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Corporate social responsibility: legal and semi-legal frameworks supporting CSR: Developments 2000-2010 and case studies

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Citation

Lambooy, T. E. (2010, November 23). *Corporate social responsibility: legal and semi-legal frameworks supporting CSR: Developments 2000-2010 and case studies*. Uitgave vanwege het Instituut voor Ondernemingsrecht. Retrieved from <https://hdl.handle.net/1887/16169>

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CORPORATE SOCIAL RESPONSIBILITY

CORPORATE SOCIAL RESPONSIBILITY

Legal and Semi-Legal Frameworks Supporting CSR

Developments 2000-2010 and Case Studies

Proefschrift

Ter verkrijging van de graad van doctor aan de Universiteit Leiden op gezag van de Rector Magnificus, Professor Dr. Paul F. van der Heijden, ingevolge het besluit van het College voor Promoties.

In het openbaar te verdedigen ten overstaan van de oppositiecommissie van de faculteit der Rechtsgeleerdheid op dinsdag, 23 november 2010 des morgens om 11.15 uur in het Academiegebouw, Rapenburg 67-73 te Leiden.

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** 'Lambooy' is de bij de burgerlijke stand vermelde familienaam; 'Lambooy' gebruikt de auteur in het dagelijkse leven en in haar wetenschappelijke publicaties*

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Van dit proefschrift is een handelseditie verschenen in de serie *Uitgaven vanwege het Instituut voor Ondernemingsrecht* (Rijksuniversiteit Groningen en de Erasmus Universiteit), No. 77 (ISBN 978 90 13 07672 1).

Editor: Penny Simmers

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Preface and acknowledgements

Corporate social responsibility (CSR) has rapidly gained a foothold in business. In the last decade, many companies developed ‘Planet, People, Profit’ strategies, and put them into practice. Governments and civil society have called on private actors to contribute in resolving the dilemmas and difficulties of global governance.

This book concentrates foremostly on legal aspects of CSR but also deals with CSR in the broader perspective of assessing best practices. It elaborates on international developments in this field over the decade 2000-2010. The introductory chapters sketch the background of globalisation in relation to sustainable development, thereby identifying the role of CSR and comparing it with corporate governance. Part I of the book offers an overview of, and discussion on, the legal and semi-legal frameworks which can assist a business organisation in the course of becoming a socially responsible company. Examples are the institutionalisation of CSR in the corporate governance code, annual reporting on CSR, setting up an anti-corruption programme to support the internal control process, making human rights impact assessments part of corporate due diligence investigations, making use of private regulation and sustainability labels, and providing consumer product information. Part II contains five case studies that show how CSR works in practice. Two of them focus on conflict situations concerning CSR practices of companies (one regards the oil industry in Nigeria, the second relates to the textile industry in India and the Netherlands). The other three case studies focus on water management by companies, biodiversity concerns for the capital market, and on how to invest in nature, respectively.

This book is the result of research on CSR performed in the course of 2004 - 2010, partly when I worked as a corporate lawyer with the international law firm Loyens & Loeff, and partly when I worked as a lecturer and researcher at the Molengraaff Institute, part of the Law School of Utrecht University and as a researcher at the Center for Sustainability of Nyenrode Business University.

PREFACE AND ACKNOWLEDGEMENTS

The subject of corporate social responsibility has provided me with a lot of joy, both in studying the theoretical legal aspects and in examining how theories work in practice. It is fascinating to research the complex interrelationships between companies, public authorities and civil society in this field, and sometimes to part in current developments, for example through the performance of action-research projects.

