



CORPORATE SOCIAL RESPONSIBILITY: DOES MOTIVATION MATTER?

Does it matter whether a corporation's participation in CSR is an exercise in window-dressing or genuine CSR in action?

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Acronyms:

CCP – Cadbury Cocoa Partnership

CED – Committee for Economic Development

CSR – Corporate Social Responsibility

DCFRB – The Dove Campaign for Real Beauty

IPO – Initial Public Offering

ARV - Antiretroviral

HAART – Highly Active Antiretroviral Therapy

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Abstract:

This research thesis seeks to find a solution to the question: does the motivation or reason behind a corporation's socially responsible behaviour matter, provided that they are behaving in a socially responsible manner? Does it make a difference what the factors that are motivating a company are, be it self-interest to profit-maximise or an altruist intention to do good, as long as the company is partaking in CSR. Using Milton Friedman's as the basic premise, Chapter 1 discusses the classic economic notion that the "business of business is business" and the issue of the separation of ownership and control within the corporation and how it has resulted in a responsibility gap. Chapter 2 address the question of whether a corporate conscience does indeed exist and if so, the context within which it does, and finally how it interacts with legal regulation, particularly, the Companies Act 2006. Chapter 3 discusses the universality of ethics and the role of ethics within corporate legal philosophy, with particular reference to the role of motivation. In Chapter 4, three case studies of corporate social responsibility are evaluated within the context of the theories previously discussed. The cases examined are Cadbury's Cocoa Partnership for Ghana, Heineken's HIV-AIDS policy and Unilever's Dove Campaign for Real Beauty. These case studies bring to light a convergence of motives. It is concluded that genuine ethical motivation matters with regard to the determination and improvement of the moral quality of the particular corporation's CSR activities. Recommendations for further study are made.

INTRODUCTION

INTRODUCTION

“Our success will be measured not only by growth in shareholder value, but also by our reputation, the quality of our constituency relationships, and our commitment to social responsibility.”

– Levi Strauss & Co., business vision statement¹

The Corporation

A corporation as defined by Crane and Matten is characterised by two main features: legal status and ownership of assets. Corporations are legally recognised entities, independent of its employees, managers, investors or customers; they are “artificial legal persons” in their own right. Corporations, rather than its stockholders or managers, are recognised as owning the assets associated with them. Additionally, any transactions made with a corporation in the course of its operations are made with the corporate entity itself, and not any particular employees, shareholders or managers.² Kraakman *et al* in their definition stated that it is characterised by five features: “legal personality, limited liability, transferable shares, a centralized management under a board structure, and shared ownership by contributors of capital.”³ If a corporation is an “artificial person”, as recognised by law, does it then

¹ Makower, p.66.

² Crane & Matten, p38.

³ Kraakman, et al, p5.

have responsibilities and rights as an ordinary person does? Crane and Matten posit that this is indeed the case, and that corporations have rights and responsibilities in society. They state that corporations, not shareholders or managers, are responsible for their own assets, debts or damages. Furthermore, they state that managers are trustees to shareholders and owe them a fiduciary duty to protect their investment in the corporation.⁴

Corporate Social Responsibility

With the above definition in mind, what does it mean then, to speak of a corporate social responsibility (CSR)? Bakan asserts that the corporation, over the course of the last 150 years, has become “the world’s dominant economic institution”, practically governing the lives of ordinary people within society.⁵ Being such an influential social actor, a corporation cannot be left to its own devices. Simply put therefore, “CSR covers the relationship between corporations and the societies with which they interact.”⁶ Carroll illustrated the different categories of CSR as economic, legal, ethical and discretionary responsibilities (see Figure 2.).⁷ In his later publications⁸, these responsibilities were slightly modified, with discretionary responsibilities being replaced by what he termed “philanthropic responsibilities”. Carroll posits that of the four components of CSR, economic responsibilities form the basic foundation on which all the other responsibilities stand, however corporations do have a responsibility to obey the law, as the law is society’s way of regulating right and

⁴ Crane & Matten, p39.

⁵ Bakan, p5.

⁶ Werther & Chandler, p6.

⁷ Carroll 1979, pp499-500.

⁸ Carroll 1991, p42.

wrong behaviour.⁹ These two responsibilities are required by society. A corporation's responsibility to be ethical is their obligation to do what is "right, just and fair" in the eyes of society, in order to avoid any damage to its stakeholders' interests; this is not required by society, but expected.¹⁰ Philanthropic responsibilities are concerned with good corporate citizenship through its contribution to the community and quality of life.¹¹ Although philanthropic responsibilities are neither required nor expected, they are generally desired by society. For the purposes of this thesis, the discussions on CSR shall be in reference to those responsibilities expected and desired by society only; in essence, the activities which corporations partake in voluntarily.

CSR pervades all aspects of business behaviour and is therefore important for businesses to partake in it,¹² by considering not just their economic bottom-line, but their triple bottom-line (economic, social and environmental). There are both *business* reasons and *moral* reasons for CSR:

Business reasons

A corporation may participate in CSR to promote its own self-interest. Nowadays with the rise in ethical consumerism, corporations perceived as CSR champions are likely to attract more customers and in turn, receive financial rewards (e.g. corporate irresponsibility may lead to consumer boycotts) and to gain a competitive advantage. In addition to this, it may also attract employees or help retain the loyalty of existing

⁹ Ibid.

¹⁰ Carroll 1991, p42.

¹¹ Ibid .

¹² Werther & Chandler, p19.

ones. Thirdly, voluntary corporate actions may pre-empt proposed government legislation, therefore rendering the legislation unnecessary.¹³ Finally, by contributing positively to society, businesses can ensure they operate within conditions conducive for their operations. These reasons are what are referred to as “window-dressing” CSR, in that they are business ethics, which are superficially motivated.¹⁴

Moral reasons

In their course of business, corporations can and do sometimes cause social and environmental problems (e.g. environmental pollution, deforestation, child labour). It is only fair therefore, that they correct or address the problems they cause and prevent them from reoccurring.¹⁵ Furthermore, being entities that wield so much power and whose actions can have a great impact on society, they ought to exercise their power responsibly. Besides, their activities involve and rely on a broad range of stakeholders in society (e.g. labour, consumers, suppliers) and therefore should take the interests of other stakeholders, beyond the shareholders, into account. These reasons are what are referred to as “genuine” CSR, in that they are for no other reasons than the mere fact that it is “the right thing to do”.¹⁶

RESEARCH OBJECTIVE

¹³ Crane & Matten, p41.

¹⁴ Zsolnai, p1.

¹⁵ Crane & Matten, p42.

¹⁶ N. Craig Smith, p58.

The objective of this research thesis is to answer the question: does the motivation or reason behind a corporation's socially responsible behaviour matter, provided that they are acting in a socially responsible manner? In the title, there is a distinction made between genuine CSR and "window-dressing" CSR. This thesis is not so concerned with the issue of a corporation making profits from its CSR activities, but rather, whether self-interest to profit-maximise or an altruist intention to do good, was the main reason for the action in the first place; and whether it matters which of the two factors motivated the corporation.

In determining this, the traditional role of the corporation within society will be considered, and building on ideas already introduced in this chapter, and a discussion on how its development over time has led to a shift in its role. The ability of a corporation as a "legal person" to take on the same responsibilities for its actions as a "human person" would be expected to, shall be considered, bearing in mind not only its legal independence from its members, but also its agency independence. Subsequently, an assessment of the role of motivation in the light of legal philosophy is made, and finally, an illustration of the analysis and evaluation of the theory with three case studies is carried out. The cases chosen are: Unilever's Dove Campaign for Real Beauty, Cadbury's Cocoa Partnership, and Heineken's HIV/AIDS Policy.

CHAPTER ONE

THE

CORPORATION

CHAPTER 1: THE CORPORATION

“Few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible. This is a fundamentally subversive doctrine.”¹

Classic economic thought holds that the fundamental motivation of business is to maximise profit. Adam Smith wrote, individuals, left to pursue their own selfish interests would be “led by an invisible hand to promote an end which was no part of his intention”- essentially, inadvertently promoting the public good.² It is widely recognised nowadays that the interests of corporations are inevitably linked with society’s welfare, as corporations rely on society for their labour, consumers, and supplies *inter alia*.³ Therefore, by turning a blind eye to its responsibility towards society, a corporation risks jeopardising its own interests. Several corporations⁴ today are making a considerable amount of effort to contribute to CSR or appear socially responsible in the eyes of their stakeholders, particularly, the consumer. Contrasted with the traditional view presented by various law and economics

¹ Friedman 1962, p.133.

² Smith, A. (1776) The Wealth of Nations: Book IV, chapter 2, p2.

³ CED, pp26-27.

⁴ Nike: Following allegations of abuse of workers in its “sweatshop” factories abroad in 2001, it has since become the first company in the apparel industry to publicly disclose its complete global supplier base. See <http://www.nikebiz.com/responsibility/>
Primark: Following allegations of its Indian subcontractors using child labour in the production of their garments, it has ended its contracts with three suppliers in India. See http://www.businessrespect.net/page.php?Story_ID=2120

theorists, that “the business of business is business,” this current focus on ethics is becoming the *modus operandi* for corporations for a variety of reasons. In spite of this, Bakan, in his book *The Corporation* asserts that the corporation as a “legally designated person” has not changed – in that it is still prone to disregard moral concerns in favour of its own self-interest – and that should it be likened to a person, then that person would be a psychopath; based on the characteristics exhibited, such as lack of empathy and refusal to accept responsibility.⁵ In seeking to answer the question of whether the motivation behind CSR matters so long as it is being done, it is important to consider the primary purpose for which the corporation was set up. I will look closely at some classic law and economics theories of corporate responsibility and how the composition of the corporation has led to the issue of a responsibility gap.

