





# **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.

Door: Tineke Elisabeth Lambooy\*

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

## **Informatie Betreffende de Promotie**

### **Promotores**

Professor Dr. Vino Timmerman (hoogleraar Grondslagen van het Ondernemingsrecht aan de Faculteit der Rechtsgeleerdheid van de Erasmus Universiteit Rotterdam)

Professor Dr. Alex Geert Castermans (hoogleraar Burgerlijk Recht aan de Faculteit der Rechtsgeleerdheid van de Universiteit Leiden)

### **Promotiecommissie**

Professor Dr. Steef Bartman (hoogleraar Ondernemingsrecht aan de Faculteit der Rechtsgeleerdheid van de Universiteit Leiden)

Dr. Eva Nieuwenhuys (universitair docent Encyclopedie en Rechtsfilosofie aan de Faculteit der Rechtsgeleerdheid van de Universiteit Leiden)

Professor Dr. Cees Flinterman (emeritus hoogleraar Rechten van de Mens aan het Studie- en Informatiecentrum Mensenrechten – SIM, Faculteit der Rechtsgeleerdheid van de Universiteit Utrecht en bijzonder hoogleraar Verenigde Naties en de Rechten van de Mens aan de Universiteit Maastricht)



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

# Contents

<b>Preface and acknowledgements</b>	<b>XX</b>
<b>Abbreviations</b>	<b>XXIII</b>
<b>Chapter 1 Introduction</b>	<b>1</b>
1.1 Background of globalisation and consequences	1
1.1.1 Economic globalisation	1
1.1.2 Globalisation as a societal phenomenon and its consequences	4
1.2 Corporate Social Responsibility (CSR)	10
1.2.1 CSR as a societal phenomenon	10
1.2.2 Defining CSR	10
1.2.3 Voluntary or binding?	13
1.2.4 Pros and cons?	15
1.3 Problem statement	18
1.3.1 Legal aspects of CSR	18
1.3.2 Research questions	19
1.4 Methodology	20
1.4.1 Part I: Chapters 2-8 – Corporate tools and approaches	20
1.4.2 Part II: Chapters 9-13 – Case studies	20
1.5 Terminology, framing CSR, international norms and private actors	21
1.6 New responsibilities attributed to private actors	25
1.6.1 By governments	25
1.6.2 By international organisations	26
1.6.3 By civil society	27
1.7 New roles claimed by private actors	29
1.8 Legal and non-legal frameworks that can assist business to implement CSR	30
1.8.1 Corporate governance – the decision-making process	30
1.8.2 Annual reporting – transparency of corporate conduct	33
1.8.3 Internal control and management information processes – avoiding corruption	35
1.8.4 Private regulation – defining desired conduct	36
1.8.5 Due diligence in business operations – human rights compliance	39
1.8.6 Providing product information to consumers	40
	<b>VII</b>

## CONTENTS

1.9	Dispute resolution: mediation versus litigation	43
1.10	Innovative partnerships	44
1.11	Conclusion	45
Annex 1.1	Overview of chapters and publications	47
<b>Chapter 2</b>	<b>Corporate social responsibility and corporate governance issues</b>	<b>49</b>
2.1	Introduction	49
2.2	Background	51
2.2.1	Corporate social responsibility	51
2.2.1.1	Sustainable business practice: P for Planet	51
2.2.1.2	Socially responsible business practice: P for People	53
2.2.1.3	Running a business: P for Profit	54
2.2.2	Corporate governance	54
2.3	Objective	57
2.3.1	Corporate social responsibility	57
2.3.2	Corporate governance	57
2.4	Initiators	57
2.4.1	Corporate social responsibility	57
2.4.2	Corporate governance	59
2.5	Interested parties	60
2.5.1	Corporate social responsibility	60
2.5.2	Corporate governance	60
2.6	Initiatives	61
2.6.1	Corporate social responsibility	62
2.6.1.1	International initiatives	62
2.6.1.2	The European Union	64
2.6.1.3	The Netherlands	67
2.6.2	Corporate governance	69
2.6.2.1	International initiatives	69
2.6.2.2	The European Union	70
2.6.2.3	The United States of America	71
2.6.2.4	The United Kingdom	72
2.6.2.5	The Netherlands	73
2.7	Concrete objectives	77
2.7.1	Corporate social responsibility	77
2.7.2	Corporate governance	78
2.8	Voluntary versus compulsory	79
2.8.1	Corporate social responsibility	80
2.8.1.1	Enforceability of desired conduct	80
2.8.1.2	Enforceability of transparency	85

