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NEWSLETTER ISSUE NO. 8 - FEBRUARY 2008

FROM OUR DESK

WORLD BANK

Within The World Bank (WB), LEGLA lawyers facilitate the identification, negotiation and processing of bank-funded operations. Proper attention and informed decisions must be based on domestic and international law as well as on best business practices in order to provide best practice and to support sustainable development. Lawhouse.dk was commissioned by WB through the Danish Consultant Trust Fund (CFT). From 12 Nov – 01 Feb 2008 we produced a report providing for a compilation of international best practices in the area of 'equitable access to labour markets' including a review of international labour law regarding regulation and in particular how such regulation relates to CSR. The report serves as background material for the WB and Lawhouse consultants for visits to Honduras in April and May on how to facilitate and support sustainable development vis á vis CSR with particular attention to vulnerable groups, in particular women. The report and findings from the field trips will feed into the drafting of a concrete manual for World Bank lawyers.

DANISH EXPORT CREDIT AGENCY – EKF

As a state-owned company, The Danish Export Credit Agency has a responsibility to engage in sustainable finance. A formalisation of the responsible handling of social, environmental and economic aspects of its business has been initiated through the development of a corporate policy on the contribution to and work with sustainable development (or Corporate Social Responsibilities - CSR). Lawhouse.dk has been commissioned to provide coaching and general advice to the process from 1 Jan – 1 July 2008. Next initiative on the EKF agenda is a structured stakeholder hearing, initiated to gather information on attitudes, challenges, opportunities etc. on selected policy topics among key stakeholders.

NEWS

Companies Warned on Social Reports

LONDON, UK – January 15, 2008.

A group of influential investors has reminded corporations listed on the stock market about their failure to produce reports on their 'compliance' with the UN Global Compact. The Global Compact commits corporations to human rights principles, including the core labour standards, environment and corruption, with the aim of improving the "social legitimacy" of businesses. According to the UNGC database on compliance, 904 corporations have failed to produce reports on progress. The majority of corporations originate from emerging markets, but some larger European corporations are on the list too. The investors' group, which runs more than \$2,130bn, regrets the delay. The investors in fact, as stated by the head of engagement at Morley Found Management, see the reports as a valuable addition to good corporate management and assistance to investors. Investors also stated the necessity of protecting corporations that have complied with the reporting requirements from the free-riding of others.

The UNGC was launched early-2000 and was criticized by campaign groups accusing the UN of having created a toothless code with no enforcement mechanism. The annual requirement for Communication on Progress (CoP) was introduced to answer such criticism. Investors now use this tool to put pressure on corporations to comply with the reporting requirements.

<http://www.ft.com/cms/s/0/3284671-8-c2f6-11dc-b617-0000779fd2ac.html>

Comments:

The investment community has for some time been one of the most visible stakeholders in motivating business to contribute to sustainable development. Interestingly the CoP requirement from UNGC is quite toothless in itself as it contains no monitoring or accountability measures. However, there is no doubt that the CoP requirement is perceived and regarded as serious by business. Corporations generally do not appreciate such publicly disclosed information. The CoP is similar to the public pension funds requirements that were introduced in the late 90's in the UK. Pension funds were required to report publicly on their

'ethical considerations' by investments. No pension fund would embarrass its stakeholders by reporting that no considerations were adopted. In sum UNGC with its CoP requirement appears to have developed an effective tool to be used by one of the most important corporate stakeholders; the providers of capital.

Businesses Urged to Take Part in Greater Public-Private Cooperation to Strengthen Global Governance

DAVOS, SWITZERLAND – January 25, 2008.

A group of prominent World Economic Forum business leaders issued a call to their colleagues to join collaborative efforts to strengthen public governance frameworks and institutions as a core element of corporate citizenship. Fourteen global CEOs and chairmen signed a leadership statement calling on businesses to engage in public-private partnerships to strengthen public policies and institutional capacity at the national, regional and global levels. The statement was the outcome of the project entitled "Partnering to Strengthen Public Governance – The Leadership Challenge for CEOs and Boards". It provides a roadmap for business leaders seeking to work with governments and other stakeholders to improve the enabling environment for sustainable economic growth and development. The signatories call for a new frontier in global corporate citizenship and a new era in public-private partnerships, recognizing the increasing convergence of public and private sectors' agenda.

