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### Corporate social responsibility and the legal profession

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Insights

# CORPORATE SOCIAL RESPONSIBILITY AND THE LEGAL PROFESSION

HOW RELEVANT IS CORPORATE SOCIAL  
RESPONSIBILITY IN THE LEGAL SPHERE?  
EUGENE TAN ANALYSES THE ISSUES.



By Eugene Tan, law academic,  
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**LIKE** the demise of Enron some years ago, the blue-chip financial institutions that went bust in the recent financial convulsions had one thing in common. All of them claimed to engage in corporate social responsibility ("CSR") and subscribed to an ethical way of doing business. But, in truth, as things have turned out, responsibility was patently lacking in the way they operated. Their actions ultimately spoke louder than the corporate spiel that provided the feel-good cover for various vices, including irresponsibility, fraud, and greed.

The sub-prime mortgage crisis in the United States which shocked global markets in 2008 and triggered an economic depression was a manifestation of such abuse of trust, in which key stakeholders of the financial industry developed or allowed the sale of inherently-flawed financial instruments. Much attention has been focused on the bankers and financial advisers involved, but less discussed is the role of lawyers in providing the legal advice and sanction in the development of such toxic financial products. Surely, they could not claim ignorance of the immense moral hazards that were creatively packaged as financial ingenuity and sources of wealth and profitability.

#### **WHAT IS CSR?**

Issues relating to corporate accountability, social responsibility,

and ethical conduct are hardly new, and were certainly not alien to the forerunners of today's modern corporate entities and multinationals. For example, the colonial-era British East India Company was morally exercised over the use of slaves in the West Indies sugar production.

So what is CSR today, and how important is it in the business world? Is it a fad, a myth, a luxury, or a must-have? Is it compatible with the financial bottom-line, and should it be used to boost an organisation's reputation? More importantly for the legal profession, how concerned should law firms be about CSR?

CSR has become an omnibus term that covers many aspects of business activities and its relations with society at large. Yet despite its increasing popularity, saliency, and visibility, CSR remains a controversial subject and many definitions exist. It might be likened to the proverbial elephant being felt and interpreted differently by different people.

Notwithstanding that, CSR embraces the following salient attributes:

- (a) Responsible/ethical conduct (*ie* the domain of ethics);
- (b) Balancing competing and even conflicting aims and aspirations of diverse shareholders and stakeholders (*ie* cross-sectoral involvement and partnership of business, society, and government);



- (c) Positive non-financial outcomes in addition to generating decent profits (*ie* triple bottom-line considerations with regards to financial, environmental, and social governance);
- (d) Sustainability (*eg* quality of life, environmentally sustainable, inter-generational equity); and
- (e) Generally voluntary in nature, and over and above what the law requires.

Thus, CSR, in essence, is the tangible expression of a business integrating economic, social, environmental and other concerns in its operations. It includes both the internal and external dimensions of a company's activities. Too often in practice, the internal dimension gets forgotten, resulting in CSR having a very strong external manifestation in which enhancing the corporate reputation is deemed more important than doing good. However, in many respects, it is artificial to separate the internal and external dimensions since they are intertwined and impact upon each other. In any case, responsibility has to begin "at home". Otherwise, the CSR efforts would be viewed only as "green wash" – a public relations exercise to enhance a company's reputation and visibility as a responsible corporate citizen.

#### NEW IMPETUS

Following developments in advanced economies in North America and Europe, CSR has acquired renewed vigor in the corporate landscape in Asia, where the notion of corporate credibility, linked with how a company conducts its business and makes profits, is of growing importance and urgency. Perhaps the most significant development on the CSR front is the ongoing efforts by the International Organization for Standardization ("ISO"), in collaboration with a variety of international partners, to provide a guidance standard for social responsibility.

The use of "social responsibility" rather than CSR is deliberate. Social responsibility applies universally not just to private companies but extends to governments, non-profit entities, and professional industries as well. Currently under development, the guidance standard is scheduled to be ready in 2010 as ISO 26000, and will be for voluntary usage. Unlike other ISO standards, ISO 26000 will not be a certification standard at the outset but may evolve into one.

What is noteworthy is that the ISO 26000 guidance standard seeks to help businesses, NGOs, governments, the labour movement, and other stakeholders internalise the desired norms and values of social responsibility. By virtue of its inherent flexibility and potential



discursive power, ISO 26000 can facilitate the setting of normative standards and enable social learning about social responsibility. This is particularly useful in the sphere of CSR where persuasion and reflexive adjustment, rather than rigid adherence or enforcement, are needed. The ideational standards or expectations enunciated in such guidelines and industry-wide codes of conduct can subsequently form the basis on which the practical application of the law can subsequently acquire effectiveness, efficacy, and legitimacy.

#### **DEVELOPMENTS HERE AND ABROAD**

Besides China, countries such as Indonesia and Malaysia have recently enacted legislation requiring local and foreign companies to behave responsibly. The salient worldwide trends suggest that CSR will take on greater importance, and it will impact upon how business is done at both domestic and foreign levels. Norms of responsibility, sustainability, and corporate citizenship are emerging. Civil society, with the aid of new media, is increasingly cognisant and demanding in this regard.