## CONTENTS

2.8.2	Corporate governance	87
2.8.2.1	Enforceability of desired conduct	87
2.8.2.2	Enforceability of transparency	90
2.9	Differences between corporate social responsibility and corporate governance	91
2.9.1	Issues	91
2.9.2	Addressees	91
2.9.3	Advisors	91
2.9.4	Conduct versus dialogue	92
2.9.5	Enforceability of good conduct	92
2.10	Parallels	95
2.10.1	A change in attitude	95
2.10.2	A code of conduct	95
2.10.3	Transparency	95
2.10.4	Internal control and risk management systems	96
2.10.5	Avoiding detailed legislation	96
2.11	Conclusion	97
Annex 2.1	Outline of the Tabaksblat Code recommendations	100
Annex 2.2	Dual-Board Company Structure Reform Act	104

### PART I: LEGAL AND SEMI-LEGAL FRAMEWORKS SUPPORTING CSR 105

<b>Chapter 3</b>	<b>Institutionalisation of corporate social responsibility in the corporate governance code. The new trend of the Dutch model</b>	<b>107</b>
3.1	Introduction	107
3.2	The 2004 foundation of the Dutch corporate governance model	111
3.3	The 2010 Dutch corporate governance model	113
3.4	Discussion on the CSR provisions in the Frijns Code	119
3.4.1	Management board and CSR	119
3.4.2	Supervisory board and CSR	120
3.4.3	Gender concerns in board composition	123
3.5	The Frijns Code and institutional investors	126
3.5.1	The Frijns Code on institutional investors	126
3.5.2	Fiduciary duty and ESG factors: the Freshfields report	128
3.5.3	PRI and UNEP FI Fiduciary Responsibility Report	130
3.5.4	Eumedion Position Paper	131
3.5.5	Freshfields Report, Eumedion Position Paper and Frijns Code	134
3.6	Developments in legislation and practice	134
3.6.1	Commentaries to the Frijns Code and subsequent developments	134

## CONTENTS

3.6.2	New revisions of the Dutch Company Code impacting corporate governance	137
3.7	Overview of the 2010 Dutch status quo on corporate governance and CSR	139
3.8	Overall analysis and concluding remarks	143
<b>Chapter 4</b>	<b>Annual report can provide transparency on corporate social responsibility</b>	<b>147</b>
4.1	Introduction	147
4.2	The Modernisation Directive	148
4.2.1	The Accounting Directives	148
4.2.2	New annual reports standards	148
4.2.3	Information on worldwide activities	149
4.2.4	Environmental matters	149
4.2.5	Employee matters	150
4.2.6	Information on suppliers?	151
4.2.7	Guidelines for interpretation	151
4.2.8	Exemptions	152
4.3	Implementation in national legislation	152
4.3.1	Implementation date	152
4.3.2	Implementation by Member States	152
4.3.3	Non-implementation	154
4.4	Implementation in Dutch law	154
4.4.1	Amendment Dutch company code	154
4.4.2	Legislative history	154
4.4.3	Environmental reporting obligations	155
4.4.4	Reporting on employee matters	156
4.4.5	Proposed amendment referring to OECD MNE Guidelines	157
4.4.6	Exemptions	157
4.4.7	Existing Dutch accounting guidelines on CSR transparency	158
4.4.8	Legal consequences	158
4.5	Annual reports 2006 Dutch companies	160
4.5.1	Overview analysis	160
4.5.2	Supply chain responsibility	161
4.5.3	Environmental aspects	161
4.5.4	Social matters	162
4.5.5	Employees	162
4.5.6	References to CSR reports	163
4.6	Final remarks	165
Annex 4.1	Implementation of art. 1.14 EU Modernisation Directive in national law	166
Annex 4.2	Annual reports 2006 Dutch listed companies	168