I am grateful for the support of many people, some of whom I would like to thank explicitly. Firstly, I would like to express my gratitude to Professor Vino Timmerman, Professor Alex Geert Castermans and Professor Gerard Keijzers for their efforts throughout the research, guiding me in the ways of conducting research and the criteria it has to fulfil, reading through various stages of the drafts, providing time for regular meetings, and, most importantly, giving constructive criticism. Special thanks are also owed to the former prime-minister of the Netherlands, Professor Ruud Lubbers, who in the course of the years frequently conversed with me about the subject of corporate social responsibility and the added value of it for global governance. In particular, I acquired many insights in this field during the period in which I was requested to assist him in a mediation project concerning a conflict related to corporate social responsibility in an international supply chain. Special thanks are also owed to Professor Carel Stolker of Leyden University (the Dean of the Law School) who stimulated me to start this research project, and to my former colleagues at Loyens & Loeff, Professor Niek Zaman and Philip van Verschuier, who supported my wish to commence with PhD research. I am most grateful to Penny Simmers, Yulia Levashova, Marie-Ève Rancourt, Bas Köhler, Michiel Brandt and Irene Heemskerk for our stimulating brainstorm sessions, and - on an individual basis - for their valuable cooperation, contribution in editing, assistance in the research projects and their comments and support in the structuring and the finalisation of this book. Furthermore, I would like to thank my colleagues of the Molengraaff Instituut, especially Professor Adriaan Dorresteyn (at that time the Dean of the Law School), Professor Wilco Oostwouder and dr. Sonja Kruisinga, who offered me the possibility to start an international LLM programme at Utrecht University, *i.e.* International Business Law and Globalisation, in which corporate social responsibility and sustainable development play an equal role next to international business law. The programme was developed together with them as well as with my colleague dr. Antoinette Hildering of Utrecht University and with dr. Eva Nieuwenhuys of Leyden University. Setting up this programme in 2006, and working with students from all over the world as of 2007, has brought me valuable knowledge and perspectives on the legal aspects of corporate social responsibility from an international perspective. I would further like to mention my colleagues at the Molengraaff Institute with whom I could often exchange views regarding the legal aspects of corporate social responsibility, *i.e.* Liesbeth Enneking, Professor Ivo Giesen, Professor Marie-Louise Lennarts, Professor

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Steven Schuit, Professor Ewoud Hondius and Professor Cees van Dam, and also Professor Bas de Gaay Fortman and Professor Cees Flinterman of the human rights institute of Utrecht University. Gratitude is also expressed to my colleagues at Nyenrode Business University, with whom I have been working on several very interesting research projects aimed at studying and stimulating the implementation of corporate social responsibility. In particular, Ard Hordijk, Irene Jonkers, Yulia Levashova, Professor Anke van Hall and Professor Gerard Keijzers are mentioned. As a team, we have learned a lot about the way in which corporate social responsibility works in practice, which dilemma's and bottlenecks exist, and how these can be addressed. Working together on these projects with various stakeholders, such as the Dutch public authorities (representatives of the Ministries for Economic Affairs, Environmental Affairs, and Agriculture), NGOs (*e.g.* IUCN-NL and WWF), and companies, amongst which institutional investor APG, has provided me with many valuable insights. Because of the interesting conversations about the role of private actors and the role of law with regard to corporate social responsibility, I also wish to express my appreciation for dr. David Raic, Katarzyna Kryczka and dr. Sam Muller of the Hague Institute for the Internationalisation of Law (HiiL), with whom I have cooperated concerning the development of the HiiL Private Actors Programme. Furthermore, I always welcomed the inspiring discussions on corporate social responsibility, sustainable development and about the principles and the role of the Earth Charter, with the following people: Damaris Mathijssen (Economy Transformers); Jan van de Venis (director of Stand Up For Your Rights); my colleagues of the Board of the Club of Rome (Dutch Chapter); Ashok Khosla (director of the Club of Rome and the IUCN); the members of the Round Table of Worldconnectors, especially Alide Roerink, Herman Mulder, Professor Herman Wijffels, Teresa Fogelberg, Professor Ruud Lubbers, Sylvia Borren, Nanno Kleiterp, Sandra van Beest, Leontien Peeters, Sayida Vanenburg, Professor Hans Eenhoorn, Professor Ton Dietz, Jos van Gennip and Johan van de Gronden; Liesbeth van Tongeren and Mei Li Vos, respectively a member of parliament and a former member of parliament; and also Professor John Ruggie and Caroline Rees of Harvard - John F. Kennedy School of Government, Corporate Social Responsibility Project; and Jan Eijsbouts and Paul Hohnen (both independent consultants in the field of corporate social responsibility). I am also grateful for the support I have received over the years from Peter Morris in editing my English style. Family and friends are thanked for their patience. Most of all, I would like to thank Kees Hooft for his support. He provided me with feedback on the setting-up and the execution of the research project. He shared with me interesting thoughts, and he assisted me in preparing the text for publication. And, very important, he created an allowing, inspiring and musical environment in which I could perform this research project.

