



Legal Update: CSR Issues Risks and Opportunities

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Overview

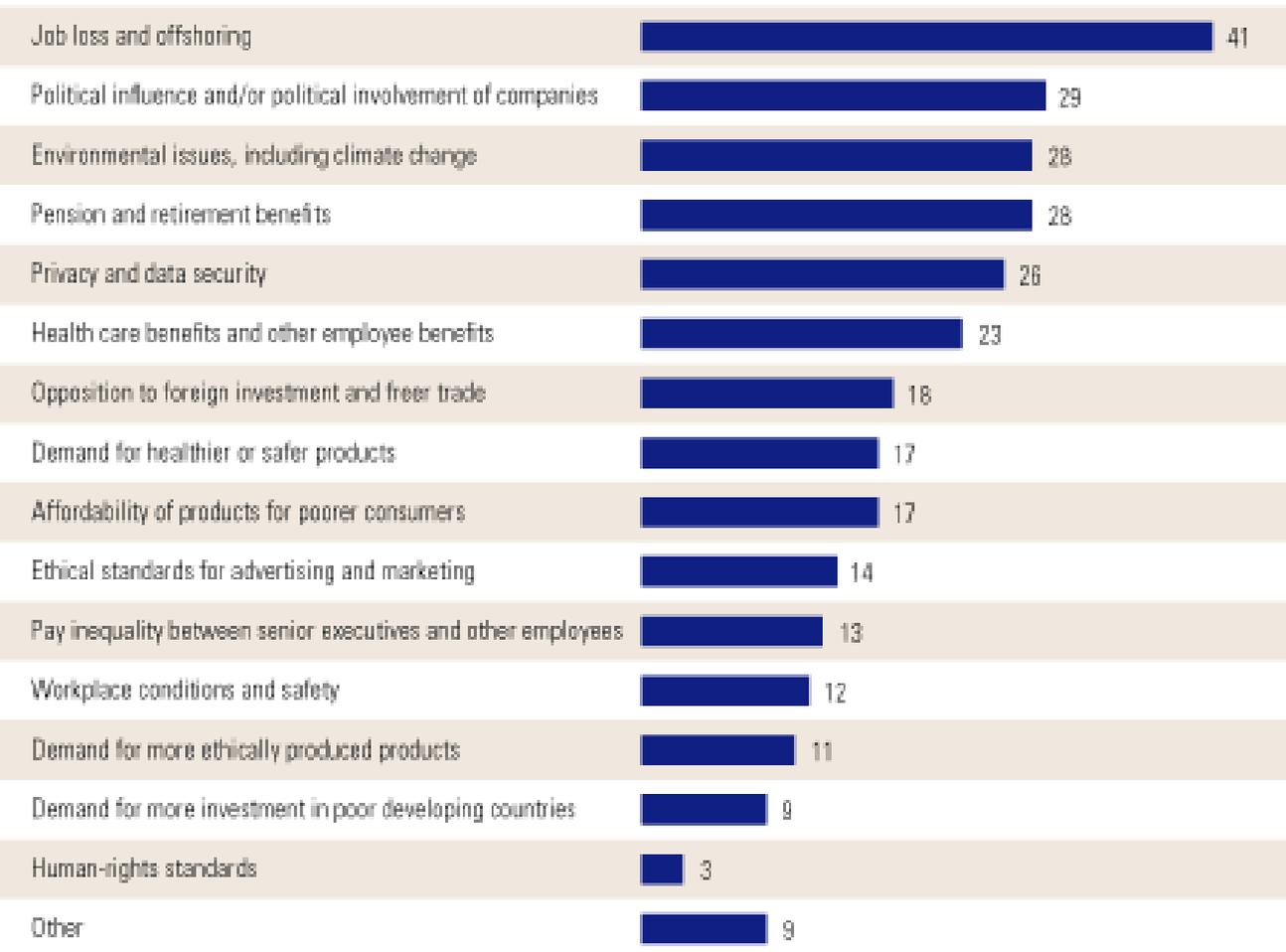
- ◆ CSR Pressures
 - ~ Risks
 - ~ Trends
- ◆ Tools for Management
 - ~ Opportunities

EXHIBIT 4

What issues will affect shareholder value?

% of respondents selecting given issue as one of top 3¹

Which 3 issues are likely to have the most impact, positive or negative, on shareholder value for companies in your industry over the next 5 years?



