on monitoring, strategic, and service functions, and considering stakeholder concerns in CG structure,<sup>317</sup> especially family businesses. A study indicates, however, CSR is negatively correlated with ownership structure and family ownership.<sup>318</sup> Similarly, a Saudi Arabian study found that nationality of CEO is negatively related to CSR reporting family-controlled firms.<sup>319</sup>

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

### CSR and Supply chains

While standard international framework of CSR emphasizes labour rights in supply chains, climate change, and anti-corruption,<sup>320</sup> the Saudi framework places more emphasis on human and social development.<sup>321</sup> Unfortunately, there is no Saudi study examining the social responsibility of Saudi companies in their supply chains explicitly, and there is no laws or regulation that addresses human rights in supply chains in Saudi Arabia. Therefore, the author focused on the rare literature dealing about supply chains in general in Saudi Arabia.

Although Saudi subjects have higher expectations for corporations' social responsibility within their supply chains as compared to Brammer et al.,<sup>322</sup> poorly managed suppliers and poor future plans with their buyers lead to haphazard work practices in Saudi market, according to a Saudi study.<sup>323</sup> This means that the supplier-buyer relationship, which is a key area of CSR in supply chains,<sup>324</sup> faces regulatory challenges in the Saudi labor market.

<sup>315</sup> See generally: Khalid Mujahid Alharbi, 'The Impact of The 2030 Vision and Firm Characteristics On Corporate Social Responsibility Disclosure in Saudi Arabia' (PhD thesis, Victoria University 2021).

<sup>316</sup> Pamela Kent and Reza Monem, 'What Drives TBL Reporting: Good Governance or Threat to Legitimacy?' (2008) 18 Australian Accounting Review, 297, 309.

<sup>317</sup> Alshareef, & Sandhu (n 31).

<sup>318</sup> Joern Block and Marcus Wagner, 'Ownership Versus Management Effects On Corporate Social Responsibility Concerns in Large Family and Founder Firms' (2014) 5 Journal of Family Business Strategy, 339, 346.

<sup>319</sup> Shaker Dahan AL-Duais and others, 'CEO Characteristics, Family Ownership and Corporate Social Responsibility Reporting: The Case of Saudi Arabia' (2021) 13 Sustainability, 12237.

<sup>320</sup> See for example: Holger Görg, Aoife Hanley and Adnan Seric, 'Corporate Social Responsibility in Global Supply Chains: Deeds Not Words' (2018) 10 Sustainability, 3675. See also: Valeria Sodano and Martin Hingley, 'The Food System, Climate Change and CSR: From Business to Government Case' (2013) 115 British Food Journal, 75, 91. See also: Kerstin Lopatta and others, 'Corruption, Corporate Social Responsibility and Financial Constraints: International Firm-Level Evidence' (2016) 14 European Management Review, 47, 65.

<sup>321</sup> See for example: Sutan Emir Hidayat and Ahmad Rafiki, 'Comparative Analysis of Customers' Awareness Toward CSR Practices of Islamic Banks: Bahrain Vs Saudi Arabia' [2021] Social Responsibility Journal. See also: Samia Magbool, 'An Overview of CSR Programs in Saudi Arabia with Reference to Select Organizations' (2015) 5 International Journal of Human Resource Studies, 282.

<sup>322</sup> See generally: Maurice J. Murphy and others, 'Exploring Muslim Attitudes Towards Corporate Social Responsibility: Are Saudi Business Students Different?' (2016) 154 Journal of Business Ethics, 1103, 1118.

<sup>323</sup> Mohamad Miralam, 'An Exploratory Study into Buyer and Supplier Relationship Problems, Causes, Control Strategies Effects in Saudi Arabian Companies' (PhD thesis, University of Stirling, Department of Management 2011).

<sup>324</sup> See for example: Craig R. Carter and Marianne M. Jennings, 'LOGISTICS SOCIAL RESPONSIBILITY: AN INTEGRATIVE FRAMEWORK' (2002) 23 Journal of Business Logistics, 145, 180.



On the other hand, although over 90% of corporations worldwide are SMEs,<sup>325</sup> the general literature focuses mainly on large corporations that have CSR-related activities in their supply chains.<sup>326</sup> From the limited literature about SMEs, according to a SAP-sponsored study conducted in 2013, Saudi SMEs have been making a strong push to expand overseas in recent years,<sup>327</sup> however, it is more likely for those SMEs to engage in CSR in their supply chains if CSR practices can easily be identified by their customers, it partly means that CSR practices for SMEs overlook operational issues that their customers are unaware of. Therefore, the characteristics of SMEs such as lack of resources and imbalance of power within their customer relationships may explain this inadequate CSR programs in their supply chains.<sup>328</sup>

Interestingly, the authors, Loosemore, M., and Phua, F., found in their analysis of case studies of world-renowned building and consulting companies, that customers do not pay much attention to comprehensive CSR strategies of construction companies in their supply chain.<sup>329</sup> To this end, it has been argued that due to its high cost and consumers lack concern about it, Saudi Arabia lacks CSR in mega-construction projects. This study also suggests that this can affect the supply chain of these businesses, therefore, the study indicates that CSR in supply chains of should be improved, in Saudi construction companies, through a rapid response program that changes management, develops regulations, and develops workforce skills.<sup>330</sup>

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

## 2.5 Limitations of prior studies and research gap

The aim of this section is to critically analyse the existing literature on comparison of CSR-related regulations and its effectiveness in Saudi Arabia and UK. It will then identify the gaps and propose ways by which the current research will try to fill them. This will be examined by firstly considering the problems which previous literature in this area has encountered, before the section will examine the ways in other paradigms might be utilized in order to address these weaknesses. The way in which this thesis will seek to address these issues will then be examined, before the importance of the case study is to be examined.

### 2.5.1 Problems which Previous Saudi-UK Research Has Faced

The first major problem which arises in this study is that, despite the fact that there is increasing interest in CSR practices globally; the extant literature mainly concentrates on the developed countries.<sup>331</sup> In short, the existing sources in developing

<sup>325</sup> See for example: Krishna Udayasankar, 'The Foundations of Governance Theory: A Case for The Resource-Dependence Perspective' (2008) 5 Corporate Ownership and Control, 164, 172.

<sup>326</sup> See for example: Androniki Apostolakou and Gregory Jackson, 'Corporate Social Responsibility in Western Europe: An Institutional Mirror or Substitute?' [2009] SSRN Electronic Journal.

<sup>327</sup> Oxford Economics, 'Smes: Equipped to Compete Saudi Arabia Fact Sheet' (*Oxfordeconomics.com*, 2013) <<https://www.oxfordeconomics.com/Media/Default/Landing%20pages/SAP%20SME/Country-fact-sheets/SMEs%20Equipped%20Saudi%20Arabia.pdf>> accessed 4 March 2022.

<sup>328</sup> Hee-Yong Lee, Dong-Wook Kwak and Jeong-Yang Park, 'Corporate Social Responsibility in Supply Chains of Small and Medium-Sized Enterprises' (2017) 24 Corporate Social Responsibility and Environmental Management, 646.

<sup>329</sup> Martin Loosemore and others, 'Operatives' Experiences of Cultural Diversity On Australian Construction Sites' (2010) 28 Construction Management and Economics, 177, 188.

<sup>330</sup> Ali Alotaibi, Francis Edum-Fotwe and Andrew D.F. Price, 'Critical Barriers to Social Responsibility Implementation Within Mega-Construction Projects: The Case of the Kingdom of Saudi Arabia' (2019) 11 Sustainability, 1755.

<sup>331</sup> Brammer, Brooks and Pavelin, 'Corporate Social Performance and Stock Returns: UK Evidence from Disaggregate Measures.' (2006) 35 Financial Management 97; L. Holder-Webb, J. Cohen, L. Nath and D. Wood, 'The Supply of Corporate Social Responsibility Disclosures Among U.S. Firms' (2009) 84 Journal of Business Ethics .497; C. Post, N. Rahman and E. Rubow, 'Green Governance: Boards of Directors' Composition and Environmental Corporate Social Responsibility' (2011) 50 Business & Society 189; K. Rao, C.A. Tilt and L.H. Lester, 'Corporate Governance and Environmental reporting: An Australian Study.' (2012) 12 Corporate Governance: The international journal of business in society 143; C. Reverte, 'Determinants of Corporate Social Responsibility Disclosure Ratings by Spanish Listed Firms' (2009) 88 Journal of Business Ethics 351-366; Branco and Rodrigues, 'Corporate Social Responsibility and Resource-

countries, especially Saudi Arabia, are rare.<sup>332</sup> This is of course a major problem not only for this study, which is reliant on the secondary literature in this field in order to obtain a strong basis on which to construct and make arguments as to the relative importance of CSR in both Saudi Arabia and in the UK,<sup>333</sup> and to make recommendations for Saudi Arabia, but also because it is arguable that CSR is just as important, or even more important as a practice to develop in developing states. Due to higher poverty levels, environmental degradation, and institution problems, Egri and Ralston argue that there has been relatively little corporate responsibility research in countries with the greatest pressure for CSR.<sup>334</sup> As Pisani et al noted that since developing countries have so many institutional voids, it is particularly important to study CSR practices there.<sup>335</sup> Additionally, they said, despite the publications in international journals, it is possible to doubt whether CSR research is truly global or even truly 'international'.<sup>336</sup> From this, it can be suggested that even what literature does exist in this area is of rather dubious value, and should not be relied upon without other supporting evidence as a basis on which to draw conclusions by this work. In short then, whilst there is an increasing interest for CSR in Saudi Arabia, and whilst this subject is of undoubted importance, studies that demonstrate how this concept is understood are few, and its practical use by Saudi organisations.

This means that there a fundamental gap in the literature in which comparative studies into the differences between CSR approaches adopted in the UK and in the KSA respectively. Due to the fact that most existing literature focuses on international law or developed country law, it is arguably even more necessary to highlight how Saudi organizations practice CSR. As both Johnson and Rühmkorf noted, there is an extensive debate about the scope and function of corporate social responsibility in isolation from the legal framework that governs managerial discretion.<sup>337</sup> Rühmkorf tried to prove that CSR can be viewed as at least in part a legal concept and that English private law has already played a considerable role in promoting CSR.<sup>338</sup> Therefore, one of the main aims of this thesis will be to fulfil this gap.

There is then a significant practical difficulty which arises in researching and writing this thesis which is that there is a gap in literature about direct link between CSR and law in Saudi Arabia. For example, there is no literature that discusses the link between Saudi corporate law or contract laws and CSR (this thesis will fill this gap), and Saudi legislation do not deal with human rights in supply chains. Similarly, there are a few sources dealing with the relationship between CG and CSR, but they have two problems: First, these sources deal with the subject in terms of management or accounting not law.<sup>339</sup> Secondly, some of the literature considers CSR as a function under CG and is not an ethical, legal and economic behaviour.<sup>340</sup>

However, another major problem with the field of research is the scarcity of sources due to the recent changes in the Saudi framework. As a result, a large number of sources are discarded due to the outdated data. Indeed, some PhD thesis written

Based Perspectives' (2006) 69 Journal of Business Ethics 111; Branco and Rodrigues, 'Factors Influencing Social Responsibility Disclosure by Portuguese Companies' (2008) 83 Journal of Business Ethics 685

<sup>332</sup> Dima Jamali, and Charlotte Karam, 'Corporate social responsibility in developing countries as an emerging field of study' (2016) 20 International Journal of Management Review

<sup>333</sup> See for example: Moneera Abdullah Alwahaibi, 'Mapping The Territory of Saudi Corporate Social Responsibility a Grounded Theory Analysis' (PhD level, Brunel Business School, Brunel University 2018).

<sup>334</sup> Carolyn Egri and David Ralston, 'Corporate responsibility: A review of international management research from Niccolò Pisani, Arno Kourula, Ans Kolk and Renske Meijer, 'How global is international CSR research? Insights and recommendations from a systematic review' (2017) 52 Journal of World Business 591, 591 1998 to 2007' (2008) 14 Journal of International Management 319

<sup>335</sup> Niccolò Pisani, Arno Kourula, Ans Kolk and Renske Meijer, 'How global is international CSR research? Insights and recommendations from a systematic review' (2017) 52 Journal of World Business 591, 591

<sup>336</sup> *ibid*, 591

<sup>337</sup> Johnson, Op. Cite, 1002

<sup>338</sup> Rühmkorf, (n 26), 53

<sup>339</sup> See for example: Mohammed Naif Z Alshareef and Kamaljeet Sandhu, 'Integrating Corporate Social Responsibility (CSR) Into Corporate Governance Structure: The Effect of Board Diversity and Roles-A Case Study of Saudi Arabia' (2015) 10 International Journal of Business and Management. See also: Ebrahim El Said EBEID, 'Accounting Students' Perceptions of Social Responsibility Importance: Empirical Evidence from Saudi Arabia' (2020) 4 Journal of Finance & Corporate Governance, 61, 78.

<sup>340</sup> See for example: Andrea Beltratti, 'The Complementarity Between Corporate Governance and Corporate Social Responsibility' (2005) 30 The Geneva Papers on Risk and Insurance - Issues and Practice, 373, 386.

on the topic are criticizing the old CSR rules.<sup>341</sup> Therefore, the link between CSR and CG in Saudi firms needs to be updated, to explore the current strengths as well as its weaknesses of CSR in Saudi Arabia, from legal perspective.<sup>342</sup>

Briefly, the limitations in previous studies are summarized in the lack of sources in general in Saudi literature, especially in corporate law and supply chains. Also, some sources are considered outdated (before some laws were amended), so many of them were excluded. In addition, the literature that compares CSR in Saudi Arabia and Britain legally is not available.

### 2.5.2 How Can This Thesis Use Alternative Paradigms to Solve This?

The lack of previous literature in this area is not necessarily a hindrance to this issue, as traditional black letter legal analysis can be combined with a socio-legal approach here in order to apply some criticism to the position of the KSA law, and in order to analyse the extent to which this law might promote (or hinder) CSR compliance in the KSA. This type of analysis is not necessarily dependent on there being a significant existing corpus of secondary literature on which to base these criticisms. Instead, critical analysis of the law itself, taking into account the importance and objective of CSR, and comparing this to the approach adopted in the UK will be able to mitigate this lack of literature.<sup>343</sup>

The same is arguably true of other areas. The absence of such previous existent literature is not something which is necessary an immovable impediment to the research. There are various different ways of approaching situations in which a literature gap such as this exists. For example, one way of considering the fact that relevant CSR literature in developing states and in states such as Saudi exists is to acknowledge that this indicates that there has not perhaps been as significant an effort directed towards developing and adopting CSR in these states.<sup>344</sup>

This can then operate as a working hypothesis which can then be tested by consideration of case-studies rather than by reference specifically to previous literature in the area. Another advantage of this programme is that generally speaking, the companies operating within the scope of this study are large, multinational corporations. CG and CSR is a globally important topic, and such companies often seek to encourage investment globally.<sup>345</sup> Having an effective CSR policy is a good way of attracting investment worldwide,<sup>346</sup> and national borders are therefore less relevant in this consideration than elsewhere because of the fact that individual companies take it upon themselves to adopt CSR policies for example which impact on their global operations.<sup>347</sup> As has already been seen, some Saudi companies for example have a CSR policies. This can be examined by the empirical data obtained from an interview with 20 CSR practitioners in Saudi Arabia and 10 interviews in the UK. This is to prove if the law has a role in Saudi Arabia in improving CSR, and to explore if leading British laws such as Section 172 of the Companies Act and Section 54 of the Modern Slavery Act are effective enough in the UK from a practitioner's point of view, to suggest transferring it to the Saudi legal environment, taking into account local constraints.<sup>348</sup>

<sup>341</sup> Jawhar Ebnmhana, 'Corporate Social Responsibility in a Saudi Arabian Context: Social Development Centres as a Bridge between the Private Sector and Community Needs' (PhD Thesis, University of Salford 2018); Khalid Saad Al-habshan, 'Corporate Governance Disclosure Practices and Protection of Shareholders in Saudi Arabia' (PhD Thesis, Brunel University, 2015); W.M. Albassam, 'Corporate governance, voluntary disclosure and financial performance: an empirical analysis of Saudi listed firms using mixed-methods of research design' (PhD Thesis, University of Glasgow 2014); Abdullatif Mohammed Aleshaikh, 'Towards legal reform of Saudi law of directors' duties and of enforcement by derivative action' (PhD Thesis, University of Glasgow 2018); A M. Al-Khuwiter, 'Environmental Accounting and Disclosure in Saudi Arabia' (PhD thesis, Cardiff University, 2005); Anas Alhazmi, 'Exploring the Factors and Effects of Corporate Social Responsibility Disclosure in Saudi Arabia' (PhD Thesis, Nottingham Business School, 2017)

<sup>342</sup> See Chapter Four.

<sup>343</sup> See Chapters Three & Four.

<sup>344</sup> See for example: P.Lesley Cook and John Surrey, 'Energy Technology In Developing Countries: The Scope For Government Policy' (1989) 9 Technovation, 431, 451. See also: Ammar Ahmad, 'CSR or ISO Certification: What Does Really Matter for Consumer in Developing Countries?' (2019) 15 IBT Journal of Business Studies, 95, 111.

<sup>345</sup> Krista Bondy and others, 'Multinational Corporation Codes of Conduct: Governance Tools for Corporate Social Responsibility' (2008) 16 Corporate Governance 294, 294.

<sup>346</sup> See for example: Juil Lee, Sang-Joon Kim and Insu Kwon, 'Corporate Social Responsibility as A Strategic Means to Attract Foreign Investment: Evidence from Korea' (2017) 9 Sustainability, 2121.

<sup>347</sup> Bryan Horrigan, *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business* (1st edn Edward Elgar 2010) 177.

<sup>348</sup> See chapter five.

Furthermore, regardless of the fact that there is a lack of relevant secondary literature about CSR and Saudi law. Several international CSR frameworks such as China<sup>349</sup>, India<sup>350</sup> and some Islamic countries<sup>351</sup> can be explained. It means that this thesis can seek to consider the way in which these frameworks operate, and can analyse then how these approaches might otherwise operate in Saudi Arabia within the particular socio-cultural and religious challenges.<sup>352</sup> This is another way of mitigating the lack of specific literature in this field.

Moreover, the scarcity of sources in this area is also due to the longstanding misinterpretation of CSR as a charity.<sup>353</sup> As a result, there has been some lack of understanding of what CSR is, even if it is being pursued and applied. Because of this, the perception of what responsible business entails differs greatly from reality. Lu, Wang, and Lee demonstrate that the Middle East organizations' mentality has resulted in them only recognizing CSR as a charitable program or donation without properly integrating it into core business strategies.<sup>354</sup> It is, therefore, important to verify those allegations through interviews. If the interviews demonstrate a similar trend, then explain that CSR is not only related to philanthropy can lead to changes in practice.

To sum up, the author will attempt to solve the problems of a lack of literature by using case studies, sources of Islamic law, and discourse analysis of current laws.

### 2.5.3 Importance of Case Studies in this Area

It can be said that case studies on CSR, in developing countries in general, are of utmost importance, because it provides different challenges than those of developed countries for this thesis to consider.<sup>355</sup> This may be due to the weak level of economic development in developing countries,<sup>356</sup> and cultural differences have also implications for CSR activities.<sup>357</sup> Additionally the legal systems of these states may be insufficiently strong to enforce CSR activities which result in unlikely strong pressure groups and activists to influence the firms' behaviour.<sup>358</sup> Therefore, the influencing factors and effects may be different from developed countries.<sup>359</sup> For instance, the case studies in China and India demonstrates whether domestic laws of CSR have strengthened CSR practices. Both of these countries are also extremely relevant for two reasons: first, they

<sup>349</sup> See for example: Linbin Zhou and Zhaodan He, 'On Corporate Social Responsibility "Beyond Law" In China' (2009) 4 *Frontiers of Law in China*, 457, 473. See also: Virginia E. Harper Ho, 'Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and The Law in China' [2012] SSRN Electronic Journal.

<sup>350</sup> See for example: Jee Hye You, 'Corporate Social Responsibility (CSR) Legislation in India and Its Implications' (2014) 4 *Sogang Journal of Law and Business*, 45, 80. See also: Akanksha Jumde and Jean du Plessis, 'Legislated Corporate Social Responsibility (CSR) In India: The Law and Practicalities of Its Compliance' [2020] *Statute Law Review*.

<sup>351</sup> See for example: Naila Aaijaz and Mohamed Ibrahim, 'CSR Inflections: An Overview On CSR Global Strategies Adopted by Companies in Malaysia and Other Asian Countries' [2012] *The Journal of Southeast Asian Research*, 1, 16.

<sup>352</sup> Valentyna Anatoliyivna Bodak, 'Religion as A Socio-Cultural Phenomenon' [2009] *Ukrainian Religious Studies*, 85, 90.

<sup>353</sup> See for example: Tahreem Noor Khan, 'Corporate Social Responsibility of Islamic Banks: CSR Website Visibility, CSR Initiatives, CSR Strategy' (2021) 6 *AL-FALAH: Journal of Islamic Economics*, 166. See also: Erna Widiastuty and Noorlailie Soewarno, 'CSR Expenditure and Company Performance: Charity or Signal? Evidence from Indonesia' (2019) 23 *Quality Innovation Prosperity*, 22.

<sup>354</sup> W. Lu, W. Wang, and H. Lee, 'The relationship between corporate social responsibility and corporate performance: evidence from the US semiconductor industry' (2013) 51 *International Journal of Production Research* 5683

<sup>355</sup> Mandurah, Khatib and Al-Sabaan, (n 30); Nalband Al-Amri, (n 74); J. Mahadeo, V. Oogarah-Hanuman and T. Soobaroyen, 'A Longitudinal Study of Corporate Social Disclosures in a Developing Economy' (2011) 104 *Journal of Business Ethics* 545

<sup>356</sup> W. Visser, 'Corporate Social Responsibility in Developing Countries' in: A. Crane, A. McWilliams, D. Matten, J. Moon and D. S. Stegel (eds.) *The Oxford Handbook of Corporate Social Responsibility* (Oxford: Oxford University Press, 2009); M. Mangena and V. Taurigana, 'Disclosure, Corporate Governance and Foreign Share Ownership on the Zimbabwe Stock Exchange' (2007) 18 *Journal of International Financial Management & Accounting* 53

<sup>357</sup> Visser (n 104); Mahadeo, Oogarah Hanuman and Soobaroyen, (n 103)

<sup>358</sup> R. La Porta, F. Lopez-de-Silanes, A. Shleifer and R. Vishny, 'Investor Protection and Corporate Valuation' (2002) 57 *Journal of Finance* 1147

<sup>359</sup> Mahadeo, Oogarah-Hanuman and Soobaroyen, (n 103); A. Khan, M. Muttakin and J. Siddiqui, 'Corporate Governance and Corporate Social Responsibility Disclosures: Evidence from an Emerging Economy.' (2013) 114 *Journal of Business Ethics* 207



are developing countries,<sup>360</sup> as is the case with Saudi Arabia, so some of the challenges will be similar, and second, they have developed their own structures for CSR,<sup>361</sup> which are different from the ones adopted by the UK, which followed the global model.

In light of Saudi diverse religious, social, and political systems, the Islamic context provides a unique setting for studying CSR disclosures, as Alotaibi and Hussainey noted, the Saudi CG contains Islamic principles.<sup>362</sup> As a result, Islamic governance characteristics have been introduced. Consequently, studying recent case studies about Islamic CSR practices would improve disclosure practices in general and CSR in particular in Islamic firms.

Moreover, On top of the study by Zubairu, Sakariyau and Dauda on Islamic banks, there is a 2019 study by Ben Mahjoub on the disclosure rate of CSR.<sup>363</sup> Both studies demonstrate a relatively low disclosure rate; however, the reasons for such a low rate are not analysed in-depth. The study by Mandurah et al. seems more robust; however, it was published in 2012 and is, thus, outdated.<sup>364</sup> The study found that the executives in Islamic firms had a strong level of understanding and attitude towards the CSR concept, but noted a lack of consistent organizational policies and concerted efforts to incorporate CSR.<sup>365</sup> It is, therefore, hard to determine whether listed companies in Islamic countries such Saudi Arabia adhere to a code of conduct to enhance CSR and improve their reputation. This thesis will provide an answer to this question.

In this respect, in influencing its policies and practices, including CSR, the business entity's contextual settings may play a vital role.<sup>366</sup> More importantly, for the purposes of this thesis, using previous case studies of CSR practices globally and within the UK will be able to provide a good basis for comparison and for an analysis of whether transplantation of such approaches might be possible or desirable within Saudi Arabia. For example, Pedersen argues that various factors form and influence the perceptions of managers of the relationship between business and society and that these variables vary depending on the country studied. In turn, such variables form corporate behaviour and influence CSR operations.<sup>367</sup> A research by Doh and Guay shows how organizational policies relating to CSR activities are influenced by institutional gaps between the US and Europe.<sup>368</sup>

Another important study is by Golob and Bartlett which analysed how Australia and Slovenia are addressing corporate social responsibility reporting issues.<sup>369</sup> These authors have shown that the challenges of reporting are different due to the role of culture in influencing the perceptions of individuals.<sup>370</sup> Actually, Australia has an Anglo-Saxon heritage,<sup>371</sup> while Slovenia

<sup>360</sup> See for example: Anup Raj and others, 'How Different Are Corporate Social Responsibility Motives in A Developing Country? Insights from A Study of Indian Agribusiness Firms' (2018) 61 Thunderbird International Business Review, 155, 165. See also: Dr. Ramakrishnan, 'Indian CSR - Is It Different from Western?' [2016] SSRN Electronic Journal.

<sup>361</sup> See for example: Ameeta Jain and Sandeep Gopalan, 'CSR Disclosure by Asia-Pacific Banks: Evidence from Comparative Assessment Against India's Compulsory CSR Law' [2017] SSRN Electronic Journal.

<sup>362</sup> Khaleed Alotaibi and Khaled Hussainey, 'Quantity Versus Quality: The Value Relevance of CSR Disclosure of Saudi Companies' (2016) 13 Corporate Ownership and Control, 167, 179.

<sup>363</sup> Ben Mahjoub, L., 'Disclosure about corporate social responsibility through ISO 26000 implementation made by Saudi listed companies.' (2019) 6 Cogent Business & Management 1

<sup>364</sup> Mandurah, Khatib and Al-Sabaan, (n 30)

<sup>365</sup> *ibid.*

<sup>366</sup> D. Campbell, 'A Longitudinal and Cross-sectional Analysis of Environmental Disclosure in UK Companies—A Research Note.' (2004) 36 The British Accounting Review 107; R.M. Haniffa and T. E. Cooke, 'The Impact of Culture and Governance on Corporate Social Reporting' (2005) 24 Journal of Accounting and Public Policy 391; Mahadeo, Oogarah-Hanuman and Soobaroyen, (n 103)

<sup>367</sup> Esben Rahbek Pedersen, 'Modelling CSR: How Managers Understand the Responsibilities of Business Towards Society' (2009) 91 Journal of Business Ethics, 155, 166.

<sup>368</sup> J.P. Doh and T. R. Guay, 'Corporate Social Responsibility, Public Policy, and NGO Activism in Europe and the United States: An Institutional-Stakeholder Perspective.' (2006) 43 Journal of Management Studies 47

<sup>369</sup> U. Golob and J. Bartlett, 'Communicating about Corporate Social Responsibility: A Comparative Study of CSR Reporting in Australia and Slovenia' (2007) 33 Public Relations Review 1

<sup>370</sup> *ibid.*

<sup>371</sup> See for example: Kunnawee Thirarungrueang, 'Rethinking CSR in Australia: Time for Binding Regulation?' (2013) 55 International Journal of Law and Management, 173, 200.





broader group of stakeholders.<sup>380</sup> CSR practices are however only partially underpinned by these studies. Only a few sources outside of Alotaibi's thesis have measured the quantity and quality of CSR disclosure. While this thesis is not aiming at measuring such level, it is important to use such data to answer the main research question.<sup>381</sup>

Most importantly, except for Alotaibi and to a lower extent Aleshaikh, no studies have been identified that have explored the benefits of participating in CSR in the Saudi Arabian context in terms of sustainable profits, strengthening the relationship with the community, satisfaction of employees and consumers and participation in social improvements. To fill this knowledge gap, it is expected that the current study will provide new insights. Indeed, by raising awareness of the value of CSR and launching CSR initiatives, increasing private sector participation in Saudi Arabia's social and economic development has been a government priority. Understanding the benefits of CSR as well as the current limitations in the framework in place could incentivize Saudi companies to engage more with CSR.

The importance of this thesis, therefore, is that it enriches the literature on analysing the current situation of CSR in Saudi Arabia and compare this with the UK situation, then analysing the role of Saudi and the UK laws in improving CSR, and finally proposing legal mechanisms to improve CSR in Saudi firms in the future. This thesis is the first of its kind in the Saudi context that explicitly links the law with CSR, especially with regard to supply chains. There is no study on the role of law in protecting human rights across supply chains in Saudi firms.

Because of the severe lack of references related to the Saudi context, the author overcomes these challenges through three means: first, use Islamic corporate social responsibility (ICSR) sources and analysing them critically, secondly criticising the legal frameworks in other countries (case studies)<sup>382</sup>, and finally through empirical data obtained by the author. (Interview with 30 practitioners in Saudi Arabia and the UK).<sup>383</sup>

Once again, the scarcity of valid sources in the Saudi context is the most prominent limitation of this study, just as some previous studies are superficial or inappropriate for the topic of the thesis. Therefore, the author attempts to solve these difficulties through a critical analysis of the practices of CSR in some Islamic countries, as well as studying the organizational framework of CSR in some developing countries such as India and China. More importantly, analyze the very close relationship between some Islamic practices such as Zakat, charity, giving and philanthropy with the social responsibility of Saudi companies.

## 2.6 Conclusion

The main aim of this chapter is to focus on the different regulatory perspectives of CSR in the UK and Saudi literature. The chapter began with a discussion of the history of CSR, then definitions of CSR, and then deals with specific legal frameworks of CSR in the UK and Saudi Arabia, namely, corporate law, corporate governance and CSR policies in supply chains. Finally, the chapter deals with the problems that the researcher faced in the current literature and how he overcame them and the importance of this study to bridge a large gap in Saudi literature.

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

Finally, the analysis also reveals that an area of sources focusing on the factors influencing CSR practices such as family ownership, governance structure, government ownership, and others, which is not part of this thesis. However, these sources

<sup>380</sup> Aleshaikh (n 101); Khalid Saad Al-habshan (n 101); Haniffa and Cooke (n 111)

<sup>381</sup> Alotaibi (n 101)

<sup>382</sup> See Chapter Four.

<sup>383</sup> See Chapter Five and Six.

offer some explanations regarding how CSR works in Saudi context and the gap in literature about CSR and law. Therefore, this thesis supports in filling this gap, by providing a more comprehensive understanding of the new laws, policies and regulatory mechanisms that have not yet been discussed in the context of the CSR in Saudi Arabia particularly in supply chains.

## Chapter Three

### CSR in UK Laws

#### 3.1 Introduction

This chapter answers the research question: What the impacts of the direct laws on CSR practises in the UK? And Why? The focus of the chapter, therefore, is looking at the impacts of the UK Environment Protection, Act Companies Act, Modern Slavery law, and some other laws in improving CSR in the UK. Furthermore, this chapter explores the relationship between managers and shareholders, the existing legal framework and the effect of third parties and events such as the Covid-19 pandemic on companies' willingness to adopt and adhere to CSR practices and goals.

The chapter argues that the idea that enhancing shareholder value should be the overriding objective of a company's senior management, which is entrenched in the primacy approach literature, is damaging to the wider stakeholder body, as well as outdated. It will be demonstrated that the law is changing in a direction more aligned with CSR than it ever was before. However, the author will argue that the lack of specific legislation, addressing CSR prevents the optimal development of this notion and its genuine application across UK companies.

Nevertheless, the chapter contributes to answer the main research question of the thesis by proving that the main function of mandatory CSR laws in UK is largely symbolic rather than regulatory or judicial. At best, they might send signals about appropriate corporate behaviour and possibly lead to reform of labour standards that prioritize economic interests over social and environmental concerns.

#### 3.2 General Framework of CSR in the UK

CSR has been framed in the previous chapter as the group of businesses through which profitable companies seek to find economic, social and environmental returns.<sup>384</sup> It can be said that CSR in the UK is a fusion of two separate concepts, each of which refers to a separate stand-alone area. First, the "social responsibility" part of the term indicates that companies must consider the effect their actions and operations have on society, including the impact on the environment, on those employed by the company and on the wider base of stakeholders.<sup>385</sup> Not least, the company must take into account its contribution to the community as a whole.<sup>386</sup> This brings attention to the so-called "triple bottom line", encompassing people, planet and profit.<sup>387</sup> Although the framework of TBL is to measure the social, environmental and economic impact of corporate and it considers a key component of transitioning to sustainability through companies' CSR activities<sup>388</sup>, the absence of a mandatory law or a strong executive tool for reporting and accounting led to limited compliance to social obligations in particular, and surprisingly, it has been argued that the high level of disclosure based on TBL did not contribute to raising the quality of accountability within the UK companies.<sup>389</sup>

Second, the "corporate" element of the term, however, has to do with corporate governance since it is through targeted governance and awareness on behalf of the governing corporate body that any kind of CSR can be carried out by the firm. What is more, the debate on CSR grabbed the attention of the wider public and caused corporate boards across different

<sup>384</sup> Matt Gavin, '5 Examples of Corporate Social Responsibility | HBS Online' (*Business Insights Blog*, 2019)

<<https://online.hbs.edu/blog/post/corporate-social-responsibility-examples>> accessed 10 June 2021.

<sup>385</sup> Kasturi Lisa Chase Rangan and Karim Sohail, 'The Truth About CSR' (*Harvard Business Review*, 2015)

<<https://hbr.org/2015/01/the-truth-about-csr>> accessed 18 August 2021.

<sup>386</sup> As an example, see, Gov.uk, 'Our commitment to corporate social responsibility (CSR)' (2018)

<<https://www.gov.uk/government/news/our-commitment-to-corporate-social-responsibility-csr>> accessed 8 June 2021.

<sup>387</sup> Matt Gavin. (n1).

<sup>388</sup> John Elkington, 'Towards The Sustainable Corporation: Win-Win-Win Business Strategies for Sustainable Development' (1994) 36 *California Management Review*, 90-100

<sup>389</sup> Carol A. Adams, 'The Ethical, Social and Environmental Reporting-Performance Portrayal Gap' (2004) 17 *Accounting, Auditing & Accountability Journal*, 731-757.

industries in the UK to rethink the relationship of the company with its different stakeholders in light of the new developments.<sup>390</sup> Specifically, the need to remain without the framework of CSR required changing business strategies and at times sacrificing profitability in order to retain the company's activities within the boundaries of the socially acceptable.<sup>391</sup> The UK companies have increasingly transitioned towards dedicating an entire department to the issue of CSR with a dedicated executive being responsible for the company's policy with respect to this. The title of such executives is typically "the chief officer of corporate social responsibility" or "chief sustainability officer" (CSO).<sup>392</sup>

This is the case because the new understanding of CSR in UK calls for companies that focus on the issue of purpose and working towards the greater good rather than simply on making a profit.<sup>393</sup> To this end, the concept of "profiting" adopts a new dimension; it is not sufficient to simply create more value, it is much more important to do so while doing good. However, given British society's attention to CSR, engaging in this ultimately proves to be beneficial to the company, including its profitability. This ends up being the case because consumers appreciate the efforts of such companies and elect to purchase their goods or services. On one hand, this creates a sense of contributing to a vision of the future to which such consumers subscribe and on the other, it "rewards" the change in policies in those corporations, which have decided to move to greater adherence to the CSR's principles.<sup>394</sup> Equally, not adhering to such principles may have the result of consumers punishing the "offender" company by not purchasing its products. In addition, companies are now under the pressure coming from different directions (NGOs<sup>395</sup>, 'asset managers, special interest groups, activist investors, private equity funds, ESG rating firms, consumer groups, trade groups, politicians, regulators, academics and others')<sup>396</sup> to address the new challenges presenting the corporate world. This illustrates that corporations must consider the broader context and that they are vulnerable to all sorts of critique, coming from a number of sectors.<sup>397</sup> Furthermore, the fact that corporations must listen as attentively to NGOs as they do to formal regulators underscores the power such informal governmental organisations have in that they can shape the policies of big companies in a way that will best align with their CSR objectives.<sup>398</sup> The new challenges discussed above fall into three main categories: environmental, social governance (ESG). With respect to the former, of interest are issues of climate change such as risks generated from this, reporting on the issue and greenhouse gas emissions objectives. Other notable environmental objectives include sustainability and energy.<sup>399</sup>

<sup>390</sup> Ramakrishnan Ramachandran, 'Significant Changes in the Business in the Last 30 Years Due to Corporate Social Responsibility' (2008) available:

<[https://www.researchgate.net/publication/228320598\\_Significant\\_Changes\\_in\\_the\\_Business\\_in\\_the\\_Last\\_30\\_Years\\_Due\\_to\\_Corporate\\_Social\\_Responsibility](https://www.researchgate.net/publication/228320598_Significant_Changes_in_the_Business_in_the_Last_30_Years_Due_to_Corporate_Social_Responsibility)> accessed 18 August 2021.

<sup>391</sup> See generally: Jaakko Siltaloppi, Risto Rajala and Henri Hietala, 'Integrating CSR with Business Strategy: A Tension Management Perspective' (2020) 174 *Journal of Business Ethics*, 507-527.

<sup>392</sup> Deloitte, 'The rise of the socially responsible business' (2019) available:

<<https://www2.deloitte.com/global/en/pages/about-deloitte/articles/societal-impact-survey-deloitte-global.html>> accessed 10 June 2021, 3.

<sup>393</sup> *ibid.*

<sup>394</sup> Alexandra Zbucheá, 'Are Customers Rewarding Responsible Businesses? An Overview of the Theory and Research in the Field of CSR' (2013) available:

<[https://www.researchgate.net/publication/261797365\\_Are\\_Customers\\_Rewarding\\_Responsible\\_Businesses\\_An\\_Overview\\_of\\_the\\_Theory\\_and\\_Research\\_in\\_the\\_Field\\_of\\_CSR](https://www.researchgate.net/publication/261797365_Are_Customers_Rewarding_Responsible_Businesses_An_Overview_of_the_Theory_and_Research_in_the_Field_of_CSR)> accessed 9 June 2021.

<sup>395</sup> Non-governmental organizations.

<sup>396</sup> Peter A Atkins, Marc Gerber and Edward Marc Gerber and Edward Micheletti, "Social Responsibility and Enlightened Shareholder Primacy: Views from The Courtroom and Boardroom" (*Harvard Law School Forum in Corporate Governance*, 2019) <<https://corpgov.law.harvard.edu/2019/02/21/social-responsibility-and-enlightened-shareholder-primacy-views-from-the-courtroom-and-boardroom/>> accessed 20 June 2021.

<sup>397</sup> See for example: Federica Balluchi, Arianna Lazzini and Riccardo Torelli, 'CSR and Greenwashing: A Matter of Perception in The Search of Legitimacy' [2020] SSRN Electronic Journal.

<sup>398</sup> See for example: Antonis Skouloudis, Konstantinos Evangelinos and Chrisovaladis Malesios, 'Priorities and Perceptions for Corporate Social Responsibility: An NGO Perspective' (2013) 22. *Corporate Social Responsibility and Environmental Management*, 95-112. See also: Sylvaine Poret, 'Corporate-NGO Partnerships Through Sustainability Labelling Schemes: Motives and Risks' (2019) 11 *Sustainability*, 2689.

<sup>399</sup> For instance, engaging in renewable sources of energy or hydraulic fracturing. This demonstrates that companies are called upon to consider pressing environmental issues and to, essentially, keep abreast of all developments in the sector. Taking such a proactive approach will inevitably result in extra costs for the company which can only be offset by



As regard socio-political issues, companies are called upon to consider matters of racial, gender or age discrimination and diversity, human rights, inequity in payment, the opioid crisis, gun control, animal rights, political contributions, lobbying, charity work, drug prices, and last but not least, pension planning.<sup>400</sup> The mere variety of issues included above demonstrates the scope of the challenge before a corporate board. As with the other legs of the ESG group, addressing the issues in their totality and in a satisfactory way will involve a change in strategy and factoring in of the additional costs, which can have not only a monetary dimension but also the dimension of time. This is all the more the case because the last leg of the ESG group of issues (governance), compensation of directors and other executives appear to be at the forefront together with various, ongoing issues of corporate governance. For example, 78% of CEOs in the UK believe that “climate risk management” will decide whether or not they will continue in their jobs during the next five years according to recent pulse survey by KPMG<sup>401</sup>, and this proves that the environment of the ESG group will continue to be a priority for companies in the medium and long term.<sup>402</sup> This illustrates the pressure corporations are under suggesting that the so-called voluntary adoption of the model is not so voluntary in substance.<sup>403</sup> Moreover, the pressure is not exerted by customers solely (through boycotts) but comes from shareholders in the form of “no” campaigns voting against directors or through submission of proposals, from large shareholders during personal meetings or through personal messages, or from investors divesting from their shares (or simply threatening to do so) and even through ‘exclusion of companies from exchange-traded funds and other investment pools’.<sup>404</sup> Looking at the above in its totality highlights the seriousness of the problem and the need for the Board of Directors to consider adjusting the company’s policies in order to fit into the perceptions of British society.

In the West, while CSR by definition goes further than what is required by the law, even this has changed in the last years with legislators starting to consider changes in the relevant law in order to better reflect on the changes in society’s values.<sup>405</sup> Examples of such strategies and the following from them success stories include Lego’s<sup>406</sup> commitment to sustainability, which extends to the company’s partnerships and to the materials it uses in the manufacturing of its toys.<sup>407</sup> Another example would be Salesforce’s<sup>408</sup> 1-1-1- Philanthropic Model, where the company gave ‘one percent of the product, one percent of equity, and one percent of employees’ time to communities and the non-profit sector.’<sup>409</sup> Of interest would be Starbucks’s<sup>410</sup> Commitment to Ethical Sourcing, as a result of which in 2015 99% of the coffee supply chain was ethically sourced.<sup>411</sup>

aggressive advertisement, highlighting the company’s involvement with these issues and/or engaging with these issues in such a way, which can productively increase the company’s profit.

<sup>400</sup> Peter A Atkins, Marc Gerber and Edward Marc Gerber and Edward Micheletti. (n13).

<sup>401</sup> KPMG International Limited is a British-Dutch multinational professional services network, and one of the Big Four accounting organizations.

<sup>402</sup> Sue Bonney, ‘In a post-COVID-19 world, what comes first - profit or responsibility?’ (2020) KPMG, available: <https://home.kpmg/uk/en/home/insights/2020/09/uk-ceo-outlook/in-a-post-covid-19-world-what-comes-first.html>, > accessed 9 July 2021.

<sup>403</sup> Michael E. Porter & Mark R. Kramer, ‘Strategy and Society: The Link between Competition Advantage and Corporate Social Responsibility’ (2006) Harvard Business Review 78 at 78.

<sup>404</sup> Peter A Atkins and others. (n 13), 3.

<sup>405</sup> Jingchen Zhao, ‘Promoting More Socially Responsible Corporations through a Corporate Law Regulatory Framework’ (2017) 37(1) Legal Studies 103-106.

<sup>406</sup> The LEGO Group, one of the largest toy manufacturers in the world, is owned and managed by the Kirk Kristiansen family in Billund, Denmark. The company operates in 30 countries and has 50 companies worldwide. The company’s main business is the manufacturing, development, marketing, and distribution of the LEGO toy system. Its products are sold in more than 130 countries, and an estimated 300 million children have played with LEGO bricks.

<sup>407</sup> WWF, ‘LEGO Group builds a more sustainable future’ (2018) available: <https://www.worldwildlife.org/magazine/issues/winter-2018/articles/lego-group-builds-a-more-sustainable-future> > accessed 10 June 2021.

<sup>408</sup> Salesforce is an American cloud-based software company headquartered in San Francisco, California. It provides customer relationship management service and also provides enterprise applications focused on customer service, marketing automation, analytics, and application development.

<sup>409</sup> Matt Gavin. (n1). Salesforce.org, ‘Education Summit: Innovation for Education’ (2021) available: <https://www.salesforce.org/> > accessed 11 June 2021.

<sup>410</sup> Starbucks Corporation is an American multinational chain of coffeehouses and roastery reserves headquartered in Seattle, Washington. As the world’s largest coffeehouse chain.

<sup>411</sup> Starbucks Stories and News, ‘Starbucks Verifies 99% of Coffee Ethically Sourced’ (2015) available: <https://stories.starbucks.com/stories/2015/starbucks-ethical-sourcing-program/> > accessed 10 June 2021.



Similar to Starbucks, Levi Strauss's Social Impact strategy that goes as far back as 1991,<sup>412</sup> is geared towards sustainable and ethical sourcing.

This means that there has been a gradual shift in the West and specifically in the UK from the shareholder value approach to an approach includes broader set of stakeholders, which is called "Enlightened Shareholder Value".<sup>413</sup> The author discusses this further in the next section.

### 3.3 The shareholder primacy approach: shareholders vs stakeholders

It has been argued that the neoclassical economic approach to CSR is inappropriate and ultimately inadequate because it calls for internalisation of external costs only in a scenario where this either does or is expected to lead to increased profitability.<sup>414</sup> The question in front of the UK corporations, therefore, is whether they should address the social costs created in the wake of their operation, if there is no guarantee that such internalisation will be carried out profitably.<sup>415</sup>

The shareholder primacy view on the relationship between externalities and internalities is that negative externalities (meaning, social costs) could be offset in two main ways. First, it can be done by instrumental regulation or in other words, by calibrating the combined effect of regulation and taxation until such time that the desired effect of offsetting the undesired social costs (the specific negative externality) is achieved.<sup>416</sup> Secondly, it can be done by bargaining between the "victim" of this social cost and the "offender".<sup>417</sup> Whichever option has been chosen by the regulator, must be based on a cost-benefit analysis. This analysis must include a consideration of what the costs would be if such negative externalities are covered by means of governmental regulation and what they would be if they are met by way of transaction costs, arising from the contract between the parties.<sup>418</sup>

The typical response of economists was that the cost of such instrumental regulation would be too high to justify its application. Such an analysis assumes that the negative externalities are an acceptable cost given that the alternative would be economically inefficient.<sup>419</sup> It has been argued that the solution for this is to leave the regulation of such social costs to the market, accepting that 'leaving the externality where it falls is the most efficient outcome in the circumstances'.<sup>420</sup> From the author point of view, there are two problems with this approach, however. The first is that it assumes that social costs can be calculated in terms of monetary value. The second, and it follows from the first, is that the more people get affected by the corporation's action, the more likely it is that these negative externalities will be addressed by the corporation (or alternatively, through the legislator). However, this approach ignores the fact that the actions of a corporation may affect real people and cause real injuries,<sup>421</sup> which would be callous to estimate in monetary terms.

<sup>412</sup> Levi Strauss, 'Levi Strauss & Co. Announces New Terms of Engagement for Its Global Supply Chain' (1991) available: <https://www.levistrauss.com/wp-content/uploads/2019/03/Levi-Strauss-Co.-Announces-New-Terms-of-Engagement-for-Its-Global-Supply-Chain-undated.pdf> accessed 10 June 2021.

<sup>413</sup> See for example: Andrew Johnston, 'After The OFR: Can UK Shareholder Value Still Be Enlightened?' (2006) 7 European Business Organization Law Review, 817-843.

<sup>414</sup> Emmanuel Adegbite and others, 'Financial and Corporate Social Performance in The UK Listed Firms: The Relevance of Non-Linearity and Lag Effects' (2018) 52 Review of Quantitative Finance and Accounting., 105. See also: Kenneth Amaeshi, 'Different Markets for Different Folks: Exploring The Challenges of Mainstreaming Responsible Investment Practices' (2010) 92 Journal of Business Ethics.41. See also: Marc Orlitzky, 'Institutional Logics in The Study of Organizations: The Social Construction of the Relationship Between Corporate Social and Financial Performance' (2011) 21 Business Ethics Quarterly, 409.

<sup>415</sup> Andrew Johnston and others, 'Corporate Social Responsibility as Obligated Internalisation of Social Costs' (2019) 170 Journal of Business Ethics, 39-52.

<sup>416</sup> Andrew Johnston and others. (n32).

<sup>417</sup> R. H. Coase, 'The Problem of Social Cost' (1960) 3 The Journal of Law and Economics, 1-44.

<sup>418</sup> Andrew Johnston and others. (n32).

<sup>419</sup> Andrei Shleifer, 'Understanding Regulation' (2005) 11 European Financial Management, 439.

<sup>420</sup> Andrew Johnston and others. (n32).

<sup>421</sup> Axel Honneth, 'Recognition and moral obligation' (1997) 64(1) Social Research 16. See also: Jill E. Fisch and Steven Davidoff Solomon, 'Should Corporations Have a Purpose?' [2020] SSRN Electronic Journal.

Regardless of the above considerations, and particularly irrespective of the visibility adopted by CSR in recent times, analysis suggests that the preoccupation with the market has remained alive and well in the UK.<sup>422</sup> In addition to that, the last years have borne witness to the increased role of shareholders with regard to the management of the corporation, including an ability to impose a veto on which external interests the company may take into consideration.<sup>423</sup> In addition, post the 1980s, most theorists supported the view of shareholder primacy,<sup>424</sup> “shareholder value”<sup>425</sup> or “shareholder wealth maximisation”<sup>426</sup> without taking into account the ‘the social costs this creates, and the public demand for a wider scope of corporate law in order to ensure greater social responsibility.’<sup>427</sup> The rationale to adopt this approach was ‘that the US and UK are liberal market economies that have features, such as a dispersed share ownership, more susceptibility to hostile takeovers and the existence of large institutional investors which are eager for quarterly improvements in the share price, and this tends to entrench shareholder primacy in their respective systems.’<sup>428</sup>

The 1919 case of *Dodge v. Ford* is perhaps the best articulation of the approach that corporations should be managed to maximize shareholder economic value, “[A] commercial corporation is founded and carried on largely for the profit of the owners,” the Michigan Supreme Court stated in *Dodge v. Ford*. The directors' powers will be used to achieve this.”<sup>429</sup>

This, however, stands in stark contrast to the admittedly fewer number of companies that act in consideration of their moral code and religious beliefs.<sup>430</sup> It is encouraging, however, that despite their being in the minority, the courts appear to support the view that state law does not impose a profit maximization duty on corporations.<sup>431</sup> It is submitted that such an approach may sway the decisions of the corporate board when, on the balance, it is not clear what the best direction of the company should be. Regardless, the input by the courts will arguably remain relatively non-consequential unless there is a law requiring that social costs are taken into account. Although instrumental regulation may appear to be burdensome and inefficient, it is only possible to characterize it as such if the only thing to take into account is the profit-loss consideration. Once the calculation begins including the effect on the relevant stakeholders and on our environment, the outcome of the discussion changes accordingly. Furthermore, while it is relatively uncontroversial that not taking negative externalities into consideration does not translate into effective management of the social costs caused by corporations, it is arguable that it is actually bad for profit if the long-term is considered.<sup>432</sup>

Such arguments should affect future discussions on the state of UK company law. Until now the situation in the area of shareholders primacy was that the UK largely followed the lead of its American brethren albeit with a considerable delay, as far as the questioning of the doctrine was concerned.<sup>433</sup> To the extent there has been some questioning of the status quo, it was silenced with some ‘cosmetic changes to the law’.<sup>434</sup> The result of the above was that the transition to the more

<sup>422</sup> Andrew Johnston, ‘The Shrinking Scope of CSR in UK Corporate Law’ (2017) 74(2) *Washington and Lee Law Review* 1001-1002.

<sup>423</sup> Andrew Johnston. (n39), 1002.

<sup>424</sup> Lawrence E. Mitchell, ‘Groundwork of the Metaphysics of Corporate Law’ (1993) 50 *Washington and Lee Law Review* 1477, 1485. See also: Lisa M. Fairfax, ‘The Rhetoric of Corporate Law: The Impact of Stakeholder Rhetoric on Corporate Norms’ (2006) 31 *Journal of Corporation Law* 675, 676. See also: Gregory S. Crespi, ‘Maximizing the Wealth of Fictional Shareholders: Which Fiction Should Directors Embrace?’ (2007) 32 *Journal of Corporation Law* 381, 383, 386.

<sup>425</sup> Karel Williams, ‘From shareholder value to present-day capitalism’ (2000) 29 *Economy and Society* 1, 1.

<sup>426</sup> C.f. with Stephen Bainbridge, ‘Director Primacy: The Means and Ends of Corporate Governance’ (2003) 97 *Northwestern University Law Review* 547, 574.

<sup>427</sup> Andrew Johnston. (n 39), 1003.

<sup>428</sup> Andrew Keay, ‘Shareholder Primacy in Corporate Law: Can it Survive? Should It Survive?’ (2009) Available at SSRN: <<https://ssrn.com/abstract=1498065>> or <http://dx.doi.org/10.2139/ssrn.1498065>> accessed 10 June 2021.

<sup>429</sup> Fisch, Jill E. and Davidoff Solomon, Steven, (n38).

<sup>430</sup> Lyman Johnson & David Millon, ‘Corporate Law after Hobby Lobby’ (2014) 70 *Bus. Law* 1, 7.

<sup>431</sup> *Paramount Communications Inc v Time Inc* 571 A. 2d 1140, 1150 (Del, 1989) and more recently, *Burwell v. Hobby Lobby Stores, Inc* 134 S. Ct. 2751 (2014).

<sup>432</sup> See generally: Andrew Johnston and others. (n32).

<sup>433</sup> David Collison and others, ‘Shareholder Primacy in UK Corporate Law: An Exploration of the Rationale and Evidence’, (2011) *The Association of Chartered Certified Accountants*, 5.

<sup>434</sup> Andrew Johnston (n 39), 1004.

enlightened stage of development, that is, to a stage where CSR is seriously considered by the corporate board and it is acted upon, has been inconsistent and often remained a lip service rather than a genuine commitment to CSR's objectives.

This conclusion is supported by a discussion on the company law review (CLR) process carried out in the UK. The CLR process led to the promulgation of the Companies Law Act 2006, which, although tidying up the existing provisions on UK company law and bringing in some positive developments<sup>435</sup>, reaffirmed that 'shareholder primacy would be maintained as a key principle of UK company law.'<sup>436</sup> However, a report on the process of CLR acknowledged the frustration of one steering group member that 'there was never any intention to have a 'meaningful discussion of the issues' [or that] there was little interest in a discussion of principles or 'the bigger picture'.'<sup>437</sup>

The importance of this last point cannot be overstated since it can potentially impact on the development of UK company law and more generally, on the achievement of the goals inherent in the CSR doctrine more generally. To this end it may be useful to reframe the research question, namely, how can CSR be improved in England in law and practice in terms of the shareholder – stakeholder duality. Approaching the issue from this perspective will give us a better understanding of how the debate has changed in the last decades because the reference to "stakeholders" allows for a practical examination of the approaches and strategies of both big corporations and company law. Analysis suggests that the shareholder primacy doctrine in the UK is in crisis and this is caused by two main factors:

First, the status quo has been strongly impacted by the introduction in the UK corporate legislation of the enlightened shareholder value concept via section 172 of the Companies Act 2006.<sup>438</sup> This provision refers to the directors' duty to promote the success of the company, stating specifically that a director must act in good faith, considering how a decision will impact the company in the long run,<sup>439</sup> the interests of those employed by the company<sup>440</sup>, the need to look after the company's relationship with other stakeholders such as suppliers, creditors and consumers.<sup>441</sup> In addition, s.172 calls upon directors to consider how the company's operation will affect the community<sup>442</sup>, the need to establish the company's reputation for conducting its business to the best of standards<sup>443</sup> and the need to act with fairness with respect to everybody working for the company.<sup>444</sup>

In particular, subsections a, b, d and f of the above provision appear to promote the principles of CSR, discussed earlier in this Chapter. This has been interpreted to mean that management of companies in the UK is gradually adopting a more stakeholder rather than shareholder approach.<sup>445</sup> This is in line with the approach taken in the US where more than half of the states have imposed a requirement or alternatively, permission, on company directors to consider the interests of the larger stakeholders,<sup>446</sup> rather than only those of the shareholders.<sup>447</sup> Note, nevertheless, that this view is not supported

<sup>435</sup> Discussed further below.

<sup>436</sup> David Collison and others. (n50).

<sup>437</sup> *ibid.*

<sup>438</sup> Companies Act 2006, c.46.

<sup>439</sup> *ibid.*, s.172(1)(a).

<sup>440</sup> *ibid.*, s.172(1)(b).

<sup>441</sup> *ibid.*, s.172(1)(c).

<sup>442</sup> *ibid.*, s.172(1)(d).

<sup>443</sup> *ibid.*, s.172(1)(e).

<sup>444</sup> *ibid.*, s.172(1)(f).

<sup>445</sup> Sarah Kiarie, 'At Crossroads: Shareholder Value, Stakeholder Value and Enlightened Shareholder Value: Which Road Should the United Kingdom Take?' (2006) 17 *International Corporation and Commercial Law Review*, 329. See also: Cynthia A. Williams and John M. Conley, 'An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct' 38 *Cornell Int'l L J* 493, 500, available: <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=632347](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=632347)> accessed 10 June 2021. See also: C.f. Andrew Keay, 'Enlightened shareholder value, the reform of the duties of corporation directors and the corporate objective' [2006] *Lloyds Maritime and Commercial Law Quarterly*, 335. See also: Andrew Keay, 'Tackling the Issue of the Corporate Objective: An Analysis of the United Kingdom's "Enlightened Shareholder Value Approach"' (2007) 29 *Sydney Law Review*, 577.

<sup>446</sup> Alissa Mickels, 'Beyond Corporate Social Responsibility: Reconciling the Ideals of a For-Benefit Corporation with Director Fiduciary Duties in the US and Europe' (2009) 32 *Hastings Int'l & Comp L Rev* 271, n113.

<sup>447</sup> Anthony Bisconti, 'The Double Bottom Line: can Constituency Statutes Protect Socially Responsible Corporations Stuck in Revlon Land?' (2009) 42 *Loy. L.A. L. Rev.* 765.

throughout the industry as some analysis argue that the wording of s.172 places greater importance on the interests of the shareholders of a company rather than on its stakeholders.<sup>448</sup> This view was based on the observation that the wording of the section referred to the company rather than to its members, which was deemed to have the effect of underlining the importance of shareholder primacy even further.<sup>449</sup> Whatever the position that has been taken with regard to section 172, all commentators seem to agree that the provision reinforces the shareholder primacy model.<sup>450</sup>

Second, in a purely practical sense, the contractual relationship between the company and its creditors prevented the utilization of the shareholder primacy model.<sup>451</sup> For example, when the board of directors must abide by the company's investment contracts, this may have a negative impact on the primacy of shareholders, meaning that this commitment may lead to decisions in which the value is not maximized for investors as a group, because with the commitment to the company's fiduciary duty, directors have a duty to take care of the affairs of the company in good faith, therefore shareholders must protect themselves through the powers granted to them by the company's bylaws.<sup>452</sup>

### 3.4 The UK: CSR in action

#### 3.4.1 Corporate Environmental Responsibility (CER)

Looking at environmental law provisions in the UK is relevant for a number of reasons. To begin with, considerations for the planet are a legitimate and non-controversial part of the doctrine of CSR.<sup>453</sup> Corporate Environmental Responsibility (CER) has appeared as an independent, albeit very influential section of the movement. Suffices to look at the practice of biggest companies that purport to uphold the CSR's objectives to see that a big part of them place sustainability and sustainable sourcing at the core of their CSR platforms.<sup>454</sup>

Yet this has not been always the case because although the debate on CSR has started almost a century ago, it focused almost exclusively on the issue of the corporation, looking at an answer on 'what (or who) the corporation is for'.<sup>455</sup> The debate contemplated the question of whether corporations should be run in the interest of their shareholders or in the interest of the broader group of stakeholders.<sup>456</sup> Going forward a few decades, proponents of CSR began advocating in its favour, relying strongly on the "business case" argument, which is to say that engaging in CSR practices actually enhance shareholders' value and contribute to the long-term financial success of the company.<sup>457</sup> While it seems uncontroversial that such correlation exists to the extent it is caused by customers boycotting (or supporting) companies based on the extent such companies have internalized values that such customers see as worthy of being promoted,<sup>458</sup> it is still not clear whether adherence to CSR would improve financial performance in more general terms.<sup>459</sup> Furthermore, classic example of how

<sup>448</sup> David Collison et al. (n 50), 5.

<sup>449</sup> *ibid.*

<sup>450</sup> *ibid.*

<sup>451</sup> Frederick Tung, 'The New Death of Contract: Creeping Corporate Fiduciary Duties for Creditors' (2008) 57 *Emory L J* 809, 853. Andrew Keay, 'Shareholder Primacy in Corporate Law: Can it Survive? Should It Survive?' (2009), 3.

<sup>452</sup> Douglas G. Baird and M. Todd Henderson, 'Other People's Money' (2008) 60 *Stanford Law Review* 1309. Also, see Frank Partnoy, 'Financial Innovation in Corporate Law' (2006) 31 *Journal of Corporation Law*, 799.

<sup>453</sup> Carol Newman and others, 'Corporate Social Responsibility in A Competitive Business Environment' (2020) 56 *The Journal of Development Studies*, 1455-1472.

<sup>454</sup> See for example, Neil Gunningham, 'Shaping Corporate Environmental Performance: A Review' (2009) 19 *Environmental Policy and Governance*, 215-231.

<sup>455</sup> Carrie Julia Bradshaw, 'Corporations, Responsibility and the Environment' (2013) UCL, available: [https://discovery.ucl.ac.uk/id/eprint/1414312/1/Carrie%20Bradshaw.%20Corporations,%20Responsibility%20and%20the%20Environment%20\(UCL,%202013\).pdf](https://discovery.ucl.ac.uk/id/eprint/1414312/1/Carrie%20Bradshaw.%20Corporations,%20Responsibility%20and%20the%20Environment%20(UCL,%202013).pdf) accessed 11 June 2021, 12.

<sup>456</sup> E Merrick Dodd, 'For Whom Are Corporate Managers Trustees?' (1932) 45 *Harvard Law Review* 1145 and AA Berle Jr, 'For Whom Corporate Managers Are Trustees: A Note' (1932) 45 *Harvard Law Review* 1365.