Abbreviations

ABB	Asean Brown Boveri
ACCA	Association of Chartered Certified Accountants
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Covention on Human Rights
AFM	Authority Financial Markets (the Netherlands)
AHRC	African Human Rights Commission
APN	African Parks Network
ASEAN	Association of Southeast Asian Nations
ATCA	Alien Tort Claim Act (US)
BBOP	Business and Biodiversity Offsets Programme
BIAC	Business and Industry Advisory Committee (OECD)
BES	Biodiversity and eco-system services
BMC	Bangalore Mediation Centre
BSCI	Business Social Compliance Initiative (EU)
BWF	Business Water Footprint
CBD	Convention on Biological Diversity
CCBA	Climate, Community and Biodiversity Alliance
CCB Standards	Climate, Community and Biodiversity Project Design Standards (CCBA)
CCC	Clean Clothes Campaign
CCX	Chicago Climate Exchange
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERES	Coalition for Environmentally Responsible Economies (US)
CESR	Centre for Economic and Social Rights (US)

ABBREVIATIONS

CfS	Center for Sustainability, Nyenrode Business University (the Netherlands)
CIF	Investment Climate Facility
CIPE	Center for International Private Enterprise
CITES	Convention of the International Trade of Endangered Species
Clean Water Act	Federal Clean Water Act 1972 of the US Army Corps of Engineers
CNOOC	China National Offshore Oil Company
CNPC	China National Petroleum Corporation
CoE	Council of Europe
Combined Code	Corporate governance code for listed companies 2003 (UK)
COMESA	Common Market of Eastern and Southern Africa
Commission	European Commission
Consumer Directive	Proposal for the Directive of 8 October 2008, 2008/0196/COD (EU)
COSO	Committee of Sponsoring Organisations of the Treadway Commission (US)
COSO Addendum 1994	Addendum to Reporting to External Parties issued by COSO (1994)
COSO Report 1992	Internal Control Integrated Framework Report issued by COSO (1992)
CPI	Corruption Perception Index
CRC	Committee on the Rights of the Child (UN)
CSR	Corporate Social Responsibility
CSR EMS Forum	Multi-stakeholder forum on CSR (EU)
CSR-SC	Corporate Social Responsibility-Social Commitment
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)
Caudex Timber	Caudex Timber Investments GmbH (Germany)
DCC	Dutch Civil Code
DCrC	Dutch Criminal Code
DFID	Department for International Development (UK)
DJSI	Dow Jones Sustainability Group Indexes
DMDC	Dutch Ministry for Development Cooperation
DTI	Department of Trade and Industry (UK)
EC	European Community
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ABBREVIATIONS

EC Treaty	European Community Treaty
ECHA	European Chemicals Agency
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
Economic Offences Act	<i>Wet Economische Delicten</i> (the Netherlands)
EFSA	European Food Safety Authority
EFTA	European Free Trade Association
EIA	Environmental Impact Assessment
EIP	Ecosystem Investment Partners
EITI	Extractive Industries Transparency Initiative
EKN	Export Credit Guarantee Board (Sweden)
EMA	Environmental Management Act (<i>Wet Milieubeheer</i> ; the Netherlands)
EMAS	Eco-Management and Audit Scheme
EP	European Parliament
ESG	Environmental, social and governance
ETI	Ethical Trading Initiatives
EU	European Union
EU CSR Forum	European Multi-Stakeholder Forum on CSR
EU-OSHA	European Agency for Safety and Health at Work
FAO	Food and Agricultural Organisation
FCPA	Foreign Corrupt Practices Act of 1977 (US)
FFD	Forest Footprint Disclosure Project
FFI	Fibres & Fabrics International Private Limited
FINRA	Financial Industry Regulatory Authority
Fish Regulation	EC Council Regulation 104/2000, OJ 2001 L278/6
FLA	Fair Labour Association
Frijns Code	Dutch Corporate Governance Code for Listed Companies (2008)
FSA	Financial Services Act (UK)
FSC	Forest Stewardship Council
FTI	Fast Track Initiative
FWF	Fair Wear Foundation
GAAP	General Accepted Accounting Principles (US)
GATT	General Agreement on Tariffs and Trade
GATWU	Garment and Textile Workers Union
GAVI	Global Alliance for Vaccines and Immunisation

