



Regulatory Stakeholder Consideration in UK's Proposed Company Law Regime---Effects and Expectations

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Britain is traditionally regarded as a classical representation of the shareholder-value country. Nevertheless, though the long-term, stakeholder-value orientation of corporate social responsibility has often been claimed as incompatible with UK's "Anglo-Saxon Approach", during recent years there are signs of growing recognition of corporate social responsibility in UK. In UK's most recent company law reform, much effort has been put to include stakeholder consideration into its regulatory regime. In this article, the reform effort, i.e., s.158 of the Company Law Reform Bill, is going to be reviewed and possible effects of this provision are going to be impartially evaluated. Conclusion will be drawn that though this proposed CSR statutory approach would have the potential effect of propelling the CSR practice at various levels, due to a number of UK path dependence elements featured with shareholder-centred thought, the implementation of the new provision might be difficult and sluggish and progress towards stakeholder protection is very much likely to be limited.

Key words: Corporate social responsibility, director duty, stakeholders' interests, UK company law reform, Company Law Reform Bill.

"The world does not fit the Panglossian belief that firms always make optimal choices. This will hold true only in a static optimization framework where information is perfect and profitable opportunities for innovation have already been discovered, so that profit-seeking firms need only choose their approach."

--- Porter and van der Linde (1995)¹

After years of planning, in March 2005, the British government published a White Paper Company Law Reform, together with a drafted Company Law Bill, setting out a comprehensive reform proposal of UK's company law. "A fair, modern, and effective framework of company law"² is expected as a result of the reform. Among many recommendations, the most eye-catching one is the explicit recognition and inclusion of other stakeholders' interests into UK company law regime. While the dominant position of shareholders has again been reinforced by a number of initiatives and provisions³, endeavours have been made to integrate corporate social responsibility, a currently fashionable concept, into UK's traditional shareholder-oriented scheme. It is provided in section 158 of the drafted Bill that, in fulfilling a director's duty for the benefits of a company's members as a whole: "A director must have regard to the likely consequences of any decision in the long term, the interests of the company's employees, the need to foster the company's business relationships with suppliers, customers and others, the impact of the company's operations on the community and the environment, and the desirability of the company maintaining a reputation

¹ M. E. Porter and C. van der Linde, "Towards a New Conception of the Environment-Competitiveness Relationship", (1995) 9 *Journal of Economic Perspectives* 97-118, at p 99.

² Department of Trade and Industry, *Company Law Reform*, March 2005, Cmnd 6456, at p 3.

³ For instance, see of Section 3: *Enhancing Shareholder Engagement* of Department of Trade and Industry, *Company Law Reform*, March 2005, Cmnd 6456. A number of recommendations such as improving shareholder dialogue, minority shareholder protection and directors' duty to shareholders, are included in this part, reinforcing the shareholder position within a company.



for high standards of business conduct."⁴ It is a sign that other stakeholders' interests will be possibly included into the British pro-shareholder regime by way of a regulatory approach, particularly in the area of directors' duties in which many reviews, reports and draft bills have come to fruition introducing.⁵ However, much debate has arisen with regard to the efficiency and enforceability of this reformed Bill. It has been contended that there is little doubt that this reform fails on all three counts: enforceable, understandable for the public and achieving the balance between risk and reward for a direct right; and really will discourage people from becoming a director.⁶

UK's attempt of incorporating stakeholders' interests into its shareholder regime by virtue of regulations, associated opposition and implementation difficulty are perfect manifestation of the propelling and obstructing elements affecting individual countries reforming their national systems. On the one hand, UK tends to preserve its shareholder-centred corporate tradition; on the other hand, it recognizes the significance of corporate social responsibility in corporations' long-term development and intends to justify the importance of CSR by virtue of a regulatory approach.

In the light of the above company law reform, this article will examine the effect of newly-prescribed CSR regulatory consideration in the UK shareholder-centred context. It will first clarify the reasons of UK incorporating stakeholder consideration into its legal regime. CSR practice at UK, European and global levels will be respectively presented. The second part is going to provide an impartial evaluation of the effect of UK's reform in accelerating CSR practice. Both advantages and deficiencies of the proposed statutory approach will be presented objectively. The following part will concentrate on the discussion of UK-based path dependence elements blocking the introduction and implementation of UK's company law reform Bill. Last but not least, alternative solutions and reforming methods will be presented. Various theories will be applied in support of suggested solutions. It will be recognized that due to the internal deficiency of its composition and shareholder-value characterized contexts it operates in, though s. 158 intends to promote the construction of a CSR regulatory framework and the enhancement of CSR practice in UK, there is little possibility that it could be of any substantial effect in practice.