From a social contract perspective, CSR embodies the symbiotic relationship between businesses and their wider operating environment. Interestingly, this is very much in line with the communitarian ethos

espoused in many Asian societies. For instance, Article 5 of China's Company Law stipulates that: "In its business activities, a company must comply with laws and regulations, observe social morals and commercial ethics, act in an honest and trustworthy manner, subject itself to the supervision of the government and the public and assume social responsibility."

Not surprisingly, CSR has gained tentative prominence in Singapore, an important business hub, in the last few years. A key impetus for the nascent CSR movement in Singapore is the economic imperative. As the government is a significant player in Singapore's economy, it is perhaps not surprising that it has taken on the role of a promoter and practitioner of CSR. The government supports the CSR endeavour with an instrumental bent: adapting, incorporating and promoting CSR ideas and concepts in various sectors of the economy. The government also implicitly recognises that CSR has the potential to engender economic vitality and productivity through innovation, enterprise, competition, skills and investment. Operating in a trade-dependent, industrialising economy, Singapore businesses have also reflected an increasing cognisance of the growing CSR movement in the western, industrialised world.

Even then, the domestic CSR scene has acquired a somewhat ambivalent, if not patchy, presence in Singapore.

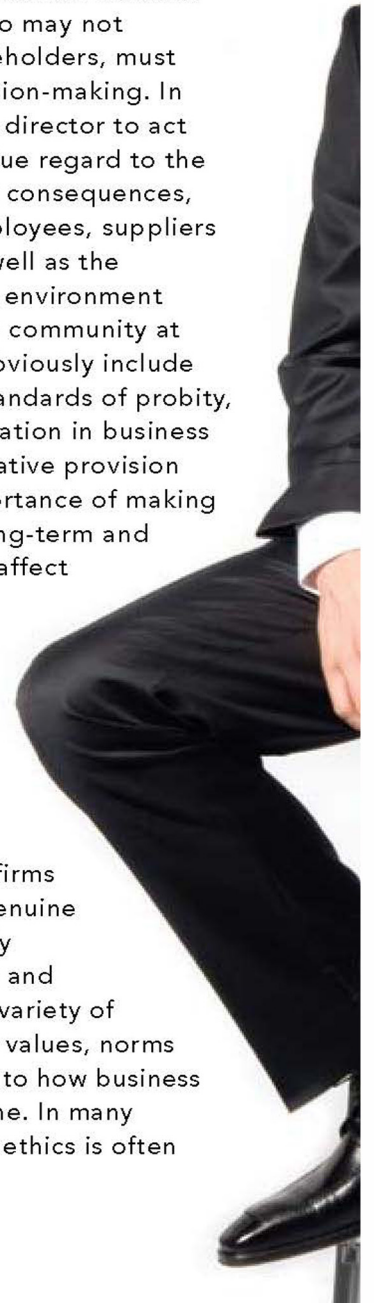
#### CSR IN THE LAW

The developments in CSR in the commercial sphere will increasingly impact upon the legal sector here. This is especially so when lawyering in Singapore has a strong business component, one that is also seeking new markets and new innovations. For example, we now talk of globalising Singapore law. Regardless of those ambitions, ultimately, law, the legal system, and lawyering are humanistic endeavours and human enterprises. This means that law, the legal infrastructure that supports it, and the practice of law have to give full expression to and enhance positive human values, instead of detracting from them.

Many law firms here and abroad are now paying attention to CSR – not just in terms of being practitioners of CSR, but also in acquiring and developing knowledge and expertise in CSR. Such law firms have acquired a first-mover advantage. Clients increasingly expect corporate lawyers to be familiar with and able to advise on CSR. In the UK, this development has been given impetus by s 172 of the UK Companies Act which codifies the fiduciary duty of a company director to promote the “success” of the company.

This recent codification of the director’s duty to act in good faith in the company’s best interest necessarily means that the interests of stakeholders, who may not necessarily be shareholders, must be factored in decision-making. In turn, this requires a director to act in good faith with due regard to the probable long-term consequences, the interests of employees, suppliers and customers, as well as the implications for the environment and concerns of the community at large. This would obviously include maintaining high standards of probity, propriety and reputation in business conduct. This legislative provision underlines the importance of making decisions for the long-term and factoring how they affect shareholders and stakeholders alike.

While activities and programmes that demonstrate commitment to CSR are important, all too often, businesses and law firms fail to realise that genuine CSR is fundamentally about values, norms and attitudes towards a variety of stakeholders. These values, norms and attitudes speak to how business and lawyering is done. In many discussions on CSR, ethics is often







mentioned only in passing. This is problematic since CSR programmes and initiatives that lack an ethical backbone will not be sustainable and impactful.