<b>Chapter 5</b>	<b>Corruption and corporate governance: ‘in control’ requires an anti-corruption programme</b>	<b>171</b>
5.1	Introduction	171
5.2	Internal control	176
5.2.1	Developments in corporate governance	176
5.2.2	The COSO definition and the framework of internal control	178
5.2.3	SOX – the ‘in-control’ requirement	181
5.2.4	The Dutch Corporate Governance Code – ‘in-control’ statement	184
5.2.5	Internal control requirements as a corporate law mechanism to fight corruption	187
5.3	Corruption risks from a company perspective	190
5.3.1	Costs and reputational risk	190
5.3.2	International developments	191
5.3.3	US law – Foreign Corrupt Practices Act	195
5.3.3.1	The anti-bribery provisions	196
5.3.3.2	The accounting controls provision	196
5.3.3.3	Penalties	197
5.3.3.4	Personal liability of directors and officers	199
5.3.4	Dutch Law	200
5.3.4.1	Active bribery	202
5.3.4.2	Passive bribery	203
5.3.4.3	Confiscation	204
5.3.4.4	Sanctions	204
5.3.4.5	Private sector bribery	205
5.3.5	Annex 5.1: overview of regulations	206
5.4	Transparency: part of responsible corporate conduct	206
5.5	Corporate anti-corruption programmes	209
5.5.1	Better to prevent than to defend	209
5.5.1.1	Public regulation	210
5.5.1.2	Private regulation	210
5.5.2	Best practices	211
5.5.2.1	Implementing anti-corruption policies (internal efforts)	212
5.5.2.2	Special anti-corruption accounting controls (internal efforts)	215
5.5.2.3	Establishing third party anti-corruption policies (external efforts)	215
5.6	Concluding remarks	217
Annex 5.1	Overview of corruption regulation	220

## CONTENTS

<b>Chapter 6</b>	<b>Private regulation: setting the standards</b>	<b>227</b>
6.1	Introduction	227
6.2	The spectrum of CSR private regulation	228
6.3	The reasons behind the emergence of private regulation	232
6.4	Public legislation on sustainability reporting	235
6.5	Private regulation on sustainability reporting	238
6.6	Public legislation and policies on responsible corporate conduct	243
6.7	Private regulation on responsible corporate conduct	246
6.8	Private contracts regulating CSR behaviour	247
6.9	Successfulness of private regulation	250
6.10	The quality of the regulation	252
6.11	The legitimacy of the regulation	256
6.12	The enforcement of the regulation	260
6.13	The effectiveness of the regulation	265
6.14	Concluding observations and remarks	272
	Annex 6.1 Categories of private regulation	275
<b>Chapter 7</b>	<b>Corporate due diligence as a tool to respect human rights</b>	<b>277</b>
7.1	Introduction	277
7.2	Corporate practice – History ‘due diligence’	279
7.3	Due diligence in corporate practice	282
7.3.1	Who performs the due diligence process?	283
7.3.2	Why due diligence?	284
7.3.2.1	Capital markets transactions – legal reasons and scope	284
7.3.2.2	Capital markets due diligence – integrating human rights?	285
7.3.2.3	Private transactions – legal reasons and scope	287
7.3.2.4	Private transactions due diligence – integrating human rights?	288
7.3.3	Other reasons for executing due diligence	289
7.3.4	How is the due diligence process executed?	291
7.3.5	When do parties execute a due diligence process?	292
7.3.6	Conclusion on corporate due diligence processes	292
7.4	Due diligence in human rights law	293
7.4.1	Treaties and commentaries	294
7.4.2	Jurisprudence	298
7.4.3	Universal human rights norms for companies?	304
7.4.4	Conclusion on due diligence in human rights law	309
7.5	Corporate due diligence as referred to by Ruggie	309
7.5.1	Governance gaps versus accountability gaps	310
7.5.2	Ruggie’s model for “complementary governance”	312
7.5.3	The corporate duty to apply due diligence	314

