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Purpose of a Company in 21st Century: Comparative Analysis of Legal Aspects
Master thesis

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LIST OF ABBREVIATIONS

CSR – Corporate Social Responsibility

ESG – Environment, Social and Governance

R&D – Research and Development

SVM – Shareholder Value Maximization

UK – United Kingdom

USA – United States of America

UN – United Nations

INTRODUCTION

The relevance of research. Companies play an important role in our daily lives. It is a source of profit, jobs, innovation, new technologies and as result, of prosperity and sustainable development of society and the state. However, at the same time, companies are the center of inequality, discrimination, deterioration of the environment. Companies are growing and can affect the societies of many countries at the same time. However, great opportunities create responsibilities that are not limited to internal corporate processes, ensuring production efficiency or proper service delivery, but to the purpose of the companies' existence.

The debate over the purpose of companies has been going on for a long time. In particular, in 1932, the Harvard Law Review published a series of scientific papers of Adolph A. Berle, who supported the position of shareholder primacy and noted that the powers granted to the company's management should be used to satisfy the interests of shareholders[1] and Merrick Dodd, who argued that the real purpose of the company, and therefore the activities of managers is not limited to making money for shareholders, but also includes secure jobs for workers, better quality products and overall well-being for the community.[2] Later, in 1970, shareholder primacy doctrine was supported by Milton Friedman, an economist. The author excludes the social responsibility of business. In his view, the company does not have any social obligations, but is accountable to its own shareholders through appointed managers. Executors are employees of company owners and must manage the company in their best interests.[3]

Influenced by Friedman's theory, as well as economic changes in the second half of the 20th century, the concept of shareholder value maximization in the context of the companies' business activity was formed. But the emergence of new social values and the constant development of economies have forced companies on the one hand and society on the other to re-evaluate the purpose of companies and turn to the concept of corporate social responsibility as an alternative model to shareholder value maximization.

In particular, BlackRock CEO Larry Fink in his letter to CEOs from January 2018 questioned the concept of shareholder value maximization and achieving profit as the main purpose of the company: "The importance of serving stakeholders and embracing purpose is becoming increasingly

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[1] A.A. Berle Jr., "Corporate Powers as Powers in Trust," *Harvard Law Review* 44, no. 7 (1931): 1049.
[2] E. Merrick Dodd Jr., "For Whom Are Corporate Managers Trustees?" *Harvard Law Review* 45, no. 7 (1932): 1148.
[3] Milton Friedman, "The Social Responsibility of Business Is to Increase Its Profits," *New York Times*, September 13, 1970, https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html

central to the way that companies understand their role in society. A company cannot achieve long-term profits without embracing purpose and considering the needs of a broad range of stakeholders. [...] a strong sense of purpose and a commitment to stakeholders helps a company connect more deeply to its customers and adjust to the changing demands of society".[4]

In addition, according to the report that has been prepared by Ernst & Young Global Limited for the European Commission, there is a trend to focus on the short-term benefits of shareholders rather than on the long-term interests of the company, that has environmental (climate change impacts and environmental risks to health and well-being), social (exacerbates inequalities) and economic (undermines the macroeconomy) consequences.[5]

Based on provisions mentioned above, it should be noted that problem of the companies' purpose is debatable and controversial. Therefore, analysis of the purpose of companies in the historical context, in different socio-economic conditions and jurisdictions is a relevant topic that requires detailed research.

Scientific research problem. Analysis and comparison of the dominant doctrines of different periods of history, the legislation of countries of both common and continental law, case law show an ambiguous understanding of the purpose of companies. Often a superficial assessment of the nature of the company as an entity with a separate legal personality, leads to the understanding of the company as a tool to maximize the wealth of shareholders. Such position rejects an important aspect of the essence of the company as an institution that combines the interests of opposing participants – from a short-term increasing of dividends for shareholders to increasing salaries for employees and research and development costs. At the same time, the company does not exist by itself, but within the established economic and social framework of a particular community, state, which determines certain expectations from society and the state.

In the light of the above issues, a logical question arises: **what is the purpose of companies in the 21st century?** The current research is aimed at answering this question.

Overview of the research. The research boundaries include the analysis of the company's purposes in different historical periods, the concept of shareholder primacy as the dominant model of corporate governance, the place of companies in modern society and their interaction through corporate social responsibility. The researched literature includes, in particular, the book

[4] Larry Fink, "A Fundamental Reshaping of Finance," BlackRock, Accessed 27 September 2020, https://www.blackrock.com/hk/en/larry-fink-ceo-letter
[5] Ernst & Young Global Limited, "Study on directors' duties and sustainable corporate governance," FINAL REPORT for the European Commission DG Justice and Consumers, Luxembourg: Publications Office of the European Union, 2020, https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en

"Prosperity"[6] by Colin Mayer, in which the author strongly criticizes the concept of shareholder primacy, explores why businesses and corporations are such powerful instruments for advancing human well-being and how their incorrect depiction has had such devastating consequences for our societies, politics, and environment. Dr. Min Yan, assistant professor of Queen Mary University of London in Legal Studies Research "Corporate Social Responsibility versus Shareholder Value Maximization: Through the Lens of Hard and Soft Law"[7] analyzes the concept of shareholder value maximization as the purpose of companies and its legitimacy, the impact of shareholder value maximization on social welfare, identifies ways to implement corporate social responsibility policy. Sigurt Vitols and Norbert Kluge describe the historical process of implementation of the concept of shareholder primacy in European countries as a result of regulatory changes.[8] Lynn A. Stout, professor of Corporate & Business Law at the Cornell Law School researched the proper role of companies through detailed analysis of the arguments for shareholder primacy.[9] In addition to scientific researches, Master Thesis contains the analysis of legislation and case law, international treaties, guidelines, relevant statistics etc.

Scientific novelty of research. Despite the fact that the concept of shareholder primacy has been actively criticized since the end of the 20th century, modern socio-economic conditions require companies more than just to consider the interests of employees, creditors, consumers in making strategic decisions. Thus, this research not only analyzes the arguments of the antagonistic parties but focuses on the necessity of social involvement of companies as an integral part of its purpose to achieve sustainable development.

The aim of research – to determine the main purpose of the existence and activities of companies through a comparative analysis of basic theoretical concepts and practices, legislation, and case law of continental and common law countries.

The objectives of research. To achieve established aim of this master thesis the following tasks have to be carried out:

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[6] Colin Mayer, *Prosperity: Better Business Makes the Greater Good* (Oxford: Oxford University Press, 2018), 29.
[7] Min Yan, "Corporate Social Responsibility versus Shareholder Value Maximization: Through the Lens of Hard and Soft Law," *Northwestern Journal of International Law & Business* 40 (May 2018): 1-49, https://ssrn.com/abstract=3183279
[8] Sigurt Vitols and Norbert Kluge, *The Sustainable Company: a new approach to corporate governance* (Brussels: The European Trade Union Institute, 2011), 12.
[9] Lynn A. Stout, "Bad and Not-so-Bad Arguments for Shareholder Primacy," *Southern California Law Review* 75, no. 5 (July 2002): 1190, https://scholarship.law.cornell.edu/facpub/448

1) To determine the concept of the company's purpose, its historical development and connection with the constitutive features of the company.

2) To identify the essense and main arguments of the shareholder primacy and stakeholder value as the as the basic concepts of the company's purpose.

3) To offer methods of integration of corporate social responsibility as an alternative model of corporate governance and prerequisites for achieving sustainable development.

The significance of research. Master Thesis has significance for three groups:

1) Scholars in the field of corporate law, as research considers modern socio-economic preconditions and trends in the development of companies, a comparative analysis of the dominant concepts regarding the purpose of the companies.

2) For owners and management of companies, as research breaks the stereotype of the normative dogma of shareholder primacy and offers alternative models.

3) For students studying international corporate law, as research changes the perception of the essence of the company as an entity that has a separate legal personality, purpose and impact of companies not only on the entities involved, but society as a whole.

Methods used in the research. The methodological basis of the research are the following methods:

1) Collection and analysis of information – in particular, scientific concepts, legislation, court cases of different jurisdictions will be analyzed, structured and on the basis of this information will be made appropriate conclusions.

2) Comparative method – the aim of research is to determine the purpose of companies through comparative analysis, so, it is necessary to analyze and compare not only antagonistic theories, but also their application in practice in different jurisdictions.

3) Formal-logical methods (analysis and synthesis, induction and deduction) – the purpose of research is more than just to outline existing concepts, but also to substantiate alternatives, find ways to implement the proposed steps.

4) Historical analysis – the researching of the purpose of companies in different historical terms allows to identify external factors that contribute to the formation of relevant doctrines and concepts.

The structure of the research. The first chapter describes the essense and historical development of the company's purpose concept, identifies the relationship of the constitutive features of the corporate form with the achievement of the purpose of companies.

The second chapter defines the shareholder primacy and stakeholder value as the main antagonistic concepts, determines their main arguments in terms of modern social, environmental and economic conditions.

The thirds chapter analyzes the corporate social responsibility as the main trend of the 21st century company management and long-term development strategy, suggests the methods to implement it, identifies international standards that promote CSR policy.

Defence statements:

1. The significant impact of companies on society stipulates the purpose of companies' existence wider than maximizing of shareholders' profit.

2. Corporate social responsibility as a model of company management and long-term development strategy is the tool that will allow companies in the 21st century to correspond the expectations of both shareholders and society, to achieve sustainable development.

CHAPTER 1. THE CONCEPT OF PURPOSE AND CONSTITUTIVE FEATURES OF A COMPANY

Modern companies as institutional entities play a key role in the development of economies and societies in general. As a result of evolution or even revolution, companies have ceased to be a tool for uniting people to achieve the common goal, becoming the engine of development, the leader of modern technologies that improve the relevant areas, a source of innovation.

However, this was not always the case. Companies were born and functioned as a mechanism for implementing government projects for the benefit of society. However, certainly, living conditions are constantly changing, that makes its adjustments to the system of relations between companies, society and the state. Why (or rather for whom) do companies exist today?

Chapter 1 defines the concept of the company's purpose, the factors that led to the transformation of the company's purpose in the historical context, determines the need for appropriate changes through current environmental, social and economic challenges and describes the main characteristics that identify the company and form the basis for further analysis.

1.1. The Company's Purpose: General Definition and Historical Development

Over the past forty years, the development of companies has undergone an extraordinary transformation - from the dominance of tangible assets owned by companies to licenses, patents, research.[10] Companies have long gone beyond the country of registration and affect entire continents. Globalization determines the concentration of production, power and wealth within a narrow range of actors. Whether this is good or not is really a moot point. On the one hand, multinational companies have brought and are bringing benefits to the lives of societies, improving efficiency and performance. However, on the other hand, disparities in living standards, social inequality, global environmental change due to irresponsible conduct of companies and the inability of states to implement and harmonize effective control mechanisms threaten the future.

Certainly, a company is not a simple association of a group of people, but is essentially a separate entity that has its own persona. Persona refers to the external perception of the company, because reputation and brand come primarily from interaction. In addition, the company uses its own

[10] Colin Mayer, *supra note*, 6: 51.

capital to acquire other forms of capital, such as intellectual property, real estate.[11] Therefore, a set of both tangible and intangible capital, combined with a corporate form, necessitates the definition of the meaning or purpose of its existence.

The concept of the "company's purpose" was defined in different periods and in different contexts. Christopher A. Bartlett and Sumantra Ghoshal define company's purpose as "[...] the embodiment of an organization's recognition that its relationships with its diverse stakeholders are interdependent. [...] purpose is the statement of a company's moral response to its broadly defined responsibilities, not an amoral plan for exploiting commercial opportunity".[12] Anjan V. Thakor and Robert E. Quinn emphasize the company's purpose as "[...] something that is perceived as producing a social benefit over and above the tangible pecuniary payoff that is shared by the principal and the agent".[13] Rebecca Henderson and Eric Van den Steen in the article "Why Do Firms Have "Purpose?"[14] determine the concept of purpose as a specific goal or objective of a company that goes beyond profit maximization. The Report of Harvard Business Review defines organizational purpose as "[...] an aspirational reason for being which inspires and provides a call to action for an organization and its partners and stakeholders and provides benefit to local and global society".[15]

Thus, the company's purpose corresponds to the basic idea of why the company was incorporated and why the company exists. It is worth noting that in most cases of purpose definition, the emphasis is not only on the internal achievements and influence of the company, but also on external stakeholders. Certainly, the purpose of the company is set by the persons involved in its creation. However, it seems necessary to define a certain universal purpose, because in the presence of the transferable shares and investor ownership as constitutive features of companies, the original purpose may differentiate.

The company's focus on a specific purpose can affect performance through various mechanisms, for instance, increasing employee effort and productivity through higher employee

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[11] Susan Watson, "The corporate legal person," *Journal of Corporate Law Studies 19*, no. 1 (2019): 4, https://ssrn.com/abstract=3300383

[12] Christopher A. Bartlett and Sumantra Ghoshal, "Changing the role of top management: Beyond strategy to purpose," *Harvard Business Review* 72, 6 (1994): 88.