The project has focused on understanding the business case for improved public governance and on providing concrete guidance on how business can engage in public-private partnerships. The idea is that public governance is now a global issue and that businesses, governments and non-governmental organisations no longer can afford to act independently of each other: "Only through a combined effort can we achieve economic growth, sustainability and create opportunities for a better life for people everywhere" one of the signatories stated.

The statement acknowledges the essential role that partnerships play in advancing the global agenda on sustainable development.

<http://www.csrwire.com/News/10820.html>

Comment:

The statement is both timely and warranted. Sustainable solutions to the economic, environmental and social challenges that we face cannot be met without the participation of business; however, business needs governments and civil society in order to participate in any meaningful way. Governments hitherto have stepped back defining CSR as completely voluntary; interestingly the call for better governance will necessitate that governments rethink their role. Today most governments have adopted strategies that support economic development through market economies. Attracting Foreign Direct Investment is of vital importance to such development. Thus governments should see an interest in meeting corporate concerns in relation to sustainable development. Lack of basic governance (read: protection) from a government will entail increased costs for corporations operating or sourcing from such an area; in addition it increases barriers for corporations that aim at proactively contributing to SD in order to improve its corporate brand. Conclusively it is not only a requirement under international agreements for governments to ensure compliance and contributions to SD by corporations; it has great economic potential.

CSR Takes Center Stage for First Time at World Economic Forum

SPRINGFIELD, MASSACHUSETTS - January 30, 2008.

The World Economic Forum in Davos is not usually the place to discuss Corporate Social Responsibility, but this seems to have changed in the last two years. While at the last convention the issue of climate change was in fact raised, the debate was about *why* businesses should engage.

This year however, the debate was around *how* businesses can contribute. Together with environmental issues, more social issues were also taken up, with conferences holding titles like "The Sustainable Consumer" and "Human Rights on the Global Agenda".

The raising of consciousness around CSR has received great help from initiatives like Innovest Strategic Value Advisors's "Global 100 list of the Most Sustainable Companies in the World", which is published every

year. The editor of the list noticed, "Increased environmental scrutiny and regulatory action are opening the floodgates for trillion of dollars of investment capital to flow into companies with green edge... and the G100 are well-placed to surf this long-wave".

<http://www.csrwire.com/News/10813.html>

Comment:

CSR has become main-stream and the focus allotted to the issue at Davos demonstrates the emerging importance and opportunity that governments realize these years.

Swedish Statement

LONDON, ENGLAND – January 14, 2008.

The government of Sweden has ordered its 55 state-owned firms to adopt mandatory sustainability reporting based on the Global Reporting Initiative's G3 guidelines. All fully or partly state-owned companies will have to report on their approach to human rights, the environment and gender equality, starting in 2009. Companies covered include energy firm Vattenfall and stock exchange OMX, which employ a combined total of 190,000 people.

<http://www.ethicalcorp.com/content.asp?ContentID=5669>

Comment:

Sweden is perceived as a leader on Corporate Responsibilities. The move to ensure that state-owned enterprises report on the triple bottom line impact is a natural first step; the government intends to bring its own house in order before it extends responsibilities to private entities.

US Poke on Child Labour Jolts India into Action

GURGAON, INDIA – December 4, 2007.

US government notification on proposed procedural guidelines on imported goods made by using child - or forced labour has acted as a wake-

up call for India. The Minister of state for commerce said the US proposed action had to be taken seriously. The ministries of Commerce, Labour and Women and Child development have in fact got together to find a solution to the problem and representatives from child labour-sensitive sectors have been involved too. Meanwhile the government has decided to get exporters from the five identified sectors- apparel, handicraft, carpet, sporting goods and gems jewellery- to conduct annual external social audits on child labour as per national labour law and rules.