Putting CSR on the Britain Map: UK's Incentive of Reform

1. Definition of Corporate Social Responsibility

Since its first important references appearing in the 1930s and 1940s in America,⁷ there has been a great proliferation of theories, approaches and methodologies with regard to corporate social responsibility. This concept has been used in different contexts and supported by various arguments and conflicting evidence. According to how the interaction phenomena between business and society are focused, Garriga and Mele classified the corporate social

⁴ This is the text of the Company Law Reform Bill [HL] to be printed on 24th May 2006, accessed from <http://www.publications.parliament.uk/pa/cm200506/cmbills/190/2006190.htm>.

⁵ See M. Bruce, *Rights and Duties of Directors*, (7th ed), Tottel Publishing, (2005) at p 1.

⁶ See R. Watts, "This Bill will Discourage People from Becoming a Director", Sunday Telegraph, 29 January 2006, accessed on <http://www.telegraph.co.uk/money/main.jhtml?xml=/money/2006/01/29/ccbill29.xml>.

⁷ A. B. Carroll, "Corporate Social Responsibility: Evolution of a Definitional Construct", (1999) 38 *Business and Society* 268.



responsibility theories into four aspects: economics, politics, social integration and ethics.⁸ Alternatively, Lance Moir divided theories which might explain active CSR into three categories: stakeholder theory, social contracts theory and the legitimacy theory.⁹ In addition, Brummer further presented three theories in his article to explain to whom corporations might be accountable, respectively, stakeholder theory, social demandingness theory and social activist theory.¹⁰ As noted by Votaw, “*corporate social responsibility means something, but not always the same thing to everybody. To some it conveys the idea of legal responsibility or liability; to others, it means socially responsible behaviour in the ethical sense; to still others, the meaning transmitted is that of “responsible for” in a casual mode.*”¹¹

By far the greatest number of commentators that propose active CSR do this by means of stakeholder theory,¹² which can be further divided into three inter-related aspects: descriptive, instrumental and normative. The descriptive model is used to interpret special corporate characteristics and behaviours; the instrumental model identifies the connections between stakeholder management and corporate financial performance; the normative model defends corporate behaviours on moral basis.¹³ Notwithstanding the diversity of various arguments and supporting evidence with regard to corporate social responsibility, it is commonly acknowledged that this term incorporates a wide range of issues and stakeholders’ interests: workplace (employees’ interests); market place (customers and suppliers’ interests); environment; community; ethics and human rights.¹⁴ In the Company Law Reform Bill 2005, the consideration of those stakeholders’ interests has been officially included into the list for directors to take into account.

2. Accelerating CSR Practice in UK

Though UK is widely recognized as a shareholder-centred country, it does not follow that it failed to acknowledge the importance of CSR. In a free market, companies are always competing, not only for capital, but also for sales and customer “brand loyalty”, for the services of the most able employees and favourable supply terms.¹⁵ Corporate groups other than shareholders, as a consequence, are also playing an important role for the success of modern corporations. During recent years, the growing importance of CSR has been fully reflected on the dramatic changes in the attitudes and expectations brought to bear on

⁸ E. Garriga, D. Mele, “Corporate Social Responsibility Theories: Mapping the Territory”, (2004) 53 *Journal of Business Ethics* 51-71, at p 52.

⁹ L. Moir, “What Do We Mean by Corporate Social Responsibility?” (2001) 1 *Corporate Governance* 16-22.

¹⁰ J. J. Brummer, *Corporate Responsibility and Legitimacy – An interdisciplinary Analysis*, (Westport, Greenwood Press, 1991).

¹¹ D. Votaw, “Genius Became Rare: A Comment on the Doctrine of Social Responsibility Part 1”, (1972) 15 *California Management Review* 25-31.

¹² For instance, G. A. Steiner and J. F. Steiner, *Business, Government and Society: A Managerial Perspective*, (McGraw-Hill, Maidenhead, 2000); W. C. Frederick, J. E. Post and K. Davis, *Business and Society: Corporate Strategy, Public Policy, Ethics*, (7th ed, McGraw Hill, Maidenhead, 1992). See L. Moir, “What Do We Mean by Corporate Social Responsibility?” (2001) 1 *Corporate Governance* 16-22, at p 18.