[13] Anjan V. Thakor and Robert E. Quinn, "The Economics of Higher Purpose," ECGI Finance Working Paper no. 395/2013 (December 2, 2013), 2, https://ssrn.com/abstract=2362454

[14] Rebecca Henderson and Eric Van den Steen, "Why Do Firms Have "Purpose?" The Firm's Role as a Carrier of Identity and Reputation," *American Economic Review* 105, 5 (2015): 327, http://nrs.harvard.edu/urn-3:HUL.InstRepos:33785676

[15] "The Business Case for Purpose," A Harvard Business Review Analytic Services Report, October 01, 2015, 1, https://hbr.org/sponsored/2015/10/the-business-case-for-purpose

satisfaction and engagement, which ultimately affects the company's performance.[16] Obviously, employee satisfaction and involvement to achieve specific purposes creates a comparative advantage in achieving more effective results in the future. Hence, the purpose complements efficiency: a higher sense of purpose among employees is correlated with better long-term performance.[17] According to the report "The Business Case for Purpose"[18], companies with a strong sense of purpose are better able to transform and innovate. Managers who see goals as the main drivers of strategy and decision-making have reported a greater ability to drive successful innovation and transformational change and ensure stable revenue growth.[19] Moreover, purpose-oriented companies have a key role to play in driving systemic change, as they have a unique willingness to create common value, process finances, build cooperation and rebuild global institutions.[20] Thus, the concept of the company's purpose is not just a general or doctrinal definition at the level of theory, marketing or brand issue. The purpose of existence, determines the choice of a particular type of business conduct, including social policy, forms the company's development strategy.

On the other hand, the notion of the benefits of purpose-oriented companies that go beyond profit maximization contrasts with the long-standing argument that the corporation's sole purpose is to enrich shareholder value.[21] However, the dominance of shareholder primacy as a model of corporate governance and the concept of the company's purpose combined with the prioritization of short-term projects and initiatives has consequences in the environmental, social and economic spheres due to the number of stakeholders affecting company performance and conversely are affected by the activities of companies. In particular, according to calculations of Global Footprint Network (an international independent analytical center), in 2020, humanity has exhausted "nature's budget" on August 22, 2020 (by the end of 2020, humanity is actually in deficit, threatening a shortage of natural resources for future).[22] Due to the current situation, society is "[...] on the border between creation and cataclysm, and the corporation is in large part the determinant of which way we will go"[23]. However,

[16] Claudine Madras Gartenberg, Andrea Prat and George Serafeim, "Corporate Purpose and Financial Performance," Columbia Business School Research Paper no. 16-69 (June 30, 2016), 10, https://repository.upenn.edu/mgmt_papers/274
[17] "Can Purpose Deliver Better Corporate Governance?" IESE-ECGI Conference Report, October 28-30, 2020, 22, https://www.iese.edu/wp-content/uploads/2020/12/IESE-ECGI-Conference-2020.-Conference-Report.pdf
[18] "The Business Case for Purpose," *supra note*, 15: 3.
[19] Ibid.
[20] "Can Purpose Deliver Better Corporate Governance?" *op. cit.*, 28. https://www.iese.edu/wp-content/uploads/2020/12/IESE-ECGI-Conference-2020.-Conference-Report.pdf
[21] Claudine Madras Gartenberg, Andrea Prat and George Serafeim, *op. cit.*, 11.
[22] "Earth Overshoot Day," Global Footprint Network, Accessed 12 November 2020, https://www.footprintnetwork.org/our-work/earth-overshoot-day/
[23] Colin Mayer, *supra note*, 6: 55.

before analyzing what humanity needs to give up (Chapter 2) and where to move (Chapter 3), it is necessary to look back and understand the purpose of companies through the prism of history.

Throughout its 4,000-year history from the Hammurabi Code in Babylonia, through the Roman Republic to the Industrial Revolution, entrepreneurship was motivated by ideas of social purpose.[24] In particular, in Roman law, companies were created to perform public functions, such as minting coins, collecting taxes, organizing and conducting of public works.[25] Later, the companies were used to manage municipalities in Europe, establish the first universities.[26] The early development of the corporate form was for local government, and incorporation was usually granted by the Crown, in particular, by the 16th century, there were numerous corporations in England such as universities and colleges, hospitals, charitable bodies, and ecclesiastical bodies.[27] The Crown had near-monopoly power over the creation of corporations and granted them through Royal charters, letters patent, or Acts of Parliament.[28] Companies also became the basis for the formation of trading corporations that were used by imperial powers to control trade, resources and territory in Asia, Africa and America, for instance, the East India Company that expanded into a vast enterprise, conquering India with a total monopoly on trade and all the territorial powers of a government.[29] Dr. Min Yan describes the public nature of companies before 19th century as follows:

> In the U.K., the first trading companies with legal personality were created in the 16th century by royal charters and mainly used for overseas trading, exploration, and colonization. In the U.S., incorporation depended on the state's concession through special acts by the state legislature and was usually made for providing public utilities, such as public transport, financial institutions, and local public services [...] The privilege of incorporation was largely legitimized on the basis that corporations would serve the public good rather than simply private benefits. All of these considerations led corporations to be viewed as socially useful instruments to carry out public policy goals.[30]

Hence, initially companies were created to meet the public interest of the state, community, society rather than private interests. The dependence of companies on states and the need for

[24] David Cannadine and Colin Mayer, "Reforming Business for the 21st Century: A Framework for the Future of the Corporation," (Report, The British Academy, 2018), 14, https://www.thebritishacademy.ac.uk/documents/76/Reforming-Business-for-21st-Century-British-Academy.pdf
[25] Ibid.
[26] Ibid.
[27] John D. Turner, "The development of English company law before 1900," Queen's University Centre for Economic History, Working Paper Series, no. 2017-01, 4.
[28] Ibid.
[29] "A short history of corporations," *New Internationalist*, July 05, 2002, https://newint.org/features/2002/07/05/history
[30] Min Yan, *supra note*, 7: 8.

government approval automatically created an obligation for companies to perform certain social or public functions.

With the advent of general incorporation law, almost all major restrictions on corporate activities were removed, and as the establishment of the company became a formal procedure, the state gradually lost the power to require companies to operate in the public interest.[31] As a result, the role of corporate law has largely shifted from public law, which regulates the economic and social aspects of companies to the internal issues of corporate governance.[32] Thus, the public and social function of companies came to naught, and social welfare became an obsolete issue in the activities of companies.[33]

Due to economic changes and economic stagnation in the 1970s, in particular, companies in the United States faced with stiff competition from abroad, so the concept of active social involvement of companies receded into the background.[34] Company managers sought to maximize the wealth of their owners, unions declined and shareholder primacy became the dominant model of corporate governance in the United States, then Europe and Japan, where it is still gaining ground.[35]

In addition, the division of ownership and management of the company, the emergence of the theory of agencies, that provides for executors appointed to manage the company on behalf and in favor of shareholders has shifted the emphasis from social involvement of companies to achieve public welfare to balance the interests of shareholders, directors and managers and the growth of the concept of shareholder value maximization.[36] The emergence of the financial service and the transnational corporation, that is not only international but stateless, has led to a situation in which, from entities owned by the states, the companies became organizations owned by specific investors without any obligations to nations or states other than modern state regulations.[37]

Based on described development of the nature and purpose of companies caused with changes in socio-economic and political conditions, scientists identify historical stages in the formation of companies and acquisition of modern features that distinguish them among other forms of

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[31] Ibid., p.9.
[32] Ibid.
[33] Ibid.
[34] Harwell Wells, "The Purpose of a Corporation: A Brief History," *The Temple 10-Q,* Accessed 20 September 2020, https://www2.law.temple.edu/10q/purpose-corporation-brief-history/
[35] "What companies are for: Competition, not corporatism, is the answer to capitalism's problems," *The Economist,* August 22, 2019,
https://www.economist.com/leaders/2019/08/22/what-companies-are-for
[36] Min Yan, *supra note*, 7: 9-10,
https://ssrn.com/abstract=3183279
[37] Colin Mayer, *supra note*, 6: 54.

entrepreneurship. In particular, the classification of Colin Mayer is noteworthy: “At first the merchant trading company established by royal charter to undertake voyages of discovery [...] Then the public corporation created by Acts of Parliament to engage in major public works and the building of canals and railways. Then [...] the private corporation – the seedbed of the industrial revolution and the manufacturing corporation. Next were the service firms and the rise of financial institutions. The fifth age is the transnational corporation [...] The last [...] is the mindful corporation – sans machines, sans man, sans money, sans everything – but with principles and purposes that determine our destiny”.[38]

Hence, companies have evolved from an instrument of rulers (parliaments) to achieve national interests, build infrastructure through the industrial revolution, division of ownership and management of companies to transnational entities that enrich a narrow circle of shareholders. However, companies do not exist by themselves. As long as the company is seen as a tool of its shareholders, social, environmental and economic problems will only worsen and bring the state, companies, society to the point of no return. Employees provide their skills and experience necessary for the proper functioning of companies, the human mind is a source of innovation, suppliers provide companies with raw materials, the state provides the conditions for doing business, infrastructure, etc. Thus, all of these stakeholders have their own interests, which led to the logical questions: for whom companies exist? What is the main purpose of companies in the 21st century?

1.2. Constitutive Features that Shape the Company’s Identity

Before proceeding to a direct analysis of various concepts of the purpose of companies and finding ways to balance heterogeneous interests inside and outside the company, it is necessary to determine how the corporate form of the company distinguishes it from other organizational entities.

The classic corporate form emerged in the mid-19th century and takes essentially the same form in every developed jurisdiction, including a combination of its main features: separate legal personality, limited liability, transferable shares, delegated management and investor ownership.[39] Moreover, the combination of constitutive features of the company forms the company’s persona, different from the shareholders, that plays a key role in justifying the need to focus companies on specific purposes that exceed the maximization of shareholder wealth.

[38] Ibid., p. 50.
[39] Edward Rock, “For Whom is the Corporation Managed in 2020? The Debate over Corporate Purpose,” New York University and ECGI, Law Working Paper N° 515/2020 (September 2020), 7, https://ssrn.com/abstract=3589951

Separate legal personality. The status of the company as a "nexus for contracts"[40] in the sense that the company is essentially a joint counterparty and coordinates the actions of employees, suppliers, creditors, but remains a separate contracting party is the basic principle of corporate law.

The main element of the company as a nexus for contracts is that the assets owned by shareholders are different from the company owns assets, that are not available for seizure by personal creditors of shareholders (entity shielding).[41] Entity shielding doctrine is necessary to assure current and potential creditors that the contract between the company and one of its creditors will have on the security available to the firm's other creditors.[42]

Entity shielding consists of two relatively different rules:

1) The company's creditors receive a priority right over the personal creditors of shareholders to satisfy claims on the company's assets and a result, the company's assets become available by default for the performance of contractual obligations entered into in the name of the company[43];

2) Liquidation protection (unique for companies), that does not allow shareholders to withdraw their own share of the company's assets at will or personal creditors of shareholders foreclose on the owner's share of firm assets, it serves as a guarantee of the value of the firm against destruction by individual shareholders or their creditors[44]. Thus, the priority rule and liquidation protection as part of the entity shielding allow to separate the financial interests of shareholders from the value of the company, give the company independence with the appropriate rights and responsibilities.

While a company is registered, it is considered as a separate legal entity from its shareholders, directors, employees, thus, a corporate veil was formed.[45] This fundamental principle was established by the House of Lords in *Salomon v. Salomon & Co Ltd.*[46] Briefly summarizing the decision, the following should be emphasized: after registration in the manner prescribed by the law, the company

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[40] Rainer Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe and Edward Rock, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (Oxford: Oxford University Press, 2017), 5.

[41] John Armour, Henry Hansmann, Reinier Kraakman and Mariana Pargendler, "Foundations of Corporate Law," ECGI Working Paper Series in Law, Working Paper N° 336/2017 (January 2017), 10, https://ssrn.com/abstract=2906054

[42] John Armour, Henry Hansmann and Reinier Kraakman, "The Essential Elements of Corporate Law," ECGI Working Paper Series in Law, Working Paper No. 134/2009 (November 2009), 7, https://ssrn.com/abstract=1436551

[43] Rainer Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe and Edward Rock, *op. cit.*, 6.

[44] John Armour, Henry Hansmann, Reinier Kraakman and Mariana Pargendler, *op. cit.*, 11,

[45] Rajib Dahal, "Salomon v Salomon & Co. Ltd. [1897] AC 22 – its impact on modern laws on corporations – selected studies from the UK and the USA," SSRN, April 26, 2018, https://ssrn.com/abstract=3169431

[46] Salomon v. Salomon & Co Ltd [1897] AC 22.

forms a new legal entity separate from the shareholders, even if the vast majority of issued shares are held by one person. There is no agency relationship between a shareholder and a company solely on the basis of the fact that all or almost all of the company's issued shares belong to one person. The reasons for establishing the company once it is registered are irrelevant to the determination of the rights and responsibilities of the company.

The mentioned above considerations lead to a logical conclusion: if the company has legal personality (that determines the relevant rights and obligations), separate from shareholders, employees, creditors, therefore, the company can independently enter into contractual relations, own property , that is not the property of the shareholder (even if he owns all the shares), delegate authority, to sue and to be sued. Brenda Hannigan also emphasizes the "perpetual existence and succession"[47] of the company, and "debts are the debts of the company and not of the shareholders"[48], whose obligations are limited to contribute assets to the authorized capital of companies corresponding to the amount of shares they own. In addition, considering the company as a legal entity separate from the shareholders, which enters into a contractual relationship on its own behalf, in this case, directors and other agents act as fiduciares of the company, not shareholders.[49]

Defining the separate legal personality of the company plays a key role in shaping the concept of the company's purpose, because the rights, responsibilities and interests of shareholders and the company are separated by a corporate veil. In view of the above, the understanding of the company as a tool for the enrichment of shareholders in accordance with the doctrine of the shareholder primacy does not seem reasonable. A company, that has appropriate legal status unites completely antagonistic groups of stakeholders, and giving preference to one of them, creates negative consequences for others. Thus, the separate legal personality is essentially one of the constitutive features of the company, which distinguishes the interests of shareholders and the interests of companies, creating a basis for further research of the company's purpose.