1. 1. THE BUSINESS OF BUSINESS

Milton Friedman in his article *The Social Responsibility of Business is to Increase its Profits* subjugates the role of ethics within the business to a minimal level, whereby it is merely important insofar as the “the basic rules of the society, both those embodied in law and those embodied in ethical custom”⁶ are being adhered to. But is this enough? Or must businesses go beyond this?

A corporation, as defined in the previous chapter, distinguishes itself from a not-for-profit organisation in that its primary purpose is to make profit; it is a basic assumption of corporate philosophy that business’ responsibility is only towards its

⁵ Bakan, p28.

⁶ Friedman 1970, New York Times article.

stockholders, by making as much profit for them as possible. However, the means by which businesses seek to attain these profits (at all costs, or within a socially responsible framework) is worth questioning. In his book, *Capitalism and Freedom*, Friedman rebuts the “widespread acceptance” that corporations owe a social responsibility beyond their duty to shareholders by positing that within the free market economy, the only responsibility of business is to maximise its profits, provided it does so legally, by using whatever resources are available or activities it sees fit.⁷ He further states that in the same way that union leaders serve the interests of their members, corporations are there to serve their stockholders first, that is to make profit. In essence, the job of a manager within the corporation is to create as much profit as possible, and in so doing, create maximum returns on investment for shareholders.

What role then, does CSR play within a corporation in creating maximum returns for its shareholders? In addition to the activities a corporation pursues in its course of trading, CSR is increasingly being used as a strategy to gain a competitive advantage.⁸ In a world that is becoming more and more globalised, this can prove to be a differentiating factor for a corporation; an intangible asset of sorts.⁹ It is this notion that corporations only partake in CSR because it serves their bottom-line (profit-making), rather than for altruistic purposes that gives rise to the focus of this essay: does motivation matter? Kluth argues that, it is commonly thought that for a business’ CSR initiatives to be deemed worthy of the name, it should be altruistic in nature.¹⁰ In essence, unless an action is seen to be done without any benefit to the

⁷ Friedman 1962, p.133.

⁸ Werther & Chandler, p9.

⁹ Azmi, p2.

¹⁰ <http://www.ethicalcorp.com/content.asp?ContentID=1999>

corporation (or any selfish gain was neither anticipated, nor the reason for the action being carried out) or the corporation is partaking in it out of its non-pecuniary desire to support that cause, the action is not considered to be genuine CSR.¹¹ However, if a business (as distinguished from a not-for-profit organisation) is set up with the primary goal of making profit, and in the course of doing so, contributes positively to society at large, perhaps it is unreasonable to expect it to go even further as to commit itself to activities that have no direct relationship with its business operations. Kluth describes this as being questionable at best and destroying shareholder values at worst.¹² Suffice to say however, that being perceived to have or having a genuine interest in CSR beyond what it adds to the profits of the corporation can enhance and foster relations with stakeholders both within and outside of the corporation. In so doing, the corporation stands a greater chance of “furthering its long-run profits.”¹³

In a survey, conducted around the time of Friedman’s writing, published in the *Harvard Business Review* (1961), 94 per cent of the businessmen-respondents felt that “spiritual, ethical, moral, and social considerations should, and do, play a role of the utmost importance in profit making.”¹⁴ The survey highlighted that majority of businessmen at the time not only found it unethical, but also unprofitable to try and maximise profit without heeding the societal norms and customs. The survey also reported that 99 per cent of the respondents believed that having “sound ethics” led to good business in the long term.¹⁵ Although businessmen operating on behalf of corporations may not be acting ethically for purely altruistic purposes, they recognise

¹¹ Friedman 1970 NYT article

¹² <http://www.ethicalcorp.com/content.asp?ContentID=1999>

¹³ McGuire, p144.

¹⁴ McGuire, p274.

¹⁵ McGuire, p274.

the importance and interdependence of behaving responsibly in order to achieve what may be seen as their ultimate goal – to make profit.

The Committee for Economic Development (“CED”) (1971) in its discussion on the *Social Responsibilities of Business Corporations* uses the analogy of concentric circles to illustrate that economic performance is the primary objective of business. The role of social responsibility, particularly regarding the environment within which a business operates is not negated; however, it is not seen as fundamental to the operation of the business.¹⁶

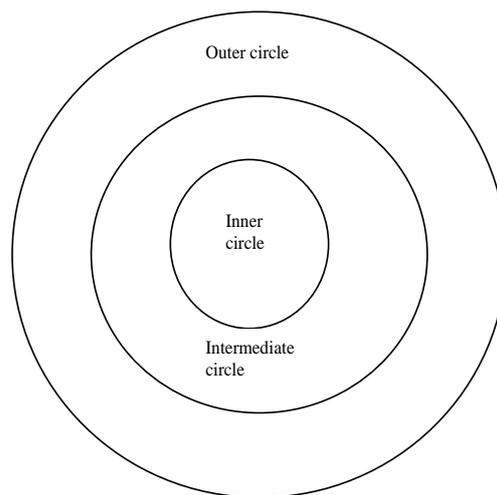


Figure 1. Three concentric circles, Committee for Economic Development (1971)

The CED explains that the *inner circle* consists of the vital responsibilities that businesses must assume in order to efficiently carry out their economic function, such as making a profit for its shareholders. The *intermediate circle* introduces the social responsibility element and requires businesses to exercise inner circle activities with awareness and within the context of social issues and norms. Finally,

¹⁶ CED, p16.

the *outer circle* consists of matters which may not immediately affect (whether positively or negatively) the operations of a business, however, society may expect and solicit the help of businesses where it feels they have the resources to solve the problems and essentially improve the social environment within which the business operates. ¹⁷ This attitude highlights a growing trend of thinking, whereby corporations are expected to have a moral obligation to society, sometimes to the detriment of their bottom-line. Society's expectations of business have changed and the CED's three concentric circles above illustrate a popular view of what is expected. This rise in awareness of ethical consumerism and CSR initiative/campaigns make it more difficult for corporations to operate with the old assumption of primarily making profit, as in so doing, they risk alienating their consumers, which in turn deprives them of their profit.

Archie Carroll categorises the societal obligations a business has into four, in order of priority – economic, legal, ethical, and discretionary responsibilities. Although the four categories are not strictly separate, they are arranged in the below diagram in order of their proportionate importance to the business. ¹⁸

¹⁷ CED, pp15-16.

¹⁸ Carroll 1979, p499.

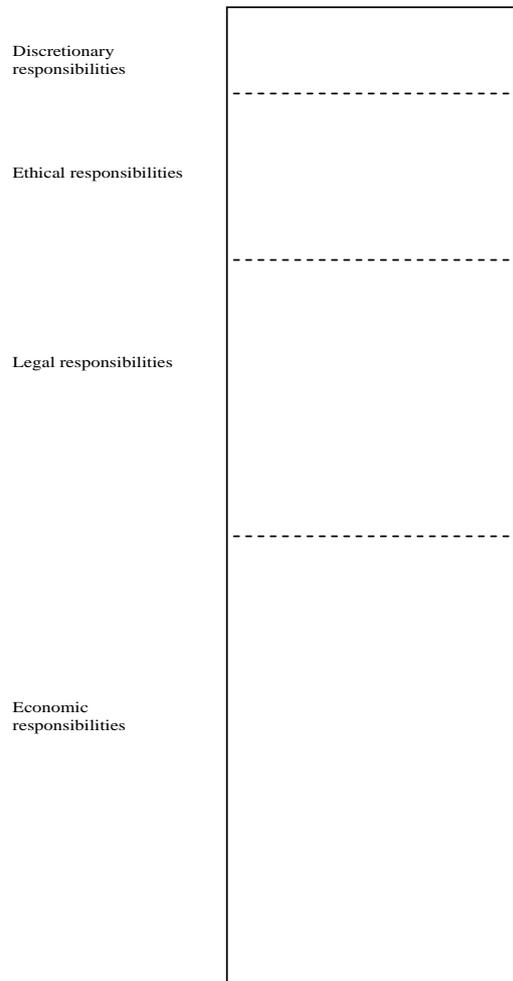


Figure 2. Social Responsibility Categories

It is evident from the diagram above that economic responsibilities constitute the largest proportion in terms of relative magnitude of each of the responsibilities presented. Once again, this highlights the primacy of the economic and profit-making function of a business. As Carroll states, “all other business roles are predicated on this fundamental assumption.”¹⁹ Legal responsibilities consist of the legal framework of laws and regulations, set down by society, within which

¹⁹ Carroll 1979, p500.

businesses are expected to operate.²⁰ Although legal responsibilities are not the primary objective of the business, they serve a fundamental purpose in keeping the business operational. As regards ethical responsibilities, the sheer difficulty in defining what is regarded as ethical or not makes it difficult to ascertain what exactly Carroll means by *ethical responsibilities* here. However, Carroll explains this to be the type of actions which are not officially made law, but are expected by society beyond the economic and legal functions.²¹ Finally, discretionary responsibilities go beyond ethical behaviour in that businesses are at liberty to decide what social roles (if any) they wish to take in a particular matter. This arises out of a genuine desire to voluntarily help society – as is the case with the CED’s - *outer circle*.²² What the two diagrams presented above highlight is that business is made up of many parts, the economic function not only occupies its core, but also, makes up the greater part of what the business is concerned with and is of the greatest importance of all the responsibilities a business may be said to have.

