



**FROM THE *DODGE* CASE TO CORPORATE SOCIAL RESPONSIBILITY - THE RISE
OF BENEFIT CORPORATIONS: LESSONS FOR GEORGIA IN LIGHT OF THE U.S.
EXPERIENCE**

By Gvantsa Elgendashvili

LL.M. SHORT THESIS
COURSE: U.S. Corporations and Partnership Law
PROFESSOR: Jessica Charles Lawrence
Central European University
1051 Budapest, Nador utca 9.
Hungary

ABSTRACT

The notion of corporate social responsibility is widely expected recent phenomenon that promotes the following idea that corporations should serve the societies and take into account interests of all stakeholders rather than focus on profit-maximization interests of shareholders. Despite the recent popularity of CSR, legal scholars and economists have a debate over the social nature of corporations, related fiduciary duties of corporate managers and the introduction of new forms of socially responsible corporations, such as the Benefit Corporation. This paper will focus on the notion of CSR, its connections with corporate law in the context of shareholder versus stakeholder debate and Benefit Corporations in order to identify the relevance of the stated issues in the non-U.S. legal system of Georgia.

ACKNOWLEDGMENTS

I would like to express my deep gratitude to Professor Jessica Charles Lawrence, my research supervisor for her support, guidance, valuable and constructive suggestions, and encouragement during the process of writing.

My heartfelt thanks to my mother for her love, sacrifice and support.

TABLE OF CONTENTS

ABSTRACT	i
ACKNOWLEDGMENTS	ii
TABLE OF CONTENTS	iii
LIST OF ABBREVIATIONS	v
INTRODUCTION.....	1
CHAPTER 1. THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY	4
1.1 Carroll’s Pyramid	6
1.2 Ethical Basis of Corporate Social Responsibility	8
1.3 The “Triple-bottom line” of Socially Responsible Corporations	10
1.4 Modern Understanding of Corporate Social Responsibility.....	13
CHAPTER 2. SHAREHOLDER VERSUS STAKEHOLDER DEBATE.....	16
2.1 Fundamental Arguments Related to the Shareholder versus Stakeholder Debate	16
2.2 The <i>Dodge</i> Case And the Shareholder-Wealth-Maximization Theory	18
2.3 Rationale of the Stakeholder-Protection Theory	21
2.3.1 Stakeholder-Protection Measures as Brand Insurance.....	23
2.3.2 Economic Arguments for the Stakeholder-Protection Theory.....	24
2.4 Legal Theory of Corporate Social Responsibility as a Victor of the Debate.....	25
2.5 In Search of the Right Approach for Emerging Market of Georgia.....	28
CHAPTER 3: THE RISE OF BENEFIT CORPORATIONS	33
3.1 Benefit Corporations – Redefining Business Purpose of Corporations.....	33
3.1.1 Public Benefit Goals of Benefit Corporations	35

3.1.2 Benefit Corporation and CSR	37
3.1.3 Commitment of Benefit Corporations and its Effects on Brand Loyalty	39
3.2 Reporting Requirements Applicable to Benefit Corporations	40
3.3 Expanded Corporate Governance and Fiduciary Duties of Directors	42
3.4 Possible Introduction of a Legal Form of Benefit Corporation in Georgia.....	44
CONCLUSION	47
BIBLIOGRAPHY	49

LIST OF ABBREVIATIONS

ACAD.	Academic
Apr.	April
Art.	Article
BC(s)	Benefit Corporation(s)
BJR	Business Judgment Rule
Bus.	Business
CAL.	California
Corp.	Corporation
CSR	Corporate Social Responsibility
DEL.	Delaware
DGCL	Delaware General Corporation Law
e.g.	For example
Ed.	Editions
Eds.	Editors
EU	The European Union
HAR. L. J.	Harvard Law Journal
Id.	Idem
Int'l	International
Iowa L. Rev.	Iowa Law Review
J.	Journal
L.Q.	Law Quarterly

Mar.	March
Mich.	Michigan
MNG.	Management
N.Y.	New York
O.J.	Official Journal
REV.	Review
U.S.	The United States of America
U.S.C	United States Code
Y.B.	Year Book
YALE L.J.	Yale Law Journal

INTRODUCTION

Corporate Social Responsibility or CSR is a recent phenomenon in different but closely connected fields of law, economics, business, political economy, public policy etc. Before the modern era of CSR appreciation, scholars and ordinary members of societies were criticizing business entities for being self-interested with egocentric interests of their shareholders, not interested in the general welfare of environment or society as a whole.¹ The emergence of CSR and the idea of socially responsible business entities have created various confrontations in the field of corporate law questioning social nature of corporations, expanded fiduciary duties of corporate managers etc. These confrontations have resulted in shareholder versus stakeholder debate on whether business entities should engage in CSR activities or remain focused on shareholder profit-maximization.²

There are scholarly opinions provided by the representatives of opposing school participating in the debate. The scholarship includes writings of legal scholars, economists, professionals involved in business sector etc. CSR is being also discussed in the context of a hybrid form of a legal entity, Benefit Corporation. However, there is lack of legal literature touching the field of CSR and Benefit Corporations in emerging market of Georgia. Therefore, this paper will fill the gap and provide a conceptual analysis of CSR, its connection with shareholder and stakeholder debate in the United States and Benefit Corporations. By exploring the concept of CSR and rationale of shareholder versus stakeholder debate this paper will assess to what extent the concept and the debate are relevant for non-U.S. legal systems, such as Georgia in order to

¹ See generally, JOHN O. OKPARA & SAMUEL O. IDOWU, CORPORATE SOCIAL RESPONSIBILITY: CHALLENGES, OPPORTUNITIES AND STRATEGIES FOR 21ST CENTURY LEADERS xv-xvi (Springer Ed. 2013); See also Hiller, *infra* note 115, at 287.

² See e.g., Winkler, *infra* note 53.

critically discuss and implement the theories involved in the debate in a legal framework and business environment of Georgia. The hybrid form of a business entity, Benefit Corporation will be assessed in the context of CSR and its specific characteristics as a socially responsible corporation in order to assess whether the introduction of this hybrid form in Georgia is sensible and possible.

In order to establish conceptual a framework of this paper, it will start with Chapter 1 addressing the notion of corporate social responsibility. As a basis for discussion, the stated Chapter will focus on the definitions provided by international and regional organizations, scholars and their interaction with the norms of international law. Taking into account the fact that Georgia lacks scholarship and legal framework describing nature of CSR, I will mostly rely on the notions and characteristics of CSR provided on international, regional and national (mostly U.S.) levels.

Chapter 2 will address the issue of shareholder versus stakeholder debate, its connection with CSR, claimed victor of this debate and to what extent the arguments presented in the U.S. are important for Georgia for the purposes of identifying a proper approach for the State.

Chapter 3 will focus on a hybrid form of business entities, Benefit Corporation as a socially responsible form of corporations, its connection with CSR and the discussed debate in order to assess whether there is a possibility of their introduction in Georgia.

Principal findings of this thesis suggest that despite the importance of CSR, there is no uniform definition attached to it, as the field is developing and catching more and more attention. However, there is uniformity in the assessment of its principal characteristics and confrontation with the shareholder primacy theory applied in the *Dodge* case.³ Mentioned confrontation and the debate between supporters of shareholder and stakeholder theories are important for non-U.S.

³ *Dodge*, *infra* note 57.

emerging markets as well with slight modifications and the introduction of a socially responsible Benefit Corporation into non-U.S. systems is possible and sensible subject to certain difficulties. This paper focuses on the laws of the States of the U.S., most importantly laws and Court decisions of Delaware. Moreover, it employs Georgian legislation and Supreme Court decisions for further comparative and systematic analysis the later compared to the ones from American jurisdiction.

CHAPTER 1. THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY

The notion of corporate social responsibility (CSR) is a widely accepted concept in the business world. Despite differences and difficulties in definition, according to various scholars, “it is clear that most authors mean corporate social responsibility to include behavior and actions beyond mere profit, making that serve to improve the conditions of society and individuals within that society.”⁴ Supporters of the field state that the concept developed as a response to “the risks that corporate wrongdoing poses to society.”⁵ After various corporate scandals and financial crises of the 21st century, the United States and European countries started strengthening their CSR policies, obliging corporations to take into account the interests of various constituencies. Prominent authors argue, “heightened interest in CSR in recent years has stemmed from the advent of globalization and international trade, which have reflected in increased business complexity and new demands for enhanced transparency and corporate citizenship.”⁶

Issues related to CSR were under discussion in the field of political economy. According to scholars in that field, CSR rests on the idea that corporations should play an important role in society.⁷ It is argued by scholars that the idea of corporate social responsibility emerged from the writings of Andrew Carnegie, who argued that the two principles of charity and stewardship are necessary in order to make capitalism work.⁸ According to him and supporters of his ideas, the

⁴ John F. Mahon & Richard A. McGowan, *Searching for the Common Good: A Process Oriented Approach*, 34 BUS. HORIZONS 79, 80 (1991).

⁵ JEEHYE YOU, LEGAL PERSPECTIVES ON CORPORATE SOCIAL RESPONSIBILITY: LESSONS FROM THE UNITED STATES AND KOREA 4 (2015).

⁶ Dima Jamali, *Insights into Triple Bottom Line Integration from a Leading Organization Perspective*, 12 BUS. PROCESS. MNG. J., 809, 810 (2006).

⁷ *Id.*

⁸ R. Edward Freeman & Jeanne Liedtka, *Corporate Social Responsibility: A Critical Approach*, 34 BUS. HORIZONS 92, 92 (1991).

“more fortunate members of society are obliged to assist its less fortunate members”⁹ under the charity principle. As regards to the stewardship principle, in his view, the rich were stewards of their property holding wealth “in trust” for the benefit of the rest of society.¹⁰ Since corporate social responsibility is aimed at serving the welfare of society, it should be noted that the notion “does not negate earning a profit.”¹¹ Instead, it requires corporations to balance the costs and benefits of CSR policies.

In addition to the political economy setting a basis for the legal theory of CSR, it should be noted that more and more non-governmental organizations are requiring corporations to conduct business transparently. According to Transparency International (TI), CSR requires commitment and resources to avoid various legal and political risks, including those related to corruption.¹² Therefore, CSR policies of corporations fulfill social as well as political role in respective societies.

The basis of corporate social responsibility taken from the field of political economy clearly led to the international recognition of the need for CSR policies. The United Nations has created huge a network of business that is encouraged to adopt socially responsible and sustainable policies. In this context, the United Nations adopted The Ten Principles of the UN Global Compact.¹³ Mentioned principles are derived from the fundamental human rights and freedoms and constitute the starting point for companies to fulfill their obligations towards planet and

⁹ *Id.*

¹⁰ Andrew Carnegie, *Wealth*, 148 N. AM. REV. 653 (June 1889).

¹¹ Myrna Wulfson, *The Ethics of Corporate Social Responsibility and Philanthropic Ventures*, 29 J. BUS. ETHICS 135, 136 (2001).

¹² Transparency International, *Transparency In Corporate Reporting: Assessing the World's Largest Companies* (2014).

¹³ The Ten Principles of the UN Global Compact, United Nations Global Compact (Mar. 23, 2018), <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

society and make profits in the long run.¹⁴ Therefore, CSR codes exist at international level, including the 2011 United Nations Guiding Principles on Business and Human Rights¹⁵ and 2011 OECD Guidelines for Multinational Enterprises.¹⁶ The only international concern is how far the CSR can go on the international level, especially taking into account the modern era of multinational corporations that operate cross-border. Taking into consideration the fact that the CSR is an emerging field and gets more and more attention on the international level, it can be concluded that in future it can be regarded as an independent field with binding CSR provisions. Despite the fact that there is no uniformity as regards to the exact definition of CSR and to what extent it is relevant for the international and national scene, it should be stated that the most well-known model of CSR is the one suggested by Archie B. Carroll. Carroll's pyramids of corporate social responsibility will be the starting point of the discussion regarding the concept of CSR.

1.1 Carroll's Pyramid

Carroll's Pyramid includes four dimensions and pursues the following understanding of CSR: “[c]orporate social responsibility encompasses the economic, legal, ethical and discretionary (philanthropic) expectations that society has of organizations at a given point in time.”¹⁷ He argues that the CSR brings together profit-making, law, and economics as a “pyramid of

¹⁴ *Id.*

¹⁵ Special Report of the Secretary-General, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Human Rights Council, United Nations Doc. A/HRC/17/31 (Mar. 21, 2011).

¹⁶ Organization of Economic Cooperation and Development, *OECD Guidelines for Multinational Enterprises* (2011), <http://www.oecd.org/corporate/mne/48004323.pdf>.