ABBREVIATIONS

GCNL	Netherlands Network of the UN Global Compact
GFATM	Global Fund to Fight AIDS, Tuberculosis and Malaria
GLAAS	Global Annual Assessment of Sanitation and Drinking Water
Global Compact	UN Global Compact
GPSD	Directive 2001/95/EC on General Product Safety of 3 December 2001, OJ 2001 L11/4 (EU)
GRI	Global Reporting Initiative
GRI G3	Third Generation Sustainability Reporting Guidelines (2006)
GRI Guidelines	GRI Sustainability Reporting Guidelines
GSB	Growing Sustainable Business
GSK	GlaxoSmithKline plc
Guideline 400	Dutch Council for Annual Reporting Annual Report Guideline 400
HiiL	The Hague Institute for Internationalisation of Law
HRIA	Human Rights Impact Assessment
IAS	International Accounting Standards
ICC	International Chamber of Commerce
ICCPR	International Covenant on Civil and Political Rights
ICC Rules on Bribery	ICC Rules of Conduct and Recommendations: Extortion and Bribery in International Business Transactions (2005 revised version)
ICESCR	International Covenant on Economical, Social and Cultural Rights
ICGN	International Corporate Governance Network
ICN	India Committee Netherlands
IFAI	<i>Instituto Federal de Acceso a la Información</i> [Federal Information Institute] (Mexico)
IFC	International Finance Co-operation
IFFI	International Finance Facility for Immunisation
IFRS	International Financial Reporting Standards
IFU	Industrialisation Fund for Developing Countries
IGGN	International Corporate Governance Network
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ABBREVIATIONS

ILO	International Labour Organisation
IMF	International Monetary Fund
IPIECA	International Petroleum Industry Environmental Conservation Association
IPO	Initial Public Offering
ISP	Internet Service Provider
IUCN-NL	International Union for the Conservation of Nature – Netherlands Committee
JKPL	Jeans Knit Private Limited
Malua Bio Bank	Malua Wildlife Habitat Conservation Bank
MBO	Management Buy-out
MDGs	Millennium Development Goals
MEND	Movement for the Emancipation of the Niger Delta
MERCOSUR	The Southern Common Market
MNCs	Multinational companies
MP	Member of Parliament
Modernisation Directive	Directive 2003/51/EG on the annual and consolidated accounts of 18 June 2003, OJ 2003 L 178/16 (EU)
Monitoring Committee	Corporate Governance Code Monitoring Committee (the Netherlands)
MOSOP	Movement for the Survival of the Ogoni People
MSC	Mixed Credits Scheme (Denmark)
MSI	Multi-stakeholder-initiative
NAFTA	North American Free Trade Agreement
NCP	National Contact Point (OECD)
NGO	Non-Governmental Organisation
NICAM	Netherlands' Institute for the Classification of Audiovisual Media
NIVRA	<i>Koninklijk Nederlands Instituut van Registeraccountants</i> (Royal Netherlands Institute of Registered Accountants)
NNPC	Nigerian National Petroleum Corporation
NOSDRA	National Oil Spill Detection and Response Agency (Nigeria)
NPC	Nigerian People's Congress
NTFP	Non-Timber Forest Products
NTUI	New Trade Union Initiative
OECD	Organisation for Economic Co-operation and Development

ABBREVIATIONS

OECD Corruption Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
OECD Principles	OECD Principles of Corporate Governance 2004
OECD MNE Guidelines	OECD Guidelines for Multinational Enterprises
OEEC	Organisation for European Economic Co-operation
ÖTI	Austrian Textile Research Institute
PBT	Persistent, Bio-accumulative and Toxic
PES	Payment for Ecosystem Services
PFP	Partnership Facility Programme (Denmark)
PPP	Public Private Partnerships
PRI	Principles for Responsible Investment
PSDP	Private Sector Development Programme (Denmark)
PWYP	Publish What You Pay initiative
REACH	Regulation on Registration, Evaluation, Authorisation and Restriction of Chemical Substances (EU)
REDD	Reducing Emissions through Deforestation and Forest Degradation
RICO	Racketeer Influenced and Corrupt Organisations Act (US)
RBM	Roll Back Malaria Partnership
RND	<i>Raad Nederlandse Detailhandel</i> (Dutch Council for the Retail Sector)
RoHS	Directive 2002/95/EC on the Restriction of the Use of certain Hazardous Substances in Electrical and Electronic Equipment of 27 January 2003, OJ 2002 L0095.
RSISTF	Rivers State Internal Security Task Force (Nigeria)
RTA	Regional Free Trade Agreement
RTW	Round Table of Worldconnectors
Ruggie Report	UN GA Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, “Protect, Respect and Remedy: a Framework for Business and Human Rights” (7 April 2008)
	UN Doc A/HRC/8/5