Although it has traditionally been seen that the business of business is strictly business, in an increasingly globalised world, businesses cannot simply seek to maximise their profits alone; they must conduct their business within a framework that is beneficial to society, as the welfare of the business is inextricably linked with that of society. However, they must have a realistic approach to CSR in order to not lose sight of their central purpose. Corporations do recognise that they ought to conduct their business operations within socially acceptable means, as to pursue profits without any regard to this, would be “antisocial and immoral.”²³ The desire

²⁰ Ibid.

²¹ Carroll 1979, p500.

²² Ibid..

²³ McGuire, p273.

to maximise profits by corporations has led to them adopting strategies, such as using CSR initiatives or ethical behaviour, to increase their bottom-line for the long term. In behaving ethically, they contribute to society's welfare, even if the underlying motives are for financial, as opposed to moral, gain. McGuire argues that perhaps it is better for businesses to behave this way even if it is not for the *right* reasons than for them to disregard ethical behaviour altogether.²⁴ Therefore, regardless of the motivation, it may be better to have corporations *doing the right thing*, and helping society inadvertently or as a by-product, than not at all.

1.2. THE RESPONSIBILITY GAP

Berle and Means in their work *The Modern Corporation and Private Property* (1932) pioneered the separation of ownership and control, and Berle in his later works on *Power without Property* (1959) and *The Twentieth Century Capitalist Revolution* (1954) further developed the concept of social responsibility. Berle and Means²⁵ introduced empirical data to show that stockholders were gradually losing their influence over the way the corporation conducted its affairs. They also asserted that the managers were the ones who were effectively *controlling* the corporation, despite not actually being the owners themselves. This has given rise to an agency relationship whereby the managers owe a fiduciary duty of sorts to the shareholders as principals.²⁶

²⁴ McGuire, p274-275.

²⁵ *The Modern Corporation and Private Property* (1932)

²⁶ Easterbrook & Fischel, p104.

What the above theories and discussion highlight is the problem of the responsibility gap within the corporation; managers do not *own* the corporation and the owners do not *control* it. Going back to the definition of the corporation, if it is seen to be a 'legal person', in line with the doctrine of separate corporate personality²⁷, then perhaps the corporation should be held accountable for its actions. However, conversely, the corporation does not and cannot physically act on its own, and has human actors, be it owners or managers who act on its behalf.²⁸ There is an evident difficulty in tying a *conscience* per se to the corporate entity. Bearing in mind the responsibility gap, this then begs the question, whose conscience is operating, if any? And does it matter?

Friedman stated:

*“The discussions of the “social responsibilities of business” are notable for their analytical looseness and lack of rigor. What does it mean to say that “business” has responsibilities? Only people can have responsibilities. A corporation is an artificial person and in this sense may have artificial responsibilities, but “business” as a whole cannot be said to have responsibilities, even in this vague sense.”*²⁹

Friedman focused on individuals' behaviours. He argued that it was necessary to consider the implications social responsibility would have and for whom also. He described the role of corporate managers and owners by comparing them to agents and principals. He saw their relationship as a fiduciary one, where the managers are

²⁷ Talbot, pp24-29.

²⁸ This is dealt with in more detail in Chapter 2.

²⁹ Friedman, 1970. NYT article.

agents of the owners (principals), and the managers must do as the owners want.³⁰ As shown in the above quote, this allows him to question where responsibility lies within the corporation. From this perspective, the notion of responsibility applies only to the managers or owners as they are the individuals, and not the business organisation itself. The corporation is not considered to be an actor here, only individuals are. If one is to ascertain whether motivation matters, it is important to locate where responsibility lies within the corporation, as it falls on that entity/person/group to decide what the driving factors for a corporations actions may be. As is suggested by contractual theory, which emphasises relationships among individuals, suggests, the corporation consisting of various contracts among individuals and groups, is arranged for the purpose of satisfying their interests. Even though all of these contracts would appear to have equal value, this theory gives priority to the contract with shareholders and their interest in profit maximisation.³¹ Therefore if the human actors in the corporation are allowed to perpetuate this responsibility gap by remaining hidden behind the “corporate veil”, then perhaps they shall continue to be motivated by their own self-interest.

Carroll suggests that over the years, the emphasis placed on social responsibility had led to an unwarranted desire to identify where *obligation* and *accountability* lie, resulting in an effort to find motivation rather than focusing on the performance given. She concludes that may be myopic in assessing the contribution of business to society.³²

³⁰ Ibid.

³¹ Brown, p16.

³² Carroll 1979, p498.

CHAPTER TWO
A
CONSCIENTIOUS
CORPORATION

CHAPTER 2: A CONSCIENTIOUS CORPORATION

In the previous chapter, I started the discussion on the notion of the corporate *conscience* and how the separation of the ownership and control functions within the corporation have essentially led to a responsibility gap. This chapter delves deeper and seeks to address the question of whether a corporate conscience does indeed exist and if so, the context within which it does, and finally how it interacts with legal regulation, particularly, the Companies Act 2006. In the case of *Salomon v Salomon Co Ltd*¹ the House of Lords established that the company was a legal entity, distinct from its owning shareholders and controlling directors/managers²; in effect, a separate corporate personality.³ The extent to which this corporate legal person can be likened to a real human person, in terms of what rights are afforded to and what behaviour can be expected of the corporate legal person has been the subject of much debate. For instance, can a corporation have a conscience in the same way a human being may be said to have a conscience? Does a corporation know right from wrong? And to what extent can or does its human actors superimpose their own conscience and personal values on it, using the pretext of the corporate person? These are some of the issues I will deal with in this chapter.

¹ *Salomon v Salomon Co Ltd*. [1897] AC 22

² I use these two words interchangeably.

³ *Salomon v Salomon Co Ltd*. [1897] AC 52

2. 1. PERSONAL VALUES vs. VALUES OF THE CORPORATE LEGAL PERSON

*“Can organizations have goals apart from the people within them?”*⁴

As a starting point for his book, Mitchell assumes that a corporation’s “inhabitants” (directors, employees, officers, etc) are predominantly “decent people” who have a desire to *do what is right*, as they see it through their own personal morals or value systems (rather than always looking out for their own interests).⁵ I shall adopt this assumption for this chapter. Hemingway, in her article on *Personal Values as a Catalyst for Corporate Social Entrepreneurship* discusses the role of individual employees within companies and how their personal values affect the company’s approach to CSR. Crane and Matten⁶ question whether a corporation can in reality assume moral responsibility for its actions, independent of the group of “human persons” who work within it. They posit that for responsibility to be aptly assigned to a corporation, one must demonstrate not only the legal independence of the corporation (“corporate legal person”), but also agency independence from its members.⁷ Hemingway describes the employee (including managers) as moral agents of the corporation, using their personal morality to champion social initiatives.⁸ Although not every employee may do this, as some are described as amoral – “morally mute” – and choose to not speak out in instances where there is an ethical dilemma to be dealt with, for fear of the consequences.⁹ She goes on to argue

⁴ McGuire, p277.

⁵ Mitchell, p13.

⁶ Crane & Matten, p40.

⁷ Ibid.

⁸ Hemingway, p244.

⁹ Hemingway, p234.

that managers have and do exercise their discretion when it comes to making decisions, whether ethical or otherwise, and can therefore be said to be “moral actors”.¹⁰ This supports Carroll’s view that in order for social responsibility to be realised, more managers must *moral* rather than *amoral* or *immoral*.¹¹

The Body Shop’s Anita Roddick, to cite a well-known example whereby personal values have been attached to a business, saw the separation of personal values and business as the cause of corrupt and unethical business practices. This was what distinguished her business from her competitors and any others. She could afford to conduct her business in this way as it was largely owned and controlled by her. However, following an initial public offering (IPO) in 1982, and subsequent pressure from stockholders to change its business plan in order to enhance performance and efficiency, and the appointment of a new CEO, she gradually lost control.¹² The Body Shop was eventually sold to the L’Oreal Corporate Group in 2006.¹³ By this point, although The Body Shop sought to maintain its ethical reputation, it had become so removed from Roddick’s personal values that she began with, that she came to describe the IPO as a “pact with the Devil.”¹⁴ This highlights the issue that despite the personal motivation of the moral actors or agents of the corporation, it is imperative that it is aligned with that of the corporation itself. This suggests that should the motivation of the human actors conflict with or impede the pursuit of profits or increased shareholder value, the corporate legal entity’s ultimate goal will prevail. If we are to consider the corporation from the point of view of Bakan, in that it is indeed a psychopath, then we cannot expect it to behave ethically with a motive

¹⁰ Hemingway, p.235.

¹¹ Carroll 1991, p39.

¹² Bakan, pp51-52.