¹⁷ Archie B. Carroll, *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders*, BUS. HORIZONS, 39-48 (1991).

corporate social responsibility”¹⁸. It should be noted that the concept includes ethical points of CSR policies. The idea that the corporations bear some responsibilities towards the society gained wide acceptance and helped that corporations add social concerns to their primary economic purposes. As regards to economic purposes, it should be noted that society intends and often requests business entities to be profitable.¹⁹ The stated is in the interests of shareholders and investors of companies as they expect companies to be profitable. Moreover, it is in the interests of business entities for reinvestment purposes.²⁰

Furthermore, society requires the business entities to abide legal obligations that are binding on national and international levels.

As regards to the philanthropic responsibilities of the business entities, it is stated that business entities should engage in any form of business giving. This usually has voluntary or discretionary character. However, the modern understanding of social contract between society and business entities, it is expected from businesses to be good corporate citizens.²¹ Companies should take part into philanthropic activities based on their ethical considerations towards society and the environment, however, it should be also noted that businesses usually give away money, products or other contributions in order to enhance their reputation and not for altruistic reasons.

As for the fourth dimension of Carroll’s pyramids, the business entities are required to have ethical considerations towards the society as a whole. The following can be regarded as a very basis of the CSR. Theories of political economy urging business entities to be socially responsible are based on the ideas derived from the ethics. Therefore, there is a clear need of

¹⁸ *Id.*

¹⁹ Archie B. Carroll, *Carroll’s pyramid of CSR: taking another look*, 1 (1) INT’L J. OF CORPORATE SOCIAL RESPONSIBILITY, 3, 6 (2016).

²⁰ *Id.* at 7.

²¹ *Id.* at 6.

identifying the relationship between the ethical considerations of the CSR and the legal obligations that the business entities have under the national and international legal systems. In order to identify its standing in business law and then apply identified approached to the emerging market of Georgia, it is important to discuss the ethical basis of the CSR in greater details.

1.2 Ethical Basis of Corporate Social Responsibility

Ethical considerations have become an interesting topic not only for the field of philosophy but for the businesses and corporate law. Modern legal theory of the CSR reveals that the stated notion has not only legal or economic basis but most importantly it has an ethical basis. Ethics is important in the context of the CSR and sustainability as they are expected to minimize destruction to the environment.²² The rationale is that it is extremely hard to provide legal remedies for corporate wrongdoings of multinational corporations in certain jurisdictions and therefore, CSR policies can have a gap-filling function in this regard.²³ Multinational corporations are therefore, required to “serve a social, political, and cultural role as well as an economic role.”²⁴ The notion of corporate social responsibility represents the voluntary way of implementation of the social role of corporations. Hence, for some scholars it is a voluntary way of enhancing public image and reputation; satisfy obligations that are beyond legal

²² Lisa Jones Christensen, Ellen Peirce, Laura P. Hartman, W. Michael Hoffman, Jamie Carrier, *Ethics, CSR, and Sustainability Education in the Financial Times Top 50 Global Business Schools: Baseline Data and Future Research Directions*, 73 (4) J. BUS. ETHICS. 347, 358 (2007).

²³ Larry C. Baker, *Multinational Corporations, Transnational Law: The United Nations’ Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law*, Colum. Hum. Rts. L. Rev. 291 (2006).

²⁴ Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443, 448-449 (2001).

requirements.²⁵ The European Commission while defining a concept of corporate social responsibility undertakes the same approach and states that CSR is “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”²⁶ Therefore, the concept includes various policies that can be undertaken on a voluntary basis and will serve the society and environment based on the idea of the ethical obligations.

The ethical basis of the CSR usually creates disagreement as regards to its connection with the international legal obligations. The question is whether ethical considerations of the CSR can create positive international legal obligations, in particular positive human rights responsibilities. According to scholars of that field, states have positive human rights obligations to ensure the effective enjoyment of fundamental rights.²⁷ Despite the stated fact, increasing number of scholars argue that the human rights responsibilities should be extended to non-state actors, in particular to the private sector. That is quite logical, but the very problem of ethical considerations of CSR to be regarded as positive human rights obligations is the problem of voluntariness. The mentioned problem clearly indicates that there is a clash between the voluntary character of corporate social responsibility and the nature of positive human rights obligations. If we assume that business entities are obliged to provide minimum care towards corporate stakeholders, the very nature of voluntariness will be under the risk. For most of scholars and economists, corporate social responsibility activities are discretionary and whenever

²⁵ Patricia B. Abels & Joseph T. Martelli, *What is CSR all about?*, Global Conference on Business & Finance Proceedings 7(2), 86 (2012).

²⁶ Communication from the European Union Commission, *Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development* 5, at 7 (COM (2002) 347 final, Brussels, 2 July 2002).

²⁷ See SANDRA FREDMAN, *HUMAN RIGHTS TRANSFORMED: POSITIVE RIGHTS AND POSITIVE DUTIES* (2015).

they think about it, they imagine CSR as being “fundamentally” voluntary.²⁸ Despite the attempts of CSR supports to push business entities undertake CSR policies as positive human rights obligations to guarantee for individuals’ enjoyment of their fundamental rights and freedoms, there is not uniform acceptance in this regard.

Business entities are free to undertake the CSR policies and they are encouraged to do so within an international business context, however, ethical considerations of CSR have not yet raised to the level of positive human rights obligations.²⁹ I would say that positive trends in the development of CSR as a separate field might lead to the extension of positive obligations of business entities in future. Despite the stated approach, it should be noted that business entities do have negative legal obligations including human rights responsibilities that also have an ethical basis.

It should be noted that business entities are usually committed to undertake negative legal obligations in order to enhance their reputation and therefore, increase their profits. That is how the theory of the “triple-bottom line” was introduced. Hence, it is important to discuss the stated approach in line with the sustainability as a related concept to the CSR.

1.3 The “Triple-bottom line” of Socially Responsible Corporations

Socially responsible corporations are considered to be more successful compared to others, as CSR measures are vital to the profitability of a corporation. Despite the fact the modern national and multinational corporation bear economic, legal, ethical and philanthropic responsibilities, it should be noted that the idea behind the notion of corporate social responsibility was economic

²⁸ Florian Wettstein, *CSR and the Debate on Business and Human Rights: Bridging the Great Divide*, 22(4) BUS. ETHICS Q. 739, 748 (2012).

²⁹ *Id.*

notwithstanding the abovementioned ethical considerations. It is widely argued that CSR policies affect the profitability of business entities and that is why scholars sometimes use “triple-bottom line” as a synonym of “corporate social responsibility”.³⁰ According to the narrow definition of “triple-bottom line”, the term should be used for “measuring and reporting corporate performance against economic, social and environmental parameters”,³¹ It should be stated that CSR policies have the following dimensions: economic, environmental and social. “Companies should have three different bottom lines, the first bottom line should include a traditional concept of the profit and loss account, the second one should be company’s “people account” and third as a measure of ‘planet account.’”³² Corporate performance is sometimes called “sustainable corporate performance that includes financial, social and environmental performance measures. Therefore, inclusion of two additional aspects of measurement and evaluation of corporate performance can be deduced from the proposition that the “responsibility of the company is not only to generate economic welfare (*i.e.*, profit) but also to care for the society (e.g., people) and the environment (*i.e.*, the planet).”³³ The following approach aims to make a business sustainable and durable. Triple bottom line approach suggests viewing benefits to the stakeholders inside and outside corporation and environmental issues (such as water and air) equally important alongside with profit maximization. It is considered to be overall more successful than achieving the same goals on a governmental level.

³⁰ JOHN ELKINGTON, *CANNIBALS WITH FORKS: THE TRIPLE BOTTOM LINE OF 21ST CENTURY BUSINESS*. GABRIOLA ISLAND, BC: New Society Pub. (1998).

³¹ Jamali, *supra* note 6, at 812.

³² ELKINGTON, *supra* note 27.

³³ Fauzi Hasan, Goran Svensson, Azhar Abdul Rahman, “*Triple bottom line*” as “*sustainable corporate performance*”: a proposition for the future, 2(5) Sustainability 1345, 1353 (2010).

According to supporters of the “triple-bottom-line” approach, companies undertaking the mentioned approach should have increased market-share, while other companies that do not undertake “triple-bottom line” approach are more likely to suffer a losses in consumer confidence in the long run.³⁴ However, it should be noted that the “triple-bottom line” theory is also criticized on the grounds that it is extremely hard to measure the “triple-bottom line” as it is complex and involves measurement of intangible assets such as reputation and loyalty.³⁵ Moreover, companies do not usually connect three dimensions of the “triple-bottom-line” and there is no uniformity as regards to the calculation.³⁶ Despite the criticism, supporters of “triple-bottom-line approach” state that they should be aggregated together with the other claims that companies have. For companies basing their income on branding and reputation, it is of utmost importance for them to undertake activities that enhance their “triple-bottom-line”.

The “triple-bottom-line” approach that was firstly examined by John Elkigston is usually linked to the notions of “corporate social responsibility” and “sustainability”.³⁷ Savitz argues that the stated two notions should be distinguished since “responsibility emphasizes the benefits to social groups outside the business, whereas sustainability gives equal importance to the benefits enjoyed by corporation itself.”³⁸ According to him, “a sustainable corporation is one that creates profit for its shareholders while protecting the environment and improving the lives of those with

³⁴ Kaushik Sridhar & Grant Jones, *The Three Fundamental Criticisms of the Triple Bottom Line Approach: An Empirical Study to Link Sustainability Reports in Companies based in the Asia-Pacific Region and TBL shortcomings*, 2 (1) Asian J. BUS. ETHICS. 91, 93 (2013).

³⁵ *Id.* at 94.

³⁶ *Id.* at 108.

³⁷ See generally, John Elkington, *Cannibals with Forks: The Triple Bottom Line of the 21st Century Business*, Gabriola Island, BC, NEW SOCIETY PUB. (1998).

³⁸ ANDREW W. SAVITZ & KARL WEBER, "TRIPLE BOTTOM LINE: HOW TODAYS BEST-RUN COMPANIES ARE ACHIEVING ECONOMIC, SOCIAL, AND ENVIRONMENTAL SUCCESS: AND HOW YOU CAN TOO, REVISED AND UPDATED" xi (2014).

whom it interacts.”³⁹ On the other hand, corporate social responsibility is a separate system including various dimensions that makes the stated notion broad and comprehensive. Savitz mentions that the notion of corporate social responsibility is a very useful term while discussing triple bottom line doctrine in the context of sustainability.⁴⁰ Therefore, it should be noted that the “triple-bottom line” doctrine is usually discussed in the context of corporate social responsibility and even if it is addressed in the context of sustainability, the notion of corporate social responsibility gains huge importance.

Traditional concepts of CSR have shifted towards more unified concept claiming that it is a separate field of law, economics and political economy that is gaining more and more popularity. For this reason, it is important to discuss the modern understanding of the CSR in a separate sub-chapter.

1.4 Modern Understanding of Corporate Social Responsibility

Modern scholars consider various other interpretations of the idea of corporate social responsibility. Nowadays, CSR is considered to be an autonomous system reflecting various dimensions (environmental, social, economic, stakeholder, and voluntariness),⁴¹ which “enables the production and distribution of wealth for the betterment of its stakeholders through the implementation and integration of ethical systems and sustainable management practices.”⁴² Since CSR is a complex system, it is defined in various manners. As it was already discussed,

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Alexander Dahlsrud, *How Corporate Social Responsibility is Defined: An Analysis of 37 Definitions*, 15(1) CORP. SOC. RESP. & ENVTL. MNGE J. 5-6 (2013).

⁴² Richard E. Smith, *Defining Corporate Social Responsibility: A Systems Approach For Socially Responsible Capitalism*, Master of Philosophy thesis 9 (2011), http://repository.upenn.edu/od_theses_mp/9.

according to Carroll, “corporate social responsibility involves the conduct of a business so that it is economically profitable, law-abiding, ethical and socially supportive.”⁴³ This approach suggests that “economic and legal responsibilities are socially required (i.e., mandatory), ethical responsibilities is socially expected, while philanthropy is socially desired.”⁴⁴ According to Wartick and Cochran, CSR measures should be socially responsible and it should address social issues.⁴⁵ The current model of “corporate social responsibility”, states that corporations should be managed in such a way to satisfy the different corporate stakeholders.⁴⁶ By introducing the stakeholder dimension, the nature of corporations had been re-conceptualized. New stakeholders beyond the traditional pool – shareholders, suppliers, employees, and customers were introduced. The new way of thinking suggests that “needs of shareholders cannot be met without satisfying to some degree needs of other stakeholders.”⁴⁷ According to Freeman, there are several arguments that support “managing for stakeholders” approach: 1. The argument from consequences, taking into account stakeholder needs guarantees greater goodwill; 2. The argument from rights, corporations are owned by customers, suppliers, employees; 3. The argument from a character of the business, taking into account that business virtues fairness and efficiency.⁴⁸ Therefore, the stakeholder dimension is an integral part of the notion of corporate

⁴³ Archie B. Carroll, *Corporate Social Responsibility: Will Industry Respond to Cutbacks in Social Program Funding*, 49 (19) *Vital Speeches of the day*, 604, 605 (1983).