<sup>457</sup> See for example: Keith Davis, 'The Case for and Against Business Assumption of Social Responsibilities' (1973) 16 *Academy of Management Journal*, 312-322. See also: David J. Vogel, 'Is There a Market for Virtue? The Business Case for Corporate Social Responsibility' (2005) 47 *California Management Review*, 19-45.

<sup>458</sup> Johan Classon and Johan Dahlström, 'How can CSR affect company performance?' (2006) available: <https://www.diva-portal.org/smash/get/diva2:6476/FULLTEXT01.pdf> accessed 11 June 2021.

<sup>459</sup> Carrie Julia Bradshaw (n 42), 14.



corporate environmental responsibility can exist simultaneously with its variability is measures aimed at reducing corporate waste. Environmentally friendly recycling is beneficial for organisations. It means by reducing the demand for raw materials, we reduce the need for environmentally harmful disposal methods, and we reduce the environmental damage associated with the sourcing and disposal of waste. Transporting virgin materials is also reduced by reducing waste. Moreover, resource efficiency plays a significant role in energy and water consumption. Businesses often see waste reduction as an inherent advantage; However, wasting materials is just as costly as disposing of them.<sup>460</sup>

This point is a relevant one, regardless of whether the point of the view of the reader is one of support of CSR more broadly and CER in particular or against it. With respect to the viewpoint of the CER supporters, it would matter whether the measures taken by a company actually support the company's bottom line and do not harm its financial interests because doing otherwise would necessarily involve a decision to discard all CER related initiatives further down the line. Considering the importance of environmental protection for the health of the planet and the wellbeing of people, it is clear that this is not a working solution. This is, even more, the case, considering that, as has been argued, 'enterprises are increasingly contributing to the progressive degradation of existing ecosystems by emitting huge amounts of hazardous pollutants and excessive use of available natural resources, causing a serious threat to our planet's biodiversity.'<sup>461</sup>

Furthermore, what should be considered is that there is a long-standing conflict between the economic interests of a company and society's environmental goals and that this conflict has become deeply embedded in our social and business practices.<sup>462</sup> It is arguable that in order to introduce a meaningful change, therefore, legislation must address the behaviour of stakeholders more generally and to do so in a holistic, rather than piecemeal manner. In addition, it is suggested that the task may be made more complicated because the effect of business activities on the environment is so wide-ranging that it cannot be estimated in monetary terms with easiness or scientific certainty. Perhaps this is why CER depends so much on the input of customers who drive it forward. At the same time, however, reliance on third parties to "enforce" strategies that are not embedded in legislation makes for confusing, inconsistent and ultimately, ineffective CER policies. This is further complicated by the propensity of businesses to pay greater attention to the market than they do to political pressure,<sup>463</sup> unless, of course, such pressure comes in a more formalized, i.e. legislative, way.

To this end, it would be instructive to examine the extent to which the UK has supported the achievement of environmental protection goals and draw conclusions as to how this has affected the state of CER in the country.

### **The Environmental Protection Act 1990<sup>464</sup>**

The Environmental Protection Act 1990 (EPA 1990) is wide-ranging and consists of a great number of provisions relating to air pollution control, focusing on prevention and reducing of the release of substances into the environment;<sup>465</sup>

waste on land, prohibiting unauthorised or harmful deposit, treatment or disposal of waste on land, and, in addition, it places a duty of care on the entity concerned, which aims at the prevention of the escape of harmful substances<sup>466</sup> and statutory nuisances and clean air requirements addressed to the Local Authority, which is under an obligation 'to regularly inspect the area and to deal with problems such as smoke, fumes, dust, smell, noise, and animals.'<sup>467</sup> It is evident that the EPA 1990 is a wide-ranging instrument and its provisions concern many issues that are of interest to environmental protection.

<sup>460</sup> See for example: Mahmoud M. El-Halwagi, 'Optimal Design of Membrane-Hybrid Systems for Waste Reduction' (1993) 28 Separation Science and Technology, 283-307.

<sup>461</sup> Anna Żelazna, Matylda Bojar and Ewa Bojar, 'Corporate Social Responsibility Towards The Environment In Lublin Region, Poland: A Comparative Study Of 2009 And 2019' (2020) 12 Sustainability, 4463.

<sup>462</sup> Carrie Julia Bradshaw (n 42), 14.

<sup>463</sup> Carrie Julia Bradshaw (n 42), 14.

<sup>464</sup> UK Environmental Protection Act 1990 (EPA 1990), c.43.

<sup>465</sup> *ibid*, Part I.

<sup>466</sup> EPA 1990 (n 49), Part II.

<sup>467</sup> EPA 1990 (n 49), Part III. See, Xenon, '7 key pieces of sustainability related legislation that you should be aware of' (2005-2021) available: <<https://www.xenongroup.co.uk/knowledge-centre/csr-and-sustainability/6-key-pieces-of-sustainability-related-legislation-that-you-should-be-aware-of>> accessed 12 June 2021.



The objectives of EPA 1990 were reaffirmed through the Environment Act 1995 (EA 1995),<sup>468</sup> which contributed to the creation of the Environment Agency<sup>469</sup> and it also addresses issues of air<sup>470</sup> and water quality,<sup>471</sup> contaminated land<sup>472</sup> and waste.<sup>473</sup> The UK Environmental Permitting Regulations (England and Wales) 2010<sup>474</sup> came into force in 2010, replacing the 2007 Regulations. The objective of these Regulations (which preceded a similar piece introduced by the European Union (EU)) was to govern ‘the storage, treatment, transport and disposal of hazardous waste.’<sup>475</sup> This is relevant to the topic of this dissertation because how waste should be disposed of is an issue which most companies must consider on a regular basis. This is particularly the case for big companies or at least for those with a larger output; as for the latter, their waste disposal management is an issue with direct relevance to the broader community. As such, it is connected to other issues governed by the spectrum of environmental legislation, such as issues of clean air, clean water, and the health of the population, as well as animal health.

To this end, note that the UK Regulations defined “hazardous waste” as waste that ‘might be harmful to human health or the environment.’<sup>476</sup> It is clear from the wide range of EU legal instruments which the UK Regulations aimed to implement that the ambit of the provisions was intended to be comprehensive and far-reaching. However, it was also clear that the EU had produced too much legislation on the matter, which could have perhaps impose confusing and contradicting instructions as to what corporations are expected to do in certain defined situations.<sup>477</sup> In order to consolidate the law in the area, the EU produced two more impactful and tidier pieces of legislation, which were subsequently, as was expected given the UK then membership of the EU, translated into UK law. These legal instruments were the WEEE and the RoHS Directives.

It is arguable that these EU pieces of legislation had a considerable impact on environmental protection in the UK. The Waste Electrical and Electronic Equipment (WEEE) Directive<sup>478</sup> came into force in January 2007 and was subsequently amended a number of times. As its name suggests, the Directive has the objective to ‘both reduce the amount of Electrical and Electronic waste being produced and encourage everyone to reuse, recycle and recover it.’<sup>479</sup>

It is submitted that the wide time frame of operation of the CCA 2008 contributes to its ongoing success. Importantly, it demonstrates that the interest of the legislator was in the long-term consequences of the governmental decisions rather than the pursuance of short-term partisanship. As such, the success of the Act is not (or should not be) linked to a specific government.

Linked to the above, the Energy Savings Opportunity Scheme (ESOS), administered by the Environment Agency, was established by the Energy Savings Opportunity Scheme Regulations 2014 (ESOS Regulations).<sup>480</sup> The ESOS imposed an obligation on almost 14000 UK companies from the private and third sectors to audit their energy usage. Public sector organisations are excluded from the scope of the scheme. Furthermore, the ESOS applies solely to entities employing in the excess of 250 staff or companies with an annual turnover exceeding £42.5m. Governmental guidance indicates that the scheme reaches ‘large undertakings and groups containing large undertakings in the UK,’<sup>481</sup> with “undertaking” being defined

<sup>468</sup> Environment Act 1995 (EA 1995), c.25.

<sup>469</sup> *ibid*, s.1.

<sup>470</sup> EA 1995 (n 53), s.5.

<sup>471</sup> EA 1995 (n 53), s.6.

<sup>472</sup> EA 1995 (n 53), s.57.

<sup>473</sup> EA 1995 (n 53), ss.92-95.

<sup>474</sup> UK Environmental Permitting Regulations (England and Wales) 2010, ISBN 978-0-11-149142-3.

<sup>475</sup> Xenon (n 52).

<sup>476</sup> Xenon (n 52).

<sup>477</sup> See generally: John Gerard Ruggie, ‘Multinationals as Global Institution: Power, Authority and Relative Autonomy’ (2017) 12 Regulation & Governance, 317-333.

<sup>478</sup> For example, see Directive 2012/19/EU of The European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE)(recast).

<sup>479</sup> Xenon (n 52).

<sup>480</sup> UK Energy Savings Opportunity Scheme Regulations 2014 (ESOS Regulations), No. 1643.

<sup>481</sup> Environment Agency, ‘Comply with the Energy Savings Opportunity Scheme (ESOS) (2021) Gov.uk, available: <<https://www.gov.uk/government/publications/comply-with-the-energy-savings-opportunity-scheme-esos/complying-with-the-energy-savings-opportunity-scheme-esos>> accessed 11 June 2021.

by the Company Act 2006 as ‘a corporate body or partnership [and/or] an unincorporated association carrying on a trade or business, with or without a view to profit.’ Notably, the scheme covers also ‘partnerships, limited liability partnerships, joint ventures and in many cases charities’.<sup>482</sup>

The initial audits, referred to above must be performed by an independent third party, who will assess the energy use of the relevant enterprise and who can then make non-binding recommendations to implement energy-saving strategies. While carrying out the audit, the auditor must consider the use of energy in buildings, transport and industrial operations.

The scheme’s focus on large businesses suggests that the UK government has internalized that large corporations are better prepared to withstand the costs related to CSR. It could also be argued that the scheme demonstrates that the government has identified that large companies are complicit in ineffective and excessive energy use. In any case, it appears that the ESOS Regulations are likely to have a very positive impact on the environment. However, the effectiveness of these regulations is undermined by the complexity of societal actors in the UK. It means the UK community is extraordinarily diverse, so standardising and uniformising standards that are applied in the UK may be inefficient because it may limit the number of regulated actors.<sup>483</sup>

Furthermore, it is submitted that ESOS is a great example of how goals of environmental protection may benefit the bottom line of companies, thus reinforcing the business case for CER. For instance, the scheme is expected to deliver huge savings, most of which will be immediately felt by the audited companies.<sup>484</sup> In addition, the scheme is estimated to have delivered around £1.6 billion net benefits to the UK.<sup>485</sup> This demonstrates that pursuance of CSR goals can go hand in hand with business profit thus countering possible arguments that companies engage in CSR to the disadvantage of their shareholders.

### 3.4.2 The UK: meeting CSR’s socio-political goals

The discussion in the previous sections highlighted, *inter alia*, that there is no uniform definition of CSR. Not knowing what exactly goes into the concept is arguably one of the reasons why companies are often struggling to align their policies with the expectations of progressive members of society.<sup>486</sup> It was already established that the confusion in companies’ Boards is prompted by 1) concern for their business bottom line and 2) the inconsistent response from the Government and the legislator more generally. However, such a lack of uniformity in defining the tenets of CSR results in confusion as to the possible outcomes from the application of the concept. Simply put, the company leadership has no benchmark to help it measure its successes or failures. While such uncertainty can nevertheless generate some positive developments such as the ones discussed earlier in this work, it can, at times, lead to chaotic actions of the corporate, which can be unhelpful as regard the entrenchment and/or promotion of the CSR agenda.<sup>487</sup>

To this end, identifying some objectives which could enter the discussion on CSR could be very useful, because it gives a practical direction to businesses as well as an incentive to comply. For example, by doing so the company can identify the link between its operations and possible human rights infractions, its operations and possible tax avoidance that takes or has taken place, its operations and corruption. Such an analysis will be helpful to the respective corporation willing to improve its performance in the respective area. Another approach that could help is focusing on the conceptual aspect of CSR, which may assist the company leadership in their better understanding of the challenges presented to the company by the CSR agenda.

To this end, having a robust framework, as well as one that is underlined with a solid theoretical understanding is vital because companies do not always operate in fully auspicious conditions. More often than not, companies experience negatively the

<sup>482</sup> *ibid.*

<sup>483</sup> See generally: C. Willmore, 'Environmental Protection, Law and Policy: Text and Materials. By JANE HOLDER AND MARIA LEE' (2007) 20 *Journal of Environmental Law*, 153-156.

<sup>484</sup> Environment Agency (n 82).

<sup>485</sup> Department of Energy & Climate Change, 'Consultation outcome Energy Savings Opportunity Scheme' (2013-2014) Gov.uk, available: <<https://www.gov.uk/government/consultations/energy-savings-opportunity-scheme>> accessed 12 June 2021.

<sup>486</sup> See generally: Dan Beare, Ruvena Buslovich and Cory Searcy, 'Linkages Between Corporate Sustainability Reporting and Public Policy' (2013) 21 *Corporate Social Responsibility and Environmental Management*, 336-350.

<sup>487</sup> See generally: Madhavi Venkatesan, 'Addressing Sustainability' (2021) 14 *Sustainability and Climate Change*, 201.

economic crises plaguing society. Given the cyclical nature of such crises, and the possibility of other types of systemic shocks, such as pandemics, (of which the Covid-19 crisis is a good example), it is clear that companies must be prepared to have a CSR agenda, which will withstand the fluctuations of the market borne out of crises.<sup>488</sup> This is crucial because in times of a crisis, companies slim down to the most necessary to make a profit. It is possible, therefore, that in such a situation, CSR may be easily forgotten or suspended until better times arrive. While this may be the sensible solution, at least from the perspective of shareholders and employees, as well as business partners and sub-contractors, it would be an unfortunate consequence from the perspective of the long-term benefits to society flowing from a proper application of CSR's strategies.

### 3.4.3 The stance of the EU Commission: from 2001 to 2021

The developments in the European Union (EU) are relevant and will be discussed below because they were affecting in a direct way the regulatory response in the UK. Furthermore, even though the UK has now left the EU its policies are at least informed by, if not still fully in line with the respective EU regulatory agenda. Above all, given the globalization of business and the fact that the biggest companies are multi-national, analysis of just one country will be inadequate. What is more, it is at the heart of CSR that the issues are tackled with the bigger picture in mind, which further justifies the chosen approach. To this end, the below section will analyse the relevant EU legislation which it will then compare with the way such legislative instruments are transposed in the UK regulatory framework.

Historically speaking, the movement towards CSR began at the beginning of the century and the question of whether CSR should be regulated was met by businesses with negativity.<sup>489</sup> The main argument, advanced by the critics of the idea was that making CSR mandatory will be detrimental for national competitiveness and innovation,<sup>490</sup> but it was also argued that CSR burdens corporations with a "stealth tax" – tax, because CSR was costly and the measures taken went beyond what was strictly necessary for the company's bottom line and "stealth" because the expense was introduced by the State without actually legislating on the matter.<sup>491</sup> Note that the proposal which the European Commission (EC) outlined in its 2001 Green Paper seemingly agreed with this position, emphasizing the reasonableness of a voluntary approach to CSR.<sup>492</sup> The EC was motivated by the belief that companies will internalize the need to change their policies without external prompting if only the European Community succeeds in raising its industrial standards more generally.<sup>493</sup> Moreover, the Commission had expectations that corporate leadership will be influenced by the attitude of their shareholders (which was hoped to be supportive of the changes) and by the financial benefit of introducing more socially benefitting business strategies. It is submitted that this "soft" approach was a reflection of the Commission's desire to respect national sovereignty, particularly in the area where the national government interacted with its domestic companies, and refrain from approaching the matter with heavy hands. It is possible, however, that globalization (among other things) has impacted the stance of the EU legislator, which has changed over the course of the next two decades.

The EC maintained its stance for a while although, it noted in one of its 2011 Communications that CSR has demands that 'go over and above [the companies'] legal obligations towards society and environment' and that 'an environment more

<sup>488</sup> See for example: Hongwei He and Lloyd Harris, 'The Impact Of Covid-19 Pandemic On Corporate Social Responsibility And Marketing Philosophy' (2020) 116 Journal of Business Research, 176-182. See also: Kristina Sergeevna Plis and Nataya Leonidovna Yaroslavl'tseva, 'FEATURES OF CORPORATE SOCIAL RESPONSIBILITY DURING AN EMERGENCY. IMPACT OF THE COVID-19 PANDEMIC ON CORPORATE SOCIAL RESPONSIBILITY' (2020) 2 Nedelya nauki Sankt-Peterburgskogo gosudarstvennogo morskogo tekhnicheskogo universiteta, 37. See also: Nataliia Riabets, 'Developing Corporate Social Responsibility In The Face Of The COVID-19 Pandemic' (2021) 11 Social and labour relations: theory and practice, 31-42. See also: S. Lykholat and M. Levytska, 'THE IMPACT OF THE COVID-19 PANDEMIC ON THE DEVELOPMENT OF CORPORATE SOCIAL RESPONSIBILITY OF PHARMACEUTICAL ENTERPRISES' [2022] Efektyvna ekonomika.

<sup>489</sup> J.A. Zerk, *Multinational and Corporate Social Responsibility: Limitations and Opportunities in International Law*, (Cambridge University Press 2006), 33.

<sup>490</sup> *ibid.*

<sup>491</sup> Jingchen Zhao, 'Promoting More Socially Responsible Corporations through a Corporate Law Regulatory Framework' (2017) 37(1) Legal Studies 103, 141, f.t. 26.

<sup>492</sup> European Commission 'Prompting a European Framework for Corporate Social Responsibility', Green Paper and COM 366, Brussels (2001).

<sup>493</sup> Jingchen Zhao, 'Promoting More Socially Responsible Corporations through a Corporate Law Regulatory Framework' (2017) 37(1) Legal Studies 103, 141.

conductive to enterprises voluntarily meeting their social responsibility' can be achieved through regulatory measures.<sup>494</sup> The assessment of the Commission was admittedly equivocal, however, it was gradually followed by a more determined effort to introduce 'a smart mix of voluntary and mandatory actions to promote CSR/RBC, and implement the UN guiding principles on business and human rights (UNGPs) and the UN 2030 agenda for sustainable development.'<sup>495</sup> This indicates that the EU Commission had meanwhile internalized the need to be more proactive in legislating on the matter of CSR.

Furthermore, the Commission called for national and international regulation as well as a blended model of self-regulation and governmental regulation since its 2011's Communication.<sup>496</sup> A particularly appropriate move from the Commission was its decision to combine the horizontal promotion of CSR with sector and policy-tailored approaches. This strategy proved to be successful and was followed in 2019 by another Commission policy document, outlining the progress achieved by the EC so far.<sup>497</sup> The emphasis on "international" highlights the Commission's appreciation of the more global character of the companies operating in the EU. At the very least, it was an admission of the fact that many large companies registered in one Member State had branches and/or subsidiaries in the other Member States. As to the "blended" approach to regulation, this was arguably reminiscent of the Commission's original less invasive approach which relied more on self-regulation and self-discipline than on top-down introduced regulatory measures.

Furthermore, the area of sustainable finance, the Commission reported a number of legislative instruments which had a direct impact on CSR. For example, in the area of tax avoidance, the Commission published the 2015 Communication on Tax Transparency to Fight Tax Evasion and Avoidance.<sup>498</sup> The Communication calls on companies to engage in more transparent and fair tax practices. It is submitted that the instruments addressing tax evasion have a potentially strong impact on the community and because of that, are of high CSR value. For example, the tax contributions of large companies are particularly significant. They, therefore, make it possible for national governments to carry out a wider variety of community-friendly measures and projects; something, which would be very difficult to do without these contributions.

To this end of further interest is the EC's proposal for the exchange of information between the Member States on tax rulings and advanced pricing agreements. This initiative had the purpose of preventing preferential tax treatment offered to some corporations. This Proposal culminated in the 2015 Directive on automatic exchange of tax rulings and advance pricing agreements (in force from 2017).<sup>499</sup> The ultimate effect of this legislative instrument was to guarantee a level playing field as regard taxation for firms operating cross-border within the EU market.

This initiative was followed by the EC by entering a proposal on corporate tax avoidance and aggressive tax planning,<sup>500</sup> which was, arguably, another step in the right direction. The purpose of this proposal was to ensure that corporations operating in the EU paid their taxes where their activity laid. Subsequently, this resulted in the adoption of the Anti -Tax Avoidance Directives<sup>501</sup> as well as the proposals to re-launch the Common Consolidated Corporate Tax Base (CCCTB). This directive is of particular importance because it linked the activity of a corporation to its tax obligations. This way it arguably provided for a fairer way of wealth distribution within the EU. Considering that many big corporations establish branches in poorer Member States where their overheads are much lower compared to those they would have paid had they been established in

<sup>494</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011–14 for Corporate Social Responsibility, Brussels 2011 COM (2011), 681 final.

<sup>495</sup> EU Commission, 'Corporate social responsibility & Responsible business conduct' (n.d.) available: [https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility\\_en](https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility_en) accessed 22 June 2021.

<sup>496</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011–14 for Corporate Social Responsibility, Brussels 2011 COM (2011), 681 final, 146.

<sup>497</sup> EU Commission, 'Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights' (2019) available: <https://ec.europa.eu/docsroom/documents/34963> accessed 23 June 2021.

<sup>498</sup> COM (2015) 136, 'Communication on Tax Transparency to Fight Tax Evasion and Avoidance'.

<sup>499</sup> Directive 2015/2376/EU on automatic exchange of tax rulings and advance pricing agreements.

<sup>500</sup> EU Commission, 'Action Plan on Corporate Taxation' (2015) available: [http://ec.europa.eu/taxation\\_customs/business/company-tax/action-plan-corporate-taxation\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/action-plan-corporate-taxation_en) accessed 23 June 2021.

<sup>501</sup> Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.



a richer country, it makes sense to require them to share some of their profits with the host State. Tax obligation where the activity lays suggests that such poorer countries will have at their disposal a larger amount of money which could then be used in socially and environmentally friendly initiatives.

In addition, the Commission proposed the adoption of a Directive on corporate tax transparency (country by country reporting), which was intended to oblige multinational companies to produce annual profit and tax reports, which would be accessible to the wider public. It is submitted that this has the potential to be a commendable legal instrument since it will allow citizens to scrutinize the behaviour of big multinational corporations, including in the area of CSR. Above everything, it will make it very transparent whether the leadership of the respective corporation pays only lip service to CSR rather than to genuinely embrace its values.

Furthermore, the Directive on new transparency rules for intermediaries relating to cross-border arrangements<sup>502</sup> addressed the responsibilities of tax advisors, accountants and lawyers, which all now fall under the heading of “intermediaries” for the purposes of this Directive. Under the provisions, any intermediary who assists their client with a scheme that could potentially help them avoid taxes must report this scheme to the government (more specifically, to the tax authorities). The Directive also envisions that the Member States will exchange the so obtained information in order to ensure coverage of companies operating on a cross-border basis.<sup>503</sup> It is submitted that the Directive further reaffirmed the regulatory control over companies’ financial decisions, particularly in the context of taxes, by imposing obligations (and responsibilities) on accountants and other advisors. This suggests that the Commission is determined to ensure that taxes that are due to the respective governments will not be funnelled elsewhere. This is potentially relevant to the objectives of CSR because it guarantees that a certain amount of companies’ profit will be dedicated to socially useful projects.

Further to this, the established in 2012 Platform on Tax Good Governance assists in the carrying out of the above legislative initiatives and it is particularly helpful for the objectives of CSR because it provides the opportunity for different stakeholders such as ‘businesses, NGOs and the Member States to discuss key issues related to corporate taxation.’<sup>504</sup> The ultimate aim of the Platform, which was set up by the EU Commission, is to help with the fight against tax avoidance and to ensure that companies are indeed paying what they are owing in terms of taxes, regardless of whether they earn profits in the EU or beyond.

To this end, reporting of key tax information is covered by the Directive on automatic exchange of country by the country report,<sup>505</sup> in force since 2018, addressing multinational companies which have their tax residence in one of the EU Member States or are tax subjects in a Member State, due to having a permanent establishment there. The purpose of this instrument is to assist local tax authorities in discovering schemes of tax avoidance by comparing data of the tax practices of such companies in other EU countries. Related to this objective, the Directive on country-by-country reporting,<sup>506</sup> in force since 2013, deals with tax transparency in the oil, gas, mining and forestry sectors, requiring payments in the excess of €100,000 made to the Governments in the countries of operation, to be reported. This report should include any taxes and license fees.

However, the focus of this is now placed on governments, which are scrutinized with respect to how they perform their responsibilities under the EU regulatory framework, assisting them in the adoption of the Extractive Industry Transparency Initiative by countries (the Initiative).<sup>507</sup> The change of focus is appropriate because, from the perspective of the EU, it is much easier to scrutinize governments of Member States rather than individual corporations or their support network. Furthermore, it is submitted that the Initiative is of particular relevance to the goals of CSR because it has a specific environmental and social focus. For instance, the Commission stated that the Initiative endeavored to create ‘transparency and accountability in the area of natural resources and in the extractive industry with a view to ensuring that countries obtain a fair deal from the exploitation of their natural resources and increase the volume of domestic resources needed to reach

<sup>502</sup> Directive 2018/822/EU on automatic exchange of cross-border arrangements.

<sup>503</sup> EU Commission, ‘Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights’ (2019) available: <<https://ec.europa.eu/docsroom/documents/34963>> accessed 23 June 2021.

<sup>504</sup> *ibid.*

<sup>505</sup> Directive 2016/881/EU on automatic exchange of country by country report.

<sup>506</sup> Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

<sup>507</sup> EU Commission, ‘Broader engagement with the governance issues in natural resources’ (n.d.) available: <<https://eiti.org/supporter/european-commission>> accessed 23 June 2021.

development goals.<sup>508</sup> This includes mandatory disclosure applicable to listed and large unlisted industries, operating in the relevant extractive sectors (oil, gas and mining) ‘and logging of primary forest sectors to disclose their payments to governments on a country and project basis (Country-by-Country Reporting).’<sup>509</sup> To recall, the reference to reporting above is covered by the Accounting and Transparency Directives (2013), discusses earlier in this section.

As regard tax transparency in the banking sector, of interest is the 4<sup>th</sup> Capital Requirements Directive (CRD IV),<sup>510</sup> which imposes an obligation on banks operating in different countries to report the tax paid in each location. Under the new transparency rules introduced by this Directive, banks must disclose relevant financial information on a country-by-country basis.<sup>511</sup>

Furthermore, in 2019, the European Union (EU) published legislation to implement the CRD V<sup>512</sup> and Capital Requirements Regulation (CRR) II,<sup>513</sup> amending CRD IV and CRR<sup>514</sup> respectively. This was meant to have an effect within the EU, and to complete the implementation of the prudential reforms agreed by the Basel Committee on Banking Supervision (BCBS) still outstanding in Basel III. The Bank of England implemented elements of CRD V<sup>515</sup> and the final policy was published in PS29/20 ‘Capital Requirements Directive V (CRD V)’. The EU bank regulation initiatives are of utmost importance to CSR objectives because banks’ stability has direct relevance to the quality of life of EU citizens. To this end, it suffices to recall the devastating impact of the latest financial crisis, which was due to failures of banking regulation and self-regulation (i.e. corporate governance failures). The crisis was of such a magnitude that it diminished the ability of corporations and governments to address many of the existing environmental and social issues, instead of channelling all available resources in the most pressing challenges of the day.

As a then member of the EU, the UK reflected the EU initiatives in its domestic regulation. For example, in the sphere of financial regulation, established after the crisis UK Financial Conduct Authority (FCA) is the agency responsible for the supervision of a great part of UK financial regulation (and specifically, securities regulation). As the FCA itself states, it has three main objectives: to protect consumers, enhance market integrity and promote competition.<sup>516</sup> The FCA achieves its objectives together with the London Stock Exchange (LSE), which is both the biggest UK security exchange and a leading global market.<sup>517</sup> While the latter two objectives are only generally linked to CSR, consumer protection is at the core of the CSR framework. As such, it could be argued that the introduction of the FCA was a necessary step in the right direction.

In addition, s.172 of the UK Companies Act 2006 imposes specific reporting requirements on companies on social and environmental issues. Under its listing requirements, the LSE now requires from listed UK incorporated companies environmental and/or social disclosure, which includes human rights, environmental performance, social and community engagement, as well as diversity. Furthermore, the LSE expects certain statistics related to, for instance, toxic emissions or ‘gender diversity at board, senior management, and whole-company levels.’<sup>518</sup> It is evident that the UK domestic framework is very heavily geared towards an effective and broadly reaching CSR agenda and as such it is to be expected that it will

<sup>508</sup> *ibid.*

<sup>509</sup> EU Commission, ‘Broader engagement with the governance issues in natural resources’ (n.d.) available: <<https://eiti.org/supporter/european-commission>> accessed 23 June 2021.

<sup>510</sup> Directive 2013/36/EU.

<sup>511</sup> Deloitte, ‘Country-by-Country reporting for the financial services industry Capital Requirements Directive IV’ (2013) available: <<https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/financial-services/deloitte-nl-country-by-country-reporting-for-the-financial-services-industry.pdf>> accessed 22 June 2021.

<sup>512</sup> Directive (EU) 2019/878.

<sup>513</sup> Regulation (EU) 2019/876.

<sup>514</sup> Regulation (EU) 575/2013.

<sup>515</sup> See Bank of England, ‘PS29/20 ‘Capital Requirements Directive V (CRD V)’ (2020), available: <<https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>> accessed 24 June 2021, where the Bank of England published its final policy on the matter.

<sup>516</sup> FCA, ‘About Us’ (2021) available: <<https://www.fca.org.uk/about>> accessed 22 June 2021.

<sup>517</sup> Alan S. Gutterman, *Sustainability and Corporate Governance: A Practice Guide to Implementing a Sustainability Governance System (European Company Law)*, (Kluwer 2018), 3.03.

<sup>518</sup> *ibid*

produce the desired results going forward. However, the UK appears to have adopted a softer approach to CSR regulation, at least compared to the EU, refraining from excessive intrusion into companies' internal policies.

To this end, the UK has adopted the “comply or explain” principle, which is relevant to the country's application of the national governance code. For example, the UK Corporate Governance Code (CGC) contains methods for best practices in the area of corporate governance. Companies listed in the LSE's main market are obliged to either adopt these principles or explain why they would not elect to do so.

Furthermore, the LSE has published guidance on how reporting on ESG should be done. Reporting on these issues is encouraged in the UK through the Corporate Governance Code which requires principle risks and uncertainties to be reported together with a viability statement. However, note that smaller companies are under different and often lighter requirements. For example, small growth companies are free to adopt any corporate code they wish, even from abroad; the only requirement being that they have to make it very clear to their investors what obligations they are subject to. This rule could potentially prove useful to companies and it can help promote CSR because it allows such companies to continue working under the code of its own country (which it is familiar with) instead of adopting the code from the country where they are listed.

### 3.5 CSR in UK Private law

One of the biggest impediments to the development of the CSR doctrine is found in arguments about the illegitimacy of CSR. Such a perspective on CSR seriously considers that practicing CSR runs against the provision of the law<sup>519</sup> as it effectively steals from the owners of the company (i.e. the shareholders).<sup>520</sup> This highlights the sensitivity of the issue – creating new or interpreting old provisions of private law can be interpreted as sanctioning the development of CSR either in the direction of promoting greater CSR at the expense of shareholders or pursuing a lesser CSR, at the expense of society and the broader group of companies' stakeholders.

To understand the context, one must define what private law is. However, there is no definition of private law. Rather, it has been defined by reference to what it is not. Private law is, therefore, all law that is not public.<sup>521</sup> The purpose of such a law is to protect the private rights of private individuals and public bodies. In distinction, public law protects the individual against the state in cases where there could be an abuse of power by the latter.<sup>522</sup> Private and public law can be distinguished also by the function performed by the specific area of the law; if it involves only private individuals, then it is private law. Alternatively, the involvement of a public body makes the case subject to the rules of public law.<sup>523</sup> This means that adopting the above definition of private law places within its ambit areas of the law such as contract law, tort law and property law, company law, consumer law and commercial law.<sup>524</sup>

Thinking of regulation as a mechanism of regulating the conduct of the subject, regardless of whether the influence comes from a national or international source,<sup>525</sup> suggests that regulation is “a broader social phenomenon”,<sup>526</sup> which goes beyond the law.<sup>527</sup> In the particular case of CSR, this means that the area is governed not only by legislation but also by private means of regulation such as, for instance, codes of conduct developed by corporations and applicable internally and by non-

<sup>519</sup> Doreen McBarnet, ‘Corporate social responsibility beyond law, through law, for law: the new corporate accountability’ in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press 2009).

<sup>520</sup> Milton Friedman, ‘The Social Responsibility of Business is to Increase Its Profits’ *The New York Times Magazine* (13 September 1970).

<sup>521</sup> D Oliver, *Common Values and the Public-Private Divide* (Butterworths 1999), 15.

<sup>522</sup> *ibid*, 14.

<sup>523</sup> Lord Woolf, ‘Droit public – English style’ [1995] PL 57, 62. Andreas Ruhmpkorf, *The Promotion of Corporate Social Responsibility in English Private Law*, (2013), PhD Thesis, University of Sheffield, School of Law, 20.

<sup>524</sup> A Ruhmpkorf (n 136), 21.

<sup>525</sup> Julia Black, ‘Decentring regulation: Understanding the role of regulation and self-regulation in a post-regulatory world’ (2001) 54 *Current Legal Problems* 103, 129.

<sup>526</sup> Julia Black (n 138), 33.

<sup>527</sup> Bryan Horrigan, *Corporate Social Responsibility in the 21st century Debates, Models and Practices Across Government, Law and Business* (Edward Elgar 2010), 59.

governmental entities, which, along with other third parties, exert some influence over the way CSR is dealt with by companies.<sup>528</sup>

In the UK, the interest of the legislator towards embedding sound CSR-related practices reflected the opinions expressed by numerous Non-Governmental Organisations lobbying on certain environmental or social issues or the concerns expressed by local residents, who complained of specific company policies. This led to suggestions, included in the Report, to make the practice of making an Operating and Financial Review (OFR) compulsory for “economically significant” organisations. This suggestion was important because the OFR was meant to go beyond the ordinary financial report and give the reader a better idea of the dealings and practices of the respective company. Considering the developments in the next two decades, it is meaningful that the drafters of the Report felt as far back as 2003 that a blanket imposition of an OFR could benefit citizens, as well as the Socially Responsible Investment Industry and their customers and employees. Above all, however, it was considered that making an OFR compulsory will help deal with the many social and environmental issues discussed in the public space. This encouraging development did not appear in a vacuum, however. Its origins can be found in the Occupational Pensions Schemes Regulations 1999,<sup>529</sup> which imposed a requirement on ‘pension funds to state and explain investment decisions directed towards social, environmental and ethical issues.’<sup>530</sup> Despite the lack of a legal obligation to provide notes, pension funds internalized the call of the Government, attempting to project a clearer picture of what they were standing for. Since pension funds are related to many industries, the practice which they adopted influenced many of their business partners, which gradually started to embrace it.<sup>531</sup> This demonstrates that the notion of CSR has great potential. For one, it can be persuasive even in conditions of non-regulation either by virtue of succumbing to peer pressure or, which is the better option, by following an example of good practice.

It is arguable, that the corporations which chose to embrace CSR at this early stage did so for a mix of reasons; however, the fact that CSR espouses morally defensible objectives certainly helped “convince” the corporate board that this is a path worth taking. Another reason why many UK corporations elected to follow the example of the UK pension funds, prior to the UK Government actually regulating CSR, was the promulgation of similar legislation in other important UK trading partners. Among them, Germany had adopted pension fund legislation back in 1992. Notably, the Insurance Supervision Act’s s. 294<sup>532</sup> states that the primary objective of this piece of legislation is to ensure ‘the protection of policyholders and beneficiaries’.<sup>533</sup>

In addition, countries such as Australia<sup>534</sup> and France<sup>535</sup> promulgated similar legislation soon after the UK (in 2001 and 2003 respectively). The regulatory framework in the US was shaped in a similar way, the difference being that the US regulator carried out a more consistent and sweeping effort to overhaul the system towards greater compliance with CSR. This is to say that the US reforms were not confined to pension funds but had a much wider reach. For example, the US Foreign Corrupt Practices Act 1977<sup>536</sup> provided financial incentives to firms with anti-corruption and environmental protection agendas (although none of this was obligatory). 25 years later, the Sarbanes-Oxley Act of 2002,<sup>537</sup> which came about in the aftermath of the Enron scandal, set about the promotion of ethical conduct and a culture of integrity. The effect of all this was an

<sup>528</sup> A Ruhmpkorf (n 136), 21.

<sup>529</sup> The Occupational Pension Schemes (Investment, Assignment, Forfeiture and Bankruptcy etc.) (Amendment) Regulations 1999, SI 1999/1849.

<sup>530</sup> Prin Shashiharan, ‘The Influence of Societal Structure and the Impact of Legal Regulation on Corporate Social Responsibility: A Comparative Perspective’ (2016) 1 LSE Law Review 92, 100.

<sup>531</sup> *ibid.*

<sup>532</sup> Versicherungsaufsichtsgesetz – VAG 1992.

<sup>533</sup> BaFin, ‘Insurance Supervision’ (n.d.) available:

<[https://www.bafin.de/EN/DieBaFin/AufgabenGeschichte/Versicherungsaufsicht/versicherungsaufsicht\\_artikel\\_en.html](https://www.bafin.de/EN/DieBaFin/AufgabenGeschichte/Versicherungsaufsicht/versicherungsaufsicht_artikel_en.html)> accessed 17 October 2021.

<sup>534</sup> Financial Services Reform Act 2001 No. 122, 2001.

<sup>535</sup> Loi Pensions Complémentaires 2003.

<sup>536</sup> Foreign Corrupt Practices Act 1977 15 U.S.C. §§ 78dd-1, et seq. (“FCPA”).

<sup>537</sup> United States Code, Sarbanes-Oxley Act of 2002, PL 107-204, 116 Stat 745, Codified in Sections 11, 15, 18, 28, and 29 USC, July 2002.



increase in corporate accountability.<sup>538</sup> Referred to as “meta-regulation”, this new corporate culture was deemed to have arrived as a result of a legal necessity.<sup>539</sup>

Considering that modern corporations are, as a rule, trans-national or at least, they operate cross-border, it is no wonder that businesses started harmonizing the applicable CSR requirements long before governments across the world have taken the decision to make CSR in their jurisdiction mandatory. To this end, it has been argued<sup>540</sup> that the countries began adopting indirect economic strategies, which due to globalization and other factors (one of which is the existence of economic and political unions) led to the integration of progressive social policies. In this context, the EU Commission’s Green Paper on Promoting a Framework for CSR<sup>541</sup> became a true driver for social renovation in the European Union and this certainly affected the developments in the UK.<sup>542</sup>

So the framework which existed at the beginning of this century repeated across major economies. While compliance with CSR was based on guidelines rather than on obligation, it was successful in the sense that not only were governments able to persuade the companies to embrace these CSR-friendly internal policies, they were able to achieve market acceptance of this novel corporate behaviour.<sup>543</sup> This is significant because transparency is not intuitive for businesses and neither is the desire to think of interests other than profit. The fact that the UK Government, along with the governments of the major world economies were successful at achieving that is not only credit to them but also evidence of the “winds of change”, shaping society at the turn of the century.

The idea to make OFR compulsory did not eventually come to fruition. After 10 years of research,<sup>544</sup> the legislation on the Operating and Financial Review was passed in March 2005,<sup>545</sup> mandating all ‘UK listed companies to disclose a separate statement of management commentary.’<sup>546</sup> The group of listed companies included ‘1,290 British-based companies listed on the London Stock Exchange, New York Stock Exchange, or NASDAQ.’<sup>547</sup>

Interestingly, the efforts to introduce legislation concerning CSR have been made by the Corporate Responsibility (CORE) Coalition, which has introduced two Corporate Responsibility Bills in the UK Parliament in two consecutive years (2003 and 2004).<sup>548</sup> The first Bill was aimed at improving transparency and reporting as regard CSR. The 2003 Bill also suggested ‘an extension of directors’ duties to take account of the environmental and social impact of their conduct and a statutory obligation to pay compensation to those injured or harmed as a result of group management failure’.<sup>549</sup> The 2003 Bill was not passed into law, mainly because of the ongoing reviewing of the Companies Act, which was intended to include some of the objectives of the Bill (for example, those referring to the duty of directors to consider the wider company’s stakeholders

<sup>538</sup> C Parker, ‘Meta-Regulation: Legal Accountability for Corporate Social Responsibility?’ in D McBarnet, A Voiculescu and T Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press 2007).

<sup>539</sup> L. Paine, ‘Up to Code: Does Your Company's Conduct Meet World-Class Standards?’ (2005) 83(12) Harvard Business Review 122.

<sup>540</sup> M Mahmudur Rahim, *Legal Regulation of Corporate Social Responsibility: A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy* (Springer Science & Business Media 2013), 34.

<sup>541</sup> EU Commission, Green Paper on Promoting a Framework for CSR (2001) available: [https://ec.europa.eu/commission/presscorner/detail/en/DOC\\_01\\_9](https://ec.europa.eu/commission/presscorner/detail/en/DOC_01_9) accessed 13 October 2021.

<sup>542</sup> M Mahmudur Rahim, *Legal Regulation of Corporate Social Responsibility: A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy* (Springer Science & Business Media 2013), 34.

<sup>543</sup> Prin Shashiharan, ‘The Influence of Societal Structure and the Impact of Legal Regulation on Corporate Social Responsibility: A Comparative Perspective’ (2016) 1 LSE Law Review 92, 100.

<sup>544</sup> Cynthia A. Williams & John M. Conley, ‘An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct,’ (2005) 38 CORNELL INT’LL. J. 493.

<sup>545</sup> The Companies Act 1985 (Operating and Financial Review and Directors' Report etc.) Regulations 2005, S.I. 2005/1011 (U.K.).

<sup>546</sup> N. Rowbottom and M.A.S. Schroeder, ‘The rise and fall of the UK operating and financial review’ (2014) 27(4) Accounting Auditing & Accountability Journal 27(4).

<sup>547</sup> Cynthia A. Williams and John M. Conley, ‘Triumph or Tragedy? The Curious Path of Corporate Disclosure Reform in the U.K.’ (2007) 31 Wm. & Mary Envtl. L. & Pol’y Rev. 317, 317.

<sup>548</sup> *ibid* (n 136), 32.

<sup>549</sup> *ibid* (n 136), 32.

and enhancing the reporting requirements applicable to companies).<sup>550</sup> The 2004 Bill was also unsuccessful; perhaps because it did not offer anything particularly new compared to its 2003 predecessor (it focused on requiring mandatory reporting requirements as to the environmental and social impact of the company's activities).

## The Companies Act 2006

In principle, English law considers the subsidiaries of a company as having a separate legal personality.<sup>551</sup> This could potentially make such claims in tort more difficult or rather, the provision of adequate remedy for the alleged tortuous acts can be made more difficult, because such acts committed by the subsidiary cannot, in principle, be attributed to the parent company.<sup>552</sup> However, *Chandler v Cape plc*<sup>553</sup> changed the law in this respect.<sup>554</sup> The CA upheld a High Court decision and thus provided a precedent that a parent company can be held liable for its subsidiary's negligence to its employees because of the direct duty of care which the parent company owed to those employees.<sup>555</sup> The case established a few key propositions, such as that an enhanced duty of care does not arise by default but it does so when a particular context is present. : Importantly, the case upheld the notion of the corporate veil and underlined that 'there was no imposition or assumption of responsibility to the employee by reason only that the defendant was the parent company: parent companies have a separate legal personality'.<sup>556</sup> Furthermore, the CA found that in the particular case the parent company and its subsidiary had parallel duties of care towards the employees of the subsidiary company. This was due to the relatively similar businesses of the two entities, the parent company's real or constructive knowledge of the lack of safety of its subsidiary's system of work and the parent company's real or constructive knowledge 'that the subsidiary or its employees would rely on its using that superior knowledge the employee's protection.'<sup>557</sup>

It has been suggested that this decision indicates that courts will interpret issues of parent companies and their subsidiaries in a holistic manner rather than sticking to already established rules. Furthermore, it has been suggested that such an approach would be extended even to subsidiaries of a UK plc, incorporated abroad.<sup>558</sup> This means that the proposal included in the 2003 Bill could come to fruition, after all. In any case, Chandler expanded the CSR of companies, which need now consider a wider spectrum of stakeholders, namely, the employees of its subsidiaries and more broadly, the consequences of the conduct of the latter.

The provision codifying directors' duties under section 172 of the Companies Act 2006, has received much attention since its enactment. There have also been scholarly discussions of the shareholder/stakeholder debate, policy papers that consider how the law should be amended in response to corporate failures, and lecture notes about company law provided in law schools throughout the UK on the topic. Among the benefits of EU membership to UK company law was that other constituencies were protected under a number of securities and company laws. Discussion of section 172 of the Companies Act of 2006 tends to focus on its utility and enforcement rather than the limitations it imposes on shareholder interests.<sup>559</sup>

The word 'success' is not defined in section 17.1 (1). According to the definition, success is what the members collectively hope the company achieves. For a commercial venture, success is usually measured by long-term value growth. The reform

<sup>550</sup> Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (CUP 2006), 169.

<sup>551</sup> *Adams v Cape Industries plc* [1990] BCLC 479.

<sup>552</sup> But c.f. with Radu Mares, 'Defining the Limits of Corporate Responsibilities Against the Concept of Legal Positive Obligations' (2012) 40 *The Geo. Wash. Int'l L. Rev.* 1157, 1183.

<sup>553</sup> *Chandler v Cape plc* [2012] EWCA Civ 525.

<sup>554</sup> See also Jennifer Arlen & Reinier Kraakman, 'Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes' (1997) 72 N.Y.U. L. REV. 687, 752.

555 <sup>1</sup>  
ibid.

<sup>556</sup> Linklaters, ‘Chandler v Cape plc.’ (2012) available: <<https://www.linklaters.com/en/insights/publications/ecc/chandler-v-cape-plc>> accessed 23 July 2021.

557 *ibid.*

<sup>558</sup> Linklaters, ‘Chandler v Cape plc.’ (2012) available: <<https://www.linklaters.com/en/insights/publications/ecc/chandler-v-cape-plc>> accessed 23 July 2021.

<sup>559</sup> Georgina Tsagas, 'Section 172 Of The Companies Act 2006: Desperate Times Call for Soft Law Measures' [2017] SSRN Electronic Journal.

process emphasized the importance of this expression, which, in its current form, ties all of the elements of section 172(1) together. It is important to encourage change in directors' behaviour as many directors seem to value shareholders' immediate returns over long-term returns, according to the CLRSG. It was the Commission's belief that its clarification and improving access to the law on directors' duties would be able to lead to a behaviour change in this regard. In order to accomplish success, it is essential to understand that the ultimate goal is to benefit shareholders. Building successful businesses depends on paying attention to relationships, effects, and reputation.<sup>560</sup> However, taking into account more than just financial performance when applying s.172 is important, since other factors need to be considered as well. This supports the previous assertion that stakeholder interests should be considered under s.263(3)(b), since the statutory framework does not limit success to that which can be evaluated analytically. For example, Stimpson<sup>561</sup> explained that he decided to end the claim due to both considerations and employee concerns. In that case, employees would be the beneficiaries of a victory on a derivative claim, but not from the cost element.<sup>562</sup>

One study found that none of the 100 largest listed companies in London by market capitalization were referring to Enlightened shareholder value as required by Section 172 of the Companies Act 2006. Neither ESV nor legislation was taken into account when directors performed their duties. The fact that the ESV focuses on long-term success makes this omission noteworthy, since protecting stakeholder interests at the same time is important. Even though the sample companies engaged in sustainable business practices, they failed to mention ESV.<sup>563</sup>

Furthermore, taking the place of the Annual Business Review, a Strategic Report was introduced on 1 October 2013 (s414 of the Companies Act). There are three main components of an annual report: the report, financial statements, and remuneration statements. According to Section 172 of the Companies Act, a strategic report informs company members and enables them to decide whether the director has met his or her duty to promote the success of the company.<sup>564</sup>

It has been argued that regulations directed by the state are stressed in Companies Act 2006 as opposed to voluntary self-regulation. It means that (s172 & s414 of Companies Act) explains corporate responsibility as having a dual component of accountability (holding those in charge of businesses accountable for their actions) and enforcement (punishing those in violation of the law).<sup>565</sup> In order to hold corporations accountable, the government has taken a broad array of measures that go beyond the law and public policy instead of simply urging them to improve standards and report. The "post-voluntarist" approach calls for direct government regulation to combat neoliberalism. Therefore, it is enhancing voluntary CSR in the UK through legal and extra-legal ways.<sup>566</sup>

### The UK 2015 Modern Slavery Act

A legislative Act, which merits a discussion here, is the UK 2015 Modern Slavery Act (the MSA 2015 or the Act),<sup>567</sup> which made a significant contribution to CSR compliance in the UK. Unfortunately, the Act has been criticised for not going far enough to achieve its potential. The positive comments and critiques of the MSA will be outlined below, along with some discussion of the author's own.

<sup>560</sup> Luca Cerioni, 'The Success of the Company in S. 172(1) Of The UK Companies Act: Towards an Enlightened Directors' Primacy?' (2008) 4 The University of Edinburgh, 2.

<sup>561</sup> \*Comp. Law. 81.

<sup>562</sup> P. L Davies and others, Gower's Principles of Modern Company Law (2008), 618.

<sup>563</sup> Taskin Iqbal and Andrew Keay, 'An Evaluation of Sustainability in Large British Companies' (2019) 48 Common Law World Review, 55.

<sup>564</sup> Irene-Marie Esser, Iain MacNeil and Katarzyna Chalaczkiwicz- Ladna, 'Engaging Stakeholders In Corporate Decision-Making Through Strategic Reporting: An Empirical Study Of FTSE 100 Companies (Part 2)' [2018] SSRN Electronic Journal.

<sup>565</sup> Peter Newell, 'From Responsibility to Citizenship? Corporate Accountability for Development' (2002) 33 IDS Bulletin, 1-12.

<sup>566</sup> Renginee G. Pillay, 'The Limits to Self-Regulation and Voluntarism: From Corporate Social Responsibility to Corporate Accountability' (2016) 2014 Amicus Curiae.

<sup>567</sup> UK 2015 Modern Slavery Act, c.30.

The MSA 2015 came to consolidate the old offences of trafficking (“arranging or facilitating the travel of another person with a view that a person is being exploited”) and slavery (now interpreted as “servitude or forced labour”).<sup>568</sup> The Act introduced two new civil orders intended to facilitate placing restrictions on physical and legal persons convicted of the offence of modern slavery. These orders also permit the court to restrict those who have not yet been convicted but for whom there has been sufficient evidence of involvement in such offences.<sup>569</sup> Furthermore, the Act established an independent Anti-Slavery Commissioner. In addition, the MSA provided a mechanism for compensation payments, whereby it made it possible to seize the assets of traffickers and direct some of them towards their victims.

Furthermore, the MSA 2015 applies to any company which carries out at least part of its business in the UK as long as they are engaged in the provision of goods or services. This means that the Act has sweeping coverage as this definition arguably includes most of the businesses working in the country.

In addition, the 2015 Transparency in Supply Chain Regulations,<sup>570</sup> which brought into force the MSA’s section 54,<sup>571</sup> introduced a requirement for businesses with an annual turnover exceeding £36 million to publish an annual statement,<sup>572</sup> describing what steps they have taken to guarantee that their business or any of their supply chains have not benefited from or used slavery and human trafficking. This is significant because it means that UK companies will be responsible for the offences of human trafficking and/or slavery when perpetrated abroad, as long as the offence has been committed by their supply chain. It should be noted that including supply chains within the reach of the Act was not the initial intention of the drafters who thought that this would impose an unreasonably heavy burden on companies.<sup>573</sup> However, the final draft of the Bill eventually included this text due to campaigning in favour of the change.<sup>574</sup>

Alternatively, corporations have to declare that they have made no effort to confirm the existence of slavery or trafficking carried out in connection to their business. Since the declaration must be written on the company’s website, it will be visible to the firm’s competitors and customers as well as the NGOs working in the area of CSR. This indicates that the Act relies on peer shaming in the sense that businesses will feel scrutinized on account of their declarations. This creates expectations that corporations as a whole will avoid taking the second option because doing so will raise doubts about their integrity, and ethics, ultimately causing reputational damage. It should be noted, nevertheless, that the Act does not impose a legal requirement for due diligence on supply chains and non-compliance with it does not lead to criminal or financial penalties.<sup>575</sup>

<sup>568</sup> Sharon Benning-Prince (31 July 2015). "A Guide to the Modern Slavery Act for Your Business". ContractStore Legal Business Blog, available: <<https://www.contractstore.com/blog/uk-law/a-guide-to-the-modern-slavery-act-your-business-could-be-affected/>> accessed 14 October 2021.

<sup>569</sup> *ibid.*

<sup>570</sup> The Modern Slavery Act 2015 (Transparency in Supply Chain) Regulations 2015

<sup>571</sup> Chris Syder, ‘Modern Slavery Act – transparency in supply chains requirements come into force’ (2015) PMC, available: <<https://www.penningtonslaw.com/news-publications/latest-news/modern-slavery-act-transparency-in-supply-chains-requirements-come-into-force>> accessed 15 October 2021.

<sup>572</sup> *ibid.*, regulation 2.

<sup>573</sup> Home Office, Draft Modern Slavery Bill (2013) available:

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/266165/Draft\\_Modern\\_Slavery\\_Bill.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266165/Draft_Modern_Slavery_Bill.pdf)> accessed 18 October 2021.

<sup>574</sup> Michael Pollitt, ‘Unfinished abolitionists: Britain returns to the frontline of the war on slavery’ (2014) New Statesman, available: <<https://www.newstatesman.com/politics/2014/10/unfinished-abolitionists-britain-returns-frontline-war-slavery>> accessed 18 October 2021.

<sup>575</sup> Sharon Benning-Prince (31 July 2015). "A Guide to the Modern Slavery Act for Your Business". ContractStore Legal Business Blog, available: <<https://www.contractstore.com/blog/uk-law/a-guide-to-the-modern-slavery-act-your-business-could-be-affected/>> accessed 14 October 2021.



This omission has been criticised<sup>576 577</sup> and the MSA 2015 has been compared unfavourably to its French counterpart (the duty of vigilance law).<sup>578</sup> The French law goes further than the UK Act since it imposes due diligence and legal liability where there has been ‘ineffective implementation resulting in damages’.<sup>579</sup> Notably, the French legislator was influenced, similarly to the UK one, by the Rana Plaza disaster which caused the death of ‘over a thousand workers, who were hired by subcontractors including of several global companies including French ones’.<sup>580</sup>

One commendable development in the UK, which may help counteract the misgivings of the Act, was the 2016 announcement by the Home Office of the TISC Report - an independent civil society modern slavery register, which provided a registry where companies could share their MSA statements. The registry was/is public and searchable. At the beginning of 2017, it had collected over 10,153 company statements, which made it the largest such register of this type in the world.<sup>581</sup> Since 2019 the UK Government self-included itself within the provisions of the Act, committing to making a report under the MSA 2015, s.54.<sup>582</sup>

It should be noted that while campaigners succeeded at including supply chains within the final Bill, not all proposals to amend the Bill were accepted. For example, the proposal to criminalise the purchase of sex did not find its way into the Act, neither did the proposal on tied visas. While the issue with criminalizing prostitution is indeed a complicated one because there is no sufficient evidence that criminalizing this area will actually improve the lives of women working in the profession,<sup>583</sup> the issue of tied visas is much more clear-cut. To recall, tied visas are visas that oblige their holder to continue working for their sponsor without a capacity to legally change their employer.

This system concerns mostly foreign domestic workers. It was introduced in Britain in 2012, resembling, to a large extent, the kafala system of the Middle East.<sup>584</sup> The House of Commons rejected the proposal which would have given such visa holders the right to change employers.<sup>585</sup> It is submitted that by rejecting the tied visas proposal, the UK legislator missed a valuable opportunity to protect a minority, which is often exploited and mistreated in the course of their work and life in the UK. To see things in context, it is notable that the supply chain clause was included because of the large number of individuals

<sup>576</sup> Adam S. Chilton and Galit A. Sarfaty, ‘The Limitations of Supply Chain Disclosure Regimes’ (2017) 53 STAN. J. INT’L L. 1.

<sup>577</sup> Ernst & Young LLP, ‘The UK Modern Slavery Act 2015: What Are the Requirements and How Should Businesses Respond?’ (2015) available: <[https://www.ey.com/Publication/vwLUAssets/ey-the-uk-modern-slavery-act-2015/\\$FILE/ey-the-uk-modern-slavery-act-2015.pdf](https://www.ey.com/Publication/vwLUAssets/ey-the-uk-modern-slavery-act-2015/$FILE/ey-the-uk-modern-slavery-act-2015.pdf)> accessed 17 October 2021.

<sup>578</sup> Li-Wen Lin, ‘Mandatory Corporate Social Responsibility Legislation around the World: Emergent Varieties and National Experiences’ (2020) University of Pennsylvania Journal of Business Law, available: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3678786](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3678786)> accessed 16 October 2021, 7.

<sup>579</sup> *ibid*, 7-8.

<sup>580</sup> Li-Wen Lin, ‘Mandatory Corporate Social Responsibility Legislation around the World: Emergent Varieties and National Experiences’ (2020) University of Pennsylvania Journal of Business Law, available: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3678786](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3678786)> accessed 16 October 2021, 8.

<sup>581</sup> TISC Report, ‘World’s largest anti-slavery register reaches 10k milestone, boosting the fight against exploitation’ (2017) available: <<https://pressreleases.responsesource.com/news/92463/world-s-largest-anti-slavery-register-reaches-k-milestone-boosting-the/>> accessed 18 October 2021.

<sup>582</sup> UK Government, UK Government Modern Slavery Statement, published 26 March 2020, available: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875800/UK\\_Government\\_Modern\\_Slavery\\_Statement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875800/UK_Government_Modern_Slavery_Statement.pdf)> accessed 17 October 2021.

<sup>583</sup> House of Commons (4 November 2014) UK Parliament, available: <<https://www.parliamentlive.tv/Event/Index/cde7a8c1-edd7-49f3-834e-4a308da91fee?in=17%3A37%3A24.8900000>> accessed 14 October 2021.

<sup>584</sup> Alastair Sloan, ‘UK tied visa system ‘turning domestic workers into modern-day slaves’ (2015) The Guardian, available: <<https://www.theguardian.com/world/2015/mar/17/uk-tied-visa-system-turning-domestic-workers-into-modern-day-slaves>> accessed 18 October 2021.

<sup>585</sup> Frances Perraudin, ‘Modern slavery bill amendment rejected by MPs’ (2015) The Guardian, ‘Modern slavery bill amendment rejected by MPs’ (2015) The Guardian, available: <<https://www.theguardian.com/world/2015/mar/17/modern-slavery-bill-lords-amendment-rejected-mps>> accessed 17 October 2021.

and groups who campaigned for it. This included ‘a resolute and passionate abolitionist backlash,...from anti-slavery NGOs, human rights lawyers, investigative journalists, members of the public and MPs on all sides’.<sup>586</sup>

To a large extent, this reaction (as well as the Government’s eventual willingness to accommodate the proposal) has been informed and inspired by the Bangladesh Rana Plaza factory collapse (mentioned above) where more than 1,130 garment workers were killed during the collapse of a building.<sup>587</sup> Notably, some of the victims worked for UK corporations such as Primark and Matalan.<sup>588</sup> Also influential was the Thai prawn-fishing industry scandal, exposed by the Guardian.<sup>589</sup> In the latter, the investigation by the newspaper discovered ‘kidnapping, corporal punishment and summary execution at the bottom of supply chains that led to Tesco, Aldi, Morrisons and the Co-operative’.<sup>590</sup>

However, while the horrors that often happen in supply chains of big UK corporations do explain why supply chains were eventually included in the MSA, this does not explain why the UK Government chose to disregard the issue of tied visas. After all, the workers brought into the UK under these visas are often abused by their employers, including sexually, and their plight certainly fits the description of modern-day slavery. This has been well-documented by researchers from the UCL, who, together with the charity Kalayaan carried out a series of interviews with 400 domestic foreign workers, the majority of them from the Philippines and Indonesia, mostly brought into the UK by wealthy families from the Gulf.<sup>591</sup>

This issue is of interest to the current thesis because the tied visa example illustrates that problems that can eventually be framed as CSR issues, can migrate between countries. To this end, the quote from Lord Hylton, an independent peer, who worked towards amending the “tied visa” legislative provision is of interest:

We are importing the kind of mentality they have in the Gulf states, the same kind of conditions you see in Saudi Arabia, Kuwait or the United Arab Emirates. The government argues that changing the law will attract too many foreign domestic workers wanting to emigrate to the UK ...[but] domestic workers don’t choose to come here, they are brought here with their Middle Eastern employers.<sup>592</sup>

This harsh critique of an aspect of life in, among other Middle Eastern countries, Saudi Arabia, is a reminder that despite the good intentions and societal culture of the latter, which admittedly helps promote an Islamic-specific form of CSR,<sup>593</sup> there are areas that still need improving.<sup>594</sup> It is perhaps relevant to underscore that the workers in question are foreign not only to the UK but also to the Saudi Kingdom. The reaction of neglect is apparent in the attitude of the legislator in both countries,

<sup>586</sup> Michael Pollitt, ‘Unfinished abolitionists: Britain returns to the frontline of the war on slavery’ (2014) *New Statesman*, available: <<https://www.newstatesman.com/politics/2014/10/unfinished-abolitionists-britain-returns-frontline-war-slavery>> accessed 18 October 2021.

<sup>587</sup> Shahnaz Parveen, ‘Rana Plaza factory collapse survivors struggle one year on’ (2014) *The BBC*, available: <<https://www.bbc.com/news/world-asia-27107860>> accessed 16 October 2021.

<sup>588</sup> Sarah Butler, ‘UK government tells retailers to pay up in Rana Plaza compensation battle’ (2014) *The Guardian*, available: <<https://www.theguardian.com/business/2014/jun/25/uk-government-retailers-matalan-rana-plaza-compensation-bangladesh>> accessed 16 October 2021.

<sup>589</sup> Kate Hodal, Chris Kelly and Felicity Lawrence, ‘Revealed: Asian slave labour producing prawns for supermarkets in US, UK’ (2014) *The Guardian*, available: <<https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>> accessed 17 October 2021.