¹³ See T. Donaldson and L. E. Preston, The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications, (1995) 20 *Academy of Management Review*, 65-91. Descriptions of those three models can also be found in Freeman’s work, see R. E. Freeman, *Strategic Management: A Stakeholder Approach*, (Boston, Pitman Publishing, 1984).

¹⁴ Included in the reporting guidelines of CSR Europe, a membership organization of large companies across Europe. See CSR Europe, *Communicating Corporate Social Responsibility*, (CSR Europe, Brussels, 2000). Also *Ibid.*, at p 17.

¹⁵ J. Dean, “Stakeholding and Company Law”, (2001) 22 *Company Lawyer* 66, at p 67.



companies.¹⁶ The proportion of the British public saying corporate responsibility is very important in their purchasing decisions has doubled from 1997 to 2001.¹⁷ The public opinion towards corporate profit has also varied a lot. In 1976, the British public agreed by two to one that the profits of large companies are beneficial to customers; by 1999 the balance of opinion was the exact opposite, with two to one disagreeing that companies profits help making things better.¹⁸ Public declining faith in corporate profits, accompanied by a number of scandals occurring in the Anglo-Saxon world,¹⁹ resulted in a vibrant social protest movement which main theme is that corporations are not sufficiently accountable to the societies in which they operate for their environmental and social impacts.²⁰ This idea is currently undergoing a renaissance of interest under the banner of “corporate social responsibility” in UK.²¹

UK’s intention of boosting up its CSR practice was also largely stimulated by the proliferation of CSR at both European and global levels. During recent years, corporate social responsibility has experienced tremendous blossom. The global acceleration of CSR started from The 1976 *OECD Guidelines for Multinational Enterprises* and the 1977 ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. Since then, a number of international codes and Conventions have been produced and ratified in many countries.²²

At the European level, CSR practice has been fostering since the 2000 Lisbon Summit, during which an EU strategic goal for the next decade was officially established: to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion.²³ The European Council made the first appeal on CSR on the basis that it is a positive contribution to this goal.²⁴ In 2001, the European Commission issued a Green Paper, initiating to promote a “European Framework for Corporate Social Responsibility”.²⁵ In October 2002, in response to the suggestion of launching a CSR debate in the Green Paper, the European Multi-stakeholder Forum was launched and its final report was produced in July 2004.²⁶ So far, many European companies have embraced the notion of Corporate Social Responsibility as a rationale to guide their business practices.²⁷ Along with the changing business reality and

¹⁶ J. Dawkins and S. Lewis, “CSR in Stakeholder Expectations: and Their Implications for Company Strategy”, (2003) 44 *Journal of Business Ethics*, 185-193, at p 185.

¹⁷ *Ibid.*, at p 187.

¹⁸ *Ibid.*, at p 185.

¹⁹ The representation of corporate scandals in early millennium remains the collapse of Enron in December 2001, followed by five largest bankruptcies in the America in 2002, including Worldcom, Conseco, Global Crossing and Adelphia Communications. See P. Almond, T. Edwards and I. Clark, “Multinationals and Changing National Business Systems in Europe: Towards the ‘Shareholder Value’ Model?” (2003) 34 *Industrial Relations Journal* 430, at p 431.

²⁰ A. O’Rourke, “A New Politics of Engagement: Shareholder Activism for Corporate Social Responsibility”, (2003) 12 *Business Strategy and the Environment* 227-239, at p 227.

²¹ *Ibid.*

²² For instance, the UN Draft Code of Conduct on Transnational Corporations, the 1998 ILO (International Labour Organization) Declaration on Fundamental Principles and Rights, the Declaration of World Summit on Sustainable Development 2002, establishing internationally agreed standards on multiple CSR issues.

²³ Accessed on http://ec.europa.eu/comm/employment_social/news/2000/newsagenda_en.htm

²⁴ European Multistakeholder Forum on CSR, *Final Results & Recommendations*, (2004), at p 6. Also see Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility, COM (2001) 366 final (July 18, 2001), available at http://europa.eu.int/comm/employment_social/soc-dial/csr/greenpaper_en.pdf, at p 3.