The audits on child labour will be conducted in a transparent manner: They will be open for examination by anyone who is interested. NGOs and social activists will also be involved in the preparation of guidelines to be used for the audits.

The Export Promotion Councils (EPCs) will prepare a plan for child labour abolition in specific geographical areas. EPCs will examine the supply chain in their industries to ensure not only exporters but also sub-contractors and suppliers comply to laws relating to child labour.

http://economictimes.indiatimes.com/Foreign_Trade/US_poke_on_child_labour_jolts_India_into_action/articleshow/2593212.cms

Comments:

Child labour has been seen as the 'usual suspect' for some time under CSR. The US government initiative as responded to by the Indian government demonstrates that government actions are required to scale up sustainable social development. It is equally obvious that future initiatives cannot be limited to a single human right; although deplorable, child labour represents only one of a range of basic human rights that need protection in order to ensure the dignity of individuals in the value chain of and under influence from corporations.

CSR as no. 1 issue for State-owned enterprises in China

HONG KONG – January 9, 2008.

The State-owned Asset Supervision and Administration Commission of State Council (SASAC) issued a "Red Header document" entitled "Instructing opinions about State-owned enterprises fulfilling social responsibility". This type of Red Header document is directed from the Party or the government offices to the subordinate departments and contains important messages as policy and planning for the whole coming year. In the document it is stated that corporations should be responsible to stakeholders and environment while achieving business purposes. The SASAC recognises that as the most important action to enhance socialism and the construction of a harmonious society. The SASAC is also convinced that CSR will play an important role in the modernisation of State-owned companies and that it will improve their competitiveness and management systems. The document enumerates thereby the areas that have to be covered by the companies. State-owned enterprises should, among other things, improve the quality of their products and service, improve resource and environmental protection, ensure work safety and prevent serious accidents from happening to workers and respect and protect labour rights. Especially the emphasis on labour rights constitutes a novelty.

<http://www.csr-asia.com/upload/csrasiaweeklyvol4week02.pdf>

Comment:

China is very aware of the potential impact of CSR and the strong focus by the Government should be commended. With its enormous population and vast geographic spread China faces great challenges in ensuring that capacity and systems are in place to ensure social sustainable development. In addition China will, not least due to the upcoming Olympics, its incredible market based economic growth and the western perception of China as oppressive, continue to be in the limelight of international attention.

EDITORIALS

Maersk and Human Rights

'Bring your own house in order before raising demands towards your suppliers' was one of the main messages at the Danish Industries' conference on CSR and supply Chain Management, January 28 2008 in Copenhagen.

A fortnight prior to the event, one of Maersk's factories in Hong Kong was hit with violent protests when angry workers attacked security guards, machines and the building. A member of management reported that not a single window in the factory remained intact. The reason, allegedly, was that guards had beaten an employee when he refused to pay a fine for breaking internal company regulation. According to the employees, this was the proverbial last drop; they were already angry with management. Salaries had been reduced while expectations of productivity (longer working hours) simultaneously increased. Employees were also expected to work long hours during weekends in order to be able to take time off for the Chinese New Year. Similarly, the situation was awry on one of Maersk's oil platforms a week before the Chinese incidence. Here employees claimed to have been fired after complaining to authorities about health and safety conditions on the North Sea platform.

What does this have to with human rights? Protection against degrading treatment is a basic right. Violence meted out by persons employed by the company, in this case a security firm, is a clear violation. Demanding fines for breaking internal regulation can violate the right to property and the right to minimum wages. Salary reductions increase this risk. Demands for longer working hours and "deals" involving holidays may encroach upon violations of the right to rest, leisure, and paid holidays. The episode on the oil platform potentially involves freedom of speech and the right to a safe and healthy working environment.