<sup>590</sup> Michael Pollitt, ‘Unfinished abolitionists: Britain returns to the frontline of the war on slavery’ (2014) *New Statesman*, available: <<https://www.newstatesman.com/politics/2014/10/unfinished-abolitionists-britain-returns-frontline-war-slavery>> accessed 18 October 2021.

<sup>591</sup> Alastair Sloan, ‘UK tied visa system ‘turning domestic workers into modern-day slaves’ (2015) *The Guardian*, available: <<https://www.theguardian.com/world/2015/mar/17/uk-tied-visa-system-turning-domestic-workers-into-modern-day-slaves>> accessed 18 October 2021.

<sup>592</sup> *ibid*, per Lord Hylton.

<sup>593</sup> Sami A Khan, ‘Exploring Corporate Social Responsibility in Saudi Arabia: The Challenges Ahead’ (2013) 10(3) *Journal of Leadership, Accountability and Ethics* 65.

<sup>594</sup> *ibid*.

however.<sup>595</sup> Perhaps the motivation for this attitude differs or maybe it does not; what is certain is that domestic workers are not seen as a strong group that contributes significantly to a country's economy. This should be added to the fact that such workers come from countries with lesser clout, and are introduced into the domestic labour force under incredibly unfavourable conditions.<sup>596</sup> The analysis of their situation appears to lead to a conclusion that if the ethical problem is of lesser economic magnitude, it will not be taken seriously by the government. This, however, should not be tolerated under the modern understanding of CSR. What makes the issue worse is that the UK demonstrated a desire to lead in the field of CSR – as noted above, it provided the first global registry for company reports on modern slavery and British corporations were willing to embrace the goals of CSR even prior to these becoming obligatory under the law of the country. Yet, when it had the opportunity to rise to the occasion, the UK Parliament failed to do so.

Furthermore, the issue of tied visas has another, arguably more troubling, dimension, which is that the exploitation of domestic workers that have been made possible under the regime benefits a number of wealthy residents of the country (in the case of the UK) and own citizens (in the case of the Saudi Kingdom). The reluctance to deal with the issue and to alleviate the position of such workers speaks of an attitude that should have been eradicated by the 21<sup>st</sup> century. More specifically, leaving the tied visa workers in their current situation equates them to a commodity, objectifies and disvalues them. Furthermore, there have been critiques that the UK government may have introduced the rules to encourage wealthy individuals from the Gulf to set up second households in the UK [and that it] has gone to special lengths to welcome immigration from the Gulf States.<sup>597</sup> For example, the UK Government has introduced a fast-track visa applications scheme, offered to citizens of the UAE, Oman, and Qatar.<sup>598</sup> Furthermore, the Government did not include the migration figures resulting from these visas into the migration statistics of the country. In addition to the abuse of workers that this scheme helps perpetuate, the lack of transparency arguably flies in the face of the Government's requirements that corporations report their activities with a view of controlling their CSR impact.<sup>599</sup> Not only is this conduct by the UK Government inconsistent, but it is also cynical and counterproductive. It is, therefore, highly unfortunate that the UK Government decided against the abolishing of this system and declined to include proposals to this effect into the final Modern Slavery Bill.

### The consumer protection and competition laws

Another possibility to hold companies to account, particularly for false advertisement, is to rely on the existing consumer protection and competition laws.<sup>600</sup> This could be particularly helpful if a company has established a code of conduct that supports CSR's goals and then breaches it in the course of its actions or the conduct of its agents and employees. To this end, the EU Directive on unfair commercial practices (Directive 2005/29/EC),<sup>601</sup> implemented through the Consumer Protection from Unfair Trading Regulations 2008 (CPUTR)<sup>602</sup> and the EU Directive concerning misleading and comparative advertising (Directive 2006/114/EC),<sup>603</sup> implemented through the Business Protection from Misleading Marketing Regulations 2008<sup>604</sup> could be relied upon. CPUTR 2008 'prohibit misleading actions, including the failure by a trader to comply with a firm and

<sup>595</sup> HRW, "Bad Dreams" Exploitation and Abuse of Migrant Workers in Saudi Arabia' (2004) available: <https://www.hrw.org/report/2004/07/13/bad-dreams/exploitation-and-abuse-migrant-workers-saudi-arabia> accessed 14 October 2021.

<sup>596</sup> See more generally on the issue of Indonesian migrant workers, Ami Sim, 'Women Versus the State: Organizing Resistance and Contesting Exploitation in Indonesian Labor Migration to Hong Kong' (2009) 18(1) Asian and Pacific migration journal 47.

<sup>597</sup> Alastair Sloan, 'UK tied visa system 'turning domestic workers into modern-day slaves'' (2015) The Guardian, available: <https://www.theguardian.com/world/2015/mar/17/uk-tied-visa-system-turning-domestic-workers-into-modern-day-slaves> accessed 18 October 2021.

<sup>598</sup> *ibid.*

<sup>599</sup> See, for instance, Gov.UK, 'Transparency in Supply Chains etc. A practical guide' (n.d.) Guidance issued under section 54(9) of the Modern Slavery Act 2015, available: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/649906/Transparency\\_in\\_Supply\\_Chains\\_A\\_Practical\\_Guide\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf) accessed 18 October 2021.

<sup>600</sup> Carola Glinski, 'Corporate codes of conduct: moral or legal obligation?' in D Mc Barnet, A Voiculescu and T Campbell (eds), *The new corporate accountability: Corporate social responsibility and the law* (CUP 2007), 126.

<sup>601</sup> EU Directive on unfair commercial practices (Directive 2005/29/EC).

<sup>602</sup> Consumer Protection from Unfair Trading Regulations 2008 No. 1277.

<sup>603</sup> EU Directive concerning misleading and comparative advertising (Directive 2006/114/EC).

<sup>604</sup> Business Protection from Misleading Marketing Regulations 2008 No. 1276 (S.I. 1988/915).

verifiable commitment contained in a code of conduct with which he has undertaken to comply.<sup>605</sup> This was seen as a major issue and the Law Commission's recommendation to introduce consumer redress for misleading and aggressive practices, was accepted by the UK Government and included in the Consumer Protection (Amendment) Regulations 2014.<sup>606</sup> It is submitted that while addressing only one aspect of CSR, this is a commendable development that supports and strengthens the arguably vague provisions of s.172 of the UK Companies Act 2006.

### The criminal liability of the company

It should also be mentioned that corporations may be under criminal responsibility with respect to breaches of CSR, particularly when these are expressed in behaviour breaching the criminal law of the country.<sup>607</sup> For example, physical violence against an employee falls within this bracket although the act must be attributable to an agent or an employee of the company.<sup>608</sup> For example, corporate manslaughter is an offence under the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA)<sup>609</sup> as long as 'the company's activities are managed or organised in a way that causes a person's death and amounts to a gross breach of a relevant duty of care owed by the company to that person.'<sup>610</sup> Under s.1(3) CMCHA, whether a breach of the duty of care can be established will depend a big part on how the company's senior management has managed or organized the conduct of the company.<sup>611</sup>

### The Bribery Act 2010 (BA 2010)<sup>612</sup>

This law could also be used as a basis for making English multinational companies liable in connection to their failure to adhere to CRS' objectives. The Act prohibits paying or receiving bribes, bribing a foreign public official and the failure of a commercial organisation to prevent bribery. BA 2010 has universal jurisdiction because it is applicable to 'individual or company with links to the United Kingdom, regardless of where the crime occurred'.<sup>613</sup> It is arguable that the significance of this is linked to the purpose of bribes. Often, bribes are given so that a Western company carries out certain actions, typically in a developing state, which harm the environment and/or the social rights of their employees and/or the local population. By asserting the almost universal jurisdiction of the BA 2010, the legislator endeavours (not always successfully, however) to police these practices. The Act goes further by placing a responsibility on employees of the company in question with respect to its provisions. This raises the question of whether bribery can lead to civil liability, which is an important point, recently discussed by the English courts.<sup>614</sup> In addition, this wide reach of the Act gives force to arguments that CSR 'is, at least in part, law'.<sup>615</sup> To this end, it could be argued that the Bribery Act 2010 has contributed to the strengthening of the CSR framework not only in the UK but also internationally. What is even more significant is that this Act attempts to regulate the global CSR print of UK companies, which is a commendable development.

Last but not least, corporate activities which can impact companies' CSR can be regulated through private regulation. This includes internal codes of conduct and labelling schemes (for example, the 'green labelling' scheme carried out by the Forest Stewardship Council). In addition, much of what is happening as a consequence of a company's internal code of conduct is

<sup>605</sup> A Ruhmpkorf (n 136), 34.

<sup>606</sup> Consumer Protection (Amendment) Regulations 2014 No. 870.

<sup>607</sup> On this topic, see more generally Derek French, Stephen Mayson and Christopher Ryan, *Mayson, French & Ryan on Company Law* (28th edn, OUP 2011-2012), para 19.8.4.

<sup>608</sup> *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 BCLC 116, PC, elaborating the 'directing mind and will of the company' test, established in *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705, 713 and *Tesco Supermarkets v Natrass* [1972] AC 153.

<sup>609</sup> Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA), c.19.

<sup>610</sup> A Ruhmpkorf (n 136), 35.

<sup>611</sup> CMCHA (n 164), s.1(3).

<sup>612</sup> Bribery Act 2010, c.23.

<sup>613</sup> A Ruhmpkorf (n 136), 35.

<sup>614</sup> *Fiona Trust & Holding Corp v Privalov* [2010] EWHC 3199 (Comm).

<sup>615</sup> A Ruhmpkorf (n 136), 36.



monitored and certified by third-party actors, such as NGOs, which serve to discipline and police the activities of a company.<sup>616</sup>

Furthermore, the standard and codes applicable to companies are not in all cases created by them.<sup>617</sup> They could be introduced by the industry in which the company operates or by NGOs, leading to perhaps too many sources of influence as to the way a corporation leads its business. It is submitted that this state of things can lead to confusion as to which obligations take precedence (in other words, what is the hierarchy of the applicable obligations) and which obligations should not be considered at all if they are contrary to the interests of the company's shareholders.

The above discussion signifies that CSR has a deep connection to law and with that, it can easily become translatable into binding obligations. This emphasizes the need to have well-thought-out CSR goals which take into consideration the wider legislative and regulatory context within which companies operate.

### 3.6 The UK CSR agenda in the post-Covid time

Having discussed the private law implications of CSR, this section will turn to a discussion on the UK CSR agenda in the period following the Covid-19 pandemic. Estimations from the end of 2020 suggest that the impact of the Covid-19 pandemic on the economy exceeds that of the 2007-2008 crisis. For example, the drop in the GDP for each month of lockdown is calculated to be between 2 to 3 points.<sup>618</sup> During the autumn of 2020, it was estimated that the combined effect of the pandemic and the measures to fight it caused the loss of more than 195 million jobs.<sup>619</sup>

It has been argued that the Covid-19 pandemic created an environmental challenge of huge proportions which is likely to have 'a profound impact on corporate social responsivity (CSR), consumer ethics, and basic marketing philosophy.'<sup>620</sup> It is not controversial to say that Covid posed a number of challenges to small and big businesses. At the same time, some corporations clearly benefited from the pandemic – for example, those dealing/trading with digital technologies, communication applications, social media, medical research companies or online marketplaces.

While the businesses referred to above profited from the pandemic in an ostensibly legit way, there were many other companies that were accused of profiteering by, for instance, increasing their prices disproportionately and engaging in fraud by 'making misleading claims about products'.<sup>621</sup> Some of these behaviours could be explained, although not excused, with the financial squeeze, caused by the pandemic and the potential for short and long-term financial losses, which some firms

<sup>616</sup> Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (CUP 2006), 95.

<sup>617</sup> For instance, see British American Tobacco, *Standards of Business Conduct*, available: <[http://www.bat.com/group/sites/uk\\_\\_3mnfen.nsf/vwPagesWebLive/DO5TXKRH?opendocument&SKN=1&TMP=1](http://www.bat.com/group/sites/uk__3mnfen.nsf/vwPagesWebLive/DO5TXKRH?opendocument&SKN=1&TMP=1)> accessed 22 July 2021.

<sup>618</sup> IMF, 'IMF World Economic outlook', (April 2020) available: <<https://www.imf.org/es/Publications/WEO/Issues/2020/04/14/weo-april-2020>>, accessed 7 July 2021; OECD, 'Evaluating the Initial Impact of COVID-19 Containment Measures on Economic Activity' (2020) available: <<https://www.oecd.org/coronavirus/policy-responses/evaluating-the-initial-impact-of-covid-19-containment-measures-on-economic-activity/>>, accessed 7 July 2021.

<sup>619</sup> Isabel-María García-Sánchez and Alejandra García-Sánchez, 'Corporate Social Responsibility during COVID-19 Pandemic' (2020) 6 *Journal of Open Innovation Technol. Mark. Complex* 126, 126; ILO, 'COVID-19 and the World of Work' (2020) available: <<https://www.ilo.org/global/topics/coronavirus/lang--en/index.htm>> accessed 8 July 2021.

<sup>620</sup> Hongwei He and Lloyd Harris, 'The impact of Covid-19 pandemic on corporate social responsibility and marketing philosophy' (2020) 116 *J Bus Res.* 176, 176.

<sup>621</sup> Hongwei He and Lloyd Harris (n 132); C Butler, 'How to survive the pandemic', (2020) *Chatman House: The World Today*, accessible at: <<https://www.chathamhouse.org/publications/twt/how-survive-pandemic>>, accessed 7 July 2021; S Butler, 'New UK taskforce to crack down on coronavirus profiteers', (2020) *The Guardian*, accessible at: <<https://www.theguardian.com/business/2020/mar/20/new-uk-taskforce-to-crack-down-on-coronavirus-profiteers>>, accessed 7 July 2021.

looked to offset by inflating their profits. Whatever the motivation, it is clear that the crisis has taken its toll on the investment in CSR and in ethical business practices more generally.

It has also become evident, however, that not all companies have chosen this path; many others used the opportunity to engage with the local and wider community by providing help to those in need or by facilitating a better and easier lockdown experience. Examples of such ethical course of conduct and CSR in practice abound. Vodafone made unlimited mobile data available free to many of its pay monthly customers, giving the best offers to the most vulnerable customers.<sup>622</sup> UK supermarkets allocated specific hours for the elderly in order to make sure that these more vulnerable customers will not mix with the rest of the clients. They adopted a similar policy with regard to NHS workers and donated Easter Eggs to charity.<sup>623</sup> PG tips and Re-engage conducted an initiative where they trained volunteers to call the elderly living alone during the lockdown.<sup>624</sup> In another example, UK companies reformed their factories to start producing ventilators that had sanitizers or personal protection equipment (PPE), which they donated on many occasions. Even banks contributed by waving overdraft for a considerable period of time and some companies ‘donated their original commercial campaign airtime to promote good causes’.<sup>625</sup>

It has been suggested that the examples from the response to the Covid-19 pandemic underscore that CSR is not only profitable but it can help establish ongoing and long-lasting trust and rapport between a company and consumers. This suggests that the crisis may become an appropriate moment to examine the state of a company’s CSR’s strategy and agenda, particularly since the period of the pandemic has placed under question the survival of many business entities.<sup>626</sup>

While He and Harris assume that much of what has happened was due to governments across the globe introduction of aid packages, they also note that the heads of the biggest global corporations have personally engaged in promoting donations aimed at relieving the burden of the pandemic. For example, He and Harris note Jack Dorsey (Twitter), Jack Ma (Alibaba) and Bill Gates (Microsoft), all of whom have donated money, medical supplies or logistic support for the cause of the fight with the pandemic. In the UK specific context of note is Marcus Rashford’s initiative to help reduce child food poverty by bringing together the efforts of major UK corporations (supermarkets, businesses and charities) as well as that of the British Government. The initiative, which focused on providing free school meals during the summer holidays, was very successful, proving the importance of working together towards the achievement of the concrete CSR goal.<sup>627</sup> This consideration allows proposing that the pandemic highlighted the implications for CSR of combining institutional factors and leadership.<sup>628</sup>

Another point worth mentioning is the effect of events, such as the pandemic, on the bottom line of companies and additionally on their readiness to continue upholding the values of CSR even in scenarios where this would greatly endanger the survival of the corporate entity. Historical analysis suggests that in such times many corporations would focus on the essential; however, examples from the oil crisis from the 1970s (the 1973 oil embargo and the 1978 oil crisis) demonstrate that others may react in a different, more CSR friendly manner. While the transition to greater exploration, conservation of energy and alternative energy research may have been forced on corporations as a result of the 1970s events, the fact remains that the environmental crisis promoted interest towards CSR as well as a novel appreciation of the benefits derived by it. Still, considering that the economic crisis generated by the Covid-19 pandemic is predicted to match the Great Depression from the 1930s, it is understandable that many companies will re-consider their CSR objectives. These goals are best analysed by reference to a previously devised framework of business responsibilities, including economic and legal, commercial, ethical, altruistic, and strategic commitments of the respective business. It is arguable that firms operating throughout the period of the pandemic (still ongoing at the time of writing) needed to find the fine balance between these five objectives.

<sup>622</sup> Hongwei He and Lloyd Harris (n 132).

<sup>623</sup> J Lindsay, ‘Aldi donates Easter eggs to food banks and local charities’, (2020) Metro, accessible at: <https://metro.co.uk/2020/04/04/aldi-donates-easter-eggs-food-banks-local-charities-12507475/>, accessed 6 July 2021.

<sup>624</sup> H Jones, ‘Huge surge in volunteers to help combat coronavirus loneliness’, (2020) Metro, accessible at: <https://metro.co.uk/2020/04/07/huge-surge-volunteers-help-combat-coronavirus-loneliness-12524549/>, accessed 6 July 2021.

<sup>625</sup> Hongwei He and Lloyd Harris (n 132).

<sup>626</sup> *ibid* (n 132).

<sup>627</sup> Editorial, Marcus Rashford brings food brand giants together to tackle child food poverty’ (2020) BBC, available: <https://www.bbc.com/news/uk-53979648> accessed 9 July 2021.

<sup>628</sup> Hongwei He and Lloyd Harris (n 132).

### 3.7 Conclusion

This chapter of the thesis focused on CSR in the UK, examining the ways CSR operates and how it can be improved in England, in law and practice. The author discussed the prevailing in the shareholder's primacy academic literature theory of shareholder value, arguing that this has been at the core of companies' lack of desire to engage more genuinely with the objectives of CSR. The author acknowledged the contributions of English private law and more specifically these of the Companies Act 2006 (s.172 and s. 417), which relate to the directors' duty to promote the success of the company and the obligations to report, including on the company's CSR objectives. Furthermore, the chapter acknowledged that the English legal framework provides a number of avenues to make CSR more anchored in law, such as to pursue a claim in tort, contract or commercial law, in addition to the obligations existing under the applicable company law legislation. Furthermore, the analysis established that breaches related to CSR may be examined under English Criminal Law, most notably the Bribery Act 2010.

The author looked at the connection between adopting a CSR agenda and the harmful practices of earnings management and found that companies that have embraced the CSR goals in a more genuine way run a lower likelihood to have managers who engage in earnings management. This was acknowledged as a positive finding because it underscores the positive consequences of making the CSR framework a robust part of the company's internal policies. These findings were supported by the analysis of CSR in the context of the Covid-19 pandemic, which highlighted the importance of engaging genuinely with the CSR agenda rather than pink or whitewashing it.

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

## Chapter Four

### CSR in Saudi Law

#### 4.1 Introduction

This chapter answers the research question: What the impacts of Current legal framework on CSR practises in KSA? And Why? This chapter finds that due to the voluntary nature of CSR practices, many Saudi Arabian companies have developed CSR plans that are not comprehensive enough to accommodate all of CSR's characteristics. Similarly, CSR remains underdeveloped in Saudi Arabia, and unless major and still unheard of reforms are enacted, there appears little prospect for its growth and development.

This chapter explains China, India, and Indonesia CSR legislation. Each country has its own level of sophistication with regards to CSR and its own particular legislative framework. Following the laws passed by these countries, Saudi Arabia can leverage the relative success of these frameworks to create its own CSR infrastructure. All of these countries have since created extensive CSR infrastructure as a result of the legislation passed. Saudi Arabia shares many similarities with these jurisdictions, despite the fact that they are not identical. Therefore, CSR is better implemented through legislative frameworks.

This chapter also explores that the current approach to (CSR) in Saudi Arabia is insufficient since the country's system is relatively underdeveloped, mainly encouraging companies to act on their own but taking no steps to compulsorily force them to do so. Rather than international standards, Saudi companies could benefit more from a Saudi framework for CSR. Since the CSR requirements will be uniform, companies that adopt CSR early will not be penalized. Furthermore, CSR outcomes can be modified to meet the government's goals rather than imported western or international CSR. Given the relatively unique aspects of Saudi Arabia, local authorities are likely to be more open to such an approach. The Saudi government needs to gain the support and "buy-in" of the business community in order to develop an effective framework that will bring about genuine, long-term CSR in Saudi Arabia. This illustration demonstrates that imposing a prison term in this case for breaching a CSR requirement will not only not win the favor of the corporate community, but will also establish friction that will ultimately undermine efforts to ensure compliance across society. In order for CSR frameworks to be implemented successfully - whether voluntary or legislative - companies must voluntarily sign on to the framework, rather than acting out

of fear of sanction. It has been demonstrated that undertaking a process of consultation is essential when it comes to the reform of CSR requirements in India - many of which have the potential to be extensive and encompassing. It is necessary for Saudi authorities to understand the unique features of Saudi society in order to design CSR requirements that fit into it. Through the Zakat model, China's CSR requirements are useful and instructive since many of them originated from its socialist heritage, so they were able to be introduced in three phases.

The chapter discusses that CSR is a conduit for or at least a framework for implementing CSR in Saudi Arabia. In spite of the fact that the slow adoption of corporate social responsibility may be one of its pitfalls - and may have created obstacles to switching from Zakat to CSR - the cultural impact of corporate social responsibility has been incorporated into the Saudi Arabian psyche. For generations, Saudis have understood the religious and spiritual nature of Zakat obligations, which have led to an increased awareness of individual, societal, and institutional responsibilities.

#### 4.2 Overview: CSR Frameworks

One of the major debates surrounding the proliferation of CSR worldwide concerns the degree to which the base of the requirement should be legislative or whether it should be voluntary.<sup>629</sup> While some advocates of the voluntary approach point to the sophisticated nature of CSR as it currently stands on a global scale – the vast majority of which has been adopted on a voluntary basis by companies – as a justification for the approach, others argue that realistic change cannot take place without some degree of legislative effort.<sup>630</sup> Indeed, this discussion of voluntary versus legislative strikes at the very heart of what CSR is – and what it should try and be, which has become a more prevalent topic of academic discussion in recent years.<sup>631</sup> The latter argument is particularly prevalent among those who agitate for a greater adoption of CSR in developing economies, many of which have little to no CSR pedigree.<sup>632</sup> Indeed, where CSR has been adopted at a legislative level, this has primarily taken place in countries with developing economies, such as China, Indonesia, India and Mauritius. The nature of Corporate Social Responsibility as being a voluntary or an obligatory undertaking has been given extensive academic consideration.<sup>633</sup> The accepted definition for the piece is that of Zerk,<sup>634</sup> who says “each business enterprise, as a member of society has a responsibility to operate ethically and in accordance with its legal obligations and to strive to minimise any adverse effects of its operations and activities on the environment, society and human health”. The accepted definition for the purposes of this thesis thereby takes into account both the ‘legal’ and the ‘ethical’ aspects of corporate social responsibility. In the definition, Zerk directly references the obligation to comply with the law, while also directly referencing ‘operating ethically’ and outlining the obligation to “strive to minimise any adverse effects” of company operations in a variety of areas, thereby indicating a moral and ethical component. This is important because it references the degree to which moral and ethical concerns can underpin business decisions and overarching strategy, even if these do not amount to rules which have a legal foundation.<sup>635</sup> Indeed, while there is a wide variety of divergence surrounding the degree to which a CSR definition composes either legal or moral elements, this definition adequately reflects both elements that are present in a company’s operational strategy.<sup>636</sup> This is important, particularly for being able to identify companies which are CSR compliant. Therefore, a company which is complying with its CSR-related legal obligations and doing nothing more is CSR compliant, while a

<sup>629</sup> Lucia Gatti, Babitha Vishwanath, Peter Seele and Bertil Cottier, Are We Moving Beyond Voluntary CSR? Exploring Theoretical and Managerial Implications of Mandatory CSR Resulting from the New Indian Companies Act (2019) 160 *Journal of Business Ethics* pp 961-970.

<sup>630</sup> *ibid.*

<sup>631</sup> Mallika Tamvada Corporate social responsibility and accountability: a new theoretical foundation for regulating CSR (2020) *International Journal of Corporate Social Responsibility* 5(2)

<sup>632</sup> Lars Isaksson and Nayan Mitra, To Legislate or Not: That Is the Question—Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR, in *International Dimensions of Sustainable Management* (Springer, London, 2019).

<sup>633</sup> Hui Situa and Carol Tilt, Mandatory? Voluntary? A Discussion of Corporate Environmental Disclosure Requirements in China (2018) 38(2) *Social and Environmental Accountability* pp. 131-144

<sup>634</sup> J. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (CUP 2006), 299

<sup>635</sup> Karin Buhmann, *Corporate Social Responsibility: What Role for Law?* (2006) 6(2) *Corporate Social Responsibility* pp. 188-202.

<sup>636</sup> Karin Buhmann, *Corporate Social Responsibility: What Role for Law?* (2006) 6(2) *Corporate Social Responsibility* pp. 188-202.



company which has adopted an extensive range of CSR practices above and beyond the legal requirements is also CSR compliant.<sup>637</sup>

Such a conception is preferred because it reduces the spectral dichotomy that businesses pursue profit and the interests of shareholders without regard to social objectives as a default standard, with CSR initiatives therefore not a part of this default standard.<sup>638</sup> While this is beyond the scope of the thesis to consider in depth, such a construction is important as it reflects a modern reality that engaging in CSR activities is no longer simply a desirable option but instead is a necessity in contemporary business.<sup>639</sup> A result of a legal framework which legally requires CSR activities to be engaged in alongside the pursuit of profit and shareholder interest is that this then becomes a part of the societal conception of a business' operation.<sup>640</sup> Additionally, such a construction takes into account the modern nature of business regulation – particularly with regard to CSR. A number of legal frameworks across the globe have built upon the voluntary CSR integration which has taken place in recent decades in order to put in place legal requirements for CSR for companies to follow.<sup>641</sup> This is considered to be a “progressive” legal approach, which although it is growing in popularity is still considered “controversial”.<sup>642</sup> Advocates of establishing a legal CSR framework argue that the approach allows for the setting of a range of minimum standards which should be pursued as societal priorities rather than being left to the voluntary whims of companies.<sup>643</sup> As noted expressly:

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

Such an approach therefore necessitates that there is a degree of strong leadership coming from the government, rather than being reliant on the initiative to come from the business community.<sup>644</sup> As has been noted by Biswas and Tortajada “as powerful as public pressure is, it is no substitute for regulations”.<sup>645</sup> Advocates of such an approach argue that setting up a legal framework for CSR enables the establishment of minimum standards according to which businesses must operate.<sup>646</sup> The implementation of a legally founded framework of CSR would therefore remove any advantages that a company may be able to have by disregarding CSR.<sup>647</sup> Importantly, this does not prevent companies from engaging in their own CSR activities, as the drivers for companies to adopt more responsible practices – i.e. consumer desire - still remain.<sup>648</sup> Instead, it ensures that even businesses which have little interest to pursue CSR must abide by a set of minimum standards. Finally, considering the role of a legally supported CSR regime is appropriate in the context of Saudi Arabia due to that nation's lack of CSR pedigree.<sup>649</sup> Countries such as China, India and Indonesia, who have sought to build a CSR framework quickly, have

<sup>637</sup> Arjun Adhikari, Corporate Social Responsibility: Voluntary or Mandatory? (2014) NJA Law Journal

<sup>638</sup> Valentin Jesch, *Corporate Social Responsibility and the Law: International Standards, Regulatory Theory and the Swiss Responsible Business Initiative*, EUI Working Papers: MWP 2018/05

<sup>639</sup> Mandurah, S., Khatib, J. & Al-Sabaan, S., ‘Corporate Social Reporting among Saudi Arabian firms: An Empirical Investigation’ (2012) 28 Journal of Applied Business Research 1049, 1049.

<sup>640</sup> T Lambooy, 2014. Legal Aspects of Corporate Social Responsibility. Utrecht Journal of International and European Law, 30(78), pp.1–6.

<sup>641</sup> See for instance China, India and Indonesia.

<sup>642</sup> L Lin, Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China (2019) Oxford Faculty of Law Blog

<sup>643</sup> Arjun Adhikari, Corporate Social Responsibility: Voluntary or Mandatory? (2014) NJA Law Journal, 195.

<sup>644</sup> International Council on Human Rights Policy, Beyond Voluntarism, Human Rights and the Developing International Obligations of Companies (Switzerland: Versoix, 2002), 2

<sup>645</sup> Asit Biswas and Cecilia Tortajada, The evolution of CSR in China, *The Bangkok Post*, January 2020, Available at <<https://www.bangkokpost.com/business/1829654/the-evolution-of-csr-in-china>> Accessed November 19, 2020.

<sup>646</sup> Fanny Calder, *Following Up the World Summit on Sustainable Development Commitments on Corporate Social Responsibility, Options for Action by Governments* (Chatham House: Royal Institute of International Affairs, February 2005), 36.

<sup>647</sup> Ramon Mullerat (ed.), Corporate Social Responsibility, The Corporate Governance of 21st Century (The Hague, the Netherlands: Kluwer Law International and International Bar Association, 2005).

<sup>648</sup> *ibid.*

<sup>649</sup> Asit Biswas and Cecilia Tortajada, The evolution of CSR in China, *The Bangkok Post*, January 2020, Available at <<https://www.bangkokpost.com/business/1829654/the-evolution-of-csr-in-china>> Accessed November 19, 2020.

done so using legislation. The relative success that each of these countries have had in the area highlights the benefit of such a framework.

Much like in other parts of the Middle East, the penetration of CSR in Saudi Arabia has been less significant than in other parts of the globe.<sup>650</sup> For a variety of reasons, including a relatively well-developed sense of philanthropic responsibility among companies alongside a degree of reluctance to adopt some aspects of CSR due to concerns about their Western centric nature and origin, CSR is still developing in the Middle East.<sup>651</sup> That said, a significant percentage of companies – particularly those which have a greater degree of engagement in the international business community – have begun to adopt some CSR measures.<sup>652</sup> However, these steps have been relatively minor – and are far less extensive than those seen, for instance, in Europe or Asia.<sup>653</sup> This is also the case in Saudi Arabia. In Saudi Arabia, the wealthiest and most influential country in the Gulf Cooperation Council,<sup>654</sup> the course towards adopting CSR has been a balancing act which reflects the country's traditional values as well as its gradual emergence on the global stage.<sup>655</sup> As has been outlined by Ali and Al-Aali:<sup>656</sup>

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

While Saudi Arabia has gradually adopted a range of economic policies which have allowed the country to develop significantly, the state of CSR remains relatively underdeveloped in the Kingdom – particularly from a legislative perspective. The companies that have embraced CSR have tended to have an international presence.<sup>657</sup> In addition, the nature of the 'CSR' that has been embraced has only some parallels with those adopted elsewhere in the world.<sup>658</sup> This is for a variety of factors, such as the underlying cultural influence in Saudi Arabia, meaning that some aspects which could be described as within the purview of CSR – such as philanthropy – are relatively prevalent, whereas others related to gender equality are relatively sparse.<sup>659</sup> In addition, the strong and pervasive influence of Zakat – a concept which is prevalent in the region and has a number of parallels with CSR – has meant that CSR has taken on a character of Zakat rather than evolve to more closely resemble that in the west.<sup>660</sup> Zakat – which is focused primarily on charitable giving and philanthropy – is considered to be a key pillar of Islam and therefore is relatively widespread in Saudi Arabia.<sup>661</sup> While some authors argue that this will make the overall transition towards the embrace of CSR easier,<sup>662</sup> others argue that it is likely to be more difficult due to the fact that companies may not feel the desire or the compulsion to engage more extensively in CSR related activities

<sup>650</sup> Ahmed Al-Abdin, Taposh Roy and John D. Nicholson, *Researching Corporate Social Responsibility in the Middle East: The Current State and Future Directions* (2017) 25(1) *Corporate Social Responsibility and Environmental Management*

<sup>651</sup> Kjetil Selvik, *Business and Social Responsibility in the Arab World: The Zakat vs. CSR models in Syria and Dubai* (2013) 12(1) *Comparative Sociology* pp 95-103

<sup>652</sup> Ahmed Al-Abdin, Taposh Roy and John D. Nicholson, *Researching Corporate Social Responsibility in the Middle East: The Current State and Future Directions* (2017) 25(1) *Corporate Social Responsibility and Environmental Management*

<sup>653</sup> Belaid Rettab and Kamel Mellahi, *Practising CSR in the Middle East*, (Springer, Switzerland, 2019)

<sup>654</sup> Gregory Gause, *Saudi Arabia in the New Middle East* (Council on Foreign Relations, New York, 2011).

<sup>655</sup> Sami Kahn, Khalid Maimani and Wafa Al-Yafi, *Exploring Corporate Social Responsibility in Saudi Arabia: The Challenges Ahead* (2013) 10(3) *Journal of Leadership, Accountability and Ethics*

<sup>656</sup> Abbas J. Ali and Abdulrahman Al-Aali, *Corporate Social Responsibility in Saudi Arabia* (2012) 29(4) *Middle East Policy Council*, [5]

<sup>657</sup> Sami A Khan, *Exploring Corporate Social Responsibility in Saudi Arabia: The Challenges Ahead* (2013) 10(3) *Journal of Leadership, Accountability and Ethics*

<sup>658</sup> Magnus Gravem, *CSR in Saudi Arabia*, University of Oslo, Master's Thesis, 2010.

<sup>659</sup> *ibid.*

<sup>660</sup> Husam-Aldin Nizar Al-Malkawi and Saima Javaid, *Corporate social responsibility and financial performance in Saudi Arabia: Evidence from Zakat contribution* (2018) 44(6) *Managerial Finance*

<sup>661</sup> General Authority of Zakat and Tax, *Zakat General Guideline* (GAZT, 2019)

<sup>662</sup> Sami Kahn, Khalid Maimani and Wafa Al-Yafi, *Exploring Corporate Social Responsibility in Saudi Arabia: The Challenges Ahead* (2013) 10(3) *Journal of Leadership, Accountability and Ethics*

due to their existing Zakat commitments.<sup>663</sup> As a result of these factors, CSR in Saudi Arabia is recognised as being “in its infancy”.<sup>664</sup>

The thesis is strongly advocating a greater integration of CSR into Saudi corporate life. Therefore, the focus will be to outline the best way through which this will be achieved in a substantive sense – i.e. real and documented CSR, rather than a culture where lip service is paid to CSR principles but no meaningful policies are enacted. The primary objective of this chapter is to assess the ways in which CSR can be improved in practice and in law in Saudi Arabia. This primary objective is supported by a number of ancillary objectives, such as investigating the value of CSR to Saudi Arabia as well as considering which models represent the most appropriate and effective ways of encouraging CSR. These can be achieved by looking at the varying methods of adopting CSR, whether they be through encouraging voluntary adherence to CSR principles or through putting in place a comprehensive legal framework. Ultimately, the chapter will make a finding as to the most appropriate means through which CSR could be pursued in Saudi Arabia. Therefore, this chapter will adopt a path of comparative analysis by considering corporate social responsibility and how it has been adopted in jurisdictions across the globe, with a focus on differentiating between a pure voluntary approach, a pure legislative approach or an approach which combines the two. Another ancillary aim is to undertake a broad assessment of the prevailing corporate attitudes towards CSR in Saudi Arabia, including historical and cultural assessments. Therefore, the history of CSR in Saudi Arabia will also be considered, looking at its development over time alongside the strong influence of the Islamic principle of Zakat and associated Islamic principles in the development of Saudi corporate culture. The chapter will then look at the current state of affairs regarding CSR in Saudi Arabia, before laying out a suite of recommendations through which CSR can be improved in Saudi Arabia both in law and in practice. The chapter will conclude by summarising the major recommendations and charting a course for CSR in the Kingdom.

#### 4.3 Comparative Analysis: Jurisdictions Where Legislative CSR has been Pursued

It is perhaps a sign of the increasing prevalence of CSR over the years to today that the debate has shifted from discussing what exactly amounts to ‘CSR’ to how best to encourage compliance with CSR policies, whether that be through the adoption of a legislative framework or by encouraging compliance through voluntary means.<sup>665</sup> As a result, the spread of legal frameworks mandating CSR is a relatively recent phenomenon.<sup>666</sup> In order to properly understand the way a legal framework can incorporate CSR, it is important to look at the existing frameworks where this has taken place. The first country in the world to legislate that companies must engage in some form of CSR action was Mauritius, which required that local and foreign companies must commit a certain percentage of their profits towards “social, economic and environmental development”.<sup>667</sup> In 2016, these obligations were made stricter, following the passing of the Finance Act 2016.<sup>668</sup> Although this framework was relatively minimal – and has been noted by commentators to have had a negligible effect on encouraging CSR activities in the country – as the first legislative incarnation of CSR, it served as a model for a number of large, influential nations to take similar steps.<sup>669</sup>

Three of the world’s largest economies – China, India and Indonesia – have each incorporated CSR into their legal frameworks to some degree in recent years.<sup>670</sup> These developing countries serve as a model for how CSR can become a legal requirement in addition to the moral and ethical components it has possessed previously. China was the first country in the

<sup>663</sup> Husam-Aldin Nizar Al-Malkawi and Saima Javaid, Corporate social responsibility and financial performance in Saudi Arabia: Evidence from Zakat contribution (2018) 44(6) *Managerial Finance*

<sup>664</sup> Sami Kahn, Khalid Maimani and Wafa Al-Yafi, Exploring Corporate Social Responsibility in Saudi Arabia: The Challenges Ahead (2013) 10(3) *Journal of Leadership, Accountability and Ethics*

<sup>665</sup> Lars Isaksson and Nayan Mitra, To Legislate or Not: That Is the Question—Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR, in *International Dimensions of Sustainable Management* (Springer, London, 2019).

<sup>666</sup> *ibid.*

<sup>667</sup> See Income Tax Act 1995 (Mauritius).

<sup>668</sup> *Finance Act 2016* (Mauritius)

<sup>669</sup> Ourvashi Bissoon, Corporate social responsibility in Mauritius: an analysis of annual reports of multinational hotel groups (2018) 3(2) *Asian Journal of Sustainability and Social Responsibility*

<sup>670</sup> L Lin, Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China (2019) Oxford Faculty of Law Blog

world to expressly incorporate ‘corporate social responsibility’ into the statute books.<sup>671</sup> The China Companies Act 2006 Article 5 states the following:<sup>672</sup>

In the course of doing business, a company shall comply with laws and administrative regulations, conform to social morality and business ethics, act in good faith, subject itself to the government and the public supervision, and undertake social responsibility.

This wide-ranging provision did not come out of a sudden desire to put in place CSR provisions in Chinese law, but was instead a consequence of a long-term movement – which started among companies in China who possessed international links or were a part of global supply chains – to ensure that the products they produced were produced in an ethically acceptable manner.<sup>673</sup> Since the 2006 law was passed, a 2019 assessment showed that it had been considered in at least 169 unique court cases in China, with the Chinese courts “using (the law) in a largely consequential manner”.<sup>674</sup> This highlights the effectiveness and indeed the impact of the gradual CSR integration. Lin, one of the preeminent commentators on the use of CSR in China, notes that not only has the CSR law become a relatively commonly litigated part of corporate law in the country, it has quickly become part of the landscape of Chinese corporate law. Lin notes specifically in an assessment from 2020: “The CSR law is by no means as useless as commonly expected. The meaningful application of the law is attributable to the law’s fit with China’s legal infrastructure and socio-political institutions”.<sup>675</sup> CSR is now a central and enduring component of China’s corporate legal framework. Therefore, China – despite its size and the relative novelty of the notion of CSR in its corporate structure – provides a useful example of the establishment of a CSR framework with a legal foundation.

Indonesia also provides a useful and illustrative example.<sup>676</sup> At the turn of the millennium, CSR was almost completely non-existent in Indonesia, although companies did engage in charitable and philanthropic activities frequently.<sup>677</sup> However, seeking to capitalise on the potential for CSR to bring about positive outcomes, the government in 2007 passed Law 25 and Law 40,<sup>678</sup> which sought to bring companies into line around a number of different CSR objectives including labour rights, consumer protection, the environment, human rights and anti-corruption. The laws made “Indonesia the first nation in the world that mandated companies in the energy and extractive industries to disclose their CSR activities”.<sup>679</sup> This was notable in that it linked in provisions of the Indonesian constitution which stated that economic and social welfare reforms must be made by government with the manner in which a company in Indonesia should operate.<sup>680</sup> The country’s Constitutional Court has since held that CSR is mandatory for Indonesian firms under the legal framework, regardless of attempts to exculpate from its jurisdiction.<sup>681</sup> Problematically however, while the law has been passed by the government, the country has not yet issued an implementation regulation, which means that while the law is effectively on the books, it is unenforceable.<sup>682</sup> This means that although effectively the government has indicated it wants to prioritise CSR, it has established a voluntary framework for companies to adhere to.<sup>683</sup> Although commentators note that this has led to an overall uptick in the societal

<sup>671</sup> *China Companies Act 2006*

<sup>672</sup> *ibid*, Article 5

<sup>673</sup> Jeremy Moon and Xi Shen, CSR in China Research: Salience, Focus and Nature (2010) 94 *Journal of Business Ethics* pp613-629.

<sup>674</sup> L Lin, Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China (2020) *American Journal of Comparative Law*, [3]

<sup>675</sup> *ibid*, [4]

<sup>676</sup> Taridi Ridho, CSR in Indonesia (2017) 3(4) *The EUASEANs: journal on global socio-economic dynamics*

<sup>677</sup> Aikaterini Argyrou, *CSR IN INDONESIA, Legislative Developments and Case Studies* (Konstitusi Press, Jakarta, 2013).

<sup>678</sup> See LLC Act 2007

<sup>679</sup> Sustainable Square, CSR Landscape in Indonesia: Past, Present and Future (2017) Available online <<https://sustainablesquare.com/evolution-csr-landscape-indonesia/>> Accessed November 20, 2020.

<sup>680</sup> *Constitution of Republic Indonesia 1945*

<sup>681</sup> Hasan Fauzi, Redefining CSR concept in Indonesia (2009) *Jakarta Post*, Available at <<https://www.thejakartapost.com/news/2009/08/05/redefining-csr-concept-indonesia.html>> Accessed December 12, 2020.

<sup>682</sup> Mukti Fajar, Corporate Social Responsibility in Indonesia: Regulation and Implementation Issues (2018) 21(3) *Journal of Legal, Ethical and Regulatory Issues*

<sup>683</sup> Sustainable Square, CSR Landscape in Indonesia: Past, Present and Future (2017) Available online <<https://sustainablesquare.com/evolution-csr-landscape-indonesia/>> Accessed November 20, 2020.



understanding of the relevance of CSR<sup>684</sup> – along with CSR practices being adopted and expanded at company level – on a comparative basis with China's legislative approach, CSR has had a much less significant penetration in Indonesia.

Another country where a legislative route towards CSR has been taken is India.<sup>685</sup> The most notable development in kick starting CSR integration in India came through the introduction of a 'comply or explain' CSR obligation for certain companies in the 2013 Companies Act. As a result, India's approach has been comparatively more rigid than that taken in China and Indonesia, particularly with regard to the amount of money that a company must spend on CSR and CSR related activities.<sup>686</sup> In mid-2014, India passed a reform under the country's corporate legal framework regarding the amount of company revenue which must be spent on CSR-related activities. This was motivated by a number of different concerns, including an understanding of the commercial benefit of establishing a corporate framework in which CSR was prioritised.<sup>687</sup> The legislation did however have a broader, ideological foundation, with the government indicating it wanted to see India become the "birthplace" of a social, economic and environmental transformation, not just domestically but across the globe.<sup>688</sup> Advocates of the CSR plan also indicated that the Indian approach may prove to be a catalyst for an era of "widespread business humanism".<sup>689</sup>

Section 135 of the Companies Act mandates that companies must spend a minimum of two percent of their average net profit across the past three years on CSR.<sup>690</sup> Prior to the reform, companies of a similar class were encouraged to adopt CSR practices of spending two percent of total profit, however this was not mandated by law. In addition, companies must set up what is known as a Corporate Social Responsibility Committee, which is to be staffed by company directors and at least one independent director.<sup>691</sup> The CSR Committee must develop the company's CSR policies and provide a framework through which money can be spent on CSR activities. As is noted expressly in section 135 (3):

(The CSR Committee must) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII; (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

The CSR requirements under the legislation do not apply to every company in India, but are instead limited to those which have accrued certain net worth or profit thresholds which are laid out under the Companies Act.<sup>692</sup> These thresholds were put in place in order to ensure that the burden of complying with CSR requirements was not overly harsh, particularly on smaller companies or companies which otherwise would have struggled to make the contribution.<sup>693</sup> In 2020, the Amendment Act 2019 came into force, which put into effect a range of relatively basic changes to clarify the CSR obligations on new companies or in the event that companies had allocated funds to CSR efforts but had not spent the money.<sup>694</sup> The Act also contained a provision that money spent above the threshold one year could bring down the required threshold in subsequent years.<sup>695</sup> The most significant impact of the amendment however was to put in place stricter punitive measures for failing to comply with the requirements, which included a three-year jail term alongside the possibility of a financial penalty. A later set of amendments which received assent in late September 2020 overturned the application of this imprisonment term

<sup>684</sup> Aikaterini Argyrou, *CSR IN INDONESIA, Legislative Developments and Case Studies* (Konstitusi Press, Jakarta, 2013).

<sup>685</sup> Abhishek Mukherjee and Ron Bird, Analysis of mandatory CSR expenditure in India: a survey (2016) 7(1) International Journal of Corporate Governance

<sup>686</sup> Madhu Bala and Deepak Verma, An Empirical Investigation of Managerial Perceptions in Indian Organisations Regarding CSR After Legislation of CSR in India (2019) 9(4) International Journal of Research in Social Sciences

<sup>687</sup> Lars Isaksson and Nayan Mitra, To Legislate or Not: That Is the Question—Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR, in *International Dimensions of Sustainable Management* (Springer, London, 2019).

<sup>688</sup> Nayan Mitra and Rene Schmidpeter, *Mandated Corporate Social Responsibility* (Springer, Switzerland, 2020).

<sup>689</sup> *ibid.*, 6.

<sup>690</sup> Companies Act 2013 (India)

<sup>691</sup> Companies Act 2013 s135(1)

<sup>692</sup> Companies Act 2013 s135(1)

<sup>693</sup> Abhishek Mukherjee and Ron Bird, Analysis of mandatory CSR expenditure in India: a survey (2016) 7(1) International Journal of Corporate Governance (Page no)

<sup>694</sup> See *Amendment Act 2019* (India)

<sup>695</sup> *ibid.*

however, replacing it with a financial penalty.<sup>696</sup> As was noted by commentators such as Obhan and Patodia, the initial Act's imprisonment term "was a move that shocked India Inc" (India Inc being a term used in India to represent the Indian private sector), which led to significant uproar and controversy, resulting in the passing of the subsequent amendment.<sup>697</sup>

One core aspect of the Indian plan to legislate for CSR activities is to ensure that certain CSR activities are being encouraged, while also giving companies a broader scope through which they could make their own decisions of what to prioritise.<sup>698</sup> Under the framework, a company's CSR activities must be in one of the following areas: hunger and poverty, education, environment, health, gender equality and the empowerment of women, skills training, encouraging sport on a regional or national level and social enterprise projects.<sup>699</sup> While all of these areas have parallels with CSR efforts seen in the west, they also serve a number of national objectives which have been identified by the Indian government – primarily the need to encourage "widespread development" across the country.<sup>700</sup> This is achieved through putting in place geographic restrictions and limitations on where the CSR activities must be targeted. As has been outlined by Obhan and Patodia:<sup>701</sup>

The Act maintains that companies are required to give preference to the local areas around where it operates for spending the amount earmarked for CSR activities. The list of activities and programs that can be undertaken needs to fall within the scope of or related to the activities listed in the Schedule. One important thing that Indian companies should take note of is that the CSR activities are to be undertaken in India only.

Furthermore, the framework was developed specifically so that acts of philanthropy would not prima facie be counted as CSR.<sup>702</sup> Although philanthropic efforts may have a CSR character, in order for them to offset the two percent requirement they must be within the above categories of CSR.<sup>703</sup> The Indian approach also sees a degree of flexibility sewn into it which allows for the type of activities considered to be CSR relevant to change over time. For instance, during the first few months of the coronavirus pandemic, India widened the definition of what amounted to CSR activities to include those with regard to the pandemic.<sup>704</sup> The Indian government announced in March that "Funds may be spent on various activities related to COVID-19 such as promotion of healthcare including preventive healthcare and sanitation, and disaster management".<sup>705</sup> This change not only ensured that valuable funds would be directed towards the fight against the coronavirus pandemic during a difficult and testing phase, but it also recognised the fact that companies which may be struggling financially as a result of the pandemic would be less reluctant to spend money in furtherance of activities which were relevant to Covid-19<sup>706</sup> rather than on the general CSR-relevant activities which would usually be the target of CSR efforts.<sup>707</sup>

<sup>696</sup> See the *Companies (Amendment) Act, 2020*

<sup>697</sup> Ashima Obhan and Vrinda Patodia, Tracking The Ups and Downs of Corporate Social Responsibility Legislation in India (2020) Mondaq

<sup>698</sup> Madhu Bala and Deepak Verma, An Empirical Investigation of Managerial Perceptions in Indian Organisations Regarding CSR After Legislation of CSR in India (2019) 9(4) International Journal of Research in Social Sciences

<sup>699</sup> Joya Banerjee, India Mandates Corporate Social Responsibility: The 2 Percent Bill (GBC Health, 2014).

<sup>700</sup> Rachita Mehrotra, India's CSR law: A national experiment to drive social development (2020) Centre for Asian Philanthropy and Society

<sup>701</sup> Ashima Obhan and Vrinda Patodia, Tracking The Ups and Downs of Corporate Social Responsibility Legislation in India (2020) Mondaq

<sup>702</sup> Anne-Marie L. Beliveau, Nellie V. Binder and Michael R. Littenberg, Corporate Social Responsibility in India: New Requirements for U.S.-Based Multinationals on the Horizon (2020) Lexology, Available at <<https://www.lexology.com/library/detail.aspx?g=b5c2a053-eee0-4aae-884c-bf7a785bd04e>> Accessed online December 12, 2020.

<sup>703</sup> *ibid.*

<sup>704</sup> Dezan Shira, Corporate Social Responsibility in India (2020) India Briefing: Dezan Shira, Available at <<https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html>> Accessed online December 12, 2020.

<sup>705</sup> *ibid.*

<sup>706</sup> See General Circular No. 10/2020

<sup>707</sup> Dezan Shira, Corporate Social Responsibility in India (2020) India Briefing: Dezan Shira, Available at <<https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html>> Accessed online December 12, 2020.

The result of the CSR framework has been seen as positive by commentators, although there have been some areas identified where more CSR integration could be pursued. In a December 2018 study looking at the impact of the Indian legislation requiring certain companies to engage in CSR activities to a greater extent, Dharmapala and Khanna found that there was a “significant increase in CSR by affected firms”.<sup>708</sup> The authors however noted that there was a slight impact on much larger firms, some of which had begun to reduce their compliance with CSR spending since the law was introduced, which they attribute to a flaw in the framework which allows advertising to be counted as part of a company’s mandatory CSR contribution.<sup>709</sup> This would therefore indicate that while the framework in general has been largely effective in encouraging CSR compliance, there remain some aspects of it which would benefit from improvement. Guha, whose 2019 research indicates the law “has resulted in significant increases in CSR spending by creating a social norm around the 2 percent target” also said that the overall effectiveness could be further improved by reforming the enforcement and compliance elements, which the author identified as lacking.<sup>710</sup> Once again, this indicates the merit of a legislatively founded CSR scheme – while also showing the degree to which said scheme must be properly and appropriately developed.

#### 4.4 Overview: CSR in the Middle East and North Africa

One aspect which has become apparent through a comparative analysis of CSR schemes is the degree to which these are regionalised. While CSR may have flourished in central and western Europe through greater corporate integration, trade and globalisation. Similarly, Asia has seen a growth in CSR due to these international ties and links.<sup>711</sup> As has been outlined by Mahjoub and Ntim, this has grown and evolved to a point where companies are now implementing CSR from a ‘bottom up’ approach: “Certainly, the current growth in CSR is more marked in Europe and in some Asian countries ( e.g., Japan, Taiwan, etc. ), and the growth of India and China as main actors in the global economy has included CSR. The existence of large businesses in the developed world is contended by many as being one of the most solid drivers of CSR, not only in Western multinationals but also in indigenous firms”.<sup>712</sup> In many European jurisdictions, CSR is seen as an essentially valuable component of corporate identity, while the demands for CSR among members of society – from suppliers to customers – are far greater.<sup>713</sup> Compared to Europe, Asia and North America, other regions have seen a stagnation. This is the case in the Middle East and North Africa. The take up rate in the Middle East has been historically less significant. Where CSR has been adopted, this has tended less to be in a manner rolled out by government and held in place through specific CSR focused legislation; rather, CSR policies have been adopted by specific companies and entities, especially those which engage in world markets or who are positioned along a supply chain where it is deemed important.<sup>714</sup>

Where CSR has been adopted, this has tended not to be in the comprehensive fashion that it has spread in the West and in Asia, but in a relatively select set of areas.<sup>715</sup> For instance, companies in the Middle East have been receptive to efforts to pursue CSR objectives consistent with environmental protection, water conservation and improved health outcomes.<sup>716</sup> The Middle East is particularly susceptible to the challenges of climate change, which has rendered regional organisations supportive of pursuing environmental sustainability as a broad objective. The Arab Forum for Environment and Development (AFED), for instance, explained that “transitioning to the Green Economy is not only an option for the Arab region; rather it

<sup>708</sup> Damika Dharmapala and Vikramaditya Khanna, The impact of mandated corporate social responsibility: Evidence from India’s Companies Act of 2013 (2018) 56 International Review of Law and Economics 92-104, 93.

<sup>709</sup> *ibid.*

<sup>710</sup> Panchali Guha, why comply with an unenforced policy? The case of mandated corporate social responsibility in India (2019) 3(1) Policy Design and Practice

<sup>711</sup> Kjetil Selvik, Business and Social Responsibility in the Arab World: The Zakat vs. CSR models in Syria and Dubai (2013) 12(1) *Comparative Sociology* pp 95-103

<sup>712</sup> Lassaad Ben Mahjoub and Collins G. Ntim, Disclosure about corporate social responsibility through ISO 26000 implementation made by Saudi listed companies (2019) 6(1) *Cogent Business Management* [1]

<sup>713</sup> ME Tourky, P Kitchen and A Shallen, The role of corporate identity in CSR implementation: An integrative framework (2019) *Journal of Business Research*

<sup>714</sup> Jeffery Avina, The Evolution of Corporate Social Responsibility (CSR) in the Arab Spring (2013) 67(1) *Middle East Journal* pp. 77-92.

<sup>715</sup> Hussein Abaza, Najib Saab, and Bashar Zeitoon, eds., *Arab Environment: Green Economy: Sustainable Transition in a Changing Arab World* (Arab Forum for Environment and Development, 2011).

<sup>716</sup> Abbas J. Ali and Abdulrahman Al-Aali, Corporate Social Responsibility in Saudi Arabia (2012) 29(4) *Middle East Policy Council*

is an obligation to secure a proper path to sustainable development”.<sup>717</sup> Similarly, efforts to tackle corruption have been prevalent in the Middle East – both before and after the wave of CSR swept across the world.<sup>718</sup> Another prominent area in which CSR objectives are pursued and achieved in the region is in relation to charity and philanthropic activity, which has been a significant and enduring part of corporate culture in the region long before CSR gained popularity as a concept.

Conversely, there are a number of other areas in which CSR has failed to gain a significant foothold in the region – many of which are in the human rights and labour law areas. For instance, labour rights have not been incorporated as a prominent component of CSR efforts in the Middle East as much as they have in other parts of the world.<sup>719</sup> Gender rights also lag behind similar efforts in many other countries.<sup>720</sup> Finally, there are a number of structural aspects of CSR which have been adopted in a different fashion in the Middle East. For instance, while efforts to curb corruption are prevalent, these tend to take on a different conception than those in the west which focus on directors’ duties and the correct actions of a fiduciary.<sup>721</sup>

Some such as Selvik are broadly critical of the CSR which exists in the Arab world, saying that by and large it consists of charitable giving and little else which can be described as constructive. He argues that this is because it has not become a significant enough component of contemporary business in the region: “In Arab countries, CSR is often reduced to donations of money or food, or to planting trees and shrubbery in public parks. Measures like these do not satisfy the ambitions of CSR promoters, who would like to see systematic changes in how companies are operating... The failure to be something beyond Zakat indicates that CSR in most instances has not been institutionalised. CSR does not affect the *modus operandi* in the companies that have adopted it”.<sup>722</sup> The current state of affairs regarding CSR in the Arab world can at least partially be explained with reference to the traditional practice of Zakat, which is deeply ingrained in Islamic culture. Merriam Webster defines Zakat as “an annual alms tax or poor rate that each Muslim is expected to pay as a religious duty and that is used for charitable and religious purposes”.<sup>723</sup> Zakat obligations do not only accrue to individuals, but they are also frequently paid by companies and other organisations and entities.<sup>724</sup> Zakat is particularly prevalent in the oil rich societies of the Middle East due to the belief that it cleanses accumulated wealth: “Those eligible to pay Zakat, must pay 2.5 per cent of their cumulative wealth to charity each year. This payment is said to “purify” a Muslim’s wealth.”<sup>725</sup> Zakat is an enduring and prevalent concept in Islamic culture and has become a central part of the operations of many businesses in the region.<sup>726</sup>

Although the existence of Zakat may appear to be a positive in the context of CSR, i.e. by showing a pre-existing acknowledgement among companies of the importance of playing a role in undertaking social actions and being active in their respective communities, some scholars have argued that this has in effect hindered the development of CSR throughout the region.<sup>727</sup> The primary reason for this is that while CSR was able to spread throughout the west and later to Asian nations relatively quickly, this quick-fire proliferation could only take place because there was in effect a vacuum when it came to

<sup>717</sup> Hussein Abaza, Najib Saab, and Bashar Zeitoon, eds., *Arab Environment: Green Economy: Sustainable Transition in a Changing Arab World* (Arab Forum for Environment and Development, 2011).

<sup>718</sup> Belaid Rettab and Kamel Mellahi, *Practicing CSR in the Middle East* (Palgrave Macmillan, London, 2019)

<sup>719</sup> Charlotte M. Karam and Dima Jamali, *Gendering CSR in the Arab Middle East: An Institutional Perspective* (2013) 23(1) *Business Ethics Quarterly* pp. 31-68.

<sup>720</sup> *ibid.*

<sup>721</sup> Ramez Shehadi, Salim Ghazaly, Dima Jamali and Mounira Jamjoom, *The Rise of Corporate Social Responsibility a Tool for Sustainable Development in the Middle East* (Booz and Company, Beirut, 2015)

<sup>722</sup> Kjetil Selvik, *Business and Social Responsibility in the Arab World: The Zakat vs. CSR models in Syria and Dubai* (2013) 12(1) *Comparative Sociology* pp 95-103

<sup>723</sup> Merriam Webster, ‘Zakat’, Merriam Webster, 2020, Available at <<https://www.merriam-webster.com/dictionary/zakat>> Accessed online November 27, 2020.

<sup>724</sup> *ibid.*

<sup>725</sup> Salam Al Amir, the five pillars of Islam: what is Zakat? *The National News*, June 2019, Available at <[https://www.pcrf.net/president-s-blog/what-is-zakat.html?gclid=EAlalQobChMIgoOP1pO28wIVGe3tCh3TzgadEAAAYASAAEGJHbPD\\_BwE](https://www.pcrf.net/president-s-blog/what-is-zakat.html?gclid=EAlalQobChMIgoOP1pO28wIVGe3tCh3TzgadEAAAYASAAEGJHbPD_BwE)> Accessed online November 27, 2020.

<sup>726</sup> Kjetil Selvik, *Business and Social Responsibility in the Arab World: The Zakat vs. CSR models in Syria and Dubai* (2013) 12(1) *Comparative Sociology* pp 95-103

<sup>727</sup> See Kjetil Selvik, *Business and Social Responsibility in the Arab World: The Zakat vs. CSR models in Syria and Dubai* (2013) 12(1) *Comparative Sociology* pp. 95-123. See also Wayne Dunn, *Middle East CSR: Zakat, Sadaqah and Ownership Structure* (2016) CSR Training Institute.



corporate interactions of a social nature.<sup>728</sup> Conversely, when the notion of CSR was originally brought to the Middle East through multinational companies, Middle Eastern companies and entities thought it less necessary to embrace due to the fact they already had a degree of social involvement through adherence to the principles of Zakat.<sup>729</sup> Indeed, as has been noted by Dunn, many companies of Middle Eastern origin have experienced a degree of tension when it comes to the implementation of CSR due to a perceived inconsistency with Zakat – or in some cases a perception that CSR is in effect replacing traditional Zakat principles.<sup>730</sup> As has been noted expressly:<sup>731</sup>

For the ownership families there is often a close personal and family connection with the causes supported and the charities and organisations that are involved. New partners and external investors seldom have the same connections with the charities and causes and look to see more strategic, mutually beneficial approaches to social responsibility and community engagement.

In addition, as CSR has become more common place and indeed more studied in the Middle East, it has become clear that a gap or lacuna has emerged between the conception of what is actually CSR and Arab perceptions of the practice. The major reason for this, as has been noted by commentators such as Talal Alsharif, is that CSR is frequently confused with other forms of charity and giving, for instance those with their origins in Zakat.<sup>732</sup> This means that companies which may believe they are adhering to or discharging their CSR obligations are in practice rather adhering to the traditional principles of Zakat. For instance, while philanthropy and charitable giving – two core aspects of Zakat – are common place in much of the Arab world, other aspects such as a commitment to gender equality, racial diversity and labour rights are lacking. This is considered in further depth below.