¹³ http://www.thebodyshop.com/en/ww/services/aboutus_history.aspx

¹⁴ Bakan, p52.

that goes beyond its bottom-line. After all, with exception to the “laws of the land”, there is nothing within its legal construct to prevent it from pursuing profits at all costs.¹⁵

McGuire in his analysis, looks at the individual human actors behind the business. He posits that by virtue of the positions they hold within society, and the fact that they are humans first and foremost, their values inevitably play a role in their business decision-making.¹⁶ In essence, they cannot help it but be concerned with issues of ethics and morals. This may be true where the businessmen are individually or personally accountable for the decisions they make. Can the same be said however for when they have the protection of the corporate veil? McGuire, like Bakan, goes further and likens a businessman who acts “purely in their own self-interest” to a psychopath by stating that they would ultimately find themselves in a mental hospital or prison. On the other hand however, he asserts that to expect that a business to go to the other extreme of being completely selfless is simply unrealistic. What is more likely is that businesses will act out of an “enlightened self-interest”, so that they can consider both the economic and social factors when making decisions.¹⁷

2. 2. INTERACTION WITH THE LAW

This notion of the corporation’s human actors being the driving force behind its decisions has been put into statutory form in the UK by the Companies Act 2006.

¹⁵ Bakan, p60.

¹⁶ McGuire, p290.

¹⁷ Ibid.

Chapter 2 of the Act, describes the *General Duties of Directors*.¹⁸ The Act codifies already existing common law and equitable principles.¹⁹ Under s172, a director is under a duty to “act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole,” and lists factors that the director must consider when satisfying this duty. The director is expected to not only foster relations with customers, but also consider the effect of the corporation’s activities on the community at large. S172 does not merely focus on *shareholder* primacy or maximising profits, but rather, it compels directors to consider the importance of *stakeholders* altogether – e.g. consumers, employees, suppliers, community, and even shareholders. Failing to heed this not only puts a director at risk of litigation, but also risks jeopardising the reputation of the corporation, which could essentially be fatal for it – as was seen in the case of Arthur Andersen, following the Enron Scandal.

Davies argues that although s172 has proven to be controversial for businesses, it does not present a total reversal in the philosophy of company law, because ultimately, shareholder primacy is still paramount. He argues that the real innovation here is the concept of “enlightened shareholder value”.²⁰ While Davies explains it as a principle whereby the interests of stakeholders are to be considered in the process of furthering the interests of shareholder,²¹ Talbot, who also recognises this concept, defines it as an approach supporting the philosophy of a company law that uses the knowledge that taking account of stakeholders’ interests is perhaps the best way to

¹⁸ See Appendix A.

¹⁹ Talbot , p181.

²⁰ Davies, p2.

²¹ Ibid.

create value for and further the shareholder's interests.²² What both these definitions essentially highlight, is the view that a corporation may further its own interests by considering the interests of other stakeholders. It is important however, for directors to look beyond merely strategic decision-making to increase their profits, as although this may work in the short term, it is better for shareholder value in the long run to build good relationships with the community.²³ This view is reinforced by Mitchell, who states that long term responsible management is curtailed by owners who are encouraged to use their power to "increase the short-term focus that managers already have."²⁴

As contractarianism²⁵ asserts, the company is comprised of a nexus of contracts between people, who play both a social and economic role. It is therefore realistic and important to take account of these interests of the human actors involved within the corporation and not just the shareholders.²⁶ As Maxwell et al.²⁷ point out, very often the mere threat of imposing sanctions or regulation leads businesses to self-regulate.²⁸ In so doing, both the corporations and its consumers are advantaged, as consumers are provided with ethical products, while corporations do not risk reputation damage through the imposition of government sanctions. Although s172 provides an incentive for directors to take more than just the financial bottom-line into account, the law is limited in how far it can go in ensuring that corporations are

²² Talbot, pp 149.

²³ "Modern Company Law for a Competitive Economy: The Strategic Framework", Consultation Document, February 1999 cited in Talbot, pp 149-150.

²⁴ Mitchell, p170.

²⁵ Talbot, pp 64-77.

²⁶ Talbot, p191.

²⁷ Maxwell, J.W. & Lyon, T.P. & Hackett, S.C. (2000) "Self-Regulation and Social Welfare: The Political Economy of Corporate Environmentalism", *Journal of Law and Economics*, 43, pp. 583-615.

²⁸ Maxwell et al. p613.

complying with them for the *right reasons* or *motivation*. For as long as a corporation is complying with the regulations, it can ask no more of it.

2. 3. DOES THE CORPORATE ‘CONSCIENCE’ EXIST?

“Corporations are people. But as we’ve already seen, they are special kinds of people; people created not by God but by law and humans. As such, and in contrast to the Enlightenment vision of autonomous man, they have only the ends given to them by their creators.”²⁹

Goodpaster, in *Conscience and Corporate Culture*, reflects on previous corporate scandals and tragedies, remarking that although the law and markets can change the way a corporation behaves by giving it incentives or imposing sanctions where it defaults, ultimately, there are limitations which mean that law and markets cannot actually change the mindsets that lead to these occurrences. He asserts that the *corporate conscience* goes beyond compliance or gaining an upper hand in the marketplace, but instead, it is a case of what the corporation “stand[s] for.”³⁰ What does it mean to speak of a *conscience*? *The Blackwell Encyclopedic Dictionary of Business Ethics* defines a conscience as an “inner awareness of right and wrong, good and evil.”³¹ When a person has a conscience, they assess their behaviour and motives to decide if they are morally apt, they are capable to experiencing emotions such as remorse or contentment about their decisions, and finally, they have an

²⁹ Mitchell, p43.

³⁰ Goodpaster, p4.

³¹ Blackwell’s, p133.

inclination to act based on what they perceived as being morally right.³² Unlike a human person, it is arguable whether a corporation as a *legal person* is capable of exhibiting any of the above characteristics.

In his work on *Power Without Property*, Berle writes about a “corporate conscience”, which restricts managers from acting in a socially irresponsible way or to satisfy their own self-interest.³³ I suggest however, that this corporate conscience that Berle speaks of, is merely the fiduciary duty owed by the managers to the owners of a corporation. It does not refer to a conscience of the corporate legal entity independent of its human actors. As I highlighted earlier, Friedman did not comprehend what it meant to speak of a business having responsibilities, as he only saw people as being able to do so. He did however acknowledge the possibility of a corporation having “artificial responsibilities” by virtue of it being an “artificial person,” but in no way equated these artificial responsibilities to that of a human person.³⁴

If corporations therefore, are to have a conscience, perhaps it should be the conscience of the individuals that should be operating, rather than to expect the corporate entity itself, as an abstract to have a conscience. The corporation itself does not have human abilities and although can be described as a *legal person*, cannot be expected to exhibit the same human traits. Its human inhabitants, on the other hand, as human persons and members of society, do have personal value systems, feelings and ought to be seen as the driving force behind corporate behaviour. If the managers are the decision-making and controlling body within the corporation, perhaps it is

³² Blackwell’s, p 133.

³³ Berle, *Power Without Property*, pp. 90-91.

³⁴ Friedman, 1970. NYT article.

inevitable that they will impose their personal motivations and values on the corporation to some extent, if not entirely.

So, if a person cannot be likened exactly to a corporation, then why does society care about its motivation? In the light of the discussion thus far, I submit that it is because without a genuine motivation to partake in CSR in a way that is profitable to society, what one would be left with is a corporate *psychopath* which provides a shield for its real human actors' misbehaviour. People therefore speak of changing the corporate mindset, but perhaps what they actually mean is the mindset of the people inhabiting and driving the corporation itself.

**CHAPTER THREE
ETHICS AND THE
PHILOSOPHY OF
LAW**

CHAPTER 3: ETHICS AND THE PHILOSOPHY OF LAW

In this chapter, I shall discuss the universality of ethics and the role of ethics within corporate legal philosophy, with particular reference to the issue of motivation and its importance.

3.1. UNIVERSAL VALUES/ETHICS

“One need not ponder the social issues that have evolved under the rubric of social responsibility to recognize how they have changed over time....The issues, and especially the degree of organizational interest in the issues, are always in a state of flux. As the times change, so does emphasis on the range of social issues business must address.”¹

Ethical values are not static; they are ever-changing with times as our beliefs about what is right or wrong evolve, and across cultures. That is not to say however, that there is no such thing as universal values. Kohlberg asserts that the same basic moral principles can be found across all cultures, although the particular social contexts within which they are found might lead to differences in “specific beliefs” – such as not eating pork or not smoking.² However, the universal values on the other hand, are values such as honesty, accountability, integrity, fairness and respect for others.³ Although I cannot produce an exhaustive list of these specific beliefs or universal

¹ Carroll 1979, p501.

² Kohlberg, p14.

³ Hoffman, p89.

values, the main issue here is that ethical issues change with time and are of varying importance to different corporations.⁴ Out of the four responsibilities of business that Carroll describes⁵, he refers to the last two (ethical and discretionary) as “social responsibilities of today that may become legal responsibilities of tomorrow.”⁶ This reflects the ever-changing nature of what is considered to be good ethical corporate behaviour. In the early nineteenth century for instance, issues of race and gender discrimination in the workplace were not considered to be of importance as they are nowadays. In this same vein, Carroll argues that issues such as the environment and ethical consumerism have only recently gained prominence in social and legal discourse.⁷ In light of this, to ask that corporations (which often operate multi-nationally nowadays) are genuinely motivated to partake in CSR initiative, beyond doing what is legally required of them or what they see as necessary to improve their bottom-line, is problematic, as this in some cases would essentially mean adopting different values/ethics for different cultures. Disagreeing with this view, Doug Cahn of Reebok International states, that corporations (irrespective of their locations) have a responsibility to ensure that its products are produced in line with the values of the consumers.⁸

⁴ Carroll 1979, p501.