Limited liability. The corporate form of a company imposes a default term in contracts between the company and creditors, which are limited in their claims by the assets of companies and may not have any claims on the assets of shareholders or managers.[50] This limitation of shareholders' liability distinguishes companies from other legal entities with legal personality, such as

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[47] Brenda Hannigan, *Company law* (Oxford: Oxford University Press, 2012), 44.
[48] Ibid.
[49] Prithvijoy Das, "Corporate Personality is the Laws Greatest Invention," SSRN, April 26, 2019, 10, https://ssrn.com/abstract=3373137
[50] John Armour, Henry Hansmann and Reinier Kraakman, *supra note*, 42: 10.

partnerships.[51] Along with the separate legal personality of companies, limited liability is a universal feature of the corporate form, a tool for concluding contracts and financing the company by shareholders. While legal personality allows a company to own assets and favors the company's creditors in satisfying their interests over individual creditors of shareholders or managers (entity shielding), limited liability in turn reserves individual shareholders' assets exclusively to their personal creditors (owner shielding).[52] The liability of the members of the company is limited to the nominal value of the shares signed by them after registration companies.[53] Thus, legal personality and limited liability establish a regime under which the shareholder's personal assets are available to personal creditors, while the company's assets are reserved for the company's creditors.

The peculiarity of limited liability is that it allows the company's creditors to have the first claim for the company's assets, which have such comparative advantages in valuation and monitoring and conversely, it allows an individual's personal creditors to have the first claim for personal assets that these creditors are able to assess and control, and which the company's creditors, on the other hand, are unable to verify.[54] Limitation of shareholder liability transfers business risks to other stakeholders, such as suppliers, customers and employees.[55] The separation of company's assets and personal assets of shareholders seems to be an incentive that can encourage potential shareholders to invest in the company, as there is a guarantee of inviolability of their personal assets from creditors (as opposed to general partnerships).

In addition, limited liability protects shareholders from creditors' claims, which contributes to diversification, because in the case of unlimited liability, the risk of reduction borne by shareholders depends on the way of doing business, so shareholders prefer to take an active part in doing business to keep this risk control, which makes it difficult to invest in several companies at once.[56] Limited liability, on the other hand, imposes restrictions on potential shareholder losses, allowing shareholders to diversify their holdings. In this regard, in the context of the research topic, it should be emphasized that limited liability of shareholders to the company and vice versa, allows managers to effectively promote long-term projects and initiatives (including corporate social responsibility as a management

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[51] Henry Hansmann and Reinier Kraakman, "What is Corporate Law?" Yale Law & Economics Research Paper no. 300 (February 2004), 8,
https://ssrn.com/abstract=568623
[52] John Armour, Henry Hansmann, Reinier Kraakman and Mariana Pargendler, *supra note*, 41: 14.
[53] Prithvijoy Das, *supra note*, 49: 11.
[54] Henry Hansmann and Reinier Kraakman, *op. cit.*, 8.
[55] Denis Boyle, "Historical Drawbacks of Limited Liability," *Journal of Evolutionary Studies in Business* 2, no. 1 (2016): 298
https://revistes.ub.edu/index.php/JESB/article/view/j020
[56] John Armour, Henry Hansmann, Reinier Kraakman and Mariana Pargendler, *op.cit.*, 14.

model), due to the fact, that limited liability leaves an imprint on the corporate structure of the company, where shareholders are not involved in the day-to-day business of the company.

Transferable shares are another characteristic of companies that distinguishes them from the partnership and other legal entities. Transferability allows the company to carry out business activities uninterruptedly, avoiding the difficulties of exit of common members, such as among partnerships, cooperatives, it increases the liquidity of shareholders' interests, allows shareholders to construct and maintain diversified investment portfolios.[57]

For further analysis of the transferability of shares, it is necessary to determine the definition of shares. In this context, in *Borland's Trustee v Steel Bros & Co Ltd*[58] a share was defined as the shareholder's interest in the company, measured by a sum of money, for the purpose of liability and interest and constitutes a number of mutual obligations. The mentioned above amount of money is the nominal value of a share, that identifies the degree of responsibility of the shareholder to the company; mutual obligations of the company and shareholders provide for compliance with the terms and conditions of the charter.[59] Thus, a share certifies the status of a shareholder of the company, is an identifier of the shareholders' rights to receive dividends and at the same time a basis of mutual obligations of the shareholder and the company.

From mentioned set of characteristics, the share is a type of personal intangible property, it can be owned, bought and sold, mortgaged, and it will be part of the estate of the deceased.[60] However, fully transferable shares do not mean freely tradable shares, although shares can be transferred, they cannot be traded in public markets without restrictions, but are simply transferred between limited groups of people or after approval by current shareholders or the company.[61] In this regard, companies with freely traded shares are defined as open or public, and companies that have restrictions on trading in their shares are defined as closed or private.[62] Depending on the type of company, the transferability of shares as an instrument of permanent existence of the company may acquire certain features and even restrictions.

Henry Hansmann and Reinier Kraakman describing the nature of transferable shares as general feature of companies, note: "[...] free tradability maximizes the liquidity of shareholdings and the

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[57] Henry Hansmann and Reinier Kraakman, *supra note*, 51: 10.
[58] Borland's Trustee v Steel Bros & Co Ltd. [1900] SVC 19.
[59] Nicholas Grier, *Company law* (Great Britain: Thomson Reuters, 2009), 97.
[60] Simon Goulding, *Company law* (Great Britain: Cavendish Publishing Limited, 1996), 205.
[61] Rainer Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe and Edward Rock, *supra note*, 40: 10.
[62] Ibid.

ability of shareholders to diversify their investments. It also gives the firm maximal flexibility in raising capital".[63] For this reason, all jurisdictions provide for free trade as the default mode for at least one type of company (open company).[64] Thus, the transferability of shares allows the persons involved in the creation of the company to transfer shares, promotes the development of the company, as it minimizes the effect of a change of shareholder (the only consequence is essentially the change of shareholder, that does not bring significant changes in management structure).

Transferability of shares is the reverse of liquidation protection that the company's legal personality assures to its contractual counterparties, due to the fact, that counterparties can be confident that the company will continue to exist, there is no need to require owners to continue to participate.[65] And such approach is understandable, because in the case of a sole trader, changing the contractual party may reduce the expected benefit or value of the expected results. In this regard, the transferability of shares complements the limited liability and separate legal personality of the company, is a feature of the standard corporate form, that ensures uninterrupted existence of companies, promotes contract relations, gives confidence to creditors, allows planning and implementation of long-term projects aimed at sustainable development. The trasnferability of shares allows shareholders to respond to company policies, in case of disapproval of the implementation of certain projects and strategies, the transferability of shares allows shareholders to invest in other companies that meet their expectations and preferences.

Delegated management is an attribute of almost all companies with dispersed ownership that reflects the investor ownership (fundamental decisions are made at the general meeting), while delegated management provides for significant decision-making powers by specially elected (appointed) body. Delegation allows to centralize the authority to make the necessary decisions for the company.[66] In addition, delegation of power to a particular person is informative for third parties, as it allows to clearly define who has the authority to enter into a contractual relationship on behalf of the company.[67] However, different organizational forms may adapt different method of distribution of powers to enter into contractual relations, to exercise the powers granted to the company by contracts, to manage the company's assets.[68] As a rule, a general partnership gives the right to manage the day-to-day operations of the company to the partners, while the fundamental decisions for the

[63] Henry Hansmann and Reinier Kraakman, *supra note*, 51: 10.
[64] John Armour, Henry Hansmann and Reinier Kraakman, *supra note*, 42: 12.
[65] John Armour, Henry Hansmann, Reinier Kraakman and Mariana Pargendler, *supra note*, 41: 16.
[66] Henry Hansmann and Reinier Kraakman, *op. cit.*, 11.
[67] Ibid.
[68] John Armour, Henry Hansmann and Reinier Kraakman, *op. cit.*, 13.

partnership require unanimity, that does not correspond to the essence of the company with the transferable shares and numerous and changing shareholders.[69] In particular, companies usually give managerial powers to a board of directors, which is elected exclusively or predominantly by shareholders.[70] Thus, companies are distinguished by their management structure, in which most of the responsibilities for day-to-day business are transferred to the board of directors.

The board is initially separated from the operational managers of the companies, however, the nature of such division depends on the structure of the board (one-tier board or two-tier board).[71] In a two-tier board system, the company's management occupies a subordinate level of the board (management board), but is usually absent at the supervisory level (supervisory board).[72] Moreover, in jurisdictions with labor codetermination (Germany), the supervisory board not only devoted to the interests of the shareholders, but also serves to reduce the cost of coordination between shareholders and employees.[73] As analyzed below, this approach is a way to ensure the interests of stakeholders (employees in this case). Delegated management is one of the grounds for further criticism of the effectiveness of the concept of shareholder primacy, as it reflects the nature of the functional rights and responsibilities of shareholders, refutes the understanding of the company as property of shareholders.

Delegated management economizes on the costs of decision-making through avoiding the need to inform shareholders and obtain consent to make day-to-day decisions other than the most important for the company's existence.[74] Along with a separate legal personality, limited liability and transferability of shares, board membership can provide stakeholders such as creditors, employees with access to information or direct participation in decision-making, that increases the likelihood that these individuals will respond to the interests of all stakeholders.[75] Therefore, delegated management of the company's day-to-day operations makes sense as it contributes to the company's structure, reduces the coordination costs faced by shareholders if they try to make decisions on their own, allows shareholders to invest in several companies at once, and finally, reveals the essence of the company

[69] John Armour, Henry Hansmann, Reinier Kraakman and Mariana Pargendler, *supra note*, 41: 17.
[70] Rainer Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe and Edward Rock, *supra note*, 40: 12.
[71] John Armour, Henry Hansmann and Reinier Kraakman, *supra note*, 42: 12.
[72] John Armour, Luca Enriques, Henry Hansmann and Reinier Kraakman, "The Basic Governance Structure: The Interests of Shareholders as a Class," ECGI, Law Working Paper no. 337/2017 (January 2017), 3, https://ssrn.com/abstract=2901416
[73] Ibid., p. 4.
[74] Rainer Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe and Edward Rock, *op. cit.*, 12.
[75] Henry Hansmann and Reinier Kraakman, *supra note*, 51: 12.

as a group of interests of different stakeholders, refutes the understanding of the company as a property right of shareholders.

Investor ownership as another fundamental characteristic of companies has two key elements: the right to control the firm and the right to receive the firm's net earnings.[76] In companies owned by the investor, the right to participate in the control through voting in the election of directors and voting for the approval of major transactions, the right to receive residual income or profits of the company, as a rule, proportional to the amount of contributed capital.[77] Promoting of investor ownership gained popularity only in the second half of the 19th century, while further specialization in investor ownership stemmed from the dominant role of companies in today's economy and the implications of having a form that specializes in the specific needs of such firms, and this clearly signals to stakeholders the specific nature of the firm they are dealing with.[78]

Investor ownership is also one of the key factors in determining the purpose of companies. As analyzed below, the shareholder primacy is based on the understanding of the company as the property of shareholders in the classical (private-law) sense of ownership. However, such position is not justified. In particular, *Short v Treasury Commissioners*[79] seems exemplary, where House of Lords established that shareholder who owns a share owns a bundle of rights in relation to the company. This is not the same as owning a proportionate part of the company's assets. Shareholders are not, in the eye of the law, part owners of the undertaking. The undertaking is something different from the totality of the shareholdings. In this context, Jonathan R. Macey also emphasized: "[...] shareholders simply are owners of investment interests with certain contractual rights. They are not "owners" of the corporation in any sense of the word, and their relationship with the corporation is purely statutory and contractual".[80]

This argumentation is confirmed by the identification of other fundamental features of the company. In particular, the separate legal personality of the company gives it certain rights and obligations (enter into contracts, own property, to sue and to be sued), limited liability effectively excludes the company as shareholder property, limiting the right of personal creditors of the shareholder to claim the company's property, and finally delegated management establishes the

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[76] John Armour, Henry Hansmann and Reinier Kraakman, *supra note*, 42: 14.
[77] Henry Hansmann and Reinier Kraakman, *supra note*, 51: 13.
[78] John Armour, Henry Hansmann, Reinier Kraakman and Mariana Pargendler, *supra note*, 41: 19.
[79] Short v Treasury Commissioners. [1948] SVC 177.
[80] Jonathan R. Macey and Leo E. Strine, "Citizens United as Bad Corporate Law," Institute for Law and Economics, Research Paper no. 18-28 (August 2018), 4,
https://ssrn.com/abstract=3233118

internal structure of the company, when daily business activities of the company are governed by specially elected bodies. Thus, investor ownership, that includes the right to control the company and the right to receive dividends is one of the fundamental features of the company, that distinguishes it from other corporate forms, essentially refutes the concept of private law understanding of property rights, promotes specialization and investor protection.