#### 4-5 Overview: CSR in Saudi Arabia

Like many nations outside Europe, Asia and North America, the western conception CSR is a relatively new concept in Saudi Arabian businesses and corporate culture.<sup>733</sup> The growth of CSR in the Kingdom has mirrored that in a number of other emerging economies outside Europe whereby companies have put in place measures which are consistent with the Western-centric notion of CSR on an organic, ground-up basis due to a desire to participate in markets where CSR is prioritised. This has taken place both as a consequence of Saudi Arabia opening itself up to international companies, as well as Saudi companies wanting to engage in the regional and global business landscape.<sup>734</sup> This does however mean that the legal framework surrounding CSR in Saudi Arabia is relatively non-existent. Indeed, while there are some legal frameworks which act to simultaneously pursue the aims of CSR – for instance laws which seek to prevent corruption – these have evolved independently as part of Saudi Arabia's legal system.<sup>735</sup> In that sense, the legal framework surrounding CSR in Saudi Arabia mirrors that which has been adopted in the vast majority of countries which have seen the adoption of CSR policies and objectives, i.e. adopted by companies unilaterally rather than being a consequence of government action.<sup>736</sup> However, it is important to note that while CSR is a relatively recent phenomenon in Saudi Arabia in terms of the Western-centric conception of CSR, many of the hallmarks of a culture of responsible corporations which are community focused can be seen in Saudi Arabian corporate culture. This is discussed further below in the section 'CSR in Saudi Arabian Corporate Culture'.

Although the advent of the Western-centric notion of CSR in Saudi Arabia is a relatively recent phenomenon, that does not mean Saudi Arabian companies neglect to engage in socially focused or community focused activities. Saudi Arabian

<sup>728</sup> Kjetil Selvik, Business and Social Responsibility in the Arab World: The Zakat vs. CSR models in Syria and Dubai (2013) 12(1) *Comparative Sociology* pp. 95-123.

<sup>729</sup> *ibid.*

<sup>730</sup> Wayne Dunn, Middle East CSR: Zakat, Sadaqah and Ownership Structure (2016) CSR Training Institute.

<sup>731</sup> *ibid.*, [8]

<sup>732</sup> Dimah Talal Alsharif, why there is much more to CSR than just corporate charity, Arab News, August 2018, Available at <<https://www.arabnews.com/node/1363341>> Accessed online November 28, 2020.

<sup>733</sup> Abbas J. Ali and Abdulrahman Al-Aali, Corporate Social Responsibility in Saudi Arabia (2012) 29(4) Middle East Policy Council

<sup>734</sup> Jeffery Avina, The Evolution of Corporate Social Responsibility (CSR) in the Arab Spring (2013) 67(1) Middle East Journal pp. 77-92.

<sup>735</sup> *ibid.*

<sup>736</sup> Dima Jamali and Walaa El Safadi, Adaptations of CSR in the Context of Globalization the Case of the GCC (2019) *Globalisation* pp 123-143.

corporate culture exhibits many of the tenets which would usually be attributed to companies with a rich commitment to CSR. The companies mirror those in the west in the sense that they operate largely to pursue profit and to boost shareholder interests, however there is a strong and resilient corporate culture of giving and philanthropy which pre-dates modern Western notions of CSR.<sup>737</sup> Maqbool argues:<sup>738</sup>

A strong and deeply embedded culture of giving already exists in the corporate sector in Saudi Arabia... The social infrastructure is mainly driven by cultural and religious causes, a fact that fosters a culture conducive for philanthropy. Company leadership has been spending huge amounts on charity for so long that now making the business case for CSR is about swaying them from their well-trodden path of ad hoc community initiatives towards strategic CSR, rather than convincing them to spend money in the first place.

This comes from the Islamic notion of Zakat,<sup>739</sup> a feature on the corporate landscape in the region.<sup>740</sup> The existence of Zakat means that that Saudi corporate culture already embraces conduct of a social and charitable nature, which some scholars argue contributes to Saudi reluctance to adopt CSR.<sup>741</sup> Unlike that in the West however, the primary characterisation of CSR in Saudi Arabia is based around the notion of charity through religious practice.

Al and Al-Aali, along with Alsubaie, note that there are in effect three phases in the evolution of CSR in Saudi Arabia which has led to the current situation where it differs markedly to that in Europe and in particular in England (see Chapter Three).<sup>742</sup> The first, which took place in the late 1960s, focused broadly on three areas: charity, environment and philanthropy.<sup>743</sup> A number of companies took steps to integrate a commitment to these areas into their corporate mission objectives. The highly influential Saudi Aramco adopted a suite of environmentally focused mission objectives in 1963, while simultaneously adopting a set of charitable objectives.<sup>744</sup> These actions served as a foundation for further CSR integration across the company, including the development of an extensive set of environmental protection standards which were adopted in 1986 to boost ecological hygiene.<sup>745</sup> The AFED has identified Saudi Arabia as a “pioneering country” with regard to environmental issues in the Middle East region.<sup>746</sup>

The second stage of Saudi Arabia’s CSR integration moved beyond charitable activities and environmental protection to focus on improving access and opportunity for workers in the private sector. The creation of the Saudi Arabian General Investment Authority (SAGIA) in 2000 through a partnership between government and industry entities sought to target investment into specific industry sectors and to improve economic performance with a focus on institutionalising CSR in Saudi society.<sup>747</sup> As has been outlined by Ali and Al-Aali:<sup>748</sup>

One of SAGIA's major responsibilities is to supervise the establishment of economic cities around the kingdom. At a cost of more than \$60 billion, Saudi Arabia's economy is being boosted by the construction of several of these integrated sites

<sup>737</sup> Samia Maqbool, an overview of CSR programs in Saudi Arabia with reference to select organizations (2015) 5(2) International Journal of Human Resource Studies, 286.

<sup>738</sup> ibid

<sup>739</sup> ibid.

<sup>740</sup> Izlawanie Muhammad, Analysis of Zakat System in High-Income Islamic Countries (2019) 16(2) Journal of Maumalat and Islamic Finance Research

<sup>741</sup> Samia Maqbool, an overview of CSR programs in Saudi Arabia with reference to select organizations (2015) 5(2) International Journal of Human Resource Studies

<sup>742</sup> Abbas J. Ali and Abdulrahman Al-Aali, Corporate Social Responsibility in Saudi Arabia (2012) 29(4) Middle East Policy Council; See also Mesfer Alsubaie, The Effectiveness of Corporate Social Responsibility in Saudi Arabia (2016) 16(4) Global Journal of Human Social Science.

<sup>743</sup> ibid.

<sup>744</sup> Mesfer Alsubaie, The Effectiveness of Corporate Social Responsibility in Saudi Arabia (2016) 16(4) Global Journal of Human Social Science.

<sup>745</sup> Mesfer Alsubaie, The Effectiveness of Corporate Social Responsibility in Saudi Arabia (2016) 16(4) Global Journal of Human Social Science.

<sup>746</sup> Hussein Abaza, Najib Saab, and Bashar Zeitoon, eds., *Arab Environment: Green Economy: Sustainable Transition in a Changing Arab World* (Arab Forum for Environment and Development, 2011).

<sup>747</sup> Abbas J. Ali and Abdulrahman Al-Aali, Corporate Social Responsibility in Saudi Arabia (2012) 29(4) Middle East Policy Council [17]

<sup>748</sup> ibid

designed to promote economic diversification, create over a million new job opportunities and foster contributions to GDP by the private sector, while minimizing negative environmental impact and maximizing energy conservation and sustainability

In addition to encouraging corporate participation in CSR, SAGIA launched the Saudi Arabia Responsible Competitive Index (SARCI) in the first few years of the new millennium. This measure looked to encourage private sector participation in CSR by evaluating and monitoring the various CSR policies of leading companies. SARCI establishes a range of “social, environmental, economic, management, and stakeholder participation metrics” in order to measure CSR.<sup>749</sup> One of the major consequences of this second phase was a period of rapid economic growth and diversity for the country. As a result of these changes, “a great number of jobs were created in the private sector with attractive packages; there was a sustainable and rapid economic growth as a result of increases in productivity which not only strengthened the concerned industries but also the economy of Saudi Arabia as a whole”.<sup>750</sup> In particular, these efforts were lauded for their broad approach which sought to improve economic outcomes across the economic and geographical spectrum in the country, rather than allowing the vast majority of the existing opportunities to be concentrated in the oil sector.<sup>751</sup> The efforts are however not comprehensive as they do not take into account human rights, labour rights, corruption and environmental standards to the same degree as has been seen as fundamental in CSR efforts in Europe and North America.<sup>752</sup> This has been a common complaint of Saudi CSR efforts, with critics arguing that despite the progress that has been made, it has largely been on a patchwork, inconsistent basis.<sup>753</sup>

The third phase of Saudi integration with CSR took place in 2010 and was later accelerated due to the protests and demonstrations that took place as part of the Arab Spring.<sup>754</sup> The changes were aimed at boosting social cohesion domestically, while also providing a more stable environment in the kingdom from which the country could take on a greater leadership role in the GCC countries and the region more generally. The first aspect of this did not encourage CSR in a corporate setting generally but it resulted in the adoption of a range of socially progressive policies by the government, including a greater degree of support for poorer citizens. This included financial assistance, as well as the building of half a million housing units which could be accessed by lower income Saudis.<sup>755</sup> In this third phase, the government took on a more active role in seeking to develop CSR as a part of corporate culture in Saudi Arabia, although they stopped short of developing widespread, sweeping CSR rules at a legislative level like those which have been seen abroad.<sup>756</sup> Instead, the government sought to oversee the creation of a number of “partnerships between the public and private sectors” whereby CSR was an express element.<sup>757</sup> Due to the Arab Spring, a greater desire for beneficial social outcomes – including those which could be brought about by changes in the corporate sector – spread across the region.<sup>758</sup> While the uprisings were not as strong in Saudi Arabia as in some of its neighbours, it still added to collective efforts at improving community and social outcomes, including political freedoms.<sup>759</sup> Alsubaie pointed out that these efforts were largely successful, with the result being a strengthening of the ties between businesses and the government around CSR action: “During this time, political-business relations grew stronger and new economy friendly reforms were made in laws related to industries. Companies showed more

<sup>749</sup> Khan SA, Al-Maimani K, Al-Yafi W. Exploring corporate social responsibility in Saudi Arabia: The challenges ahead. *Journal of Leadership, Accountability and Ethics*. 2013; 10(3):65-78

<sup>750</sup> Mesfer Alsubaie, The Effectiveness of Corporate Social Responsibility in Saudi Arabia (2016) 16(4) *Global Journal of Human Social Science*.

<sup>751</sup> *ibid.*

<sup>752</sup> *ibid.*

<sup>753</sup> *ibid.*

<sup>754</sup> Dima Jamali and Walaa El Safadi, Adaptations of CSR in the Context of Globalization the Case of the GCC (2019) *Globalisation* pp 123-143.

<sup>755</sup> SPA, The King orders to spend 1.3 billion riyals for social security beneficiaries, *Aleqt*, August 2012, Available at <[https://www.aleqt.com/2012/08/06/article\\_680880.html](https://www.aleqt.com/2012/08/06/article_680880.html)> Accessed online November 20, 2020.

<sup>756</sup> Jeffery Avina, The Evolution of Corporate Social Responsibility (CSR) in the Arab Spring (2013) 67(1) *Middle East Journal* pp. 77-92

<sup>757</sup> Abbas J. Ali and Abdulrahman Al-Aali, Corporate Social Responsibility in Saudi Arabia (2012) 29(4) *Middle East Policy Council*

<sup>758</sup> Jeffery Avina, The Evolution of Corporate Social Responsibility (CSR) in the Arab Spring (2013) 67(1) *Middle East Journal* pp. 77-92

<sup>759</sup> *ibid.*

interest in political strengthening which increased political stability, leading to a more prosperous and stable Saudi Arabia”.<sup>760</sup> In addition, the government helped to facilitate the development of CSR institutional knowledge among peak representative bodies in the country, including for instance the Makkah Chamber of Commerce and Industry which oversaw seminars and other events targeted at improving awareness and understanding of CSR in the broader corporate community.<sup>761</sup>

Although these advances have been in some areas significant, they have been limited to certain companies and entities – particularly those which have a more considerable integration on the international business landscape, where CSR is more common. As has been noted by Saudi commentators “Although Saudi Arabia implemented the CSR properly and many companies adopted it... it was not implemented properly... Apart from two to three well established companies, all other companies who implemented CSR were either not able to afford it or did not properly fulfil the needs of CSR, instead of executing it diligently so that partnership between government and private sector can be institutionalised”.<sup>762</sup> Jamali and Safadi expand on this point to illustrate which areas need the most work: “Governmental and legislative factors including high bureaucracy, labour laws, corruption, legal systems, and investment regulations are major challenges for CSR implementation (in Saudi Arabia)”.<sup>763</sup> In some areas, the impact of the CSR objectives which have been developed has been minimal or insignificant. Indeed, despite one of the major areas which has been in place for decades in Saudi CSR being the environment, there have been a range of devastating environmental consequences for Saudi Arabia – particularly as a result of the actions of the oil industry.<sup>764</sup> Chemical waste pollution is a major problem across the country and has caused environmental harm and in some cases damaged other industries, for instance efforts to improve Saudi agriculture.<sup>765</sup> Damage to mangroves along the Saudi coastline in the Persian Gulf has harmed biodiversity efforts considerably.<sup>766</sup>

Furthermore, the areas which have not been the focus of Saudi Arabian efforts at improving CSR have differed dramatically from those seen in Europe and North America. Labour rights and gender protections – long devalued by Saudi society – have seen only incremental improvements in recent decades.<sup>767</sup>

This is problematic because it harms the Kingdom’s international competitiveness and it undermines the efforts of those companies who have actually made progressive steps in following CSR implementation. In fact, this can be seen as a part of the CSR structures generally. Bodies such as SARCI were constructed not to take many of these issues into account. While SARCI set up a number of “social, environmental, economic, management, and stakeholder participation metrics” in order to measure CSR,<sup>768</sup> they do not take into account human rights, labour rights, corruption and environmental standards.<sup>769</sup> Not only does this represent a less than comprehensive commitment to CSR, but it also illustrates where the specific policy objectives of the Saudi government lie when it comes to the embrace and proliferation of CSR in society.

Perhaps the most notable observation from the published literature on the manner is the extent to which CSR differs from company to company and from industry to industry in Saudi Arabia. This has been acknowledged by Jamali and Safadi,<sup>770</sup> who put together an extensive literature review on the topic. The authors note that the result of the efforts has been an

<sup>760</sup> Mesfer Alsubaie, The Effectiveness of Corporate Social Responsibility in Saudi Arabia (2016) 16(4) Global Journal of Human Social Science, [8]

<sup>761</sup> CSR Middle East, Saudi CSR Forum to honour top CSR achievers, *CSR Middle East*, April 2013, Available at <<http://csrmiddleeast.org/profiles/blogs/saudi-csr-forum-to-honor-top-csr-achievers>> Accessed November 21<sup>st</sup>, 2020.

<sup>762</sup> Mesfer Alsubaie, The Effectiveness of Corporate Social Responsibility in Saudi Arabia (2016) 16(4) Global Journal of Human Social Science, [10]

<sup>763</sup> Dima Jamali and Walaa El Safadi, Adaptations of CSR in the Context of Globalization the Case of the GCC (2019) *Globalisation* pp 123-143.

<sup>764</sup> *ibid.*

<sup>765</sup> *ibid.*

<sup>766</sup> Fatin Samara, Nadia Solovieva, Thouraya Ghalayini, Zaina Anwar Nasrallah and Maria Saburova, Assessment of the Environmental Status of the Mangrove Ecosystem in the United Arab Emirates (2020) 12 Water 2-19

<sup>767</sup> Mesfer Alsubaie, The Effectiveness of Corporate Social Responsibility in Saudi Arabia (2016) 16(4) Global Journal of Human Social Science, [22]

<sup>768</sup> Khan SA, Al-Maimani K, Al-Yafi W. Exploring corporate social responsibility in Saudi Arabia: The challenges ahead. *Journal of Leadership, Accountability and Ethics*. 2013; 10(3):65-78

<sup>769</sup> *ibid.*

<sup>770</sup> Dima Jamali and Walaa El Safadi, Adaptations of CSR in the Context of Globalization the Case of the GCC (2019) *Globalisation* pp 123-143.



inconsistent patchwork which only in some sectors or corporate cultures reflects the stated objectives of the government.<sup>771</sup> As noted expressly “It has been mentioned in the literature that there is a lack of legislation or an institutionalised system for CSR; this has resulted in fragmented efforts with a low level of overall strategic strength.”<sup>772</sup> Some companies – whether Saudi or international – have spent decades prioritising CSR both as a means of pursuing moral objectives as well as a point of competitive difference to engage in markets where CSR is popular, whereas other companies have either paid lip service to the efforts at securing CSR or largely ignored the efforts completely. Compared to Europe and North America, where CSR has a tendency to span the corporate sector largely regardless of industry type, this lack of broader CSR saturation is a problem. While this will be discussed later in the piece, these inconsistencies clearly show the degree to which a broader legislative effort at entrenching CSR in Saudi culture would be more effective and beneficial than the ongoing voluntary efforts, in both the public and private sectors. CSR has also, in recent years, managed to find a foothold in the education sector – and specifically in universities. Recent studies have indicated that universities are willing early adopters of CSR – and indeed have become some of the most enthusiastic entities to practice CSR in modern Saudi Arabia.<sup>773</sup>

#### 4.5.1 Challenges to the Adoption of CSR in Saudi Arabia

An assessment of the corporate landscape in Saudi Arabia shows that there is a degree of reluctance among the corporate community to implement CSR frameworks – whether this be at a legal level or in the individual practices of specific companies. One major reason for the reluctance to adopt CSR in Saudi Arabia is the degree to which it is seen as representative of Western interests – even where one or more component of CSR operates under the notion that it is ‘universal’. In particular, Saudi companies are concerned by the idea of adopting Western centric values, particularly where these values would become a core part of a company’s operations.<sup>774</sup> Gravem draws parallels with the way in which Saudi society has been reluctant to embrace other purportedly ‘universal’ concepts which are increasingly viewed to originate in the West, such as human rights and labour rights.<sup>775</sup> Several further challenges have been identified which have hampered the development of CSR in Saudi Arabia. The most significant moment in the recognition of these challenges took place at Saudi Arabia CSR Leadership Meeting in Riyadh in 2008, whereby four broad categories of challenges were identified by the participating parties. These were.<sup>776</sup>

" 1- A lack of awareness of CSR in Saudi Arabia, both in terms of overall ‘business case’ for CSR and in terms of concrete CSR practices, implementation tools, and methodologies,

- 2- Lack of institutionalisation of CSR in Saudi Arabia within companies and within the business communities i.e., relatively few CSR organisations, consultancies, business leadership initiatives etc.
- 3- A mismatch between the need for CSR practices and the skills taught by local colleges and universities in Saudi Arabia, and
- 4- A lack of resources available in Arabic."

While these findings were handed down in 2008, a study from 2013 found that they were largely still relevant in Saudi society.<sup>777</sup> Pinto and Allui, in a 2020 study into the major barriers to further adoption of CSR in Saudi corporate culture found that the primary problem was a lack of awareness among the corporate sector – whether this be management, employees, investors or shareholders – as well as an overall lack of competency with CSR matters.<sup>778</sup> Specifically, the authors found that a lack of management commitment to CSR was the primary barrier, followed by a lack of investor interest, a lack of economic resources and a lack of employee competencies.<sup>779</sup>

<sup>771</sup> *ibid.*

<sup>772</sup> *ibid.*

<sup>773</sup> Bandar Khalaf Alharthey, Role of Corporate Social Responsibility Practices in Saudi Universities (2016) 6(1) International Journal of Business and Social Research

<sup>774</sup> Magnus Gravem, CSR in Saudi Arabia, University of Oslo, Master Thesis, 2010, 117.

<sup>775</sup> *ibid.*

<sup>776</sup> Sami Kahn, Khalid Maimani and Wafa Al-Yafi, Exploring Corporate Social Responsibility in Saudi Arabia: The Challenges Ahead (2013) 10(3) *Journal of Leadership, Accountability and Ethics*

<sup>777</sup> *ibid.*

<sup>778</sup> Luisa Pinto and Alwiya Allui, Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organizations (2020) 7(11) *Journal of Asian Finance, Economics and Business*.

<sup>779</sup> *ibid.*



Despite this, there have been some recent suggestions of a desire to adopt CSR-relevant policies among the Saudi leadership. This came in November of 2020 through the G20 Summit, which took place in Riyadh, Saudi Arabia (but was held virtually due to the coronavirus pandemic).<sup>780</sup> Other than being the host, the summit was significant for Saudi Arabia due to the fact that the country is set to take over the presidency of the G20.<sup>781</sup> While Saudi Arabia's official presidency overview was silent on the issue of CSR itself, it pledged to oversee the pursuit of collective goals of equality and sustainability on behalf of the G20.<sup>782</sup> The organisation specifically pledged to pursue these goals in a statement, saying the country was committed to "coordinated global action, solidarity and multilateral cooperation...by empowering people, safeguarding the planet, and shaping new frontiers."<sup>783</sup> Although the summit only took place relatively recently, it remains to be seen whether it will have an influence on domestic Saudi policy – and in particular on whether or not steps will be taken to encourage CSR through legislative action. The statements made at the summit do however indicate a desire among the Saudi leadership to take greater action in the pursuit of social and environmental goals – a desire which may be harnessed by advocates of CSR in pushing for a legislative solution.

#### 4.5.1.1 CSR V Islamic practices

The analysis conducted in the first part of this work suggested that Saudi Arabia tackles the issue of CSR in an efficient way, often surpassing the UK in the implementation of CSR-related practices. As was argued above, this is largely due to an alignment between the fundamentals of CSR and the values of Islam. What is more, it has been argued that Saudi Arabia's 'cultural and religious history ... is consistent with the goals of its private sector's corporate social responsibility (CSR) work.'<sup>784</sup> The tradition of Zakat (almsgiving) is a good example of how this consistency may demonstrate in practice.<sup>785</sup> Other good examples on this list would be the Waqf<sup>786</sup>, Sadaqa<sup>787</sup> and Qard-ul-hassan.<sup>788 789</sup>

To be precise, Zakat is an obligation imposed on Muslims by Shariah law, intended to ‘act as a social safety net for those in need and a means to uplift the entire community and help Muslims and Islam thrive’.<sup>790</sup> The concept has Tabarru<sup>791</sup> (corporate social) aspect, which helps businesses to balance their corporate activities with their religious obligations.<sup>792</sup> Under the obligation of Zakat, the faithful must donate money, food or anything else that is needed, to charity recipients, known as Mustahik.<sup>793</sup> These eight categories of people include the needy and the poor, strangers/homeless and debtors, who require relief for their debt.<sup>794</sup> Another, more elaborate, classification of the eight categories refers to ‘the poor, the destitute, those who collect it, reconciling people's hearts, freeing slaves, those in debt, spending in way of Allah, and travellers’.<sup>795</sup>

<sup>780</sup> European Commission, G20 Summit: G20 leaders united to address major global pandemic and economic challenges, European Commission, November 2020: Press Release.

<sup>781</sup> Lojien Ben Gassem, King Salman confident Riyadh G20 summit will deliver ‘significant and decisive results’, *Arab News*, November 2020, Available at <<https://www.arabnews.com/node/1766431/saudi-arabia>> Accessed November 27, 2020.

<sup>782</sup> Saudi Arabia, Overview of Saudi Arabia's G20 Presidency, (Saudi Arabia, Riyadh, 2020)

<sup>783</sup> G20 Riyadh Summit, Leaders Declaration, 2020.

<sup>784</sup> Rahayu Abdull Razak, 'Corporate Social Responsibility Disclosure and its Determinants in Saudi Arabia' (2015) 23(10) Middle-East Journal of Science Research 2388, 2388.

785 *ibid.*

<sup>786</sup> Waqf is an Arabic word that describes (philanthropic trust).

<sup>787</sup> Sadagh is an Arabic word that describes (charity).

<sup>788</sup> Qard-ul-hassan is an Arabic word that describes (interest-free loans).

<sup>789</sup> Rahayu Abdull Razak, 'Corporate Social Responsibility Disclosure and its Determinants in Saudi Arabia' (2015) 23(10) Middle-East Journal of Science Research 2388, 2388.

<sup>790</sup> National Zakat Foundation, 'Purpose of Zakat' (2021) available: <https://nzf.org.uk/about-zakat/purpose-of-zakat/> accessed 25 September 2021.

<sup>791</sup> 'Tabarru' is an Arabic word that describes a voluntary donation or gift which is given by someone to meet the requirement in Islam to provide mutual help to others.

<sup>792</sup> Friztina Anisa et al., 'How Much Does Islamic Corporate Social Responsibility Affect Zakat Performance? Data Processing Using Eviews' (2019) 436 *Advances in Social Science, Education and Humanities Research* 429, 429.

<sup>793</sup> Mustahik is an Arabic word that describes a Deserver

<sup>794</sup> *ibid.*, 430. Also, see the Ouran (9:60).

<sup>795</sup> Wan Sulaiman bin Wan Yusoff, 'Modern Approach of Zakat as an Economic and Social Instrument for Poverty Alleviation and Stability of Ummah' (2008) 9(1) Jurnal Ekonomi dan Studi Pembangunan 105, 109.

This allows being concluded that Zakat's charitable obligation is owed to the broader Muslim community (the Ummah). By asking the people whose income is above a certain threshold, to help those less fortunate than them, Shariah law arguably aims to expand the givers' vision of the world and connects the members of the community. What is even more curious is that the practice resembles CSR because of some Islamic countries' requirement that a certain sum of money is dedicated on a periodic basis for the achievement of a number of socially positive goals of the CSR agenda.<sup>796</sup>

Despite that, it is arguable that Zakat, which is given just once a year to charitable causes in the form of a percentage of the business' earnings,<sup>797</sup> does not and could not properly answer the CSR call, as understood by the Western tradition. This is the case because CSR refers to a host of issues, not all of which concern poor people. Quite the contrary; CSR engages with climate change, as well as with issues of diversity and equality within but also, without, the immediate environment of the company.

The difference between CSR and Zakat is best seen in their respective purposes. Zakat has been put in place with the intention to purify the wealth accumulated by traders. Curiously, while this in itself could be interpreted as intimating that making wealth is a bad thing,<sup>798</sup> this would be an inaccurate reading of Islam, because Islam respects commerce and sees it as an extremely valuable contribution to society.<sup>799</sup> This approach is certainly in line with the Western understanding of profit maximization.<sup>800</sup> In distinction, the Western theory of CSR is unconcerned with how pure the specific business' profit is and it is more technical in its interpretation. To the extent there is a place for emotive messaging in the Western-type CSR, this is done through carefully studying the effect of emotion-filled messages on the targeted customer group and choosing between a more utilitarian/rational and more emotional message.<sup>801</sup>

This indicates that the notion of CSR proper adopts a more scientific approach to the way the impact of businesses on the wider community and the environment is measured.<sup>802</sup> It could also be argued that CSR does not work with the same terminology and even when its goals resemble those of Zakat, they are motivated by a desire to limit the possibility to inflict harm on society and not by a motivation to judge one's morality.<sup>803</sup>

This is an important clarification because businesses across the world and including in the Islamic ecosystem, often earn their profit in a non-CSR-compliant way. This is evident by the constant activity in the area displayed by Western regulators, who increasingly engage with the promotion of greater CSR, including by the adoption of further-reaching legislative measures.<sup>804</sup>

<sup>796</sup> See, for example, Law Number 40 of 2007 article 74, further stipulated in Government Regulation No. 47 (2012), Indonesia.

<sup>797</sup> Daniel Liberto, 'What is Zakat' (2021) Investopedia, available: <https://www.investopedia.com/terms/z/zakat.asp> accessed 25 September 2021.

<sup>798</sup> *ibid.*

<sup>799</sup> Shouvik Sanyal and Mohammed Wamique Hisam, 'A study on the impact of Islamic thought on global commerce and trade' (2016) available: [https://www.researchgate.net/publication/309104300\\_A\\_study\\_on\\_the\\_impact\\_of\\_islamic\\_thought\\_on\\_global\\_commerce\\_and\\_trade](https://www.researchgate.net/publication/309104300_A_study_on_the_impact_of_islamic_thought_on_global_commerce_and_trade) accessed 3 October 2021.

<sup>800</sup> Abbas J Ali, 'Profit Maximization and Capitalism' (2006) available: [https://www.researchgate.net/publication/256438476\\_Profit\\_Maximization\\_and\\_Capitalism](https://www.researchgate.net/publication/256438476_Profit_Maximization_and_Capitalism) accessed 1 October 2021.

<sup>801</sup> Luisa Andreu et al., 'Effects of Message Appeal on Corporate Social Responsibility initiatives' (2010) available: [https://www.researchgate.net/publication/276410361\\_Effects\\_of\\_Message\\_Appeal\\_on\\_Corporate\\_Social\\_Responsibility\\_initiatives](https://www.researchgate.net/publication/276410361_Effects_of_Message_Appeal_on_Corporate_Social_Responsibility_initiatives) accessed 30 September 2021, 3.

<sup>802</sup> *ibid.*

<sup>803</sup> Patrick MacLagan and Tim Campbell, 'Focusing on Individuals' Ethical Judgement in Corporate Social Responsibility Curricula' (2011) 20(4) Business Ethics a European Review.

<sup>804</sup> For example, see European Parliament, 'Corporate social responsibility (CSR) and its implementation into EU Company law' (2020) Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE 658.541 - November 2020, available: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL\\_STU\(2020\)658541\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU(2020)658541_EN.pdf) accessed 3 October 2021, 10.

It is submitted that, considering that such regulatory flurry is not yet apparent in Saudi Arabia<sup>805</sup> and adding to this lacuna of legislation the limited range of Zakat, adopting only the latter in terms of dealing with CSR could make it possible for corporations to start or continue engaging in harmful business practices. This outcome appears likely because Zakat resembles CSR sufficiently well in order to placate those advocating for CSR. The ensuing problem becomes even greater if one is to consider the benefits for businesses of engaging in both (Zakat and CSR) in conjunction.<sup>806</sup>

Even more worryingly, evidence from the yearly account reports produced by some of the big Islamic banks indicates that not all Islamic banks deduct Zakat from their earnings.<sup>807</sup> While surprising, this practice could be explained by looking at the example of Indonesia, where it has been noted that 'disclosure of CSR funds [by Indonesian banks] negatively affected the Zakat Performance Ratio.'<sup>808</sup> It should be clarified that the companies in question chose to donate less Zakat than they were supposed because they assumed that they have already discharged their CSR duties by complying with their CSR obligations. The rationale for this conduct was based on the argument that '[m]aximizing the value of the company is the main goal of all activities carried out by the company.'<sup>809</sup> This is perhaps informed by the thinking that company leadership is under a responsibility not to spend on such goals anything beyond the strictly necessary. To this end, the reasoning goes, so long their firm's social responsibilities have been discharged, their obligations related to profit maximization kick in and take precedence.

While seeing profitability as paramount is not wrong in itself, this author would like to argue that Islamic companies should concern themselves with objectives that go above and beyond the simple material goal. In practical terms, this means that Islamic firms should comply with their CSR and Zakat obligations without shunning one at the expense of the other. First, this should be done precisely because Islamic companies are supposed to espouse Islamic values.<sup>810</sup> Secondly, this approach should be taken because doing so can prove practically more beneficial for them.<sup>811</sup> For example, on one hand not (fully) complying with Zakat would certainly put the respective Islamic firm in a precarious position vis-à-vis its Shariah-based obligations. On another, it may cause friction between such companies and their Muslim customers who would and indeed, should, expect from them to stay truer to Shariah law in such circumstances.

It could certainly be argued in defence of such companies that the company leadership sees the concepts of CSR and Zakat as having overlapping objectives. This is supported by a study indicating that 20% of the businesses operating in the United Arab Emirates (UAE) 'reported that they implement CSR to comply with Zakat'.<sup>812 813</sup> While the study reflects the experience of UAE's businesses, it is arguable that the situation in Saudi Arabia will not be so different.

Perhaps this explains why Zakat has often been shunned in favour of the former. However, as it was discussed earlier, such a conclusion is unjustified and the two concepts should be approached as two separate, albeit similar obligations. Admittedly, such companies could also argue that the notion of Zakat is sufficiently flexible to accommodate expansion, in line with the times, in order to include a broader spectrum of needs and recipients,<sup>814</sup> however, this is something that has not been

<sup>805</sup> G.E. Halkos, and S.N. Nomikos, 'Reviewing the status of corporate social responsibility (CSR) legal framework' (2021) 32(4) *Management of Environmental Quality* 700.

<sup>806</sup> Reskino Reskino, 'Zakat and Islamic Corporate Social Responsibility: Does It Take Effect to the Performance of Shari'a Banking?' (2016) 1(2) *Shirkah Journal of Economics and Business* 161.

<sup>807</sup> Fritzina Anisa et al., 'How Much Does Islamic Corporate Social Responsibility Affect Zakat Performance? Data Processing Using Eviews' (2019) 436 *Advances in Social Science, Education and Humanities Research* 429, 430.

<sup>808</sup> *ibid*, 429.

<sup>809</sup> Fritzina Anisa et al., 'How Much Does Islamic Corporate Social Responsibility Affect Zakat Performance? Data Processing Using Eviews' (2019) 436 *Advances in Social Science, Education and Humanities Research* 429, 429.

<sup>810</sup> Siti Anisah Atan, Norjariah Arif and Kamilah Ahmad, 'Incorporating Islamic Values into Business Towards Holistic Shariah Compliance' (2017) 23(11) *Advanced Science Letters* 10544.

<sup>811</sup> Robiatul Auliyah and Basuki Basuki, 'Ethical Values Reflected on Zakat and CSR: Indonesian Sharia Banking Financial Performance' (2021) 8(1) *Journal of Asian Finance Economics and Business* 225.

<sup>812</sup> Luisa Pinto and Alwyia Allui, 'Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organizations' (2020) 7(11) *Journal of Asian Finance, Economics and Business* 259, 261.

<sup>813</sup> Dubai Chamber, 'Corporate Social Responsibility and Corporate Governance in the United Arab Emirates' (2009) Emirates Foundation.

<sup>814</sup> Wan Sulaiman bin Wan Yusoff, 'Modern Approach of Zakat as an Economic and Social Instrument for Poverty Alleviation and Stability of Ummah' (2008) 9(1) *Journal Ekonomi dan Studi Pembangunan* 105, 105.



introduced at present. Furthermore, even if the concept does get expanded, it is still unlikely that it will fully overlap with CSR because the latter is only loosely connected to poverty and re-distribution of wealth,<sup>815</sup> and remains much better aligned with other issues.

Having said the above, the closeness between CSR and Zakat helps Saudi Arabia adopt CSR practices more easily<sup>816</sup> because its corporations are not too challenged by the idea of CSR (because they have already internalised it in the course of their compliance with Shariah law). Despite this, however, some aspects of CSR had proven more problematic for the Saudi Arabian reality. This is to be expected. While CSR happens to embrace goals that are quite similar to those of Islam, it is nevertheless the thought product of a liberal Western society.<sup>817</sup> As such, it contains references that are not so easily translatable into the Saudi Arabian cultural and social vocabulary.<sup>818</sup> This is an issue that cannot be underestimated.

While it may be argued that CSR is a work in progress and countries are free to pick and choose these aspects of the concept which most suit their cultural and social make-up, the globalisation of the modern world and particularly the globalisation of business arguably necessitates a certain degree of cross-pollination between Saudi Arabia and its Western business partners.<sup>819</sup>

Successful and complete cross-pollination is however impossible to achieve at this stage, for all of the reasons enumerated above but also, because the concept of CSR is still relatively new for the Saudi Kingdom, particularly compared to the rest of the world. This means that Saudi corporations have not yet fully understood the fundamentals of the concept, how it should be practiced and implemented.<sup>820</sup>

#### 4.5.1.2 Adopting timid motivational initiatives that do not address basic concepts of CSR

Nevertheless, it is encouraging that since 2000, the competitiveness of the Saudi companies is subject to the oversight and care of the Saudi Arabian General Investment Authority (SAGIA).<sup>821</sup> SAGIA is tasked with the institutionalization of CSR in the Kingdom;<sup>822</sup> this is to say that the fulfilment of the CSR objectives of the Kingdom forms one of the three main objectives of the authority.<sup>823</sup> SAGIA has carried out a few initiatives (discussed below), which had an arguably positive impact on the status of CSR in the Kingdom.

For example, in 2008, together with AccountAbility<sup>824</sup> and Tamkeen Consulting,<sup>825</sup> the SAGIA launched a Saudi Arabia Responsible Competitive Index (SARCI). The purpose of this index was to assess the performance of the Saudi Arabian companies against their CSR obligations.<sup>826</sup>

<sup>815</sup> *ibid*, 117.

<sup>816</sup> Husam-Aldin N. Al-Malkawi, 'Corporate Social Responsibility and Financial Performance in Saudi Arabia: Evidence from Zakat Contribution' (2017) available:

<[https://www.researchgate.net/publication/320839814\\_Corporate\\_Social\\_Responsibility\\_and\\_Financial\\_Performance\\_in\\_Saudi\\_Arabia\\_Evidence\\_from\\_Zakat\\_Contribution](https://www.researchgate.net/publication/320839814_Corporate_Social_Responsibility_and_Financial_Performance_in_Saudi_Arabia_Evidence_from_Zakat_Contribution)> accessed 3 October 2021.

<sup>817</sup> Ulf Henning Richter, 'Liberal Thought in Reasoning on CSR' (2010) 97(4) *Journal of Business Ethics* 625.

<sup>818</sup> Andreas Ostermaier & Dominik van Aaken, 'Freedom trumps profit: a liberal approach to business ethics' (2020) 90 *Journal of Business Economics* volume 947.

<sup>819</sup> Dima Jamali and Walaa El Safadi, 'Adaptations of CSR in the Context of Globalization the Case of the GCC' (2019) available: <<https://www.intechopen.com/chapters/63208>> accessed 24 September 2021.

<sup>820</sup> Rahayu Abdull Razak, 'Corporate Social Responsibility Disclosure and its Determinants in Saudi Arabia' (2015) 23(10) *Middle-East Journal of Science Research* 2388.

<sup>821</sup> World Economic Forum, 'Saudi Arabian General Investment Authority (SAGIA)' (2021) available: <<https://www.weforum.org/organizations/saudi-arabian-general-investment-authority-sagia>> accessed 25 September 2021.

<sup>822</sup> Dima Jamali and Walaa El Safadi, 'Adaptations of CSR in the Context of Globalization the Case of the GCC' (2019) available: <<https://www.intechopen.com/chapters/63208>> accessed 24 September 2021.

<sup>823</sup> World Economic Forum, 'Saudi Arabian General Investment Authority (SAGIA)' (2021) available: <<https://www.weforum.org/organizations/saudi-arabian-general-investment-authority-sagia>> accessed 25 September 2021.

<sup>824</sup> AccountAbility, (2021) available: <<https://www.accountability.org/>> accessed 2 October 2021.

<sup>825</sup> Tamkeen, (2021) available: <<https://www.tamkeencsr.com/>> accessed 1 October 2021.

<sup>826</sup> Harvard Kennedy School, 'Corporate Social Responsibility (CSR) in Saudi Arabia and Globally: Key challenges, opportunities and best practice' (2008) available:

The examination measured how the companies' strategy aligned with the Kingdom's CSR agenda, how they approached business management, what is the stakeholder engagement process in the firm, as well as what is the firm's social, environmental and economic performance.<sup>827</sup> It is submitted that this project had the potential to greatly increase the accountability in the Saudi corporate market and the degree to which CSR is implemented in the country.

Companies that measured well on this index were nominated as leaders of Saudi Arabia's business ecosystem and subsequently, the three companies that position themselves at the top of the responsible competitiveness index were given the King Khalid Award for Responsible Competitiveness.<sup>828</sup>

The award process was intended to both encourage businesses to uphold the values of CSR and to reward them for having done so. This suggests that when it comes to CSR, the Kingdom's government had internalized the need for publicity and acknowledgment of good practices.<sup>829</sup> The emphasis on positivity rather than criticism is an arguably appropriate way to deal with local corporations, who traditionally place a high value on being of service to society. Note that this award came into operation in 2009,<sup>830</sup> which suggests that CSR practices had by now become well established in the country.

Of interest is also the Saudi Fast Growth 100 initiative, which had been developed in partnership with NextEconomics. The Saudi Fast Growth 100 Initiative received the support of SAGIA, helping it identify hundreds of the Kingdom's fastest-growing enterprises.<sup>831</sup>

Furthermore, the country adopted the Responsible Competitiveness Leadership Dialogues: initiative, which aimed to 'build awareness of and support local capacity building for corporate social responsibility'.<sup>832</sup> This series of Leadership dialogues have been convened by SAGIA, in conjunction with the Harvard Kennedy School's CSR Initiative. The Dialogues have been intended to bring together participants from Saudi Arabia and abroad 'to discuss the future of CSR in the Kingdom, and exchange best practices, [including] on business partnerships for developing human capital'.<sup>833</sup>

Another project that should be considered is the Vision 2030 initiative,<sup>834</sup> which formalized the drive for economic diversification and development.<sup>835</sup> This initiative adds to the impact of the King Khalid Award for Responsible Competitiveness because it formalizes a framework of development where businesses are expected to act systematically and consciously in a way that develops society and economy more generally.<sup>836</sup>

<[https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cr/ri/files/report\\_33\\_SAGIA\\_leadership\\_dialogue\\_final\\_november\\_08.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cr/ri/files/report_33_SAGIA_leadership_dialogue_final_november_08.pdf)> accessed 3 October 2021, 3.

<sup>827</sup> Rahayu Abdull Razak, 'Corporate Social Responsibility Disclosure and its Determinants in Saudi Arabia' (2015) 23(10) Middle-East Journal of Science Research 2388, 2389.

<sup>828</sup> *ibid.*

<sup>829</sup> Sofia Serrano, 'Saudi Report 2021: New behaviours for a new environment, by W7Worldwide's Abdullah Inayat' (2021) available: <<https://campaignme.com/saudi-report-2021-new-behaviours-for-a-new-environment-by-w7worldwides-abdullah-inayat/>> accessed 3 October 2021.

<sup>830</sup> Harvard Kennedy School, 'Corporate Social Responsibility (CSR) in Saudi Arabia and Globally: Key challenges, opportunities and best practice' (2008) available:

<[https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cr/ri/files/report\\_33\\_SAGIA\\_leadership\\_dialogue\\_final\\_november\\_08.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cr/ri/files/report_33_SAGIA_leadership_dialogue_final_november_08.pdf)> accessed 3 October 2021, 3.

<sup>831</sup> *ibid.*

<sup>832</sup> *ibid.*

<sup>833</sup> Harvard Kennedy School, 'Corporate Social Responsibility (CSR) in Saudi Arabia and Globally: Key challenges, opportunities and best practice' (2008) available:

<[https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cr/ri/files/report\\_33\\_SAGIA\\_leadership\\_dialogue\\_final\\_november\\_08.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cr/ri/files/report_33_SAGIA_leadership_dialogue_final_november_08.pdf)> accessed 3 October 2021, 3.

<sup>834</sup> Sofia Serrano, 'Saudi Report 2021: New behaviours for a new environment, by W7Worldwide's Abdullah Inayat' (2021) available: <<https://campaignme.com/saudi-report-2021-new-behaviours-for-a-new-environment-by-w7worldwides-abdullah-inayat/>> accessed 3 October 2021.

<sup>835</sup> *ibid.*

<sup>836</sup> Luisa Pinto and Alwyia Allui, 'Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organizations' (2020) 7(11) Journal of Asian Finance, Economics and Business 259, 260.

However, despite the shift towards greater emphasis on CSR, the concept is still not sufficiently well developed in the Kingdom due to a variety of reasons. For example, it has been argued that SARCI had not addressed global concerns of environment, human and labor rights, as well as corruption.<sup>837</sup>

It is arguable that this is problematic<sup>838</sup> given the fact that CSR is measured by two Saudi Arabian organisations and one international, namely the Organisation for Economic Co-operation and Development (OECD).<sup>839 840</sup> It is submitted that the involvement of the latter may result in a harsher perception of Saudi Arabian's track record on CSR among the international community.<sup>841</sup> Despite, as it will certainly put pressure on the Saudi Arabian firms to take their CSR obligations more seriously, and serve as a reminder of the importance conferred on CSR by the global community, this may become a stimulus for the Kingdom to do even better in this area.

#### 4.5.1.3 Cultural peculiarity

It has been suggested that Saudi corporations tend to first consider the impact of their activities on their immediate community, then think about its impact at the level of the Saudi Arabian nation and only after that will they consider, if at all, the effect of their business on the international plane.<sup>842</sup> Because of this cultural peculiarity, part of the diversion between the international and the Saudi Arabian understanding of CSR respectively is manifested in the excessive (from a Western perspective) focus on the development of human and social capital, characteristic of the Shariah law tradition. This makes alignment more difficult, all the more that it could be argued that the ethnocentrism of each party's take on CSR does not leave too much room for a compromise between the two. As a consequence of that, even if the Saudi government decides to adopt a more Western-centric attitude to CSR, it is questionable whether the corporations would take this to heart and implement it in their practices.<sup>843</sup> This is not to say that the CEOs of the big Saudi Arabian corporations do not value and appreciate CSR properly. However, even if they wished to modernise and align themselves with their international partners, they may be prevented from doing so by their national customer base whose opinions can prove more inflexible than those of politicians and company managers.<sup>844</sup> This outcome can become more likely if the change is likely to clash with customers' religious faith.<sup>845</sup>

This point merits some further investigation because CSR, just like many other policies of the modern time, originated in the West but has been exported across the world, regardless of hosts' cultural and/or religious differences with the imported concept. One possible solution could be if the CSR requirements applied in the West become more flexible or able to accommodate or even absorb some of the good practices of the Islamic world. Surely, taking this road would make it easier to persuade those Saudi (and other Islamic) corporations, which have not yet adopted the full spectrum of CSR practices, to do so. Adopting a more permissive and open-minded approach to CSR will reiterate that commitment to CSR is a "two-way street", that CSR itself is a dynamic concept,<sup>846</sup> which necessarily is a work in progress, and that cross-pollination between

<sup>837</sup> Magnus Gravem, 'Corporate Social Responsibility: Saudi Arabia and International Standards' (2010) available: <http://gulfunit.wordpress.com/2010/01/18/corporate-social-responsibility-saudi-arabia-and-international-standards/> accessed 23 September 2021.

<sup>838</sup> *ibid.*

<sup>839</sup> See OECD, 'UN Global Compact, OECD Guidelines for Multinational Enterprises' (2005) available: <https://www.oecd.org/corporate/mne/34873731.pdf> accessed 26 September 2021.

<sup>840</sup> See also, ISO, 'ISO 26000 Social responsibility: 2010' (2010) available: <https://www.iso.org/news/ref2599.html> accessed 26 September 2021.

<sup>841</sup> Nisar Nalband Mohammed and S. Al-Amri, 'Corporate social responsibility: Perception, practices and performance of listed companies of Kingdom of Saudi Arabia' (2013) 23(3) Competitiveness Review an International Business Journal incorporating Journal of Global Competitiveness.

<sup>842</sup> Magnus Gravem, 'Corporate Social Responsibility: Saudi Arabia and International Standards' (2010) available: <http://gulfunit.wordpress.com/2010/01/18/corporate-social-responsibility-saudi-arabia-and-international-standards/> accessed 23 September 2021.

<sup>843</sup> *ibid.*

<sup>844</sup> Areej Abdullah Algumzi, 'The Impact of Islamic Culture on Business Ethics: Saudi Arabia and the Practice of *Wasta*' (2017) PhD Thesis, Lancaster University Management School, Department of Leadership and Management, available: <https://core.ac.uk/download/pdf/153320454.pdf> accessed 24 September 2021.

<sup>845</sup> *ibid.*, 49.

<sup>846</sup> Binghui Zu et al., 'A Dynamic Model for Corporate Social Responsibility: A Case Study of Chinese Major Coal Producers' (2014) 14 Journal of Applied Sciences 2109.

cultures could enrich the existing CSR. It is submitted that this argument becomes more convincing if one considers that the importance of CSR is such because it concerns the world as a whole. The “corporate” in CSR is particularly telling because modern corporations very often turn global. This means that their operations will necessarily have implications across the cultural and political spectrum. In addition, “social responsibility” speaks about society. Human society is not limited to the West; the world is colourful and full of diversity. Not having an account of how certain cultures perceive CSR could easily gravitate into cultural imperialism,<sup>847</sup> which should at this stage have become a thing of the past.<sup>848</sup> Having all of the above into consideration underlines why it is so important to learn to compromise with the local traditions; and to reiterate, this compromise must go two ways.

#### 4.5.1.4 Lack of awareness and legislation or an institutionalized system for CSR

Having said the above, Saudi Arabia lags behind the world when it comes to the application of CSR principles, as espoused internationally.<sup>849</sup> Of course, the Kingdom is not the only country that suffers from this predicament, and to this end, it will be important to identify what is it that holds certain areas of the world behind. The topic has been well researched. Indeed, analysts from across the world have identified different reasons for subpar performance in the area of CSR. For example, a study in India<sup>850</sup> (which together with Saudi Arabia is considered a developing country)<sup>851</sup> has identified twelve barriers for adequate development of CSR. These are:

lack of stakeholder awareness, lack of training, lack of information, lack of financial resources, lack of customer awareness, lack of their reputation value, lack of knowledge, lack of regulations and standards, diversity, company culture, lack of social audit, and lack of top management commitment.<sup>852</sup>

The study cited above makes it clear that there is an ongoing issue with the lack of awareness of what the principles of CSR constitute and the insufficient understanding of the value flowing from the adoption of these principles. Note that some commentators have concluded that Saudi corporations investing in CSR do so only to gain good publicity among their customer base. For example, it has been argued that many Saudi corporations use CSR ‘to achieve a competitive edge over the other organisations in the domain of brand loyalty of the customer’<sup>853</sup> and not so much out of convictions. Furthermore, it is significant that the study discussed above identified financial constraints to be the main driver behind the barriers to full CSR implementation.<sup>854</sup> It follows that should more money be invested in this area, the performance will improve. Considering the immense recent economic progress of the Saudi Kingdom,<sup>855</sup> it is submitted that this should not be a challenge for the government and neither this should be an issue for the big Saudi companies.

To this end, note that a similar study (this time carried out in the KSA) found that there are 7 rather than 12 main barriers in this country and they consisted in ‘additional costs, lack of awareness and knowledge, lack of guidelines and coherent strategy, lack of stakeholder communication, lack of law enforcement, lack of training, and unclear project requirements.’<sup>856</sup> While there are some differences between the Indian and Saudi Arabian reports, it appears that the issues are more or less

<sup>847</sup> Farzad Rafi Khan and Peter Lund-Thomsen, ‘CSR as Imperialism: Towards a Phenomenological Approach to CSR in the Developing World’ (2011) 11(1) *Journal of Change Management* 73.

<sup>848</sup> K Bondy & K Starkey, ‘The dilemmas of internationalization: corporate social responsibility in the multinational corporation’ (2014) 25(1) *British Journal of Management* 4.

<sup>849</sup> Samia Maqbool, ‘An overview of CSR programs in Saudi Arabia with reference to select organizations’ (2015) 5(2) *International Journal of Human Resource Studies* 282, 283.

<sup>850</sup> BBC, ‘Case study - emerging and developing country – India’ (2021) available: <<https://www.bbc.co.uk/bitesize/guides/zgwm4j6/revision/1>> accessed 26 September 2021.

<sup>851</sup> WorldData, ‘Saudi Arabia’ (2021) available: <<https://www.worlddata.info/asia/saudi-arabia/index.php>> accessed 26 September 2021.

<sup>852</sup> *ibid*, 262.

<sup>853</sup> Samia Maqbool, ‘An overview of CSR programs in Saudi Arabia with reference to select organizations’ (2015) 5(2) *International Journal of Human Resource Studies* 282, 283.

<sup>854</sup> L Shen et al., ‘Evaluation of Barriers of Corporate Social Responsibility Using an Analytical Hierarchy Process under a Fuzzy Environment—A Textile Case’ (2015) 7 *Sustainability* 3493.

<sup>855</sup> Samia Maqbool, ‘An overview of CSR programs in Saudi Arabia with reference to select organizations’ (2015) 5(2) *International Journal of Human Resource Studies* 282, 283.

<sup>856</sup> A Alotaibi et al., ‘Critical Barriers to Social Responsibility Implementation within Mega-Construction Projects: The Case of the Kingdom of Saudi Arabia’ (2019) 11 *Sustainability* 1755.



similar in both countries. The interesting thing here is that India is not a poor country, and neither is the Kingdom of Saudi Arabia. Furthermore, India has traditionally been under the cultural and political influence of the UK by virtue of the latter being India's former colonizer. The trade relationship between the two countries is of significant importance to them<sup>857</sup> and in many cases, these activities are carried out by Indians who have either lived or are currently living in the United Kingdom. It could be expected, therefore, that they would have transposed the CSR traditions from the island into their jurisdiction. However, it appears that this has not been the case, at least not for now.<sup>858</sup>

Similarly, Saudi Arabia's trade and commerce have been closely linked to the United States (US) since 1986 when the Saudi riyal has been tied at a fixed rate to the US dollar.<sup>859</sup> While this has largely had the effect of weakening or strengthening the riyal according to the fluctuations of the US currency, the US State Department has noted that the US 'is Saudi Arabia's second-largest trading partner, and Saudi Arabia is one of the United States' largest trading partners in the Middle East.'<sup>860</sup> Almost equally strong is the trade relationship between Saudi Arabia and the United Kingdom.<sup>861</sup> Neither connection has, however, had influenced the Saudi Kingdom to embrace CSR more fully.

It is easy to assume that the link between these two Western countries and the Saudi Kingdom should have inevitably helped introduce new business ideas and practices, including those belonging to the CSR concept. Despite this, the reality is that Saudi Arabia demonstrates a certain reluctance to adopt the Western approach to CSR in its entirety. Not only that, the country demonstrates that it remains a victim of weaknesses and barriers that it is capable of overcoming with greater investment in this area. Currently, however, Saudi Arabia displays a 'lack of legislation or an institutionalized system for CSR [leading to] fragmented efforts with a low level of overall strategic strength.'<sup>862 863</sup>

As became evident from the studies discussed above, such an investment should not be only financial but it should include more staff training and education of the higher management bodies. In addition, the government must overcome challenges related to 'high bureaucracy, labor laws, corruption, legal systems, and investment regulations.'<sup>864865</sup>

The question remains as to whether the change can be implemented without the corresponding legislative framework. It is clear that Shariah law would be insufficient to legislate upon CSR matters (because Zakat is not the same as CSR), for reasons of the latter never being a part of the Islamic tradition. This leaves secular legislation as the only route to CSR compliance.

So far the Kingdom has introduced a measure, which impacts CSR in a positive way, albeit indirectly. The 2006 Saudi corporate governance (CG) code places a requirement on companies 'to have an audit committee with at least three non-executive directors and at least a financial and accounting director.'<sup>866</sup> The positive impact of this legislative measure is in

<sup>857</sup> Sangeeta Khorana, 'UK-India trade deal: why the timing is crucial for both nations' (2021) The Conversation, available: <<https://theconversation.com/uk-india-trade-deal-why-the-timing-is-crucial-for-both-nations-160383>> accessed 3 October 2021.

<sup>858</sup> L Shen et al., 'Evaluation of Barriers of Corporate Social Responsibility Using an Analytical Hierarchy Process under a Fuzzy Environment—A Textile Case' (2015) 7 Sustainability 3493.

<sup>859</sup> Abdulrahman Al-Hamidy and Ahmed Banafe, 'Foreign exchange intervention in Saudi Arabia' (n.d.) BIS Papers No 73, available: <<https://www.bis.org/publ/bppdf/bispap73v.pdf>> accessed 26 September 2021, 301.

<sup>860</sup> US Department of State, 'U.S. Relations with Saudi Arabia' (2020) available: <<https://www.state.gov/u-s-relations-with-saudi-arabia/>> accessed 26 September 2021.

<sup>861</sup> Department for International Trade, 'Exporting to Saudi Arabia' (2021) available: <<https://www.great.gov.uk/markets/saudi-arabia/>> accessed 26 September 2021.

<sup>862</sup> Dima Jamali and Walaa El Safadi, 'Adaptations of CSR in the Context of Globalization the Case of the GCC' (2019) available: <<https://www.intechopen.com/chapters/63208>> accessed 24 September 2021.

<sup>863</sup> T Emtairah et al., 'Context and corporate social responsibility: The case of Saudi Arabia' (2009) 1(4) International Journal of Sustainable Society 325.

<sup>864</sup> Dima Jamali and Walaa El Safadi, 'Adaptations of CSR in the Context of Globalization the Case of the GCC' (2019) available: <<https://www.intechopen.com/chapters/63208>> accessed 24 September 2021.

<sup>865</sup> Tamkeen Sustainability Advisors, 'The Evolution of CSR in Saudi Arabia: The Changing Landscape' (2010) available: <<http://www.tamkeencsr.com/images>> accessed 26 September 2021.

<sup>866</sup> Dima Jamali and Walaa El Safadi, 'Adaptations of CSR in the Context of Globalization the Case of the GCC' (2019) available: <<https://www.intechopen.com/chapters/63208>> accessed 24 September 2021.

the area of CSR disclosure since post the adoption of the 2006 Code, a higher number of companies disclose the degree of application of CSR in their business practices.<sup>867</sup>

A recent report on the Middle East and North Africa (MENA) CSR practices, carried out by Cicero and Bernay, in corporation with YouGov,<sup>868</sup> found that Saudi Arabia, along with the UAE is at the forefront of CSR implementation.<sup>869</sup> More specifically the survey's findings vis-à-vis Saudi Arabia indicated that:

"• 41 percent of respondents there are familiar with CSR

- CSR is not just important for the organizations but is also a factor that job seekers consider. • This was marked as an important criterion for 70% of executives in KSA who are fully aligned with this statement
- Of the executives surveyed in Saudi Arabia, 90% possessed an intrinsic understanding of the scope of CSR
- 58% deemed CSR to be integral for their businesses"<sup>870</sup>

These findings are encouraging; however, they should not take away from the concerns that 'currently there is little regulation in Saudi Arabia which could prompt a structured approach to CSR'.<sup>871</sup> There is some empirical data suggesting that while Saudi Arabian customers would look favourably on a company that incorporates CSR values in its policies, whether the company does so will not influence their buying habits. What is more, data suggests that Saudi Arabian customers are mainly influenced by the price of the products they buy and being able to offer the lowest price gives a company the decisive competitive edge.<sup>872</sup> This is concerning because it suggests that companies will not have incentives to introduce CSR because doing so will necessarily mean that in order to keep their profit margins they have to increase the price at which they are selling. Simply put, companies must satisfy their shareholders as well as their consumers and they have little room to accommodate sustainability concerns and other CSR-related expenses.

The lack of pressure from customers or rather, the pressure to provide low prices is complemented by a general perception that '[d]ue to the cultural heritage, ... both in the business community and the public at large, that social responsibility and welfare is the primary role of government.'<sup>873</sup> This has indeed influenced the behaviour of companies, which, along with their customers believed that CSR should be the duty of the government.<sup>874</sup>

While the attitudes have slowly started to change, particularly with the influx of young people that have been educated abroad, many of the areas traditionally important from a CSR perspective are considered lagging behind the Western world.

<sup>867</sup> Murya Habbash, 'Corporate governance and corporate social responsibility disclosure: Evidence from Saudi Arabia' (2016) 12(4) Social Responsibility Journal 740, available: <DOI: 10.1108/SRJ-07-2015-0088> accessed 26 September 2021.

<sup>868</sup> Cicero and Bernay and YouGov, 'MENA CSR Survey Report 2020' (2020) available: <<https://saudigazette.com.sa/article/604634>> <[https://cbpr.me/csr/Cicero\\_and\\_Bernay\\_x\\_YouGov\\_First\\_Annual\\_MENA\\_CSR\\_Survey\\_Report\\_2020\\_English.pdf](https://cbpr.me/csr/Cicero_and_Bernay_x_YouGov_First_Annual_MENA_CSR_Survey_Report_2020_English.pdf)> accessed 3 October 2021.

<sup>869</sup> Saudi Gazette, 'KSA leads by example in CSR adoption and integration' (2020) available: <<https://saudigazette.com.sa/article/604634>> accessed 3 October 2021.

<sup>870</sup> *ibid.*

<sup>871</sup> Nuha Hamed Alofi, 'Corporate Social Responsibility in Saudi Arabia: Perception, Disclosure and Impact on Firm Performance' (2020) PhD Thesis, De Montfort University Leicester Business School, available: <<https://dora.dmu.ac.uk/bitstream/handle/2086/21153/Thesis%2010.pdf?sequence=1&isAllowed=y>> accessed 28 September 2021, 111.

<sup>872</sup> *ibid.*, 112.

<sup>873</sup> Tamkeen Sustainability Advisors, 'The Evolution of CSR in Saudi Arabia: The Changing Landscape' (2010) Tamkeen Sustainability Advisors, 7.

<sup>874</sup> Nuha Hamed Alofi, 'Corporate Social Responsibility in Saudi Arabia: Perception, Disclosure and Impact on Firm Performance' (2020) PhD Thesis, De Montfort University Leicester Business School, available: <<https://dora.dmu.ac.uk/bitstream/handle/2086/21153/Thesis%2010.pdf?sequence=1&isAllowed=y>> accessed 28 September 2021, 120.

This is especially evident in the area of employee welfare and labour relations where the Kingdom registers one of its lowest scores on the CSR index.<sup>875</sup> For example, companies' diversity policies, women's rights to work and discrimination at the workplace more generally sets Saudi Arabia behind the Western world and the UK in particular.<sup>876</sup>

It is also interesting to note that many companies do not see the value of CSR and continue to consider the practice something that has to be done to appease the government and assist it in its CSR agenda as well as to help the community. This clearly shows that Saudi business is still laboring under the confusion that CSR is a placeholder for charity. The preceding discussion has shown that such an approach to CSR would be erroneous. What is particularly relevant here is that thinking of CSR as a form of Zakat focuses the attention of companies onto the local customers, their needs and concerns, and little to no attention is given on issues of climate change and sustainability. This conclusion is supported by empirical data suggesting that many companies do not have knowledge and information about, neither they are inclined to scrutinize the sustainability in their supply chains.<sup>877</sup> This is in stark contrast with companies in the West<sup>878</sup> while remaining in line with the main objectives of the Saudi companies, which are price competition and building a good relationship with one's trade partners.<sup>879</sup> The latter should be seen in the context of the Saudi reality where most businesses are still family-run and it is often 'expected that interpersonal relationships between managers are important for winning orders, innovation, and collaboration'.<sup>880</sup>

Another factor that should be taken into account is that customers from different income categories are likely to perceive CSR issues such as Fairtrade food products or reducing carbon emissions in a different way. To this end, middle-class customers or people with a larger disposal income are more likely to support CSR policies rather than their poorer counterparts. This finding holds true across jurisdictions.<sup>881</sup> To this end, it is relevant to note that the population of Saudi Arabia has a considerable proportion of poor people.<sup>882</sup> According to a 2017 study, the official poverty rate in the country stood at 12.7% although it is thought that 'the number of people struggling financially could be far higher, with a forecasted 4 Million Saudi's living in poor quality urban housing, while 60% will be unable to afford their own homes in urban centers'.<sup>883</sup> This clearly suggests that there are a lot of people in the country that are potential consumers, yet they have no means to afford the higher prices accompanying CSR practices.