⁵ Economic, legal, ethical and discretionary.

⁶ Carroll, 1979, 499.

⁷ Carroll 1979, p501.

⁸ Makower, p.258.

3.2. THE ROLE OF MOTIVATION

“Ethics is like love: only those who love their partners in and for themselves will enjoy all the blessings of a loving relationship.”⁹

Morawetz, in *The Philosophy of Law*, defines a motive or motivation as a “state of character or disposition that [is] related to goals or ends.”¹⁰ He adds that although a motive can be conscious or unconscious, usually, it is not arrived at by choice.¹¹ He goes on to say that due to the complexities involved, the motivation or motive behind a decision may sometimes be determined by a mixture of motives, even contradictory at times.¹² Consequentialists are focused on the outcome or goals of actions. Consequentialism¹³ holds that it is the consequences of one’s actions, as opposed to their duties to perform that action that determine the *moral quality* of the actions.¹⁴ This argument is supported by the general attitude of corporations towards CSR these days. Since CSR is not a strictly regulated area of law, with CSR initiatives being largely voluntary or discretionary, corporations can do as much or as little as they want to contribute without much concern for the moral quality of their actions as the resulting consequence can be managed. For instance, if the consequences for non-participation were that governmental sanctions would be publicly imposed, leading to reputational and financial damage, corporations would perhaps pay more attention to the moral quality of their actions. On the other hand however, if the consequences for non-participation are risking reputational damage in the eyes of

⁹ Zsolnai, p3.

¹⁰ Morawetz, p227.

¹¹ Morawetz, p227.

¹² Morawetz, p227.

¹³ Getz, p567. Examples of consequentialists are John Stuart Mill and Jeremy Bentham

¹⁴ Mcleod, p11.

their consumers, the incentive here is not so much to pay attention to the moral quality, but to “window-dress” adequately so the perception emanated is one that will please and/or convince the consumer. The figure below further illustrates this concept of *moral quality*:

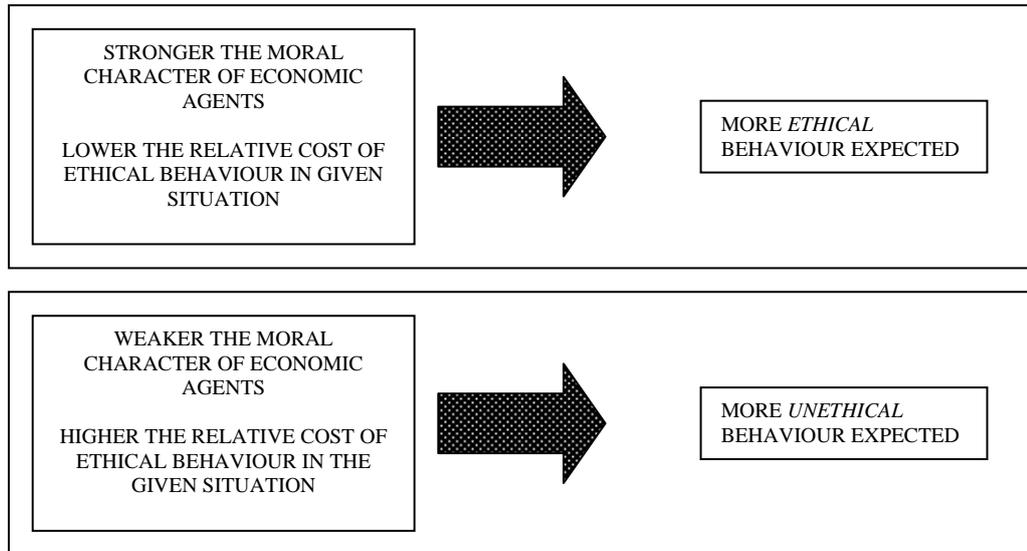


Figure 3. Determinants of the Ethical Quality of Economic Behaviour¹⁵

Moral quality here is determined by the moral character of the economic agents (the human actors) and the relative cost of behaving ethically.¹⁶ Zsolnai (citing Frey) posits that in ethical decision-making within an economic context, the inherent motivation of persons is undermined by external motivation, such as financial incentives, which effectively lessens the quality of the outcome or goal.¹⁷ In essence, a CSR initiative which is financially motivated may not make as qualitative a contribution, as an initiative that is motivated by ethics/morals. Zsolnai maintains

¹⁵ Frey, B. (1997) *Not Just for the Money*, Edward Elgar; cited in Zsolnai, p2.

¹⁶ Zsolnai, p2.

¹⁷ n15.

that the in order to improve the moral quality of one's economic actions, the motivation behind the said action must be "genuinely ethical" – in other words, for no other underlying reasons other than the morality of the decision.¹⁸

When a corporation is perceived to be motivated by genuine ethical behaviour, consumers are more receptive to and approving of that business' actions, be it economic or socially, as they are perceived to be in the interest of society at large. As the authors put it succinctly in *The Impact of Perceived Corporate Social Responsibility on Consumer Behaviour*, "although the act of supporting a social initiative may seem to be a public serving action, consumers' perceptions of the underlying motivations for the act may drive their evaluations of the firm and impact beliefs, attitudes, and intentions."¹⁹ For this reason, consumers seek to understand the real motivations behind CSR initiatives. As good CSR contributes to the financial bottom-line of a corporation, there is a perceived connection linking a cause to a business' product, brand, reputation and/or market-positioning. When corporations partake in a particular CSR campaign, consumers, as judges of the ethical authenticity, usually assume that the campaign is motivated by one of two things: the corporation's self-interest (e.g. profit-maximisation, market-positioning, reputational risks) or "public serving" (e.g. serving the interests of other stakeholders such as the local community or employees, or even promoting awareness of a social issue).²⁰

Genuine ethical motivation therefore matters here insofar as improving the moral quality of an action and influencing the consumers' evaluation of the corporation. Where the motive is seen as being self-serving for the corporations, the corporation

¹⁸ Zsolnai, p3.

¹⁹ Becker-Olsen, p47.

²⁰ Becker-Olsen, p47-48.

is likely to be perceived in a less favourable light than if the motivation is public-serving.

CHAPTER FOUR

CASE STUDIES

CHAPTER 4: CASE STUDIES

“The *Financial Times* recently reported a fact that we all intuitively know: good behaviour is good business.”¹

In this chapter, I shall examine the theory and issues discussed in the preceding chapters in the context of three CSR case studies: Cadbury’s Cocoa Partnership for Ghana², Heineken’s HIV-AIDS policy³ and Unilever’s Dove Campaign for Real Beauty.⁴

4.1. CADBURY COCOA PARTNERSHIP FOR GHANA

Cadbury is one of the world’s top confectionery companies and produces various types of chewing-gum, candy and chocolate products. According to its *Corporate Responsibility & Sustainability Fact Sheet 2007/08*, its chocolate brands alone constituted 42 per cent of its full year confectionery revenue.⁵ Cadbury has sourced cocoa (this is a seed sourced from the cacao tree and is the main ingredient used to make chocolate) from Ghana since 1909. With Ghanaian cocoa trading at an estimated 10 percent over the global market price as a result of its “consistent high quality compared to other origins”, Ghana remains Cadbury’s principal supplier of cocoa worldwide to date.⁶

¹ Mitchell, p49.

² www.cadbury.co.uk

³ www.heinekeninternational.com

⁴ <http://www.campaignforrealbeauty.com>

⁵ See p3 of full report. Available at <http://www.dearcadbury.com/i-know-my-stuff/index.aspx>

⁶ <http://www.cadbury.com/media/press/Pages/100ghanaian.aspx>

In January 2008, Cadbury, in conjunction with the United Nations Development Programme, local farmers, governments and communities, established the Cadbury Cocoa Partnership (CCP). The CCP initiative involves Cadbury investing £45 million over a ten year period in the cocoa farming communities in Ghana, India, Indonesia and the Caribbean.⁷ Cadbury states that the CCP initiative was created to safeguard the economic, environmental and social sustainability of about a million farmers in these regions. This case study focuses on Ghana, as with £30 million of the fund allocated to it, it is by far the highest recipient.⁸

With the successful implementation of the CCP, and to mark the 100th anniversary of Cadbury's operation in Ghana, Cadbury reported in January 2009 that the CCP had been established in 100 Ghanaian communities.⁹ As a result of this initiative, not only is Cadbury's market position safeguarded as they can ensure the continual supply of cocoa to their factories, but it has also led to the Fairtrade certification for Cadbury Dairy Milk.¹⁰ By July 2009, the first Fairtrade Cadbury Dairy Milk chocolate bars were in shops across the United Kingdom, making it the first mass market brand of chocolate to get a Fairtrade certification.¹¹ As a result, this means that cocoa sales for existing Ghanaian farmers will be tripled (from 5,000 to 15,000 tonnes), and new openings will be created for more farmers to benefit from this scheme.¹²

⁷<http://www.cadbury.com/ourresponsibilities/cadburycocoapartnership/Pages/cadburycocoapartnership.aspx>

⁸Ibid.