²⁵ Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility, COM (2001) 366 final (July 18, 2001), accessed on http://europa.eu.int/comm/employment_social/soc-dial/csr/greenpaper_en.pdf.

²⁶ European Multistakeholder Forum on CSR, *Final Results & Recommendations*, (2004).

²⁷ S. A. Aaronson and J. Reeves, *The European Response to Public Demands for Global Corporate Responsibility*, (2002), National Policy Association: Washington, at p 2.



external pressures from both the global and the European level of promoting social cohesion and business cooperation, the British Government started to feel the need of a comprehensive change of its corporate governance structure.

In the past, UK was gloried in taking the lead in European corporate social responsibility practice. In 1998, the Department for International Development created a Business Partnerships Unit which had a signposting and guidance role to foster partnership with socially responsible firms and to improve the enabling environment for productive investment overseas.²⁸ In March 2000, the world's first minister for corporate social responsibility was appointed by the British Government. From 1999-2000, a Statement of Voluntary Principles on Security and Human Rights was produced by Britain Foreign and Commonwealth Office and the US Department of State. Many extractive industry companies and civil society groups signed up for this voluntary code, agreeing to report credible allegations of human rights abuse by government authorities and press for proper solutions.²⁹

3. The Promotion of a CSR Regulatory Approach

Though stimulated by the proliferation of CSR at both European and global levels, recent UK's CSR approach went beyond the voluntary European approach³⁰ and started to stress the importance of government involvement and regulatory intervention. The attempt of s. 158 of incorporating stakeholders' interests into its company law structure is consequently expected as strengthened regulatory control on stakeholder consideration. Three specific elements can hereby be distinguished which have **the increasing effect of enhancing CSR regulatory framework in UK**: failure of previous CSR voluntary approach, regulatory inclination of the Labour Party government and the stimulation of Continental European stakeholder-centred experience.

Initially, UK adopted the voluntary-based European approach and mainly relied on the business-led agenda in CSR acceleration. Proponents of this approach argue that it is impossible to regulate all CSR behaviour in a legal way as most of them, for instance, charitable giving, are neither required by law nor generally expected of business, and depend on corporations' voluntary intentions.³¹ Nevertheless, the voluntary CSR approach has been proved inefficient in UK, where most corporations are performing the shareholder wealth maximization at the expense of stakeholders' interests.³² In year 2000, all large UK-listed companies were urged by the Prime Minister, Tony Blair MP to publish an environmental report by the end of 2001.³³ The Government quickly issued detailed guidelines on corporate

²⁸ Accessed on <http://www.dfid.gov.uk/pubs/files/bpu-partners.pdf>, also see S. A. Aaronson and J. Reeves, *The European Response to Public Demands for Global Corporate Responsibility*, (2002), National Policy Association: Washington, at p 25.

²⁹ *Ibid.*, S. A. Aaronson and J. Reeves, at p 24; also see Peter Behr, *Companies Sign Pact on Human Rights*, Washington Post, 20 December 2000.

³⁰ *Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility*, COM (2001) 366 final (July 18, 2001), accessed on http://europa.eu.int/comm/employment_social/soc-dial/csr/greenpaper_en.pdf, at p 5.

³¹ J. Dean, "Stakeholding and Company Law", (2001) 22 *Company Lawyer* 66, at p 67.

³² A survey carried out by the Institute of Directors in 1999 revealed that many directors believed that the law required them to maximize short-term shareholder benefit at the expense of long-term profit. See Institute of Directors, *Good Boardroom Practice* (IOD, London, 1999), also see L. Roach, "The Legal Model of the Company and the Company Law Review" (2005) 26 *Company Lawyer* 98, at p 102.

³³ In a speech to the CBI in October 2000, he said: "I am issuing a challenge today, to all of the top 350 companies to be publishing annual environment reports by the end of 2001." See L. Miles, "Company Stakeholders: Their Position under the New Framework", (2003) 24 *Company Lawyer* 56.



environment report as complements to the Prime Minister's call for reports. Nevertheless, a survey conducted in 2000/2001 showed that of the top 200 FTSE companies, 97 companies did not disclose any information on their social and environmental performance.³⁴ It was further revealed in the 2004 Corporate Social Responsibility Government Update that of the top 250 UK companies, there were still 118 companies did not report on their environmental performance at all as was pressed by the Government.³⁵ Notwithstanding the Government's efforts of pushing companies to report, businesses reacted indifferently and the figure of voluntary disclosure has not increased much in the past three years.