Further to this, there is the question that it is hard to convince the local population that it is more important to care about the needs of poor people who live in a geographically distant location (for example, in Brazil or Ecuador) than about those of your poorer compatriots. This issue may arise because CSR requires a certain amount of money to be dedicated to its goals.<sup>884</sup>

<sup>875</sup> Abbas J Ali and Abdulrahman Al-Aali, 'Corporate Social Responsibility in Saudi Arabia' (2012) 19(4) Middle East Policy 40.

<sup>876</sup> Nuha Hamed Alofi, 'Corporate Social Responsibility in Saudi Arabia: Perception, Disclosure and Impact on Firm Performance' (2020) PhD Thesis, De Montfort University Leicester Business School, available: <https://dora.dmu.ac.uk/bitstream/handle/2086/21153/Thesis%2010.pdf?sequence=1&isAllowed=y> accessed 28 September 2021, 121.

<sup>877</sup> *ibid*, 126.

<sup>878</sup> Nuha Hamed Alofi, 'Corporate Social Responsibility in Saudi Arabia: Perception, Disclosure and Impact on Firm Performance' (2020) PhD Thesis, De Montfort University Leicester Business School, available: <https://dora.dmu.ac.uk/bitstream/handle/2086/21153/Thesis%2010.pdf?sequence=1&isAllowed=y> accessed 28 September 2021, 123.

<sup>879</sup> *ibid*, 123-124.

<sup>880</sup> Nuha Hamed Alofi, 'Corporate Social Responsibility in Saudi Arabia: Perception, Disclosure and Impact on Firm Performance' (2020) PhD Thesis, De Montfort University Leicester Business School, available: <https://dora.dmu.ac.uk/bitstream/handle/2086/21153/Thesis%2010.pdf?sequence=1&isAllowed=y> accessed 28 September 2021, 124.

<sup>881</sup> Z Tian et al, 'Consumer responses to corporate social responsibility (CSR) in China' (2011) 101(2) Journal of business ethics 197.

<sup>882</sup> Nuha Hamed Alofi, 'Corporate Social Responsibility in Saudi Arabia: Perception, Disclosure and Impact on Firm Performance' (2020) PhD Thesis, De Montfort University Leicester Business School, available: <https://dora.dmu.ac.uk/bitstream/handle/2086/21153/Thesis%2010.pdf?sequence=1&isAllowed=y> accessed 28 September 2021, 126.

<sup>883</sup> *ibid*.

<sup>884</sup> V Kasturi Rangan, Lisa Chase and Sohail Karim, 'The Truth About CSR' (2015) Harvard Business Review, available: <https://hbr.org/2015/01/the-truth-about-csr> accessed 3 October 2021.

It also requires that the way this money is spent be transparent and clear for society.<sup>885</sup> Empirical data from interviews indicate that a majority of Saudi Arabian commerce does not dedicate a formal budget for CSR activities and almost the same amount of companies does not evaluate CSR activities to gauge how effective they are.<sup>886</sup> At the same time, most interviews felt that if CSR was something that is being done for the benefit of the local community, it would make sense to continue doing it even in a period of an economic crisis.<sup>887</sup>

It is submitted, therefore, that unless these issues are solved, Saudi Arabia's CSR agenda will not catch up with that of the West. Equally, if CSR becomes a formal obligation of the companies, this may impose undue pressure on the smaller firms to act in a way that will be perceived virtuous from the perspective of CSR. How this will play out in practice is to be seen but this author's prognosis is that there will be some turmoil and re-adjustment of the stakes companies have in their respective industries and the market more generally.

#### 4.5.2 Corporate Regulation in Saudi Arabia

On an international comparative basis, corporate law in Saudi Arabia is relatively thin. Several areas are not directly regulated, with the legal framework not having many of the other limitations which are usually and frequently seen in other jurisdictions. One of the foundation instruments which regulates company law in Saudi Arabia is the Saudi Company Law (SCL),<sup>888</sup> which was originally passed in 1965 and was the "first law to regulate firm behaviour in Saudi Arabia".<sup>889</sup> Alongside the Saudi Corporate Governance Regulations – considered below – the SCL is a cornerstone of Saudi corporate law. Although it is currently slated to be amended and reformed in line with the considerable expansion of the Saudi economy which continues to take place, the law remains the principal legal instrument through which companies are regulated in Saudi Arabia.<sup>890</sup> The law covers a wide variety of different areas which are relevant to carrying out business in Saudi Arabia including rules surrounding the creation of businesses, the sharing of profit and loss, capital levels, audit processes, the makeup and rules relating to a board of directors, reporting and accounting requirements and registration processes, among many other areas.<sup>891</sup> Article 66 of the SCL prescribes that company boards of directors must have a minimum of three members, while there is no maximum prescribed.<sup>892</sup> Commentators note that while the SCL has allowed for an expansion of the Saudi corporate sector and has resulted in creating a business environment which has produced economic prosperity for the nation, there are several areas where greater regulation is needed. Indeed, while there have been reform efforts since 1965, these have been comparatively minimal – with a number of commentators advocating for a greater degree of reform.<sup>893</sup> As has been specifically outlined by Alhamzi:<sup>894</sup>

While the SCL requires a minimum number of board members, it does not give a maximum. Nor does it specify the proportion of non-executive directors needed on the board. Hence, the SCL does not address important contemporary issues in corporate governance. Moreover, it does not specify the required accounting standards and procedures necessary for delivering financial statements.

<sup>885</sup> Wim Dubbink, Johan Graafland and Luc van Liedekerke, 'CSR, transparency and the role of intermediate Organizations' (n.d.) available: <[https://www.montesquieu-instituut.nl/9353000/1/j4nvih7l3kb9l1rw\\_j9vvi72dlowskug/vjclg3i5c7dc/f=/artikel\\_johan\\_graafland.pdf](https://www.montesquieu-instituut.nl/9353000/1/j4nvih7l3kb9l1rw_j9vvi72dlowskug/vjclg3i5c7dc/f=/artikel_johan_graafland.pdf)> accessed 3 October 2021.

<sup>886</sup> Nuha Hamed Alofi, 'Corporate Social Responsibility in Saudi Arabia: Perception, Disclosure and Impact on Firm Performance' (2020) PhD Thesis, De Montfort University Leicester Business School, available: <<https://dora.dmu.ac.uk/bitstream/handle/2086/21153/Thesis%2010.pdf?sequence=1&isAllowed=y>> accessed 28 September 2021, 126.

<sup>887</sup> *ibid.*

<sup>888</sup> Saudi Company Law (SCL) 1965

<sup>889</sup> Anthony Shoult, *Doing Business with Saudi Arabia* (GMB Publishing, London, 2006) 34.

<sup>890</sup> Hesham Al Homoud, *The Proposed KSA Companies Law*, (Al Tamimi, 2011).

<sup>891</sup> MA Ramady, *The Saudi Arabian Economy: Policies, Achievements, and Challenges* (Springer, Washington, 2010)

<sup>892</sup> Saudi Company Law (SCL) 1965 66

<sup>893</sup> Youseif al-Qassam al-Zahrani, *Examination of the Legal Ambiguities of Remedies for Shareholders under the Saudi Company Law No. 1965* (2015) 29(4) *Arab Law Quarterly*; see also Faisal Bin Hammad, *The Vision 2030: Corporate Governance Perspective in Saudi Arabia* (2019) 9(1) *Journal of System and Management Sciences*.

<sup>894</sup> Anas Alhamzi, *Exploring the Factors and Effects of Corporate Social Responsibility Disclosure in Saudi Arabia*, Doctors Thesis, 2017, 72.



It is perhaps unsurprising that the SCL contains very little with contemporary relevance to the principles of CSR. Given the age of the SCL there is no direct relevance to SCL, while there are few concrete protections afforded under the framework. For instance, one further major area which has been identified as lacking under the current framework are shareholder rights, specifically the remedies available to minority shareholders. Al Zahrani notes that the framework which allows shareholders to enforce their rights from the minority is poorly developed, with the result being that minority shareholders are not effectively protected. Al Zahrani concludes that the statutory remedies under the SCL are not effective in protecting minority shareholders in listed companies and allowing them to defend their interests.<sup>895</sup> As Al Zahrani concludes expressly and specifically:<sup>896</sup>

As a result, minority shareholders either do not exercise or do not enjoy certain rights, and they therefore forfeit their natural and intended role under this law, which is to oversee and control the activities of the board of the company, and in so doing to defend their interests. Despite the Saudi government intentions to conduct a range of reforms, particularly in the field of trade, SCL 1965 has not been modified to any significant degree; it is still not sufficiently effective, and does not address many important points relating to shareholders' rights in listed companies.

With shareholder rights being an increasingly important part of CSR globally – both in terms of being legally required as part of CSR frameworks and indeed corporate governance structures – the failure of the Saudi framework to account for ever important minority shareholder interests is indicative of the broader neglect that the framework has for CSR principles. Many of the regulatory steps in the area – whether relevant to CSR or not – exist either in the Corporate Governance Regulations or have been adopted voluntarily by Saudi companies.

#### 4.5.2 Corporate Regulation in Saudi Arabia: CSR

As has been discussed above, corporate regulation in Saudi Arabia is relatively sparse, even outside of the purview of CSR. One area however where some degree of progress has been made is in relation to tackling corruption and putting in place a stricter and more comprehensive framework surrounding how directors' duties should be exercised. For instance, the passing of the Saudi Corporate Governance (CG) Code 2006<sup>897</sup> put in place a requirement that all companies must establish an audit committee. This audit committee must have at least three non-executive directors and one financial accounting director. Broadly, this was viewed positively not just in the sense of improved corporate governance rules but as a further integration of CSR into Saudi corporate culture. As was noted by Jamali and El Safadi "this code had a positive impact on CSR disclosure with a higher number of companies registered by research studies post its application".<sup>898</sup>

Scholars have indicated a degree of dissatisfaction with the existing framework for other areas of the law, for instance with relation to corporate criminal liability in Saudi Arabia.<sup>899</sup> Even where law exists, understanding it and the way it operates is difficult due to the fact that the legal framework itself is relatively opaque. Despite the recent establishment of specialized commercial courts in the Kingdom, not all corporate cases and statistics be published – making it more difficult to understand the substantive operation of the corporate law in the country.<sup>900</sup> Although charity has been the primary focus of what could be described as a socially relevant corporate culture in Saudi Arabia, this is not the only area in which Saudi companies have sought to engage in socially beneficial affairs. One such area which has been recognised is the environment. In 1981, Saudi Arabia created the Meteorology and Environmental Protection Administration and the Committee Environmental Protection. This creation represented an understanding and an acknowledgement of the importance of taking steps to pursue environmental protection, as well as the need to address "societal responsibility" in the government's actions.<sup>901</sup>

<sup>895</sup> Youseif al-Qassam al-Zahrani, Examination of the Legal Ambiguities of Remedies for Shareholders under the Saudi Company Law No. 1965 (2015) 29(4) Arab Law Quarterly 343

<sup>896</sup> Youseif A. M. Al-Zahrani, Rights of Shareholders under Saudi Company Law 1965, Doctors Thesis, 2013, i.

<sup>897</sup> *Saudi Corporate Governance (CG) Code 2006*

<sup>898</sup> Dima Jamali and Walaa El Safadi, Adaptations of CSR in the Context of Globalization the Case of the GCC (2019) *Globalisation* pp 123-143, 129.

<sup>899</sup> Mohammed Fahad Aljiday Alsubaie, 'Corporate criminal liability in Saudi Arabia' in *Research Handbook on Islamic Law and Society* (Elgar Online, 2018).

<sup>900</sup> *ibid.*

<sup>901</sup> Lassaad Ben Mahjoub and Collins G. Ntim, Disclosure about corporate social responsibility through ISO 26000 implementation made by Saudi listed companies (2019) 6(1) *Cogent Business Management* [23]

Promisingly, the government has in 2020 produced a draft law for reform of the SCL.<sup>902</sup> This was welcomed by industry commentators and analysts, with some beginning to assume that the promised reforms would continue to be delayed indefinitely.<sup>903</sup> Indeed, imminent reforms have been promised in Saudi corporate law consistently for the past ten years.<sup>904</sup> While commentators have argued that the changes to Saudi law are likely to be “significant”, the impact in the area of CSR is considerably minimal.<sup>905</sup> The most relevant changes relate to internal procedures – for instance directors’ disclosure requirements for potential conflicts of interest and the manner and scope in which dividends should be distributed – however there are few protections for minority shareholders. It is worth noting that the draft framework, at the time of writing, has not been passed into law, with this not expected to take place until 2021 at the earliest. At the time of writing, the exact impact of this consultation process is difficult to discern, primarily because several aspects of the draft framework remain in consideration. That said, perhaps the most welcome development is that this is an example of the desire of the Saudi Arabian authorities to put in place a more effective corporate environment – including with CSR elements. With consultations continuing, there is the potential for far reaching changes to take place.

#### 4.5.3 CSR: Saudi Arabia and International Law

One area where attempts have been made to make inroads regarding CSR in Saudi Arabia has been through international law. International legal agreements and supranational instruments have played a crucial role in furthering CSR aims across the globe in a variety of areas, for instance with relation to human rights.<sup>906</sup> While the results have up until this stage been relatively modest, Saudi companies have shown a desire to implement international legal standards with regard to CSR in some instances.

One example which illustrates the degree to which international law and regulations can have a domestic influence in Saudi Arabia is in relation to standards. The International Organisation for Standardisation sets standards in relation to a variety of fields – from product quality to food safety standards.<sup>907</sup> One such standard which has relevance to CSR and has been implemented in companies in Saudi Arabia is the ISO 26000, a Social Responsibility standard which seeks to improve the operations of businesses and organisations with regard to social responsibility.<sup>908</sup> The standard lays out seven ‘key principles’ of socially responsible behaviour, which are: Accountability, Transparency, Ethical behaviour, Respect for stakeholder interests, Respect for the rule of law, Respect for international norms of behaviour and Respect for human rights.<sup>909</sup> In a study focusing on the implementation of ISO 26000 in Saudi corporate society, Mahjoub and Ntim showed a notional increase in CSR reporting as a result of the international standard.<sup>910</sup> Using a CSR reporting index to determine the degree to which ISO 26000’s seven core subjects were being achieved at a domestic level in Saudi Arabia, the researchers found that all companies surveyed had reference to the ISO standard to some extent, although they did acknowledge that in some instances “reporting levels were weak”.<sup>911</sup> This indicates that international law has had some degree of an impact, albeit relatively minimal. This is supported by other researchers in the field. Alotaibi and Hussainey have found that while the standard has made an impact, it was relatively minimal.<sup>912</sup> As was outlined by the authors directly, while the results of the international integration have been “acceptable... showing an increase in CSR reporting”, there was a large degree of scope for further integration to be pursued.<sup>913</sup> Similarly, a 2016 study by Habbash showed improvements in CSR disclosure which

<sup>902</sup> Ibrahim Bakhurji and Reem Albakr, Overview: New Draft Saudi Arabian Companies Law (White and Case, 2020)

<sup>903</sup> *ibid.*

<sup>904</sup> Hesham Al Homoud, The Proposed KSA Companies Law, (Al Tamimi, 2011).

<sup>905</sup> Ibrahim Bakhurji and Reem Albakr, Overview: New Draft Saudi Arabian Companies Law (White and Case, 2020) [2]

<sup>906</sup> Robert McCorquodale, Corporate Social Responsibility and International Human Rights Law (2009) 87(2) *Journal of Business Ethics*

<sup>907</sup> ISO, The ISO Story, International Organisation for Standardisation, 2020, Available at <<https://www.iso.org/about-us.html>> Accessed November 26, 2020.

<sup>908</sup> ISO 26000 2010.

<sup>909</sup> *ibid.*

<sup>910</sup> Lassaad Ben Mahjoub and Collins G. Ntim, Disclosure about corporate social responsibility through ISO 26000 implementation made by Saudi listed companies (2019) 6(1) *Cogent Business Management* [23]

<sup>911</sup> *ibid.*

<sup>912</sup> Khaleed Omair Alotaibi and Khaled Hussainey, Determinants of CSR disclosure quantity and quality: Evidence from non-financial listed firms in Saudi Arabia (2016) 13(4) *International Journal of Disclosure and Governance*

<sup>913</sup> *ibid.*, [87]

were higher than average, an indication of the effectiveness of the standard in CSR corporate culture in Saudi Arabia.<sup>914</sup> It is important to note that these standards are ultimately voluntary and do not have the character of ‘international law’. Indeed, the ISO standard 26000 explicitly states that it provides “guidance rather than requirements unlike some other well-known ISO standards”.<sup>915</sup> However, they represent a useful and illustrative example of where CSR norms have been established at an international level and have found their way into Saudi Arabian domestic use through ISO standards.

#### 4.5.4 Overcoming Challenges to the Adoption of CSR in Saudi Arabia

Although some degree of progress is being made, it is clear that the challenges towards the adoption of CSR in Saudi Arabia remain pervasive and enduring. As has been outlined above and particularly on the basis of an international comparison with world-leading regions such as Europe and North America, these challenges are many and varied – from a lack of desire in implementation towards a lack of understanding of the nature of CSR and what it seeks to do – they tend to stem from a failed appreciation of what CSR actually is and the positive impact that it can have once implemented, both for the company which implements it and for broader society.<sup>916</sup> Alotabi notes that unlike in Europe, North America and Asia, the lack of domestic appreciation for CSR in Saudi Arabia is significantly influenced by a lack of research into the topic in Saudi Arabia by companies and academics.<sup>917</sup> While there has been an extensive amount of research into CSR for decades now at an international level, more needs to be done at a domestic level so that the key tenets of CSR can be considered, discussed and adapted into a Saudi context.<sup>918</sup> Where CSR has been adapted, it has on occasion had the impact of erasing these underlying doubts – for instance in relation to the cost perceptions of CSR.<sup>919</sup> This has been the case internationally and would have the same impact in Saudi Arabia.<sup>920</sup> One of the major challenges – that members of the Saudi corporate sector and indeed the general public in Saudi Arabia feel that CSR has an overly significant western character which is inappropriate or inapplicable in a Saudi context – can be overcome by research and evaluation done on a ground level in the Kingdom so that the fundamental tenets of CSR can be applied. In relation to Saudi Arabia, Pinto and Allui indicated that a more concerted effort to encourage research and understanding of CSR domestically will give rise to a more sophisticated level of CSR integration in the country – with the primary means of encouraging CSR being through a concerted effort at building understanding.<sup>921</sup> As the authors noted specifically:<sup>922</sup>

Companies leaders, top management, and investors need to understand the meaning of CSR in decision-making and strategic planning and be more aware of the importance of CSR practices on companies’ performance. CSR activities enhance the importance of the CEO authentic leadership and performance of the company’s members.

The clear area in which additional steps need to be taken with regard to CSR is on the part of the government. As has been illustrated by the gradual legal reform efforts alongside broader statements such as those made at the G20 Summit in 2020 and under the purview of Saudi Vision 2020, there is a desire at a governmental level for a greater degree of social interaction and engagement on the part of the corporate sector. This is important considering governmental desire has been a major force in making CSR part of the status quo elsewhere. Therefore, the next major step in overcoming the underlying challenges to the penetration of CSR in Saudi society is for the government to take constructive action in boosting the comprehension of

<sup>914</sup> Murya Habbash, Corporate governance and corporate social responsibility disclosure: evidence from Saudi Arabia (2016) 12(4) Social Responsibility Journal pp 740-754,

<sup>915</sup> ISO, ISO 26000: Social Responsibility, ISO, Available at <<https://www.iso.org/iso-26000-social-responsibility.html>> Accessed November 26, 2020.

<sup>916</sup> Luisa Pinto and Alwiya Allui, Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organizations (2020) 7(11) Journal of Asian Finance, Economics and Business, 265

<sup>917</sup> Ali Alotabi, Francis Edum-Fotwe and ADF Price, Critical Barriers to Social Responsibility Implementation within Mega-Construction Projects: The Case of the Kingdom of Saudi Arabia (2019) 11(6) Sustainability

<sup>918</sup> *ibid.*

<sup>919</sup> Luisa Pinto and Alwiya Allui, Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organizations (2020) 7(11) Journal of Asian Finance, Economics and Business. See also Moneera Abdullah Alwahaibi, Mapping the Territory of Saudi Corporate Social Responsibility, Doctorate Thesis: Brunel Business School, 2018.

<sup>920</sup> L Shen, K Govindan, and M Shankar, Evaluation of Barriers of Corporate Social Responsibility Using an Analytical Hierarchy Process under a Fuzzy Environment—A Textile Case (2015) 7 Sustainability

<sup>921</sup> Luisa Pinto and Alwiya Allui, Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organizations (2020) 7(11) Journal of Asian Finance, Economics and Business

<sup>922</sup> *ibid.*, 265.



what amounts to CSR and the nature of CSR policies – and how these can be applied, tailored and implemented in the Kingdom.

#### 4.6 A Path Towards the Legal Embrace of CSR

It is submitted that considering the existing problems with the Saudi Arabian CSR framework, the preferred approach in improving CSR standards across the country would be to put in place an exhaustive and comprehensive legal framework. Research shows that companies in developing countries with ‘emerging economies’ are less likely to embrace CSR than companies in established economies.<sup>923</sup> There are a variety of reasons for this. For instance, companies in established economies are likely to have a greater degree of financial stability, meaning that engaging in CSR activities carries with it less risk, while companies are clearly better resourced to fund CSR activities.<sup>924</sup> Similarly, research shows that customers and consumers in established or developed economies not only demand a greater degree of CSR activities from the corporate sector, but they are better resourced and better informed to make purchase decisions in favour of companies with a more well established CSR ethos and ideology.<sup>925</sup> As has been noted by Pinto and Allui, “in developing countries, in contrast with firms in developed countries, companies perceive less pressure from the public for CSR practices”.<sup>926</sup> As a result, voluntary schemes are likely to be more effective in established economies than in emerging economies.<sup>927</sup> Research into the prevalence of CSR in established economies shows that the corporate embrace of CSR tends to lead to a greater prevalence of CSR, with companies using their CSR credentials as a means of competing in a competitive market.<sup>928</sup> In emerging economies, where CSR is less prevalent – and even the community’s understanding of what amounts to CSR is less sophisticated – it follows that there will be less customer driven demand for putting in place CSR requirements.

Isaksson and Mitra's comparison of voluntary and mandatory CSR in their article entitled 'To Legislate or Not: That Is the Question— Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR' looked at the prevalence of voluntary CSR in established economies such as Sweden, Germany, Canada and Denmark, along with legislative CSR mandated in Mauritius, Indonesia and India.<sup>929</sup> The authors found that while Sweden had embraced a range of CSR standards on a voluntary basis, this was not necessarily the most effective means of moving towards CSR in every jurisdiction. This is the case with regard to Saudi Arabia. Indeed, the authors noted that the Indian experience of putting in place a comprehensive legislative framework to encourage CSR compliance was an effective one not only in encouraging CSR but in improving firm worth and benefiting companies.<sup>930</sup> Other studies show the clear benefit of legislatively mandated CSR in emerging countries.<sup>931</sup> Although there are a range of differences between India and Saudi Arabia, both remain emerging economies and both have relatively minimal compliance with CSR activities.<sup>932</sup> Saudi Arabia, like India, also has

<sup>923</sup> Lars Isaksson and Nayan Mitra, To Legislate or Not: That Is the Question—Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR, in *International Dimensions of Sustainable Management* (Springer, London, 2019).

<sup>924</sup> Lars Isaksson, Tim Kiessling and Michael Harvey, Corporate social responsibility: Why bother? (2014) 43(1) *Organisational Dynamics*

925 *ibid.*

<sup>926</sup> Luisa Pinto and Alwiya Allui, Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organizations (2020) 7(11) Journal of Asian Finance, Economics and Business, 265.

<sup>927</sup> Lars Isaksson and Nayan Mitra, To Legislate or Not: That Is the Question—Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR, in *International Dimensions of Sustainable Management* (Springer, London, 2019).

<sup>928</sup> *ibid.* See also Ameer Ishwarbhai Dave, Voluntary vs. Mandatory CSR (2017) IJIRMF 3(4)

<sup>929</sup> Lars Isaksson and Nayan Mitra, To Legislate or Not: That Is the Question—Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR, in *International Dimensions of Sustainable Management* (Springer, London, 2019).

930 *ibid.*

<sup>931</sup> Ameeta Jain, Monica Keneley and Dianne Thomson, Voluntary CSR disclosure works! Evidence from Asia-Pacific banks (2015) *Social Responsibility Journal* 11(1).

<sup>932</sup> Arab Weekly, Saudi Arabia is officially an emerging market, *Arab Weekly*, March 2019. Available at <  
[https://the arabweekly.com/saudi-arabia-officially-emerging-](https://the arabweekly.com/saudi-arabia-officially-emerging-market#:~:text=LONDON%20D%20Saudi%20Arabia%20is%20officially,in%20the%20kingdom's%20stock%20mark)  
[market#:~:text=LONDON%20D%20Saudi%20Arabia%20is%20officially,in%20the%20kingdom's%20stock%20mark](https://the arabweekly.com/saudi-arabia-officially-emerging-market#:~:text=LONDON%20D%20Saudi%20Arabia%20is%20officially,in%20the%20kingdom's%20stock%20mark)  
 et.> Accessed online December 13, 2020. See also Matt Egan, Saudi Arabia joins emerging market indexes, CNN Markets



a strong business tradition and both nations are going through a period of significant and perhaps unprecedented economic growth (in their national histories). Therefore, it is submitted that a legislative approach for encouraging CSR compliance in Saudi Arabia is the best and most effective method.

Clearly, despite a growth in the understanding of CSR at least in part in Saudi companies, more needs to be done before this is given a legal footing. In doing so, China provides a useful perspective to see how CSR can grow from having almost no presence in corporate society – whether voluntary or otherwise – to become a crucial component of the overarching corporate code framework.<sup>933</sup> Lehman, Lee and Xu note that the integration of CSR into China took place gradually in three broad stages.<sup>934</sup> The first took place in the 1990s, with CSR being initially introduced through international companies who had a supply chain presence in China. Here, the demand for CSR in China was driven by international companies with a supply chain presence in China, while this demand was in and of itself driven by consumer demand by the destination countries of these products.<sup>935</sup> Gradually, Chinese enterprises put in place their own CSR codes of conduct along with a wide variety of socially responsible standards and practices. As noted by Lehman, Lee and Xu “Some Chinese enterprises, which had joined the global supply chain, began to accept factory auditing by multinational corporations. The management of these export-oriented enterprises was the first social group contacting CSR concept”.<sup>936</sup> The Chinese Company Law 1994 was developed to reflect these changes in Chinese company culture; while no direct reference was had to CSR as a concept, a range of other areas were regulated including the rights of employees and the role of directors.<sup>937</sup> Article 15 of the 1994 Company Law laid out a requirement that “Companies must protect legal rights of employees, strengthen labour protection measures, and realize safe production; companies may through a variety of measures support employee education and training, and thereby improve the quality of employees”.<sup>938</sup> Article 16 also highlighted the socialist origin of prevailing Chinese attitudes towards the law and labour rights, by requiring that employees must be allowed to establish trade unions and that unions should be free to engage in any types of activities which seek to promote and safeguard the legal rights of the company’s employees.<sup>939</sup> However it was Article 14 which went the furthest in introducing the notion of CSR into society, doing so with reference to a corporate need to “confirm to business ethics”.<sup>940</sup>

Companies must comply with the law, conform to business ethics, strengthen the construction of the socialist civilisation, and subject themselves to the government and public supervision in the course of business

In this sense, the seed had been planted in the corporate law framework that the government had a role in regulating certain types of activities in company affairs – i.e. that the government believed that the role of companies was not purely to pursue profit and the interests of their shareholders.

The second stage of CSR integration into China took place at the turn of the millennium, where the notion of CSR was “introduced” to broader Chinese society.<sup>941</sup> However, this ‘introduction’ did not take place via legal compulsion, but was instead heavily debated in academic institutions, chambers of commerce, non-governmental organisations and other international entities with a major presence in China. Parallel to this, the government began to develop its own exploratory

Now, March 2019. Available at <<https://edition.cnn.com/2019/03/18/investing/saudi-arabia-emerging-market-ftse-russell/index.html>> Accessed online December 12, 2020.

<sup>933</sup> *China Companies Act* 2006 Article 5

<sup>934</sup> Lehman, Lee and Xu, Corporate Social Responsibility, Lehman Law, Available at <<http://www.lehmanlaw.com/resource-centre/faqs/corporate-social-responsibility/corporate-social-responsibility.html>> Accessed online November 19, 2020.

<sup>935</sup> Li-wen Lin, Corporate Social Responsibility in China: Window Dressing or Structural Change? (2010) 28(1) *Berkely Journal of International Law*.

<sup>936</sup> Lehman, Lee and Xu, Corporate Social Responsibility, Lehman Law, Available at <<http://www.lehmanlaw.com/resource-centre/faqs/corporate-social-responsibility/corporate-social-responsibility.html>> Accessed online November 19, 2020

<sup>937</sup> L Lin, Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China (2019) Oxford Faculty of Law Blog

<sup>938</sup> *China Company Law* 1994 Article 15

<sup>939</sup> *ibid*, Article 16.

<sup>940</sup> Article 14

<sup>941</sup> *ibid*.

committees which looked at the notion of CSR and how this could be better implemented into corporate culture in China.<sup>942</sup> It is important to note at this stage that the development of these committees did not come about purely through altruistic motives; the Chinese government realised the value of undertaking CSR practices and the impact that this would have on boosting Chinese trade at a time of rapid globalisation.<sup>943</sup> The CSR practices which were undertaken have been shown to have a significant economic value to China – a value which continues to be sustainable in the present day.<sup>944</sup>

The third phase began in 2004 and looked to incorporate a greater degree of regulation in order to achieve CSR objectives. The value of pursuing CSR objectives was made clear, both in terms of economic benefit along with a changing corporate culture which was gradually more accepting of CSR practices becoming the norm in China.<sup>945</sup> As was outlined by Lehman, Lee and Xu “Chinese government departments, industries and enterprises all have realized that developing CSR is an effective means to build a harmonious society, carry out the scientific approach to development and realize sustainable development. Accordingly, they have taken a series of positive measures to promote the maturity of CSR movement”.<sup>946</sup> The most notable step in this process was the development of the China Companies Act 2006<sup>947</sup> which made China “first country in the world that expressly writes the phrase of ‘corporate social responsibility’ into its corporate statute”.<sup>948</sup> The result – albeit with CSR taking a different form in some extent to that prevalent in the West – has been a gradual entrenchment of CSR practices in Chinese society.<sup>949</sup> As has been shown elsewhere – both in relation to China and other countries where CSR practices have been adopted – as a country becomes wealthier and its inhabitants become more economically powerful, the importance of CSR to the residents of the country grows.<sup>950</sup> As outlined by Biswas and Tortajada in 2020:<sup>951</sup>

As China's new middle-class flourishes, demand for CSR will only grow. Well aware of global norms, middle-class Chinese expect safer products, better services and a healthier environment. They are no longer willing to tolerate companies that prioritise profits over human and environmental welfare.

As China continues to grow economically powerful, CSR will gain a more entrenched place on the corporate landscape.

Indeed, China provides a number of useful comparative points with Saudi Arabia. Much like Saudi Arabia, China has for decades been saddled with a number of prominent human rights concerns, many of which are directly relevant in labour law.<sup>952</sup> Common international perspectives on China and Saudi Arabia with regard to corporate and labour law focus on unequal treatment, poor labour laws and a lack of limitations on corporate action.<sup>953</sup> As noted by Liu “The recent growth of

<sup>942</sup> Lehman, Lee and Xu, Corporate Social Responsibility, Lehman Law, Available at <http://www.lehmanlaw.com/resource-centre/faqs/corporate-social-responsibility/corporate-social-responsibility.html> Accessed online November 19, 2020

<sup>943</sup> *ibid.*

<sup>944</sup> Dongyong Zhang, Stephen Morse and Qiaoyun Ma, Corporate Social Responsibility and Sustainable Development in China: Current Status and Future Perspectives (2019) 11 *Sustainability* pp. 2-23.

<sup>945</sup> Kun Li, Nasrin R. Khalili and Weiquan Cheng, Corporate Social Responsibility Practices in China: Trends, Context, and Impact on Company Performance (2019) 11 *Sustainability* pp 2-19.

<sup>946</sup> Lehman, Lee and Xu, Corporate Social Responsibility, Lehman Law, Available at <http://www.lehmanlaw.com/resource-centre/faqs/corporate-social-responsibility/corporate-social-responsibility.html> Accessed online November 19, 2020

<sup>947</sup> *China Companies Act* 2006 Article 5

<sup>948</sup> L Lin, Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China (2019) Oxford Faculty of Law Blog

<sup>949</sup> Kun Li, Nasrin R. Khalili and Weiquan Cheng, Corporate Social Responsibility Practices in China: Trends, Context, and Impact on Company Performance (2019) 11 *Sustainability* pp 2-19.

<sup>950</sup> *ibid.* See also Eliza Sharma, a review of corporate social responsibility in developed and developing nations (2019) 26(4) *Corporate Social Responsibility and Environmental Management* pp 712-720

<sup>951</sup> Asit Biswas and Cecilia Tortajada, The evolution of CSR in China, *The Bangkok Post*, January 2020, Available at <https://www.bangkokpost.com/business/1829654/the-evolution-of-csr-in-china> Accessed November 19, 2020.

<sup>952</sup> Li-wen Lin, Corporate Social Responsibility in China: Window Dressing or Structural Change? (2010) 28(1) *Berkely Journal of International Law*.

<sup>953</sup> See Miramar Damanhour, Saudi Labour Law in Theory and in Practice (2016) Paper Proceedings of Advances in Women's Studies, Mohammed Fahad Aljiday Alsubaie, ‘Corporate criminal liability in Saudi Arabia’ in *Research Handbook on Islamic Law and Society* (Elgar Online, 2018); Antoinette Vlieger, Domestic Workers in Saudi Arabia and

the Chinese CSR initiatives deserves an analysis of the CSR development in China, especially given that China's international image is usually associated with human rights abuses, substandard products, sweatshops, and serious environmental pollution".<sup>954</sup> While many of these issues remain pervasive and warrant the degree of international focus and criticism which has been made of them, the progress in China shows how corporate culture can evolve and develop. While the Chinese experience does highlight the many societal differences between China and Saudi Arabia, parallels can still be drawn. For instance, the initial kernel of development for China's CSR policies was heavily grounded in socialist ideology; it is no surprise that the first steps taken towards building a socially responsible corporate climate in China were grounded in workers' rights and the permission for trade unions to operate freely.<sup>955</sup> While Saudi Arabia clearly lacks the same degree of commitment to socialist ideals as China, the prevalence of religion in Saudi society could be a similarly strong catalyst for CSR.

The Chinese experience also has lessons for those in Saudi society who may be reluctant to adopt a legal framework which is grounded in Western legal history and evolution. Indeed, while CSR grew in China as a direct consequence of that country's involvement in Western supply chains, it too has developed to a point where it has been tailored to the Chinese legal system. This has taken place primarily through judicial interpretation. As has been noted by Lin, Chinese courts have adopted an expansive approach which is less reliant on the Western concept of directors' duties: "Chinese courts have innovatively applied CSR in various contexts far beyond the traditionally Western-led focus on directors' fiduciary duties. The Chinese experience suggests that the significance of the CSR law is more of a judicial review standard than a corporate behaviour standard, which further confirms the importance of judicial capacity in implementing the vague law."<sup>956</sup> While this is surely a welcome sign for Saudi advocates of CSR – or indeed anyone seeking to implement a greater degree of CSR in their own corporate law frameworks – it should not be surprising given the broad range of activities which are considered to fall under the modern CSR banner.<sup>957</sup> CSR is by its very nature malleable and potentially subject to consistent change and growth<sup>958</sup> – the tightened focus on the environment as a primary area of CSR in recent years is an example of this.<sup>959</sup>

In a Saudi Arabian context, it is clear how CSR concepts could reflect many of the underlying principles of a legal framework which regulates corporate conduct – universality, clear and transparent standards and improved corporate behaviour – while also coming together to form a framework which is reflective of the nation's cultural and societal norms. The role of Islam, prevalent both in Saudi law and in broader society, could be clearly woven into the CSR framework in much the same manner as how socialism and workers' rights were the catalyst for the original development of CSR in China, which then led to a greater degree of organic changes and adoption of CSR practices.<sup>960</sup> Indeed, as with any domestically incorporated CSR framework, the power to amend, control and reform underlying CSR practices would lie in the hands of Saudi authorities in both the short and the longer term. Scholars including Conrad and Harper Ho<sup>961</sup> note that the most effective CSR movements in countries across the world are those which reflect the underlying "culture, history and social philosophies" of the country in question.<sup>962</sup> By doing so in a legal manner, Saudi legislators would be able to have a heightened degree of control over the evolution and development of CSR in the country than if this was left up to the individual companies, many of whom have

the Emirates: A Socio-legal Study on Conflicts (Quid Pro LLC, 2012); Li-wen Lin, Corporate Social Responsibility in China: Window Dressing or Structural Change? (2010) 28(1) Berkely Journal of International Law.

<sup>954</sup> Li-wen Lin, Corporate Social Responsibility in China: Window Dressing or Structural Change? (2010) 28(1) Berkely Journal of International Law.

<sup>955</sup> See China Company Law 1994 Articles 14-16

<sup>956</sup> *ibid*, [4]

<sup>957</sup> Ki-Hoon Lee, David M. Herold and Ae-Li Yu, Small and Medium Enterprises and Corporate Social Responsibility Practice: A Swedish Perspective (2016) 23(2) Corporate Social Responsibility and Environmental Management pp.88-99.

<sup>958</sup> *ibid*.

<sup>959</sup> Samuel O. Idowu, Catalina Sitnikov, Dalia Simion and Claudiu George Bocean, *Current Issues in Corporate Social Responsibility: An International Consideration* (Springer: London, 2018)

<sup>960</sup> Dongyong Zhang, Stephen Morse, Uma Kambhampati and Bingjun Li, Evolving Corporate Social Responsibility in China (2014) 6 Sustainability pp 7646-7665.

<sup>961</sup> Virginia Harper Ho, Corporate Social Responsibility in China: Law & the Business Case for Strategic CSR (2015) 12(1) S. Car. J. Int'l L. & Bus.

<sup>962</sup> Jessica Marie Conrad, The Business of Business: Social Responsibility Initiatives in China and the United States (2013) 41 Georgia Journal of International and Competitive Law, 772.

a significant international influence. Therefore, from a domestic perspective, such an approach is likely to be more favoured by Saudi authorities due to the degree of control which they would have over its development and continued maintenance.

#### 4.7 CSR and Zakat: A Traditional Vehicle to Contemporary CSR?

One way in which CSR could be pursued more effectively in a Saudi Arabian context is to have reference to traditional principles of Zakat.<sup>963</sup> As has been outlined above, some scholars have pointed out the degree to which CSR has struggled to gain a foothold in the Middle East due to the influence of Zakat, arguing that CSR's failure to become widely adopted in the Middle East is due to Zakat filling the vacuum where CSR might otherwise have been in other countries.<sup>964</sup> This does not however mean that CSR and Zakat need to be looked at in a mutually exclusive fashion. Indeed, a number of scholars have noted that there is a need to change the narrative surrounding CSR in the Middle East to ensure that it does not appear to be 'replacing' Zakat or altering the way in which Zakat functions.<sup>965</sup> Al-Malkawi and Javaid have argued that Saudi authorities pushing for a greater degree of CSR integration should do so using Zakat as a 'proxy', thereby expanding upon existing Zakat principles rather than giving an indication that they are being restricted or otherwise changed.<sup>966</sup> Alfakhri et al completed an extensive study taking into account the opinions of members of the Saudi public engaged in a variety of different industries and professions to see the degree to which they supported CSR practices, finding that there was widespread support for CSR – provided that the definition fits within a Saudi context and that the concept was well explained.<sup>967</sup> Indeed, the researchers found that contributions to the community were considered to be more important than the three other pillars of Carrol's CSR pyramid – ethical responsibility (doing what is right), legal responsibility (obeying the law) and economic responsibility (ensuring that the company is profitable).<sup>968</sup> The authors noted expressly that Saudi respondents were less enthusiastic about marketing campaigns which trumpeted a company's CSR credentials than they were about real and effective efforts to make changes at the ground level. As was outlined expressly:<sup>969</sup>

This finding also raises challenges for western multinationals which are more oriented toward public displays. The findings have some implications for future study. For example, CSR managers should understand the local values in implementing CSR strategy. In particular, multinational companies' managers should stress the value orientation of CSR in a country where the business operates. This is due to the fact that one strategy may not fit for all countries.

This, therefore, shows that there is an appetite and a desire for greater CSR integration in Saudi Arabia, however care must be taken to ensure that it is somewhat tailored and adapted to Saudi interests – many of which have been heavily influenced by Zakat.<sup>970</sup> One clear step which can be taken – and ideally needs to be taken at a legislative level – is to lay out an effective definition of CSR which has utility and application in the Saudi Arabian context. This should incorporate the key tenets of CSR more broadly, but also have some relevance to Saudi society and underlying cultural norms.

Finally, it is however important that effort is expended to provide an understanding of the differentiation between CSR and pure Zakat, lest companies operate in a fashion where they believe they are adhering to CSR obligations but are realistically only following traditional Zakat principles. Alshariff notes that a better understanding of the difference between CSR and other forms of 'charitable' engagement, such as Zakat, needs to be established in the Middle East. As CSR has become more common place in the Middle East, a lacuna has emerged between charitable giving and CSR as a whole. Forms of charitable giving, for instance those with their origins in Zakat, are often thought of to be consistent with CSR – which can lead to a

<sup>963</sup> Sami Kahn, Khalid Maimani and Wafa Al-Yafi, Exploring Corporate Social Responsibility in Saudi Arabia: The Challenges Ahead (2013) 10(3) *Journal of Leadership, Accountability and Ethics*

<sup>964</sup> See Kjetil Selvik, Business and Social Responsibility in the Arab World: The *Zakat* vs. CSR models in Syria and Dubai (2013) 12(1) *Comparative Sociology* pp. 95-123. See also Wayne Dunn, Middle East CSR: *Zakat*, Sadaqah and Ownership Structure (2016) CSR Training Institute.

<sup>965</sup> Mohammed Ilyas, Islamic Work Ethics and Corporate Social Responsibility in Business Organizations: Issues and Challenges (2018) 22 *Academy of Accounting and Financial Studies Journal*

<sup>966</sup> Husam-Aldin Nizar Al-Malkawi and Saima Javaid, Corporate social responsibility and financial performance in Saudi Arabia: Evidence from *Zakat* contribution (2018) 44(6) *Managerial Finance*

<sup>967</sup> Mohammad Nurunnabi, Yazeed Alfakhri and Demah H. Alfakhri, CSR in Saudi Arabia and Carroll's Pyramid: what is 'known' and 'unknown'? (2020) 26(8) *Journal of Marketing Communications*

<sup>968</sup> *ibid.*

<sup>969</sup> *ibid.*, 1069.

<sup>970</sup> Mohammed Ilyas, Islamic Work Ethics and Corporate Social Responsibility in Business Organizations: Issues and Challenges (2018) 22 *Academy of Accounting and Financial Studies Journal*



failure to adopt or fully consider CSR completely.<sup>971</sup> This means that companies which may believe they are adhering to or discharging their CSR obligations are in practice rather adhering to the traditional principles of Zakat. Indeed, this is likely to have hampered the further extrapolation of CSR measures in Saudi Arabia, as companies feel less inclined to reform their operations in pursuit of CSR objectives when they already believe they are making valuable and enduring contributions in relation to philanthropic and charitable activities.<sup>972</sup> Saudi Arabia's lack of contemporary CSR frameworks therefore can be seen as a product of the relatively strong existing culture of Zakat, rather than a general corporate disdain or disregard for taking up a more important role in the community. As a result of this, it is imperative that authorities work to provide a clearer differentiation between Zakat activities and CSR, if CSR is to indeed be encouraged in Saudi society.

#### 4.8 CSR Legislation in Saudi Arabia: 'Mandating' Certain Types of CSR Activities

In constructing an effective CSR framework, one priority for Saudi authorities must be ensuring that certain types of CSR conduct are encouraged. This is not only to ensure that the CSR activities broadly fit within the scope of the definition of CSR, but also to have a longer lasting impact on Saudi corporate culture – particularly in properly differentiating between what amounts to be philanthropic activity in line with Zakat, and activities which are true forms of CSR.<sup>973</sup> One useful example which was outlined above can be seen in relation to India, where not only does the legislative framework lay out a minimum amount of money which must be spent on CSR but that only certain types of activities can be rightly considered as true 'CSR'.<sup>974</sup> Although a wide range of activities are provided for – from gender equality to global environmental goals as well as domestic health aims such as the eradication of malaria – all of these must have a CSR character, thereby meaning that not all acts of philanthropy will be considered to be consistent with the obligation.<sup>975</sup> This is of particular use in Saudi Arabia, where the cultural prevalence of Zakat has hampered the true understanding of what amounts to CSR activities. The Saudi legislation should therefore take on a character similar to that of the Indian Companies Act of 2013, whereby it is made clear that activities of a philanthropic nature will not count towards the company's CSR quota on a prima facie basis, unless of course there are other elements which could be said to fit within the definition of CSR.<sup>976</sup> Furthermore, this can serve societal aims which are deemed to be relevant by the government and important for Saudi Arabia itself.<sup>977</sup> This therefore allows policy makers and legislators to pursue social policy aims which may not be seen to be directly related to corporate law – for instance India's objective of eradicating malaria – but which could be pursued through the vehicle of a robust CSR framework.<sup>978</sup> A recent example of this as noted above came from India, where the CSR criteria were expanded so to include measures taken by a company which were relevant to the coronavirus pandemic.<sup>979</sup> Therefore, the approach taken by Saudi Arabia would benefit for not only incorporating certain types of activities which were seen as societal priorities by local authorities, but to ensure that a sufficient degree of flexibility was woven into the framework, so that it could be extended – for instance with regard to the coronavirus pandemic.<sup>980</sup>

<sup>971</sup> Dimah Talal Alsharif, why there is much more to CSR than just corporate charity, Arab News, August 2018, Available at <<https://www.arabnews.com/node/1363341>> Accessed online November 28, 2020.

<sup>972</sup> *ibid.*

<sup>973</sup> Abhishek Mukherjee and Ron Bird, Analysis of mandatory CSR expenditure in India: a survey (2016) 7(1) International Journal of Corporate Governance

<sup>974</sup> *Companies Act 2013 India*

<sup>975</sup> Anne-Marie L. Beliveau, Nellie V. Binder and Michael R. Littenberg, Corporate Social Responsibility in India: New Requirements for U.S.-Based Multinationals on the Horizon (2020) Lexology, Available at <<https://www.lexology.com/library/detail.aspx?g=b5c2a053-eee0-4aae-884c-bf7a785bd04e>> Accessed online December 12, 2020.

<sup>976</sup> *Companies Act of 2013*

<sup>977</sup> Lars Isaksson and Nayan Mitra, To Legislate or Not: That Is the Question—Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR, in *International Dimensions of Sustainable Management* (Springer, London, 2019).

<sup>978</sup> Anne-Marie L. Beliveau, Nellie V. Binder and Michael R. Littenberg, Corporate Social Responsibility in India: New Requirements for U.S.-Based Multinationals on the Horizon (2020) Lexology, Available at <<https://www.lexology.com/library/detail.aspx?g=b5c2a053-eee0-4aae-884c-bf7a785bd04e>> Accessed online December 12, 2020.

<sup>979</sup> Rachita Mehrotra, India's CSR law: A national experiment to drive social development (2020) Centre for Asian Philanthropy and Society

<sup>980</sup> See General Circular No. 10/2020

#### 4.9 Conclusion

Corporate Social Responsibility in Saudi Arabia remains in its relative infancy. Where companies have adopted CSR practices this has been purely on a voluntary basis and the frameworks often only have few true hallmarks of CSR as defined. Where CSR or CSR-relevant policies have been adopted, this has primarily been due to companies having a larger international footprint – which therefore indicates that there is a less significant and developed CSR culture on the domestic level. Furthermore, there is in effect little to no legislative foundation for CSR in the Kingdom. As a result, CSR remains not only underdeveloped in Saudi Arabia, but it appears that there is little prospect of a greater degree of CSR proliferation and development, outside of a major and as yet unprecedented reform effort in that regard.

This chapter has extensively considered a number of jurisdictions which have adopted CSR legislation, including China, India and Indonesia. While the CSR sophistication in each of these countries remains considerably different – and the exact nature of the legislation itself is also varied – the relative success of these legislative frameworks provides a useful model from which Saudi Arabia will be able to develop its own CSR infrastructure. Each of these countries has now made at least moderate steps in the direction of establishing a comprehensive CSR infrastructure – while each country had very little CSR infrastructure before the legislation was passed. Although they are not identical, these jurisdictions still have many parallels with Saudi Arabia. It is submitted therefore that the adoption of a legislative system for CSR is the preferred approach. It is clear that the current approach – of encouraging voluntary action but only taking few steps to compel such action on the part of companies – is as yet insufficient, given the relatively underdeveloped nature of CSR in Saudi Arabia. By doing so, Saudi companies would have an effective framework to guide them on the nature of the CSR they are set to adopt, rather than basing it on international norms. Companies would also not be disadvantaged by becoming an early adopter of CSR if others did not, due to the fact that the requirements would be uniform. Additionally, adopting a legislative framework for CSR would allow the government to tailor the CSR outcomes it wanted to achieve, rather than to import CSR which has a western or internationalised nature. Given the relatively unique characteristics of Saudi Arabia as a whole, such an approach is likely to be viewed more positively by local authorities. In order to develop an effective framework which brings about genuine and long-lasting CSR in Saudi Arabian society, it is imperative that Saudi authorities gain the support and ‘buy in’ of the corporate sector. As has been illustrated by the Indian example, simply putting in place legislative consequences for the breach of a CSR requirement – such as in this case imposing a prison term – is not only unlikely to win the favour of the corporate community, but it could lead to a degree of friction which ultimately undermines efforts to ensure compliance across society. Given that any CSR framework – whether voluntary or legislative at its core – needs to rely on companies willingly ‘buying in’ to the framework, rather than acting out of fear of sanction, such an approach is imperative. As has been shown in the recent efforts in India to reform CSR requirements – many of which have the potential to be extensive and wide ranging – undertaking a process of consultation is key. Furthermore, Saudi authorities need to be understanding of the unique aspects of Saudi society when designing CSR requirements. The example of China is beneficial and illustrative here, in that many of the eventual CSR requirements came about by virtue of their ties with socialism and China’s socialist pedigree, enabling them to be brought in gradually in a three-phase system. In Saudi Arabia, there is clear potential for the Zakat framework to be used as a conduit or at least a guiding framework through which CSR could be implemented. Indeed, as has been outlined above, while Zakat may have resulted in a slower uptake on some aspects of CSR – and while it may hamper an overall switch to CSR rather than Zakat principles – the fact that it has embedded corporate responsibility as a core aspect of company affairs into the country’s cultural psyche is important. For centuries, Saudis have understood the religious and spiritual nature of the Zakat obligation, giving rise to a feeling of societal responsibility for organisations, entities and of course individuals. By tailoring the country’s legislative CSR response around these ideological principles, Saudi Arabia will be able to develop an exhaustive and comprehensive CSR framework which endures well into the future.

#### Chapter Five

##### **Critical analysis of the conceptual and regulatory challenges of CSR in Saudi Arabia compared with The UK model (Empirical study)**

##### **5.1 Introduction**

This chapter assesses the implementation of CSR in UK and Saudi firms from the perspective of experts to understand the differences. It analyses 30 interviews with industry practitioners – 10 from the UK and 20 from Saudi Arabia – to answer the main research question of this chapter, how UK and Saudi experts assess the application of CSR. This analysis includes the conceptual framework of CSR, the relationship between CSR and international and private law, and challenges that may

impede corporate efforts in achieving the best practices in CSR. The contribution to the research has been presented in this chapter and in the following chapter.

The chapter finds that there are cultural, regulatory and structural differences in the practical implementation of CSR in both countries. While the religious pillar dominates the CSR of Saudi companies, the situation is more regulated in the UK where CSR endeavours are more strategic and more related to the law. It finds that the practical result of having international guidelines and domestic legislation in the UK is that firms look both at the international and the domestic legal framework and adjust their conduct accordingly. This is appropriate because the respective domestic legislative framework is where the guidance on responsible business conduct practical advice and sector-specific recommendations can be found. In the UK, relevant legislative acts include the Modern Slavery Act 2015 and the Companies Act 2006. In Saudi Arabia, CSR and law do not seem to be directly related to international directives. Saudi companies – which are mostly family-owned – lack legislation that protects human rights in the supply chains.

The chapter also finds that fears of the negative effects of overregulation are the most prominent challenges that practitioners from the UK believe prevents companies from achieving their economic function of making a profit. Islamic stereotyping of CSR and the severe disparity in the level of compliance between family businesses are the most prominent challenges facing CSR practices in Saudi Arabia. This may negatively affect the institutionalisation of CSR, meaning that unregulated charitable work, which is prevalent in Saudi firms, may benefit only a small group of stakeholders.

The chapter begins with a discussion of the nature of CSR, then the chapter discusses CSR in both international and private law. Finally, the chapter addresses the problems that interviewees find real challenges in implementing CSR in both the UK and Saudi Arabia.

## 5.2 Understanding of CSR

### 5.2.1 Charitable nature of CSR

The purpose of this section is to highlight the differences in the understanding of the nature of CSR in the UK and KSA, the reasons for these differences, and the problems that may result from the KSA's adoption of CSR as a form of charity. It explores if charitable work and CSR are synonymous or whether charity is just an extension of CSR in the UK and Saudi Arabia. This will help to understand practitioners' opinions of current CSR practices which cannot be understood without analysing their adaptation to the nature of CSR. The UK practitioners' view of the benevolent nature of CSR may provide a more effective theoretical framework for adapting CSR to the KSA. The question posed to the interviewees was: what is the basis for practising CSR in your jurisdiction from your point of view?

The findings show that all the Saudi interviewees argued that practising CSR is an expression of their gratitude to the community in which they carry out their business. As stated by a Saudi interviewee: 'CSR is essentially a donation, it is our way of thanking the community'.<sup>981</sup> Sixteen of the 20 Saudi interviewees stated that the application of charitable assets means legally that it is not required to achieve a financial return from any social investment. CSR, therefore, is used synonymously with philanthropy in the KSA. For example, a Saudi interviewee noted:

The rationale underlying this attitude is rooted in the simple fact that the members of the community help the business grow by investing in it as customers.<sup>982</sup>

However, all the UK interviewees said that CSR has not focused on the charitable aspects such as building hospitals and care centres but current practices go far beyond that. For example, a participant from the UK stated:

CSR has historically been purely charitable work, but now is extremely different.<sup>983</sup>

Nine of the 10 UK interviewees felt that practising CSR is a legal requirement for social investment.<sup>984</sup> By using social investment to address important social issues, the UK can provide insight into how KSA can improve its CSR. An investment in social causes is repaid by financial means aimed at achieving a social and economic objective. A Saudi business can do

<sup>981</sup> N11.

<sup>982</sup> N11.

<sup>983</sup> N2.

<sup>984</sup> (Protection and Social Investment) The UK Act 2016.

this by seeking out social investment opportunities to enhance its business objectives, create value for society and generate value for customers and investors. The purpose of social investment is to discover new markets, grow existing markets and foster innovation that generates sustainable returns.<sup>985</sup>

The Saudi perspective of CSR may mean that, for religious reasons, social investment is a religious practise known as Waqf.<sup>986</sup> Religious practices in general, except for Zakat,<sup>987</sup> are voluntary and therefore, it is not a legal requirement that requires a penalty for non-compliance. Two good examples of how this may work in practice are the project of one company to secure food baskets during Ramadan where the company undertook to contribute in a manner equivalent to the total contributions of the employees. As a result of this project, 1,000 food baskets were distributed to the needy. Another initiative was to provide computers and tablets for orphans. This initiative allowed them to continue their studies on virtual education platforms. One Saudi interviewee linked CSR practices to Islamic teachings:

The concept of CSR is mainly found in religion and Islamic law and there are hadiths of the Prophet Muhammad calling for CSR towards the environment. There are also other examples, such as the presence of a woman who entered Hell because of a cat and here another woman entered Heaven because of a dog and this is a kind of CSR towards animals.<sup>988</sup>

Another explained that CSR does not necessarily mean Zakat or religious practice; although we mean two compatible practices, they are completely separate:

In fact, Zakat is legally divided into banks, here it may be in harmony between the recipient of CSR and the recipient of zakat as for CSR, it has many doors that do not converge and do not interfere with Zakat’.

The same interviewee explained:

Employees, regardless of their administrative positions, contribute to the implementation of many other programs, including cooperation with associations in distributing food to the needy, contributing to cleaning beaches, visiting patients in hospitals, visiting wounded soldiers stationed on the southern border, participating in breaking the fast of needy fasting people and many other CSR-related programs.<sup>989</sup>

While a few of the UK interviewees (three out of 10) claimed that corporate charitable work may bring economic benefit to the company, the majority focus on adopting a corporate concept of CSR as a voluntary commitment to the company rather than an act of charity. For instance; two interviewees claimed:

CSR as a voluntary work could be as an economic benefit to the company.

CSR would mean more of a voluntary commitment.<sup>990</sup>

Philanthropy in the KSA should not be a substitute for CSR because, unlike philanthropy in which corporations simply donate money, CSR takes a proactive approach to solving social and environmental issues.<sup>991</sup> For example, a study of 384

<sup>985</sup> Oliver Wyman, ‘Corporate Social Investment: Achieving Impacts’ (MARCH & MacLennan Companies 2016)

<[https://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2016/feb/OW\\_Corporate\\_Social\\_Investment\\_Final.pdf](https://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2016/feb/OW_Corporate_Social_Investment_Final.pdf)> accessed 9 March 2022.

<sup>986</sup> An endowment (Waqf) is a special kind of charitable act in perpetuity. A donation of a fixed asset that generates a financial return or benefits the donor is called a gift of capital. Profits from the gift are then distributed to beneficiaries according to their needs.

<sup>987</sup> Zakat is a term from Islamic finance that refers to the obligation an individual has to donate a certain percentage of their wealth to charitable causes every year.

<sup>988</sup> N12.

<sup>989</sup> N14.

<sup>990</sup> N3 and N7.

<sup>991</sup> Zach Lazzari, ‘The Difference Between Corporate Philanthropy & Corporate Social Responsibility’ *CHRON* (2018) <<https://smallbusiness.chron.com/difference-between-corporate-philanthropy-corporate-social-responsibility-65129.html>> accessed 9 March 2022.



companies in the US found that those which performed worst in social work were the most generous in charitable donations.<sup>992</sup> This means that, to improve CSR in the KSA, it should not be a tool for a Saudi company to use to prove that it is socially responsible. While some have argued that charitable work is an indication of the ‘good citizenship of the company even if it does not stem from a moral sense,’<sup>993</sup> the link between CSR and philanthropic responsibilities prevails but is not essential to prove good intentions.<sup>994</sup>

The reason why practitioners in the KSA equate CSR with charity is due to the Saudi understanding of possessions, based on the Quran verse:

And the heaven He raised and imposed the balance in order that you do not transgress the balance and establish weight in justice and do not make deficient the balance.<sup>995</sup>

This means that people’s property is not their property but is in their possession on a loan basis; they are custodians of these properties to serve mankind and must obey the limits set by God. Muslims, therefore, act as stewards. An Islamic perspective recognises that people serve as trustees and stewards (khalifah) to counter the effects of environmental crisis and curb climate change humans. This means there is an ethical responsibility to respect the environment and all living creatures. Islamic philosophy promotes a holistic view of the universe based on the principles of proportion (mikdar) and balance (misan) within each system, therefore fostering harmony.

Saudi businessmen follow the Prophet Muhammad’s three basic principles in their work: fairness, charity and honesty. Thus religious works have a reward in Islam because the Holy Qur’an granted the privilege of exploiting the natural resources of mankind based on stewardship, which implies the right to use someone else’s property and be rewarded if he does not damage it.

This points to CSR as a synonym for philanthropy in Saudi Arabia.<sup>996</sup> As a result, no legal liability arises for non-performance of CSR; it is subject to the company’s discretion.<sup>997</sup> As a practical matter, this means that Saudi firms donate to prove their CSR towards society. Since philanthropy and CSR are strongly linked in Saudi Arabia, the concept of CSR has been reduced to unsustainable practices and the serious negative effects that Saudi corporations have on society, the environment and the planet are ignored. By extending the concept of CSR in the KSA based on the UK experience, CSR could be improved beyond philanthropy. This means that CSR should become a legal requirement.

The UK’s starting point in CSR is morality, not religion, while the Saudis see CSR is as religious morality. However, some have criticised the ‘moral philosophy’ created by Western companies:

My fear is that all this talk of ethics is just that – talk; new forms of corporate self-presentation that have no reference to or influence on what is practiced in the name of the corporation, beyond those associated with good public relations. In this form, corporate social responsibility is cheap and easy; a sort of prosthesis, readily attached to the corporate body, that repairs its appearance but in no way changes its actual conduct.<sup>998</sup>

<sup>992</sup> Jennifer C. Chen, Dennis M. Patten and Robin W. Roberts, ‘Corporate Charitable Contributions: A Corporate Social Performance or Legitimacy Strategy?’ (2007) 82 Journal of Business Ethics, 131-144.

<sup>993</sup> Sylvie Formánková, ‘The Role of Corporate Philanthropy in CSR’ (2015) <[https://www.researchgate.net/publication/291832374\\_The\\_Role\\_of\\_Corporate\\_Philanthropy\\_in\\_CSR](https://www.researchgate.net/publication/291832374_The_Role_of_Corporate_Philanthropy_in_CSR)> accessed 19 February 2022.