⁴⁴ Dima Jamali, *A Stakeholder Approach to Corporate Social Responsibility: A French Perspective into Theory and Practice*, *J. Bus. Ethics*, 213, 215 (2008).

⁴⁵ Steven L. Wartick & Philip L. Cochran, *The Evolution of the Corporate Social Performance Model*, 10 *Acad. Manage Rev.* 758, 758 (1985).

⁴⁶ Max B.E. Clarkson, *A Stakeholder Framework for Analyzing and Evaluating Corporation Social Performance*, 20 *ACAD. MNG. REV.* 92, 93 (1995).

⁴⁷ Jamali, *supra* note 44, at 217.

⁴⁸ TOM L. BEAUCHAMP, NORMAN E. BOWIE, AND DENIS G. ARNOLD, EDS., *ETHICAL THEORY AND BUSINESS*, Upper Saddle River, NJ: Pearson/Prentice Hall (8th ed. 2007).

social responsibility, which states that corporations must be viewed as at the center of a “network of interrelated stakeholders that create, sustain and enhance value-creating capacity.”⁴⁹ Stakeholder dimension of the CSR is of paramount importance for the determination of the current concept of the corporate social responsibility, which is broader and more complex than “Carroll’s CSR pyramids” and its four dimensions.

Various legal scholars criticize the current notion of corporate social responsibility, including its stakeholder dimension. Supporters of neo-classical economic theory and shareholder primacy doctrine state that the only aim that corporations can have is to increase the profits for their shareholders. Hence, stakeholder dimension has been highly controversial among legal scholars and economists.

⁴⁹ James E. Post, Lee E. Preston, Sybille Sachs, *Managing the Extended Enterprise: The New Stakeholder View*, 45(1) CAL. MNG. REV. 6, 8 (2002).

CHAPTER 2. SHAREHOLDER VERSUS STAKEHOLDER DEBATE

Implementation of the CSR into the legal context of the United States has faced disagreement between two schools of shareholder-profit-maximization and stakeholder protection. The mentioned dilemma stems from the above-discussed approaches with respect to the purpose of corporations.

Firstly, basic arguments of the mentioned debate will be discussed in the present introductory paragraph before addressing related legal and business arguments separately in the following sub-chapters. The subsequent Sections of this Chapter will analyze the victor of the debate through emphasizing the emergence of the stakeholder protection approach supporting the CSR policies. This chapter concludes by applying provided approaches to the emerging market of Georgia in order to explore and assesses to what extent non-US legal systems can catch the legal debate between shareholder and stakeholder theories and codify discussed theories articulating CSR.

2.1 Fundamental Arguments Related to the Shareholder versus Stakeholder Debate

The stakeholder dimension of CSR is confronted with the shareholder theory widely accepted among economists and legal scholars. Supporters of the shareholder theory claim that corporate governance in the United States “is almost always stated in terms of maximizing shareholder wealth.”⁵⁰ The stated approach is expressed in the following famous quotation of Milton Friedman: “there is one and only social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the

⁵⁰ Katharine V. Jackson, *Towards a Stakeholder-Shareholder Theory of Corporate Governance: A Comparative Analysis*, 7(2) Hastings Bus. J. 309, 312 (2011).

game, which is to say, engages in open and free competition without deception and fraud.”⁵¹ Supporters of the shareholder theory claim that corporate law is witnessing “the end of history.”⁵² Various scholars claim that the battle between shareholder-wealth-maximization school of corporate legal thought and stakeholder-protection/social-responsibility school is over and the victor is considered to be the shareholder primacy theory.⁵³ In contrast to the stated approach, a second group of legal scholars argue that the allowance of charitable giving, adoption of constituency statutes and expansion of corporate social responsibility outside corporate law show that claims of victory for shareholder theory over stakeholder doctrine “depend on an artificially narrow view of the law affecting corporate management.”⁵⁴ Supporters of stakeholder theory claim that shareholder primacy approach is not a victor in this debate since “corporate law alongside the many other areas of the law of business that do interfere with the free market and restrain corporate management in the interests of corporate stakeholders.”⁵⁵ The stated debate includes disagreement regarding the scope of fiduciary duties of directors. The main question, which arises, is the following: whether directors of corporations have a duty to make business decisions exclusively in order to maximize shareholder’s wealth or it is permitted to consider stakeholder interests as well. Provided theories answer this question differently.

⁵¹ Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, The New York Times Magazine (1970).

⁵² Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L. J. 439 (2001).

⁵³ Adam Winkler, *Corporate Law or the Law of Business: Stakeholders and Corporate Governance at the End of History*, 67 Law and Contemporary Problems 109, 109 (2004); See FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* (1991); NICHOLAS WOLFSON, *THE MODERN CORPORATION: FREE MARKET VERSUS REGULATION* (1984); Henry Butler, *The Contractual Theory of the Corporation*, 11 GEO. MASON U. L. REV. 99 (1989).

⁵⁴ Winkler, *supra* note 53, at 111.

⁵⁵ *Id.* at. 112.

2.2 The *Dodge* Case And the Shareholder-Wealth-Maximization Theory

The structure and basics of corporate law ensure that corporations operate in the interest of shareholders; employees, customers and credits may have contractual claims against corporations but “shareholders claim the corporation’s heart”.⁵⁶ The following approach is often referred to as shareholder primacy theory. Despite the fact that shareholder primacy norm has various formulations, the one often quoted comes from the famous case *Dodge v. Ford Motor Co.*⁵⁷: “A business corporation is organized and carried on primarily for the profit of the stockholders” and “[t]he powers of the directors are to be employed for that end.”⁵⁸ Management retained discretion over “choice of means to attain that end,”⁵⁹ fiduciary duties of directors obliged them to work for shareholders rather than for community.

In the stated case, the Dodges as minority shareholders objected to the decision made by the board of directors, claiming that the decision was based on Henry Ford’s (founder of the Ford Motor Co.) personal preferences about doing social good for workers and customers as opposed to making the most money for shareholders. As opposed to Henry Ford’s aspirations, Michigan Supreme Court struck down Henry Ford’s plan to use surplus earnings to reduce car prices rather than distribute those earnings to shareholders.⁶⁰ Therefore, the Supreme Court undertook the shareholder-wealth-maximization approach stating that business corporations are primarily created for the purposes of making profit and the Court cannot review purely business matters.⁶¹

⁵⁶ D. Gordon Smith, *The Shareholder Primacy Norm*, 23 J. CORP. L. 277, 278 (1998).

⁵⁷ *Dodge v. Ford Motor Co.*, 170 N.W.684 (Mich. 1919)

⁵⁸ *Id.* at 684.

⁵⁹ *Id.*

⁶⁰ Jill E. Fisch, *Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy*, 31 J. Corp. L. 637, 650 (2006).

⁶¹ *Dodge*, *supra* note 57, at 684.

The *Dodge* case is considered a leading case relied upon by the supporters of the shareholder primacy theory as opposed to the goals connected to the corporate social responsibility such as economic benefits or surplus to workers or consumers. However, it is not usually pointed out that initial purpose of Henry Ford was not only doing goods as much as company could, “everywhere, for everybody concerned”, but to make money incidentally.⁶² Henry Ford could not attain the stated purpose since the Supreme Court applied a doctrinal rule of shareholder primacy.

The mentioned doctrinal approach is derived from the theory of corporate law, stating that shareholders should be considered as owners of corporation and the corporation should be managed in accordance to their interests.⁶³ Since shareholders are considered to be owners of the corporation, it has been argued that directors of corporations do not have the power to sacrifice interests of shareholders in order to attain corporate social responsibility goals.⁶⁴

Shareholder primacy norm consists of the implied contract between the shareholders, who agree that the main goal of a corporation is to increase their profits and the main function performed by corporate law is to maximize achievement of the stated goal agreed between the parties.⁶⁵ Shareholders bear the risk related to their investment in the corporation and therefore, they should be given greater protection.

⁶² Alexander R. Crabb, *The Birth of a Giant: The Men and Incident that Gave America the Motorcar*, 359 (1960).

⁶³ *Malone v. Brincat*, 722 A.2d 5, 9 (Del. 1998); See Adolf Berle, *Corporate Powers as Powers in Trust*, 44 HAR.L.REV. 1145, 1156 (1932); Adolf Berle, *For Whom Corporate Managers Are Trustees: A Note*, 45 HAR.L.REV. 1365 (1932).

⁶⁴ Friedman, *supra* note 51, at 32.

⁶⁵ Fisch, *supra* note 60, at 656.

Compared to stakeholder theory, shareholder primacy norm reduces risks of managerial opportunism.⁶⁶ If directors of the open and closed corporations have broader discretion to make business decisions, they might end up in the situations of self-dealing or use of power in their personal interests. Since shareholders of the corporations exercise residual control over the invested assets⁶⁷ during the establishment of the corporation, they might encounter problems related to the managerial opportunism and lack of scrutiny on the side of directors. If stakeholder primacy is a starting point for corporate law, it should be noted that managers could always justify their decisions based on legal theory of corporate social responsibility. They might argue that their decisions benefit either consumers or environment or actions were taken in order to serve interests of employees and general corporate culture. It was rightly pointed out by Stephen Bainbridge, that it does not matter what kind of actions are taken by the managers of corporations, there is likely to be someone for whom they can claim protection.⁶⁸ Self-serving and using managerial opportunities can destroy firm value of an open or closed corporation that eventually has detrimental effect on shareholders. Economists usually describe the stated problem as “agency costs”.

Since shareholders are considered to be residual claimants of the corporations whose claims are satisfied after all fixed claims are paid, they are interested in maximizing the firm value of the corporations as the surplus that they get as a residual claimants depends on overall firm value of the corporation.⁶⁹ Based on the abovementioned arguments, supporters of shareholder primacy

⁶⁶ Winkler, *supra* note 53, at 118.

⁶⁷ Martin Gelter, *Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance*, 50 Harv. Int'l L.J. 129, 137 (2009).

⁶⁸ Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 WASH. & LEE L. REV. 1423, 1432-1436 (1993).

⁶⁹ Fisch, *supra* note 60, at 658.

theory consider that managers, shareholders, lawmakers and representatives of judiciary power should uphold the following approach.

2.3 Rationale of the Stakeholder-Protection Theory

Stakeholder-protection theory, which is based on the ideas of corporate social responsibility, takes a different approach compared to the shareholder primacy theory. Supporters of stakeholder primacy theory argue that directors of corporations exist to serve the interests not shareholders per se, but all of a firm's stakeholders.⁷⁰ The ideas of stakeholder-protection approach were rightly summarized by the esteemed professor Merrick Dodd at Harvard Law School who argued for "a view of the business corporation as an economic institution, which has a social service as well as profit making function."⁷¹ He claimed that proper purpose of corporations is not only to make money for shareholder, but to produce quality products for consumers, secure jobs for employees, and to contribute to the welfare of the community.

Stakeholder-protection theory is claimed to be a progressive approach in the field of corporate law. Progressive ideals have influenced various areas of corporate law, for instance charitable giving that is allowed under corporate law and the adoption of constituency statutes in the United States.⁷² Constituency statutes expanded managerial discretion of the directors of corporations that allowed them to take stakeholders' interests into account while making decisions. Many progressive corporate scholars in the United States, such as Lawrence Mitchell argue future reforms should be incorporated in the field of corporate law and managers of corporations should

⁷⁰ Lynn A. Stout & Margaret Blair, A Team Production Theory of Corporate Law, 85 VA. L. REV. 247, 253 (1999).

⁷¹ E. Merrick Dodd, *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1148 (1932).

⁷² Winkler, *supra* note 53, at 110.

be too much focused on short-term share prices.⁷³ Mitchell proposed to trust directors of corporations to run them and take into account moral and social aspects of their behavior, as well as profitability of the corporations.⁷⁴

As regards to the concerns raised by the supporters of shareholder primacy theory that expanded managerial discretion of directors can lead to managerial opportunism, it should be noted that shareholders have rights of control. They can vote against the appointment of directors and/or bring derivative claims on behalf of corporations.