¹ All data weighted by GDP of constituent countries to adjust for differences in response rates from various regions.



CSR Issues

- ◆ Environmental protection
- ◆ Human rights
- ◆ Worker health
- ◆ Labor practices
- ◆ Effects of products on consumers
- ◆ Supplier standards
- ◆ Investments in particular countries
- ◆ Improved governance
- ◆ Executive compensation
- ◆ Corruption
- ◆ Reducing risks from products
- ◆ Commitment to diversity
- ◆ Economic impacts on local communities
- ◆ Responsible lobbying



CSR Issues

- ◆ Expectations of business
 - ~ Ethical (society)
 - ~ Legal (government)
 - ~ Commercial (customers, suppliers)
- ◆ Intensifying pressure
 - ~ Mistrust of industry
 - ~ Ability of activists to mobilize public opinion
- ◆ Growing complexity of forces
- ◆ Speed of change



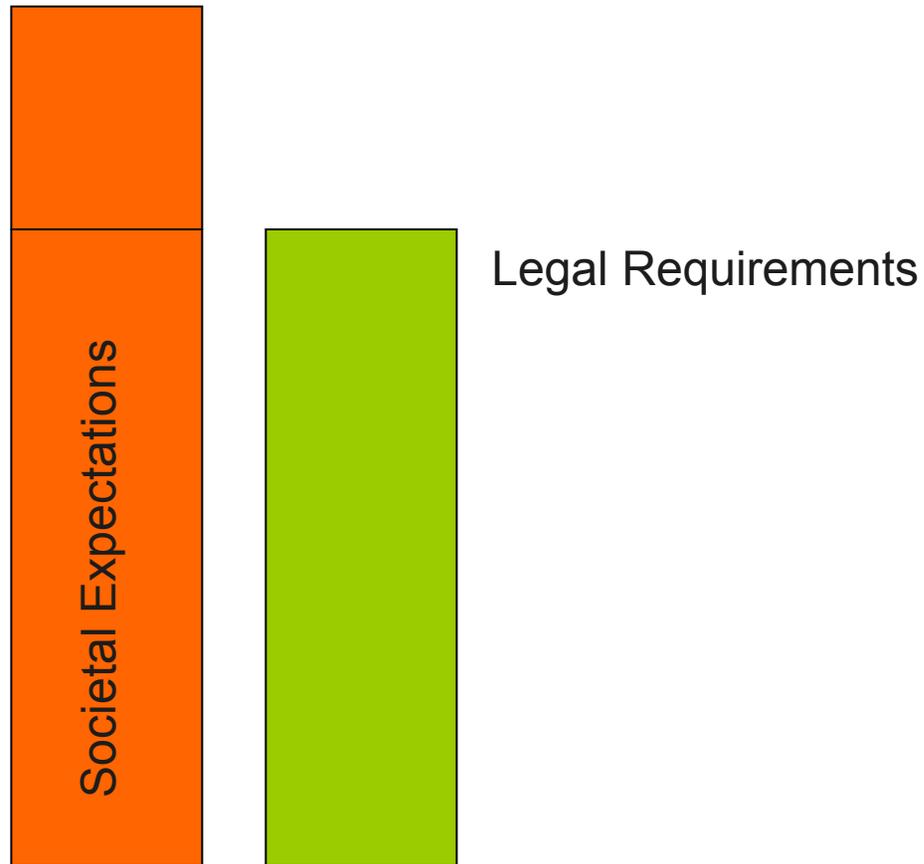
Corporate Social Responsibility



Societal Expectations

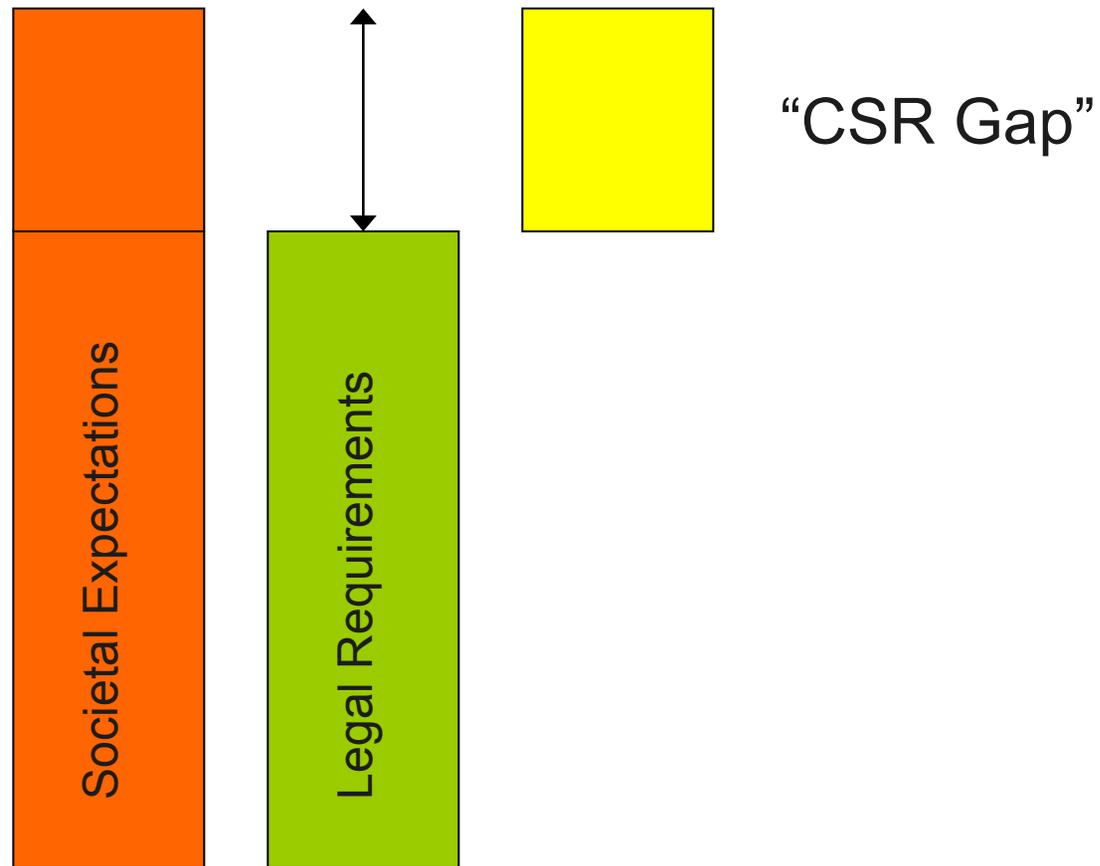


Corporate Social Responsibility





Corporate Social Responsibility





CSR Pressures

- ◆ Legal liability risks
 - ~ Legislative/Regulatory
 - ~ Litigation
 - ~ Shareholder Activism
- ◆ Commercial risks
 - ~ Reputation/market share
 - ~ “Moral liability”



CSR Legal Liability Risks

- ◆ Legislative/Regulatory
- ◆ Litigation
- ◆ Shareholder Activism