To conclude this Chapter, companies change as do the conditions in which they operate. However, the purpose of the company's existence has always determined the principles of its existence due to the dominance of understanding the company as a form of association, a public instrument or a means of promoting private interests. In order to effectively and comprehensively analyze the purpose of the companies, the constitutive features that form the company's persona have been identified. Hence, company is determined as a separate legal entity, that has its own management structure through delegation of powers, is not liable to personal creditors of shareholders, interrupted in its existence due to the transferability of shares and is not a classic object of property rights, but acquires the form of investor ownership through control over the company and the right to receive dividends. Such corporate form, uniting the number of stakeholders, not only eliminates the company from other legal entities of public and private law, but also necessitates the definition of the purpose of existence.

Briefly summarizing:

✓ The company's purpose corresponds to the basic idea why the company was registered and why the company exists. The purpose of a company is not simply a general or doctrinal definition at the level of theory, marketing or brand. The purpose of existence, determines the choice of a particular type of business conduct, including social policy, forms the company's development strategy.

✓ The concept of the company's purpose and its role in modern society has evolved from a state agent - a tool of kings (parliaments) in promoting national interests, building infrastructure through the industrial revolution, separation of ownership and management of companies to a multinational corporation - a leader of progress and innovation.

✓ The separate legal personality of companies distinguishes the interests, rights and obligations of companies from the personal interests, rights and responsibilities of shareholders, managers, employees. Since companies are endowed with legal personality to act as an independent entity in contractual relations, company managers act as fiduciaries of companies, not shareholders, which is a key factor for further research.

- ✓ Limited liability as a supplementary element of a separate legal personality of companies, protects shareholders from the claims of the company's creditors and vice versa protects the company's property from the claims of personal creditors of shareholders. Limited liability confirms the separation of the company and shareholders, allows managers to effectively promote long-term projects and initiatives (including corporate social responsibility as a management model).
- ✓ Transferability of shares (as the shareholder's interest in the company, measured by a sum of money, for the purpose of liability and interest and constitutes a number of mutual obligations) allows shareholders to respond to company policy, promotes the development of the company, minimizes the effect of a change of shareholder, ensures uninterrupted existence of companies, provides with the planning and implementation of long-term projects aimed at sustainable development.
- ✓ Delegated management as a characteristic that distinguishes companies from partnerships, helps to inform third parties about the structure of companies, allows stakeholders to clearly define who has the power to enter into contractual obligations on behalf of the company. Delegated management confirms the essence of the company as a group of heterogeneous interests that need to be effectively balanced.
- ✓ Investor ownership, that includes the right to control the company and the right to receive dividends is one of the main features of the company, which distinguishes it from other corporate forms, departs from the classical understanding of the company as private property of shareholders, promotes specialization and investor protection.

CHAPTER II. SHAREHOLDER PRIMACY: FROM DOMINATION TO CRITICISM

Companies have the capacity to use the greatest potential of mankind to implement projects with volumes that exceed what any individual can provide to the world.[81] Historically, companies have combined the efforts and interests of people to achieve a common goal. But, at some point of development, companies ceased to be a "socially active element" and focused in their activities on the enrichment of shareholders. Thus, concepts, theories, doctrines were formed, to some extent absolutely mythical, which became norms of corporate behaviour.

Chapter 2 defines shareholder primacy as the dominant concept of the purpose of existence of companies, analyzes in detail the main arguments of shareholder primacy, legislation and case law of common and continental law countries on the purpose of existence of companies and responsibilities of managers to achieve it. In addition, stakeholder value as an alternative to the shareholder primacy is determined, the methods of its integration into the national legislation and practice of companies are identified.

2.1. The Essence and Main Arguments of the Shareholder Primacy

The debate over the purpose of the companies has been going on for a long time. In particular, in 1932, the Harvard Law Review published a series of scientific papers regarding the purpose of public companies. On the one side, Adolph A. Berle expressed the position that: "[...] all powers granted to a corporation or to the management of a corporation, or to any group within the corporation, whether derived from statute or charter or both, are necessarily and at all times exercisable only for the ratable benefit of all the shareholders as their interest appears".[82]

On the other side, professor Merrick Dodd discussed allegations of A.A. Berle and defined: "[...] a view of the business corporation as an economic institution which has a social service as well

[81] J.S. Nelson, "Bringing Ethics Back to Friedman's Call to Purpose for the Next 50 Years," *PROMARKET: the publication of the Stigler Center at the University of Chicago Booth School of Business,* October 7, 2020, https://promarket.org/2020/10/07/ethics-milton-friedman-purpose-corporations/

[82] A.A. Berle Jr., "Corporate Powers as Powers in Trust," *Harvard Law Review* 44, 7 (1931): 1049, cited from Lynn A. Stout, "Bad and Not-so-Bad Arguments for Shareholder Primacy," *Southern California Law Review* 75, no. 5 (July 2002):1189, http://scholarship.law.cornell.edu/facpub/448

as a profit-making function [...]".[83] Thereby, Berle adopted the private aggregate theory of the company, while Dodd considered the company from a public perspective.[84]

Another well-known and most quoted concept regarding purpose of the companies comes from Milton Friedman, an economist. The Friedman Doctrine first appeared in the New York Times in 1970. In the essay, the author excludes the social responsibility of business, only individuals.[85] In his view, company managers are the agent of the individuals who own the company, and their primary responsibility is to shareholders.[86] Friedman declared: "There are no "social" values, no "social" responsibilities in any sense other than the shared values and responsibilities of individuals. [...] There is one and only one 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 game, which is to say, engages in open and free competition without deception fraud".[87]

More recently, the concept of shareholder primacy has been supported by Joel Bakan, in scientific research "The Corporation: The Pathological Pursuit of Profit and Power".[88] He considers the company as a highly effective mechanism for creating wealth for its owners without any internal limits, whether moral, legal or ethical. Moreover, J. Bakan emphasized: "The corporation's legally defined mandate is to pursue relentlessly and without exception its own economic self-interest, regardless of the harmful consequences it might cause to others".[89]

Stances about purpose of the company's existence correspond to the conceptual distinction between pluralistic and monistic approaches.[90] A pluralistic approach to the interests of the company provides an opportunity to balance different interests, as opposed to a monistic approach that sets the

[83] E. Merrick Dodd Jr., "For Whom Are Corporate Managers Trustees?" *Harvard Law Review* 45, 7 (1932): 1148, cited from Lynn A. Stout, "Bad and Not-so-Bad Arguments for Shareholder Primacy," *Southern California Law Review* 75, no. 5 (July 2002):1189,
http://scholarship.law.cornell.edu/facpub/448
[84] Jennifer G. Hill, "Corporations, Directors' Duties and the Public/Private Divide," Monash University and ECGI, Law Working Paper no. 539/2020, August 2020, 7,
http://ssrn.com/abstract_id=3682754
[85] Milton Friedman, *supra note*, 3.
[86] Ibid.
[87] Ibid.
[88] Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (London: Simon and Schuster, 2005), 111-112.
[89] Ibid., pp.1-2.
[90] Amir N. Licht, "Varieties of Shareholderism: Three Views of the Corporate Purpose Cathedral," Interdisciplinary Center Herzliya and ECGI, Law Working Paper no. 547/2020 (October 2020), 4,
https://ssrn.com/abstract=3718670

priority of a person or group of people.[91] The shareholder primacy, as monistic approach, determines the maximization of shareholders wealth as the ultimate goal of the company, other interests should be considered only to the extent that they assist to achieve the main goal.[92] In this regard, the biggest criticism is the narrow focus of the shareholder primacy only on creating value for shareholders, not taking into consideration what is happening to other stakeholder groups, society or the environment.

Over the past 50 years, environmental issues have become more serious and noticeable compared to the time when Friedman published his essay.[93] However, the concept of shareholder primacy is still limited in its arguments.

Can shareholders be considered as owners of companies? Milton Friedman argued that: "In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers".[94] In this way, proponents of shareholder primacy emphasize that shareholders, as owners of companies, should have more rights over companies than other stakeholders. However, shareholders do not own companies in the context of a private-law understanding of property rights. Now, when the company's value lies largely in intellectual property, in trademarks and patents, in the skills and experience of employees, it seems impossible to consider these things as the property of shareholders.[95]

Moreover, shareholders do not merely lack exclusionary rights over the companies. As Jonathan R. Macey mentioned: "Shareholders do not enjoy any of the indicia or hallmarks of ownership. Corporations themselves, not shareholders, have title to corporate assets"[96]. Lynn A. Stout describes shareholders as owners of "[...]a type of corporate security commonly called "stock."[97] Therefore, the rights of shareholders as owners of stock, are quite limited. In particular, in accordance

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[91] Sjåfjell, Beate and Johnston, Andrew and Anker-Sørensen, Linn and Millon, David K., "Shareholder primacy: the main barrier to sustainable companies," Cambridge University Press, 2015, University of Oslo Faculty of Law, Research Paper no. 2015-37, 95,
https://ssrn.com/abstract=2664544
[92] John Quinn, "The Sustainable Corporate Objective: Rethinking Directors' Duties," *Sustainability* 11, 23 (2019): 3,
https://doi.org/10.3390/su11236734
[93] Oliver Hart, "Shareholders Don't Always Want to Maximize Shareholder Value," *PROMARKET: the publication of the Stigler Center at the University of Chicago Booth School of Business*, September 14, 2020,
https://promarket.org/2020/09/14/shareholders-dont-always-want-to-maximize-shareholder-value/
[94] Milton Friedman, *supra note*, 3.
[95] Charles Handy, "What's a Business For?" *Harvard Business Review*, December 2002,
https://hbr.org/2002/12/whats-a-business-for
[96] Jonathan R. Macey, "The Central Role of Myth in Corporate Law," Yale University and ECGI, Law Working Paper no. 519/2020 (May 2020), 13,
http://ssrn.com/abstract_id=3435676
[97] Lynn A. Stout, *supra note*, 9: 1191.

with the provisions of the Delaware Code, "The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors[...]".[98]

A similar case when shareholders can receive direct payments from companies only if the director decides to declare the payment of dividends.[99] In addition, there are limits on income that can be distributed and paid as dividends. In particular, according to the UK Companies Act, "a public company may only make a distribution – (a) if the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves, and (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate".[100]

Thus, the company owns both tangible and intangible assets that cannot be considered the property of shareholders due to the separate legal personality of the company. Shareholders do not enjoy the right of direct control over the company's assets or direct access to them. Therefore, the understanding of the company as an object of ownership of shareholders who can use the company for their own enrichment is superficial.

Shareholders as residual claimants. Another argument in favor of shareholder primacy is that shareholders are the sole residual claimants of the company.[101] The essence of the argument is that "shareholders as residual claimants reap the marginal dollar of the corporate profits and suffer the marginal dollar of any corporate losses".[102] In particular, Frank H. Easterbrook and Daniel R. Fischel consider shareholders as residual risk persons and "[...] other participants contract for fixed payouts – monthly interest, salaries, pensions, severance payments, and the like. [...] Risk bearers get a residual claim to profit; those who do not bear risk on the margin get fixed terms of trade".[103]

Chapter 1 determines the company as a "nexus for contracts" in the sense that the company is essentially a joint counterparty and coordinates the actions of employees, suppliers, creditors, but remains a separate contractor. Separate legal personality of the company allows to distinguish personal assets and interests of shareholders from assets and interests of the company (entity shielding). Thereby, shareholders are one of the stakeholders who bear residual risks in the sense that they expect to benefit from the activities of companies. Stakeholders such as employees and managers who invest

[98] "Delaware Code," State of Delaware, tit. 8 § 141 (a), Accessed 22 October 2020, https://delcode.delaware.gov/title8/c001/sc04/index.shtml
[99] Ibid., tit. 8 § 170 (a)
[100] "UK Companies Act 2006," legislation.gov.uk, section 831 (1), Accessed 15 October 2020, https://www.legislation.gov.uk/ukpga/2006/46/contents
[101] Ibid., 1192,
[102] Min Yan, *supra note*, 7: 12,
[103] Frank H. Easterbrook and Daniel R. Fischel, *The Economic Structure of Corporate Law* (Harvard University Press, 1996), 36.

their experience in the company, knowledge are also residual claimants. For example, if a company makes a profit and operates successfully, employees can count on salary increases or bonuses, and vice versa, when there is a crisis, possible reductions, potential risks of loan defaults exist.[104] So, residual claimants argument does not consider employees, creditors, and other stakeholders who invest in the company and may bear potential risks.[105] Therefore, it is absolutely incorrect to consider shareholders as the only residual claimants. Shareholders cannot single-handedly support the activities of companies – employees, managers, creditors, the government – make their own contribution to the success of companies.