Furthermore, supporters of the stakeholder theory claim that various other fields of law that influence directors of corporations to undertake stakeholder-protection theory. There are laws related to environment, consumer protection, and labor that favor stakeholders of corporations instead of shareholders.⁷⁵ Hence, default rules and mandatory provisions included in the fields of environmental law, labor law and consumer protection leads to conclusion that ideals of progressive legal scholars in the area of corporate should be pursued.

Followers of the stakeholder-protection theory identify various weaknesses of shareholder primacy theory upheld in the famous *Dodge* case and argued by the famous Nobel Prize-winning economist – Milton Friedman. First of all, it should be pointed out that shareholders are not the owners of corporations; they own corporate security called “stock”.⁷⁶ Therefore, they do not directly control the earnings of corporation; rather they have right to get dividends only in case directors declare that dividends should be distributed. It is highly questionable whether even only

⁷³ LAWRENCE E. MITCHELL, *CORPORATE IRRESPONSIBILITY: AMERICA'S NEWEST EXPORT* 185 (2001).

⁷⁴ *Id.*

⁷⁵ *Id.* at. 132; See Deborah A. Ballam, *The Evolution of the Government-Business Relationship in the United States: Colonial Times to Present*, 31 AM. BUS. L. J. 553 (1994).

⁷⁶ Lynn A. Stout, *Bad and Not-so-Bad Arguments for Shareholder Primacy*, 75 S. Cal. L. Rev. 1189, 1991 (2002); See Lynn M. Lopucki, *The Myth of the Residual Owner: an Empirical Study*, 82 Wash. U. L. Q. 1341 (2004).

one shareholder in closed corporations “owns” the corporation itself. As according to modern option theory, corporations usually issue debts and if we undertake “ownership” approach, it can be argued that debtors also “own” corporations.⁷⁷

Moreover, as opposed to the shareholder primacy theory, stakeholder-protection theory argues that shareholders can only be residual claimants of the corporation when corporation is in the process of bankruptcy.⁷⁸ It should also be pointed out that the shareholders are not sole residual claimants in bankruptcy proceedings and therefore, their interests can be taken into account together with the interests of other stakeholders as stakeholder-protection theory suggests.

Supporters of the stakeholder-protection theory claim that corporate social responsibility measures ensure popularity of brands despite management lapses and provide an effective economic basis for long-term prospects of companies.

2.3.1 Stakeholder-Protection Measures as Brand Insurance

Stakeholder-Protection measures guarantee popularity of brands that business enterprises usually have. The CSR policies and stakeholders’ reactions are central for the corporations that mostly get its income from “intangibles” – trademarks, patents, etc. It is argued that growing need of brand management “moves CSR from being a minimal commitment or some social ‘ad-on’ to becoming a strategic necessity.”⁷⁹ Since stakeholders usually demand corporations to be accountable, corporate governance of multinational corporations and smaller business entities

⁷⁷ *Id.*; See Fischer Black & Myron Scholes, *The Pricing of Options and Corporate Liabilities*, 81 J. POL. ECON. 637 (1973).

⁷⁸ *Id.* at. 1194.

⁷⁹ William B. Werther Jr. & David Chandler, *Strategic Corporate Social Responsibility as Global Brand Insurance*, 48 BUS. HORIZONS 317, 319 (2004).

that heavily rely on its “intangibles” use stakeholder-protection measures as brand insurance. The CSR policies can correct future management lapses.

It is argued that the stated policies strongly affect customer loyalty towards the company.⁸⁰ Brand reputation has defined as a “perception of quality associated with the name.”⁸¹ Perceived quality of the product of service is associated with its name.⁸² Customers usually have certain preferences as regards to products and services sold under certain names. This phenomenon is called customer loyalty that guarantees future purchases on products or services of certain companies.⁸³ Stakeholder-protection policies enhance the likelihood of future purchase of products offered by socially responsible companies. It is stated that the CSR and corporate reputation is closely linked to each other and empirical results suggest that the stakeholder-protection measures have positive effects on corporation reputation and its future performance.⁸⁴

2.3.2 Economic Arguments for the Stakeholder-Protection Theory

In addition to the positive effects of the stakeholder-protection measures on brand names of corporations, supporters of stakeholder-protection theory raise various economic arguments in support of the mentioned policies.

⁸⁰ Ya-Ling Wu & Eldon Y. Li, *Marketing Mix, Customer Value and Customer Loyalty in Social Commerce: A Stimulus-organism-response Perspective*, 28 (1) Internet Research 74, 78 (Feb. 24. 2018 12:43 PM), <https://doi.org/10.1108/IntR-08-2016-0250>.

⁸¹ Fred Selnes, *An Examination of the Effect of Product Performance on Brand Reputation, Satisfaction and Loyalty*, 27 (9) EUR. J. MKTG, 19, 20 (1993).

⁸² *Id.*

⁸³ *Id.* at. 21.

⁸⁴ Chi-Shiun Lai, Chih-Jen Chiu, Chin-Fang Yang, Da-Chang Pai, *The Effects of Corporate Social Responsibility on Brand Performance: The Mediating Effect of Industrial Brand Equity and Corporate Reputation*, 95 (3) J. BUS. ETHICS 457, 465 (2010).

It is argued that the CSR policies correct market failures (such as externalities, informational asymmetry) and enhance welfare.⁸⁵ The stated policies can enhance competition and ensure protection for correct functioning of the market.⁸⁶ Hence, the stakeholder-protection approach is beneficial for the market, its correct functioning and contributes to general welfare of society.

Furthermore, companies have economic incentives to engage in the CSR activities as they can “reduce costs and risks to the firm, build firm competitive advantage, enhance reputation and legitimacy and create synergies.”⁸⁷ The mentioned activities usually provide social benefit, while aiming to minimize costs and enhance reputation of business entities.⁸⁸

Hence, socially responsible companies are claimed to benefit the overall welfare of society and at the same time maximizes benefits for companies in the long run by enhancing their reputation and minimizing costs of risks. The only managerial challenge is to “manage stakeholder relationships for the maximum benefit of the firm and as well as society”.⁸⁹

2.4 Legal Theory of Corporate Social Responsibility as a Victor of the Debate

It is impossible to rule out any of the discussed theories, however for the author of this paper the victor of the debate between shareholder and stakeholder theories should be claimed to be the latter one. Several arguments need be discussed in this regard. First of all, allowance of charitable giving to the corporations has created the ground for the adoption of the CSR policies by the corporate managers. According to the practice of the United States, corporate

⁸⁵ Francis Weyzig, *Political and Economic Arguments for Corporate Social Responsibility: Analysis and Proposition Regarding the CSR Agenda*, 86 (4) J. BUS. ETHICS 417, 423 (2009).

⁸⁶ *Id.*

⁸⁷ Jill A. Brown & William R. Forster, *CSR and Stakeholder Theory: A Tale of Adam Smith*, 112 (2) J. BUS. ETHICS 301, 302 (2013).

⁸⁸ *Id.*

⁸⁹ *Id.* at. 303.

philanthropy is on rise generating about \$390.05 billion to charities in 2017.⁹⁰ This record level of charitable giving challenges the basic idea of the shareholder profit-maximization theory. According to various scholars, corporate statutes do not usually oblige directors of the corporations to undertake a singular duty of their profit-maximization.⁹¹ According to the state practice, corporate law includes that the directors have fiduciary duties towards shareholders and corporations.⁹² As long as directors act in accordance to “any rational business purpose” while making the corporate decisions and undertaking CSR policies, they are protected under the business judgment rule.⁹³ Corporations use charitable activities as a way of marketing, generating loyalty of consumers, getting tax benefits etc. The most important benefits that companies get out of the charitable activities are tax benefits, as the taxable base is either reduced or the corporation is provided with the credits to mitigate tax liabilities.⁹⁴ Hence, increasing number of corporate giving and related business judgment rules clearly indicate that progressive ideas of stakeholder theory is favored in American legal system.

The second and the most important argument favoring stakeholder theory over the shareholder counterpart is the adoption of constituency statutes. They were adopted as a defense against takeovers and were inspired by progressive ideals of the stakeholder theory supporters. Mentioned changes in corporate law increased managerial discretion in order to take into account

⁹⁰ Giving USA 2017: Total Charitable Donations Rise to New High of \$390.05 Billion, Get Giving USA Report 2017, (Mar. 28, 2018) <https://givingusa.org/tag/giving-usa-2017/>.

⁹¹ See Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U.L. REV. 733, 763 (2005).

⁹² Janet E. Kerr, *The Creative Capitalism Spectrum: Evaluating Corporate Social Responsibility Through a Legal Lens*, 81 Temp. L. Rev. 831, 835 (2008).

⁹³ See R. FRANKIN BALOTTI & JESSE A. FINKELSTEIN, DELAWARE LAW OF CORPORATIONS & BUSINESS ORGANIZATIONS § 4.19(A) (3d ed. 2014) (citing *Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 720 (Del. 1971)).

⁹⁴ See, e.g., I.R.C. § 170 (2012); John A. Pearce II, *The Rights of Shareholders in Authorizing Corporate Philanthropy*, 60 Vill. L. Rev. 251, 252 (2015).

wider range of constituencies rather than only shareholders.⁹⁵ The following approach was undertaken in the landmark Delaware case of *Paramount Communications v. Time* where the court stated that directors have power to adopt defensive measures during takeover with the “impact on ‘constituencies’ other than shareholders”⁹⁶ That was regarded as taking side of stakeholder approach.⁹⁷

Furthermore, it is well argued by Winkler that the CSR gained its victory in a larger context of business law.⁹⁸ Other fields of law rather than corporate law can also be looked at while determining directors’ corporate behavior. Mandatory legal provisions found in the field of labor law, environmental law, consumer protection law and other determine corporate directors’ operational decisions, including decisions regarding allocation of material resources.⁹⁹

Moreover, taking into account that shareholder theories main arguments from property law and residual claims towards the corporation are mostly irrelevant for modern legal practice, it should be stated that the stakeholder dimension has gained a greater importance in this regard. As it was argued in the relevant sub-chapter, shareholders are not owners of corporations, as they own shares not the corporations themselves.¹⁰⁰ If we consider them to be residual claimants, this will be of importance only in case of bankruptcy proceedings. On the other hand, stakeholder theory

⁹⁵ See Eric W. Orts, *Beyond Shareholders: Interpreting Corporate Constituency Statutes*, 61 Geo. Wash. L. Rev. 14 (1992).

⁹⁶ *Paramount Communications v. Time*, 571 A.2d 1140, 1153 (Del. 1990); See *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

⁹⁷ Stout, *supra* note 76, at 1204.

⁹⁸ Winkler, *supra* note 53, at 111.

⁹⁹ *Id.*

¹⁰⁰ See MARGARET M. BLAIR, *OWNERSHIP AND CONTROL: RETHINKING CORPORATE GOVERNANCE FOR THE TWENTY-FIRST CENTURY* 4–5 (1995).

derives its force from the real entity theory, which considers corporations as separate legal entities apart from its shareholders.

Based on the discussed arguments, it should be deduced that the legal concept of the CSR has won the debate with the shareholder theory. And the conclusions, drawn from the *Dodge* and *Revlon* cases¹⁰¹ regarding shareholder profit-maximization are exaggerated if the related concepts are looked at in a larger legal context.

2.5 In Search of the Right Approach for Emerging Market of Georgia

Emerging market of Georgia lacks measures and legal framework addressing the issue of corporate social responsibility and the theories of corporate law or political economy omit mentioning social nature of the corporations. It is important to state that Georgia as an emerging market has recently faced various CSR policies adopted by big corporations and legal scholarship in this regard is quite scarce. According to the scholars, interest towards the CSR activities has enhanced recent years, however it is only the starting point.¹⁰² Several corporations such as commercial banks – “VTB Bank”, “PASHA Bank”, “Bank of Georgia” and “TBC Bank” usually engage in various CSR activities.¹⁰³ They are engaged in various environmental, educational and cultural activities. However, it should be mentioned that their involvement is usually rare and they are done once without continuity. They usually satisfy a very small part of

¹⁰¹ See generally *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

¹⁰² Asie Tsintsadze & Tamar Ghoghoberidze, *The Role of Business Social Responsibility in Managing Social Risks*, J. Soc. Econ. 220, 223 (2017).

¹⁰³ *Id.* See, e.g., TBC Bank, Corporate Social Responsibility (Mar. 31, 2018), <http://www.tbcbank.ge/web/en/social-responsibility>; Bank of Georgia, CSR (Mar. 31, 2018), <http://bankofgeorgia.ge/en/csr>; PASHA Bank, *PASHA Bank won “The Best Corporate Social Responsibility (CSR) Programme in Europe” at the Europe Banking Awards 2012* (Mar. 31, 2018), https://www.pashabank.az/press_centre,607/lang,en/; VTB Bank, Social Responsibility (Mar. 31, 2018), <https://www.vtb.com/group/social/>.

society and do not provide benefits from larger groups of society. Moreover, none of the companies or big corporations has general CSR codes according to which they operate. Therefore, it should be concluded that they perceive CSR activities as additional and rare activities.