EHS Requirements

- ◆ Becoming more stringent worldwide
- ◆ Enforcement on the rise
- ◆ Focus Areas
 - ~ Producer responsibility
 - ~ Product based regulation
 - ~ Chemicals
 - ~ Material bans
 - ~ Market access restrictions
 - ~ Waste minimization



Direct CSR Legislation

- ◆ South African Mining Charter
- ◆ Ghana Forestry law
- ◆ Public Procurement Laws
- ◆ Mandatory non-financial sustainability reporting



Financial

- Sarbanes-Oxley Act of 2002
- Pension Disclosure Regulations
 - ~ UK, Belgium, Germany and Australia
- Financing Conditions (HR, Environment)
 - ~ World Bank
 - ~ IFC (new sector-specific EHS Guidelines)
 - ~ Private lenders (Equator Principles)



Voluntary Standards

- ◆ **Supplier Standards**
 - ~ Wal-Mart
 - ~ Surveys
- ◆ **Industry Standards**
 - ~ ACC Responsible Care
 - ~ Electronics Industry Code of Conduct
 - ~ Increases certainty, but can lead to regulation
- ◆ **Other Voluntary Standards**
 - ~ UN Global Compact
 - ~ OECD Guidelines on Multinational Enterprises
 - ~ International Chamber of Commerce (ICC) Guidelines
 - ~ ISO 26000 Social Responsibility Standard
 - ~ Global Sullivan Principles
 - ~ UK Extractive Industry Transparency Initiative (EITI)
 - ~ Kimberley Process Diamond Certification Scheme
 - ~ Social Accountability 8000 (ethical workplace)