## CONTENTS

7.5.4	The country context	316
7.5.5	The human rights impact	319
7.5.6	Third party relationships	321
7.5.7	Due diligence: when?	323
7.6	HRIA tools and sector approaches	326
7.7	Dilemmas	330
7.8	Summary and concluding remarks	333
Annex 7.1	Due diligence checklist	338
<b>Chapter 8 To know or not to know? The consumer’s right to information under REACH and other European Union legislation 343</b>		
8.1	Introduction	343
8.2	Overview of REACH	345
8.2.1	Background	346
8.2.2	Registration deadlines	347
8.2.3	Registration contents	348
8.2.4	Communication in the supply chain	348
8.3	The right to information	349
8.3.1	Right to information for consumers	350
8.3.2	The workers’ ‘right to know’	351
8.3.3	Nanotechnology	352
8.3.4	Non-EU manufacturers	354
8.3.5	Non-EU consumers	355
8.3.6	Preliminary observations on REACH	356
8.4	Comparison with other EU legislation	359
8.4.1	The General Product Safety Directive	359
8.4.2	The General Food Law	360
8.4.3	Draft Consumer Directive	362
8.4.4	Tobacco Directive	363
8.4.5	The Unfair Commercial Practices Directive	364
8.4.6	Fish products labelling Regulation	365
8.4.7	Electrical and electronic equipment	365
8.5	Enforcement of the consumer’s right to information	368
8.5.1	Experiment regarding consumer information under REACH	368
8.5.2	Enforcement of REACH	369
8.5.3	Enforcement regime in the Netherlands	370
8.6	The consumer’s right to product information on societal aspects	371
8.6.1	New Dutch legislative proposal	371
8.6.2	Experiment regarding consumer information on CSR	374
8.7	Conclusion	374

## CONTENTS

Annex 8.1 Corporate obligations under REACH	376
Annex 8.2 Template consumer letter [REACH]	377
Annex 8.3 Template consumer letter [CSR Aspects]	378
PART II: CASE STUDIES	383
<b>Chapter 9 Shell in Nigeria: from human rights conflicts to corporate social responsibility</b>	<b>385</b>
9.1 Shell in Nigeria: background and context	385
9.1.1 A short history of the political evolvments of post-colonial Nigeria	386
9.1.2 A brief account of the economic, geographic and social features of oil exploitation in the Niger Delta (situation as of 1995)	387
9.1.3 Worldwide human rights movement for the rights of indigenous people and their right to self-determination with respect to the sustainable development of natural resources (until 1995)	392
9.1.3.1 Introduction: the Ogoni	392
9.1.3.2 The MOSOP	393
9.1.3.3 The arrest and trial of Saro-Wiwa	394
9.1.4 Fact-finding mission of the UN in Nigeria	396
9.1.5 Aftermath of the execution	397
9.2 Legal Proceedings – human rights and the environment	399
9.2.1 Civil law litigation	399
9.2.2 Claims versus Shell under the ATCA	402
9.2.3 Human rights obligations: Nigeria	404
9.2.4 African Human Rights Commission ruling	405
9.2.5 Nigerian law – oil and the environment	408
9.2.6 Clean-up claim against Shell	409
9.2.7 Ruling on gas flaring	411
9.3 Multinational companies under international law	412
9.3.1 Background and developments on the application of human rights to companies	412
9.3.2 Legal opinions on the application of human rights treaties to companies	414
9.3.3 The Ruggie report: “Protect, Respect and Remedy” principles and its application to the oil industry	418
9.3.4 Corporate responsibility from a sustainable development perspective	420
9.3.5 Corporate practice to adopt voluntary codes of conduct	421
9.4 Corporate social responsibility in the Niger Delta region	424
9.4.1 Reconciliation process between the Ogoni People, Shell and the Nigerian Government	424

## CONTENTS

9.4.2	Distribution of oil proceeds: “negotiations” between the Nigerian Government and the Niger Delta People and further concerns	427
9.4.3	Shell & the Millennium Development Goals in the Niger Delta region	429
9.4.4	The Nigerian Government talks with Chinese oil companies and privatisation of the oil industry: what future for the Ogoni?	430
9.5	Conclusion	432
<b>Chapter 10 Case study: the international CSR conflict and mediation. Supply-chain responsibility: Western customers and the Indian textile industry</b>		
		<b>435</b>
10.1	Introduction	435
10.2	Events in India	436
10.2.1	The jeans manufacturer FFI/JKPL	436
10.2.2	GATWU, a new trade union	438
10.2.3	June-July 2006, the complaints	440
10.2.4	Non-stop campaigning and legal proceedings	442
10.3	Political conflicts	446
10.4	Events in the Netherlands	447
10.4.1	G-Star	447
10.4.2	Public campaigning and the termination of the supplier relationship	449
10.5	Failing dialogue leading to lawsuits	453
10.6	Overview of the conflict resolution procedures	455
10.6.1	First mediatory attempt: the Dutch NCP	455
10.6.2	Second mediatory attempt: Amnesty <i>et al.</i>	458
10.6.3	Third mediatory attempt: Dutch Minister of State Ruud Lubbers	459
10.7	The Lubbers Mediation	460
10.7.1	The first mediation results	460
10.7.2	Appointment of the Conciliator-Ombudsman-Mediator	462
10.7.3	The COM in office	464
10.8	Differences in law and confusing soft law labour standards	465
10.9	Communication strategies of the parties	467
10.10	Comparison with other CSR textile conflicts	470
10.10.1	International campaigns against garment manufacturers	470
10.10.2	A hidden conflict: clash of CSR codes	473
10.11	Concluding remarks	476
Annex 10.1	Applicable legal and soft law standards <i>re</i> the allegations	480