⁹Ibid.

¹⁰http://www.eatoutmagazine.co.uk/online_article/Cadbury-Dairy-Milk-goes-Fairtrade-/6242

¹¹<http://allafrica.com/stories/200907240740.html>

¹² n10.

The CCP was largely advertised by Cadbury as its response to a study conducted by the Institute of Development Studies and the University of Ghana that it had commissioned.¹³ Having researched the state of cocoa farming in Ghana at the time, the study found *inter alia* that poverty in the parts of Ghana that grew cocoa, along with low levels of production of cocoa, and the lack of interest by the younger generation of people to enter into farming, had left the sector in a vulnerable state.¹⁴ In effect, the long-term sustainability of the Ghanaian farming sector was at risk of being undermined, and the CCP initiative is helping maintain the main source of economic activity for the world's second largest producer of cocoa¹⁵ and the livelihood of its farmers. However, the story has not been so promising on the other side of the Atlantic Ocean. In January 2008, the *Birmingham Post* reported that while Cadbury had been “pump[ing] millions of pounds into a project to protect Ghana's cocoa farming industry to safeguard crops vital to its operations in Birmingham”, at the Cadbury plant in Birmingham, it had cut 200 jobs and proposed a closure of another plant that would lead to a further 500 job cuts.¹⁶ The article stated that 2,500 jobs in total were about to be axed by Cadbury in a bid to increase its profit margins. So what, if anything, did Cadbury have to gain by making this investment?

With the study uncovering that cocoa farming in Ghana had dropped to 40 per cent of its potential yield and that the next generation of people were losing interest in farming¹⁷, not only 42 percent of Cadbury's revenue was at risk, but also the future

¹³ Appendix B. See also <http://www.ids.ac.uk/index.cfm?objectid=2785C9A4-5056-8171-7BA8223CF5A9F8DC>

¹⁴ Please refer to Cadbury's link for the full report and recommendations: <http://www.cadbury.com/ourresponsibilities/cadburycocoapartnership/Pages/mappingsustainableproduction.aspx>

¹⁵ Ibid.

¹⁶ <http://www.birminghampost.net/birmingham-business/birmingham-business-news/manufacturing-and-skills-business/2008/01/28/cadbury-defends-cash-for-ghana-cocoa-farmers-65233-20401451/>

¹⁷ Appendix B

of its Cadbury's chocolate production altogether if Ghanaian cocoa production were to be allowed to fail.¹⁸ Cadbury's self-interestedness was made evident by its allocating £30 million of the fund to its principal supplier. Perhaps a less selfish approach would have been to allocate the funds more equally or by the level of need in each of the cocoa-farming regions involved in the CCP. However, Cadbury has sought to safeguard its market position and ensure the supply of cocoa to their factories. Furthermore, to make sure their reaping the full financial benefit of their efforts, they have tied the initiative to a particular chocolate brand of theirs, and in so doing, have introduced the first mass market brand of chocolates with Fairtrade certification,¹⁹ so that consumers can identify the campaign with a particular product, which they can buy, and in so doing, contribute to the campaign themselves. As the Executive Director of the Fairtrade Foundation, Harriet Lamb, stated, "From today, lovers of Cadbury Dairy Milk will be able to make their purchase in the knowledge that they are supporting a brighter future for very small scale cocoa farmers, their families and their villages."²⁰ Having said that, one cannot deny the fact that whatever the motivation behind the CCP was, the outcome so far and anticipated will make a considerable difference to the lives of the cocoa-growing communities in Ghana.

¹⁸ See p3 of full report. Available at <http://www.dearcadbury.com/i-know-my-stuff/index.aspx>

¹⁹ <http://allafrica.com/stories/200907240740.html>

²⁰ Ibid.

4.2. HEINEKEN HIV-AIDS POLICY

Heineken N.V.²¹ (Heineken) in its 2008 *Sustainability Report* describes itself as “one of the world’s great brewers,” with one of its primary objectives being to become a leading brewer in the markets within which it operates.²² With an international global workforce of about 54,004²³, 125 breweries in over 70 countries, the Heineken brand can be found in practically every country.

The geographic distribution of Heineken employees is illustrated in its Sustainability Report.²⁴ About 8,000 of the 10,667 Heineken personnel in Africa and the Middle East are located in Africa.²⁵ Having operated there since 1937, Africa is one of Heineken’s most profitable markets²⁶; however, one of the biggest problems Heineken faces within this market is the effect of HIV/AIDS on the workforce.²⁷ The UN estimates that about 34 million people globally live with HIV/AIDS, with two-thirds of this number living in Sub-Saharan Africa.²⁸ Following the 90 percent bulk purchase price reduction in the cost of antiretroviral (ARV) treatments in 2000 by six leading pharmaceutical companies, including GlaxoSmithKline,²⁹ Heineken (in conjunction with Pharmaccess³⁰) decided to develop its HIV employee

²¹ This is the legal entity under which the operational activities of the Heineken group are carried out. <http://www.heinekeninternational.com/ownership.aspx>

²² p4 of full report. Available at <http://www.sustainabilityreport.heineken.com/>

²³ <http://www.heinekeninternational.com/companystrategyprofile.aspx>

²⁴ p4 of full report. Available at <http://www.sustainabilityreport.heineken.com/>

²⁵ <http://ec.europa.eu/enterprise/csr/documents/20030317/csrdevheineken.pdf>

²⁶ <http://www.ethicalcorp.com/content.asp?ContentID=5902>

²⁷ Werther & Chandler, p 283.

²⁸ <http://www.ethicalcorp.com/content.asp?ContentID=5902>

²⁹ Ibid.

³⁰ The Pharmaccess Foundation organises ARV treatment in Africa.

programme by providing its employees, their spouses and their children (who are eligible only until the age of 18) with access to ARVs.³¹

On the 1st September 2001, Heineken launched its HIV/AIDS-HAART³² Programme in Rwanda and Burundi. Since then, Heineken has made HAART accessible to employees and their dependents across their sites in Africa.³³ The HAART programme has been effective with over 10,000 employees and their dependents having been tested at least once and an estimated 300 of the 400 who tested positive having been registered to the programme.³⁴ In partnership with Pharmaccess, Heineken has continued to not only treat affected employees, but also to educate those who are not affected about prevention, with a particular focus on prevention of transmission from mother to child.³⁵

Having been the first company to implement this programme on such a scale, Heineken's actions have encouraged other multinational corporations (such as Coca-Cola and Anglo-American) operating within Africa to follow suit.³⁶ Whereas one might ask why Heineken has focused so much of its efforts into what should essentially be a matter for national governments; as a Heineken representative said, the programme has given them "more exposure than [they] really wanted."³⁷ Heineken states in its Sustainability Report that when conducting business in a developing country, particularly "in the area of healthcare, being a multinational company means taking on the sort of responsibilities that the Western world

³¹ n29.

³² HAART: Highly Active Antiretroviral Treatment. See p5.

³³ [http://www.pharmaccess.org/FileLib/Heineken%20broch%2024-7%20\(2\).pdf](http://www.pharmaccess.org/FileLib/Heineken%20broch%2024-7%20(2).pdf)

³⁴ [http://www.pharmaccess.org/FileLib/Heineken%20broch%2024-7%20\(2\).pdf](http://www.pharmaccess.org/FileLib/Heineken%20broch%2024-7%20(2).pdf)

³⁵ http://www.gbcimpact.org/its_node/0/0/article/1772

³⁶ Appendix C

³⁷ <http://www.ethicalcorp.com/content.asp?ContentID=5902>

³⁷ <http://ec.europa.eu/enterprise/csr/documents/20030317/csrdevheineken.pdf>

traditionally sees as the domain of governments.”³⁸ Addressing a Heineken symposium held in October 2007 in Amsterdam, CEO Jean-François van Boxmeer in sum said that although it is acceptable for Heineken to take on a key role in the development agenda, but could not replace the role of government altogether, because society expects corporations to intervene to improve issues, however, in the end, businesses are driven by their desire to maximise profits.³⁹

With the programme costing approximately €2.5 million a year⁴⁰, it is by no means an easy feat for the company. However, as Chitty in her article argues, irrespective of any philosophical or moral argument regarding the motivation behind corporate actions, multinational corporations must consider the HIV/AIDS issue as a business concern – a matter of “enlightened self-interest”. This is because businesses have an interest in ensuring that their human capital is protected so that their operations can be maintained.⁴¹ The epidemic affects the daily business operations in that it increases costs (e.g. staff turnover), reduces productivity, and as a result, leads to decreased profits for many companies.⁴² It is therefore, this potential direct influence of the epidemic on a corporation’s bottom-line, that has encouraged Heineken to act. As Werther and Chandler stated, “the bottom-line return for Heineken makes good business sense, as it does for other companies operating in Africa.”⁴³

³⁸ Appendix C.

³⁹ http://www.symposium.heineken.com/summary_of_speeches.html

⁴⁰ <http://www.ethicalcorp.com/content.asp?ContentID=5902>

⁴¹ Chitty p727.

⁴² Chitty p731.

⁴³ Werther & Chandler, p 283.