It should be stated that CSR activities can be easily implemented by Georgian companies within the context of Georgian corporate law and related theory. Despite the fact that CSR is not defined within the context of Georgian legal framework and theory of corporate law, it can be evident from various legal concepts and provisions. To begin with, under Georgian corporate law directors are not fiduciaries of shareholders they are fiduciaries of corporations.¹⁰⁴ Hence, Georgian and American legal systems differ significantly on fiduciary duties of managers. This clearly suggests that corporate managers should not perceive shareholders wealth-maximization interests as an end. Shareholder theory cannot apply in the mentioned context as directors are considered to be agents of corporation and therefore, they should undertake activities that are beneficial for companies in a short or a long run (depends on directors' decisions). Moreover, Georgian legislation clearly indicates that shareholders only own shares or stocks of respective corporations and they cannot be regarded as owners of the corporations.¹⁰⁵ Therefore, shareholder primacy norm does not have an explicit legal basis in Georgian legislative context.

Despite the mentioned arguments, it should be noted that the business judgment rule, that guarantees more freedom to American corporate directors, is quite weak concept in Georgia. Firstly, BJR is not embedded in the legal context of Georgia, as normative basis of this rule cannot be found in Georgian corporate law. Various Supreme Court decisions applied American

¹⁰⁴ Law of Georgia on Entrepreneurs, Art. 9(6) (Mar. 31, 2018), <https://matsne.gov.ge/en/document/view/28408>.

¹⁰⁵ Civil Code of Georgia, Art. 147, 152 (1997).

concept of BJR in several cases,¹⁰⁶ however it was highly criticized during out of court discussions. Notion of BJR clearly underlines corporate managers' discretion to make corporate decisions only if they reasonably believe that it is beneficial for a corporation. The fact that Georgia does not have normative concept of BJR reduces the number of grounds that can be used in favor of CSR. Since Georgia is a civil law jurisdiction state, legal concepts including BJR that are part of the judicial decisions do not have significant impact as judges are obliged to apply laws and constitution.¹⁰⁷ Hence, before the legal provisions in the field of corporate law changes in Georgia, BJR that exists in the case law is quite weak to guarantee corporate directors' freedom while adopting CSR activities. It should be stated that draft of the new Law of Georgia "On Entrepreneurs" includes normative notion of business judgment rule that will enhance corporate directors' power to engage in CSR activities.

It should be also stated that Georgian scholarship lacks theories in the field of corporate law or political economy that would suggest or indicate corporations' obligations towards society. As it was already discussed in previous chapter, it is sometimes hard to find legal remedies for corporate wrongdoings and for this reason they should engage in CSR activities. Profit making goals of shareholders and corporate managers is embedded in business culture of Georgia. CSR is not regarded as a tool of correcting market failures or enhancing welfare of society. Despite the fact that companies incorporated in Georgia are created for entrepreneurial activities to gain profit,¹⁰⁸ it does not give shareholders absolute power to preclude all external activities of

¹⁰⁶ See e.g., Supreme Court of Georgia, Case #სს-1307-1245-2014; Case #სს 1158-1104-2014.

¹⁰⁷ Georgia Const., Art. 84(1) (1995) (Apr. 1, 2018), <https://matsne.gov.ge/en/document/view/30346>; See e.g., Nini Gogiberidze, *Update: Guide to Georgian Legal Research*, Global Law & Justice (Apr. 1, 2018), <http://www.nyulawglobal.org/globalex/Georgia1.html>.

¹⁰⁸ Law of Georgia on Entrepreneurs, Art. 1(1), 1(2); See e.g., IRAKLI BURDULI, FOUNDATIONS OF COMPANY LAW I (2010).

companies other than profit-making ones. Moreover, traditional concept of CSR, namely Carroll's pyramid and "triple-bottom line" approach or modern understanding of the stated notion does not preclude profit-making activities of business entities. In this regard, stakeholder theory should be relevant for Georgian market as well.

In spite of the mentioned arguments that favor stakeholder theory and relevant practice of Georgian companies, it is claimed that business entities generally misunderstand the idea of CSR.¹⁰⁹ Majority of Georgian companies view CSR narrowly as philanthropy and help to vulnerable people.¹¹⁰ Charitable contributions are part of CSR activities, however CSR includes not only charitable donations but also various types of environmental, consumer protection and other activities. Georgian companies mostly undertake CSR activities as part of their profit-maximization and enhancement of their "triple-bottom-line." Moreover, they advertise their CSR policies just for their brand insurance since companies that highly depend on "intangibles" such as trademark are mostly interested in relevant CSR activities.

Large-scale corporations that are registered on stock exchange markets are obliged to adhere to respective reporting requirements and undertake strategic approaches towards CSR. PricewaterhouseCoopers (PwC) Georgia actively suggests small and medium size enterprises to undertake CSR activities in order to fully comply with the regulatory framework of the State.¹¹¹

Hence, companies are suggested to pursue CSR activities for the purposes to fulfill negative legal obligations. Georgian companies are obliged to fulfill their negative obligations, however it

¹⁰⁹ The Financial, *Majority of Companies in Georgia Misunderstood the Idea of CSR, Survey*, 2016 (Apr. 1, 2018) <https://www.finchannel.com/index.php/world/georgia/54997-majority-of-companies-in-georgia-misunderstood-the-idea-of-csr-survey>.

¹¹⁰ *Id.*

¹¹¹ The Financial, *PricewaterhouseCoopers Calling on Georgian Companies to Adopt Principles of Social Responsibility*, 2018 (1 Apr, 2018), <https://www.finchannel.com/interviews/71755-pricewaterhousecoopers-calling-on-georgian-companies-to-adopt-principles-of-social-responsibility-2>.

is more interesting to see if they start to undertake CSR obligations as their positive obligations towards society. It should not be binding, however it will correspond the very nature of corporate social responsibility. As it was already discussed, CSR and its ethical considerations have not yet raised to the level of positive legal obligations for corporations and it will be extremely hard for Georgian companies to undertake the mentioned obligations as positive ones. It needs to be noted that there is a room for improvement in relevant business laws that contribute to CSR activities. The mentioned approach was undertaken by the EU-Georgia Association Agreement Art. 348, which states that parties shall strengthen their dialogue as regards to social protection, corporate social responsibility, and sustainable development.¹¹² Furthermore, Georgia is obliged under the Association Agreement to promote responsible business practices that are embedded in various international instruments and especially the OECD Guidelines of Multinational Enterprises.¹¹³

Hence, current legislative framework of Georgia and planed legislative changes clearly indicates that Georgian companies shall undertake stakeholder protection approach and engage in CSR activities in a broader sense. Moreover, since Georgia is in the process of moving closer to the European Union and its internal market,¹¹⁴ it should promote CSR activities and business entities should engage in them in order to follow modern trend of developed capital markets.

¹¹² Council Decision 2014/494/EU, On the Signing, on Behalf of the European Union, and Provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the One part, and Georgia, of the Other Part, 2014 O.J. (L.261) 1, Art. 348.

¹¹³ *Id.* Art. 352.

¹¹⁴ *Id.* Art. 1(2)(h); *See* European Union's Agreement on Deep and Comprehensive Free Trade Area and Georgia, European Union, Open Society Georgia Foundation, Economic Policy Research Center (EPRC) (2014).

CHAPTER 3: THE RISE OF BENEFIT CORPORATIONS

This chapter will be dedicated to the Benefit Corporations (BC) as an important step reached by corporate social responsibility. Benefit Corporations are considered to be revolutionary in the context of social enterprises. BCs historical evolution and its relationship with corporate social responsibility will be discussed in separate sub-chapter. Consequently, legal framework governing BCs will be analyzed. Finally, expanded scope of fiduciary duties of corporate managers of BCs will be discussed.

This chapter will provide analyzes of Benefit Corporations in order identify characteristics of the stated corporate form. Identified characteristics will be applied to Georgian market in the final chapter, which will examine whether introduction of BCs in Georgian market is possible and sensible within existing legal framework of the State.

3.1 Benefit Corporations – Redefining Business Purpose of Corporations

The Benefit Corporation is a new legal entity introduced by recent legislations in various States, including Delaware in the U.S.¹¹⁵ The most important distinctive character of the BC is that it is legally obliged to pursue its activities for public benefit in addition to its responsibilities towards shareholders as regards to profit-maximization.¹¹⁶ BC is for-profit business entity with traditional characteristics of corporate law and social responsibilities.¹¹⁷ In the era of shareholder primacy

¹¹⁵ Janine S. Hiller, *The Benefit Corporation and Corporate Social Responsibility*, 118(2) J. Bus. Ethics. 287, 287 (2012).

¹¹⁶ *Id.* See e.g., DEL. GEN. CORP. L. § 362 (a); CAL. CORP. CODE §§ 14600-14631 (West 2011); N.Y. Bus. Corp. L. §§ 1701-1709 (Consol. 2011).

¹¹⁷ Brett H. McDonnell, *Committing to Doing Good and Doing Well: Fiduciary Duty in Benefit Corporations*, 20 FORDHAM J. CORP. & FIN. L.. 19, 21 (2014).

theory, there was a split between two extremes, embodied in legal forms of associations.¹¹⁸ There were differences between the business entities focused on profit maximization and on the other hand, non-profit corporations interested in doing social good.¹¹⁹ As a form of bridging a great divide hybrid form of business entities – BCs were introduced. BCs correspond to the existing reality of the business world. Some entrepreneurs are interested in both – profit maximizing and at the same time, doing social good. Social enterprises,¹²⁰ such as BCs serve exactly the purpose of satisfying the needs of various entrepreneurs and investors being focused on profits and social commitment as well. Benefit corporations are incorporated the same way as other corporations, while voluntarily undertaking additional specific duties in their articles of incorporation.¹²¹ BCs have the following characteristics that clearly indicate their connection with the notion of corporate social responsibility: first of all, BCs should have the purpose of providing a public benefit; secondly, they should regularly report how they attempted to pursue their purpose; thirdly, corporate directors can take into account interests of various stakeholders rather than only shareholders and finally, BCs need to be transparent and there is possibility of enforcement by means of benefit enforcement proceedings (BEP).¹²² The following characteristics of benefit corporations will be discussed separately in the following sub-chapters. Delaware General Corporation Law (DGCL) and Model Benefit Corporation Legislation¹²³ will serve as a model for analyzing legal framework concerning BCs. Delaware law is chosen because of its developed

¹¹⁸ Lyman Johnson, Pluralism in Corporate Form: Corporate Law and Benefit Corps, 25 Regent U. L. Rev. 269, 280 (2012-2013).

¹¹⁹ McDonnell, *supra* note 117.

¹²⁰ See generally, Robert A. Katz & Antony Page, *The Role of Social Enterprise*, 35 VT. L. REV. 59, 61-62 (2010); Thomas Kelly, *Law and Choice of Entity on Social Enterprise Frontier*, TUL. L. REV. 337, 347 (2009).

¹²¹ Hiller, *supra* note 115, at 291.

¹²² *Id.* See e.g., McDonnell *supra* note 117, at. 21-22.

¹²³ Model Benefit Corp. Leg. (2014) (Apr. 3, 2018), http://benefitcorp.org/storage/Model_Legislation.pdf.

corporate law, while taking into account the fact that most American and large international corporations are registered in the State of Delaware.

3.1.1 Public Benefit Goals of Benefit Corporations

The main characteristic of BCs is that they are intended to provide public benefit or public benefits and pursue their activities in sustainable manner.¹²⁴ It is important to figure out what is considered to be public benefit and what BCs need to provide for public. According to the Delaware General Corporation Law, “public benefit” is defined as follows:

“‘Public benefit’ means a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature.”¹²⁵

While analyzing public-benefit goals of BCs, it should be noted that scholars emphasize that Benefit Corporations should provide material positive impact on environment and society as a whole.¹²⁶ It is important to note that some scholars emphasize on materiality as to determine whether BCs provide general public benefit, assessed against a third-party standard.¹²⁷ Some times ago, corporations were accused of “greenwashing” by advertising certain activities and not

¹²⁴ See e.g., DEL. GEN. CORP. L. § 362 (a).

¹²⁵ *Id.* § 362 (b).

¹²⁶ Hiller, *supra* note 115, at 292.