<sup>994</sup> Archie B. Carroll, ‘Carroll’s Pyramid of CSR: Taking Another Look’ (2016) 1 International Journal of Corporate Social Responsibility.

<sup>995</sup> (Qur’an, 55:7-10).

<sup>996</sup> Dima Jamali and Archie Carroll, ‘Capturing Advances in CSR: Developed Versus Developing Country Perspectives’ (2017) 26 Business Ethics: A European Review, 321-325.

<sup>997</sup> Han, H.; Yu, J.; Kim, W. Environmental corporate social responsibility and the strategy to boost the airline’s image and customer loyalty intentions. J. Travel Tour. Mark. 2019, 36, 371-383.

<sup>998</sup> John Roberts, ‘The Manufacture of Corporate Social Responsibility: Constructing Corporate Sensibility’ (2003) 10 Organisation, 250.

The UK experience shows that the morality motivation of CSR can be interpreted as just an image. Morals alone, therefore, may not suffice to enhance CSR. Islamic morals may have a stronger positive effect on CSR in Saudi firms than the deontology<sup>999</sup> or utilitarianism<sup>1000</sup> applied in the Western world. Islamic morals strongly support CSR and business sustainability in general, but its current application is sometimes flawed.

In another difference between these two jurisdictions, in the UK, CSR should be within the company's strategy and be more institutional than just a marketing tool; for example, participating in fair trade, improving labour policies and reducing carbon footprint. Charity is a tool of CSR and not synonymous with it and CSR includes other legal, economic and moral aspects that should not be overlooked. The UK has a long history of applying CSR; for example, ethical business was dominant in the eighties in the West and, in the nineties, the West's seriousness appeared in dealing with CSR by the implementation of the 'strategic dimension'.<sup>1001</sup> This historical background to the UK's CSR made them in line with international guidelines. This was an important factor in adapting the concept of CSR from charity to an organised institutional task.

This UK vision started after linking CSR to international and private law when the regulations improved the concept of CSR in the UK. The UK understanding of CSR affects a company's ability to attract top talent and employee retention rates. Employers with a clear and effective CSR strategy attract the younger generation of workers currently entering the workforce.<sup>1002</sup>

In Saudi Arabia, there is no institutional mechanism to regulate CSR and it mostly depends on initiatives from individuals. It is applied without necessarily developing a framework strategy which means that it is limited to charitable initiatives that are primarily religious in nature. For instance, due to the emergence of the Covid-19 pandemic, several Saudi companies distributed tens of thousands of masks and sterilisers. These initiatives were considered religious in the first place because they contribute to maintaining public health. Islam urges helping Muslims to preserve their lives from perishing in adversity and calamity<sup>1003</sup> because all human practices are dominated by religious values. Islam is a religion that deals with all aspects of life and organises them in the form of 'Qiyas'. It suggests that modern cases are measured by previous cases and taken as role models, such as the idea of judicial precedents in relation to common law. This means that any initiative should be religious in nature and should apply Islamic law and do not oppose it in anything. Thus, the idea of a charitable nature prevails because of its religious meaning that must be done to earn a reward from God.

A fundamental problem with the Saudi understanding of CSR is that Saudi companies may deliberately mix it with charity and limit the practices of CSR to volunteering and charitable work so as not to have to pay any additional costs for their social practices. This implies that many Saudi companies evade CSR with unsustainable charitable initiatives that do not create any societal wealth.

The UK model shows that CSR can be effective in the KSA if it is institutionalised as opposed to being merely used for marketing purposes or to obtain a competitive advantage. This is a tested approach to improving CSR and its transfer to KSA is possible because there is nothing to hinder the institutionalisation of CSR either in Islamic morals or social values. This can be done through domestic regulations.

### 5.2.2 Legal nature of CSR

It is important to consider CSR as an integral part of the business rather than as an optional luxury. To this end, the interviewees were asked:

<sup>999</sup> Deontology is based on the concept that 'the end does not justify the means.'

<sup>1000</sup> The utilitarian perspective works on the concept of 'the end justifies the means.'

<sup>1001</sup> Ulrike Gelbmann, 'Establishing Strategic CSR in SMEs: An Austrian CSR Quality Seal to Substantiate the Strategic CSR Performance' (2010) 18 Sustainable Development, 90,98.

<sup>1002</sup> Intan Azurin Zainee and Fadilah Puteh, 'Corporate Social Responsibility Impact On Talent Retention Among Generation Y' (2020) 27 Revista de Gestão, 369-392.

<sup>1003</sup> On the authority of Abu Musa, he said: The Prophet, may God's prayers and peace be upon him, said: 'If the Ash'aris were widowed during the invasion, or their families' food in Medina was less, they gathered what they had in one garment, then divided it among themselves in one vessel equally, so they are from me and I am from them.' Narrated by Al-Bukhari in K. Al-Sharakah, B: Company in Food 3/138 No. 2486, and Muslim in K. The Virtues of the Companions, may God Almighty be pleased with them, B: From the Virtues of the Ash'aris, may God be pleased with them 4/1944 No. 2500.

Is there a legal framework of CSR in the UK and Saudi Arabia or if non-strategic initiatives still dominate CSR?

The answer is important because it identifies the relationship between CSR and law. This section explores the current state of CSR governance and identifies the reasons for the observed differences, if any. An analysis of the legal framework of CSR in Saudi Arabia provides an avenue to improve future CSR and philanthropy by suggesting a more comprehensive legal and strategic framework to keep up with its Western counterpart.

All the UK interviewees said that CSR has changed a lot because UK firms seek to achieve an acceptable legal framework for human rights. One interviewee stated that:

The UK companies try to improve their global reputation by improving the human rights regulations.<sup>1004</sup>

This means that CSR in the UK has moved from being a form of charity to a necessity for companies to maintain their customer base, suppliers and employees. One interviewee explained this:

Our work in the UK tends to focus more on how companies make their money so thinking about responsible business practices and the authority, global standards that have been developed in the Business and Human Rights space to encourage companies to recognise and implement, respect for human rights by doing your due diligence to understand how they impact people and then to do something about that.<sup>1005</sup>

From the UK's experience, human rights are at the core of CSR and should not be ignored. The first step Saudi companies need to take to improve their social responsibilities is to consider the rights of their customers, employees, suppliers and creditors. This can be done through codes of conduct and regular disclosure of non-financial reports.

Only two of the 20 Saudi interviewees believed that CSR in Saudi companies is a strategic choice in some areas and that it is legally framed, but they did not explain how. One noted:

CSR is a strategic choice for our companies with regard to their external communications.<sup>1006</sup>

What contradicts the idea of a strategic choice for CSR within the Saudi company is that 10 of the 20 did not see any direct link between CSR and the law or a need for departments that may be at the heart of the work of CSR such as risk management, sustainability and occupational health. One interviewee stated:

A risk management plan has not been developed for our company. Because our company consists in developing initiatives that rely on volunteers only and initiatives that have no financial costs.<sup>1007</sup>

The other half claimed that law has a role in protecting specific groups in society such as the consumer and the investor but not workers in the supply chains of Saudi companies:

We have consumer protection law and offender investment law, but no human rights law in supply chains. First time I hear about this topic!<sup>1008</sup>

These findings show that the legal framework of CSR in Saudi Arabia is still in its early stages, quite the opposite of the situation in the UK where there is a connection between law and CSR. This means that, while Saudi respondents felt that CSR makes limited charitable contributions stemming from beliefs religious, eight of the 10 UK interviewees said that law plays a fundamental role in CSR, particularly concerning human rights:

<sup>1004</sup> N1.

<sup>1005</sup> N2.

<sup>1006</sup> N13.

<sup>1007</sup> N14.

<sup>1008</sup> N30.

CSR is like a balance, so it doesn't instantly privilege, those other groups, but to ensure that you consider your impact on those groups as part of the decision-making process.<sup>1009</sup>

I think it's certainly the result of regulation in the UK, which is increased, they're trying to redress that balance by saying as a director saying the management's you must take account of the environment, you must take account of consumers, you must take account of competition law health and safety.<sup>1010</sup>

This connection between CSR and law in the UK and KSA is for two main reasons. First, the law in the UK point of view is man-made, thus is linked to all other fields, while in the mind of the Saudi practitioner the law is God's creation. As one of the Saudi interviewees stated 'There are the Qur'an and Sunnah that regulate all our actions and it is not the law of humans that is forcing companies to do good. Second, Zakat is the only practice imposed on Muslims in their financial management.<sup>1011</sup> Waqf and CSR are recommended but it should not be a law or an obligation.'

When describing CSR, nine of the 10 UK interviewees used the phrase 'balance', whereas all Saudi interviewees used the phrase 'religiously motivated'. This provides two major findings. First, the UK perspective of CSR is an institutional and regulatory process for corporate social work in which morality plays an essential role.<sup>1012</sup> The reason is that morality is the main engine for practising CSR in the West, according to Kant's moral philosophy, is that actions are moral if the motive is a sense of duty rather than fear of punishment.<sup>1013</sup> Three interviewees explained that ethical standards are binding duties that are not subject to discretion and morality can be translated through law and not the other way around.<sup>1014</sup> In contrast, according to two interviewees, the Saudi perspective is nothing more than 'traditional' where in most cases, CSR is described as charitable work. While religion is the dominant force in all business, this makes the symbolism of CSR the prevailing method. It does not mean an objective change for the benefit of stakeholders, but rather a religious commitment whose purpose is to manage impressions.<sup>1015</sup> Based on the UK's experience, CSR as a tool for impression management could undermine the entire process in the KSA. The law limits such practices and manages organisations so that they are accountable to their stakeholders.

Second, the institutionalisation of CSR in the UK is closer to internationalism as it adheres to the guidelines of the UN. While it is premature to talk about the institutionalisation of CSR in Saudi Arabia, the entire process is still seen as a religious obligation. The reason is that the EU applies the UN directives of CSR because of its commitment to international standards,<sup>1016</sup> especially with the presence of branches of European companies around the world. The KSA jurisdiction has a special legal system, a mixture between Sharia law and man-made laws that do not violate Sharia. Given that the principles of CSR are highly recommended in Islamic law,<sup>1017</sup> many practitioners feel that there is no need to remind them. For instance, there are Quranic verses and honourable prophetic hadiths that call for compassion in society, whether as individuals or groups.<sup>1018</sup> Therefore, there is no need for law above divine law. Saudi Arabia can improve its CSR by making these lofty Islamic teachings into written law. As a result, inconsistencies in interpretation of the Islamic teachings among companies will be reduced.

<sup>1009</sup> N7.

<sup>1010</sup> N10.

<sup>1011</sup> 'Yet you shall duly establish the Prayer. And you shall give the Zakât-Charity, and therewith lend God a most goodly loan. For whatever good you advance for your souls, you shall find its reward with God in the Hereafter; yet it shall be far better and much greater in reward.' (Sûrat Al-Muzzammil, 73:20).

<sup>1012</sup> See Chapter Three.

<sup>1013</sup> William Maker, 'Kant's Moral Teleology' (1986) 16 Idealistic Studies, 154.

<sup>1014</sup> For example: N2, N5 and N10.

<sup>1015</sup> For example: N12 and N28.

<sup>1016</sup> Kowszyk, Y., Besnier, E., Haddad, I., Maher, R. and Meneses, G., 2015. *Corporate Social Responsibility in the context of Relations between the European Union and the Community of Latin American and Caribbean States*. [online] Aei.pitt.edu. Available at: <[http://aei.pitt.edu/43368/1/Mullerat\\_CSR\\_Europa.pdf](http://aei.pitt.edu/43368/1/Mullerat_CSR_Europa.pdf)> [Accessed 17 February 2022].

<sup>1017</sup> Abdalrahman Mohamad Migdad, 'Scope of CSR in Islamic Economics and Finance' (2021) 7 Islamic Economics Journal, 186; Nurisal Ismail and Ahmad Muqorobin, 'Implementation of Corporate Social Responsibility (CSR) On Islamic Banking: Maqasid Sy Aria' S Approach' (2017) 3 Islamic Economics Journal; 'Corporate Social Responsibility Measurement Approaches: Narrative Review of Literature On Islamic CSR' (2017) 7 Journal of Islamic Business and Management (JIBM).

<sup>1018</sup> 'If you were harsh and hard-hearted, they would have dispersed from around you. (Surah Al-Imran verse 159, Qur'an).



CSR in Europe has increasingly come to mean social justice and human rights,<sup>1019</sup> such as combating slavery in supply chains. As an example, one UK interviewee said that most of their work was about human rights.<sup>1020</sup> All the UK interviewees felt that CSR had become subject to various legal requirements. This means as an interviewee demonstrated that ‘the implication of this development that adhering to the principles of CSR became more effective across all companies and it was done in a more consistent manner’.<sup>1021</sup> The legal requirements created a level playing field which contributes to taking a more scientific approach to the issue of CSR. These legal requirements are necessary to standardise corporate social work. For example, all companies tackle issues of environmental protection or climate change in a similar way. It is more likely that the accumulation of measures will lead to a constructive change on a larger scale and that the changes introduced in the practice of one firm will complement and support the changes introduced by other firms. An interviewee from the UK explained this idea:

Such a consistent approach could contribute to increased sustainability and could even affect wider issues such as better working conditions for employees and greater respect for human rights.<sup>1022</sup>

In the Saudi jurisdiction, there is no indication of the existence of coordination between parties on CSR. This means that, to enhance CSR, actors in Saudi Arabia should call for a written CSR law to be consistent with Islamic teachings and global standards. This would create an atmosphere in which the public is more likely to trust the initiatives undertaken by notable corporations because these entities will be subject to greater accountability. This is a factor contributing to social peace and coherence. Since the legal framework of CSR provides a minimum level of corporate accountability, companies have no choice but to comply. This will significantly reduce disparities between Saudi companies’ compliance with CSR. In this way, every Saudi company will contribute to the benefit of society. This could be by providing jobs and reducing unemployment, by building housing complexes and reducing the housing crisis or by other sustainable initiatives that contribute to social cohesion.

Although the diverging from the approach of the UK, it would be inaccurate to assume that CSR in Saudi Arabia is understood only as relating to human resources and environmental issues. As two Saudi interviewees said:

While being charitable and working on the company’s CSR is an important part of the work of a corporation, having a sustainable business is also of primary importance.<sup>1023</sup> and,

The sustainable business is ensured by, for example, diversifying investment. Apart from bringing financial gains, this tactic also serves as a means of successful risk management.<sup>1024</sup>

Islam does not conflict with the legal nature of CSR since it encourages risk management and environmental and social governance. Despite this, it has not been practically translated into Saudi law, which is derived from the provisions of Islamic Sharia.

A serious problem arises due to the lack of CSR laws in Saudi Arabia; the lack of standards for corporate interaction with society and the random nature of Saudi companies’ measures for conserving the environment or for the benefit of society. With the lack of accountability or even any legal regulation, small and medium enterprises (SMEs) may be relieved of their social obligations. Consequently, these companies cannot contribute much to the economic and social development of Saudi Arabia.

An unorganised voluntary approach to CSR has been internalised in the work of Saudi corporations. Although it agrees with the principle of Western philosophy in part in the voluntarism of CSR, it is based on the religious enjoinder of being benevolent. Therefore, the need to improve CSR in law and practice in Saudi is important. This is not because of the charitable nature of CSR per se, but rather because Saudi CSR initiatives lack sustainability. Improving CSR in Saudi requires a

<sup>1019</sup> Gabriel Toggenburg, ‘Fundamental Rights and The European Union: How Does and How Should The EU Agency for Fundamental Rights Relate to The EU Charter of Fundamental Rights?’ [2013] SSRN Electronic Journal.

<sup>1020</sup> N1.

<sup>1021</sup> N4.

<sup>1022</sup> N8.

<sup>1023</sup> N14.

<sup>1024</sup> N25.

domestic law that clarifies: (a) sustainable initiatives that the Saudi community may need from companies; (b) the content of annual reports that companies must share with the public; and (c) the consequences of non-compliance.

There are a few examples from Saudi Arabia which contradict this ad hoc approach by the institutionalisation of charitable work. For example, the Sulaiman Abdul Aziz Al Rajhi Holding Company<sup>1025</sup> has institutionalised and organised its CSR goals. As one Saudi interviewee said:

The scope of this project suggests that complying with the CSR objectives of a business is something that should be dealt with on an institutional level, employing the necessary legal, financial and administrative measures. This approach would help achieve the professional management of the system while contributing to the positive development of Saudi society.<sup>1026</sup>

This raises the question of whether Saudi companies confuse social work with CSR. In the UK, there s172 of the Companies Act 2006 makes CSR a matter that should be considered when a manager takes any decision regarding the company. The law helps distinguish between the concepts of social work and CSR.<sup>1027</sup> In the Saudi view, CSR's scope is sufficiently wide to include dealing with human resources and the social contribution of the company. This means that there are departments that may be concerned with CSR within their work, and therefore there is confusion between routine social work and CSR.

The legislative absence of CSR causes another confusion in Saudi between charity and philanthropy. A corporation can give directly to a charity and non-profit organisations can be beneficiaries with no strings attached. While the purpose of philanthropy is to solve a problem,<sup>1028</sup> in Saudi Arabia charitable donations are not differentiated. This means that donors do not have to submit spending reports to ensure funds and resources are used as planned. Therefore, Saudi companies fail to discern the types of contributions they make. There are no legal repercussions for Saudi businesses conflating charitable giving and philanthropy, but organisations that are dedicated will pay attention to the causes they support and particularly emphasise the donations they make and may use the media to draw attention to a specific cause to help raise money and continue the non-profit's work.

There is another difference in that in the UK, CSR targets three categories of activities: internal influences and performance indicators, external influences and donation,<sup>1029</sup> the case in Saudi Arabia is more superficial. A Saudi interviewee explained this:

The Saudi company invites charities to present their projects and initiatives referring to a specific geographical area, offering the corporation's support to the respective charity foundation with respect to those specific sectors, which are of interest to the company. Once this has been arranged between the parties, the projects are studied, developed and worked on with a view of their implementation.<sup>1030</sup>

This is important for two reasons. First, cash donation that prevailed in the 1950s (the charitable era) was ineffective as long as there was no CSR strategy.<sup>1031</sup> As a result, UK companies are increasingly practising CSR based on 'creating shared

<sup>1025</sup> Established in 2011 to be the investment arm of the endowment system of Sheikh Suleiman bin Abdulaziz Al-Rajhi. It has direct and indirect investments in a number of sectors inside and outside the KSA. It seeks to diversify and grow investments while achieving good annual returns to finance the work of the charitable sector. It also seeks to achieve coordination and integration among its subsidiaries.

<sup>1026</sup> N16.

<sup>1027</sup> See Chapter Three.

<sup>1028</sup> Joseph S. Fulda, 'In Defence of Charity and Philanthropy' [2000] SSRN Electronic Journal; Anne O'Brien, 'Charity and Philanthropy' (2008) 1 Sydney Journal.

<sup>1029</sup> Minji Kim and Tohyun Kim, 'When Do CEOs Engage in CSR Activities? Performance Feedback, CEO Ownership, And CSR' (2020) 12 Sustainability, 8195.

<sup>1030</sup> N12.

<sup>1031</sup> Santosh Nandi and Madhavi Latha Nandi, 'Porter and Kramer's Creating Shared Value (CSV): Evidence from International Business Models' (2017) 2017 Academy of Management Proceedings, 16257.

value'.<sup>1032</sup> The intention to donate in Islamic culture makes the individual more sympathetic and human.<sup>1033</sup> This is why all charitable contributions in the KSA have religious motives. Second, the institutionalisation of CSR in the UK was imposed because many Western industrial companies have a history of scandals globally, especially in supply chains.<sup>1034</sup> Therefore, pressure groups and audit bodies in the West are more insistent on institutionalising the process of CSR.

Consequently, non-strategic initiatives that lack a regulatory framework dominate CSR initiatives in Saudi Arabia since they are driven by religious motives, meaning Saudi firms act as stewards of society without providing any clear metrics for compliance. As a result of the absence of a Saudi legal framework, there is a confusion of concepts that significantly limits the positive outcomes of the social responsibility of Saudi businesses. In contrast, UK companies are much more regulated for CSR and the linkage between law and CSR is a Western philosophy that has improved corporate behaviour and sustainability.<sup>1035</sup>

The promotion of CSR can take place through strategic donations in the KSA. This institutional action is similar to that of the UK. Hence, it should be an annual strategic donation plan, which is designed to create sustainable results. To create a long-term impact, the selection of eligible entities and donated activities must be subjected to further analysis by Saudi organisations.<sup>1036</sup>

### 5.3 CSR in International law

#### 5.3.1 Sources of International law of CSR

Several sources exist from which the rules of international law relating to CSR can be extracted and analysed, such as the UN Compact and OECD guidelines.<sup>1037</sup> These, and the activities of NGOs in the UK and KSA, are important for three reasons: First, to identify the difference in deriving international sources of CSR between the jurisdictions to reveal which have the greatest impact on the application of CSR and why. Thus, Saudi firms can learn from the UK what the most effective international sources of CSR are. Second, reviewing the role of NGOs is very important because they are partners to both society and companies. As focal points, they can thus identify the community needs of companies to be more socially responsible. Third, determining the code of conduct that Saudi companies focus on helps reveal the reasons for this selectivity and how to address it. By pursuing more comprehensive codes of conduct, as in the UK, Saudi companies could better fulfil their social responsibilities. The interviewees were asked two questions:

In your jurisdiction, which international social responsibility instruments have a significant impact on CSR?

What is the role of NGOs in improving CSR from your point of view?

#### International CSR instruments

All the UK interviewees linked CSR practices to international guidelines, especially OECD guidelines, the UN Global Compact and the 1998 International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work. An interviewee emphasised that this commitment has two important consequences:

First, that the international community has internalised the importance of CSR. Secondly, that the measures taken in this respect must be harmonised and unified, which is of particular significance, given

<sup>1032</sup> Maximilian Schormair and Dirk Ulrich Gilbert, 'Shared Value Beyond the Porter and Kramer Paradox – A Procedural Framework' (2017) 2017 Academy of Management Proceeding, 14123.

<sup>1033</sup> 'Your smiling in the face of your brother is charity, commanding good and forbidding evil is charity, your giving directions to a man lost in the land is charity for you. Your seeing for a man with bad sight is a charity for you, your removal of a rock, a thorn or a bone from the road is charity for you. Your pouring what remains from your bucket into the bucket of your brother is charity for you' (Hadith of Prophet Muhammad).

<sup>1034</sup> For example: Recent investigations into retailers' supply chains found rampant human rights abuses within the supply chains of UK luxury retailer Marks & Spencer.

<sup>1035</sup> See Chapter Three.

<sup>1036</sup> See Chapter Six.

<sup>1037</sup> See Chapter Three.

that the majority of the corporations that may have an impact on issues connected to CSR, operate across the border and even globally.<sup>1038</sup>

Another respondent from the UK mentioned the proposal for the adoption of the EU Gender Pay Gap Reporting Directive<sup>1039</sup> and argued that ‘it should be applied in the UK even after it has left the EU’.<sup>1040</sup> Nine of the UK interviewees referred to international human rights standards within the scope of their work as international labour standards:

The big UK brands such as Tesco, Sainsbury’s or Waitrose have CSR policies and guidelines which reference and integrate into their internal legal policies various international human rights standards, including the UN guiding principles, ILO and International Labour Standards.<sup>1041</sup>

Interestingly, the same interviewee pointed to the case of Shell, which was recently instructed by a Dutch civil court to reduce emissions by 45%.

In particular, the court requested that Shell complies with UN guiding principles and OECD guidelines and successfully manage the legitimate legal risks and the environmental and social impacts, flowing from their operation’.<sup>1042</sup>

These international CSR instruments are just some of what has been issued by international law. Perhaps the reason why these instruments are mentioned and not others is because of their tangible impact on the domestic laws and practices in the UK.

No Saudi interviewee mentioned such general international directives, indicating the gap between the UK and Saudi perspectives. This difference arises because there is a conflict between some of what is in these international directives and Saudi domestic law. For example, the ILO urges support for trade unions, while Saudi law prohibits unions and there is no relevant legislation on the ILO in Saudi Arabia and so this treaty cannot create rights in Saudi domestic law and these international guidelines are not very popular with Saudi companies. In practice, this results in two consequences: a loss of loyal employees, who may look for a competitor offering better working conditions and a loss of innovation and market opportunities, since companies do not seek to import sustainable products to save costs in the short-term.

To take on social responsibilities at a global level, Saudi businesses could learn from UK companies. This means respect for international codes of conduct such as labour and environmental practices, human rights, regulatory governance, fair operating practices, community involvement and consumer issues. Saudi firms can put these international guidelines into practice through self-regulation. A company’s competition with its peers around the world is the key motivator for taking a global approach in the UK. Saudi companies adhering to international standards of CSR could attract overseas clients and employees.

## NGOs and CSR

Non-governmental organisations (NGOs) have increasingly supported disclosure and transparency processes aimed at measuring the degree to which companies implement CSR policies and objectives. In Saudi, this is particularly important as questions remain over whether Saudi companies have any CSR in the midst of a global debate over how best to implement CSR. This section discusses the role of NGOs in improving CSR practices globally and recommends making room for civil society, which represents all stakeholder segments, to be involved in implementing CSR in the KSA. CSR can be enhanced if Saudis involve non-profit organisations as partners in implementing their social responsibility.

CSR is related directly to some NGO guidelines:

<sup>1038</sup> N2.

<sup>1039</sup> EU COM, ‘Gender pay gap – transparency on pay for men and women’ (2020) available: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12098-Gender-pay-gap-transparency-on-pay-for-men-and-women\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12098-Gender-pay-gap-transparency-on-pay-for-men-and-women_en) accessed 13 September 2021.

<sup>1040</sup> N8.

<sup>1041</sup> N1.

<sup>1042</sup> Ibid.



Standards of CSR in the KSA are determined according to the international standard of ISO 26000.

We have, for example, ISO 26000, you say that we can create a guide that is compatible with our own and therefore in existing global applications that we encourage companies to implement them.<sup>1043</sup>

Nice of the UK interviewees gave examples of international directives issued by NGOs which are related to human rights, workers' rights and environmental protection:

The TC identifies carbon capture initiatives. This is an organisation that companies committed to carbon emissions and supply chains.<sup>1044</sup>

Seven of the Saudi participants mentioned the Global Reporting Initiative (GRI) in their discussion about CSR, while no participant from the UK discussed this indicator. Two Saudi participants stated:

The GRI international standards were applied this year to measure the social impact by the Ministry of Trade.

We are committed to a global classification for sustainability and we apply one of these classifications as classification AA100 – GRI.<sup>1045</sup>

This is interesting because GRI has led the move toward mandatory sustainability reporting requirements in Europe and the European Commission has committed to achieving improvements in corporate transparency regarding sustainability following the publication of a proposed new Corporate Sustainability Reporting Directive (CSRD).<sup>1046</sup> This means that the UK companies take into account the GRI standards as a practical result of CSRD. Saudi Arabia lacked environmental regulations before the mid-1990s. Before 2014, companies had to comply with new air, water and noise pollution standards. To comply with Saudi Arabia's international development plan, all projects must meet international benchmark standards for protecting natural resources and human health. In the early 2000s, the GRI became widely known in Saudi Arabia's CSR reporting systems due to its use as an international benchmark. Despite this, in 2018, a Saudi study found the annual CSR reports of Saudi energy and materials firms did not meet the standards of disclosure stipulated in the GRI guidelines. Companies disclosed inadequate environmental information and fail to meet the international benchmark standards set by Saudi Arabia's Presidency of Meteorology and Environment (PME).<sup>1047</sup>

Three of the respondents from the UK felt that CSR was more beneficial in places that had local representation from NGOs. One participant believed:

Starbucks is active with NGOs that are present in a variety of coffee-growing regions in the US, this is as part of its CSR work.<sup>1048</sup>

The majority of interviewees saw CSR as a significant opportunity for NGOs to achieve their mission of social transformation. NGOs have thus been able to establish relationships with companies' managers, employees and clients. Among the Saudi participants, only three agreed that NGOs no longer need to convince companies of the benefits of CSR to obtain financial support for their causes, as CSR has become a vital part of many corporations' business plans. According to a Saudi respondent:

<sup>1043</sup> N13 and N14.

<sup>1044</sup> N1.

<sup>1045</sup> N18 and N25.

<sup>1046</sup> J. Lipskyte and Harold Koster, 'Evaluation of Sustainability Reporting Under EU Directive 2014/95' [2018] SSRN Electronic Journal; Josef Baumüller, Nikolai Haring and Stefan Merl, 'Der Kommissionsvorschlag Zur Corporate Sustainability Reporting Directive (CSRD) – Inhalte Und Implikationen' (2021) 1 Nachhaltigkeits Recht, 365.

<sup>1047</sup> Rahayu Abdull Razak and Raneem Al Ahmedi, 'Environmental Disclosure Practices of Saudi Companies According To The New Gri Standards' (Apiar.org.au, 2019) <[https://apiar.org.au/wp-content/uploads/2019/10/2\\_APCCR\\_Aug\\_2019\\_BRR732\\_Bus\\_9-13.pdf](https://apiar.org.au/wp-content/uploads/2019/10/2_APCCR_Aug_2019_BRR732_Bus_9-13.pdf)> accessed 19 February 2022.

<sup>1048</sup> N3.

NGOs are increasingly integrated into CSR activities as the public becomes more aware and the social performance of companies is of increasing concern to stakeholders.<sup>1049</sup>

From the Western perspective, the role of NGOs is to change the economic conditions that cause social problems.<sup>1050</sup> It refers to Western companies seeking a partner to guide them in their commitment toward stakeholders. In Saudi Arabia, as long as Saudi companies are not held accountable, they do not have to cooperate with NGOs to bring about social change. Due to this, the role of NGOs in the KSA is very limited. Even Saudi companies that declare that they are at least applying the GRI standards may not be doing so sincerely, or they may only be applying them to improve their reputation rather than using them for their actual purposes. Consequently, businesses become socially irresponsible and their environmental and social costs exceed their economic benefits.

Although some improvements have been made, there still need to be more reforms and support to assist NGOs in the KSA to help firms by encouraging CSR. NGOs must contribute to the improvement of CSR in the KSA by researching to spur policy development, build institutional capacity and facilitate independent dialogue with civil society to support sustainable business practices. NSOs should be legally recognised and able to access funds; local leaders should support and endorse NGO activities; and NGO representatives should participate in CSR development and implementation.

### Corporate codes of conduct

Codes of conduct specify the moral guidelines and standards that guide employees' and corporations' behaviour.<sup>1051</sup> Historically, they evolved to meet social and economic needs. The company's values and goals were the only information that codes of conduct provided in the 1950s, so employees knew how to serve the company's interest and earn profit.<sup>1052</sup> Therefore, CSR is also orientated toward the public good, focusing on economic and social goals.

The content and focus of codes vary depending on the business culture of the continent where they were conceived or operated. European codes, for instance, explain the principles of business holistically and the relationships between companies and their stakeholders. UK codes of conduct produced by individual firms offer rules centred on customer service. The codes emphasise that all employees share a responsibility, regardless of their position.<sup>1053</sup> Many Saudi companies have a code of conduct related to environmental sustainability, but most lack any other type of code of conduct. Discussion of codes of conduct in the West is important because it is a good practice to follow in the KSA to improve CSR.

Four of the UK interviewees claimed that leading UK firms are complying with their CSR responsibilities by investing in ethical trade. For example, an interviewee stated:

Corporate code of conduct means that hiring people from different places to create good and solid relationships with suppliers.<sup>1054</sup>

Another respondent explained:

I see this is a different type of non-financial reporting a legal requirement to report publicly on the steps taken to conduct due diligence in your supply chain to mitigate the risk of forced labour.<sup>1055</sup>

All Saudi interviewees said that was no code of conduct for supply chains in Saudi firms but there is a new project that regulates supply chains:

<sup>1049</sup> N30.

(2016) 3 Asia & the Pacific Policy Studies, 266, 274.

<sup>1051</sup> Vincent Giorgini and others, 'Researcher Perceptions of Ethical Guidelines and Codes of Conduct' (2015) 22 Accountability in Research, 1.

<sup>1052</sup> Archie B Carroll. (n9).

<sup>1053</sup> Alexandru Ioan Cuza, 'In brief: pros and cons of corporate codes of conduct' (*Jopafl.com*)

<[https://jopafl.com/uploads/issue9/PROS\\_AND\\_CONS\\_OF\\_CORPORATE\\_CODES\\_OF\\_CONDUCT.pdf](https://jopafl.com/uploads/issue9/PROS_AND_CONS_OF_CORPORATE_CODES_OF_CONDUCT.pdf)> accessed 19 February 2022.

<sup>1054</sup> N1.

<sup>1055</sup> N7.

Authority is working to develop its regulations so that they are sustainable, there are several variables, including: the ‘Saudisation’ system, training programs, transfer of expertise and contracting with small and medium companies.<sup>1056</sup>

A fundamental difference between the UK and KSA is that most participants from the UK stated that the majority of UK corporate codes are about supply chains and anti-slavery, followed by consumer protection and environmental protection.<sup>1057</sup> Therefore, because adverse environmental effects are often linked with human rights violations, some UK companies may realise that these issues should no longer be tackled separately, but in a comprehensive code of conduct. Most Saudi companies have codes of conduct related to environmental sustainability, especially oil and gas companies. This difference is because Saudi Arabia is one of the world’s largest oil producers and is consequently under pressure from groups concerned with environmental protection. Saudi oil companies, therefore, pay special attention to environmental sustainability since many of their customers are overseas, thus maximising profits by maintaining their reputations internationally.<sup>1058</sup>

Saudi companies’ focus on environmental sustainability should not come at the expense of other rights such as those of workers in supply chains. With the exception of major government-owned enterprises, few Saudi companies have codes of conduct related to supply chains. As a result of this, labour rights in supply chains are left unprotected leading to more forced labour, environmental crime and corruption.

The KSA has a more domestic approach to CSR compared to the UK’s more global approach. The Saudis can learn that conduct codes should be much more comprehensive. To improve social responsibility in Saudi organisations, codes of conduct regarding human rights in supply chains and anti-corruption are necessary. These codes should have a global rather than a local focus.

### 5.3.2 The Effect of International Law on CSR

#### Improving corporate behaviour

This section discusses the role of international law in improving corporate behaviour towards the community by promoting shared values. Based on the responses provided by the interviewees, it is argued that the international concept of creating shared value with the community is a good way for Saudi companies to improve their corporate citizenship and social responsibilities, thereby propelling their own growth and benefiting society simultaneously. However, these recommendations face the challenges of conflicting moral values between Saudi Arabia and the West. To this end, the following question was posed to the respondents:

Do you support businesses to improve their behaviour through shared value between companies and society?

As a result of recent cases in the UK, multinational companies may now be legally responsible for human rights violations committed abroad when local justice may not be accessible.<sup>1059</sup> Although neither the ATCA<sup>1060</sup> nor UK cases have established international precedent, the actions are a positive step towards corporate liability for inappropriate corporate conduct abroad.<sup>1061</sup> This means that an effective international legal system enhances the accountability of companies across borders and thus improves their behaviour. For instance, an interviewee from the UK said:

<sup>1056</sup> N27.

<sup>1057</sup> For example: N6, N7 and N9.

<sup>1058</sup> Habib Alshuwaikhat and Ishak Mohammed, ‘Sustainability Matters In National Development Visions—Evidence from Saudi Arabia’s Vision for 2030’ (2017) 9 Sustainability, 408.

<sup>1059</sup> In *Vedanta Resources PLC and another v Lungowe and others* [2019] UKSC 20, the UK Supreme Court found unanimously that Vedanta Resources, a UK company, owed a duty of care to the residents in adjacent areas of Konkola Copper Mines Plc (KCM), one of its subsidiaries in Zambia.

<sup>1060</sup> Alien Tort Claims Act (ATCA).

<sup>1061</sup> Kim Kercher, ‘Corporate Social Responsibility: Impact of Globalisation and International Business’ [2007] Enterprise Governance eJournal.

UN guidelines promote community behaviour and enhances the credibility of the company.<sup>1062</sup>

This means that the international regulations of CSR, especially those issued by the UN and the EU, are very effective in the UK. This suggests the adoption of such a consistent international approach in Saudi Arabia to improve corporate responsibility. However, these international efforts are undermined by the fact that the UK does not have laws that require that companies carry out due diligence in their supply chain. This means that no obligations are imposed by the UK's Modern Slavery Act to remedy risks found in a supply chain, as most of the UK interviewees noted:

This is an apparent omission and could create inconsistent CSR practices across the system of operation of the company in question, including in its international operations.<sup>1063</sup>

Fifteen of the Saudi respondents felt that the company's value is not in improving its behaviour because it is not one of its duties, but rather its value lies in enhancing its competitiveness with its peers in the first place. Four stated that some Saudi companies deal with the fact that disclosure is something negative for them:

Many corporations do charity, but they fear to be judged on account of insufficient charity, it is important for such companies to understand that transparency in this area may greatly contribute to improve the behaviour of company.<sup>1064</sup>

This shows that while the UK perspective sees that the international law affects creating value for the company, by linking the company's social performance to its financial performance, the Saudi perspective is deficient because they do not directly connect international guidelines of CSR with corporate behaviour. However, multilateral agreements impose obligations on states, not on companies. Convention 29 of the ILO, for example, prohibits forced labour but does not directly prohibit companies from using forced labour. States must take the necessary steps through domestic legislation to meet this objective. As part of the 1997 OECD Convention against corruption, some provisions deal with both host and home states. It requires states to establish jurisdiction over acts of bribery committed outside of their borders, in addition to bribery committed on their territory and by their citizens abroad. However, no mention is made of companies in this Convention.<sup>1065</sup> This means that the effect of international law is limited internationally in improving the behaviour of corporate social practices as long as there is no enforcement mechanism. However, signing international agreements that limit forced labour, corruption and the employment of minors is imperative for improving social responsibility in Saudi Arabian companies. With this type of agreement, Saudi companies will bring their ethical practices into line with global standards.

Seven Saudi respondents argued that the disclosure required by international organisations is detrimental to the company, as transparency does not necessarily create value for the company and may cause dissatisfaction amongst consumers due to a lack of social performance. One claimed that 'compliance with international directives is a 'Western industry' [and such] concepts are alien to KSA'.<sup>1066</sup> It is probably because there is no competition between the moral values advocated by these directives and Western moral values, but the opposite is true in Saudi Arabia, where there is competition between values.<sup>1067</sup> For example, international directives recognise non-discrimination against homosexuals, something that blatantly contradicts Saudi moral values. Saudi Arabia does not accept homosexuality, as this contradicts its religion,<sup>1068</sup> culture and values. A solution to this problem to enhance CSR in the KSA can be found by addressing international agreements as separate parts. This means applying the parts that do not conflict with the internal values and excluding others that might cause public

<sup>1062</sup> N5.

<sup>1063</sup> N1.

<sup>1064</sup> N13.

<sup>1065</sup> Cecily Rose, 'Corporate Obligations Under International Law. By Markos Karavias.' (2014) 85 UK Yearbook of International Law, 178, 181; R. Piotrowicz, 'States' Obligations Under Human Rights Law Towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations' (2012) 24 International Journal of Refugee Law, 181, 201.

<sup>1066</sup> N29.

<sup>1067</sup> Corallina Curzi, 'Are Human Rights Merely 'Merely' Western Constructions?' (Academia.edu, 2022) <[https://www.academia.edu/10739501/Are\\_Human\\_Rights\\_Merely\\_Western\\_Constructions](https://www.academia.edu/10739501/Are_Human_Rights_Merely_Western_Constructions)> accessed 8 February 2022.

<sup>1068</sup> As mentioned in Quran: 'Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people.'



discontent. By way of example, Saudi companies could implement labour agreements that forbid modern slavery and leave out provisions that may conflict with local laws, such as unionisation.

Global business ethics have their historical roots in the Age of Enlightenment, from which they derive values such as equality and non-discrimination.<sup>1069</sup> This means that the Western culture is dominant over international directives, while the local culture in Saudi Arabia has different values; for example, the relationship between the worker and the employer is never governed by social rules, but by labour law, and even some local programmes such as ‘Saudisation’ do not mean discrimination against foreigners but rather giving priority to locals to work. Saudisation is the substitution of a citizen for a non-Saudi resident in a specific job, provided that the Saudi has the capabilities, qualifications and competencies needed by the job itself. It constitutes a moral value for companies in Saudi Arabia because it contributes to reducing unemployment by qualifying the Saudi citizen in all theoretical and practical fields of work in a way that gives the citizens a high market value. Companies, therefore, enhance their behaviour by Saudisation. Internationally, the process may be viewed as racial discrimination against foreigners. Such differences in moral values between societies pose a problem. CSR in the KSA cannot be improved through a traditional positivist methodology which cannot avoid values conflicts because it is no longer relevant to the realities of modern international law. The values-based method of coordination should be used instead.<sup>1070</sup>

### A unified legal framework for CSR

Despite differing views on CSR, providing a unified international standard for CSR is a critical step toward achieving social justice, economic advancement and human welfare in the international community. The importance of this is threefold: (a) such a framework will reduce disparities in compliance among Saudi companies; (b) it will make Saudi companies’ social practices more consistent; and (c) Saudi companies will adopt a global approach to implementing CSR. Respondents were asked the following question:

Are you in favour of a unified legal framework for CSR?

Nine of the UK interviewees argued that there was a need for an international legal framework for CSR because it would benefit society rather than the company and this was not intuitive for company executives.<sup>1071</sup> If the management and leadership had not yet internalised the necessity for social and environmental measures, the legal framework would pressurise them to act as if they had. This was evident across all industries but particularly those affecting the environment. A respondent supported this view by giving the example of Shell:

Shell is an international corporation, which has subsidiaries in many countries. The judgment delivered by the Dutch court will certainly have repercussions on the company’s operations outside the Netherlands.<sup>1072</sup>

Not only does this judgement affect the way Shell approaches its CSR obligations, it will also affect the operational culture of their competitors who want to be seen to ‘do the right thing’ as regards the environment and more generally, their CSR duties.<sup>1073</sup>

Although 17 Saudi respondents stated that they have no idea and preferred to skip this question, the other three supported the need for a unified international framework. One noted:

There is a need to work institutionally under the umbrella and legislative reference and this, in turn, achieves a balance between the parties.<sup>1074</sup>

<sup>1069</sup> Samara Ann Cahill and others, ‘Transitions: Studies in Religion and The Age of Enlightenment’ [2018] Studies in Religion and the Enlightenment; Toren Finkel, ‘The Enlightenment of Age’ (2019) 573 Nature, 193, 194.

<sup>1070</sup> Marco Mazzeschi, ‘Coordination of Different Principles and Values in International Law’ [2018] SSRN Electronic Journal.

<sup>1071</sup> For example, N10.

<sup>1072</sup> N7.

<sup>1073</sup> Innocent Ekatah and others, ‘The Relationship Between Corporate Social Responsibility and Profitability: The Case of Royal Dutch Shell Plc’ (2011) 14 Corporate Reputation Review, 249, 261.

<sup>1074</sup> N16.

A fundamental difference between the UK and Saudi is that the UK perspective recognises the effect of a unified legal framework on CEOs as if it helps them realise the importance of CSR. Therefore, under the UK paradigm, a CSR international legal framework benefits businesses because it can help them manage risk, save money, access capital, manage customer relationships, manage human resources and develop innovation abilities.<sup>1075</sup>

The Saudi point of view is that the effect of such an international framework on Saudi companies is limited because they focus on the local than the external community. This is due to a lack of public awareness about the international framework of CSR which creates lower demands on Saudi companies from the local community. The Saudi consumer does not look for the company's history in social performance if they want to buy a commodity but only for a competitive price. Although there are a few examples of Saudi boycotts of international companies, it is mostly because they have violated an Islamic tenet.<sup>1076</sup> While it is true that there is no consistent, integrated international legal system of CSR, Saudi Arabia lacks even a domestic law regulating CSR, which makes this problem worse. Saudi Arabia does not appear to be influenced by international standards, possibly because business culture and underlying social philosophies conflict. By incentivising Saudis to standardise CSR practices, CSR can be improved. The goal of CSR standardisation is to ensure that all processes of CSR are performed in accordance with agreed principles. CSR standardisation is meant to enforce a certain level of consistency and uniformity which would force Saudi firms to adhere to a more comprehensive international framework of CSR and limit the conflicts of interest.

### 5.3.3 Application of International Law of CSR

International guidelines such as the UN Compact and OECD guidelines provide an open-ended regulatory framework for sovereign states and a comparison of adherence to such frameworks provide us with a ready standard of CSR acceptance and commitment. This section discusses reflexive law and disclosure statements known as the comply-or-explain mechanism. This discussion is important in improving CSR in the KSA for two reasons: (a) the reflexive law tends to emphasise procedures rather than objective rules and therefore does not conflict with the KSA's objective rules; and (b) disclosure statements in annual reports will probably be a compromise in the KSA to promote CSR although current voluntary disclosure has had no effect. Interviewees were asked the following two questions:

How do corporations implement international CSR, in your opinion?

To what extent do you think companies in your jurisdiction are bound by a disclosure statement to improve their social responsibility

#### Voluntary compliance & self-regulation (reflexive law)

International reporting is intended to meet public policy objectives by encouraging companies to self-regulate based on reflection on their effect on society.<sup>1077</sup> CSR and reflexive law theory are not novel concepts. Reporting and certification programmes have been viewed as forms of reflexive law related to CSR-related topics such as labour rights and environmental law. It has been the primary aim to encourage self-regulation through reporting or certification procedures.<sup>1078</sup> Reflexive law theory is concerned with regulating individual or collective actions (mostly business actions) to address societal concerns such as pollution or unfair employment. To deal with regulatory dilemmas related to such issues, Teubner developed the theory in the 1980s. The concept of reflexive law can be explored both theoretically and as a regulatory approach focused on meeting the needs and concerns of the public. The primary goal of reflexive law is not to replace substantive law, but to supplement it.<sup>1079</sup> Norms are developed based on this learning from societal actors in reflexive law

<sup>1075</sup> Alan Gutterman, 'Responsible Business: A Guide to Corporate Social Responsibility for Sustainable Entrepreneurs' [2019] SSRN Electronic Journal; Manuel Castelo Branco and Lúcia Lima Rodrigues, 'Corporate Social Responsibility and Resource-Based Perspectives' (2006) 69 Journal of Business Ethics, 111, 132.

<sup>1076</sup> In 2020, Saudis calls for a boycott of French supermarket chain Carrefour because of a cartoon offensive to the Prophet published by a French magazine.

<sup>1077</sup> Ibid.

<sup>1078</sup> Anna Beckers, 'Towards A Regulatory Private Law Approach for CSR Self-Regulation? The Effect of Private Law On Corporate CSR Strategies' [2019] SSRN Electronic Journal.

<sup>1079</sup> Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law' (1983) 17 Law & Society Review, 239.

which involves making procedural frameworks that allow them to learn about the needs and expectations of others. As a regulatory strategy, reflexive law can be employed to internalise externalities.<sup>1080</sup>

Although some argue that the reflexive law is the best description of international procedures for CSR,<sup>1081</sup> especially the UN Compact and OECD guidelines, no respondent from the UK or KSA used this phrase in their discussion, nor even synonymous terms such as ‘responsive law’ or ‘procedural law’. Twenty-five of the interviewees described compliance with these international directives (UN Compact, ILO guidelines, ISO26000 and OECD guidelines) as voluntary for companies. For instance, two interviewees from the UK and Saudi Arabia stated, respectively:

If we speak on the global level, CSR is a voluntary commitment.

Adherence to international guidelines is voluntary, it cannot force anyone.<sup>1082</sup>

Some described them as becoming an important international requirement for members of the UN Global Compact.<sup>1083</sup> While no respondent used the term ‘reflexive law’, eight of the UK respondents made it clear that ‘the principles of the UN are procedural but do not lead to a specific outcome’,<sup>1084</sup> which is in a way a reference to reflexive law.<sup>1085</sup> This means two things. First, most interviewees knew that the international guidelines on CSR are non-binding procedures and that there is no accountability mechanism. Second, there is flexibility in these international directives to avoid creating a conflict of interests and restricting the work of companies. Therefore, voluntary international law is a fact according to 29 of the interviewees and is synonymous with flexibility in commitment and implementation, as one Saudi interviewee noted:

Companies should have a certain degree of flexibility as to the extent of their commitment to CSR.<sup>1086</sup>

However, four Saudi participants argued that Saudi businesses must work towards building a better understanding with their Western commercial partners. The importance of this cannot be overestimated since it is linked to the trust Western business partners and clients place in their Saudi counterparts.<sup>1087</sup> Ultimately, this has to do with how successful the Saudi business will be and how able its management will be in allocating cash and effort in the achievement of its internal CSR objectives. This means that there is no application of reflexive law according to the KSA participants. The international directives are not a source of soft law, they are only incentives to improve their image and are closer to being a social rather than a legal responsibility, while their Western counterparts impliedly referred to the concept of ‘reflexive law’ and supported the role of law in international directives, although they did not deny that they are voluntary and the UN cannot, for example, impose them on companies in order not to impede their work. It does suggest the need to apply even minimal directives by framing the procedures that regulate the needs of the internal community, while simultaneously accommodating external factors such as reflexive law.

There is a significant difference between the UK and Saudi Arabia in that the degree of implantation of reflexive law in the UK legal system is greater than in Saudi Arabia. Most of the UK participants implicitly linked ‘reflexive law’ with the international law of CSR, while all the Saudi participants stated that reflexive law is ‘unclear and undefined’. This means that the EU reflexive harmonisation of CSR is higher than in the KSA. For example, the implementation of the EU Working Time Directive rules was framed to reduce working time by diversifying the solutions offered to unions and employers. Until

<sup>1080</sup> Karin Buhmann, ‘The Danish CSR Reporting Requirement as Reflexive Law: Employing CSR as A Modality to Promote Public Policy’ [2011] SSRN Electronic Journal.

<sup>1081</sup> Valentin Jentch, ‘Corporate Social Responsibility and The Law: International Standards, Regulatory Theory and The Swiss Responsible Business Initiative’ (Core.ac.uk, 2018) <<https://core.ac.uk/display/161571805>> accessed 30 January 2022; Kelley Burton, ‘Using A Reflective Court Report to Integrate and Assess Reflective Practice in Law’ (2016) 9 Journal of Learning Design, 56.

<sup>1082</sup> N14 and N30

<sup>1083</sup> For example: N7 and N8.

<sup>1084</sup> For example: N5.

<sup>1085</sup> Ірина Володимирівна Атаманчук, ‘Procedural Norms in The System of Procedural Law: General Theoretical Aspect’ (2015) 1 Scientific works of National Aviation University. Series: Law Journal ‘Air and Space Law.’

<sup>1086</sup> N13.

<sup>1087</sup> For example: N21.

the Regulation was enacted, the UK had a set of working time limits, centred on a maximum of 48 work hours per week.<sup>1088</sup> Using the UK example, we can see how reflexive law works in practice. The EU coordinated efforts between member states to reduce working hours by defining procedures that would help companies see the benefits of reducing working time. In response, the UK worked with internal unions and companies to create a domestic working time legislation.

Reflexive law is a relatively recent theory developed by German legal theorist Gunther Teubner in the 1980s.<sup>1089</sup> This means that reflexive law is a Western thought that symbolises self-regulation and normative solutions and does not replace the objective rules of domestic laws. Rather, it is the motivation for companies to carry out their social duty. Because of the emergence and development of this theory in the West, it is not widely or clearly known in Saudi circles.

This means that the Saudi corporate self-regulation on CSR does not consider international normative sources, particularly international law instruments of human rights. Reflexive regulation in the EU can be an effective means of encouraging self-regulation, but it can be difficult to capture definite results. The idea of reflexive regulation might conflict to achieve specific results by public institutions. However, as a model, Saudi Arabia may learn from s54 of the UK's Modern Slavery Act to improve its CSR which requires commercial organisations to include a statement regarding their efforts to prevent slavery and human trafficking in their global supply chains in their annual reports. Even though this provision focuses on improving transparency in supply chains, its broader scope indicates that a more reflexive paradigm of laws is emerging amid globalisation and implications for the responsibilities of commercial organisations to respect human rights.<sup>1090</sup> Many argue that reflexive law has little practical value since it is associated with neoliberal economic policy practices. In the case of s54, these characteristics seem to have a profound effect both on its doctrinal clarity and its lack of compliance mechanisms.<sup>1091</sup>

In light of the experience of the EU with reflexive law, regulating authorities in Saudi Arabia should be confident that the communication process of reflexive regulation will enable them to identify and address the concerns of other social subsystems. By setting up the procedural design in such a way as to encourage inter-systemic learning and information, societal interests would be balanced in the normative outcome. Whenever expectations are exchanged, Saudi public authorities have a role to play, including providing expectations that Saudi businesses adhere to international legal standards. The normative foundation of human rights in today's society is their observation and even promotion by businesses as part of their social responsibility. As a result, business normative self-regulation in Saudi Arabia may reflect an effective reflexive regulating process. A procedure that supports the norm-creation process must create conditions that support the process of learning about social expectations for it to achieve its maximum potential.<sup>1092</sup>

### Disclosure statement – the comply-or-explain mechanism

Comply-or-explain means that the company should introduce the disclosure review panel to the public or a justification for non-compliance.<sup>1093</sup> Disclosure is a way for companies to demonstrate their social responsibility. A disclosure statement (as a tool to implement a comply-or-explain mechanism) is important because it is perhaps the only way to bring about a real improvement in Saudi Arabia's social responsibility.

None of the interviewees touched on the comply-or-explain principle. One participant from the UK said that the reports of disclosure of CSR are 'the tip of the iceberg for the UK companies'<sup>1094</sup> while ten of the Saudi interviewees felt that a

<sup>1088</sup> Catherine Barnard, 'Reflexive Law, Corporate Social Responsibility and The Evolution of Labour Standards: The Case of Working Time' (Academia.edu, 2004)

<[https://www.academia.edu/14262107/Reflexive\\_law\\_corporate\\_social\\_responsibility\\_and\\_the\\_evolution\\_of\\_labour\\_standards\\_the\\_case\\_of\\_working\\_time](https://www.academia.edu/14262107/Reflexive_law_corporate_social_responsibility_and_the_evolution_of_labour_standards_the_case_of_working_time)> accessed 8 February 2022.

<sup>1089</sup> Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law' (1983) 17 Law & Society Review, 239.

<sup>1090</sup> Shuangge Wen, 'The Cogs and Wheels of Reflexive Law - Business Disclosure Under the Modern Slavery Act' (2016) 43 Journal of Law and Society, 329.

<sup>1091</sup> Harry W Arthurs, Corporate Self-Regulation: Political Economy, State Regulation and Reflexive Labour Law, in Cynthia Estlund & Brian Bercusson (eds.), Regulating Labour in the Wake of Globalisation (Oxford, Hart, 2008), 19-37.

<sup>1092</sup> Karin Buhmann, 'Reflexive Regulation of CSR to Promote Sustainability: Understanding EU Public-Private Regulation On CSR Through the Case of Human Rights' [2010] University of Oslo Faculty of Law Legal Studies Research Paper Series.

<sup>1093</sup> Yuri Biondi, 'An Economic Analysis of 'Comply or Explain Principle' Under A Review Panel Regime' (2015) 5 Accounting, Economics and Law - A Convivium, 295, 300.

<sup>1094</sup> N2.



disclosure statement is an undeclared commitment for companies; taking the first step to disclose is optional, but later it becomes hardly soft law because withdrawal may affect the company's reputation. One respondent stated:

The most important standard in strategic social and CSR work for us is the disclosure statement, which shows the company's business and its impact by using tools.<sup>1095</sup>

Another Saudi interviewee noted an important point, which is that 'many Saudi companies lack the necessary disclosure and do not see the need for annual disclosure reports'.<sup>1096</sup> This means that there are still Saudi companies that view the disclosure process as just a secondary procedure that they do not have to abide by. This is for two reasons. First, state-owned and family-owned companies dominate the Saudi Arabian market. Over 70% of listed firms are owned by family members and a Saudi Arabian company represents more than 30% of the Saudi Arabian government's holdings and CSR disclosures are negatively correlated with government ownership.<sup>1097</sup> Second, there is no international mechanism, except for some directions and instructions that are nothing more than advice. This means that some Saudi companies take care of their own interests without regard to the welfare of society and are therefore self-serving. The main goal of some Saudi companies is to increase their stock price and make profits. Therefore, the tool of disclosure is not used sufficiently by Saudi companies to monitor their operations and follow the law and regulations, ethical standards and international norms.

Seven of the UK interviewees were more supportive of companies' compliance with European disclosure reports and mentioned that EU companies are legally obligated to publish disclosure reports, even after Brexit. For example, an interviewee demonstrated:

All big companies within the EU are complying with the requirements of the EU non-financial reports.<sup>1098</sup>

Only one Saudi respondent felt that disclosure processes must be binding by international law and even think it essential to define a measurement tool to make the disclosure process more transparent:

We use the recognised SROI tool. Briefly, to define the challenge the company is working on, the resources allocated to solving it, the stakeholders and what each stakeholder offers and this conscious method of CSR makes us move away from the 'traditional public relations' because it lacks measurement standards.<sup>1099</sup>

Five of the Saudi interviewees stated that the disclosure process means calculating the value of what they should give to stakeholders. This proves that they take the issue seriously as a commitment towards their international investors and suppliers and even their global reputation, especially if a Saudi company has branches abroad. Nonetheless, this vision may only apply to multinational companies based in Saudi Arabia or large Saudi Arabian companies with overseas branches, as they are more exposed to international scrutiny than others. In itself, this is not problematic. However, many SMEs may not choose to disclose their social responsibilities at all or may publish minimal information about their social practices.

Clearly, there is a difference between the Saudi and UK perspectives about compliance with disclosure and transparency processes. The UK view interprets disclosure reports as a legal requirement and not just a tool to improve the image or manage the impression. The Saudi perspective is about enhancing the credibility of companies, but it is not a legal requirement. Although the empirical results confirm the existence of a positive relationship between the level of disclosure and the profit of Saudi companies,<sup>1100</sup> the Saudi regulator has not imposed an accountability mechanism for companies that do not comply with disclosure reports. Since some Saudi companies do not comply with voluntary disclosure, Saudi

<sup>1095</sup> N27.

<sup>1096</sup> N22.

<sup>1097</sup> Khaleed Omair Alotaibi and Khaled Hussainey, 'Determinants of CSR Disclosure Quantity and Quality: Evidence from Non-Financial Listed Firms in Saudi Arabia' (2016) 13 International Journal of Disclosure and Governance, 364, 393.

<sup>1098</sup> N1.

<sup>1099</sup> N27.

<sup>1100</sup> Putri Renalita Sutra Tanjung, 'Effect of Corporate Social Responsibility Disclosure, Good Corporate Governance Implementation, And Profitability On Corporate Value (ASEAN Country Study 2016-2018)' (2020) 05 Saudi Journal of Business and Management Studies, 274, 283.

companies could become isolated from the international business community. This might lead to the universal belief that Saudi Arabia is not an attractive investment environment, and thus hinder the implementation of the Saudi Vision 2030, a key focus of which is creating an environment that unlocks business opportunities, broadens the economic base and creates jobs for Saudis.

To improve its CSR, Saudi Arabia should make disclosure a legal requirement similar to the UK's strategic report from the Companies Act 2006 or s54 of the Modern Slavery Act and comply-or-explain system. Through CSR reports, Saudi companies will be able to assess how they impact the environment, society and the economy. As a result, companies can improve their processes and positively contribute to society. This process can help stakeholders, including employees, investors, the media and non-profit organisations, gain a better understanding of the short-, medium- and long-term goals of companies and make better decisions. Various decisions can be made, such as investing in a business, buying its products and writing reviews about it.

## 5.4 CSR in private law

### 5.4.1 The Corporate Purpose

In recent years, businesses have become more aware that the goal of a company should be to produce profitable solutions to society's problems rather than to profit from causing problems such as pollution of the atmosphere and oceans. As a result, Milton Friedman's view that a corporation has a purpose as 'just making money' has been discredited and instead it is believed a corporation should strive to produce a profitable solution to both the problem of people and the problem of the planet.<sup>1101</sup> Solution-producing, not philanthropy is increasingly becoming the purpose of some Western companies. Because of this, the theory of the company affects corporate governance and CSR. This section explores the effect of the theory of the company in the UK and Saudi Arabia on CSR. This is important for two reasons. First, to determine the relationship between the theory of the company and CSR, meaning how a company's goal contributes to sustainable profit in its social practices, and vice versa. Second, it helps to redefine the corporate purpose in the KSA that addresses the positive relationship between maximising company profit and environmental and social governance. Therefore, this section is fundamental to understanding how to improve Saudi Arabia's CSR practices, because it explores the theory of the Saudi company as compared with the UK company and how this might affect the company's behaviour and social practices. To explore this, a question was asked of the interviewees: Do you think that company profitability is its only purpose?

Seven of the UK practitioners interviewed said that a balance between profit and social benefit is dependent on the sector. For example, two interviewees said:

It's hard to characterise business practice, on the packaged definition of do businesses for or look out for the right stakeholders. Many businesses do and many businesses do not. It depends on which sector you look at.

I think it varies in terms of which stakeholders the influential, the companies that are most serious about managing social impact issues and human rights issues, those that are most kind of brand exposed.<sup>1102</sup>

The purpose of a company in the UK according to respondents is dependent on the industry type. This means that some companies have greater potential to consider what is beneficial for society and others are more prone to concentrate on profit.<sup>1103</sup> It is possible to presume that corporations dealing with products that are not easily accessible to the wider public such as defence corporations are better able to conduct operations outside the remit of the CSR framework.<sup>1104</sup> All the UK interviewees stated that the purpose of the company affects its behaviour and thus its reputation. For instance, three respondents explained how the company's behaviour affected its reputation:

<sup>1101</sup> David Federhen, 'The Social Responsibility of Business...' - A Position Paper On Milton Friedman (GRIN Verlag 2004).

<sup>1102</sup> N1 and N2.

<sup>1103</sup> For example: N7.

<sup>1104</sup> Barton H. Halpern and Keith F. Snider, 'Products That Kill and Corporate Social Responsibility' (2011) 38 Armed Forces & Society, 604, 624.

This is particularly relevant for companies that deal directly with the public, such as clothing brands. Such firms are scrutinised more closely than others that are not situated in the public sphere, meaning that they are bound to observe more closely their legal obligations vis-à-vis CSR.