Maersk can hardly claim ignorance about the company's obligations to uphold basic rights. Just last spring CSR was to be found on the company's website in a Maersk "Corporate Citizen" policy. The policy points in several directions dealing with relations to local communities, the environment, and employees. In regard to employees, Maersk warrants that the company implements four rights, also known as core labour rights; non-discrimination, the right to organise, and prohibition against child- and forced labour. A separate Maersk policy exists for the right to a safe and healthy working environment.

Of the six rights that may have been violated in the above described examples, only one – the right to a safe and healthy working environment – is actually covered by the Corporate Citizenship policy. Maersk is not alone with this dilemma. It was obvious at the supply chain management conference at DI, that CSR-work in most companies in Denmark concentrate primarily on the above mentioned four core labour rights; and admittedly these should form part of the considerations a company must concern itself with. However, companies today must also consider the fact that risk management in relation to reputation encompasses the full set of minimum standards that the international community has agreed upon as globally valid; the International Bill Human Rights. Like Maersk, Google also found itself insufficiently

protected by a 'traditional' approach to CSR during its Chinese venture, when criticism on violations of freedom of information and the right to privacy rained down upon the company.

For four years, the author has functioned as an expert advisor to the global initiative - 'Business Leaders Initiative on Human Rights' (BLIHR). The 14 member companies include big brands like Coca-Cola, GAP, Hewlett-Packard, GE, Novartis, Barclays Bank, and Statoil-Hydro, with Novo Nordisk as the Danish participant. At present BLIHR is working on 'translating' the International Bill of Human Rights, which are written for states, into a set of essential standards for business; a global 'level playing field'. Whether or not companies can agree is yet to be determined; but there can be no doubt of the need for clear standards. Criticism falls on corporations in relation to *all* rights and since these are only described in regard to states, corporations become identified with states. This is why it is in the interest of corporations to have their responsibilities defined more clearly!

By Sune Skadegaard Thorsen, partner, and Tomasso Di Carlo, intern, Lawhouse.dk

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Law is one thing, responsibility another

Myanmar is a military dictatorship where human rights are violated regularly. It is one of the world's most oppressive regimes, and sanctions from the international community have rained down upon the country. Debate about the role of corporations and their involvement in either promoting or violating human rights have been see-sawing back and forth over the last few years. The revolts in Myanmar have therefore raised renewed criticism of the activities of multinational corporations in the country. Criticism has particularly struck prominent oil giants such as Chevron and Total SA. In Denmark, the pension fund Danica Pension was recently heavily criticised for putting turnover ahead of ethics in regard to funds investment in, among others, the French oil company Total SA. When confronted with this the managing director of Danica Pension, Henrik Ramlau Hansen, stated that customer returns were not to suffer due to ethical considerations – a viewpoint this article takes issue with. Not only Danica Pension but also the Pension of the Industry and Pension Denmark have been scolded for channelling members money to Myanmar through investments in Total SA.

The UN Global Compact initiative is a voluntary multi-stakeholder initiative, established by the UN Secretary General Kofi Annan in 2000. Global Compact is not legally binding, but is a voluntary initiative under which the signatories commit to promote 10 principles for sustainable development; covering human rights, including core labour rights, environment and anti-corruption. Today there are approximately 4000 signatories to the Global Compact initiative, including NGOs, corporations and states.

Total SA is also amongst the signers to this commitment to Corporate Social Responsibility, and according to the website of Total SA the company takes the matter seriously. The policy of Total is: "to demonstrate a constant commitment to responsible corporate citizenship and always aim to contribute to economic and social progress and environmental stewardship in host countries".

If it is assumed that the efforts of Total SA are in accordance with the politics of the company, it cannot, at first glance, be seen as unethical that Total SA conducts business in Myanmar. If Total SA reckons that their presence in Burma is deemed to promote a possibility for influencing and affecting the system it might be more ethically justifiable to stay and influence the agenda than to abandon the situation and let other operators take over business.