The interests of shareholders are not homogeneous. Shareholders' interests in securing the highest price for their shares differ from the interests of other stakeholders such as employees (who may have an interest in avoiding layoffs), creditors (who may have an interest in retaining earnings and avoiding leverage), customers (who may have an interest in high quality products at low prices), and communities (who may have an interest in maintaining local production).[106] But, moreover, the interests between the shareholders themselves are not always identical. In particular, Lynn A. Stout classifies groups of shareholders as follows:

> When a firm has more than one shareholder, the very idea of "shareholder wealth" becomes incoherent. Different shareholders have different investment time frames, different tax concerns, different attitudes toward firm-level risk due to different levels of diversification, different interests in other investments that might be affected by corporate activities, and different views about the extent to which they are willing to sacrifice corporate profits to promote broader social interests, such as a clean environment or good wages for workers. These and other schisms ensure that there is no single, uniform measure of shareholder "wealth" to be "maximized".[107]

According to the OECD research, institutional investors (these are mainly profit-maximizing intermediaries that invest on behalf of their ultimate beneficiaries) own 41% of the global market capitalization.[108]. Institutional investors dominate the ownership of public companies, particularly in the United States, Canada and the United Kingdom. In the United States, the average combined ownership held by a company's 10 largest institutional investors is 43%, in European listed companies, institutional investors own 38% of the total market capitalization. Thus, the presence of

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[104] Lynn A. Stout, *supra note*, 9: 1194.
[105] Sigurt Vitols and Norbert Kluge, *supra note*, 8: 65-66.
[106] Edward Rock, *supra note*, 39: 9.
[107] Lynn A. Stout, "Why We Should Stop Teaching Dodge v. Ford," Cornell Law Faculty Publications, paper 724 (2008), http://scholarship.law.cornell.edu/facpub/724?utm_source=scholarship.law.cornell.edu%2Ffacpub%2F724&utm_medium=PDF&utm_campaign=PDFCoverPages
[108] De La Cruz, A., A. Medina and Y. Tang, "Owners of the World's Listed Companies," OECD Capital Market Series, Paris, 2019,
www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm

institutional investors creates an additional link between the shareholders of companies – institutional investors and owners of funds that are invested.[109]

In particular, Luca Enriques emphasized, that institutional investors, in order to maximize portfolio value, may pushing for ESG (Environment, Social and Governance) policies at the individual company level, even if it is not profitable for that company, because, such policy can increase portfolio returns by making other companies more profitable.[110] A similar position was expressed by Madison Condon: "Institutional investors have the economic incentive to function as "surrogate regulators," sacrificing individual firm profits for the benefit of the broader portfolio".[111] So, institutional investors may have incentives to promote social expenses by companies due to the potential long-term success of the portfolio firm.[112]

There are a growing number of examples of current trends where institutional investors have pursued social goals related to the interests of stakeholders.[113] For instance, in 2017, Amra Balic, the head of investment stewardship of BlackRock in Europe, in a letter to the bosses of more than 300 UK companies noted that executive pay should be closely linked to performance, that is stable return in the long run, rather than short-term stock growth.[114]

Thus, while some shareholders may put pressure on directors to make short-term profits and as a result reduce all other expenses while others on the contrary are interested in long-term development. The active position of institutional investors to maximize long-term profits, in particular through increasing the costs for ESG policies refutes the component of shareholder primacy that all shareholders are interested only in short-term profits. Therefore, maximizing the value of all shareholders at the same time does not seem possible.

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[109] Alex Edmans, "What Stakeholder Capitalism Can Learn from Milton Friedman," *PROMARKET: the publication of the Stigler Center at the University of Chicago Booth School of Business*, September 10, 2020, https://promarket.org/2020/09/10/what-stakeholder-capitalism-can-learn-from-milton-friedman/

[110] Luca Enriques, "Missing in Today's Shareholder Value Maximization Credo: The Shareholders," *PROMARKET: the publication of the Stigler Center at the University of Chicago Booth School of Business*, September 22, 2020, https://promarket.org/2020/09/22/milton-friedman-value-maximization-credo-is-missing-the-shareholders/

[111] Madison Condon, "Externalities and the Common Owner," *Washington Law Review 95, 1 (2020): 81* *https://digitalcommons.law.uw.edu/wlr/vol95/iss1/4?utm_source=digitalcommons.law.uw.edu%2Fwlr%2Fvol95%2Fiss1%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages*

[112] Eyub Yegen, "Can Institutional Investors Solve Societal Issues When Governments Fail to Do So?" *PROMARKET: the publication of the Stigler Center at the University of Chicago Booth School of Business*, October 7, 2020, https://promarket.org/2020/10/07/institutional-investors-solve-societal-issues-when-governments-fail-prison-suicide/

[113] Jennifer G. Hill, "Shifting Contours of Directors' Fiduciary Duties and Norms in Comparative Corporate Governance," *UC Irvine Journal of International, Transnational, and Comparative Law 5,* 163 (2020): 182, https://scholarship.law.uci.edu/ucijil/vol5/iss1/8?utm_source=scholarship.law.uci.edu%2Fucijil%2Fvol5%2Fiss1%2F8&utm_medium=PDF&utm_campaign=PDFCoverPages

[114] Angela Monaghan, "World's largest fund manager demands cuts to executive pay and bonuses," *The Guardian,* January 16, 2017, https://www.theguardian.com/business/2017/jan/15/blackrock-demands-cuts-to-executive-pay-and-bonuses

The companies' value exceeds the value of shareholders. Companies are valuable not only for shareholders, but also for employees, customers, the state in general. However, any value provided to stakeholders other than shareholders is not considered by the concept of shareholder primacy. In this way, shareholders can externalize losses to other stakeholders and in order to maximize shareholder assets, directors may reduce the value and withdraw assets from other stakeholders, which creates a problem of fair redistribution.[115]

In particular, Anna Stansbury and Lawrence Summers, in scientific research "Declining Worker Power and American Economic Performance"[116] found that the growth of shareholder activism and the concept of shareholder primacy led to increased pressure on companies to reduce labor costs and redistribute assets in favor of shareholders. In addition, the authors established a causal link between the reduction of labor due to the growth of the concept of shareholder primacy and the consequences for the economy: "A decline in worker power can both explain the changes in capital incomes that have been attributed to rising monopoly power (falling labour income share, rising corporate profitability and measured markups), and can also explain the fall in the steady-state rate of unemployment without a corresponding rise in inflation".[117]

Thus, the company's activities affect not only the profitability of shareholders, but also determines the well-being of employees, consumers, and in general determines global changes in the economy. However, the shareholder primacy doctrine expressed by Adolph A. Berle and later, by Milton Friedman does not consider the needs of other stakeholders. Certainly, shareholders and their financial investments into the company play crucial role for its existence. But employees invest their skills for the success of companies, consumers pay for goods and services. The profits of companies depend on the well-being of society. Therefore, the business activities of companies and the well-being of community are complementary elements, and this factor must be considered.

Comparative advantage from social involvement. Another aspect of shareholder primacy is that companies do not have a comparative advantage with individuals in carrying out social activities, for instance charity.[118] So, Friedman recognizes the additional social responsibilities of individuals outside of profit. But, in a system of imperfect government regulation, companies will have a

[115] Min Yan, *supra note*, 7: 15.
[116] Anna Stansbury and Lawrence Summers, "Declining Worker Power and American Economic Performance," *Brooking Papers on Economic Activity (BPEA)*, Conference Drafts, March 19, 2020, 8, https://www.brookings.edu/wp-content/uploads/2020/03/Stansbury-Summers-Conference-Draft.pdf
[117] Ibid., p.1.
[118] Oliver Hart, *supra note*, 93.

comparative advantage over individuals in carrying out certain types of social activities.[119] Oliver Hart, winner of the 2016 Nobel Prize for economics, analyzing the socio-economic and environmental changes in the world since the second half of the 19th century noted: “I don’t think companies have a comparative advantage in giving to charity. It would be much better for them to take the money they would have given to charity, hand it to shareholders, and let each shareholder decide how much to give to his or her favorite charity. But when it comes to things like the carbon footprint, companies are actually in a much better position to help with climate change than individuals”.[120]

Governments are not efficient enough. One of the key theses in Friedman’s essay is that governments function effectively.[121] However, government regulation is not perfect. And if at the level of the minimum wage or environmental standards, the government can control the activities of companies, it is much more difficult to control issues such as ensuring the development of workers’ skills and meaningful work. Therefore, the company can go beyond legislation frameworks and improve employee conditions.

Shareholder primacy leads to short-termism. According to the report of Ernst & Young Global Limited for the European Commission “Study on directors’ duties and sustainable corporate governance”: “[...] the absence of a clear duty to identify and mitigate long-term economic, social and environmental risks and impacts [...] leads directors to focus primarily on shareholder value maximisation and short-term financial risks and neglect or underestimate longer-term risks and impacts”.[122] Hence, short-termism includes situations where corporate stakeholders prefer strategies that add less value but have an earlier payback period than strategies that create more value but have a later payback period.[123]

Short-termism can be estimated by changing the amount of net corporate funds used for pay-outs to shareholders compared to changes in the cost of infrastructure improvements, employee training, investment in research and development:[124]

1) There is an increase in shareholders pay-outs (indicator of how much money the corporations pay out to their shareholders) in EU listed companies as shown by the upward trend of

[119] Oliver Hart, *supra note*, 93.
[120] Ibid.
[121] Alex Edmans, *supra note*, 109.
[122] Ernst & Young Global Limited, *supra note*, 5.
[123] Sigurt Vitols and Norbert Kluge, *supra note*, 8: 200.
[124] Ernst & Young Global Limited, *op. cit.*, 9.

total pay-outs as percentage of revenues between 1992 and 2018, which went from less than 1% of revenues in 1992 to almost 4% in 2018.[125]

2) Business investments – notwithstanding the higher levels of CAPEX (represents the cash outflows used by firms to purchase, upgrade, and maintain physical assets such as plants, properties and equipment) and R&D (includes the development of new products, the upgrading of existing ones or even the innovation related to technology formulation and the development of a service line) investment in absolute terms, the ratio of these two variables to revenues has been declining since the beginning of the 21st century, with more amplified oscillations in the case of R&D investment.[126]

Short-termism can be identified not only as a corporate practice, but also as a culture of thinking and decision-making - a common belief that investors will be punish for long-term decisions and a common opinion among financial managers that they will lose their jobs and bonuses.[127] Thereby, if the short-term profit is prioritized by the management of the company, the directors abandon economically worthwhile investments with long term benefits in order to increase reported earnings for the current period, that can negatively affect the company in the long term.[128]

The shareholder primacy is a key driver of short-termism and a powerful **barrier from company development to environmental sustainability**. In turn, short-termism (both at individual and organizational levels) leads to an unsatisfactory response to environmental challenges, and as a result, in particular, Europe faces problems in areas such as biodiversity loss, resource use, climate change impacts and environmental risks to health and well-being.[129]

As determined above, the essence of the shareholder primacy is that the interests of shareholders are equated with the interests of the company, while the well-being of all other stakeholders is not considered. Therefore, the priority of shareholders is associated with the "financialization" of the global economy and increasing social inequality.[130] As a result of short-termism, the companies risk to become less productive and innovative in the long term, with adverse consequences for the sustainability of companies.[131] In addition, short-termism not only forces companies to neglect their own adverse sustainability impacts, but also undermines their resilience to

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[125] Ernst & Young Global Limited, *supra note*, 5: 12.
[126] Ibid.
[127] Janet Williamson, Ciaran Driver and Peter Kenway, "Beyond Shareholder Value: The reasons and choices for corporate governance reform," Trades Unions, 2014, 13, https://www.tuc.org.uk/publications/beyond-shareholder-value-reasons-and-choices-corporate-governance-reform
[128] John Quinn, *supra note*, 92: 4.
[129] Ernst & Young Global Limited, *supra note*, 5: 23.
[130] Ibid., 26.
[131] Ibid., 29.

changing environmental circumstances.[132] In particular, the COVID-19 pandemic showed that short-term companies were less resilient to social and economic crises.[133]

In fairness, it should be noted that the research analyzed above received quite critical reviews. Alex Edmans in "Response to the EU Commission Study on Sustainable Corporate Governance"[134] discusses the definition of short-termism indicators and notes that: the negative impact of short-term in the form of social, environmental and economic problems affects, among other things, the value of shareholders; attempts to ensure sustainability legislation can backfire - for example, companies can focus only on the quantitative sustainability measures contained in contractors' contracts, rather than on too many qualitative measures of sustainability. Susan Emmenegger in "Feedback to the EU Commission Study on Sustainable Corporate Governance"[135] emphasizes the lack of definition of short-termism and short-term financial returns, insufficient in-depth analysis of the relationship between short-termism and sustainability issues, small sample size and the lack of a legal system that suggests that managers should promote short-term profitability. It is difficult to agree with this wording because as analyzed in subchapter 2.2. the national legislation of the countries does not sufficiently define the purpose of existence of the company, discretion in powers of directors concerning a choice of the main purpose that causes emergence of shareholder primacy as a social behavioural norm. Hence, short-termism is a consequence of the shareholder primacy, not the root cause. Mark J. Roe, Holger Spamann, Jesse M. Fried and Charles C. Y. Wang in "The European Commission's Sustainable Corporate Governance Report: A Critique"[136] note that the report combines time horizon problems (short-termism) with externalities and distribution problems; criticize the increase in gross payments to shareholders and the decrease in investment as evidence of short-term; specify that the academic empirical literature is divided as to whether short-termism exists and, if so, whether it should be considered an inevitable side effect of effective corporate governance; the proposed reforms have not been tested in practice and are therefore skeptical.