If you're an oil company and you're drilling for oil in Nigeria and there are a lot of concerns about the impact that would have on the environment and on local communities. You would come in with your CSR to perhaps generate good publicity, which would be seen as positive in the sense that this is a good company.

There was a big advertising company in the UK Bill, that made some statements in South Africa, which were considered racist, that company no longer exists, because it was, people do not want to work with them.<sup>1105</sup>

Fifteen of the Saudi respondents felt that the corporate function is making a profit in the first place. Saudi company theory, therefore, emphasises shareholder value. For example, five respondents said:

Our philosophy is profitability.

Our priority is to achieve profits.

The best interest of any company is profit.

Companies are established to achieve profits and their existence.

Most companies put on top of their goals and priorities the achievement of profitability in the first place.<sup>1106</sup>

Some Saudi companies may decide to greenwash their activities, meaning that they will decide to implement the principles of social responsibility to achieve the greatest degree of profit possible by improving their CSR-related reputation. While it was argued by one of the interviewees that such practice is not widely seen in Saudi Arabia, it was also admitted 'that some companies do label some of their investments a contribution to society'.<sup>1107</sup> It is submitted that:

[t]his raises the sensitive questions of what is or should be the main purpose of a Saudi company and whether the latter should try to emulate the experience of its Western counterparts.<sup>1108</sup>

The second question may be controversial because it requires that the company perceives itself as a legitimate participant in society and a driver for societal change. This proactive behaviour and particularly the emulation of Western practices runs the risk of being misinterpreted by the more conservative parts of the Saudi society which may view it as going astray from the principles of Shariah law. However, Saudi companies can and should incorporate this part of the Western experience which most closely aligns with the values of Islam (for example, the practice of Zakat) and leave out the parts which can create tension and societal concern. This means that a consensual way can be found to redefine the purpose of the Saudi company to emulate its Western counterpart in line with Islamic practices that emulate CSR such as Waqf and philanthropy.

An important finding is that most of the respondents from KSA stated that the main purpose of a Saudi company is to make a profit (shareholder value) because making a profit equates to social responsibility. For example, a Saudi interviewee argued that '[m]aking profits is a part of our CSR in our company'.<sup>1109</sup> By making a profit, the company helps the country's economy.<sup>1110</sup> This makes companies' social responsibility economic responsibility. The difference from UK companies, according to a Saudi respondent, is that:

<sup>1105</sup> N1, N7 and N9.

<sup>1106</sup> N13, N14, N16, N25 and N26.

<sup>1107</sup> N13.

<sup>1108</sup> Ibid.

<sup>1109</sup> N21.

<sup>1110</sup> Alexander Kritikos, 'Entrepreneurs and Their Impact On Jobs and Economic Growth' [2014] IZA World of Labour.

Shariah law requires this effort to obtain a profit to remain pure and aligned with the company's legal and regulatory responsibilities.<sup>1111</sup>

Understanding corporate economic responsibility in this way links its fulfilment to the company's social responsibility and without the former, the latter could not exist meaning that profit ensures the existence of stakeholders which the company must take care of to meet its CSR objectives.

It is, therefore, necessary for a company to learn to balance its responsibilities – economic and social – by dedicating an amount to the latter which will not cripple the entity and make it unable to meet its economic goals. Such a balance should be done regularly and consider the context within which the company operates: whether the overall economic state of the country is beneficial for social investment or not; whether the international market relevant to the corporation's activities is stable; and whether the company's business progresses well. Once such an analysis has been conducted, the corporation can allocate its resources to each area.<sup>1112</sup>

The Western view of the economic responsibility of corporations does not align with this. Creating an economic responsibility means not just making profits, but also enhancing the standard of living of citizens, ensuring they have access to quality goods and services at reasonable prices, providing jobs and paying decent wages, enhancing career opportunities in all sectors and eradicating poverty.

The Saudi philosophy of the corporate purpose is that the claim that making profits contributes to the common good is not necessarily true. Thus the common good in Saudi Arabia may not benefit from profit-making enterprises, particularly if they are only interested in serving themselves at the expense of stakeholders. The damage companies do to the environment and society may outweigh their contribution to local economic development.

This raises a familiar issue, namely whether there is a conflict between the objective to make a profit and thus fulfil the company's obligations to its shareholders, and the desire to achieve its CSR goals. The discussion on UK companies and how they approach their CSR responsibilities showed that profitability is one of the main objectives of UK companies. Indeed, at the managerial level, profitability is the focus of the activities of Western corporations in general according to a UK interviewee.<sup>1113</sup> This is driven by deference to the shareholders and by the established notion that a company must produce value for them.<sup>1114</sup> The position of a Saudi company is different, as is its motivation. One Saudi respondent stated that a Saudi company is 'primarily driven by the objective to create value for society, to be and remain in its service'.<sup>1115</sup> This is reflected in practice by the utilitarian drive to create the greatest benefit for society by distributing it across the largest possible number of individuals. This is motivated by gratitude and a sense of responsibility towards society, which inspires companies to harness their financial and human potential to serve the community to the best of their abilities.<sup>1116</sup>

In their discussion of the corporate purpose, the Saudi participants hold differing opinions. Those who argued that the aim of the company is to create value for society draw their inspiration from the charitable nature of CSR in Islamic law, but some felt that maximising profit itself is CSR. One felt that the company's behaviour does not need to affect its reputation as long as it provides good services to the consumer and gave an example:

When someone goes to buy a car, he does not pay any consideration to the company that applies CSR or not, but all that matters to him is the price of the car.<sup>1117</sup>

The reason this finding is interesting is because there is a conflict in the answers of the Saudi participants about discussing the purpose of the company. However, the existence of the company in itself is CSR, as it is required to maximise profit to ensure its continuity and its reputation is linked to consumer satisfaction, in the view of some Saudi participants. Observing the UK's experience, some sectors, especially those dealing directly with the public, must balance their economic function

<sup>1111</sup> For example: N23.

<sup>1112</sup> See Chapter six.

<sup>1113</sup> N5.

<sup>1114</sup> See Chapter Three.

<sup>1115</sup> N11.

<sup>1116</sup> See 5.2.1 of Chapter Five.

<sup>1117</sup> N23.



with society's benefit. Saudi companies, therefore, need to focus on long-term profits instead of short-term profits. A company's sustainable profit is related to its social responsibility, as it should be an active part of society by solving social problems.

These findings are in favour of treating CSR as an integral part of corporate behaviour,<sup>1118</sup> and are opposed to a scenario where companies' leadership does not consider the effect of its actions on the community. Compliance with CSR obligations just for the sake of reputation may and often does lead to only superficial observance of the relevant CSR duties. What such companies may decide to do is to meet only the most basic CSR legal obligations without actually asking what should be done to meaningfully improve the dividend for society.

The law can result in restricting the ability of a firm to conduct its operations and creating an uneven playing field. This is due to firms' different abilities to cope with a particular CSR regulatory regime. For example, firms with greater exposure to the wider public find themselves in a position of greater scrutiny; therefore, they need to invest more in CSR and be more careful how they carry out their activities. Companies from countries where CSR is not so embedded in the domestic legislative framework will thus have a competitive advantage over their more regulated counterparts. However, while this advantage is real and can bring greater profits in the short-term, the CSR-compliant companies with sufficient financial potential are in a far better position to thrive in the long-term.

In the UK and Saudi Arabia, the purpose of the company is dependent on several factors including the type of sector, the size of the company and the level of local legislation. In Saudi Arabia, there is no local legislation on CSR, which suggests that there is deep disagreement about the purpose of the business and the results are naturally contradictory. Although Western companies have a different level of compliance and define their purpose differently, they remain advanced in terms of inculcating the corporate theory that stresses social responsibility as a strategic behaviour. In the KSA, despite the spread of corporate charitable work, maximising shareholders' profits is still the main function of the company. This leads to corporate social and environmental costs such as pollution, poor-quality products and unfair business practices. The Saudis can learn from UK experience that practising CSR only for the sake of improving reputation is not sustainable. Observers pay attention to how well social responsibility initiatives are implemented and so short-term CSR initiatives to improve reputation with customers are insufficient. This suggests Saudis should reconsider the purpose of the Saudi firm to improve their social responsibilities.

#### 5.4.2 CSR and Company Law & Corporate Governance

Corporate law and corporate governance have an important role in promoting CSR in the UK. This section first compares how corporate law and corporate governance in the UK and Saudi Arabia address stakeholder interests and then analyses the enforcement challenges that s172 faces in the UK. The purpose of this is to study the weaknesses in UK legislation in promoting CSR before suggesting any Western mechanism or theory amend the existing Saudi corporate law and corporate governance. As such, we asked the respondents:

Do you believe that the current corporate law & corporate governance in your country motivate companies to improve their social responsibilities?

Nine of the UK interviewees claimed that businesses operating in the UK are motivated by the company law and corporate governance:

On CSR the UK corporate governance code and s.172 of Companies Act 2006 offer guidance on the ways businesses are expected to engage with their stakeholders, including employees for example, by demonstrating their clear purpose and strategy' and,

The UK Corporate Governance Code and the provisions of s.172 of the UK Companies Act aim to create a balanced system where the companies engage CSR with all stakeholders. However, this is

<sup>1118</sup> Kuiyoung Kang and Youngmin Yoon, 'The Effects Of Corporate Ethicality, CSR Consistency, And CSR Fit On The Perception Of CSR Authenticity : Focusing On The Moderating Effects Of Anti-Corporate Sentiment' (2018) 20 The Korean Journal of Advertising and Public Relations, 5, 34; Yi-Ru Regina Chen and Chun-Ju Flora Hung-Baesecke, 'Examining The Internal Aspect Of Corporate Social Responsibility (CSR): Leader Behaviour And Employee CSR Participation' (2014) 31 Communication Research Reports, 210, 220.

arguably undermined by the current system of remuneration in the UK which links the short-term performance of the company with the remuneration of the company's leadership.

We are asking them to disclose what they do to comply with 172 and report it to their transparency way so it's reported, as the way you would have a strategic report.<sup>1119</sup>

There is the Companies Act, s172 and s414, to address what others have specific responsibilities in relation to reporting.

s172 is a kind of the DNA of the UK company to improve CSR.<sup>1120</sup>

All these respondents felt that s172 and 414s are insufficient to protect stakeholders, but it is perhaps a gesture of goodwill. For example, two of them stated:

In my opinion, wholly insufficient, we're still at the start of a journey

We have a law enforcement problem here' and '172s is just an image.'<sup>1121</sup>

One UK interviewee said that:

s172 is an implicit identification of the relationship between the interests of the corporation and the interests of society and the case of *Re Smith and Fawcett Ltd*<sup>4</sup> is approach to interpreting 'bona fide'. Although s172 promotes CSR by 'promoting the company's success for all members', it is not a starting point for establishing 'shared value', because the director's duty is to enhance the success of the company represented by its shareholders in the first place, while the rest of the community is a secondary goal.<sup>1122</sup>

This is probably because, under s172, directors are not given much guidance on how to act in practice. It outlines the external interests that directors are to consider, but it does not specify how these external interests should be taken into consideration and therefore clarify what directors must do to comply. Neither does s172 grant standing to stakeholders other than shareholders in initiating a lawsuit against a company for non-compliance with social or environmental governance. In practice, this means that matter is more moral than physical. Investors (as stakeholders) have the right to vote for the selection of the board of directors and minority shareholders have the right to buy their shares in the right of unfair behaviour. This protection of only a portion of the stakeholders is important but certainly not sufficient. Under ss414A-D of the Companies Act 2006, companies must include information about human rights to understand the development, performance or position of their businesses, including information about any related policies and how effective they are. Although this enhances corporate transparency and imposes penalties for non-compliant companies, there is no specific mechanism in evaluating the information provided, or even the extent of its transparency. This analysis, based on practitioners' analyses, is consistent with the literature critical of the mechanism of enforcement of s172.<sup>1123</sup> The Saudis can learn from the UK's experience that the role of the law should be stronger and more defined to improve CSR. It should specify the mechanism of enforcement of the sections calling for the protection of stakeholders. This will not be easy because it requires that it be a smart law in the sense of being in a position to support the company in the performance of its social responsibilities without pushing it to do so. Pushing companies to implement CSR may cause companies to defraud the system to evade their social responsibilities but a smart law that places CSR somewhere in the middle between a purely voluntary practice and a strict legal requirement could improve CSR in the KSA.

<sup>1119</sup> N6 and N7.

<sup>1120</sup> N8 and N9.

<sup>1121</sup> N1 and N10

<sup>1122</sup> N2.

<sup>1123</sup> Ernest Lim, 'Judicial Intervention in Directors Decision-Making Process: Section 172 Of The Companies Act 2006' [2016] SSRN Electronic Journal; Amita Chohan, 'Is Section 172 Of The Companies Act 2006 Capable of Delivering for All Stakeholders?' [2012] SSRN Electronic Journal; Theophilus Tawiah, 'Do We Need Public Enforcement for Breach of Duties of Company Directors Under the Companies Act 2006?' (2021) 9 Journal of Law and Criminal Justice; Georgina Tsagas, 'Section 172 Of The Companies Act 2006: Desperate Times Call for Soft Law Measures' [2017] SSRN Electronic Journal.

When the Saudi interviewees were asked if Saudi companies apply CSR under company law, all replied ‘no’, but some felt that Saudi companies are required to be socially responsible:

Our company as a joint-stock company has laws and controls that protect its business and protect the rights of stakeholders, as the company adheres to the requirements for listing on the stock market, which include the organised disclosure of the company’s assets, sectors and investments and a review and analysis of its operations and financial position.

We have committees and regulations that regulate CSR.<sup>1124</sup>

Under Saudi corporate law, the highest decision-making body of a Saudi company is the General Assembly of Shareholders.<sup>1125</sup> Clearly, the company’s management is obligated to apply CSR policy if approved by this body. Every shareholder has the right to debate, ask questions and see reports that are disclosed. One Saudi respondent noted that ‘a company’s annual report typically discloses its contributions to CSR throughout the year’.<sup>1126</sup> The directors of a Saudi company are under a duty of care to their shareholders,<sup>1127</sup> which suggests that it is consistent with the principles of agency in Islam whereby the agent serves the interests of the principal. This means that corporations are a fiction and those who should bear this responsibility are the executives who are, however, employees of the company. This refers to the personal responsibility of the decision-makers in Saudi companies. Therefore, there is a distinction in the Saudi application of CSR between the social stance taken by the executive and what he is ‘permitted’ to do in the performance of his obligations. One Saudi participant said:

In every case when the corporate executive would be pursuing a socially responsible cause, he would be spending someone else’s money for a general social interest and this is wrong.<sup>1128</sup>

Most Saudi interviewees felt that the Saudi company is not motivated by Saudi corporate governance to promote CSR, at least as far as their work within Saudi Arabia is concerned. For example, one Saudi respondent noted:

[T]here are three criteria required by the ministry to prove that the facility achieves governance, which are the following:

- 1- Standard of transparency and disclosure.
- 2- Standard of financial safety.
- 3- Standard of compliance.<sup>1129</sup>

While Saudi corporate governance encourages compliance, transparency and disclosure of financial statements,<sup>1130</sup> there are no provisions that require companies to disclose such as non-financial reports and no ‘comply-or-explain’ principle in Saudi corporate governance, increasing the likelihood that Saudi companies will be negligent in their CSR since they are not required to comply with a minimum standard of publishing CSR reports.

There is a slight difference between the UK and Saudi in addressing CSR in corporate law and corporate governance. While shareholder value is prevalent in Saudi corporate law,<sup>1131</sup> enlightened shareholder value is the dominant theory of the UK Companies Act 2006.<sup>1132</sup> In the KSA, executives are thought to be the agents of the shareholders. As agents, they are

<sup>1124</sup> N11 and N27.

<sup>1125</sup> Saudi Corporate Law 2015.

<sup>1126</sup> N11,

<sup>1127</sup> N1.

<sup>1128</sup> N30.

<sup>1129</sup> N12.

<sup>1130</sup> Saudi Corporate Governance 2017.

<sup>1131</sup> See Chapter Four.

<sup>1132</sup> See Chapter Three.

responsible to the shareholders only and are thus focused only on increasing shareholder value.<sup>1133</sup> This means that any decision which does not protect shareholders and maximise their profits is against the principle of agent and principal in the KSA. The basis of this theory is that agency principles are supposed to apply to CEOs in Sharia Law. This means that the general principle of agency under Sharia can be applied to directors' fiduciary duties. In particular, the agent must act within the boundaries of his authority as an agent and in the best interests of the principal.

The enlightened shareholder value is somewhere in the middle between the shareholder value primacy and the continental European model of stakeholder value. Corporate law and human involvement in companies should, therefore, go hand-in-hand. The value of a company should be determined by its contribution to society. This does not mean that the enlightened shareholder value contradicts the company's economic function of maximising shareholder value, but rather it is an extension of it whereby directors should maximise the value of the shareholder in a way that does not conflict with moral and stakeholder values.

The UK model can be beneficial to KSA as enlightened shareholder value can be a complement to shareholder value. As a result, the shareholder value, which stands for maximising shareholder profits only, is no longer accepted globally and it should be improved in the KSA so that it at least does not blatantly conflict with moral values and stakeholders' interests.

When the 30 participants were asked if they were satisfied with the demographic representation on the board of directors in companies in their countries, 29 answered no. The last participant, who was from the UK, was not sure because he had no recent statistics. There is poor representation of women on the board of directors in both countries, which is a challenge. Women make up 39% of the boards of directors in the UK, for example. To this end, the FTSE Women Leaders Review sets out recommendations to encourage UK companies to open up opportunities to women, including an increase to a minimum of 40% female representation on FTSE 350 boards and in leadership roles by 2025.<sup>1134</sup> However, it is rare to find Saudi women on corporate boards because of cultural barriers.<sup>1135</sup> However, according to Harvard Business Review, boards with diverse members are more successful than those with primarily male members.<sup>1136</sup> This motivated the author to propose a solution to increase the rate of female representation on boards of directors to promote diversity in Saudi companies.<sup>1137</sup>

### 5.4.3 CSR and Supply Chains

This section seeks to highlight the UK and Saudi perspectives in addressing human rights across supply chains and to discuss the reasons for the differences. It explores whether Saudi companies suffer from a legislative vacuum to protect human rights across borders. The purpose is to improve the practices of Saudi companies in supply chains by transferring the leading UK legislative provisions in this field. This is particularly important because international business operations are becoming more aligned to retaining customers, suppliers and partners around the world and Saudi Arabia is a significant part of this vast global business sector. To this end: the respondents were asked:

Are there domestic laws that protect human rights across supply chains? Are they sufficient in your opinion?

Human trafficking and labour exploitation are acts of modern slavery that affect the UK and the rest of the world. UK organisations are required to investigate and report on their supply chains under s54 of the Modern Slavery Act 2015. They

<sup>1133</sup> Milton Friedman, 'A Friedman doctrine-The Social Responsibility of Business is to Increase its Profits' (1970) New York Times Magazine, available: <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> accessed 9 February 2022.

<sup>1134</sup> 'Sea-Change in UK Boardrooms as Women Make Up Nearly 40% Of FTSE 100 Top Table Roles' (GOV.UK, 2022) <<https://www.gov.uk/government/news/sea-change-in-uk-boardrooms-as-women-make-up-nearly-40-of-ftse-100-top-table-roles>> accessed 17 March 2022.

<sup>1135</sup> See for example UAE case which is similar to KSA case: Abeer Omar, 'Rare Middle East Push For Women On Boards Runs Into Culture Wall' (Bloomberg Quint, 2022) <<https://www.bloombergquint.com/business/rare-middle-east-push-for-women-on-boards-runs-into-culture-wall>> accessed 17 March 2022.

<sup>1136</sup> Sylvia Hwelett, Melinda Marshall and Laura Sherbin, 'How Diversity Can Drive Innovation' (Harvard Business Review, 2013) <<https://hbr.org/2013/12/how-diversity-can-drive-innovation>> accessed 17 March 2022.

<sup>1137</sup> See Chapter Six.



should publish their modern slavery transparency statements, which should include a detailed description of the supply chain, the organisation's structure, slavery and trafficking policies and business location.<sup>1138</sup>

All of the respondents from the UK stated that s54 did not adequately protect human rights in supply chains. Comments like 'absolutely it is not enough, but it's a good start', 'I would not say that they are sufficient, I think more needs to be done' and 'although with a caveat, you do not have to do anything under the Modern Slavery Act'<sup>1139</sup> were made. Three argued that the Act fails to achieve a real change and guarantee that supply chains are free from forced labour,<sup>1140</sup> and it had no penalties or benchmarks:

The regulator can enforce you to publish the statement, but it does not tell you what to say and in the statement you were allowed to say you have done nothing.

We still do not have a situation where a company is obliged to do due diligence in respect of its supply chain and actually determine if there is exploitation, for example going on within the supply chain, there is no need for a modern slavery statement to disclosure, which often is, if you look at them in company reports, they are often quite boilerplate.<sup>1141</sup>

Having a clear idea of what a company does and how well it manages its supply chain in terms of CSR would be a complicated task because there could be a conflict between the desire of a corporation to stay competitive and their efforts to consider the human rights of the participants in the supply chain. The modern understanding of CSR in the West is a natural progression from the understanding of the concept at its inception. In the past, CSR was understood as doing good or at least not causing harm. The current Western approach to CSR now requires much greater proactivity on behalf of corporations. For example, it will not suffice if the corporation knows that it has not endangered the community in any direct way. It is expected that the leadership of the corporation looks into all parts of its operation, including its supply chain, to identify whether something related to its operation had a negative, in the CSR sense, effect on society. Since the specific application of CSR will necessarily depend on the type and the size of the industry, it remains flexible and, to an extent, inconsistent. For example, supply chain management in big businesses in the UK must consider environmental, social and governance factors (ESG). Therefore, some UK businesses from sectors such as transport, technology and finance have joined the UNFCCC Race to Zero,<sup>1142</sup> such as AstraZeneca (AZN) and GlaxoSmithKline (GSK).<sup>1143</sup>

The UK's experience teaches Saudi Arabia that CSR is a proactive approach to safeguarding human rights in its supply chain and not an attempt to repair a company's reputation after malicious behaviour has occurred, but rather before it. Due to this advanced approach, the KSA has to first acknowledge that it has a responsibility to protect worker, supplier and consumer rights along cross-border supply chains to improve its CSR.

This also depends on the balance of power between leaders and stakeholders. Stakeholders include a great number of individuals and organisations such as investors, customers and business partners, but also media, civil society organisations, workers and trade unions. In principle, the greater the exposure of a brand, the more likely it is that the power will shift towards stakeholders and vice versa. The majority of the leading UK supermarket retailers have become acutely aware of the implications for their reputation of whether they adhere to CSR principles in their operation or not.<sup>1144</sup>

No participant discussed the possibility of the Secretary of State seeking an injunction against non-compliant companies, a sanction that is allowed under the Modern Slavery Act.<sup>1145</sup> However, all agreed that a lack of enforcement and penalties is the biggest issue in enforcing a robust supply chain. Although reports are made public under s54 of the Act, it is hard to properly measure the effectiveness of what has been done in terms of CSR. This is unfortunate because, in principle, it should

<sup>1138</sup> 54s of The UK Modern Slavery Act 2015.

<sup>1139</sup> N10, N3 and N5.

<sup>1140</sup> N5.

<sup>1141</sup> N7 and N9.

<sup>1142</sup> The United Nations Framework Convention on Climate Change is a race to zero.

<sup>1143</sup> 'Third of UK's Biggest Companies Commit to Net Zero' (GOV.UK, 2022)

<<https://www.gov.uk/government/news/third-of-uks-biggest-companies-commit-to-net-zero>> accessed 25 February 2022.

<sup>1144</sup> Claire Elisabeth Pulker and others, 'Global Supermarkets' Corporate Social Responsibility Commitments to Public Health: A Content Analysis' (2018) 14 Globalisation and Health.

<sup>1145</sup> Section 54(11) of the Modern Slavery Act 2015.

be easy to measure companies' CSR impact. There are areas such as carbon emissions from a company's business operations where this could be estimated with sufficient certainty. The same should apply to workers' wages.

Making s54 of the Act mandatory is hindered by many factors. Some cases may occur outside the UK, but the UK may be used as a transit station. In this case, the enforcement of the law is much more difficult because it may collide with another legal entity in another sovereign country leading to a conflict of laws and legal uncertainty for companies that attempt to find out in advance what their obligations are. Second, laws may hinder the principle of free trade and economic progress should not be held back due to a refusal to engage in trade opportunities by mandatory scrutiny of human rights across the supply chain lest it impede economic advancement in places and for people who need it most.

One interviewee from the UK suggested that companies should 'think about diversity and inclusion practices and policies within their own company data [and] about how their operations impact on human rights of other people'.<sup>1146</sup> Even in cases where a company is doing its best to comply with CSR in its supply chains, it may not be able to do so to the best of its intentions. The failure to align intentions with reality may be due to the imperfect system of reporting slavery although, as the same interviewee correctly suggested, 'there's also a lot of those that only do the bare minimum to comply with the law'.<sup>1147</sup> For example, firms are required to include in their reports everything which is relevant to their compliance with the protection of human rights. In reality, firms present reports which show them in a very positive light (producing a 'nice, glossy report' as one interview noted);<sup>1148</sup> however, they rarely discuss everything that has been done in connection with or as a result of their CSR responsibilities. Such omissions are either due to the culture of the company which has adopted a more streamlined line of reporting to make it more time-efficient for stakeholders, or to concerns that including more in the report will expose the company to legal liability. This is not to say that everything that does not find its way in the CSR reports is necessarily negative; rather, as one participant stated: 'there remains a big disconnect between what the company is saying that it is doing and what it is doing in reality'.<sup>1149</sup> This makes finding legal grounds to prosecute corporations difficult. Drawing on the UK experience, the Saudi Financial Market Authority could develop an index of CG to cover CSR reports. CSR reports of listed Saudi companies could be measured based on how well they adhere to their self-regulation of CSR. This may enhance the transparency of their reports.

One interviewee said:

The EU is moving towards mandatory human rights due diligence, whereas on the other hand, the UK is not.<sup>1150</sup>

This is not a desirable development, all the more given that the Modern Slavery Act 2015 is, in the view of one interviewee, already outdated<sup>1151</sup> despite its strong focus on corporate accountability and has other issues which a new Act could deal with successfully. Unfortunately, since Brexit, one respondent claimed that 'the UK legislature appears reluctant to introduce more human rights-centric legislation',<sup>1152</sup> which indicates that an imbalance between overregulation and lack of the most appropriate CSR regulation will continue to be present in the UK.

A legislative framework does not exist in a vacuum; rather, it reflects global standards which have by now been internalised by the broader public. This means that every brand and business finds itself under constant pressure to do better in terms of complying with standards. This pressure does not come solely from companies' regulatory obligations but from their stakeholders who have high expectations of the performance of the business they purchase from or are connected to. For instance, studies suggest that the millennial population, Gen Z and the younger generations more generally do not want to either work for or buy from companies that do not have a strong sustainability and responsibility agenda.<sup>1153</sup> This behaviour

<sup>1146</sup> N3

<sup>1147</sup> Ibid.

<sup>1148</sup> N4.

<sup>1149</sup> N2.

<sup>1150</sup> N3.

<sup>1151</sup> Ibid.

<sup>1152</sup> N10.

<sup>1153</sup> Adrián Castro-López, Victor Iglesias and Javier Puente, 'Slow Fashion Trends: Are Consumers Willing to Change Their Shopping Behaviour to Become More Sustainable?' (2021) 13 Sustainability, 13858.

becomes more pronounced in times of a crisis such as the Covid-19 pandemic. This is not entirely surprising, as one UK participant UK stated:

Given the fact that the current health crisis had and continues to have serious economic implications, which pressures consumers into a more selfish and/or pragmatic consumer behaviour.<sup>1154</sup>

The change in attitude described above positions a company in a difficult situation in which it must learn how to balance its main objective of making a profit with its CSR aspirations and, increasingly, obligations.

By contrast, most Saudi respondents had no idea about the relationship between CSR and supply chains. Some even have no idea about the concept of supply chains:

The truth is that during my work in this field over the past six years, I have not heard about this concept.

Most companies do not pay attention to this problem.

What do you mean by supply chains?<sup>1155</sup>

Only two were interested in discussing supply chains:

There are provisions in the labour system that guarantee workers' rights within the KSA. As for outside KSA, there are many conditions and standards that must be taken into consideration when dealing with these companies, CEO among them ensuring the reputation of the company and its international classification and that it is free from any suspicions or legal problems. The Chambers of Commerce also emanating from the Ministry of Commerce have an important role in shaping some relations with companies and countries.

There is the 'Local Content Authority' project, which is a national body that is the regulator of supply chains.<sup>1156</sup>

Seven said that, although employee protection forms part of the broader stakeholder protection from the Saudi company perspective, employees are a more regulated group subject to regulations issued by the Saudi Ministry of Labour. This means that the worker is a human being and there is a national law that protects his rights. Thus, the respondents believed that labour law is sufficient to protect the right of employees. No Saudi interviewee mentioned the anti-trafficking law. This shows that, in the KSA, human rights and supply chains are not issues that are at the forefront.

Although the UK had pioneering legislation in combating slavery through supply chains in s54 of the Modern Anti-Slavery Act 2015, there is no similar Saudi legislation. The KSA does have anti-trafficking laws, labour laws and consumer protection laws, but they do not guarantee any protection across supply chains. This is perhaps because, although there are reports that many companies that employ large numbers of suppliers are Western multinationals such as 3M, Apple and Carrefour,<sup>1157</sup> there are no reports about large Saudi companies. This lack is probably because most Saudi companies are small or medium and do not have branches abroad and tend to employ foreign workers only in Saudi Arabia.

One of the major problems is that Saudi companies do not engage in comprehensive risk assessments to identify and address the risks of modern slavery, human rights and wider ESG factors. Thus, they are unable to prioritise their risk management efforts and target resources to their suppliers. Due to this lack of auditing, training, policies and reporting mechanisms, Saudi Arabia's supply chains are not protected. There is a dichotomy between the steps of due diligence (including risk management) done by at least some UK companies and no risk management in the KSA. Risk analysis as part of due diligence is part of legal compliance and does not seem to be observed in the KSA. In the UK, specialised risk management is the first

<sup>1154</sup> N4.

<sup>1155</sup> N14, N18 and N19.

<sup>1156</sup> N15 and N27.

<sup>1157</sup> Frontlines Report 2016, 'Scandal Inside the Global Supply Chains of 50 Top Companies' (2016) <[https://www.ituc-csi.org/IMG/pdf/pdffrontlines\\_scandal\\_en-2.pdf](https://www.ituc-csi.org/IMG/pdf/pdffrontlines_scandal_en-2.pdf)> accessed 10 February 2022.

step towards legal compliance. As part of the risks that may harm the reputation of a company, management is supposed to take a proactive approach to protect human rights violations across supply chains.

### 5.5 Challenges facing CSR practices in the UK and Saudi Arabia

Cultural, structural and even economic problems of CSR are not without a solution, and highlighting them is the first step to solving them. This section identifies difficulties in applying CSR in the UK and Saudi Arabia. It argues that global CSR cannot be replicated by developing countries without prior examination due to the socio-cultural and religious conditions and country-specific determinants. The main focus of this section will be, first, to determine if Islamic stereotyping of CSR conflicts with Western strategies for CSR, and if the result suggests ways for improving CSR practices in Saudi Arabia. Second, it will examine whether the size and structure of the company (family or otherwise) affects its level of compliance with CSR either in Saudi Arabia or the UK and the practical effects of this, if any. Third, it will discover if overregulation of CSR poses a challenge to UK companies and why and whether such legislative concerns exist in Saudi Arabia.

#### Religious stereotypes of CSR

According to some scholars, CSR as a means by which firms have a responsibility to society has a clear relationship with religion and even its origins and antecedents in theological and religious discourse.<sup>1158</sup> For example, there is evidence that the religious values of managers reflect both on their own behaviour and that of their subordinates.<sup>1159</sup> The relationship between CSR and religion has been studied mostly from a macro-normative perspective of the Catholic and the Islamic faiths. It may be because both present normative frameworks that are readily applicable to the business context, offering strong legitimacy.<sup>1160</sup>

When questioned about the personal motive behind CSR, most UK interviewees felt that CSR is primarily a legal responsibility, perhaps slightly motivated by morals or religion, but not hugely important. The most important issue is that the company should comply with the minimum legal requirements to avoid legal sanction, regardless of any religious drive.

All Saudi respondents viewed Islam and Sharia law as having a significant influence on their daily activities and business:

Islam is not just a religion, but an organisation and guide for both society and individuals within it'.<sup>1161</sup>

Economic activities are not seen by Islam as an end in themselves, but as a means to an end. This is why many Islamic business practices are incorporated into CSR practices. Two Saudi interviewees said:

Islam is an enshrined religion that is designed to redistribute wealth and improve society.

The aim of giving is to improving society and the living standards of local communities.<sup>1162</sup>

Clearly, Saudi CSR is more influenced by principles of morality due to the religious underpinning of the system than the UK and while corporations in both systems are motivated by profit, the underlying motivation for wanting to become and stay profitable differs in Saudi Arabia and the West. Most Islamic corporate scholars assume that corporate moral considerations should be found in Islamic law. This leads to missing the comprehensive legal framework for corporate social practices. Islamic culture is flexible and usable at all times, but sometimes it is used as an excuse to undertake purely charitable work at the expense of strategic commercial interests.

In many Islamic countries, there is a difference between what is taught and what is practised although CSR as religious philanthropy is not a problem in and of itself, CSR has other aspects that must be addressed, such as legal, ethical and

<sup>1158</sup> Gerald J. Schnepf and Howard R. Bowen, 'Social Responsibilities of the Businessman' (1954) 15 *The American Catholic Sociological Review*, 42; William C. Frederick, 'Moving to CSR' (1998) 37 *Business & Society*, 40, 59.

<sup>1159</sup> Bradley R. Agle and Harry J. Van Buren, 'God and Mammon: The Modern Relationship' (1999) 9 *Business Ethics Quarterly*, 563, 582; John Angelidis and Nabil Ibrahim, 'An Exploratory Study of the Impact of Degree of Religiousness Upon an Individual's Corporate Social Responsiveness Orientation' (2004) 51 *Journal of Business Ethics*, 119, 128.

<sup>1160</sup> Florian Leo Buchner, 'Religion, Spirituality and CSR: A Systematic Literature Review' (2019) 2019 *Academy of Management Proceedings*, 14411.

<sup>1161</sup> N12.

<sup>1162</sup> N13 and N15.



economic considerations. Hence, there is no problem with religious profiling in Saudi Arabia; rather, the challenge lies in reducing CSR to purely charitable acts. This motivated the researcher to propose a strategy for CSR based on an Islamic corporate social responsibility (ICSR) model in Saudi Arabia.<sup>1163</sup>

### Different levels of compliance

CSR has changed from being an optional feature to being a compliance requirement. Internationally, there are generally three categories of compliance with CSR, with some overlap: (1) disclosure regulations, which oblige companies to disclose whether they address an issue and how they do so; (2) compliance regulations, which require companies to establish compliance programmes to address specific CSR issues; and (3) trade-based regulations.<sup>1164</sup> Compliance with CSR remains a major obstacle for many companies worldwide. This section seeks to analyse the reasons for the disparity of compliance of CSR in the UK and KSA so that Saudis can learn how the UK deals with the same problems.

Seven of the UK respondents, when questioned about the level of compliance of CSR in the UK, felt that it would be naïve to suggest that everyone who represents big corporations approaches the issue of compliance with CSR guidance in the same way. For example, three interviewees said:

While some managers and business leaders do, others do not.

The work on CSR is always different.

[T]here are some companies that take [their CSR obligations] incredibly seriously, there are some companies that are not engaging at all, everything in between, is a real mix.<sup>1165</sup>

This raises the question of whether some companies in the UK take a genuine interest in upholding the principles of CSR or whether their decisions are informed solely by considerations of profit. The answer to this is complex, as an interviewee explained:

UK companies are attracted by the CSR cause because of considerations of reputation, profit and ultimately, risk management.<sup>1166</sup>

Moreover, three of the UK respondents said that the base compliance of a company is widening to include long-term sustainable practices in addition to profit:

Climate change as a particularly good example of the importance of this new compliance since the rapid change in the environmental conditions on earth may lead to the demise of the business or even its stakeholders at a not-so-distant point in the future. This underlines the importance of companies seeing themselves as part of the social fabric.<sup>1167</sup>

At this point, it would be relevant to consider whether compliance with CSR is or can ever become profitable for the businesses committing themselves to it. One interviewee asserted that, in theory, 'this should indeed be the case, citing the organic connection between engaging in CSR practices and business profits'.<sup>1168</sup>

Equipping companies with the knowledge and skills and providing them with incentives to look at purchase orders, purchasing practices, public procurement decisions within businesses or government

<sup>1163</sup> See Chapter Six.

<sup>1164</sup> 'Corporate Social Responsibility Compliance in 2018, And Beyond – An Overview for In-House Legal Counsel' (Ropesgray.com, 2018) <<https://www.ropesgray.com/en/newsroom/alerts/2018/03/Corporate-Social-Responsibility-Compliance-in-2018-and-Beyond-An-Overview-for-In-House-Legal-Counsel>> accessed 26 February 2022.

<sup>1165</sup> N2, N8 and N9.

<sup>1166</sup> N10.

<sup>1167</sup> Ibid.

<sup>1168</sup> N1.

agencies that involve buying goods in the supply chain setting and selling goods to customers from the point of view of CSR will go an extra mile in protecting the profits of the company.<sup>1169</sup>

Company staff need to take into account how environmentally or socially damaging the products that they are selling or ordering from suppliers are.<sup>1170</sup>

However, such awareness and familiarity with the process of CSR do not come without a cost. Typically, this is an upfront cost, which must be covered by the firm at the beginning of its operation. Not all companies are in a position to meet this requirement from the start of their operation. This leaves a substantial part of many industries open to accusations of not having complied with established expectations as regards CSR. N8 cited a study of 650 companies which found that, despite the cost of applying CSR practices, especially newly established companies, about 80% preferred legislation which would ensure that they had good CSR and benchmarking.

UK companies demonstrate different levels of commitment in which some act responsibly and some stick to empty declarations while continuing their practices from the pre-CSR era and others are a mixture of the two approaches. This commitment is further supported by an elaborate legislative framework consisting of a variety of labour and anti-discrimination laws.

Fifteen of the Saudi interviewees felt that Saudi companies also have different levels of compliance. For example, only big companies which can afford it practice adequate compliance, while smaller companies do not:

This is unfortunate since it creates an uneven playing field that could potentially disadvantage start-ups and new business ventures, preventing them from successfully taking off.

It privileges the big, rich companies at the expense of smaller players.<sup>1171</sup>

However, five participants felt that, regardless of the voluntary nature of such contributions and their disclosure, Saudi companies should consider themselves under a moral obligation to come clean on the amount and kind of their contribution to society:

Increasing the transparency regarding a company's CSR activities may turn out to be a successful market move, because it will arguably sit well with the younger audience, which may be influenced by the global trend towards greater CSR'.<sup>1172</sup> Two interviewees stated:

This becomes even more important, considering that a number of Saudi companies have global exposure, which they have to tackle by following the global regulatory framework, the ultimate result of this would be that the more transparent a corporation is, (and the greater its investment in sustainability is), the wider its client base and the greater its profit.<sup>1173</sup>

[This] could be distributed in ways that are both religiously compliant by the company or by the Government.<sup>1174</sup>

This could be while preserving the business benefits flowing to the company's stakeholders. Admittedly, it is possible in large companies to show high compliance with such recommendations, but less so for the SMEs that make up 99.5% of companies in Saudi Arabia's industrial sector.<sup>1175</sup>

<sup>1169</sup> Ibid.

<sup>1170</sup> Ibid.

<sup>1171</sup> N8.

<sup>1172</sup> N18.

<sup>1173</sup> N25.

<sup>1174</sup> N23.

<sup>1175</sup> 'Saudi Arabia's Small and Medium-Sized Enterprises Fostering New Job Opportunities and Economic Growth' (Oxford Business Group) <<https://oxfordbusinessgroup.com/analysis/starting-small-key-role-played-small-and-medium-sized-enterprises-smes-fostering-new-job>> accessed 11 February 2022.

In a practical sense, one participant said:

Committing to disclosure requires that the company has a dedicated department dealing with these issues. While many big companies do have such a department, some smaller corporate entities do not. Rather, it was underlined that each company is required by law to have (at least) a dedicated person, who would deal with the issue of CSR.<sup>1176</sup>

It would help to have a more homogenous CSR framework in the Kingdom.

The views of participants from the UK and Saudi Arabia about differences in compliance are similar. However, because UK companies have to disclose something due to the 'comply-or-explain' mechanism, the difference in the level of compliance seems to be less contradictory than in Saudi Arabia. For example, large Saudi corporations, which are few in number, have relatively high compliance with the voluntary disclosure process, but not so the smaller more local companies.

An important factor for the difference in the level of compliance between the two is that family businesses make up a large proportion of all UK and Saudi companies, which makes the level of compliance of these companies disparate. According to the UK Census Bureau, 88% of companies in 2018 were family-owned. Private businesses of all sizes tend to be dominated by family businesses. Most micro-sized firms had family ownership, compared with half of medium-sized private sector firms (51.9%) and nearly 20% of the largest firms in the UK,<sup>1177</sup> and there is a strong tendency in many Arab countries for listed firms to be family firms;<sup>1178</sup> The family nature of these companies affects employees, suppliers and customers, but in the Western model it is perhaps more positive. The families, due to regulatory restrictions and the purposes of competition, consider stakeholders to be part of the extended family, so the level of compliance is more consistent compared to the Saudi model. Most KSA businesses are family-run and these have problems in compliance. First, the educational and cultural level of families and business owners affects impact the moral obligations of the company, so the level of compliance is determined by the moral values of particular families. Second, they often suffer from a limited financial resource base, which adversely affects their social responsibility budget. Maintaining these companies is in itself a social responsibility, as they employ thousands of Saudis and contribute to the Saudi economy, but they cannot bear the burden of additional costs. Due to SMEs' reduced exposure to pressures, many assumptions by the externally driven business case (EDBC) do not apply to voluntary CSR programmes in Saudi Arabia.<sup>1179</sup>

### Overregulation

It is often argued that coercive CSR practices decrease internal motivation to comply and increase circumvention of compliance procedures, even though external incentives to compliance may increase.<sup>1180</sup> Overregulation may thus reduce overall compliance. This section will examine whether companies in the UK and KSA have concerns about the overregulation of CSR and so assist with implementation in Saudi Arabia rather than be a solution.

The respondents were asked if they had any concerns about CSR overregulation. Seven of the UK interviewees felt that companies appear to need or at least be open to a single, harmonised and coherent regulation:

<sup>1176</sup> N21.

<sup>1177</sup> 'The State of the Nation: The UK Family Business Sector 2019-20' (Oxford Economics)  
 <<https://www.oxfordeconomics.com/recent-releases/The-State-of-the-Nation-The-UK-Family-Business-Sector-2019-20>>  
 accessed 11 February 2022.

<sup>1178</sup> Arab countries, for instance, have about 95% of their companies owned by family businesses. Saudi Arabia, for instance, has 95% of its companies owned by family businesses, with estimated investments of about 250 billion riyals, and they comprise 45 of the 100 largest companies in the kingdom. David Gibson, an expert on family businesses in the Middle East, states that the financial assets of 45 family businesses in the Arab Gulf amounted to \$2 trillion, or the equivalent of 7 trillion Saudi riyals, and thus constitute between 70 and 90 percent of the private sector in the region.

<sup>1179</sup> Gary Lynch-Wood, David Williamson and Wyn Jenkins, 'The Over-Reliance On Self-Regulation in CSR Policy' (2009) 18 Business Ethics: A European Review, 52, 65.

<sup>1180</sup> Orr Karassin and Aviad Bar-Haim, 'How Regulation Effects Corporate Social Responsibility: Corporate Environmental Performance Under Different Regulatory Scenarios' (2019) 15 World Political Science, 25, 53.

...because the current framework results in too much pressure on the company management, coming from the direction of the regulator, the investor body, the applicable industry standards and all other stakeholders that matter to the success of the company.<sup>1181</sup>

Thus, even if such harmonisation of CSR requirements leads to overregulation, this would be welcomed by companies because it would allow them to plan better for the future, knowing what is and what is not legal. Legal clarity, particularly when combined with a comprehensive legal framework, provides the best defence against people who argue that the company has not done its best to satisfy the CSR expectations of its stakeholders. For example, one interviewee made clear:

The time for voluntary compliance with CSR has gone and the market is getting ready to enter a new era of CSR regulation'.<sup>1182</sup>

While this may be interpreted as overregulation, such an interpretation would be misleading. What the respondent suggested was 'a strengthened, more robust regulatory model facilitating CSR compliance and filling the gaps where previously simply there was no law at all'.<sup>1183</sup> With this in mind:

It is important to make sure that the extensive regulatory regime on CSR does not amount to prescription that stifles the ability of firms to develop naturally and achieve financial success.<sup>1184</sup>

It comes down to balancing between the duty not to cause harm to society and to fellow humans and the proactive duty to commit socially beneficial deeds.<sup>1185</sup>

It is finding this balance that may prove to be difficult in the UK, particularly because of the entrenched legal notion that one cannot be compelled to act positively with relation to someone else. 'Despite the current atmosphere of acceptance, which undoubtedly has a political underlay',<sup>1186</sup> going too far in the direction of imposing positive obligations on companies may fail to achieve its purpose. 'This may be the result due to English companies being accustomed to "think" and "act" in the context of the English common law',<sup>1187</sup> and the complicated theory of positive vs restrictive covenants.

No Saudi participant mentioned 'overregulation'. Nineteen of them claimed that CSR is a voluntary charitable matter under Islamic law. Therefore, there is no concern about overregulation:

In fact, I support the voluntary nature because societal work always depends on the values of individuals, societies and even entities and thus it stems from a human and societal responsibility, in which the creative side appears and its mandatory presence means that it has become a compulsory thing and thus it is treated as a financial transaction.

CSR cannot be a law, regulations are being circumvented'.<sup>1188</sup>

This shows the difference between the UK and Saudi Arabia. Saudis support the idea that social responsibilities are voluntary public moral principles that have nothing to do with law, therefore, there is no room to talk about overregulation. The UK respondents generally felt that there is a concern about overregulation. Although Islamic laws are complementary to CSR, CSR has a charitable aspect and thus can be regulated by law, but it should not be overrated. This is an important finding because it shows that overregulation is not a challenge for Saudis as there are very few regulations at the moment and the religious-based laws have high rates of compliance.

<sup>1181</sup> N4.

<sup>1182</sup> N4.

<sup>1183</sup> Ibid.

<sup>1184</sup> N7.

<sup>1185</sup> N4.

<sup>1186</sup> N1.

<sup>1187</sup> N5.

<sup>1188</sup> N21 and N30.



## 5.6 Conclusion

CSR implementation differs in the UK and KSA. The UK's CSR is more regulated and has a stronger legal and strategic focus. UK firms consider both international guidelines and domestic legal framework and it has world-leading legislation to protect human rights in supply chains in s54 of the Modern Slavery Act 2015. Enlightened shareholder theory, although it faces challenges in its implementation, is an important step to improving CSR in the UK.

Religion dominates everything in Saudi Arabia and is the main motive for all activities, economic or social. Under Islamic agency principles, shareholder value is the driver for Saudi businesses and this means maximising the profits for shareholders as managers are the agents of the shareholders. Most Saudi companies, which are usually family-owned, do not require that human rights be complied with in their supply chains and the focus of many Saudi companies is on improving their local community rather than a much greater global outlook, so the implementation of CSR in the KSA may not yet meet international standards.

The chapter has shown that in the UK and KSA, there is dissatisfaction with the current demographic representation on the boards of directors, but to varying levels. Unregulated charitable work may impede CSR in the KSA because most initiatives are patchy and unsustainable. Islamic stereotyping of CSR and the disparate levels of compliance between family businesses are among the most severe challenges facing CSR practices in the country. Overregulation is the top challenge facing UK practitioners who believe this may impede firms' ability to achieve their mission of making profits.

## Chapter Six

### Proposals for improving CSR in Saudi Arabia

#### 6.1 Introduction

This chapter responds to the thesis's main research question: How to improve CSR in KSA in Law and Practise? According to the author's analysis in the previous chapters there is a dire need for improvement in the legal and practical aspects of Saudi CSR. To this end, five main suggestions are made in this chapter to improve CSR practices in Saudi Arabian companies in the near future. These suggestions represent the main contribution of the thesis.

First, due to the dominance of religion in all aspects of corporate structure in Saudi Arabia, this chapter proposes the application of the Islamic Corporate Social Responsibility (ICSR) model since it is the most practical and acceptable theoretical framework for adopting a broader concept of social responsibility in Saudi Arabia. Second, it is also possible to solve the problem of the current legislative vacuum in CSR in Saudi Arabia by launching comprehensive codes of conduct that include human rights in supply chains, combating corruption, protecting inside information from circulation, protecting the environment, community service and fair competition. The challenge is to ensure that the code is compliant with the ICSR principles.

Third, a comprehensive process of strategic donation is also proposed to address the problem of unstructured donations. This should be done by integrating donations into an annual strategic plan established by the company. Fourth, is a proposal to create a gender audit in Saudi companies in order to solve the problem of demographic diversity among the boards of directors. An audit of this type, whether internal or external, will undoubtedly contribute to improving women's representation on boards of directors in KSA firms.

Finally, the chapter proposes a solution to the problem of the uneven compliance of SMEs in KSA with their social responsibilities, by launching a specialised indicator for this type of companies. Such an indicator in itself constitutes a catalyst for companies to improve their social performance and thus improve their social responsibility. Such an indicator would also make SMEs initiatives more sustainable and strategic.

## 6.2 The First Proposal

### 6.2.1 Islamic principles of CSR are differently applied

Saudi Arabia is a society steeped in religious based values and practices, CSR in Islamic teachings is more than just law,<sup>1189</sup> it is part of the company's operating ethics. However, there is a wide gap between the Islamic teachings on CSR and the practices of corporations in Saudi Arabia. In Islamic teachings, social obligations are placed above profit. Saudi companies, however, apply these principles differently. This means that Saudi companies do not necessarily prioritise social commitments over profit making.<sup>1190</sup> Due to Islamic teachings being flexible, their interpretation differs for companies. Some Saudi companies explain the principles comprehensively and deeply, and implement them in a way that has a great impact on society, but some other companies follow them superficially. In Islam, for instance, philanthropy is encouraged, while many Saudi companies practice charitable giving.<sup>1191</sup> The fundamental purpose of charity is to alleviate immediate need or meet necessities. While as philanthropists, firms should seek to isolate systemic social problems and deal with the underlying causes of these problems in order to improve the community by addressing root causes.

Another example is that Islam encourages long-term CSR,<sup>1192</sup> while some Saudi companies practice a purely charity as a way to improve their social responsibility. Purely social work is the individual practices, for example, of a manager or even employees, to achieve a short-term social purpose such as alms or subsidies. While CSR has a much more comprehensive concept, such as diversity on the board, combating unfair trade, protecting human rights in supply chains.

An issue with such a difference, or perhaps the gap between the philosophy of Islamic teachings and their application in some Saudi companies, is the production of social responsibility initiatives that are unsustainable, and perhaps even ineffective. This means that some Saudi companies may claim that they apply the principles of Islamic Sharia in carrying out their social responsibilities just in order to improve their reputation and managing the impressions in the Muslim community.<sup>1193</sup>

### 6.2.2 Islamic Corporate Social Responsibility Model (ICSR)

An ICSR model is the Islamic perspective on CSR that outlined by Carroll (1979).<sup>1194</sup> Carroll held that CSR should encompass economic responsibility, legal responsibility, ethical responsibility, and philanthropic responsibility.<sup>1195</sup> According to ICSR, organisations that adhere to the Islamic faith do not just seek internal profits, but also the welfare of their communities, in other words, economic and social justice.<sup>1196</sup> Therefore, based on ICSR model, it is vital for each Muslim to play an active role in the community so that spirituality can be enhanced.<sup>1197</sup> ICSR model can develop CSR initiatives in Saudi firms. To this end, ICSR has been proposed in Saudi Arabia because it is a Muslim country with all its inhabitants being Muslims, and the Islamic faith is seen as the driving force in all activities in this Muslim community. In that case, the government, the business community, including companies and institutions, and Saudi society will accept this proposal. ICSR, which is based on faith, will inspire Saudi firms to practice good work ethics, such as honesty, good manners, and consideration for others, as a result of being inspired by their faith. ICSR is the idea that some businesses should not hurt their communities, but rather contribute to their well-being. ICSR programs can have an indirect effect on how a Saudi organisation's operations are run. For example, according to the ICSR, usury, gambling, and uncertain contracts are prohibited. It is also prohibited to act unethically for profit-related reasons under ICSR.

<sup>1189</sup> See Chapter Three and Five.

<sup>1190</sup> See Chapter five.

<sup>1191</sup> See Chapter five.

<sup>1192</sup> See Chapter five.

<sup>1193</sup> See for example N13. See also Chapter five.

<sup>1194</sup> Muhammad Adnan Khurshid and others, 'Developing an Islamic Corporate Social Responsibility Model (ICSR)' (2014) 24 Competitiveness Review, 258-274.

<sup>1195</sup> Archie B. Carroll, 'A Three-Dimensional Conceptual Model of Corporate Performance' (1979) 4 The Academy of Management Review, 497.

<sup>1196</sup> Chaudhry Ghafran and Sofia Yasmin, 'Ethical Governance: Insight from The Islamic Perspective and an Empirical Enquiry' (2019) 167 Journal of Business Ethics, 513-533.

<sup>1197</sup> Jejen Sunandar, 'CORPORATE SOCIAL RESPONSIBILITY (CSR) DALAM PRESFEKTIF HUKUM ISLAM' (2017) 15 Syiar Hukum : Jurnal Ilmu Hukum, 40-52.

To this end, it has been suggested four ICSR dimensions to improve CSR in KSA, the economic dimension concerned with the economic theory of the company, the ethical dimension concerned with the principle of kindness as an ethical behavior, the legal dimension concerned with Zakat as an obligation for companies and the charitable dimension concerned with charity in general.

#### A) Economic dimension

The economic dimension of ICSR means that "profits must be made without harming others. This entails maximizing shareholder profits, halal investment, halal products, and legitimate earning."<sup>1198</sup> While Islamic economics presents a rich vein of concepts around CSR and justice, there is no systematic framework or model of business practice at the level of CSR.<sup>1199</sup> Many Islamic groups deal with CSR as a moral issue.<sup>1200</sup> It means that legal, ethical, and philanthropic dimensions are placed more heavily than economic aspects. Profit remains central to Islam insofar as it does not lead to exploitation and corruption. Islam considers the manager to be a representative of the shareholders. In light of that, it is not allowed for him to dispose of shareholders' money without their consent, even if it is in the interests of the stakeholders. However, managers' decisions should not be offensive to society in any way. From the forms of abuse of society from the Islamic point of view, commercial fraud, unfair competition, and damage to the environment.

To this end it can be suggested to apply the Islamic theory of firm in KSA to improve CSR. It means that the Saudi market should be based on cooperation and solidarity. Therefore, Saudi companies should conform to this theory in order to achieve long-term success. Islamically, entrepreneurs are entitled to own property in order to stimulate the economy by creating jobs, promoting investment etc.

As per Islamic theory, companies cannot violate society's rights. It is therefore morally wrong to the conflict between social issues and individual claims. Nevertheless, Saudi firms, having fulfilled their responsibilities to society and the state, have the entire right to maximise their profits. Islamic theory defines the role of firm as follows: (1) achieve profits; (2) not causing harm to others; 3) Solidarity with community issues.<sup>1201</sup>

The Saudi companies can adopt the Islamic theory by re-evaluating the purpose of the existing company – thus change from profit maximization to long term sustainable approach. It is possible to reinterpret Islamic teachings with greater scrutiny, by transforming current thinking, which is solely focused on profit, into a holistic one. Therefore, according to the Islamic theory, first the Saudi company must improve its harmful behavior, then fulfill its economic function by increasing shareholder value, and finally fulfill its community service function.

The Islamic theory of company may run counter to the current goals of many Saudi companies, which are primarily driven by profit only for its shareholders. In other words, the Islamic theory states that companies should act ethically before maximising their profits, and sometimes this contradicts the current goal of some Saudi companies.<sup>1202</sup> Bribery, for instance, is not permitted and considered unethical in Islamic doctrine. Some managers may claim that bribing sometimes will gain their company a competitive advantage over others, therefore benefiting their company. This implies that bribery will be detrimental to external stakeholders outside of the normal corporate circle, but the Saudi shareholders, employees, and the local community of the company will all be benefited by the extra business made possible by bribery. For example, a Saudi company may decide to dispose its toxic waste in a country with lax environmental laws by bribing officials in this country. Because of its location in a foreign country, none of the company's Saudi stakeholders will be adversely affected by it.

ICSR will tackle this problem by recognising that bribery and other unethical behaviours will harm the host country's 'social environment' while that Islam does not permit causing harm to an external community in order to benefit the internal

<sup>1198</sup> Muhammad Adnan Khurshid and others, 'Developing an Islamic Corporate Social Responsibility Model (ICSR)' (2014) 24 Competitiveness Review, 258-274.

<sup>1199</sup> 'Corporate Social Responsibility Measurement Approaches: Narrative Review of Literature On Islamic CSR' (2017) 7 Journal of Islamic Business and Management (JIBM).

<sup>1200</sup> John Angelidis and Nabil Ibrahim, 'An Exploratory Study of the Impact of Degree of Religiousness Upon an Individual's Corporate Social Responsiveness Orientation' (2004) 51 Journal of Business Ethics, 119-128.

<sup>1201</sup> See for example: Haithem Kader, 'Human Well-Being, Morality and The Economy: An Islamic Perspective' (2021) 28 Islamic Economic Studies, 102-123. See also: Mehmet Asutay and Isa Yilmaz, 'Constituting An Islamic Social Welfare Function: An Exploration Through Islamic Moral Economy' (2021) 14 International Journal of Islamic and Middle Eastern Finance and Management, 524-540.

<sup>1202</sup> See Chapter Five.

community. It means that Islam does not distinguish between societies. Even unethical behaviours will promote corruption on a large scale, which is forbidden in Islam. This is what was taken into account when proposing the comprehensive code in the following proposal.

#### B) Ethical dimension

The ethical dimension of ICSR means "following Islamic values, and this includes avoiding fraud and commercial fraud, preventing immoral images in the workplace (such as sexual images), combating the exploitation of women",<sup>1203</sup> and treating employees with kindness, respect and appreciation. As evidenced by Sharia's concept of "good thoughts, good words, and good deeds"<sup>1204</sup>, Islam also contributes to a discussion of ethics and, therefore, of CSR business ethics. The values and ethics of Islam adherents provide a basis for decision-making. It means that Islam affects preferences, attitudes, and decisions in the workplace. It is likely that religious people see corporations in a larger context than non-religious people do. Furthermore, according to the Qur'an there is a direct relationship between religion and business ethics, which even outlines the ethical standards to be adhered to in specific business contexts. As demonstrated through one's religious convictions, Islamic spirituality also involves deeds and actions based on social responsibility.<sup>1205</sup> Furthermore, private or commercial use of a resource is not distinguished in Islamic ethics. It means that everyday life and business ethics are intertwined in Muslim culture.<sup>1206</sup> The Muslim aim is to do good while being conscious of their faith and aware of God's constant attention. This means that Saudi companies should adopt Ihsan<sup>1207</sup> in their work as an application of Islamic ethics, to improve their theoretical concept of CSR.

To do this, Saudi institutions should structure their ethics business in line with Islamic ethical principles. There are two main ways in which this can be done: By rewarding ethical behaviour and reporting unethical behaviour. For instance, any employee who breaches the privacy of any other employee should be reported, and employees who perform good deeds outside working hours, such as professional volunteering, can also be rewarded.

Furthermore, by building up their social capital, Saudi companies can enhance their moral values in line with Islamic ethics. This can be applied through training and qualifying their employees on cooperation, solidarity and a sense of responsibility, especially in times of crisis. Saudi companies can also train their employees on integrity and reporting any possible corruption within the organisation to improve its social responsibilities in accordance with i-CSR.

With this goal in mind, Saudi companies should provide their employees with more independence and present themselves as a motivator and facilitator rather than as a regulator. This can be implemented by granting reasonable powers to employees, and forgiving them for minor mistakes that may be committed during their work. Saudi companies should also look for ways to enhance the culture of mutual trust between them and the community by opening channels of communication with them, whether through their website or mail. It should also set up a hotline for dealing with urgent complaints, whether from employees, suppliers or consumers.

The main disadvantage of ethical responsibility based on ICSR is that it can limit the profits of Saudi companies. It becomes more expensive to run manufacturing units with ethical practices based on ICSR, such as fully rewarding workers, providing channels for communication with the community, or maximising social capital. As a result, profit is reduced, a factor that might not be an issue for large companies with the ability to allocate costs. For small businesses, it can pose a problem, especially if they are growing. Although the negatives of ICSR cannot be ignored, Saudi companies are rewarded for ethical behaviour, which improves their reputation and ultimately increases their revenue and investor confidence, even if they are not allowed to maximise their short-term profits. It means Islamic ethical practices are an indirect means of maximising sustainable profit. Based on this theory, a comprehensive code that is applicable in Saudi Arabia has been suggested in the next proposal.

<sup>1203</sup> Muhammad Adnan Khurshid and others. (n ).

<sup>1204</sup> Esptein, Greg M. (2010). *Good Without God: What a Billion Nonreligious People Do Believe*. New York: HarperCollins, 117.

<sup>1205</sup> It is specifically mentioned in the Holy Quran: «O People Who Believe! Do not invalidate your charity by expressing favor and causing injury - like one who spends his wealth for people to see, and does not believe in Allah and the Last Day.

<sup>1206</sup> Hussein Elasrag, 'Corporate Social Responsibility in Islam' [2014] SSRN Electronic Journal.

<sup>1207</sup> Ihsan is the Arabic word for doing good used in Islamic spirituality.



### C) Legal dimension

The legal dimension of ICSR means adherence to Islamic law, and although this includes many practices such as free trade and avoiding hoarding of products,<sup>1208</sup> the author improved the theory so that Zakat is the main legal dimension of ICSR. This is due to the importance of Zakat in redistributing wealth and thus improving CSR as a whole. Zakat is an obligatory charity that God obliges Muslims to pay from their money and possessions annually, and is paid to the poor and weak. Zakat will have a great impact for companies to improve CSR. This means that Saudi companies must exercise Zakat to raise the level of operation, by influencing factors related to supply and demand.