A more in-depth analysis and an actual evaluation of whether Total SA can be seen as either complicit in the human rights violations, in contributing to keeping the repressive dictatorship alive, or if Total SA plays an active role in changing the present circumstances and promoting human rights, will be pivotal for an assessment of the legitimacy of investments in the company. Total SA does not seem to have undertaken such an analysis, much less made such an analysis public.

However, from a Danish point of view the problem in this case is that pension funds do not deem it necessary to have a set of clearly stated ethical guidelines for investments, simply because it is not legally required in Denmark. Apparently, the president of 3F (United Federation of Danish Workers), Poul Erik Skov Christensen does not seem to find it worthwhile to incorporate 'moral' obligations, let alone the interests of stockholders, in investment considerations. Hence neither a set of clear guidelines for screening of investments, nor principles for when high economic turnovers should be set aside for the regard of fundamental social considerations or basic human rights seem to be on the way. An interesting position for a union leader, considering the brave struggle of the International Labour Organization (ILO) for basic respect of human rights

While we wait for others to take responsibility, meaning government proposals for legal requirements in the field, a 'voluntary' responsibility and thereby an initiative from the pension funds to establish sustainable guideline is eagerly awaited. Retroactive responses or "damage-control" when negative publicity is being channelled through the media is not applauded.

In 2006 the Global Compact in cooperation with UNEP produced principles for "Responsible Investment" which were developed to promote sustainable development qua sustainable investments focussing on international environmental, social and corporate governance principles.

<http://www.unpri.org/principles/>

The 6 principles integrate recommendations from financial reporting, transparency and active promotion to implementation. The pension funds could, with much advantage, make these operational by concretization, or 'translating' them in to actions, precautions and indicators for the responsible placement of investments. The third principle - 'Appropriate Disclosure' could expose the procedures needed to assess whether the principles are being complied with and which information needs to be gathered in regard to the screening of corporations for their support to and work on sustainable norms and principles. The work with making the principles concrete would contribute to ensure that the pension funds are not complicit in the violations of human rights by military dictatorships.

No one today can claim that a set of guidelines for ethical investment is incompatible with high economic return for pension savings on the terms of the market, nor with the endless liberal device that: 'the business of business is to make a profit' (Milton Friedman).

The statements of the managing director of Danica Pensions regarding the negative effects of ethical considerations on the returns of the investments can therefore be disputed. Particularly, if such a statement seems to be a cover up for unethical business.

Long term economic returns and profits are obtained by creating sustainable development and thereby creating new prospering markets. The regard paid to sustainable development and thereby to social, environmental and economic factors combined in a set of tangible guidelines should be devised in order to assure growth, wealth and high economic turnover on a long term basis.

Globally, pension funds are estimated to make up 35% of total investments. If the pension funds do not acknowledge the necessity of sustainable choices in the investment portfolio, the future of the planet looks bleak. If we as a society are to contribute to sustainable development and encourage "a development that meets the needs of the present without compromising the ability of future generations to meet their own needs" it is time that corporations, pension funds and others take responsibility, even though it is yet to be required by law. Responsibility to contribute to sustainable development lies in the hands of all of us, and a particular responsibility lies with the powerful investors that have a real chance of influencing development through consideration, conduct and large money supplies.

By Kamilla Vejergang Lembcke, CSR consultant, Lawhouse.dk

UP-COMING EVENTS

The Global Reporting Summit

3-4 March, Berlin. www.ethicalcorp.com/globalreporting

The Global Anti-Corruption, Compliance and Ethics Conference USA

16-18 April, Chicago <http://www.ethicalcorp.com/globalethics/>

Global Compact Human Rights Working group Meeting

9 May, Amsterdam http://www.unglobalcompact.org/NewsAndEvents/upcoming_events.html

The Responsible Business Summit 2008

13-14 May, London <http://www.ethicalcorp.com/rbs/>

Principles for Responsible Investment Annual Meeting: PRI in person

17-18 June, Seoul http://www.unglobalcompact.org/NewsAndEvents/upcoming_events.html

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