UK government's earlier attempt of the 1991 campaign "Making a Corporate Commitment" is another failing example of the voluntary approach.³⁶ During this campaign, the UK's top 2,000 businesses were required to sign a declaration committing them to set energy saving targets. However, only 30 companies out of 1,400 signatories had publicized their targets by February 1994 as required. It was further disclosed that in fact over a third of signatories had not set any target at all, public or otherwise. Afterwards, the failing reason was bitterly described by the scheme manager as "industries saw no benefit to their businesses".³⁷

The implementation of OECD Guidelines in UK also illustrated the difficulty of a pure business-led agenda. Despite the vast amount of documents the Government has published in relation to the Guidelines,³⁸ because no enforceable rewarding or punishing scheme was available in those documents to encourage British firms to adhere to these Guidelines, the British NCP (National Contacting Point) found it was difficult to communicate the Guidelines to companies as well as to establish whether companies are making use of the Guidelines.³⁹ UK business groups have similarly concentrated on resisting regulatory intervention; it is difficult, though, to assert that they have done so by considering the effectiveness of voluntary controls.⁴⁰

Consisting of regulations, rules and voluntary codes in disarray, current UK stakeholder protection methods are confusing and centrifugal, and stakeholders' claims to the good faith fulfillment of their bargains often cannot be accomplished.⁴¹ The reluctance of UK firms accepting the regulatory approach by no means indicates its inefficiency. In fact, empirical research has shown that businesses are most active where regulatory pressure is heaviest and when public attention is most intensely focused on them.⁴²

Given those disappointing experiences under the voluntary approach, the British Government tried to justify the significance of government and regulatory frameworks in

³⁴ *Ibid.*

³⁵ Department of Trade and Industry, *Corporate Social Responsibility: A Government Update*, (2004).

³⁶ T. Jenkins, *A Superficial Attraction: the Voluntary Approach and Sustainable Development*, (London, Friends of the Earth, 1995), at p 26; also see J. Maltby, "Setting Its Own Standards and Meeting Those Standards: Voluntarism Versus Regulation in Environmental Reporting", (1997) 6 *Business Strategy and the Environment* 83-92, at p 88.

³⁷ T. Jenkins, *A Superficial Attraction: the Voluntary Approach and Sustainable Development*, (London, Friends of the Earth, 1995), at p 26.

³⁸ For instance, Department of Trade and Industry, *Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises: UK National Contact Point Booklet*, (2001); Department of Trade and Industry, *UK NCP Promotional Activity in 2000*, (2000), available from www.dti.gov.uk/europeandtrade/trade-policy/oecd-multinat-guidelines/page10203.html

³⁹ S. A. Aaronson and J. Reeves, *The European Response to Public Demands for Global Corporate Responsibility*, (2002), National Policy Association: Washington, at p 28.

⁴⁰ J. Maltby, "Setting Its Own Standards and Meeting Those Standards: Voluntarism Versus Regulation in Environmental Reporting", (1997) 6 *Business Strategy and the Environment* 83-92, at p 88.

⁴¹ J. Dean, "Stakeholding and Company Law", (2001) 22 *Company Lawyer* 66, at p 70.

⁴² *Ibid.*, at p 89.



future CSR promotion. In the Corporate Social Responsibility Report 2002, setting up legal frameworks embedding responsible behaviour was clarified as part of the government's future working scheme and modernising company law was regarded as the primary concern of this expected framework.⁴³

In addition, the ruling Labour Party's disbelief of self-regulation in financial services factors and attention attached to corporate social responsibility potentially accelerates the company law reform. Compared to the right-wing Conservative Party, Labour Party has displayed more enthusiasm in emphasizing corporations' social responsibility and promoting their social behaviour. A survey conducted by MORI in 2001 has revealed that while only 12% of the Conservative Party representatives agree that businesses do not pay enough attention to their social responsibilities, over 72% of the Labour Party representatives are in support of this argument.⁴⁴ In fact, Labour Party often indicated during its election campaign that it would legislate in the area of corporate governance⁴⁵ and the significance of regulatory frameworks in promoting CSR has been mentioned during several occasions. "*The UK benefits from a tried and tested framework of laws and regulations on social and environmental issues. To ensure it remains current, this framework is constantly evolving and can be immensely powerful in making CSR part of normal practice in all types of organizations...Clearly, the company law potentially has an important role to play in relation to CSR objectives.*"⁴⁶ The proposed company law reform, as a consequence, was driven by Labour Party's inclination to social and employee consideration.