4.3. UNILEVER'S DOVE "CAMPAIGN FOR REAL BEAUTY"

According to Unilever's *Sustainable Development Overview 2008*, about 160 million people in 150 countries purchase a Unilever product. Unilever has established itself as one of the world's leading consumer goods companies, specialising in a range of nutrition, hygiene and personal care products.⁴⁴ This case study concerns the Dove brand, part of Unilever's personal care range. With 23 per cent of the UK population having purchased a Dove product in 2008, it is currently the UK's top-selling brand of Bar Soap. In 2004, Dove launched the "DOVE Campaign for Real Beauty" (DCFRB) as part of a global effort to challenge and eventually change the stereotypical images of beauty.⁴⁵

The DCFRB was launched by Unilever, Dove's parent company, essentially as a by-product of what had begun as an attempt to consolidate its brand portfolio and identity through the "Path to Growth" initiative⁴⁶, which was started in 2000. The ultimate aim of this growth initiative was to narrow down Unilever's 1600 brands to 400 top brands, over a five-year period.⁴⁷ Out of the 400 surviving brands, a select few would be developed into Unilever's "Masterbrands".⁴⁸ The objective here was to strengthen Unilever's market position by developing these Masterbrands, and in so doing create maximum profits. Following the "Path to Growth" initiative, Dove was to become a Masterbrand in February 2007.⁴⁹ Since its launch in 1957, Dove had been distinguished from other products in the same category, through its functional

⁴⁴ http://www.unilever.com/images/Unilever_Sustainable_Development_Overview2008_v3_tcm13-163522.pdf

⁴⁵ [http://www.dove.us/#/CFRB/arti_cfrb.aspx\[cp-documentid=7049726\]/](http://www.dove.us/#/CFRB/arti_cfrb.aspx[cp-documentid=7049726]/)

⁴⁶ Deighton, J. (2008), "Dove: Evolution of a Brand", *Harvard Business School*, 25th March 2008, 9-508-047, p2.

⁴⁷ *ibid*, pp1-2.

⁴⁸ *ibid*, p2.

⁴⁹ *Ibid*.

benefits. However, in becoming a Masterbrand, Dove had to take on other products within Unilever's personal care range and not just bar soaps; it was to include other cosmetic products such as body lotions, facial care products, hair care products, *inter alia*.⁵⁰ Unilever therefore decided to use the brand adopt an attitude or standpoint on a current issue, as a way of differentiating it from its competitors. Expert consultations⁵¹ were held, after which it was discovered that only 2 per cent of "women around the world" chose to describe themselves as beautiful, and that 81 per cent of respondents in the United States felt that "the media and advertising set an unrealistic standard of beauty that most women [could] never achieve."⁵² Armed with such findings, they had found their strategy and standpoint and the DCFRB followed.⁵³

The aim of the DCFRB, as advertised, was to "make more women feel beautiful every day by broadening the narrow definition of beauty and inspiring them to take great care of themselves."⁵⁴ The DCFRB sought to change the way in which people perceive beauty and broaden this notion beyond what is portrayed on glamorous billboards and magazines. Having been pursued in phases, the DCFRB started out as a series of "Tick-Box campaigns" featuring billboards and a phone vote.⁵⁵ It was then followed by a series of billboard campaigns featuring six "real women".⁵⁶ Subsequently, an advert was made by filming the daughters of Dove executives talking about their perceptions of beauty and insecurities.⁵⁷ The forth and perhaps

⁵⁰ Deighton, p2.

⁵¹ <http://www.campaignforrealbeauty.co.uk/#/cfrb/experts/>

⁵² Ibid.

⁵³ n50.

⁵⁴ Deighton, p4. See also <http://www.edelman.co.uk/case-studies/dove-real-beauty#>

⁵⁵ Deighton p3

⁵⁶ Ibid.

⁵⁷ Deighton p4

the groundbreaking stage for The DCFRB, came in the form of a 112-second film known as “Evolution”.⁵⁸

The film featured a young woman’s face, as it went through a sequence of changes as make-up artists, hair stylists and Photoshop editors changed it from her ordinary self to what one would usually see as the finished product on a glamorous billboard. As the film was too long for television, it was featured on YouTube⁵⁹ and by the end of its first three months on the website, had been viewed over three million times⁶⁰ and nearly ten million times to date. This created an unprecedented amount of publicity for the DCFRB as well as Dove’s products. The immediate success of the publicity was reflected in the surge of sales in Dove products that followed. By 2007, Dove had become the leading cleansing brand in the cosmetics sector with over \$2.5 billion a year in sales from over 80 countries.⁶¹ Not only had Unilever succeeded in creating a highly profitable Masterbrand, but also, it had created a new type of CSR campaign, which challenged and sought to change conventional views of beauty. As Rob Walker put it in his article in the *New York Times* magazine, a marketing campaign had effectively become the “catalyst for a societal debate”.⁶² In effect, Unilever’s profit-maximising strategy had along the way converged with an ethical debate and created international discourse, and possibly a change in attitudes, on the topic.

⁵⁸ <http://www.youtube.com/watch?v=iYhCn0jf46U>

⁵⁹ A video-sharing website.

⁶⁰ Deighton, p4.

⁶¹ Deighton, pp1-5.

⁶² “Social Lubricant – How a Marketing Campaign Became the Catalyst for a Societal Debate”, by Rob Walker, *The New York Times Magazine*, 4th September, 2005.

4.4. CONCLUSION

“You can’t do business in a society that’s burning.”

– William C. Norris, founder, Control Data Corporation⁶³

What comes to light through the discussion of the three case studies is this notion of a convergence of motives. In all three cases, the individual corporations sought to improve or maintain their market position, and in so doing, adopted strategies that developed into CSR initiatives. Through this convergence of motives, what started out as profit-maximisation strategies inadvertently became CSR cases. As Asongu asserts in his article, “nothing prevents a firm to profit from its good acts.”⁶⁴ Perhaps corporations who behave ethically *deserve* to profit from it, as this could provide incentive for other corporations to partake in CSR. Genuine ethical motivation makes a difference here insofar as ensuring that once the particular CSR initiatives start to lose their effectiveness or profitability for the company, the companies do not lose their desire to see the cause through till its end. Distinguished from a not-for-profit organisation, businesses/corporations are set up to make profits, hence the difficulty in finding an example of CSR where the primary motivation of the corporation is not to make profitable gains. However, that is not to say that this endeavour must be at society’s expense. It is possible for businesses to conduct their operations within a framework that benefits society simultaneously.

⁶³ Makower, chapter 2, p.25.

⁶⁴ Asongu, p10.

CONCLUSION/ RECOMMENDATIONS

CONCLUSION/RECOMMENDATIONS:

As stated at the start, the objective of this research thesis is to find a solution to the question: does the motivation or reason behind a corporation's socially responsible behaviour matter, provided that they are behaving in a socially responsible manner? In other words, does it make a difference what the factors that are motivating a company are, be it self-interest to profit-maximise or an altruist intention to do good, as long as the company is partaking in CSR.

Having set out the distinction between “genuine” CSR (motivation to act because it is the “right thing to do”) ¹ and “window-dressing” CSR (self-interest and profit-maximisation) ², the question was approached using the basic economics premise that the “business of business is business” as the starting point. The traditional role of the corporation within society was discussed, along with how corporate attitudes towards CSR have changed over the years, as a result of an *enlightened self-interest*. Corporations, have learnt that by employing CSR strategies, they can enhance their reputation as *good corporate citizens*, and in so doing, are more likely to attract more consumers, employees and even gain an advantage over its competitors, eventually translating into financial rewards for the corporation. The ability of the corporation as a separate and distinct legal entity/person, and how this compares to that of a human person was analysed, particularly focusing on the issue of agency independence from its members and how this interacts with the UK Companies Act 2006. The agency independence issue mentioned here, led onto the evaluation of the

¹ N. Craig Smith, ‘Corporate Social Responsibility: Whether or How?’, California Management Review, Vol 45, NO 4, 2003, Pg 58.

² Zsolnai, p1.

role of motivation within the context of corporate legal philosophy. Consequently, having researched their sustainability reports and relevant press releases, three CSR case studies are considered (Unilever's Dove Campaign for Real Beauty, Cadbury's Cocoa Partnership, and Heineken's HIV/AIDS Policy) to evaluate the role motivation has to play within a practical corporate sphere.

What is concluded from the research is that the reason why or the motivation behind a corporation's decision to partake in CSR matters insofar as determining the level of commitment the corporation puts in and the moral quality of the action. Corporations driven by a profit-maximising interest are less inclined to continue with that initiative if it is no longer bringing in any profit or as much profit as previously, as they see little to be gained from their continued commitment to it. Furthermore, due to the lack of regulation on ethical and discretionary social responsibilities, corporations can do as little or as much as they want to in order to contribute to CSR, without much regard for the quality of their actions. On the other hand however, corporations driven by a genuine desire to help society are more inclined to see an initiative through from beginning to end, regardless of its profitability, as they recognise the greater good being served. In order to improve the moral quality of one's economic actions, therefore, the motivation behind the action must be genuinely ethical; and where a social initiative is perceived as a genuine public serving action, consumers' perceptions of the corporation may be more approving and favourable. That is not to say however, that corporations forsake their profits entirely, after all, a corporation will not realistically partake in CSR to its detriment. However, they recognise that in having and showing a genuine motivation to do the right thing within CSR, they inadvertently win the consumers to their side and for the long-term too. Therefore

where a corporation merely seeks to develop a strategy to make profit in the short-term, motivation may not play much of a role, for as long as a campaign is presented as a CSR campaign, consumers are likely to buy into it until they eventually discover its genuineness, hence moral quality.