¹²⁷ *Id.*

providing the information regarding overall impact of corporation on environment or society.¹²⁸

The mentioned problem is addressed in case of BCs, as they are usually obliged to provide the information regarding general positive impact they had on environment and society as a whole.

Moreover, according to the Model Benefit Corporation Legislation, BCs are also allowed to identify and pursue one or more “specific public benefit” purpose(s).¹²⁹ It even lists seven non-exclusive lists for specific public benefits, including improving health, preserving environment, promoting sciences, arts or educational advancement and etc.¹³⁰ By putting emphasis on general and specific public benefit goals of BCs, Model legislation established legal form of business entity fully devoted to its CSR values. Scholars, such as Clark and Babson provide illustrative example of why general public benefit should be provided by BCs together with one or more specific public benefits.¹³¹ According to them, even in case when corporation gives 95 percent of its income to charity as a specific public benefit, it might generally use child labor for instance.¹³² The stated business entity cannot be regarded as a BC without providing general public benefit, even if it undertakes specific public benefit activities.

Material positive benefit of Benefit Corporations should be assessed against a third-party standard.¹³³ This approach serves effective reporting mechanism that will be discussed in Section 3.2 of this Chapter and avoids problems of “greenwashing” as well. Before moving to legal

¹²⁸ See generally, Marya N. Cotton & Gail A. Lasprogata, *Corporate Citizenship & Creative Collaboration: Best Practice for Cross-Sector Partnerships*, 18 J. L. Bus. & Ethics 9 (2012); Michael R. Deskins, *Benefit Corporation Legislation, Version 1.0 - A Breakthrough in Stakeholder Rights*, 15 Lewis & Clark L. Rev. 1047 (2011).

¹²⁹ Model Legislation § 201.

¹³⁰ *Id.*

¹³¹ William H. Jr. Clark & Elizabeth K. Babson, *How Benefit Corporations are Redefining the Purpose of Business Corporations*, 38 Wm. Mitchell L. Rev. 817, 842 (2012).

¹³² *Id.*

¹³³ See e.g., CAL. CORP. CODE § 14601(c); MD. CODE ANN., CORPS. & ASS'NS § 5-6C-01(b) (slight variation of definition); VT. STAT. ANN. tit. 11A, § 21.03.

framework of BCs, it is important to discuss its relation to CSR and positive results stemming from their commitments towards society as a whole.

3.1.2 Benefit Corporation and CSR

Public benefit goals of Benefit Corporations leads to the most relevant question as to what kind of interrelationship is present between BCs and CSR. Generally accepted view is that BCs satisfy major criteria of corporate social responsibility. This sub-chapter aims to discuss links between BCs and CSR.

Characterization of BCs under CSR includes the following: 1) actions of BCs are primary voluntary, 2) related externalities are internalized, 3) various stakeholders' interests are considered, 4) interests of environment and society are integrated, 5) CSR is adopted as a value, 6) CSR is considered to be more than charitable actions.¹³⁴ All mentioned criteria will be elaborated in details for the purposes of clarity and further application to Georgian market.

As regards to the voluntary character of CSR applied in the context of BCs, it should be emphasized that BCs choose to operate as this legal form of business entities. They pick Benefit Corporation as a business form while incorporation or afterwards by the action of respective corporate managers and stockholders.¹³⁵ Management of externalities is evident from the goal of BC as externalities are generally addressed by providing positive benefit to environment or society.¹³⁶ Directors' fiduciary duties are expanded while requiring them to consider various environmental, societal and stakeholders' interests. CSR policies and values are included in the

¹³⁴ Hiller, *supra* note 115, at 295; *See generally* ANDREW CRANE, DIRK MATTEN, LAURA SPENCE, *CORPORATE SOCIAL RESPONSIBILITY: READINGS AND CASES IN GLOBAL CONTEXT* 3-20 (Routledge Ed. 2008).

¹³⁵ *Id.*

¹³⁶ *Id.*

articles of incorporation of BCs.¹³⁷ Moreover, Benefit Corporations do not follow narrow view of CSR as it do not limit its activities to charitable contributions. Hence, BC satisfy baseline criteria of CSR and can be considered as business entity, which supports and implements CSR in its business activities.

Despite the mentioned arguments, some scholars provide criticism of benefit corporations having two purposes – profit-maximization and non-profit, public benefit purposes.¹³⁸ They state that combining two purposes may result in undertaking CSR activities for strategic business purposes rather than for the realization of various stakeholder interests.¹³⁹ This would lead to the instrumental approach towards BCs and its aspirations towards creation of public good. However, it should be taken into account that aim of the creation of BCs is to depart from shareholder primacy norm and create new business entity and “mak[e] it easier for the next generation of entrepreneurs and investors to build businesses that seek to create value for both shareholders and society.”¹⁴⁰ Most importantly it is worth mentioning that even though BCs have profit-maximization goals and aims to provide public benefit, they are obliged to pursue both of them. The stated characteristic makes the difference between benefit corporations and other forms of corporations available in the United State, as BCs are *obliged* to take into account stakeholder interests after they voluntarily chose the business entity form of Benefit Corporation.

¹³⁷ *Id.*

¹³⁸ See generally, Dorothea Baur & Hans Peter Schmitz, *Corporations and NGOs: When Accountability Leads to Co-optation*, 106 (1) J. BUS. ETHICS 9, 18-19 (2012); Krista Bondy, Jeremy Moon, Dirk Matten, *An Institution of Corporate Social Responsibility (CSR) in Multi-National Corporations (MNCs): Form and Implications*, 111 (2) J. BUS. ETHICS 281, 295-296 (2012).

¹³⁹ *Id.*

¹⁴⁰ William H. Clark, Jr. & Larry Vranka, *The Need and Rationale for the Benefit Corporation: Why it is the Legal Form that Best Addresses the Needs of Social Entrepreneurs, Investors, and Ultimately, the Public*, 6 (2012) (Apr. 5, 2018), <http://benefitcorp.net/policymakers/benefit-corporation-white-paper>.

Moreover, taking into account the fact that BCs pursue general public benefit goals and usually has specific public benefit purpose as well, presumption that financial interests take precedence over public benefit purposes should be rejected.¹⁴¹

Since Benefit Corporations are closely linked to CSR, it is relevant to discuss effects of their social commitments on brand loyalty expressed by consumers or investors.

3.1.3 Commitment of Benefit Corporations and its Effects on Brand Loyalty

Nowadays, significant numbers of consumers make their purchases according to the corporations' values.¹⁴² American consumers favor products offered by socially responsible corporations, which take into account environmental and societal interests.¹⁴³ Since Benefit Corporation constitutes socially committed form of business entity; they are usually favored by consumers. Many consumers "use their purchasing power to reward companies that positively address a social or environmental issue."¹⁴⁴ Consumer loyalty should be considered in a broad picture of how society thinks about the company in question. Socially responsible activities of corporations have impact on the value of the consumer satisfaction as well.¹⁴⁵ Some scholars even argued that brand loyalty generated as a result of CSR activities could protect socially responsible companies, including benefit corporations from the undesirable consequences of negative information about the services or products offered by the business entities in

¹⁴¹ Clark & Babson *supra* note 131, at 840.

¹⁴² Clark & Vranka *supra* note 140, at 2.

¹⁴³ See e.g., LAWRENCE GLICKMAN, *BUYING POWER: A HISTORY OF CONSUMER ACTIVISM IN AMERICA* (U. CHI. PRESS 2009).

¹⁴⁴ Clark & Vranka, *supra* note 140.

¹⁴⁵ Jiyun Kang & Gwendolyn Hustvedt, *Building Trust Between Consumers and Corporations: The Role of Consumer Perceptions of Transparency and Social Responsibility*, 125(2) J. BUS. ETHICS 253, 255 (2014).

question.¹⁴⁶ Hence, it should be concluded that the investors and entrepreneurs have strong incentive to adopt CSR policies, even greater incentives to incorporate their businesses in the form of Benefit Corporation, in order to catch brand loyalty of consumers, get brand insurance from possible negative information as regards to services or products offered to consumers and lastly and most importantly, to increase their “triple-bottom-line” (if corporate managers follow this strategy) and maximize profits in a long run.

As a conclusion of the present sub-chapter, it should be stated that business form of Benefit Corporations has redefined business purpose (solely profit-maximization) of corporations. They constitute hybrid form of business entity, which corresponds current reality of socially responsible enterprises. They have clear links to the notion of corporate social responsibility that guarantees that BCs catch brand loyalty and at the same time provide material public benefit. It is important to move on and discuss special legal characteristics of BCs in order to apply afterwards to emerging market of Georgia and determine whether introduction of BCs into Georgian market is possible and sensible from legal and business perspectives.

3.2 Reporting Requirements Applicable to Benefit Corporations

Benefit Corporations are required to present annual report to shareholders and to post it on its website to make it available to the public.¹⁴⁷ Some U.S. States require filling the report with the department of those States.¹⁴⁸ Unlike the reporting requirements applicable to BCs, in the classical world of shareholder primacy, performance of business entity and of their corporate

¹⁴⁶ See generally, Andreas B. Eisingerich, Rubera Gaia, Matthias Seifert, Gunjan Bhardwaj, *Doing Good and Doing Better Despite Negative Information?: The Role of Corporate Social Responsibility in Consumer Resistance to Negative Information*, 14(1) J. SERVICE RESEARCH. 60 (2011).

¹⁴⁷ See e.g., MD. CODE ANN., CORPS. & ASS'NS §§ 5-6C-08(a), 5-6C-08(c)(1).

¹⁴⁸ See e.g., N.Y. BUS. CORP. LAW §§ 1701-1709 (Consol. 2011).

managers can be shown in their financial statements.¹⁴⁹ In the world of Benefit Corporations, BCs are required to provide annual reports that will include overall assessment of societal and environmental activities undertaken for the purposes of general and/or specific public benefit.¹⁵⁰ Assessment should be made against the third-party standard, which is developed and organized for assessing corporations' social and environmental performance.¹⁵¹ Unlike financial reporting system, there is no standardized approach towards third-party standard applicable to the assessment of BCs' performance; therefore, they are free to select any third-party standard and present their report according to the chosen standard.¹⁵² However, there are several independent, transparent and comprehensive third-party standards available for American BCs; for example, ISO 2600, The Global Reporting Initiative (GRI) and etc.¹⁵³ Model Benefit Corporations Legislation and law of some States, such as California require BCs to provide reasons of choosing certain third-party standard applicable to their annual report.

Assessment and disclosure of BCs' corporate social and environmental performance has the following rationale. First of all, reporting requirement applicable to BCs serve as a measure against "greenwashing" as it provides whole picture of general and specific public benefits provided by the corporations in question. Moreover, by disclosing BCs' performance against third-party standard, shareholders and public get the way to assess the performance of corporation as regards to societal and environmental commitment.¹⁵⁴ This gives an opportunity to BCs to be differentiated on the market taking into account the arguments presented in previous

¹⁴⁹ Clark & Babson *supra* note 131, at 842.

¹⁵⁰ Clark & Vranka, *supra* note 140, at 18.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Clark & Babson *supra* note 131, at 846.

¹⁵⁴ *Id.* at 845.

Section that socially responsible corporations catch consumer and investor loyalty. Annual reports will assist consumers differentiate goods and/or services offered by BCs from the goods and/or services of other business entities. Since consumers usually reward socially responsible enterprises for their commitments, it should be stated that BCs would get positive feedback from the consumers and overall commercial gain.¹⁵⁵ Hence, reporting requirements applicable to BCs are also in their interests as well.

As a conclusion, Benefit Corporation as a hybrid form of business entities has its distinctive legal features that create various positive effects on the market. Mentioned positive effects pay back and BCs catch a brand loyalty from consumers and investors for its commitments towards society and environment. Since major characteristics of BCs have been already discussed in the previous Sections, it is important to proceed and discuss expanded concept of corporate governance in case of Benefit Corporations and distinctive character of fiduciary duties of corporate directors managing BCs.

3.3 Expanded Corporate Governance and Fiduciary Duties of Directors

Corporate directors of Benefit Corporations are afforded greater scope of fiduciary duties that for McDonnell can be regarded as “a modest ‘flattering’” towards them against a risk of liability corporate managers of BCs can face.¹⁵⁶ Corporate directors of BCs therefore have additional comfort to make informed, good faith, and disinterested decisions without being frequently subjected to derivative suits of shareholders.¹⁵⁷ Model legislation adopted for Benefit

¹⁵⁵ *Id.*

¹⁵⁶ McDonnell, *supra* note 117, at 19.

¹⁵⁷ Judd F. Sneirson, *Green is Good: Sustainability, Profitability, and a New Paradigm for Corporate Governance*, 94 Iowa L. Rev. 987, 1019 (2009).