CSR Legal Liability Risks

- ◆ Legislative/Regulatory
- ◆ Litigation
- ◆ Shareholder Activism



Litigation Liability Trends

- ◆ **Rise in litigiousness**
 - ~ Large verdicts
 - ~ Large defense costs
- ◆ **Use existing legal tools to target companies, products**
 - ~ Stakeholders have observed vulnerability of corporations to legal and reputation risks
 - ~ Law school courses on legal activism
- ◆ **Rise of class action suits**
 - ~ Tobacco
 - ~ Asbestos
 - ~ MTBE
 - ~ Obesity (“the new tobacco”)
- ◆ **Enterprise liability concept**



Litigation Issues

♦ **Fraud & Deceptive Statements**

- ~ Nike v. Kasky (2003)
- ~ Pelman v. McDonalds
- ~ Doe v. Wal-Mart

♦ **Human Rights**

- ~ Doe v. Unocal (1996)
- ~ Many more (Chevron, Texaco, Union Carbide, ExxonMobil, Gap, Inc., Coca Cola, Del Monte, Ford, IBM)

♦ **Environmental**

- ~ Connecticut v. AEP (2005)



CSR Legal Liability Risks

- ◆ Legislative/Regulatory
- ◆ Litigation
- ◆ Shareholder Activism



Shareholder Resolutions

- ◆ CSR proxy resolutions on the rise
 - ~ 280 CSR resolutions in 2004-5 proxy season
 - ~ Institutional investors active
- ◆ Percentage of shares supporting resolutions is on the rise
 - ~ 2005 – ExxonMobil GHG reduction targets, Kyoto (28.4%)
- ◆ Resolutions target particular issues
 - ~ Governance, accounting practices, environmental and other CR practices, climate change, environmental reporting
- ◆ Target particular industry groups
 - ~ Extractives, chemicals, retail, food
- ◆ Tend to result in some changes in corporate behavior



Corporate Response

◆ “Most executives view their engagement with the corporate social contract as a risk, not an opportunity, and frankly admit that they are ineffective at managing this wider social and political issue.”

◆ - McKinsey Global Survey of Business Executives (2006)



Corporate Response

- ♦ **Reactive, defensive**
 - ~ Issues management
 - ~ Short term financial pressures
 - ~ Lack of familiarity with the issues
- ♦ **“Our specialists are handling this”**
 - ~ Public Affairs (media, PR)
 - ~ Legal Department (lobbying)
- ♦ **Piecemeal approach**
 - ~ Integrity issues
 - ~ Risk of misalignment
- ♦ **Occasionally disastrous**
 - ~ Shell Brent Spar
 - ~ “McLibel”
 - ~ Monsanto – GMOs
 - ~ Exxon Valdez



Challenge:

- ◆ How can companies incorporate an awareness of sociopolitical issues more systematically into their core strategic decision-making processes?



Strategic Approaches

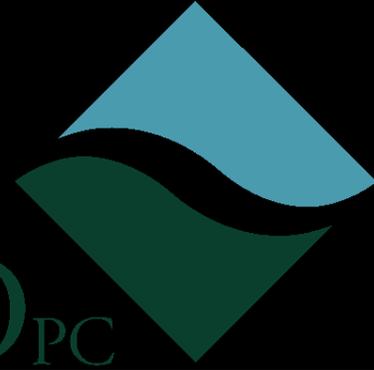
- ♦ **Anticipate & evaluate issues**
 - ~ Tracking, economic analysis, scenario planning
 - ~ Broaden view – value chain, sphere of influence
 - ~ Perspectives of various corporate functions
- ♦ **Understand stakeholders**
- ♦ **CEO involvement**
 - ~ External engagement – strategic interest
 - ~ Coherent strategy across organization, coordination
- ♦ **Join & shape debate before it gets ugly (reduce uncertainty)**
 - ~ Technical innocence or legal victory insufficient
 - ~ Some sources susceptible to manipulation



Strategic Approaches

- ◆ **Identify product or market opportunities**
 - ~ Toyota – Prius
 - ~ Healthy foods
 - ~ Unilever – Wheel detergent
 - ~ GE – Ecomagination
 - ~ DeBeers – diamonds from conflict-free areas
- ◆ **Collaborate where appropriate**
 - ~ Companies equally culpable, threat to entire industry
 - ~ Nike – Fair Labor Association
- ◆ **Adopt progressive policies and strategies**
- ◆ **Good governance**
 - ~ Management systems, Integrity

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Thank you!

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