It was also found that although corporations are “artificial legal persons”, the difficulty in establishing a moral independence from their members and essentially establishing an independent “corporate conscience”, suggests that this idea of a separate corporate conscience does not exist. The conscience of the corporation could perhaps be more aptly described as the conscience of the individuals within it. The corporation itself does not have human abilities and cannot be expected to exhibit human traits. Its members, on the other hand, as human persons and members of society, do have personal moral values which perhaps ought to be seen as the driving force behind corporate behaviour. Resulting from the separation of ownership and control, it is difficult to pinpoint where moral responsibility lies (i.e. with which human actors, managers or shareholders?). This can lead to CSR malpractice within the corporation going unpunished (but for consumer boycotts, which are arguably limited in their effectiveness in identifying and holding to account any particular individual), as courts are reluctant to intervene and hold managers or shareholders to account. In any case, if the managers are the decision-making and controlling body within the corporation, perhaps it is their motivations and values that are imposed on the corporation.

Having discovered a convergence of motives from the case studies, one might suggest that perhaps corporations should simply pursue their profits, after all, in so

doing, everything else will fall into place. If it does not all fall into place, society may end up with another *corporate psychopath*. But if it does all fall into place, the danger here, goes back to the moral quality argument. Although the outcomes of a genuine CSR campaign and a window-dressed campaign might seem the same in the short-term, they are not. For instance, as was pointed out in the Heineken case study in Chapter 4, an HIV/AIDS sufferer who has been on the HAART programme from before they turned the age of 18, will be left to his own devices once he stops qualifying for company benefits at the age of 18.

In the light of the findings, it is recommended that where regulation is available to supplement it, courts should adopt a stricter approach to CSR malpractice. In the absence of universal specific beliefs or ever-changing ethical values, perhaps, at some point, these ethical and discretionary social responsibilities will become legally regulated responsibilities. Government regulation could be used to regulate the activities of the corporation and provide incentives for those that take part in CSR. Furthermore, corporations should endeavour to create CSR initiatives in conjunction with NGOs, local communities/authorities and national governments in order to make the initiatives sustainable even after they are no longer as profitable for the corporation. It is also recommended that considering the current economic climate, for corporations looking to safeguard their relations with consumers, investing in genuine CSR initiatives does this and provides long-term benefits for the corporation.

Crane and Matten comment on the difficulty, and at times the impossibility, in determining corporate motives.³ Thoroughly examining the issue of whether motivation matters within the context of a corporation presents obvious difficulties for a work of this length. Further research would be needed to develop this further; however this thesis provides a starting point. More research extending the scope and sample size could be conducted: a detailed consumer study could be conducted over a period of a few years and interviews with top management executives and shareholders of the respective companies could be carried out.

As was demonstrated with the case studies, what is usually the case is that irrespective of the starting point for an initiative, the two motives can converge in such a way that means that both the corporation and its stakeholders can benefit from it. In the course of their CSR campaigns, although corporations may satisfy the act of behaving socially responsibly, they may not have the requisite moral frame or motivation to satisfy those who ask that they are genuinely motivated by a desire to do the right thing. Nonetheless, it is better to have a corporation that partakes in CSR, even if for their own self-interest, than one that does not at all. Society is better off having companies doing some good than none at all. After, there is nothing that stops a corporation from benefitting from its efforts to contribute to society. In the absence of an identifiable human entity whose values are driving the company, it is difficult and possibly unrealistic to expect the corporation as an entity to feel the same motivation and desires to achieve a certain aim.

³ Crane, p42.

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APPENDIX A: THE UK COMPANIES ACT 2006

(Sections 170-181)

CHAPTER 2

GENERAL DUTIES OF DIRECTORS

Introductory

170 Scope and nature of general duties

(1) The general duties specified in sections 171 to 177 are owed by a director of a company to the company.

(2) A person who ceases to be a director continues to be subject—

(a) to the duty in section 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and

(b) to the duty in section 176 (duty not to accept benefits from third parties) as regards things done or omitted by him before he ceased to be a director.

To that extent those duties apply to a former director as to a director, subject to any necessary adaptations.

(3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.

(4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.

(5) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

The general duties

171 Duty to act within powers

A director of a company must—

(a) act in accordance with the company's constitution, and

(b) only exercise powers for the purposes for which they are conferred.

172 Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

(a) the likely consequences of any decision in the long term,

(b) the interests of the company's employees,

(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

173 Duty to exercise independent judgment

(1) A director of a company must exercise independent judgment.

(2) This duty is not infringed by his acting—

(a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or

(b) in a way authorised by the company's constitution.

174 Duty to exercise reasonable care, skill and diligence

(1) A director of a company must exercise reasonable care, skill and diligence.

(2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and

(b) the general knowledge, skill and experience that the director has.

175 Duty to avoid conflicts of interest

(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

(4) This duty is not infringed—

(a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b) if the matter has been authorised by the directors.

(5) Authorisation may be given by the directors—

(a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or

(b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.

(6) The authorisation is effective only if—

(a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and

(b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

176 Duty not to accept benefits from third parties

(1) A director of a company must not accept a benefit from a third party conferred by reason of—

(a) his being a director, or

(b) his doing (or not doing) anything as director.

2) A “third party” means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.

(3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.

(4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

177 Duty to declare interest in proposed transaction or arrangement

(1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.

(2) The declaration may (but need not) be made—

(a) at a meeting of the directors, or

(b) by notice to the directors in accordance with—

(i) section 184 (notice in writing), or

(ii) section 185 (general notice).

(3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.

(5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.

(6) A director need not declare an interest—

(a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

(b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or

(c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered—

(i) by a meeting of the directors, or

(ii) by a committee of the directors appointed for the purpose under the company's constitution.

Supplementary provisions

178 Civil consequences of breach of general duties

(1) The consequences of breach (or threatened breach) of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied.

(2) The duties in those sections (with the exception of section 174 (duty to exercise reasonable care, skill and diligence)) are, accordingly, enforceable in the same way as any other fiduciary duty owed to a company by its directors.

179 Cases within more than one of the general duties

Except as otherwise provided, more than one of the general duties may apply in any given case.

180 Consent, approval or authorisation by members

(1) In a case where—

(a) section 175 (duty to avoid conflicts of interest) is complied with by authorisation by the directors, or

(b) section 177 (duty to declare interest in proposed transaction or arrangement) is complied with, the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company.

This is without prejudice to any enactment, or provision of the company's constitution, requiring such consent or approval.

(2) The application of the general duties is not affected by the fact that the case also falls within Chapter 4 (transactions requiring approval of members), except that where that Chapter applies and—

(a) approval is given under that Chapter, or

(b) the matter is one as to which it is provided that approval is not needed, it is not necessary also to comply with section 175 (duty to avoid conflicts of interest) or section 176 (duty not to accept benefits from third parties).

(3) Compliance with the general duties does not remove the need for approval under any applicable provision of Chapter 4 (transactions requiring approval of members).

(4) The general duties—

(a) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty, and

(b) where the company's articles contain provisions for dealing with conflicts of interest, are not infringed by anything done (or omitted) by the directors, or any of them, in accordance with those provisions.

(5) Otherwise, the general duties have effect (except as otherwise provided or the context otherwise requires) notwithstanding any enactment or rule of law.

181 Modification of provisions in relation to charitable companies

(1) In their application to a company that is a charity, the provisions of this Chapter have effect subject to this section.

(2) Section 175 (duty to avoid conflicts of interest) has effect as if—

(a) for subsection (3) (which disapples the duty to avoid conflicts of interest in the case of a transaction or arrangement with the company) there were substituted—

“(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company if or to the extent that the company’s articles allow that duty to be so disappled, which they may do only in relation to descriptions of transaction or arrangement specified in the company’s articles.”;

(b) for subsection (5) (which specifies how directors of a company may give authority under that section for a transaction or arrangement) there were substituted—

“(5) Authorisation may be given by the directors where the company’s constitution includes provision enabling them to authorise the matter, by the

matter being proposed to and authorised by them in accordance with the constitution.”

(3) Section 180(2)(b) (which disapplies certain duties under this Chapter in relation to cases excepted from requirement to obtain approval by members under Chapter 4) applies only if or to the extent that the company’s articles allow those duties to be so disapplied, which they may do only in relation to descriptions of transaction or arrangement specified in the company’s articles.

(4) After section 26(5) of the Charities Act 1993 (c. 10) (power of Charity Commission to authorise dealings with charity property etc) insert—

“(5A) In the case of a charity that is a company, an order under this section may authorise an act notwithstanding that it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).”.

(5) This section does not extend to Scotland.

**APPENDIX B: CADBURY CORPORATE RESPONSIBILITY &
SUSTAINABILITY FACTSHEETS 2007/08**

(Section pertaining to Cadbury Cocoa Partnership)

APPENDIX C: HEINEKEN N.V. SUSTAINABILITY REPORT 2008

(Section pertaining to Impact on Developing Markets)