Corporations suggests that corporate managers of BCs can take into account interests various stakeholders and that shall not constitute violations of fiduciary duties standard generally applicable to directors of business entities.¹⁵⁸ Hence, they are free to consider interests of consumers, employees, environment or society as a whole. This flows from the distinctive character of a BC as a business form, which aims to pursue general public benefit goals usually in conjunction with one or more specific public benefit goals. Since the aims of BCs are different from the ordinary business forms, fiduciary duties of directors are also expanded accordingly. Moreover, business judgment rule shall apply to corporate managers of BCs in a broader sense. Some States, for instance California, excludes corporate managers liability for monetary damages.¹⁵⁹ The stated approach guarantees higher degree of protection of directors of Benefit Corporations compared to corporate managers of other business entities. They are also protected from the lawsuits from the beneficiaries of BCs' general and/or specific public purpose.¹⁶⁰ Model legislation has also introduced concept of "benefit director" who is a director in charge of preparation annual report and oversight of how public benefit purposes of BCs are pursued. The only problem that arises in the context of corporate governance of BCs is that corporate managers need to take into account interests of profit-maximization as well as interests of various stakeholders as according to public benefit purposes of BCs. They need to balance the stated considerations, maximize profits and at the same time achieve the desired levels of societal and environmental commitments.¹⁶¹ Dual obligations of BCs' directors may give rise

¹⁵⁸ Clark & Vranka, *supra* note 140, at 20.

¹⁵⁹ CAL. CORP. CODE § 14620(e)(3).

¹⁶⁰ *Id.*

¹⁶¹ Sneirson, *supra* note 157, at 1021.

justifiable doubts as regards to directors' actions within the context of corporate waste.¹⁶²

Against this doubts, scholars note that the risk of commitment of any wrongdoings from the side of BC's directors are relatively low unless there is manifest conflict interests on their side to use a corporate form of Benefit Corporations as an instrumentality in their hands.¹⁶³ Furthermore, corporate directors managing BCs "are likely to be persons with a normative commitment to doing good."¹⁶⁴ Non-legal tools can be used against them in order to constrain them.¹⁶⁵

In most cases, bringing successful *Revlon* (or *Dodge* (emphasis added)) claim in case of benefit corporations will be hard as various stakeholder interests are taken into account by the directors of BCs and again "this shift seems appropriate given the differing priorities of [B]enefit [C]orporations."¹⁶⁶

3.4 Possible Introduction of a Legal Form of Benefit Corporation in Georgia

We went through and discussed major characteristics of Benefit Corporations have in the U.S. Now we move to application of these characteristics to non-U.S. emerging market of Georgia and determine whether introduction of the new hybrid form of a business entity is possible and/or sensible within the context of Georgian legal framework and business environment.

First of all, it should be argued that introduction of BCs into Georgian market would favor approaches undertaken on an international level, such as UN Global Compact. Furthermore, it will be consistent with the aspirations expressed in the EU-Georgia Association Agreement. As it

¹⁶² See e.g., J. William Callison, *Putting New Sheets on a Procrustean Bed: How Benefit Corporations Address Fiduciary Duties, the Dangers Created, and Suggestions for Change*, 2 Am. U. Bus. L. Rev. 85 (2012).

¹⁶³ McDonnell, *supra* note 117, at 66.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 69.

was already discussed in the Section 2.5, Georgia needs to promote responsible business practices and therefore, introduction of a new form of Benefit Corporation would serve this purpose.

Despite the mentioned arguments that introduction of a new, hybrid form of socially responsible business entity is sensible in the context of harmonization of Georgian laws with the international and regional (EU) standards, it should be noted that it might face certain legal difficulties. The most important difficulty that arises is that political will of the legislators to adopt different types of socially responsible business entities is not present in Georgia. Since Georgia is the State having civil law jurisdiction,¹⁶⁷ introduction of a new business form of corporations would require legislative amendments or change of law. Draft of the new Law of Georgia on Entrepreneurs, which is not formally available or adopted by the Parliament, does not provide new forms of business corporations, including BCs. Another major problem is that legal forms of business entities are regulated by the Law of Georgia on Entrepreneurs and legal framework as regards to non-profit organizations is provided in the Civil Code of Georgia.¹⁶⁸ Therefore, it is not clear which law should govern hybrid form of a BC in case of their introduction in Georgia. On the other hand, it can be included in the Law of Georgia on Entrepreneurs notwithstanding the fact that the mentioned Law does not provide different forms of corporations or separate law can be adopted that will provide legal framework for BCs. As regards to the reporting requirements of BCs and expanded fiduciaries of their corporate directors, we should state that in case of BCs introduction in Georgian legal system, the mentioned requirements should follow the legal form of that business entity. Reporting

¹⁶⁷ See generally Gogiberidze, *supra* note 107.

¹⁶⁸ See generally Civil Code of Georgia, Arts. 27-39 (1997); Law of Georgia on Entrepreneurs, Arts. 1(1), 1(2) (1994).

requirements of BCs will particularly address the problem of “greenwashing”, fragmentation and narrow view towards CSR. In that case, companies that would in hypothesis register as BCs in Georgia would not have an opportunity to limit themselves to charitable donations or fragmented activities providing public benefit, as they would be obliged to generate general public benefit. Lack of available practice as regards to the third-party standard and non-unified concepts available in the U.S. can be seen as another problematic area of the BCs’ introduction.

With respect to fiduciary duties of corporate managers, BCs’ directors should enjoy expanded scope of fiduciary duties in order to take into account interests of a wide range of stakeholders. As it was already argued in Section 2.5, according to Georgian law, corporate directors have fiduciary duties towards business entities and therefore, in case of BCs (that are committed to society and/or environment) they should have expanded fiduciary duties and protection under the BJR.

By registering as BCs, Georgian companies would have an opportunity to catch brand loyalty, create hybrid and innovative form of a corporation with high potential for sustainable practices.¹⁶⁹

¹⁶⁹ Hiller, *supra* note 115, at 300.

CONCLUSION

Discussion of existing concepts of CSR reveals that there is a certain level of uniformity as regards to basic characteristics of corporate social responsibility on international, regional and national levels. However, there is no uniformity as regards to its application in the context of positive legal obligations in general and obligations arisen from the field of corporate law, in particular. It was revealed that ethical considerations of CSR have not yet reached the level of positive legal obligations, while application of CSR within the context of a corporate law is still debated among legal scholars and economists. Careful examination of the arguments presented during shareholder versus stakeholder debate suggests that a victor is a stakeholder school in the modern era of CSR development.

Furthermore, application of basic arguments of the debate to non-U.S. emerging market of Georgia is relevant and sensible for the purposes of identifying and collecting grounds for shareholder primacy or CSR implementation. This paper revealed various legal basis and arguments in favor of CSR application in Georgia with slight differences compared to the U.S. system. Moreover, it suggested possible ways of introduction of a hybrid form of business entities, Benefit Corporations in Georgian legal system subject to discussed difficulties. This paper revealed that introduction of American legal concepts and arguments related to CSR and socially responsible business entities, such as Benefit Corporation, is sensible and possible even in developing legal system of Georgia.

Georgia is in the process of the shift from profit-maximization and narrow, fragmented understanding of CSR towards the legal concept of corporate social responsibility. During this process lessons from the United States, namely *Dodge* case and subsequent practice until the introduction of BCs are of the relevance for Georgian legal system and emerging market. This

thesis also revealed grounds for further research in the field of CSR application in Georgia within the context of planned legislative changes in the system of corporate and business laws.

Promotion of CSR and careful examination of lessons in light of the U.S. experience will provide Georgia with an effective legal basis for introducing the broader concept of CSR and Benefit Corporations, as a hybrid type of a corporation with a unique potential of sustainable development.

BIBLIOGRAPHY

International and Regional Instruments

1. The Ten Principles of the UN Global Compact, United Nations Global Compact (Mar. 23, 2018), <https://www.unglobalcompact.org/what-is-gc/mission/principles>;
2. Organization of Economic Cooperation and Development, *OECD Guidelines for Multinational Enterprises* (2011);
3. Council Decision 2014/494/EU, On the Signing, on Behalf of the European Union, and Provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the One part, and Georgia, of the Other Part, 2014 O.J. (L.261) 1;
4. European Union's Agreement on Deep and Comprehensive Free Trade Area and Georgia, European Union, Open Society Georgia Foundation, Economic Policy Research Center (EPRC) (2014);
5. Communication from the European Union Commission, *Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development* 5, (COM (2002) 347 final, Brussels, 2 July 2002);
6. Special Report of the Secretary-General, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Human Rights Council, United Nations Doc. A/HRC/17/31 (Mar. 21, 2011).

National and State Laws

1. 26 U.S.C. (2012);
2. CAL. CORP. CODE (West 2011);

3. Del. Code (2015);
4. MD. CODE ANN. CORPS & ASS'NS;
5. Model Benefit Corp. Leg. with Explanatory Comments (2014) (Apr. 3, 2018), http://benefitcorp.org/storage/Model_Legislation.pdf;
6. N.Y. BUS. CORP. LAW (Consol. 2011);
7. საქართველოს კანონი მეწარმეთა შესახებ [Law of Georgia on Entrepreneurs] (1994), (Mar. 31, 2018), <https://matsne.gov.ge/en/document/view/28408>;
8. საქართველოს კანონი საქართველოს სამოქალაქო კოდექსი [Civil Code of Georgia] (1997), (Mar. 31, 2018), http://www.wipo.int/wipolex/en/text.jsp?file_id=209012;
9. საქართველოს კონსტიტუცია [Constitution of Georgia] (1995), (Apr. 1, 2018), <https://matsne.gov.ge/en/document/view/30346>.

Books

1. ANDREW CRANE, DIRK MATTEN, LAURA SPENCE, CORPORATE SOCIAL RESPONSIBILITY: READINGS AND CASES IN GLOBAL CONTEXT (Routledge Ed. 2008);
2. ANDREW W. SAVITZ & KARL WEBER, "TRIPLE BOTTOM LINE: HOW TODAY'S BEST-RUN COMPANIES ARE ACHIEVING ECONOMIC, SOCIAL, AND ENVIRONMENTAL SUCCESS: AND HOW YOU CAN TOO, REVISED AND UPDATED" (2014);
3. FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW (1991);
4. IRAKLI BURDULI, FOUNDATIONS OF COMPANY LAW I (2010);

5. JEEHYE YOU, LEGAL PERSPECTIVES ON CORPORATE SOCIAL RESPONSIBILITY: LESSONS FROM THE UNITED STATES AND KOREA (2015);
6. JOHN ELKINGTON, CANNIBALS WITH FORKS: THE TRIPLE BOTTOM LINE OF 21ST CENTURY BUSINESS. GABRIOLA ISLAND, BC: New Society Publishers (1998);
7. JOHN O. OKPARA & SAMUEL O. IDOWU, CORPORATE SOCIAL RESPONSIBILITY: CHALLENGES, OPPORTUNITIES AND STRATEGIES FOR 21ST CENTURY LEADERS (Springer Ed. 2013).
8. LAWRENCE E. MITCHELL, CORPORATE IRRESPONSIBILITY: AMERICA'S NEWEST EXPORT, Yale University Press (2001);
9. LAWRENCE GLICKMAN, BUYING POWER: A HISTORY OF CONSUMER ACTIVISM IN AMERICA (U. CHI. PRESS 2009).
10. MARGARET M. BLAIR, OWNERSHIP AND CONTROL: RETHINKING CORPORATE GOVERNANCE FOR THE TWENTY-FIRST CENTURY (1995);
11. NICHOLAS WOLFSON, THE MODERN CORPORATION: FREE MARKET VERSUS REGULATION (1984);
12. R. FRANKIN BALOTTI & JESSE A. FINKELSTEIN, DELAWARE LAW OF CORPORATIONS & BUSINESS ORGANIZATIONS (3d ed. 2014);
13. SANDRA FREDMAN, HUMAN RIGHTS TRANSFORMED: POSITIVE RIGHTS AND POSITIVE DUTIES (2015);
14. TOM L. BEAUCHAMP, NORMAN E. BOWIE, AND DENIS G. ARNOLD, EDS., ETHICAL THEORY AND BUSINESS, Upper Saddle River, NJ: Pearson/Prentice Hall (8th ed. 2007);

Journals & Published Articles

1. Adam Winkler, *Corporate Law or the Law of Business: Stakeholders and Corporate Governance at the End of History*, 67 Law and Contemporary Problems 109, (2004);