Compared to those of UK, stakeholders of other Continental European countries are offered stronger positions in corporate management. In Member States of Germany, Netherlands and Denmark, representatives of workers are even entitled to have seats in boards of directors and participate into the corporate decision-making process. The influence of those countries can be perceived from many of the previous European harmonization directives. As a member of the European Union, if UK wants to involve more into the European harmonization and make UK-originated companies operate more smoothly in the European single market, some changes to its own regime seems necessary. UK's introduction of section 158 is therefore envisaged as a movement towards the European attitude, of bridging its traditional Anglo-Saxon style capitalism with the interventionist European approach.

Effectiveness of the Proposed Reform: an Impartial Evaluation

Though many promising effects can be expected from the introduction of s. 158, difficulties with regard to its articulation and implementation are easily to be distinguished, which is indicative of the obstacles in the promotion of a CSR regulatory scheme.

1. Potential Positive Effects

⁴³ Department of Trade and Industry, *Business and Society: Corporate Social Responsibility Report 2002*, May 2002.

⁴⁴ See J. Dawkins and S. Lewis, "CSR in Stakeholder Expectations: and Their Implications for Company Strategy", (2003) 44 *Journal of Business Ethics*, 185-193, at p 187.

⁴⁵ K. Lannoo, "A European Perspective on Corporate Governance", (1999) 37 *Journal of Common Market Studies* 269, at p 283.

⁴⁶ Department of Trade and Industry, *Business and Society: Corporate Social Responsibility Report 2002*, May 2002, at p 12.



(1) Formation of a CSR-friendly Environment in UK

One possible effect of s.158 is that it would stimulate the creation of CSR-friendly corporate culture and environment. In Britain, the maximization of shareholder wealth is not only a theory, but also a basic feature of corporate ideology and public belief.⁴⁷ As has been commented by the Hampel Report 1998 on corporate governance, the single overriding objective shared by all listed companies, whatever their size or type of business, is the preservation and the greatest practicable enhancement over time of their shareholders' investment. This long-term privileged and deeply-rooted shareholder-centred thought has thrown many directors into the narrow belief that they are obliged under the current legal framework to take a more short-termist and shareholder-centric view at the expense of other corporate groups.⁴⁸ The current legal framework, as a consequence, is criticized as "limiting any accountability to stakeholders within a framework of, and to the overall purpose of, profit-maximization for shareholders".⁴⁹ The practical failure of s. 309 of Companies Act 1985 is a typical example of shareholders' paramount interests overriding other stakeholders' interests.⁵⁰ Given this situation, there would be little impetus for directors to integrate consideration of stakeholders' interests into their managerial practice of maximizing shareholders' profits. Though the proposed reform is with no intention of challenging shareholders' paramount position, the redefinition of the "interests of the company" which emphasizes the significance of coordinating stakeholder relationships over the corporations' long-term development, aims to render directors aware of the gradual transformation occurring in legal and social frameworks in which corporations exist and operate, and to subsequently adjust their managerial routines. "*Legislation can be a blunt instrument, but its use is sometimes essential to bring about change where cultural shifts are unacceptably slow.*"⁵¹

(2) Promotion of UK-originated Multinational Companies' CSR Practice

Secondly, the introduction of a CSR regulatory approach has prospective effects on the overall arrangement and governance of UK-originated transnational companies' CSR practice, thus potentially improves the overall CSR performance in a wider playing field, for instance, the European Union, in which those multinational companies operate.

Since the famous *Centros* case⁵² in which the "freedom of establishment" principle has been revived, there seems much prospect of transnational business activities within the European Union range.⁵³ According to the existing research, although conformance with the

⁴⁷ S. M. Bainbridge, "Director Primacy, the Means and Ends of Corporate Governance", (2003) 97 *Northwestern University Law Review* 547, at p 576.

⁴⁸ RSA, *Tomorrow's Company* (RSA, London, 1995).

⁴⁹ J. Dean, "Stakeholding and Company Law", (2001) 22 *Company Lawyer* 66, at p 70.