## CONTENTS

<b>Chapter 11</b>	<b>Corporate social responsibility: sustainable water use</b>	<b>485</b>
11.1	Introduction	485
11.1.1	Background and objectives	485
11.1.2	Methodology and study design	487
11.2	Corporate impact on water; public and private responsibilities	488
11.2.1	The difficulty of directly linking corporate water use to environmental changes	488
11.2.1.1	Waste water management	488
11.2.1.2	Management of freshwater consumption	489
11.2.1.3	Groundwater control management	489
11.2.2	Responsibility of governments and enterprises; a thin line?	490
11.2.2.1	Government procedures for project approval in EU	490
11.2.2.2	Weak governance zones: CSR and Ruggie Report	491
11.2.2.3	Coca-Cola in India	492
11.2.2.4	Trafigura in Ivory Coast	493
11.3	CSR: sustainable water policies and tools	494
11.3.1	CSR	494
11.3.2	Corporate water use: why reduce it?	495
11.3.3	General CSR guidelines and water management standards	497
11.3.4	Corporate initiatives for a shared water management	498
11.3.5	Corporate reporting requirements and water use reporting tools	499
11.3.6	Disclosures on CSR policies concerning water	502
11.4	Results of a ‘quick scan’ analysis of water impact by Dutch companies; and discussion	504
11.4.1	Background information on the research project	504
11.4.2	Types of water use per company	504
11.4.3	Reporting on corporate measures	505
11.4.4	Concrete targets for water reduction or emissions	507
11.4.5	Supply chain management policies	507
11.4.6	CSR policies and monitoring tools	507
11.4.7	Research and development in sustainable water use	509
11.4.8	Dilemmas and challenges	510
11.4.9	Human right to water and companies: what to expect?	511
11.5	Conclusion	513
<b>Chapter 12</b>	<b>Integrating companies’ impact and dependence on biodiversity and ecosystem services in investment decisions</b>	<b>521</b>
12.1	Introduction: link between business and biodiversity	522
12.1.1	Business risks & related investment risks	522
12.1.2	Problem statement: investors’ lack of information re links between companies and BES	524

## CONTENTS

12.1.3	Research goals: (i) identification of barriers and (ii) catalysing development of the market	525
12.1.4	Research method	526
12.1.5	Outline of the remainder of the chapter	529
12.2	The market for BES information products	529
12.2.1	Current state of the market: the actors	529
12.2.1.1	ESG Agencies	531
12.2.1.2	Asset management companies	532
12.2.1.3	NGOs	533
12.2.2	Barriers in the market	533
12.2.2.1	A shift towards a mid-term and long-term perspective	534
12.2.2.2	Integrated legislation and private regulation	535
12.2.2.3	Consolidation of services provided by ESG Agencies	536
12.2.2.4	Deconstructing the concept of biodiversity into sub-themes (the ‘matrix’)	537
12.2.2.5	Establishing a causal relationship between BES loss and financial performance	538
12.2.2.6	Educational groundwork throughout the value chain of the financial market	539
12.2.2.7	Development of new tools	540
12.2.2.8	A more continuous flow of relevant and compatible information	540
12.2.2.9	More cooperation between NGOs and financial market actors	542
12.2.3	An integral perspective	543
12.2.4	Suggestions for collaborative actions	546
12.2.4.1	Breaking down the BES concept: a ‘materiality matrix’	547
12.2.4.2	A clearing-house for information on biodiversity	549
12.3	Catalysing change in the market – an action research approach	551
12.3.1	Theoretical considerations that influenced the workshop design	551
12.3.1.1	Introduction	551
12.3.1.2	Integral theory & systems thinking	552
12.3.1.3	Individual and collective learning	553
12.3.1.4	Theory U	554
12.3.2	The design of the workshop	556
12.3.2.1	Participants	556
12.3.2.2	The agenda and the anticipated discussion technique	557
12.3.2.3	The role of the researchers	559
12.3.3	The workshop: outcome, process, and follow-up	559
12.3.3.1	Workshop outcomes (contents)	559
12.3.3.2	Impression of the workshop process	560