2. Adolf Berle, *Corporate Powers as Powers in Trust*, 44 HAR. L. REV. 1145 (1932);
3. Adolf Berle, *For Whom Corporate Managers Are Trustees: A Note*, 45 HAR. L. REV. 1365 (1932);
4. Alexander Dahlsrud, *How Corporate Social Responsibility is Defined: An Analysis of 37 Definitions*, 15(1) CORP. SOC. RESP. & ENVTL. MANAGEMENT J. 1 (2008);
5. Alexander R. Crabb, *The Birth of a Giant: The Men and Incident that Gave America the Motorcar*, 359 (1960).
6. Andreas B. Eisingerich, Rubera Gaia, Matthias Seifert, Gunjan Bhardwaj, *Doing Good and Doing Better Despite Negative Information?: The Role of Corporate Social Responsibility in Consumer Resistance to Negative Information*, 14(1) J. SERVICE RESEARCH. 60 (2011);
7. Andrew Carnegie, *Wealth*, 148 N. AM. REV. 653 (June 1889);
8. Archie B. Carroll, *Carroll's pyramid of CSR: taking another look*, 1 (1) INTERNATIONAL JOURNAL OF CORPORATE SOCIAL RESPONSIBILITY, 3 (2016);
9. Archie B. Carroll, *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders*, BUS. HOR. 39 (1991);
10. Asie Tsintsadze & Tamar Ghogoberidze, *The Role of Business Social Responsibility in Managing Social Risks*, J. Soc. ECON. 220 (2017);
11. Brett H. McDonnell, *Committing to Doing Good and Doing Well: Fiduciary Duty in Benefit Corporations*, 20 FORDHAM J. CORP. & FIN. L. 19 (2014);
12. Chi-Shiun Lai, Chih-Jen Chiu, Chin-Fang Yang, Da-Chang Pai, *The Effects of Corporate Social Responsibility on Brand Performance: The Mediating Effect of Industrial Brand Equity and Corporate Reputation*, 95 (3) J. BUS. ETHICS 457 (2010);
13. D. Gordon Smith, *The Shareholder Primacy Norm*, 23 J. Corp. L. 277, (1998);

14. Deborah A. Ballam, *The Evolution of the Government-Business Relationship in the United States: Colonial Times to Present*, 31 AM. BUS. L. J. 553 (1994);
15. Dima Jamali, *A Stakeholder Approach to Corporate Social Responsibility: A French Perspective into Theory and Practice*, 82 (1) J. Bus. Ethics. 213 (2008);
16. Dima Jamali, *Insights into Triple Bottom Line Integration from a Leading Organization Perspective*, 12 BUS. PROCESS MNG. J. 809 (2006);
17. Dorothea Baur & Hans Peter Schmitz, *Corporations and NGOs: When Accountability Leads to Co-optation*, 106 (1) J. BUS. ETHICS 9 (2012);
18. E. Merrick Dodd, *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, (1932);
19. Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U.L. REV.. 733, 763 (2005).
20. Eric W. Orts, *Beyond Shareholders: Interpreting Corporate Constituency Statutes*, 61 Geo. Wash. L. Rev. 14 (1992);
21. Fauzi Hasan, Goran Svensson, Azhar Abdul Rahman, “*Triple bottom line*” as “*sustainable corporate performance*”: *a proposition for the future*, 2(5) Sustainability 1345 (2010);
22. Fischer Black & Myron Scholes, *The Pricing of Options and Corporate Liabilities*, 81 J. POL. ECON. 637 (1973);
23. Francis Weyzig, *Political and Economic Arguments for Corporate Social Responsibility: Analysis and Proposition Regarding the CSR Agenda*, 86 (4) J. BUS. ETHICS 417 (2009);
24. Henry Butler, *The Contractual Theory of the Corporation*, 11 GEO. MASON U. L. REV. 99 (1989);
25. Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L. J.

- 439 (2001);
26. J. William Callison, *Putting New Sheets on a Procrustean Bed: How Benefit Corporations Address Fiduciary Duties, the Dangers Created, and Suggestions for Change*, 2 Am. U. Bus. L. Rev. 85 (2012).
 27. James E. Post, Lee E. Preston, Sybille Sachs, *Managing the Extended Enterprise: The New Stakeholder View*, 45(1) CAL. MNG. REV. 6 (2002);
 28. Janet E. Kerr, *The Creative Capitalism Spectrum: Evaluating Corporate Social Responsibility Through a Legal Lens*, 81 Temp. L. Rev. 831 (2008);
 29. Janine S. Hiller, *The Benefit Corporation and Corporate Social Responsibility*, 118(2) J. Bus. Ethics. 287, 287 (2012);
 30. Jill A. Brown & William R. Forster, *CSR and Stakeholder Theory: A Tale of Adam Smith*, 112 (2) J. BUS. ETHICS 301 (2013);
 31. Jill E. Fisch, *Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy*, 31 J. Corp. L. 637 (2006);
 32. Jiyun Kang & Gwendolyn Hustvedt, *Building Trust Between Consumers and Corporations: The Role of Consumer Perceptions of Transparency and Social Responsibility*, 125(2) J. BUS. ETHICS 253 (2014);
 33. John A. Pearce II, *The Rights of Shareholders in Authorizing Corporate Philanthropy*, 60 Vill. L. Rev. 251 (2015);
 34. John Elkington, *Cannibals with Forks: The Triple Bottom Line of the 21st Century Business*, Gabriola Island, BC, NEW SOCIETY PUB. (1998).
 35. John F. Mahon & Richard A. McGowan, *Searching for the Common Good: A Process Oriented Approach*, 34 BUS. HOR. 79 (1991);

36. Judd F. Sneirson, *Green is Good: Sustainability, Profitability, and a New Paradigm for Corporate Governance*, 94 Iowa L. Rev. 987 (2009);
37. Katharine V. Jackson, *Towards a Stakeholder-Shareholder Theory of Corporate Governance: A Comparative Analysis*, 7(2) Hastings Bus. J. 309 (2011);
38. Kaushik Sridhar & Grant Jones, *The Three Fundamental Criticisms of the Triple Bottom Line Approach: An Empirical Study to Link Sustainability Reports in Companies based in the Asia-Pacific Region and TBL shortcomings*, 2 (1) Asian J. BUS. ETHICS. 91 (2013);
39. Krista Bondy, Jeremy Moon, Dirk Matten, *An Institution of Corporate Social Responsibility (CSR) in Multi-National Corporations (MNCs): Form and Implications*, 111 (2) J. BUS. ETHICS 281 (2012);
40. Larry C. Baker, *Multinational Corporations, Transnational Law: The United Nations' Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law*, COLUM. HUM. RTS. L. REV. 291 (2006);
41. Lisa Jones Christensen, Ellen Peirce, Laura P. Hartman, W. Michael Hoffman, Jamie Carrier, *Ethics, CSR, and Sustainability Education in the Financial Times Top 50 Global Business Schools: Baseline Data and Future Research Directions*, 73 (4) J. BUS. ETHICS. 347 (2007);
42. Lyman Johnson, *Pluralism in Corporate Form: Corporate Law and Benefit Corps*, 25 Regent U. L. Rev. 269 (2012-2013);
43. Lynn A. Stout, *Bad and Not-so-Bad Arguments for Shareholder Primacy*, 75 S. Cal. L. Rev. 1189 (2002);
44. Lynn A. Stout & Margaret Blair, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999);

45. Lynn M. Lopucki, *The Myth of the Residual Owner: an Empirical Study*, 82 Wash. U. L. Q. 1341 (2004);
46. Mark S. Schwartz & Archie B. Carroll, *Corporate Social Responsibility: A three-domain approach*, 13(4) BUS. ETHICS. Q. (2003);
47. Martin Gelter, *Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance*, 50 HAR. INT'L L.J. 129 (2009);
48. Marya N. Cotton & Gail A. Lasprogata, *Corporate Citizenship & Creative Collaboration: Best Practice for Cross-Sector Partnerships*, 18 J. L. BUS. & ETHICS 9 (2012);
49. Max B.E. Clarkson, *A Stakeholder Framework for Analyzing and Evaluating Corporation Social Performance*, 20(1) ACAD. MNG. REV. 92 (1995);
50. Michael R. Deskins, *Benefit Corporation Legislation, Version 1.0 - A Breakthrough in Stakeholder Rights*, 15 Lewis & Clark L. Rev. 1047 (2011);
51. Milton Friedman, *The social responsibility of business is to increase its profits*. New York Times, 126 (1962);
52. Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, The New York Times Magazine (1970);
53. Myrna Wulfson, *The Ethics of Corporate Social Responsibility and Philanthropic Ventures*, 29 J. BUS. ETHICS 135 (2001);
54. Nini Gogiberidze, *Update: Guide to Georgian Legal Research*, Global Law & Justice (2015) (Apr. 1, 2018), <http://www.nyulawglobal.org/globalex/Georgia1.html>;
55. R. Edward Freeman & Jeanne Liedtka, *Corporate Social Responsibility: A Critical Approach*, 34 BUS. HOR. 92 (1991);
56. Robert A. Katz & Antony Page, *The Role of Social Enterprise*, 35 VT. L. REV. 59 (2010);

57. Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 WASH. & LEE L. REV. 1423 (1993);
58. Steven L. Wartick & Philip L. Cochran, *The Evolution of the Corporate Social Performance Model*, 10(4) ACAD. MNG. REV. 758 (1985);
59. Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 448 (2001);
60. The Financial, *Majority of Companies in Georgia Misunderstood the Idea of CSR*, Survey 2016 (Apr. 1, 2018), <https://www.finchannel.com/index.php/world/georgia/54997-majority-of-companies-in-georgia-misunderstood-the-idea-of-csr-survey>;
61. The Financial, *PricewaterhouseCoopers Calling on Georgian Companies to Adopt Principles of Social Responsibility*, 2018 (1 Apr, 2018), <https://www.finchannel.com/interviews/71755-pricewaterhousecoopers-calling-on-georgian-companies-to-adopt-principles-of-social-responsibility-2>;
62. Thomas Kelly, *Law and Choice of Entity on Social Enterprise Frontier*, TUL. L. REV. 337 (2009);
63. Transparency International, *Transparency In Corporate Reporting: Assessing the World's Largest Companies* (2014);
64. William H. Jr. Clark & Elizabeth K. Babson, *How Benefit Corporations are Redefining the Purpose of Business Corporations*, 38 Wm. Mitchell L. Rev. 817 (2012).
65. Ya-Ling Wu & Eldon Y. Li, *Marketing Mix, Customer Value and Customer Loyalty in Social Commerce: A Stimulus-organism-response Perspective*, 28 (1) Internet Research 74 (Feb. 24. 2018 12:43 PM), <https://doi.org/10.1108/IntR-08-2016-0250>;

Miscellaneous

1. Patricia B. Abels & Joseph T. Martelli, *What is CSR all about?*, Global Conference on Business & Finance Proceedings 7(2), 86 (2012);
2. Archie B. Carroll, *Corporate Social Responsibility: Will Industry Respond to Cutbacks in Social Program Funding*, 49 (19) Vital Speeches of the day 604 (1983);
3. William H. Clark, Jr. & Larry Vranka, *The Need and Rationale for the Benefit Corporation: Why it is the Legal Form that Best Addresses the Needs of Social Entrepreneurs, Investors, and Ultimately, the Public* (2012) (Apr. 5, 2018), <http://benefitcorp.net/policymakers/benefit-corporation-white-paper>;
4. Richard E. Smith, *Defining Corporate Social Responsibility: A Systems Approach For Socially Responsible Capitalism*, Master of Philosophy thesis 9 (2011), (Mar. 31, 2018), http://repository.upenn.edu/od_theses_mp/9.

Internet Resources

1. TBC Bank, Corporate Social Responsibility (Mar. 31, 2018), <http://www.tbcbank.ge/web/en/social-responsibility>;
2. Bank of Georgia, CSR (Mar. 31, 2018), <http://bankofgeorgia.ge/en/csr>;
3. PASHA Bank, *PASHA Bank won “The Best Corporate Social Responsibility (CSR) Programme in Europe” at the Europe Banking Awards 2012* (Mar. 31, 2018), https://www.pashabank.az/press_centre,607/lang,en/;
4. VTB Bank, Social Responsibility (Mar. 31, 2018), <https://www.vtb.com/group/social/>.

CASES:

United States

1. Dodge v. Ford Motor Co., 170 N.W.684 (Mich. 1919);
2. Malone v. Brincat, 722 A.2d 5, 9 (Del. 1998);
3. Paramount Communications v. Time, 571 A.2d 1140 (Del. 1990);
4. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986).
5. Sinclair Oil Corp. v. Levien, 280 A.2d 717, 720 (Del. 1971);
6. Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985);

Georgia

1. Supreme Court of Georgia, Case #s 1307-1245-2014;
2. Supreme Court of Georgia Case #s 1158-1104-2014.