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[132] Ernst & Young Global Limited, *supra note*, 5: 29.
[133] Ibid., 30.
[134] Alex Edmans, "Response to the EU Commission Study on Sustainable Corporate Governance", London Business School, Accessed 27 November 2020, https://alexedmans.com/wp-content/uploads/2020/10/European-Commission-Sustainable-Corporate-Governance.pdf
[135] Susan Emmenegger, "Feedback to the EU Commission Study on Sustainable Corporate Governance", September 28, 2020, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/F555384
[136] Mark J. Roe, Holger Spamann, Jesse M. Fried and Charles C. Y. Wang, "The European Commission's Sustainable Corporate Governance Report: A Critique," European Corporate Governance Institute - Law Working Paper 553/2020, October 14, 2020, https://ssrn.com/abstract=3711652

In summary, short-term corporate governance, manifested by increased shareholders pay-outsand reduced investments in R&D projects, is clearly a barrier to sustainable development, leading to financial risks of instability, deepening social inequality and leaving companies away from environmental change, and economic challenges. Therefore, the development of long-term projects and initiatives should be a priority of economic policy of modern companies, the implementation of which is possible in particular through increasing reporting requirements, employee representation on boards, the introduction of supervisory boards etc.

2.2. Shareholder Value Maximization: Corporate Law Requirement or Social Behavioral Norm?

In the context of defining the modern companies' purpose, which can be achieved in particular, through the day-to-day activity of managers, it is important not only to analyze scientific theories and doctrines that promote shareholder primacy or stakeholder value, but also to define the position of legislators in different jurisdictions and courts that apply the law in practice to resolve disputes.

The New York Business Corporation Law obliges directors to act "[...] in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances".[137] In addition, in taking measures that may lead to a change in the management of the company, the director must consider both short-term interests of the company and long-term; interests of employees; persons entitled to social benefits from the company; customers and creditors of the company.[138] Moreover, the law prohibits the granting of preference to any natural or legal person in the performance of directors' duties.[139]

According to *the UK Companies Act 2006*, the director must act "in good faith, [...] to promote the success of the company for the benefit of its members as a whole", considering the long-term consequences of the decision, the interests of employees, the impact of the company on the environment etc.[140]

[137] "New York Business Corporation Law," JUSTIA US Law, paragraph 717 (a), Accessed 15 October 2020, https://law.justia.com/codes/new-york/2010/bsc/
[138] Ibid., paragraph 717(b).
[139] Ibid.
[140] "UK Companies Act 2006," *supra note*, 100: section 172 (1).

The Limited Liability Companies Act of Germany obliges the directors to conduct the company's affairs with the due care of a prudent businessman.[141]

According to *the Act V of 2013 on the Civil Code of Hungary (section 3:21 (2),* "Executive officers shall perform their management duties in the interests of the legal person".[142]

Dutch Civil Code establishes that: "Director is responsible towards the legal person for a proper performance of the tasks assigned to him".[143]

Commercial Company Act of Portugal provides that managers and directors of companies must comply with: "Their duty of care towards the organization, [...] executing their duties with the diligence of a careful and organized manager"[144], "Their duty to be loyal to the interests of the company, serving the long-term interests of the partners and considering the interests of other relevant parties such as employees, clients and creditors in ensuring the sustainability of the company".[145]

Spanish Corporate Enterprises Act obliges the directors to perform their duties "with the diligence of an orderly businessman. Each director shall remain diligently abreast of company progress".[146] Directors must act to protect the corporate interest, which means the company's interest, and perform the duties established by law and regulations.

Limited Liability Companies Act of Finland states: "The management of the company shall act with due care and promote the interests of the company".[147]

Lithuanian Law on Companies (13 July 2000 № VIII-1835) provides: "The management bodies of a company must act in the interest of the company and its shareholders, comply with laws and other legal acts and be governed by the articles of association of the company."[148]

Thus, none of mentioned above jurisdictions requires directors to maximize shareholder value as the basis for their activity, but rather give the decision-makers discretion to consider the interests

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[141] "Limited Liability Companies Act," Section 43(1), Accessed 16 October 2020, https://www.gesetze-im-internet.de/englisch_gmbhg/englisch_gmbhg.html#p0230

[142] "Act V of 2013 on the Civil Code," section 3:21 (2), Accessed 19 October 2020, http://njt.hu/translated/doc/J2013T0005P_20180808_FIN.pdf

[143] "Dutch Civil Code," DCL (Dutch Civil Law), Article 2:9 (1), Accessed 19 October 2020, http://www.dutchcivillaw.com/civilcodebook022.htm

[144] "Commercial Company Act," Decree-Law no. 76-A/2006, article 64 (1), Accessed 20 October 2020, https://www.cmvm.pt/en/Legislacao/LegislacaoComplementar/EmitentesOfertasInformcaoValoresMobiliarios/Pages/Commercial-Company-Act.aspx?v

[145] Ibid.

[146] "Corporate Enterprises Act," Official State Journal (BOE) no. 161, 3 July 2010, Article 225.

[147] "Limited Liability Companies Act," no. 624/2006, Ministry of Justice, Finland, section 8, chapter 1, Accessed 20 Ocotber 2020, https://finlex.fi/fi/laki/kaannokset/2006/en20060624_20110981.pdf

[148] "Law on Companies of Republic of Lithuania," 13 July 2000 no. VIII-1835, article 19 (8), Accessed 20 October 2020, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9670ea90e8b311e4aecae0d86a561f87?jfwid=2r1mfcu1

of different stakeholders when promoting the company's interests.[149] The legal requirement for directors to promote the interests of the company through performance of their duties in good faith, in particular, reflects the status of the company as a separate legal entity and it is a mechanism aimed at achieving the public purpose of the company.

Corporate case law. Proponents of the concept of shareholder primacy in order to demonstrate that generating maximal value for shareholders is a requirement of corporate law often refer to the decision of the Michigan Supreme Court in *Dodge v. Ford Motor Co.*[150]

Plaintiff shareholders, John F. Dodge and another brought a lawsuit against Ford claiming that he was using his control over the company to restrict dividend payouts, even though the company was enormously profitable and could afford to pay large dividends to its shareholders.[151] Ford Motor Company was the dominant car manufacturer.[152] However, the cost of cars dropped from $900 to $440.[153] Henry Ford, president and majority shareholder, reduced the cost of cars to $360, reduced shareholder dividends and spend the money on massive investments in new plants, which would allow Ford to significantly increase production and employees, thereby further reducing car costs.[154] The argued issue was whether minority shareholders could force the President and the majority shareholder to change the price of cars, reduce the cost of expanding the business and thus increase the amount of dividends.[155] The Michigan Supreme Court has ruled that: "A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end and does not extend to a change in the end itself, to the reduction of profits or to the non-distribution of profits among stockholders in order to devote them to other purposes".[156]

However, the decision of the Michigan Supreme Court in Dodge v. Ford Motor Co. has come under considerable criticism. Firstly, Lynn A. Stout notes that: "The case is old, it hails from a state court that plays only a marginal role in the corporate law arena, and it involves a conflict between controlling and minority shareholders that independently justifies the holding in the case while rendering the opinion's discourse on corporate purpose judicial dicta".[157] Secondly, there is a number

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[149] Beate Sjåfjell and Maria Jesus Munoz-Torres, "The Horse before the Cart: A Sustainable Governance Model for Meaningful Sustainability Reporting," Nordic&European Company Law, LSN Research Paper Series, no. 19-09, 4-5.
[150] Min Yan, *supra note*, 7: 20,
[151] Dodge v. Ford Motor Co., 204 Mich. 459, 170 N.W. 668 (Mich. 1919).
[152] Ibid., paragraph 464.
[153] Ibid., paragraph 465.
[154] Ibid., paragraph 468.
[155] Ibid., paragraph 474.
[156] Ibid., paragraph 507.
[157] Lynn A. Stout, *supra note*, 107: 168.

of court decisions, adopted after Dodge v. Ford Motor Co. Case, that contain contrary dicta indicating that directors must perform duties to the company as a separate legal entity.

In particular, in *Schlensky v. Wrigley* case, the director of the Chicago National League Ball Club – the company that owns the Chicago Cubs – decided not to install lights for night baseball games at Wrigley Field because he was concerned that night baseball would be detrimental for the surrounding neighborhood.[158] Although the potential installation of these scammers and night games could increase shareholders' profits, the court upheld the Director's decision, that considered the interests of local residents, thus confirming that increasing shareholders' profits could not be the company's sole purpose.[159] In *Fulham Football Club Ltd v Cabra Estates plc* the court upheld that: "The duties owed by the directors are to the company and the company is more than just the sum total of its members".[160] In *Dawson International plc v Coats Patons plc*, the interests of the company as a whole and the interests of shareholders were distinguished. In particular, Lord Culled emphasized: "What is in the interests of current shareholders as sellers of their shares may not necessarily coincide with what is in the interests of the company. The creation of parallel duties could lead to conflict. Directors have but one master, the company."[161] More recently, in *Burwell v. Hobby Lobby*, the U.S. Supreme Court emphasized "[...] the purpose of extending rights to corporations is to protect the rights of people associated with the corporation, including shareholders, officers, and employees. Protecting the free-exercise rights of closely held corporations thus protects the religious liberty of the humans who own and control them".[162]

As stated above, directors have discretion in corporate governance, which allows the interests of all stakeholders to be taken into consideration in decision-making. In this context, the business judgment rule is an effective mechanism to protect directors from the pressure of maximizing shareholder wealth. Supreme Court of Delaware in *Aronson v. Lewis* noted that the business judgment rule: "[...] comes into play in several ways — in addressing a demand, in the determination of demand futility, in efforts by independent disinterested directors to dismiss the action as inimical to the corporation's best interests, and generally, as a defense to the merits of the suit".[163] Therefore, the business judgment rule is a strong defense, in case the director's decision is challenged as contrary to the shareholder wealth maximization, the defendants are entitled to a strong presumption that in

[158] Shlensky v. Wrigley, 95 III. App. 2d 173, 237 N.E.2d 776 (III. App. Ct. 1968), paragraph 176.
[159] Ibid., paragraph 183.
[160] Fulham Football Club Ltd v. Cabra Estates plc (1994) 1 BCLC 363, 393f, CA.
[161] Dawson International plc v. Coats Patons plc (1988) 4 BCC 305.
[162] Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014).
[163] Aronson v. Lewis, 473 A.2d 805 (Del. 1984).

making a business decision, the directors acted on an informed manner, conscientiously and honestly, making sure that decision was adopted in the best company's interests.[164]

However, "the wide discretion afforded by directors' duties has left a vacuum which for many years has been filled by a "social norm of shareholder primacy",[165]– as John Quinn noted in article "The Sustainable Corporate Objective: Rethinking Directors' Duties". Thereby, the social norm of shareholder primacy uses the latitude given to the management to decide how the company's resources should be distributed.[166] In particular, the research of Sjåfjell Beate, Johnston Andrew, Anker-Sørensen, Linn and Millon, David K. describes that although no legislation requires directors to maximize shareholder wealth, the social norm of shareholders primacy provides incentives and pressure to do so, "[...] shareholder primacy has been allowed to develop because the law contains neither an explicit statement of what the societal purpose of companies is, nor of what the interests of the company are".[167]

Thus, despite the fact that directors are obliged to act in the interests of the company, the maximizing of shareholders' financial welfare is not a corporate obligation defined by legislation or case law, but rather a behavioral norm that underlies the corporate culture. The director can sacrifice the financial interests of shareholders to ensure the interests of the company. It is necessary to distinguish the interests of the company as an organization, interest groups of different subjects, such as shareholders, employees, customers, consumers from the interests of shareholders to maximize profits.

Although the shareholder primacy is not a requirement of corporate law, there is still some uncertainty about the purpose of companies in the legislation of most jurisdictions, as well as discretion in the powers of directors, which leads to the spread of social norm of shareholder primacy. Certainly, the ideal option from the point of view of corporate governance is for directors to use discretionary powers to balance the interests of all stakeholders (executives, employees, debtholders, and possibly even suppliers, consumers, and the broader community). Trereby, the establishment of precise purpose of sustainable development of companies, in particular through the activities of directors and objective criteria to ensure the implementation of such development would prevent the spread of the dogma of the shareholder primacy.

[164] Jonathan R. Macey, *supra note*, 96: 28.
[165] John Quinn, *supra note*, 92: 2.
[166] Sjåfjell, Beate and Johnston, Andrew and Anker-Sørensen, Linn and Millon, David K., *supra note*, 91: 121.
[167] Ibid., p. 145.

2.3. Deviation from the Shareholder Primacy: the Concept of Stakeholder Value

BlackRock CEO Larry Fink in letter to CEOs from January 2018 questioned the concept of shareholder value, and noted the need to prioritize long-term prospects: "Companies must be deliberate and committed to embracing purpose and serving all stakeholders – shareholders, customers, employees, and the communities where you operate. In doing so, your company will enjoy greater long-term prosperity, as will investors, workers, and society as a whole".[168]

In August 2019, the Business Roundtable, whose members are the CEOs of the largest US companies, published a "Statement on the Purpose of a Corporation"[169], which describes the concept of the company's purpose, emphasizes the importance of providing value to all stakeholders and sets the following priorities: delivering value to customers; investing in employees, through training and education that help develop new skills for a rapidly changing world; dealing fairly and ethically with suppliers; supporting the communities by embracing sustainable practices across businesses; generating long-term value for shareholders through transparency and effective engagement.