## CONTENTS

12.3.3.3 Follow-up after five months	561
12.3.3.4 Evaluation: How successful was the intervention?	564
12.4 Concluding remarks	566
<b>Chapter 13 Private investment in the conservation of Biodiversity and Ecosystems</b>	<b>569</b>
13.1 Introduction	569
13.2 The business case for biodiversity	571
13.2.1 What is biodiversity?	571
13.2.2 Importance for companies	572
13.2.3 The biodiversity business case for investors	575
13.3 Emerging markets that support BES	576
13.3.1 Sustainable forestry	579
13.3.1.1 New Forests Tropical Forest Fund LP	580
13.3.1.2 Malua Bio Bank	582
13.3.1.3 Timber Opportunities Fund	584
13.3.1.4 Conclusion regarding sustainable forestry	587
13.3.2 Nature conservation	588
13.3.2.1 Wetland banking	589
13.3.2.2 Biodiversity offsets	591
13.3.2.3 Regulatory offsets	593
13.3.2.4 Voluntary offsets	594
13.3.2.5 Conclusion regarding nature conservation	596
13.3.3 Eco-tourism	596
13.3.3.1 The Pan Parks Foundation	598
13.3.3.2 African Parks Network	599
13.3.4 PES: watershed management	600
13.3.4.1 Costa Rica	602
13.3.4.2 Vittel	603
13.3.4.3 Conclusion regarding watershed management	604
13.3.5 PES: voluntary carbon sequestration	604
13.3.5.1 Agriculture and climate change	607
13.3.5.2 REDD	607
13.3.5.3 Conclusion regarding voluntary carbon sequestration	610
13.4 Barriers and suggested solutions	612
13.5 Conclusion	615
Annex 13.1 Scope of the research project Nyenrode, IUCN-NL and ECNC	617
Annex 13.2 Innovative forestry-related initiatives in Brazil	619
Annex 13.3 Principles of Biodiversity Offsets (BBOP Advisory Committee)	621
<b>Samenvatting dissertatie (Dutch summary)</b>	<b>623</b>

## CONTENTS

<b>Overview of abstracts</b>	<b>629</b>
Introduction	629
Chapter 1 Introduction	630
Chapter 2 Corporate social responsibility and corporate governance issues	630
<b>PART I: LEGAL AND SEMI-LEGAL FRAMEWORKS SUPPORTING CSR</b>	<b>631</b>
Chapter 3 Institutionalisation of corporate social responsibility in the corporate governance code. The new trend of the Dutch model.	631
Chapter 4 Annual report can provide transparency on corporate social responsibility	632
Chapter 5 Corruption and corporate governance: ‘in control’ requires an anti-corruption programme	632
Chapter 6 Private regulation: setting the standards	633
Chapter 7 Corporate due diligence as a tool to respect human rights	634
Chapter 8 To know or not to know? The consumer’s right to information under REACH and other European Union legislation	634
<b>PART II: CASE STUDIES</b>	<b>634</b>
Chapter 9 Shell in Nigeria: from human rights conflicts to corporate social responsibility	634
Chapter 10 Case study: the international CSR conflict and mediation. Supply chain responsibility: Western customers and the Indian textile industry	635
Chapter 11 Corporate social responsibility: sustainable water use	636
Chapter 12 Integrating companies’ impact and dependence on biodiversity and ecosystem services in investment decisions	636
Chapter 13 Private investment in the conservation of Biodiversity and Ecosystems	637
<b>Overview of abstracts (Translations in Spanish, Chinese, Russian and Arabic)</b>	<b>639</b>
Spanish	641
Chinese	653
Russian	665
Arabic	683
<b>Note on the author</b>	<b>695</b>
<b>Bibliography</b>	<b>697</b>
<b>Index</b>	<b>767</b>
	XIX

## 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 Verschuer, 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 Dorresteijn (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

## PREFACE AND ACKNOWLEDGEMENTS

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 Hoofst 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

## 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

## 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
Tabaksblat 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
XXX	

## 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