⁵⁰ This provision is not of significance in legal practice. "In broadening the constituency in this way company law had taken a great leap, even though the technicalities ensured that it would be virtually impossible for employees to get any legal remedies." B. Pettet, "Duties in Respect of Employee under the Companies Act 1980" (1980) 34 *Current Legal Problems* 199, at pp. 200-204.

⁵¹ *Ibid.*

⁵² C-212/97 *Centros Ltd v. Erhvervs- og Selskabsstyrelsen* [1999] ECR I-1459

⁵³ K. Heine, W. Kerber, "European Corporate Laws, Regulatory Competition and Path Dependence", (2002) 13 *European Journal of Law and Economics* 47.



host country system is necessarily confirmed,⁵⁴ transnational companies operating within a given country tend to export the cognitive and normative assumptions of managers in the home country.⁵⁵ Those operation methods exported from the home country are often deemed as innovative in the host country and also have potential counter-influence over the host country business.⁵⁶ As a consequence, the promotion of CSR practice in UK would make UK-originated companies concentrate more on their CSR performance, and subsequently promote the overall European CSR practice by enhancing other host member states' CSR performance.

(3) Effects at the European Level

First of all, the attempt of embedding socially responsible behaviour into UK legal framework has the likely effect of promoting CSR activities within the European range, especially the construction of a strategic European CSR framework.

Given increasing transnational companies' activities, a European strategy would be meaningful in the overall arrangement and governance of those companies' CSR practice in various countries. Moreover, there has been previous practice to govern corporate socially-responsible behaviour by virtue of Directives, which turned out to be a huge success. This successful experience is the 1994 European Works Council Directive. Before the implementation, it received huge opposition and resistance from trade unions and employers, including those who declare to be stimulated by corporate social responsibility.⁵⁷ However, EWCs have been successful in practice in bringing management and employees together at the transnational level, where key decisions on the development of large enterprises are taken.⁵⁸ So far more than 650 transnational companies or groups have EWC agreements covering an estimated 11 million employees, with 10,000 employees' representatives directly involved.⁵⁹ More than 60% of the European employees were covered by this Directive.⁶⁰ "If it had been left to companies on a voluntary basis, how many European Works Councils would there be today in the name of good practices?"⁶¹ The CSR regulatory approach has proved its efficiency in European practice and the EWC Directive is deemed as a strong

⁵⁴ T. Turner, D. D'Art and P. Gunnigle, "US Multinationals: Changing the Framework of Irish Industrial Relations", (1997) 28 *Industrial Relations Journal* 92-102.

⁵⁵ P. Almond, T. Edwards and I. Clark, "Multinationals and Changing National Business Systems in Europe: Towards the 'Shareholder Value' Model?" (2003) 34 *Industrial Relations Journal* 430, at p 434; cf A. Ferner "The Embeddedness of US Multinational Companies in the US Business System: Implications for HR/IR" *De Montfort University Business School Occasional Paper No. 61*, (2000).

⁵⁶ M. Muller-Camen, "Human Resource and Industrial Relations Practices of UK and US Multinationals in Germany", (1998) 9 *International Journal of Human Resource Management* 732-749; also see P. Almond, T. Edwards and I. Clark, "Multinationals and Changing National Business Systems in Europe: Towards the 'Shareholder Value' Model?" (2003) 34 *Industrial Relations Journal* 430, at p 434.

⁵⁷ E. Bethoux, "European Trade Unions and the Challenges and Ambiguities of Corporate Social Responsibility: A Focus on Company-Level Initiatives", (2004) *Paper for European Conference Dublin*, October 30th 2004; also see W. Buschak, "Review of the EWC Directive", (2000) in E. Gabaglio & R. Hoffmann (ed.), *European Trade Union Yearbook 1999*, Brussels, ETUI, pp. 161-172.

⁵⁸ Details available from http://ec.europa.eu/employment_social/news/2004/apr/ewc_en.html

⁵⁹ *Ibid.*

⁶⁰ The figure is from the European Trade Union Confederation.

⁶¹ This is the argument of the European Trade Union Confederation, calling for a "legislative and contractual framework" for European CSR practice. See *Corporate Social Responsibility in a Legislative and Contractual Framework*, Resolution adopted by the ETUC Executive Committee, Brussels, October 2001 (151.Ex/10.01/07).