In order to understand why the Business Roundtable statement is interpreted as a departure from the principle of shareholder primacy, it is necessary to compare it with the Business Roundtable's September 1997 statement, which declares the main goal of the company is to generate profits for shareholders, in addition, the interests of other stakeholders were determined as derivatives of obligations to shareholders.[170]

These statements did not arise in a vacuum. Having established the priority of the shareholder primacy, the directors had a relatively simple solution to the complex issue of corporate goals, which allowed them to effectively manage the company to achieve financial success.[171] However, the spread of the shareholder primacy model has strengthened managers' short-term focus on quarterly profits, and as a result ignore the interests of other stakeholders. As noted in the previous subchapter, short-term strategies as a consequence of the shareholder value approach have negatively affected the achievement of sustainable development of companies, led to the corresponding consequences for the environment, economy and society as a whole. As John Quinn aptly put it: "Company law can no longer be dominated by a narrow focus on law and economics and the law of directors' duties, as the

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[168] Larry Fink, *supra note*, 4.
[169] Business Roundtable, "Statement on the Purpose of a Corporation," Accessed 01 October 2020, https://opportunity.businessroundtable.org/ourcommitment/
[170] Edward Rock, *supra note*, 39: 2.
[171] John Quinn, *supra note*, 92: 2.

primary set of laws governing company managers, should also expand to address these issues"[172]. Therefore, it is obvious that the shareholder primacy simply does not reflect today's reality. In this regard, in recent time much more attention is paid to the interests of stakeholders and corporate social responsibility.

Stakeholder theory rejects the idea that directors are agents of shareholders with the sole purpose of maximizing shareholder value, but instead argued that directors should act as intermediaries between all stakeholders and balance to achieve sustainable company development.[173] However, difficulties arise in the practical implementation of the concept of stakeholder value, as the central aspect is to satisfy the expectations of all stakeholders and a fair balance between antagonistic interests.[174] The stakeholder value model does not contain a clearly defined value indicator, which is undoubtedly the reason why stakeholder value is often criticized as impossible due to the multiplicity stakeholders interests.[175] The implementation of full-fledged stakeholder governance faces serious challenges, which complicates the implementation of this concept in practice.[176] However, there are still methods of integrating the stakeholder value into national company law and business practices. To prevent strict adherence to shareholder value, jurisdictions identify several alternatives:[177]

1) Legal requirement to consider the interests of all stakeholders in decision-making by directors as in common law countries (USA, UK, Australia). In particular, according to the UK Companies Act 2006, the director must act "in good faith, [...] to promote the success of the company for the benefit of its members as a whole", considering the long-term consequences of the decision, the interests of employees, the impact of the company on the environment etc.[178]

2) Two-tier governance structure, with the management board and supervisory board consisting in particular of representatives of shareholders and stakeholders (Germany, Netherlands). Two-tier governance structure allows employees to get up to 50 percent of representatives on the supervisory board, the main purpose of which is to control the activities of the management board, the appointment of directors to the board. In addition, the responsibilities of directors do not involve the

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[172] John Quinn, *supra note*, 92: 2.
[173] John Quinn, "The Corporate Objective: Reinterpreting Directors' Duties," (PhD Thesis, School of Law and Government, Dublin City University, 2016), 43,
http://doras.dcu.ie/20959/
[174] Ibid., 44.
[175] Steen Thomsen, "Value Creation and Corporate Governance," SSRN, October 13, 2020, 20,
https://ssrn.com/abstract=3710467
[176] Ibid., 29.
[177] John Quinn, "The duty to act in the interests of the company: simply a duty to increase shareholder wealth?" UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper no. 07/2015, 11.
http://ssrn.com/abstract=2625982
[178] "UK Companies Act 2006," *supra note*, 100: section 172 (1).

shareholder value maximization, so this approach allows to balance at least the interests of shareholders and employees.[179] However, although the presence of employee representatives may to some extent prevent the spread of shareholder primacy, the supervisory board does not participate in the company's strategic decisions, but is limited to assessing the measures already taken, so the supervisory board acts responsively.[180]

3) Another less researched trend of moving away from the shareholder primacy model is the creation of *benefit company*. This corporate form is designed to define the company's purpose more precisely and allows for executors to take on purposes other than the benefiting the shareholders.[181]

According to Article 17 of the New York Business Corporation Law: "Every benefit corporation shall have a purpose of creating general public benefit. [...] The purpose to create general public benefit shall be a limitation on the other purposes of the benefit. [...] The identification of a specific public benefit under this paragraph does not limit the obligation of a benefit corporation to create general public benefit.[182] Thereby, benefit corporation form requires three main elements:

✓ *Purpose* – the company must declare its purpose to create a public benefit, for instance: "[...] providing low-income or underserved individuals or communities with beneficial products or services; promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; preserving the environment; improving human health; promoting the arts, sciences or advancement of knowledge; increasing the flow of capital to entities with a public benefit purpose".[183]

✓ *Accountability* – to ensure business accountability to create material positive impact, the benefit corporation form requires directors to consider society and the environment. Additionally, the form provides shareholders with a private right of action to ensure their social impact investments are functioning according to the new purpose.[184]

✓ *Transparency* – benefit corporation must provide each shareholder with an annual report describing the ways in which the general public benefit prescribed in the articles of association has been used; assessment of the achieved results in accordance with the standards of third parties;

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[179] "UK Companies Act 2006," *supra note*, 100: section 93.
[180] John Quinn, *supra note*, 173: 56.
[181] Edward Rock, *supra note*, 39: 28.
[182] "New York Business Corporation Law," *supra note*, 137: paragraph 1706.
[183] Ibid., paragraph 1702.
[184] Ibid., paragraph 1707.

compensation paid to the director; the name of each person who owns 5 or more percent of the company's shares. In addition, the report should be posted on the company's website.[185]

The *French Commercial Code*[186] provides the possibility of establishing a benefit corporation (*'société à mission*) if the following conditions are fulfilled: articles of association specify a *'raison d'être'* within the meaning of article 1835 of the Civil Code; articles of association specify one or more social and environmental objectives that the company has the mission to pursue; articles of association specify the specify the procedures for monitoring the performance of declared mission; the company declares to be a benefit corporation to the commercial and companies register.

In addition, Italian Law no. 208 of December 28, 2015, has introduced the "benefit corporation" (*società benefit*), as a new type of companies, "which, in carrying out their economic activities shall pursue, in addition to the aim of distributing profits, one or more aims of common benefit, and operate in a responsible, sustainable and transparent manner vis-à-vis individuals, communities, territories and the environment, cultural and social heritage, entities and associations as well as other stakeholders".[187]

The adoption of laws on benefit companies has significant consequences: provides legal opportunities for fulfilling a dual mission and contributes to the development of corporate social responsibility; ensures transparency, impartiality and accountability to the general public, not just shareholders; creates new opportunities for the development of the social economy and finance by expanding the range of socially responsible investments. As exactly described by Tyler Halloran: "If Ford Motor Co. was defined as a B- corporation in 1919, perhaps Henry Ford would have been allowed to provide for his workers and make cars more affordable for the general public, to the possible detriment of other shareholders".[188]

The development of benefit corporations coincided with another corporate trend of the 21st century – Corporate Social Responsibility (CSR) of business, which requires providing the interests of all stakeholders in companies' decision making through the implementation of certain economic, social, environmental standards (Chapter 3 contains detailed analysis of CSR).

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[185] "New York Business Corporation Law," *supra note*, 137: paragraph 1706.
[186] "Commercial Code of France," Article L210-10, Accessed 16 October 2020, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038528238/
[187] "Law 208 of December 28, 2015 (2016 Italian Stability Law)," article 1, paragraph 376, Accessed 17 October 2020, https://ginepro.co/wp-content/uploads/sites/67/2020/01/Italian-benefit-corporation-legislation-courtesy-translation.pdf
[188] Tyler Halloran, "A Brief History of the Corporate Form and Why it Matters," *Fordham Journal of Corporate & Financial Law*, November 18, 2018, https://news.law.fordham.edu/jcfl/2018/11/18/a-brief-history-of-the-corporate-form-and-why-it-matters/

To conclude this chapter, creating new technologies, products, increasing productivity, service, companies are an active source of progress. Thereby, companies cannot give up the production of profitable products and services, but in order to achieve the sustainable development, shareholders, managers, legislators must define the purpose of companies in the context of potential environmental, social and economic consequences. Briefly summarizing:

✓ Shareholder primacy as a monistic approach aimed at creating value for shareholders as the ultimate purpose of the company, while the interests of other stakeholders should be taken into consideration only to the extent that they help to achieve the main goal.

✓ The company owns both tangible and intangible assets that cannot be considered as the property of shareholders due to the separate legal personality of the company. Shareholders are not owners of companies in the private law sense of ownership, but only own shares, thereby, they are the same stakeholders who invest capital in anticipation of benefits on a par with employees, managers, creditors, the state, society as a whole. Hence, the understanding of the company as an object of ownership of shareholders who can use the company for their own enrichment is superficial.

✓ Shareholders are among the stakeholders who bear residual risks in the sense that they expect to benefit from the companies' operations. Stakeholders such as employees and managers who invest their experience in the company, knowledge, are also residual applicants. The residual claimants argument does not consider employees, creditors and other stakeholders who invest in the company and may bear potential risks.

✓ While some shareholders may put pressure on directors to make short-term profits and, as a result, reduce all other costs, other shareholders, on the other hand, are interested in long-term development, which makes it impossible to maximize the value of all shareholders at once.

✓ The company's activities affect not only the profitability of shareholders, but also determines the well-being of employees, consumers and in general determines global changes in the economy. Employees invest their skills for the success of companies, consumers pay for goods and services, hence, the profits of companies depend on the welfare of society. Thus, the business activities of companies and the well-being of the community are complementary elements, and the companies' value exceeds the value of shareholders.

✓ Short-term, manifested by increased shareholder payments and reduced R&D investments, is a barrier to sustainable development, leading to financial risks of instability, deepening social inequality and removing companies from environmental and economic challenges.

✓ Jurisdictional law and case law do not require directors to maximize shareholder value as a basis for their activities, but rather give decision-makers the discretion to consider the interests of various stakeholders in promoting the company's interests. However, there is still some uncertainty about the purpose of companies in the legislation of most jurisdictions, as well as discretion in the powers of directors, which leads to the spread of the social norm of shareholder primacy.

✓ The stakeholder value concept within a pluralistic approach to the company's interests is a modern trend and an alternative to the hareholder primacy, but stakeholders are antagonistic in their interests, so directors should effectively balance the interests of all stakeholders rather than maximize their value at the same time.

3. CORPORATE SOCIAL RESPONSIBILITY AS AN INTEGRAL PREREQUISITE OF SUSTAINABLE DEVELOPMENT OF COMPANIES IN 21ST CENTURY

Global business in the 21st century is making permanent changes in the livelihood of millions of people all over the world. Certainly, the standard of living has improved due to the products and services provided, through access to medicine, education.[189] At the same time, companies play a key role in the crises facing global society, such as environmental change, financial instability, social inequality.[190] Under the impact of these factors, the concept of corporate social responsibility as an alternative model of corporate management and a tool for implementing the stakeholder value approach is becoming more actual. Due to the fact, that companies go far beyond their home country, international standardization and the promotion of socially responsible business conduct are crucial for responding to modern challenges.

In this regard, Chapter 3 identifies the key features of CSR; describes the methods of its implementation in the national legislation and business practice of companies; determines internationally recognized initiatives and projects aimed at implementing socially responsible practices in the business activities of companies.

3.1. Corporate Social Responsibility: Key Features and Methods of Implementation

According to the European Commission's Communication "A renewed EU strategy 2011-14 for Corporate Social Responsibility", CSR is defined as "the responsibility of enterprises for their impacts on society"[191]. To fully meet their social responsibility, companies must ensure the integration of social, environmental, ethical human rights in order to maximize value for all stakeholders, to prevent possible adverse effects from the activities of companies.[192] As Min Yan definitely summed up: "Apart from complying with the minimum legal requirements, corporations are also required to meet social expectations, including both explicit and implicit obligations. In other words, corporations are expected to exceed the minimum legal obligations by integrating social, environmental, and other

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[189] Marilyn Tam, "The Role of Business in the 21st Century," BigSpeak Voice, July 23, 2014, https://www.bigspeak.com/role-business-21st-century/

[190] John Quinn, *supra note*, 92: 2.

[191] "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a renewed EU strategy 2011-14 for Corporate Social Responsibility," EUR-Lex, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0681

[192] Ibid., paragraph 21.

concerns into their business operations”.[193] Thus, CSR is a method of eliminating the concept of shareholder primacy, that predicts the involvement of social and environmental aspects in the formation of long-term projects of the company, a way to increase the company’s efficiency to achieve sustainable development.