### **PROFITS AND ETHICS**

The fundamental CSR of law firms is to actively support and facilitate the firm's lawyers meeting their ethical and professional responsibility. Yet, we often hear of how law firms seem overly focused on billable hours and targets. To be sure, profits are important. Law firms are, after all, not charities. Profits are needed to make the practice sustainable and to deploy new talents, technology and resources in the service of clients. But it cannot be the be-all-and-end-all. Instead, profits should go towards ensuring that the practice of law is able to further and enhance positive human values instead of undermining them. In short, how earnings and profits are made in the legal practice is of great importance and deserves greater consideration.

In tandem with strong market and managerial logic, legal professionalism has tended to emphasise technical competency and rigour. This is legitimate but the danger in prioritising professional knowledge above professional values and ideals is the undermining of the ethos of professionalism. In providing legal counsel, lawyers know that they must provide lawful (what's legal) advice. But, often neglected, is the moral duty to provide ethical (what's right) advice as well. This is not about imposing one's moral scruples and rectitude but rather about helping clients appreciate how their decisions will affect others and what those effects will be. Put simply, a lawyer's ethical and professional responsibility is to use his professional skills, knowledge and values such that they respond fully to the needs and interests of the clients in a responsible manner.



### A STRATEGIC APPROACH

Law firms in Singapore already engage in varying levels of CSR. But the CSR practised tends to be generic and bland, taking the form of donations to charitable causes, sponsoring book prizes and scholarships at the law schools, providing internship opportunities for law undergraduates, providing *ad hoc* legal advice to non-profit organisations, and supporting *pro bono* legal schemes. To be sure, these contributions are important, but more can be done to purposefully integrate CSR into a law firm's overall strategy.

In particular, the legal profession can begin to develop a strategic approach to CSR, one that leverages on opportunities to create "shared value" by integrating a social dimension to the profession's value proposition. This means insisting that meaningful social impact is integral to the legal profession's overall approach to lawyering. In that sense, social impact provides a vital competitive advantage because it creatively meets the needs of the profession, the lawyers, the law firms and society. More importantly, by building on the intricate interdependence of law and society, the long-term success of the legal profession is secured and sustainability is also assured.

This "shared value" approach to CSR signals the need for an attitudinal shift in which existing norms and

assumptions of legal practice are critically examined, challenged, and re-calibrated. In the process, beliefs will be changed, behaviour modified, and value systems at the individual, corporate and societal levels tweaked.

A strategic approach to CSR also yields another advantage: that of catalysing innovation. As strategic CSR is driven by the motivation and the imperative to generate shared value for both the profession and society, a genuine commitment to CSR will precipitate innovation that is potentially both economic and social value-giving. In turn, this will open new frontiers for business possibilities.

### SOLID REASONS

There are various reasons why law firms should pay more attention to CSR, of which the following four are key. Firstly, a law firm has to be an advocate of its own ethical standard—one that meets not just community needs and standards but also goes beyond regulatory requirements and industry norms. This imperative infuses the law firm with a soul and a social purpose. A mission-driven law firm is more likely to practise law as a profession, rather than as a for-profit enterprise.

Secondly, CSR helps to differentiate one law firm from another. Law firms with a proven track record of being a good corporate citizen and having a supportive work environment

would enjoy an advantage in talent acquisition, retention and development. Generation Y lawyers are particular about post-material issues. While remuneration and other benefits are important, these younger lawyers hope to practise law in a setting that helps them attain their non-material objectives, such as doing good for society, and having a work-life balance. CSR helps generate employee loyalty through the creation of better employee morale.

Thirdly, CSR-committed law firms are more likely to attract CSR-conscious clients, who will be drawn to law firms that understand the intrinsic value of CSR, assured that their concerns and expectations will be addressed in the legal advice and service they obtain. Such clients would usually be willing to pay a premium for such value-added, innovative legal services.

Fourthly, CSR is an excellent vehicle for ethics and risk management. Law firms that care about how they practise law will be subjected to less regulatory risk and ethical breaches, and are less likely to succumb to conduct that is susceptible to generating a negative reputation.

#### **CSR OF THE FUTURE**

What then is the future of CSR in the legal profession? Can law firms think and creatively develop CSR such that it is not just a public relations exercise that generates short-term publicity

and feel-good effect, but leaves no sustainable and meaningful outcomes? With our profession suffering one too many a rogue lawyer in the last few years, CSR is, more than ever, relevant and needed.

CSR can help right-size the way the legal profession views its professional responsibility. For starters, the legal profession needs to embrace the community of which it is a member. The legal eco-system is not a zero-sum game. Goodwill, reputation, moral fibre, and profits are made inter-dependently over the long term, and CSR will be better appreciated if we truly recognise this interdependence. If Singaporeans at large feel that the legal profession is indeed honorable, that will have a multiplier effect: not just in terms of increased business opportunities, but also in attracting people to the profession.

Let us return to the foundational premise that law is a humanistic enterprise. If so, giving full expression to positive human values cannot simply be about maximising profits; instead, it has to be about ensuring that the legal enterprise is able to further and enhance those fundamental human values. In short, CSR for the legal profession begs a return to two fundamental questions: what is the purpose of law, and what is the mission of the legal profession? Hopefully, the profession will provide the right answers. **15**