ABBREVIATIONS

SDS	Safety Data Sheet
SEC	Securities and Exchange Commission (US)
SEC Rule on Internal Control	Final Rule on Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports
SER	<i>Sociaal-Economische Raad</i> (Dutch Social-Economic Council)
SERAC	Social and Economic Rights Action Centre (Nigeria)
Shell	Royal Dutch Shell
SID	Society for International Development
SIDA	Sweden International Development Cooperation Agency
SIF	Specialised Investment Fund
SLAPP	Strategic Law Suit against Public Participation
SOMO	Stichting Onderzoek Multinationale Ondernemingen
SOX	Sarbanes-Oxley Act of 2002 (US)
SPDC	Shell Petroleum Development Company of Nigeria
SRI	Socially Responsible Investment
SUFYR	NGO Stand Up For Your Rights
SVHC	Substance of Very High Concern
Tabaksblad Code	Dutch corporate governance code for listed companies
Talisman	Talisman Energy, Inc. (Canada)
TCF	The Conservation Fund
TEEB	The Economics of Ecosystems and Biodiversity
TFD	The Forest Dialogue
TFF	Tropical Forest Fund
TI	Transparency International
TIES	The International Ecotourism Society
Tobacco Directive	Directive 2001/37/EC of 5 June 2001, OJ 2001 L194 (EU)
TOF	Timber Opportunities Fund
Transparency International	NGO Transparency International
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TUAC	Trade Union Advisory Committee (OECD)
TVPA	Tort Victim Protection Act (US)

ABBREVIATIONS

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	UN Convention against Corruption
UNCTAD	UN Conference on Trade and Development
UNDP	UN Development Programme
UN Draft Norms	Norms on the Responsibility of Transnational Companies and Other Business Enterprises with regard to Human Rights (2003)
UNDRIP	UN Declaration on the Rights of Indigenous People
UNEP	UN Environment Programme
UNESCO	UN Educational, Scientific and Cultural Organisation
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UN Global Compact Principles	Global Compact CSR Code of Conduct
UNHCR	UN High Commissioner for Refugees
UNPRI	UN Principles for Responsible Investment
UK	United Kingdom
US	United States
USAID	United States Agency for International Development
US Securities Exchange Act	US Securities Exchange Act 1934
VBDO	<i>Vereniging van Beleggers voor Duurzame Ontwikkeling</i> (Dutch Association of Investors for Sustainable Development)
VCS	Voluntary Carbon Standard
VCU	Voluntary Carbon Unit
VNO-NCW	Confederation of Netherlands Industry and Employers
VPSHR	Voluntary Principles on Security and Human Rights
vPvB	Very Persistent, Very Bioaccumulable
VROM	Dutch Ministry of Housing, Spatial Planning and the Environment
Water Framework Directive	Directive 2000/60/EC of 23 October 2000, OJL 2000, 327 (EU)
WBCSD	World Business Council for Sustainable Development
WCA	Works Council Act (<i>Wet op de Ondernemingsraden</i>) (the Netherlands)
WDPA	World Database on Protected Areas
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ABBREVIATIONS

WEEE	Directive 2002/96/EC on Waste Electrical and Electronic Equipment of 27 January 2003, OJ 2002 L0096 (EU)
WFP	World Food Programme
WHO	World Health Organisation
WOK	<i>Wet Openbaarheid productie en Ketens</i> (Act on the transparency of supply chains) (the Netherlands)
WOL	World Online
WOP	<i>Wet Openbaarheid Productieketens</i> (Act on the Transparency of Supply Chains) (the Netherlands)
WRAP	Worldwide Responsible Production and Certification Programme
WRC	Workers Rights Consortium
WTO	World Trade Organisation