For example, to reduce unemployment that arises as a result of poor educational outcomes for the Saudi human factor. Zakat due by law can contribute to alleviating it in the long run through (1) the lack of Zakat eligibility for who are able to work, and this means fighting Zakat for voluntary unemployment. (2) Achieving an appropriate standard of living that provides the poor and needy with the requirements of food, clothing, treatment and housing, which contributes to their ability to study and achieve an educational level that increases their ability to work productively. This probably will enhance CSR in Saudi firms.

It also can be suggested to improve CSR in KSA that Saudi companies practice Zakat through the marginal sufficiency of capital. The application of the obligation of Zakat raises the marginal sufficiency of the opinion of money by improving expectations. This is because the repeated payment of Zakat at the end of each year leads to the regularity of the income that Saudi companies obtain, which supports, for the most part, the actual demand for consumer goods and services. The remaining part also supports various investment areas.

Zakat should thus be redefined with the aim of achieving long term goals rather than one-time charity. It can therefore be proposed that Saudi companies practice Zakat to support research, creativity, and the development of science. By paying Zakat to build publishing houses or research centers. These types of exercising Zakat will improve CSR in Saudi Arabia. As a mandatory act of ICSR, it is impossible to change or transform Zakat because Zakat is divine and holy, and, as such, cannot be changed or transformed, whether it be to target the type and amount of wealth on which Zakat falls, or the Nisab.<sup>1209</sup> No matter what is paid or who is benefitted from Zakat, none of these can be changed. On the one hand, it is a good way to clarify Zakat, but it is, on the other hand, seen as inflexible, incapable of accommodating social changes. This is taken into account when proposing the code in the following proposal.

Because Zakat cannot be modified for any reason, since it is an act of worship as are prayer, fasting and Hajj, ICSR becomes obligatory in a way. It is possible to look at such a problem as a solution instead of a problem. Zakat itself contributes to increasing CSR in a Muslim country like Saudi Arabia if the benefits and purpose of Zakat are taking into consideration. For instance, the main goal of Zakat in Islam is to redistribute wealth, which means more social justice, and thus this improves CSR in Saudi Arabia.

### D) Philanthropic dimension

The philanthropic dimension of ICSR means "contributing to society, and this includes charitable donations and alms."<sup>1210</sup> A daily act of charity is called Sadaqah, which is part of ICSR's philanthropic aspect. In the Quran, saying that Sadaqah is not a mandatory act, it mentions that it is important to give to the needy whenever possible. Giving money to the poor or carrying out practical acts like Waqf can both be ways to do this.<sup>1211</sup> While it may be small in size and just a modest gift for someone in need, every gift given to the needy is not regarded as a Sadaqah. The sole purpose of Sadaqah is to honour God by helping others.<sup>1212</sup>

<sup>1208</sup> Muhammad Adnan Khurshid and others. (n ).

<sup>1209</sup> The amount of wealth on which Zakat liability arises.

<sup>1210</sup> Muhammad Adnan Khurshid and others. (n ).

<sup>1211</sup> "Oh you who believe, do not nullify your charities by inflicting reproach and insult (on the receivers of your charity), like him who spends his wealth to be seen by others, and he believes not in God and the Last Day. " Quran [2:264] "They, who spend their wealth for the cause of God, then do not follow up what they have spent with taunt or injury, for them is their reward with their Lord, and they shall have no fear, nor shall they grieve. " Quran [2:262].

<sup>1212</sup> Salma Taman, 'The Concept of Corporate Social Responsibility in Islamic Law' (2011) 21 Indiana International & Comparative Law Review, 481-508.

In order to improve CSR in Saudi Arabia, Sadaqah should be strategic. It means that an annual charitable work plan should be created focusing on Saudi Arabia's poorest. Then get this routinely done to improve the living conditions of these vulnerable groups in society as well as being able to integrate them more. For example, Saudi companies can propose a category annually to support them either financial or in-kind charity, such as the disabled, the learning difficulties, the destitute, or the prisoners in financial cases, and make such a practice continue throughout the year according to a pre-prepared plan. Then submit reports that measure the social results of this annual charitable initiative, its negatives and positives, to improve the performance of social responsibility every year.

Philanthropy acts generally face legal restrictions in Saudi Arabia since the September 2001 attacks in the US. This is to ensure that such alms are not spent on money laundering, terrorism or any criminal offences. Thus, legal constraints may constitute an obstacle to Saudi companies' implementation of strategic handouts. But such a problem can be resolved by companies taking prior statutory approvals before any charitable acts. Such cooperation between companies and regulatory authorities is required to disburse this money to its beneficiaries. The code in the following proposal takes this point into account.

From the author's point of view, ICSR model is considered the best theoretical framework for improving CSR in Saudi Arabia. This is because of the religious pillar of the Saudi regime. Such a framework will be accepted by the Muslim community and its application will be strongly possible, because Islam originally controls all business activities in Saudi Arabia. This philosophy needs to be acted upon by the code that I am proposing in the next section.

### 6.3 Second Proposal

#### 6.3.1 Remedying the absence of legal regulation of CSR in KSA

As we have seen in the previous chapter Saudi Arabia does not have any domestic laws or regulations on CSR; many Saudi companies focus only on environmental sustainability in their voluntary disclosures and codes of conduct,<sup>1213</sup> ignoring other important issues. This includes, but is not limited to, human rights protection in supply chains, anti-corruption, fair trade<sup>1214</sup> etc. Such legislative shortcomings isolate Saudi companies from international markets. As a result, it may be more difficult than ever to compete with peers in other jurisdictions.

Furthermore, this legislative absence in KSA may be a fundamental reason for the purely charitable concept of CSR that many Saudi companies adopt. Therefore, , social customs, institutional frameworks, business models, and even laws and public policies should be improved to promote CSR in KSA. As a first step there is a need for a code of conduct for all companies in KSA.

#### 6.3.2 Code of conduct for Saudi listed companies

The author proposes a flexible code of conduct, whether for public or private listed companies. Saudi Capital Market Authority could adopt as a model of ICSR to motivate listed companies to take it into account when performing their CSR. This authority is also a supervisory body for these companies to implement provisions of code, and even the process of monitoring any legal prosecutions of persons violating the code brought by the legal representatives of the concerned companies. The model has been proposed entirely by the author. The enactment of this law will greatly contribute to the process of CSR in in Saudi Arabia. When raising the issue of laws, especially with regard to CSR, attention should be paid to that CSR is a voluntary act with a moral obligation. The enactment of a special law for it does not mean that it is transformed from a voluntary form to a compulsory form. This means that any law issued in this aspect must adapt to social, economic and technological changes, in the sense that it pushes the regulatory aspect more than restricting the movement of companies' creativity in the field of CSR, and that companies are able and have a large space in the issue of decision-making

<sup>1213</sup> See Chapter Five.

<sup>1214</sup> Fair Trade seeks to achieve better prices, decent working conditions and fair terms of trade for farmers and workers in developing countries in order to sell and market their goods and products at fair prices “close” to world prices, and to reduce the cases of exploitation to which they are exposed, especially from the developed countries of the North. It also seeks to support the development of farming communities to enable them to determine their own future and protect the environment in which they live and work.

in the issues of projects CSR so that you can innovate in this aspect and not be constrained. For this purpose, instead of a restricted or strict code, the author recommends a flexible one. This code is completely inspired by ICSR.

In order for the code of conduct to improve CSR in KSA, the Saudi company's values will need to be determined in the beginning based on the Islamic values as in ICSR model. Saudi companies should frame their values and cover the most important ethical aspect in ICSR model, integrity, which means that they are honest before society, suppliers, merchants, and employees, in terms of the reports they issue, and in their dealings with the environment or even in their service to the community. Based on ICSR, a company's commitment to customer satisfaction also extends to providing a high quality product and combating commercial fraud that could harm the consumer or customer. ICSR also requires flexibility in addressing challenges of a results-oriented approach, and defines the foundations upon which the company seeks to maximise shareholder value. Last but not least, ICSR supports the company to fulfilling its social responsibilities towards society and participation in its welfare should be an essential part of any Saudi company's values to improve CSR in KSA as a whole.

Furthermore, in application of ICSR model, Saudi companies should comply with international principles and directives of CSR, because the business environment is globalised. Compliance with UN compact for example, with regard to combating forced labour and discrimination will give Saudi companies the confidence of the foreign consumer, the foreign investor, as well as the supplier, this is strongly encouraged by ICSR. In addition, fair competition achieves the legal dimension of ICSR, and it will enhance the right of the individual and the Saudi society to obtain goods or services at real prices that are not exaggerated or greedy. It is seen by narrow interests who focus on looting the pockets of citizens or clients, while in reality they are committing an economic crime that cannot go unnoticed, compared to its repercussions and troubles it causes for everyone. Therefore, promoting fair competition among Saudi companies will contribute significantly to improving CSR in KSA. As part of ICSR, corporate environmental responsibility is an integral part of the company's ethics, Saudi firms should learn more about the effects of their actions on the environment and work to reduce pollution and carbon footprints on natural resources. By protecting the environment, Saudi companies could gain a competitive advantage over other companies. A code of conduct that includes environmental protection will allow the Saudi companies long-term success. This is because they will create trust between them and Saudi community that needs a livable environment free of pollution or carbon emissions.

Moreover, the legal, philanthropic and ethical dimensions of ICSR include human rights in somehow. Therefore, Saudi companies may lose lots of productive workers because of human rights violations, include forced labour, discrimination against women, low wages, unfair dismissal employing minors, working in harsh and bad conditions. Therefore, Saudi firm should ensure the continuity of the loyalty of its employees by protecting their rights. Further, such harmful behaviours may damage the reputation of some Saudi companies, impacting sustainable profits and even threatening their existence. Therefore, Saudi companies should pay particular attention to the protection of human rights while developing their codes of conduct, especially in supply chains to improve their CSR. On the other hand, Occupational safety and health requirements and principles will encourage the culture of prevention and raise business employers' and workers' awareness of the importance of complying with occupational safety and health requirements in KSA. It would also create a more attractive work environment for raising professional competence and ensuring job security for workers. Saudi Arabia's company should develop a code of conduct to help protect its employees from negative influences in the workplace. It can be said that workers put a high value on workplace safety, which ensures their continuity of work for the company and avoid their quest for a better environment in other workplace.

Sustainable development goals are no longer just a local issue, based on ICSR, they are an international one. In order to participate in sustainable development, the Saudi company should set clear and workable goals. This will generate shared value for the company and the community at the same time. Ultimately, sustainable development aims to meet the long-term goals of all stakeholders, including shareholders. ICSR provides for the fight against bribery and corruption. Therefore, Saudi company will gain from including specific combat bribery and corruption in it in its codes of conduct, the most important of these benefits is the increase in opportunities for business expansion with the government. As the company's history in terms of being honest will increase the company's chances of obtaining business from the government, as well as will increase its chances of becoming a supplier to major companies and entering more into global markets. The Saudi company's implementation of a good anti-bribery program in its code of conduct will prevent it from being exposed to any legal problems. A good reputation will be more attractive to the buyer. Also, a reputable company that adheres to high ideals and ethics, encourages good working relationships and raises the spirit of employees. Most importantly, implementing an anti-bribery program in the Saudi company's code of conduct will make this company more attractive to financial institutions.

ICSR addresses the issue of a conflict of interest in the workplace, when an employee has competing interests or competencies that are either, or could be, at odds with one another. An example would be a manager who was promoted from a co-worker's job where he was working with his wife. This offer made him his wife's boss until the company, after discussion with the couple and HR, moved her to another department. A conflict of interest results in an employee conflict between divergent interests, viewpoints, or loyalties. A conflict of interest can cause an employee to act out of interests that differ from those of the employer or co-workers. In the workplace, employees want to avoid any behavior or choices that would indicate a conflict of interest. It is bad news for the employee's reputation, integrity, and reliability in the eyes of management. For this purpose, conflicts of interest should generally be prohibited in the Saudi Company's Code of Conduct. This will undoubtedly contribute to the improvement of Saudi Corporate Social Responsibility. Furthermore, to enhance CSR in KSA, exploitation of confidential inside information - commercial, technical or financial that negatively or positively affect the price of the security issued by the Saudi company- should be banned in the company code of conduct. This is to achieve the principle of equality between investors.

Last but not least, ICSR provides that Saudi company must play its role in serving its community. In order to enhance trust and communication between the company and the community. This would create mutual benefits, if the company guarantees a good reputation and sustainable profit, and the community enjoys well-being. Finally, Saudi companies should annually disclose their financial and non-financial reports to enhance their transparency and thus improve their social responsibility. The availability of Saudi company information plays an assessment of its credibility with those with whom it does business; Therefore, disclosure of the financial and non-financial reports of the Saudi company affects the efficiency, credibility and balance of the Saudi market, achieving justice and protection for investors and stakeholders, which supports the investment climate and the economy as a whole. For all these purposes, the author suggested the following model of code of conduct:

## Code of Conduct

### 1) Values of the Company

**Accountability:** Integrity of the Company, fairness and transparency.

**Customer satisfaction:** Proactively anticipate customer needs, providing innovative solutions and quality products and services.

**Results-oriented approach:** Shareholder value clearly defined, an organisation that always strives to learn and desire to change keep up with challenges.

**Corporate Social Responsibility:** safety first, sustainable development and shareholder involvement.

### 2) Basic Business Principles

#### Compliance

Throughout the world, our corporate values stem from compliance with laws and regulations that apply in each country where we do business. This must be a fundamental principle we follow at all times for our employees and for our business partners. As a result of its adherence to international initiatives, our company has taken on specific commitments, such as: The United Nations Global Compact Initiative and the World Business Council for Sustainable Development are committed to complying with and promoting the directives such as: human rights protection, the elimination of forced labor, the elimination of discrimination in employment, environmental sustainability, increased stakeholder engagement, etc. Following compliance with applicable laws and regulations, we are all required to fully comply with policies and procedures established by the group and company.

#### Zakat

Our company established the “Zakat Fund” to collect the legally prescribed Zakat and disburse it to its beneficiaries according to its Shariah banks, where our company will submit the Zakat declaration accompanied by its annual budgets. In addition, charitable organisations are obligated, in the event of receiving Zakat amounts, to provide the fund with evidence of their commitment to disbursing Zakat to those who are entitled to it. Zakat funds are limited to 8 categories: the poor, the needy,



those who work on them, those whose hearts are to be reconciled, those who are in debt, those who are in debt, and for the sake of God and the wayfarer. The amount of Zakat due on the company is a quarter of a tenth of the zakat assets and is equivalent to 2.5% of the budget prepared on the basis of the Hijri year and 2.577% for the budget prepared on the basis of the Gregorian year. Our company is also obligated to pay the prescribed zakat according to Saudi law.

### **Fair Competition**

Our activities are conducted within the framework of fair competition and strict adherence to legal and ethical standards in each of the countries where we operate. Ensure that all company managers involved in business operations understand the applicable laws In the countries in which they compete, they will be trained for fair competition. Furthermore, the employee responsible for any violation of this may be subject to civil and criminal liability, according to the laws applicable, in addition to terminating his/her employment in the company. If there is any doubt about the legality of any communications, contracts, practices, or commercial activities, we advise you to seek legal advice. Each employee should consult the local legal department and/or the company legal department for assistance.

### **The environment**

We are committed to minimising the environmental impact of our operations and business activities. On environmental management, environmental initiatives, and continuous improvement of environmental management on the natural environments and on the quality of life in the areas where our facilities are located. We are committed to full compliance with all environmental laws and regulations, including obtaining and maintaining all our work requires permits and approvals, proper handling, storage, and disposal of controlled substances. In addition to submitting the required reports on time to the relevant government agencies.

### **Human Rights**

As defined in the Universal Declaration of Human Rights, we are committed to protecting and developing human rights. and ILO labor conventions. Through this framework, we strive to promote respect for human rights within our spheres of influence, including respect for freedom of our employees and diversity of values with equal opportunities for all, eliminating any kind of discrimination, and taking into account rights issues People make investment decisions, protect human rights in our supply chains. Our managers, in developing and implementing policies, should be adequately aware of our stated commitments with regard to human rights when dealing with employees, contractors, customers and suppliers.

### **Health and safety**

All of our workplaces are dedicated to protecting the health and safety of our employees. Accordingly, the company is in compliance with all applicable laws at the very least. Employees and contractors should also follow these guidelines Observe and comply with the health and safety policies and standards set by the company local safety. In addition to legal requirements, these policies and standards provide best practices as well. Our company provides a safe and healthy workplace for its employees and cares about our customers and visitors adequately.

### **Sustainable Development**

We are dedicated to achieving sustainable development, as well as integrating human, environmental, and social factors. Our business decisions reflect this commitment. We aim to reduce the negative impacts of our activities on the environment and the communities in which we operate to contribute to the well-being of workers, their families, neighboring communities, and society as a whole. Thus, our vision The social responsibility of the company is: “The constant pursuit of achieving our business goals and creating value in a manner that involves on moral and social responsibility, minimizing our negative effects, and striving to do the best to do so.”

### **Bribery and Corruption**

Transactions within a company must be conducted lawfully and ethically, in accordance with all applicable laws and regulations, and must be audited Keep in mind UNCAC (the United Nations Convention against Corruption). Our employees and representatives must also abide by UNCAC). Making, providing, accepting or promising, whether directly or indirectly, any sum of money or advantage other than any payment made to a public or private official for the purpose of obtaining preferential treatment or commercial advantage. Any employee or business partner who commits bribery in the performance

of his duties is subject to civil and criminal liability, in accordance with to applicable laws, in addition to terminating his/her employment.

### **Conflict of interests**

Business decisions should be made for the benefit of the company as a whole, not for personal gain. Employees should refrain from engaging in any commercial activity that interferes with their ability to make objective decisions. In cases where the employee's personal interests are in conflict with the interests of our company, we are expected to fully disclose this to the executive management, which in turn guarantees arrive at an appropriate solution. Employees' personal interests include those "closely related" persons, such as a blood relative, a relative through marriage, close friends, etc., or a legal entity in general.

### **Insider Trading**

Shareholders and other securities holders who gain access to insider information can affect the price of shares or other securities. Any company listed on the stock exchange must also maintain other financial instruments confidentiality of this information. Therefore, they are obligated to abstain from any transactions related to this stocks, whether for their own account or for the account of a third party, make use of this inside information. And in a general manner, they must comply fully with applicable laws regarding insider trading. For this reason, our employees must comply with applicable laws and regulations and sign an undertaking to do so specification related to it.

### **Relationship with the community**

Our commitment is to ensure participation, cooperation, and good neighborliness with local communities in all areas where we operate our facilities. This commitment represents an attempt to continue developing, which takes different forms depending on the situation to local cultures and conditions. It mainly focuses on contributing practical knowledge, experience and technical support and financial in initiatives and activities that provide education and training. Our commitment to achieve long-term sustainability includes protecting the environment and promoting health and safety.

### **Preparing financial and non-financial reports**

In accordance with International Financial Reporting Standards (IFRS), our company's consolidated financial statements are audited. The reports must also comply with generally accepted applicable accounting standards, principles and regulations. Financial and non-financial information must be recorded and accurate and objective reported on time. Furthermore, we consider non-financial reporting an important means of engaging stakeholders, and we utilize it to help facilitate dialogue and enhance engagement in accordance with international standards and the best practices, we commit to providing regular reports regarding our non-financial performance practices, in order to maintain transparency and build trust with all concerned parties.

## **3) Implementation and Violations of the Code of Conduct**

### **Execution**

The responsibility of the manager is to communicate the code to their subordinates and to ensure executives at our company are responsible for implementing the Code. Managers are responsible for communicating the code to their subordinates and ensuring that they understand and adhere to it. Adherence to the Code is everyone's responsibility, and no one can he or she justifies an immoral act by saying that it was directed by a person of a higher position. All employees must familiarize themselves with the contents of the Code, and they are responsible for complying with its rules and principles. Support and knowledge are provided, when needed, in order to ensure a full understanding of the rules and principles set forth in Blog. If there is confusion or doubt on the part of the employees, they should seek clarification from the manager direct, executive management, or local legal department. All employees must sign the acknowledgment form attached to the Code or the relevant company employee handbook and return it back to the local human resources department.

### **Violations**

Any employee who violates the Code is subject to disciplinary consequences, including termination of employment, subject to laws and regulations. In the event of any action contrary to the law, the employee may be subject to prosecution under the

anti-bribery law, anti-human trafficking law, competition law, environmental protection law and the law of penalties for publishing and disclosing confidential documents and information.

Three limitations exist with this code of conduct: the first is how well leaders respond and comply with rules of this comprehensive code of conduct. Those in leadership positions must strengthen compliance processes and lead by example, not only with slogans, but also with actions on the ground. This can be done by A) keeping integrity when meeting deadlines, satisfying customers, or increasing revenue. B) promoting direct and free reporting, and ensuring that staff are informed how to report their concerns without someone feeling afraid while doing so. It is also important for the leader to ensure his team knows how to identify danger signs in situations with significant risks, as well as completing compliance training on time. Additionally, leaders should conduct periodic compliance reviews with the aid of compliance officers and/or internal auditors within the company, as well as the application of control standards to identify risks and violations related to compliance.

Second, those who violate these rules may not understand the consequences of doing so, which may lead to them resisting enforcement, as the consequences may not be clear or comprehensive. As a solution, the Saudi company should, after writing its code of conduct, take full actions when there is a breach of the rules, and the consequences should be clearly defined, in a language that is easy and understandable for employees, and there should not be any exceptions, and the consequences should be understood by all employees. This can be done through two means: A) publishing the consequences of violating the code on the company's website, as well as the previous prosecutes. B) conducting training courses and workshops for employees, including the means of implementing the code of conduct and the accountability process in a complete and clear manner.

Third, companies need specialised departments to implement what is stated in this model, but SMEs may not be able to afford to set up these departments because of the financial challenges. This is because every department incurs annual costs, whether as a result of employing experts or allocating an annual budget for the implementation of programs. SMEs can overcome these challenges by merging these departments and by reducing them to two or three departments at most. As a result, SMEs will minimise the costs of improving their CSR.

## 6.4 Third Proposal

### 6.4.1 Donations are unorganised

Based on the qualitative empirical analysis it is clear that the donations by Saudi companies are mostly non-strategic. This means that they are often determined by circumstances or perhaps by habit. Such an unregulated practice of charitable giving greatly reduces its effectiveness for improving CSR. This means that such giveaways are short-term and target randomly selected groups without an appropriate plan or strategy. A problem with this type of CSR practice is the lack of achieving real social change.

It also means that such non-strategic donations do not necessarily solve a social problem but may only contribute to reducing it in the short term. An example of these patchwork initiatives is the distribution of food baskets in certain periods of the year, such as the month of Ramadan.<sup>1215</sup> This initiative in itself is humanitarian, but it is not sustainable and does not reflect exemplary CSR. CSR does not mean the practice of any form of donations, but rather a systematic, strategic practice that has a far-reaching impact.

### 6.4.2 Strategic Donations

It has been noted that just giving does not seem to fulfil its purpose because it is seen as insufficient by corporate critics, regardless of the size of the donation.<sup>1216</sup> To an extent, this may signify that donations should be strategically placed in Saudi Arabia in order to remain efficient. Known as “strategic donation” (SD), this type of charity donation is mainly related to advertising and/or improving the brand’s image ‘through cause-related marketing or other high-profile sponsorships’.<sup>1217</sup> The appetite of corporations to cause-related marketing is evident in the fact that expenditure in this respect had increased 8 times

<sup>1215</sup> See Chapter Five.

<sup>1216</sup> Dwane Hal Dean, 'CONSUMER PERCEPTION OF CORPORATE DONATIONS Effects of Company Reputation for Social Responsibility and Type of Donation' (2003) 32 Journal of Advertising, 91-102.

<sup>1217</sup> Santosh Nandi and Madhavi Latha Nandi, 'Porter and Kramer's Creating Shared Value (CSV): Evidence from International Business Models' (2017) 2017 Academy of Management Proceedings, 16257.

in the last decade of the 20<sup>th</sup> century. At times, corporate activities in this regard raise the proverbial eyebrow. KSA can follow a good practical example, in 1999 Philip Morris (the tobacco producer) gave \$ 75 million for charity but then spent \$ 100 million on advertising its charitable contributions.<sup>1218</sup> No wonder why this sort of behaviour is perceived as cynical and strategic donation as a way of gaining goodwill, good publicity, raising employees' morale and changing/maintaining the good public image of the company.<sup>1219</sup> Furthermore, Philip Morris has consistently engaged in overspending on the advertisement of its charitable donations, which suggests that this is a strategy rather than a one-off event. In addition, some of the internal documents of the company demonstrate that the corporation's charitable donations have always been motivated by a mixture of strategic and philanthropic concerns.<sup>1220</sup>

Critics have argued that such investments are intended to "buy" the company an easier ride the next time they are called to account in front of the US Congress. In addition, they noted that according to the company documents the tobacco giant 'targets the "favorite donations" of legislators and their spouses, and seeks to "neutralize" women and minority groups that might otherwise speak out against the tobacco company's marketing tactics.'<sup>1221</sup>

The above explains why cause-related marketing is seen as more sophisticated and impactful than diffused charitable giving, largely because it helps link the corporation-donor to an idea or organisation, which is generally admired by the population (Olympic sports for example, is one of the most preferred activities for Saudis). However, cause-related marketing is not true strategic donation because it remains focused on publicity rather than on bringing real change,<sup>1222</sup> which often has a substantial contribution to the competition. In the context of true strategic donation, Saudi corporations will give back to society their expertise and assets while addressing both economic and social objectives in areas of competitive interest.

To this end, in Saudi Arabia, corporate donation becomes synonymous with context-focused philanthropy because it works by enhancing the context within which a corporation operates; and then reaps the benefits of this positive action. Cisco Systems illustrate how this may work in practice. By creating the Cisco Networking Academy<sup>1223</sup>, the corporation was able to train computer network administrators, which provided a constant supply of well-trained staff for the company. By doing so the firm alleviated any potential inhibitions on its growth while at the same time delivering high-quality job opportunities to high school graduates. This example demonstrates that targeted giving can go a long way towards achieving a blend of social and economic objectives and Saudi corporations should think about the areas where they donate as well as the subjects of their donations.

To improve CSR in KSA, the author suggests that donations of Saudi firms should encompass emergency relief, orphan care, food security, education, clean water, health and wellbeing, refugee empowerment, livelihoods as well as seasonal Islamic giving. To this end, it would be easy to conclude that strategic donations, which is, by definition, more streamlined and goal-oriented. For example, the diverse goals that remain within the viewpoint of strategic donations are connected by a strong, internal link – their benefit for society. Equally, the social goals targeted by corporate donations need not be single standing and opposed to their economic objectives. For instance, investment in education creates quality job candidates and not just quality job opportunities. However, in order for corporate donations and shareholder interests to converge, corporate expenditures must deliver both social and economic gains simultaneously.

This means that creating shared value contributes to the strategic behavior of the company. Strategic charitable giving means that this practice will continue, and will have a far-reaching impact on society. For example, by supporting Saudi writers and thinkers as a strategic giving, the Saudi community will benefit culturally, the company, therefore, plays a pivotal role in social change. At the same time, the company will benefit from this cultural enrichment in society in the long run, by developing the creative thinking skills of its employees. Another suggestion in this regard, the Saudi companies should donate to create an innovation programs. The Saudi community will benefit from these programs in developing ideas, because

<sup>1218</sup> Guido Palazzo and Ulf Richter, 'CSR Business as Usual? The Case of the Tobacco Industry' (2005) 61(4) Journal of Business Ethics 387.

<sup>1219</sup> Michael E. Porter and Mark R. Kramer (n 108).

<sup>1220</sup> ABC News, 'Corporate Goodwill or Tainted Money?' (2006) ABC, available: <https://abcnews.go.com/WNT/story?id=131249&page=1> accessed 10 January 2022.

<sup>1221</sup> ibid.

<sup>1222</sup> Alice Gina Mary Crowley, 'Woke Washing in the Wake of Covid-19: A Case Study on Amazon' (2021) 5 Marketing, Technology and Ethics 287.

<sup>1223</sup> José Villalba, 'Cisco Networking Academy "Corporate Social Responsibility"' (2017) 4 Revista Científica de la UCSA 3-5.



it trains Saudi youth to develop innovative and creative solutions to everyday problems. Thus, these programs will stimulate the Saudi community on innovative cooperation and nurtures the creative incubating environment, as well as developing the creative economy in Saudi Arabia. At the same time, Saudi companies will benefit in the future from these young entrepreneurs to become innovative leaders in these companies. It is recommended to use this example in deductive analogy, to launch dozens of similar strategic charitable initiatives. The best way to do this is, company should study first a strategic initiative that might generate shared value (through a survey, questioners, or even interviews with social experts), and then allocate an annual budget for it. Such behaviour needs time to show its positive effects, so the company is supposed to realise that the profit in strategic initiatives is not immediate, but is medium or long-term, but has the advantage of being a sustainable profit.

There are two limitations to the application of strategic donation in Saudi Arabia. First, the economic benefits that companies may reap such donations may take a long time. The goal of these donations is to create long-term, not short-term shared value. For this reason, many Saudi companies may be reluctant to pay money that they may not reap immediate profits from it. But this problem can be overcome by educating managers, shareholders and decision-makers in Saudi companies about the importance of social investment on the company's sustainable profits. The media can play a pivotal role in raising institutional awareness of the importance of social investment in improving the social responsibility of Saudi companies.

Second, there are statutory restrictions inside Saudi Arabia on all kinds of donations, in order to prevent donations to terrorist organizations or money laundering operations. However, given that the idea of strategic donation is to be in-kind donations rather than cash, Saudi companies will overcome this problem easily. However, Saudi institutions must request the approval of official authorities for such donations to avoid any legal accountability in the future.

## 6.5 Fourth Proposal

### 6.5.1 Lack of diversity

Many Saudi companies are lacking in demographic diversity on their boards of directors, as discussed in Chapter Five.<sup>1224</sup> Saudi Arabia is still largely devoid of women in leadership positions in the public and private sector. The main reasons are cultural and social. Saudi society, for example, is accustomed to male decision-makers in a variety of fields. This stems from the hadith of the Messenger of God, may God's prayers and peace be upon him: (Never will a people succeed if they have the authority of a woman.) Nevertheless, the above hadith of the Prophet was mentioned on a specific historical occasion.<sup>1225</sup> This means that Muslim scholars do not consider the generality of the text as a rule, because if it were regarded in this way, it would contradict the Qur'an's apparent meaning. The Qur'an describes a woman who led her people in the right way. It was the best course of action she could have taken, and the basis of her ruling was organization and consultation.<sup>1226</sup> Furthermore, The "male corporate culture" as well as the inability of some women to climb the career ladder because of male domination can emulate are the fundamental reasons of this problem in KSA.

The lack of demographic diversity on Saudi corporate boards means that there is no "appropriate representation" of women's talents and skills in the private sector. This means that although more than half of Saudi university graduates are women,<sup>1227</sup> they do not have the opportunity to occupy senior positions on the boards of Saudi top 100 companies. This is disappointing, especially considering a recent study that demonstrated a positive impact of women on corporate boards of directors on the

<sup>1224</sup> See Chapter Five.

<sup>1225</sup> In it, the Messenger, may God's prayers and peace be upon him, informed his companions that the Persians were living in a state of political collapse and moral decay, ruled by a tyrannical, corrupt monarchy, and power struggles prevailed in their country, which reached the point of fighting. It has nothing to do with consultation and not a collective opinion, so the hadith was a description of the deteriorating condition of the Persians and an insightful reading of the laws of the establishment and dissolution of states.

<sup>1226</sup> That woman is the Queen of Saba that God mentioned by God in Surah. They entered a village, spoiling it, and making the most honorable of its people humiliated, and this is what they do (34) [An-Naml 32].

<sup>1227</sup> See for example: Fatmah Jamjoom and Philippa Kelly, 'Higher Education for Women in The Kingdom of Saudi Arabia' [2013] ResearchGate., available:

[https://www.researchgate.net/publication/299731670\\_Higher\\_Education\\_for\\_Women\\_in\\_the\\_Kingdom\\_of\\_Saudi\\_Arabia](https://www.researchgate.net/publication/299731670_Higher_Education_for_Women_in_the_Kingdom_of_Saudi_Arabia) accessed 19 March 2022.

company's performance.<sup>1228</sup> For this purpose, allocating quota for woman in all listed companies in KSA and all companies which have certain number of employees/revenue has become a necessity more than ever.

### 6.5.2 A Gender Audit

**1) An internal audit:** Saudi companies can assess their gender equality state-of-the-art and identify major gender biases through an internal gender audit, which will have a positive impact on CSR. In Saudi Arabia, companies need to conduct this audit every year to ensure they are paying attention to diversity in the company especially in the board. As part of this audit, the Saudi firm should also look at how they have addressed gender equality in their decision-making structures, organisational culture, and processes, and how their employees perceive, understand, and behave in this regard. Moreover, this audit should evaluate the extent to which the gender perspective is integrated into academic policies and programs, into research, in study curricula, and in the management of work and staff welfare.

Saudi companies can do this to improve their social responsibility by publishing an annual report on the number of women on the board of directors, middle employees, gender pay and identifying the pay gap and its causes. Such a report should also contain suggestions for improvement in the next report.

**2)An external audit:** Saudi companies should submit an annual external audit that reveals non-discrimination measures against women consumers, suppliers, or investors. These procedures are in the form of an annual report that reveals the number of women who deal with them from suppliers and investors, and prove that they have received equal treatment with their male peers. The report should also include goals for future improvement.

This proposal may face some limitations, including: the lack of clarity and responsibilities of the work of the internal audit. This would create ambiguity and many obstacles in the way of the auditors' work that ultimately leads to the failure to achieve the objectives audit. In order to overcome this problem, the executive departments in Saudi companies should establish and implement internal control systems and internal audit management, including the evaluation of the annual internal audit reports and notes, and taking the suggestions proposed by the internal auditor to improve the demographic diversity in the company. Other limitations include the professional incompetence of the audit manager and the auditors' work team, as well as the unprofessional exploitation by some of the support provided by the Board of Directors. This problem can be overcome by attracting Saudi companies to legal professionals to fill the positions of internal auditors. Considering that the internal audit process is legal in the first place.

## Annual Gender Audit Model

### Internal Audit

- Number of women on the board of directors: ..... out of .....
- Number of middle managers who are women: ..... Out of .....
- Average wages for men managers ...
- Average wages for female managers .....
- Reasons for the wages gap.....
- Suggestions for improving demographic diversity in the coming year.....

<sup>1228</sup> Liliana Nicoleta Simionescu and others, 'Does Board Gender Diversity Affect Firm Performance? Empirical Evidence from Standard & Poor's 500 Information Technology Sector' (2021) 7 Financial Innovation.

### External Audit

- Number of women investors the company has dealt with .....out of.....
- Number of women suppliers the company has dealt with .....out of....
- Number of complaints from women that the company dealt with last year....
- Suggestions to improve the company's treatment of women in the coming year

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#### 6.6.1 SMEs Compliance level of CSR is very different

The discussion in Chapter Five showed that SMEs in Saudi Arabia are complying with social responsibility at varying levels. Companies such as these are often owned by families, and the cultural and educational background of such families influences their level of CSR compliance. Furthermore, the limited economic profits of this type of company limit their ability to incur further social investments. It is noteworthy that some Saudi SMEs are largely compliant with CSR within the limits of their economic capabilities, while other companies of the same size are completely unwilling to comply, because the families who own them are content paying Zakat only. As a result of such disparity, most Saudi SMEs do not fulfill their social responsibility, and this is negatively impacting the social and economic development of Saudi Arabia as a whole.

This means that the damage caused by these companies to society and the environment may be much greater than their economic benefits. For example, small companies specialised in producing charcoal may cause enormous damage to the environment, while they may not contribute to social responsibility except by paying annual Zakat. This is perhaps because environmental regulations in Saudi Arabia are still limited and lack an enforcement mechanism.

In addition, the type of initiatives adopted by SMEs to improve their CSR are mostly superficial and not qualitative or strategic. So, most of the initiatives are in sponsoring a charitable association for example, the care of orphans, or planting a number of trees every two or three years. Such kind of initiative is absolutely insufficient. CSR needs to be improved by sustainable initiatives.

#### 6.6.2 Develop a special indicator of CSR for SMEs

The author proposes that the Ministry of Commerce, KSA launch a special indicator to measure CSR in SMEs. SMEs, the majority of which are family-run and do not have stock exchange listings, are regulated and instructed by the Ministry of Commerce.<sup>1229</sup> This special indicator should aim to reduce the CSR expectations of SMEs in comparison to larger companies. This is because SMEs earn limited profits in comparison to large companies. This proposal will only succeed if SMEs

<sup>1229</sup> The CEO of Mekyal Financial Technologies, Hisham Abu Jameh, said in an interview with "Al Arabiya newspaper", on August 3, 2021 - that many family companies in Saudi Arabia are reluctant to join the stock market because most of them acquire agencies that achieve fantastic profits for them, while the agencies Undesirable by market investors, fearing that the agency will not continue, especially with the opening of the Saudi economy and Vision 2030 that works to attract foreign companies to the market. See the entire interview here: <https://ara.tv/rfgfa>.

disclose non-financial reports mandatorily, so those who fail to comply should face fines from the Ministry of Commerce. This comprehensive disclosure of the non-financial reports should be made on the official website of the company or facility at the end of each fiscal year. So that the Ministry of Commerce and the Public can view and review it at any time.

A major concern with mandating the disclosure of non-financial reports for SMEs is that the disclosure may influence the attraction of new investors. It may also affect the company's ability to market its products. Because the report may contain negative information about the company, such as its failure to serve the community or protect the environment, thus affecting its reputation. As a result, SMEs may suffer financial losses due to mandatory disclosure, which results in reduced revenues and cash flows. It may also harm the company's image in the minds of the public. SME's can deal with this issue by conducting a comprehensive performance appraisal. An appraisal of their facilities should identify and track their net social contribution, which includes not only internal cost and benefit elements, but also external elements that have a positive impact on society. Small and medium-sized businesses will benefit from this appraisal by building a good reputation based on their performance and success providing services. Furthermore, it facilitates SMEs' access to bank credit, particularly with regard to the development of some indicators that influence bank credit decisions. SMEs will also be able to manage the social risks associated with their economic activity better through a comprehensive performance appraisal.

As a result of resolving the issue of mandatory disclosure, the Ministry of Commerce can launch this indicator. The indicator should measure how well SMEs comply with CSR and the social impact of their social initiatives. To this end, the indicator should include four main factors:

### **Social Performance**

When SME succeeds in performing its roles towards the surrounding community - which it mainly serves - this will reflect positively on the extent and how each individual in it performs his assigned role. Commitment to social responsibility means that the performance of employees will be higher and better, not to mention the rates of job satisfaction as well. It is illogical that the SME seeks to reform society while it is in ruins, and a mere wreck, not to mention that this inside (SME's employees) is the basis for moving outward and not the other way around.





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The social performance of small businesses can be measured through Social Return on Investment, developed by Social Value UK, which combines analytical techniques, social impact assessment and accounting. It begins with estimating the financial value of the various inputs, then the financial value of the results, and finally calculating the ratio:<sup>1231</sup>

$$\text{The monetary value of the results} \div \text{The monetary value of the input} = \text{Social Return on Investment (SROI)}$$

<sup>1230</sup> 'Social Performance Management' (Cerise) <<https://cerise-spm.org/en/spi4/>> accessed 10 April 2022.

<sup>1231</sup> See for example: Aduragbemi Oluwabusayo Banke-Thomas and others, 'Social Return On Investment (SROI) Methodology to Account for Value for Money of Public Health Interventions: A Systematic Review' (2015) 15 BMC Public Health. See also: Unggul Purwohedhi and Bruce Gurd, 'Using Social Return On Investment (SROI) To Measure Project Impact in Local Government' (2019) 39 Public Money & Management, 56-63. See also: Ross Millar and Kelly Hall, 'Social Return On Investment (SROI) And Performance Measurement' (2013) 15 Public Management Review, 923-941.

The most significant limitation of social return measurement is the difficulty of estimating the monetary value of social impact. For example, how can a monetary value be estimated for the benefit that the community obtains as a result of SME afforestation of the surrounding area. The measurement difficulties are due to the following reasons:

- A- Most of the social returns are achieved for parties outside SMEs. Social activities result in benefits for the community and not for SMEs, and many of them are difficult to measure in cash. For example, how can be measured or estimated a monetary value for the benefit that the community obtains as a result of reducing air pollution caused by the operations of SMEs.
- B- Even if SME is achieved as a result of its external social activities, which is the social acceptance of SME by the community, the assessment of a monetary value for this acceptance is difficult to verify on the one hand, and does not agree with the policy of caution on the other hand, such as achieving a good impression of the project in the community, where it is difficult to appreciate the monetary value of this good impression.

### Customer Satisfaction

In SMEs, customer satisfaction should be one of the most important priorities, but it is more than a marketing objective; it is an indicator of the commitment to social responsibility. It is evident that customer loyalty and satisfaction play a major role in the financial success of an organisation.<sup>1232</sup> It is possible to measure customer satisfaction with products produced by SMEs in Saudi Arabia by counting their numbers by the Ministry of Commerce, and then by using a correlational survey and a transactional survey to measure customer satisfaction separately. After taking the questionnaires once a year with 40-50 questions, the results should be analysed, compared, and then reports should be generated after one month.

The most prominent limitation of this proposal is that conducting these surveys requires specialists in analysis and comparison. The Ministry of Commerce can overcome this problem in cooperation with General Authority for Statistics<sup>1233</sup>, as it undertakes the task of conducting surveys and then analysing and comparing them with each other. Finally, the Commerce Ministry should publish it using the indicator.

### Environment Protection

SME social role should include the protection of the environment, its tireless efforts to redress the damage, and its serious attempts to minimise the negative impact of its activities. For example, SMEs should not pollute the air, or harms the seas

<sup>1232</sup> See for example: Eugene W. Anderson, Claes Fornell and Donald R. Lehmann, 'Customer Satisfaction, Market Share, And Profitability: Findings from Sweden' (1994) 58 Journal of Marketing, 53. See also: David M. Pooser and Mark J. Browne, 'The Effects of Customer Satisfaction On Company Profitability: Evidence from The Property and Casualty Insurance Industry' (2018) 21 Risk Management and Insurance Review, 289-308. See also: Roger Hallowell, 'The Relationships of Customer Satisfaction, Customer Loyalty, And Profitability: An Empirical Study' (1996) 7 International Journal of Service Industry Management, 27-42.

<sup>1233</sup> The General Authority for Statistics is a governmental entity with an independent legal personality, and its board of directors was formed by Cabinet Resolution No. (11) dated 13-1-1437 AH, headed by His Excellency the Minister of Economy and Planning, and the membership of each of their Excellencies: the Minister of Commerce and Investment, the Minister of Finance, the Minister of Labor and Social Development, The Minister of Education, the Minister of Industry and Mineral Resources, in addition to Their Excellencies: the Director of the National Information Center, the President of the General Authority for Statistics, and two other specialists in the field of the Authority's work, appointed by a decision of the Council of Ministers based on the nomination of the Chairman of the Council, and the Chairman of the Council chooses a deputy for him from among the Among the ministers are members of the Council. The General Authority for Statistics is the only official statistical reference for statistical data and information in the Kingdom of Saudi Arabia. It implements all statistical work, in addition to technical supervision of the statistical sector, which includes a system of multiple statistical centers and units established within the administrative structures of government agencies and some private sector institutions. The authority supervises the implementation of the national strategy for statistical work in coordination with the relevant authorities. It also designs and implements field surveys, conducts statistical studies and research, analyzes data and information, and all works of documenting and preserving information and statistical data that cover all aspects of life in the Kingdom of Saudi Arabia from its multiple sources. Codification, tabulation, analysis and extraction of its indicators.

and oceans...etc. On the contrary, SMEs should work to protect these natural resources, and work to develop and sustain them.

The Ministry of Commerce can measure the environmental performance of SMEs through evaluation of balanced scorecard (BSC) of SMEs<sup>1234</sup>, as it should include several indicators, the most important of which are: the gas emissions index, the resource and energy consumption index, the green spaces contribution index and the environmental investment index. All SMEs should follow BSC to protect the environment.

This means that the Ministry of Commerce should evaluate the extent to which SME has incorporated environmental performance indicators into its Balanced Scorecard (BSC). One of the most significant limitations of this approach is that urging SMEs to incorporate their environmental performance into their strategy means shifting their focus from strategy in implementing CSR to performance measurement. For example: "BSC Designer's practice has proven that companies that integrate their environmental performance tend to convert their strategy scorecard into a key performance indicator, and use the perspectives as containers for their myriad metrics."<sup>1235</sup>

## 6.7 Conclusion

This chapter suggests five ways to make Saudi businesses more engaged to CSR. This chapter has taken a sui generis approach of utilising Islamic teachings to conform to the Saudi legal environment in order to formulate the theories and mechanisms for implementing CSR.

The five solutions proposed by the chapter are: First, it proposes the application of a ICSR model which is an Islamic application of Carroll's pyramid. ICSR would be acceptable in KSA because of its religious background. Second: launching an indicator tailored to SMEs to facilitate sustainable and strategic SMEs initiatives. This indicator should be launched by Ministry of Commerce. Third, a strategic donation is proposed to solve the problem of unstructured donations. This strategy should create the shared value to bring the interests of shareholders closer to stakeholders. Fourth, Saudi companies are also being urged to create a gender audit to address the lack of women in their boards of directors. This gender audit is recommended to be carried out every year and by professionals. Fifth, there is the possibility of solving the legal void of CSR in KSA through the development of a comprehensive code of conduct that incorporates human rights across supply chains. The code of conduct should be the most important legal solution for Saudi companies to improve their social responsibility. The author suggested a model code of conduct that could serve as a guide for Saudi companies to emulate.

## Chapter Seven

### Conclusion

#### 7.1 Thesis Summary and Key Findings

This thesis aims to improve the legal and administrative framework of CSR in Saudi Arabia in order to improve CSR as a whole. CSR has become an important tool for international competition, and it is now viewed as a responsibility of the company. Improving Saudi CSR should, therefore, be a priority. Saudi companies have not yet implemented CSR as a strategy, and religious initiatives still dominate Saudi CSR. Thus, the importance of this thesis becomes more apparent, especially with regard to Saudi Arabia's vision for comprehensive improvement 2030.

In the literature review chapter, CSR is examined from two perspectives (the UK and Saudi Arabia). A brief history and definition of CSR has been provided in this chapter in order to illustrate its relevance to corporate governance, corporate law,

<sup>1234</sup> In 1992 David P. Norton and Robert S. Kaplan of Howard University started a working group to study the challenge of reporting only financial measures. In for-profit organizations, financial measures reported late (i.e. told you what happened in the last month, quarter, or year), but they couldn't look ahead. Norton and Kaplan wanted to look specifically at the measures that look forward in time and act as key indicators as they appear, and how this might affect the organization's strategy. See for example: Christian Mastilak and Michele Matherly, 'Resume as A Balanced Scorecard: Teaching The Balanced Scorecard Using Analogy' [2009] SSRN Electronic Journal. See also: Vladimir Vega Falcón and Daysi Krina Lluglla Jácome, 'El Balanced Scorecard Como Herramienta De Gestión Organizacional (The Balanced Scorecard as an Organizational Management Tool)' [2020] SSRN Electronic Journal.

<sup>1235</sup> Ivo Hristov and Antonio Chirico, 'The Role of Sustainability Key Performance Indicators (Kpis) In Implementing Sustainable Strategies' (2019) 11 Sustainability, 5742.

and supply chain CSR policies. It has been discussed how the study filled a gap in Saudi literature, how challenges will be overcome, and why it is significant. Due to the fact that CSR is more concerned with stakeholder interests than shareholder value, this chapter has shown that CSR is becoming increasingly controversial. In addition, this chapter has shown that sustainability and corporate social responsibility are similar concepts, but CSR is more comprehensive. This thesis, in order to achieve its objective, uses a single definition as the basis for discussion. In addition, the chapter explains how CSR is defined within this thesis in order to provide a deeper understanding of the topic. It is clear from this chapter that both the UK and Saudi regulatory frameworks have shortcomings in regards to CSR, but to varying degrees. In this analysis, there are few new sources about CSR and law in Saudi literature. This may be due to the recent changes in Saudi Arabia rendering several existing sources obsolete, and this provides another reason to examine CSR more closely. Moreover, this chapter has clearly demonstrated that this thesis is void of any discussion of factors that influence CSR, including family ownership, governance structures, and government ownership. While these sources provide some insight into CSR in Saudi Arabia and the literature gap around CSR and law, they do not address the scope of this thesis. This thesis has offered a thorough exploration of the laws, regulations, and policies that have not previously been explored in the context of CSR in Saudi Arabia, such as supply chains, in order to fill the gap in the Saudi literature about CSR and Law.

The chapter of The UK laws of CSR explores the impact of direct laws (such as Section 172 of Companies Act 2006 and Section 54 of Modern Slavery Act 2015) on CSR in the UK. The purpose of this chapter has been to examine how environmental and social laws affect CSR in the UK. Throughout the chapter, it has been discussed shareholders and managers' relationships, the existing legal framework for CSR, and external factors such as the pandemic of COVID-19. The chapter has argued that Sections 172 and 414 of the Companies Act 2006 are a good start for British law to promote CSR but are utterly inadequate, and do not clearly specify how a manager can make a decision that is in the interest of the success of the company as a whole. Also, Section 414, although it is obligatory for companies to publish their reports regarding human rights, indicates that the section did not specify what companies should write down exactly in these reports. The chapter also has assessed that Section 54 of the Modern Slavery Act 2015 is world leading, but not sufficient. There may be a huge gap between what companies write in these mandatory reports and what they actually do.

Furthermore, the chapter emphasises that the efforts of senior management of companies to maximise shareholder value have adverse effects on stakeholder groups beyond shareholders, and are outdated and unacceptable. Despite this, the author argues CSR is not sufficiently developed or applied to UK companies due to the lack of enforcement of legislations. According to this chapter, the main purpose of mandatory CSR laws in the UK is largely symbolic rather than regulating or judicial. Ideally, such policies would send a message about acceptable corporate conduct and even result in labour standard reforms to ensure that economic interests protect social and environmental interests. The dominant theory of shareholder value has also been illustrated throughout this chapter as preventing UK firms from engaging in CSR. Considering the Covid-19 pandemic, the CSR agenda emphasises the importance of being transparent when publishing CSR reports, and not colouring them pink or white. The UK law has generally been calibrated to promote CSR either through the application of private regulations or by integrating CSR into the regulatory framework. There are, however, additional steps that should be taken in order to fully leverage CSR in the country. This would allow CSR to be well integrated with pertinent policy considerations that do not harm the economy and do not confuse various stakeholders.

The chapter of the Saudi regulations of CSR examines the impact of the country's current legal framework on CSR. Saudi Arabian companies, according to this study, have not developed comprehensive enough CSR plans to cover all aspects of CSR. CSR practices are voluntary in Saudi Arabia, and they are currently underdeveloped, meaning that they are unlikely to flourish without significant reforms. Zakat functions sometimes as a vehicle through which CSR is implemented in Saudi Arabia. CSR may have been slow to emerge in Saudi Arabia as a result of the shift from Zakat to CSR - but CSR is culturally ingrained. With generations of Saudis understanding Zakat obligations to the spiritual and religious level, they have become more conscious of their responsibilities as individuals, societies, and institutions. This chapter has argued that Saudi Arabia is still relatively new to CSR. In reality, companies adopt CSR practices on a voluntary basis, and the compliance frameworks don't always mirror real practice. The lack of a significant CSR culture in Saudi Arabia is partly due to lacking of CSR legislation. The chapter has also argued that Saudi CSR remains underdeveloped, and the country must undertake reforms in order to develop it.

As outlined in this chapter, China, India, and Indonesia have all adopted extensive legislation pertaining to CSR. Even though there are notable differences in their levels of sophistication and their approaches to implementing CSR policies, Saudi Arabia can take note of the relative success these countries have had in developing their own CSR infrastructure. Development of a comprehensive CSR infrastructure has made some progress, but they were not prepared before the legislation took effect. Saudi Arabia is similar to these jurisdictions in many ways, despite their differences in many ways. It



would be more desirable to implement a legislative CSR system rather than encouraging companies to conduct CSR on their own initiative, since the current approach could well be inadequate, given how poorly CSR has been developed in Saudi Arabia. The Saudi Arabian government may want to think about developing a framework for making social responsibility decisions rather than relying on international norms. If Saudi companies started implementing CSR first, their benefits would be uniform. In addition, legislation would let the government tailor the CSR outcomes it desired rather than simply importing them from abroad. In Saudi Arabia, such a tailored approach is likely to be viewed favorably if it is tailored to the country's specific characteristics. Developing an effective CSR framework requires the corporate sector's support and involvement. In the Indian example, employers are unlikely to trust a legal consequence for violating CSR requirements. The downside is that this creates friction between employers and the corporate community, thereby undermining efforts to comply. For any CSR framework - whether voluntary or legislative - to be effective, companies need to be willing to participate, rather than reacting out of fear of sanctions. Saudi authorities should take into account the unique characteristics of Saudi society when designing CSR requirements, and consultation plays a key role in the reformation of Indian CSR requirements - many of which are extensive and broad. Since China has socialist roots and a pedigree, it has been able to institute CSR in three phases, making it instructive and useful in this regard. Saudi Arabia is able to benefit from the Zakat framework to help implement CSR policy can be used as a minimum guide. A major advantage of introducing Zakat principles into corporate culture is that it may have slowed implementation of some aspects of CSR - and potentially hindered transition from Zakat principles to CSR. Since Zakat was viewed as a spiritual and religious obligation decade ago in Saudi Arabia, it has gained significance in the way individuals, organisations, and governments perceive their responsibilities to the community. The Saudi Arabian government will be able to develop its CSR framework over the long run by applying these ideological principles.

The contribution of the research is an examination of CSR implementation in UK and Saudi firms from the perspective of expert practitioners with the aim of understanding the differences in the both jurisdictions. The author interviewed thirty industry practitioners, ten in the UK and twenty in Saudi Arabia, to answer the research question of the chapter, namely, how do UK and Saudi experts evaluate CSR? An overview of CSR is given in this study, as well as how international and private law affects CSR, as well as obstacles companies may face in achieving CSR best practices. Culture, regulatory, and structural factors all contribute to the differences in CSR implementation between the UK and Saudi Arabia. The Saudi government's contribution to CSR is heavily influenced by the country's religious pillar, whereas Britain's contribution is more strategic and concerned with legal compliance. The UK companies can respond to both domestic and international laws as a practical consequence of the fact that they receive both domestic and international legal guidance. The UK legislations have also provided guidance on how to implement responsible business practices along with practical advice and sector-specific recommendations. These factors have led to a more regulated and strategic CSR environment in the UK. Using both international guidelines and domestic legislation to protect human rights in supply chains, s54 of the Modern Slavery Act 2015 has considered the world-leading legislation to safeguard human rights in supply chains. While the enlightened shareholder theory has been challenged in its implementation, its importance cannot be overstated in terms of improving CSR in the UK. Meanwhile, neither Saudi Arabia's CSR directives nor international regulations appear to have a direct effect on the region's privately held corporations. Throughout the chapter, the Saudi participants argued that there is a lack of respect for human rights in Saudi Arabia's supply chains. Furthermore, they argued that as shareholders are the agents of managers, they are responsible for maximising shareholder value. Therefore, the objective of Saudi businesses is to maximise shareholder value. Saudi firms struggle with implementation of CSR practices because of Islamic stereotypes of CSR. Furthermore, Saudi companies often do not enforce human rights in their supply chains, and they are more concerned with improving CSR to local communities than global concerns, which may mean Saudi CSR efforts do not meet international standards yet. Unregulated charitable work and discrepancies in compliance between family businesses pose major problems for CSR in KSA. While overregulation is, according to UK practitioners, the biggest obstacle to achieving their goal of generating profits.

The focus of the thesis is to provide answer to the following research question: How to enhance CSR in KSA? This chapter proposes five key measures to improve the CSR practices of Saudi Arabian companies based on an analysis of Saudi legal and operational aspects of CSR and a comparison with the British model discussed previously in the chapters. Our five recommendations, therefore, are intended to help companies in Saudi Arabia improve their social responsibility efforts. In Saudi Arabia, religion has historically dominated the corporate structure. Therefore, a practical and feasible theoretical framework for defining CSR must be developed based on the Islamic Corporate Social Responsibility model ICSR. It is also important to ensure that Saudi Arabia's CSR code adheres to ICSR principles so as to eliminate the existing gaps in Saudi Arabia's laws on corporate social responsibility. Accordingly, the kingdom can enforce a comprehensive code of conduct ensuring human rights in supply chains, combating corruption, protecting information inside the company, protecting the environment, and promoting competitiveness. As part of the chapter, Saudi companies should also incorporate strategic

donations into their annual strategic plans in order to limit the unstructured donations. In addition, creating a gender audit within Saudi companies would improve the demographic diversity of Saudi boards of directors. In KSA firms, there will be an improvement in the representation of women on boards of directors, no matter if the audit is internal, external or both. The chapter concludes with a final suggestion on how SMEs in the Kingdom can improve their social performance and, in turn, improve their responsibilities by launching a specific indicator for SMEs. In this manner, entrepreneurship and SME CSR initiatives can also be approached strategically and sustainably.

## 7.2 Limitations of Research

### Lack of Saudi Sources in the Research Area

The most significant difficulty faced by the author is the lack of sources linking CSR to Saudi Arabian law. CSR was discussed primarily from a management perspective in most sources related to the topic. In addition, there is no legislation related to CSR in Saudi Arabia to analyse and critique. This research relies almost on the opinions of the interviewees and uses verses from the Holy Qur'an as the source of Sharia law. Social practices have also been discussed as tools for social responsibility by the author. Furthermore, the author has analysed case studies, whether they are from Saudi Arabia's surroundings in the Middle East or North Africa, or countries that have special experiences with corporate social responsibility, like China, Indonesia, and India.

### Translation and Adaptation of Meaning

For the author to maintain the credibility of the discussion and analysis, it was challenging to translate and adapt meanings from Arabic into English. During the translation of the interviews (which are in slang), the author adapted the meaning to the extent of what the interviewees meant exactly. To this end, a professional translator was hired. Translator did not have to translate from beginning to end, but only to review what the author had translated. To this end, the translator re-heard the interviews and confirmed that the meaning was translated correctly into English.

### Not discussing how CSR can contribute to Vision 2030

Despite the superficial discussion of the importance of CSR to achieve Vision 2030, the author did not elaborate on this discussion. Also, the benefits of CSR and its positive impact on Saudi companies in general are not within the scope of this thesis.

### The problems facing CSR in thesis are an important part, but not all

CSR faces more challenges than just those outlined in the thesis. Though the author attempted to discuss the theoretical challenges in Chapter Two and the practical challenges in Chapter Five, she cannot guarantee that they are comprehensive. However, the problems discussed by the author in this chapter are truly important, and they are the beginning of a more detailed discussion in the future.

## 7.3 Concluding Remarks and Future Directions

The importance of this thesis lies in the fact that it is the first of its kind that discusses corporate social responsibility in Saudi Arabia from a purely legal perspective and in comparison with the British jurisdiction. This is particularly important with Saudis' efforts to improve business sustainability. Therefore, it can be said that the timing of this thesis is ideal, as it coincides with the efforts exerted by Saudi Arabia for legislative development.

In the future, Saudi researchers should discuss the benefits of CSR for Vision 2030, and improve the theoretical framework that the author has already improved (i-CSR) to better suit the Saudi business environment. This will make the future of CSR bright in Saudi Arabia.

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## " CSR في القانون والممارسة في المملكة العربية السعودية "

### (مقارنةً بالنموذج البريطاني)

إعداد الباحثة:

نورا أبو شارب

#### الملخص:

في الاقتصادات المتقدمة، لم يعد اعتماد الشركات لسياسات المسؤولية الاجتماعية للشركات (CSR) خياراً مرغوباً بل أصبح ضرورة. باختصار، تعني المسؤولية الاجتماعية للشركات، وفقاً لزيبرك، "مسؤولية الشركة في العمل بشكل أخلاقي ووفقاً للقانون، وتقليل أي آثار سلبية لعملياتها على البيئة أو المجتمع أو صحة الإنسان".

لذا، أصبحت المسؤولية الاجتماعية للشركات جزءاً من النقاش التنظيمي والتجاري حول العالم. بينما كانت المسؤولية الاجتماعية للشركات تُعتبر سابقاً مؤشراً على نوايا الشركات الطيبة تجاه المجتمع، اليوم، تُعتبر أي حالات عدم الامتثال للمعايير الحالية للمسؤولية الاجتماعية للشركات مصدرًا للمخاطر على سمعة الشركات وقد تؤدي إلى خسائر تنظيمية كبيرة. ومع ذلك، تتورط الشركات الدولية من سياقات وطنية مختلفة وفي انتهاكات مختلفة لجوانب المسؤولية الاجتماعية (مثل فولكس فاغن وزارا، وغيرها) بشكل منتظم ومتكرر في فضائح المسؤولية الاجتماعية و"التلميع الأخضر".

بشكل أساسي، تتضمن المسؤولية المؤسسية "تحولاً في تركيز حوكمة الشركات من تعظيم الأرباح للمساهمين إلى المسؤولية تجاه مجموعة أوسع من أصحاب المصلحة". وقد أصبح من الطبيعي تصور حوكمة الشركات كوسيط بين الممارسات التنظيمية الخضراء وإعداد تقارير المسؤولية الاجتماعية، ولكن في العصر الحديث، يُقبل بشكل أكبر أن حوكمة الشركات هي في الواقع نظام شامل من المعايير التي تسعى للعمل بطريقة شاملة، سواءً لحوكمة الإدارة الداخلية للشركة أو لتعزيز ذلك من خلال تحسين الشفافية والمساءلة بحيث يكون لدى الأشخاص الخارجيين عن الشركة (المساهمين) القدرة الأفضل للسيطرة على الاتجاه الطويل الأمد للشركة.

أصبح النقاش حول المسؤولية الاجتماعية للشركات ذا أهمية متزايدة في المملكة العربية السعودية. هناك أدلة على أن الشركات في المملكة العربية السعودية بدأت تواجه ضغوطاً مؤسسية مرتبطة بتنفيذ ممارسات المسؤولية الاجتماعية للشركات.