

Corporate Social Responsibility and the Legal Framework of Foreign Direct Investment: Time for Conceptual Innovation

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Abstract : Rapidly increasing debates and initiatives in the area of Corporate Social Responsibility (“CSR”) have reached the world of international investment law. CSR standards that focus on the operations of multinational companies are increasingly relevant in the context of international investment policy making. In the past, the connection between CSR standards and legal framework for foreign direct investment has been largely non-existent. Recently, however, there is a growing trend of a more balance approach to rights and obligations as between investors and states under investment treaties. CSR principles join other social and environmental measures slowly being included in the investment treaties to enhance their sustainable development dimension. Issues of CSR are present on negotiation tables of new mega regional investment treaties like TTIP for example. To date, only a very few bilateral investment treaties and a handful of other international treaties with investment provisions include CSR clauses. In addition, the existing provisions tend to be of a soft type, where parties merely acknowledge importance of good corporate governance and CSR for sustainable development or generally affirm their aim to encourage enterprises to observe internationally recognised guidelines and principles of CSR. The relevant provisions often leave it up to the states to encourage enterprises operating within their territories to voluntarily incorporate CSR principles. The interaction between general non-binding CSR standards, domestic laws and policies and provisions of international investment treaties have not been tested by investment tribunals yet. The role of investment treaties in raising awareness and promoting CSR is still in its infancy. The use of CSR standards in the international investment protection regime for promotion of CSR standards, and as a tool for disciplining investors into complying with such standards, pose a number of questions and is met with resistance from investors` lobbies. Integration of these two areas, CSR and international investment law, both consisting of multilayered, diverse and often overlapping instruments is by no means an easy task. Whether international investment world is ready to embrace CSR standards or shrug them off is a matter of uncertain future. The subject however has been raised, first introductions have been made and the time will show whether the relationship between legal framework of international investment and CSR will flourish or remain dormant.

Keywords : corporate social responsibility, foreign direct investment, investment treaties, sustainable development

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