By practicing CSR companies can simultaneously increase the impact on the social, environmental and economic aspects of society while developing their own brands.[194] Even Milton Friedman, a supporter of the shareholder primacy, declared: “[...] it may well be in the long-run interest of a corporation that is a major employer in a small community to devote resources to providing amenities to that community or to improving its government. That may make it easier to at tract desirable employes, [...] reduce the wage bill [...] or have other worthwhile effects”.[195]

CSR as a management model originated in the 20th century, when the concept of the “social contract” between business and society was declared by the Committee for Economic Development in 1971.[196] The social contract is based on the idea that companies exists through public consent, therefore they have an obligation to constructively serve the needs of society.[197] During the second half of the 20th century, companies were seen as key tools for growing economic development, investment, and promoting social welfare.[198] Jordi Canals, determining the role of political processes in further economic change, emphasized: “The fall of the communist regimes in Eastern Europe in the late 1980s confirmed [...] the key role of private enterprise, with its ability to launch new companies, innovate, create jobs, raise capital and invest, all indispensable conditions for society’s progress”.[199] In 1991, University of Pittsburgh Professor John Wood published Corporate Social Performance Revisited[200], which revealed the impact of CSR, provided a model for assessing CSR at the institutional, organizational and individual levels. In 1996, Burke and Logsdon in research “How

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[193] Min Yan, *supra note*, 7: 25.
[194] Jason Fernando, “Corporate Social Responsibility,” Investopedia, September 17, 2020, https://www.investopedia.com/terms/c/corp-social-responsibility.asp
[195] Milton Friedman, *supra note*, 3.
[196] “Corporate Social Responsibility: A Brief History,” Association of Corporate Citizenship Professionals, Accessed 30 September 2020, https://www.accprof.org/ACCP/ACCP/About_the_Field/Blogs/Blog_Pages/Corporate-Social-Responsibility-Brief-History.aspx
[197] Ibid.
[198] Jordi Canals, *Building respected companies: Rethinking Business Leadership and the Purpose of the Firm* (Cambridge: Cambridge University Press, 2010), 68.
[199] Ibid.
[200] Donna J. Wood, “Corporate Social Performance Revisited,” *The Academy of Management Review* 16, no. 4 (1991), pp. 691–718, www.jstor.org/stable/258977

corporate social responsibility pays off"[201] argued that the strategic use of CSR is not only beneficial to society but can lead to concrete economic benefits for companies. Thus, at the end of the 20th century, corporate social responsibility became an integral part of the business reputation of companies, which can increase its capitalization.

According to the European Commission's "Green paper – Promoting a European framework for corporate social responsibility (2001)"[202], CRS include internal and external dimension. Within the company, socially responsible practices primarily include: *human resource management*[203] (involves the need to attract and retain skilled workers through work-life balance, employee training, equal pay, and youth education through cooperation with local authorities responsible for education); *health and safety at work*[204] (obliges companies to implement internal occupational safety and health criteria as additional measures to existing legal standards to improve working conditions); *adaptation to change*[205] (implies that significant changes in the structure of the company should consider the interests of all stakeholders through open information and consultation); *management of environmental impacts and natural resources*[206] (through investing in the environment, reducing of pollutant emissions into the environment and consumption of natural resources).

However, CSR includes not only the internal aspects of companies' business activity, but also sets external dimensions, through relations with contractors, cooperation with local authorities etc.[207] In particular, CSR involves the integration of companies into the *local communities*, effective interaction with local authorities, direct financial investment in projects that benefit society.[208] The companies should consider business reputation of potential *economic counteragents*, participate in innovative development through investment in startups, apply the principle of design for all in order to universalize their own products for all categories of consumers.[209] CSR has a strong focus on ensuring *human rights* through the control of companies' partners, suppliers for compliance with internationally recognized standards.[210] Companies are subjects of the *global environment* due to the

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[201] Lee Burke and Jeanne M. Logsdon, "How corporate social responsibility pays off," *Long Range Planning* 29, no. 4 (August 1996), 495-502.
[202] "Green paper - Promoting a European framework for corporate social responsibility," EUR-Lex, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52001DC0366
[203] Ibid., paragraphs 28-30.
[204] Ibid., paragraphs 31-34.
[205] Ibid., paragraphs 35-38.
[206] Ibid., paragraphs 39-41.
[207] Bryn Jones and Peter Nisbet "Shareholder value versus stakeholder values: CSR and financialization in global food firms," *Socio-Economic Review* 9, no. 2 (March 2011): 309.
[208] "Green paper - Promoting a European framework for corporate social responsibility," *op. cit.*
[209] Ibid., paragraphs 47-51.
[210] Ibid., paragraphs 52-58.

transboundary effect of many environmental problems related to business, so they can pursue social responsibility through direct financial investment in third countries, promote overall social and economic development.[211]

One of the articles of the *Financial Times* on the role of managers in shaping company policy contains the following statement: "[...] when business takes a broad perspective, it can leave everyone more prosperous, including shareholders. Rejecting the dogma of shareholder primacy is not a question of bleeding hearts, it is a matter of enlightened self-interest."[212] This approach seems absolutely logical due to the consequences of the shareholder primacy in the form of short-term, social inequality, environmental challenges. As analysed below, CSR is a value not only for society, but can also improve the economic component of companies' business activity through business reputation, meeting consumer expectations. According to the *ISO 26000:2010, Guidance on Social Responsibility*[213], integration of CSR affects the competitive advantage of company, business reputation, ability to attract and retain workers or customers, trust from investors and the financial community, relationship with governments, suppliers, and the community in which it operates.

Thus, due to the growing demand for social justice, the need to ensure a healthy ecosystem, the company's measures and projects to improve the welfare of the society in which it operates, gives the competitor an advantage in economic performance through brand awareness, business reputation. In addition, it seems necessary to note the possibility of simultaneous implementation of CSR (in its internal and external dimensions) as a fundamental principle of companies' business activity and participation in charitable projects (which is essentially aimed at external activities).

It is obvious that CSR as a voluntary initiative of companies is aimed at meeting expectations and improving living standards in general, because the constant cooperation of companies with local communities, job creation is primarily an opportunity for professional and personal realization of community residents. The state can also be a stakeholder in the implementation of CSR through the measures described below, as the promoting of CSR policy to some extent reduces the social burden on the state.

As defined below, CSR in most cases is interpreted as a voluntary initiative without an effective control mechanism and sanctions for non-compliance. However, despite the voluntaristic

[211] "Green paper - Promoting a European framework for corporate social responsibility," *supra note*, 202: paragraphs 59-60.

[212] "Investors should look beyond the bottom line," *Financial Times*, October 21, 2019, https://www.ft.com/content/30b3b8d2-f014-11e9-ad1e-4367d8281195

[213] "Guidance on Social Responsibility, ISO 26000: 2010 (E)," Geneva, November 1, 2010, https://www.iso.org/obp/ui/#iso:std:iso:26000:ed-1:v1:en

nature of CSR, which goes beyond the legal obligations of companies, there are still measures, developed in practice, for implementing CRS in the company's lifestyle.

Implementation of corporate social responsibility. The first way to implement CSR in the business practice of companies is the promotion by the state through the imposition of positive commitments on the company (such as mandatory disclosure of non-financial information of companies related to the social sphere, establishing a CSR fund), providing recommendations, approval of strategies, development plans.[214]

Mandatory disclosure. Voluntary social and environmental reporting is generally neither reliable nor relevant, as it is irrationally for companies to report honest and complete about their efforts to become environmentally and socially responsible, while less responsible competitors may not invest in CSR development.[215] Therefore, in order to introduce corporate reporting in the field of CSR, *Directive 2014/95/EU of the European Parliament and of the Council*[216] was adopted. According to article 1 of this Directive, large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, *environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters*.[217] Moreover, the obligation to disclose non-financial information affects not only companies but also groups of companies. Pursuant to Article 29a of the Directive, public-interest entities that are the parent companies of a large group (exceeding the criterion of an average of 500 employees) are required to include in the consolidated management report a consolidated non-financial report containing information on environmental, social and service issues, human rights, corruption and bribery.[218] Thus, parent companies will have a range of non-financial information on the variety and topics of CSR that they must collect from their subsidiaries

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[214] Min Yan, *supra note*, 7: 29.

[215] Beate Sjåfjell and Linn Anker Sørensen, "The Duties of the Board and Corporate Social Responsibility (CSR)," Nordic & European Company Law, LSN Research Paper Series no. 10-40, 27-28, https://ssrn.com/abstract=2322680

[216] "Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups," EUR-Lex, Accessed 16 September 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095

[217] Ibid., article 1.

[218] Ibid., article 29a.

or disclosure as part of the consolidated financial account, the consolidated non-financial report.[219] Mandatory disclosure of non-financial information by subsidiaries to parent companies not only meets the formal legal requirement to allow parent companies to fulfill their disclosure obligations, but such information may be used by parent companies to ensure internal control over corporate social responsibility fulfillment by subsidiaries. Thus, parent companies have an internal mechanism for responding and regulating compliance with corporate social responsibility by subsidiaries.

Mandatory disclosure of aspects related to CSR does not allow companies to provide selective information, ensure accountability of companies, create an opportunity for company managers to move away from the shareholder primacy and develop projects aimed at achieving sustainable development.[220]

Jurisdictional law also integrates CSR through a variety of strategies, reports. In *Spain,* Companies Act[221] obliges the board of directors of listed companies to approve the company's corporate social liability policy, which should define the company's strategy on sustainability aspects (moreover, boards of directors may not delegate this authority to other entities).

Good Governance Code of Listed Companies[222] details the essence of corporate social responsibility policy, in particular the following components should be established: corporate strategy for sustainability, environment and social issues, practice for all stakeholders of the company, respect for human rights and prevention of illegal conducts.

However, an important aspect of accountability is the presence of competition, as it reduces prices, increases productivity, ensures that firms cannot long receive abnormally high profits, encourages companies to anticipate changes in consumer preferences.[223] Therefore, competition in the market is an unconditional factor that contributes to the development of CSR, as the monopoly position allows companies to abuse the social aspects of their activities.

In *Norway,* corporate social responsibility is promoted through the Report on Corporate social responsibility in a global economy (2009)[224], expresses the government's expectations from private

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[219] Karsten Engsig Sørensen, "The legal position of parent companies: a top-down focus on group governance," Nordic & European Company Law, LSN Research Paper Series, no. 19-05, 5, https://ssrn.com/abstract=3495023

[220] Min Yan, *supra note*, 7: 40.

[221] "Corporate Enterprises Act," *supra note*, 146: Article 529 ter.

[222] "Good Governance Code of Listed Companies," February 2015, Accessed 25 October 2020, https://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/Good_Governanceen.pdf

[223] "What companies are for: Competition, not corporatism, is the answer to capitalism's problems," *supra note*, 35.

[224] Norwegian Ministry of Foreign Affairs, "Corporate social responsibility in a global economy," Abridged version of report no. 10 (2008-2009), Accessed 20 October 2020, https://www.regjeringen.no/globalassets/upload/ud/vedlegg/csr/stm10_20082009_eshort.pdf

companies regarding the implementation of corporate social responsibility through four key elements: respecting human rights; upholding core labour standards and ensuring decent working conditions; taking environmental concerns into account; and combating corruption and maximising transparency.

Chinese Company Law[225] stipulates the obligation of companies to observe social morals and commercial ethics, persist in honesty and good faith, accept supervision by the government and the public, and assume social responsibility.

While most countries implement the concept of CSR in the business practices of companies through mandatory disclosure of non-financial information, long-term development strategies, there are examples of jurisdictions that directly oblige companies to create CSR funds and impose sufficiently severe financial and non-financial sanctions for non-compliance with these requirements.

Indian Companies Act (2013)[226] imposes an obligation on companies having a net worth of 5 billion rupees, or a turnover of 10 billion rupees, or a net profit of 50 million rupees or more during any financial year to establish a corporate social responsibility committee consisting of three or more directors. The board must ensure that the company spends in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years for the implementation of projects in the field of corporate social responsibility (promotion of education; promoting gender equality and empowering women; reducing child mortality and improving maternal health; ensuring environmental sustainability; employment enhancing vocational skills; social business projects).[227] In case of non-compliance with the conditions, mentioned above the company may be fined at least fifty thousand rupees, and the head of the company may be imprisoned for up to three years.[228]

Similar regulation is determined by the Income Tax Act of *Mauritius*[229], that obliges every company to create an annual corporate social responsibility fund (implementation of projects in the field of educational support and training; environment and sustainable development; peace and nation-building; road safety and security; social housing; supporting people with disabilities) equivalent to 2 percent of its paid income for the previous year.

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[225] "Companies Law of the People's Republic of China," Order no. 42 (2005), Accessed 30 October 2020, https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92643/108008/F-186401967/CHN92643%20Eng.pdf

[226] Ministry of Corporate Affairs, "An Act to consolidate and amend the law relating to companies," Act no. 18 (2013), Accessed 16 September 2020, https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf

[227] Ibid., paragraph 135.

[228] Ibid., paragraph 134.

[229] Mauritius Revenue Authority, "The Income Tax Act 1995", Accessed 16 September 2020, https://www.mra.mu/download/ITAConsolidated.pdf

Specified above examples of fairly strict regulation have both advantages and disadvantages. Certainly, without the introduction of strict norms, many companies would not consider social development at all, such regulation contributes to a systematic approach to social development.[230] However, at the same time, there are unresolved issues in the selection of sustainable long-term projects for proper implementation, as most companies do not have competencies in the field of corporate social responsibility.[231] Min Yan also questions the effectiveness of the CSR fund system: "[...] companies can use profits obtained in a socially irresponsible manner to engage in CSR. It is equally controversial regarding whether CSR spending is the best proxy for responsible behaviour".[232] Hence, the financing of social projects is only one of the factors for achieving sustainable development nearby, in case of abuse by the state of this tool to involve companies in social activities, it can take the form of corporate tax, which in turn increases government intervention in the private sector.

In particular, despite legislative guarantees and sanctions for non-compliance of CSR steps in India and Mauritius, these countries are ranked low (Mauritius ranks 108th, India ranks 117th) in the ranking of sustainable development according to Sustainable development report 2020 of Cambridge University.[233] Thus, strict forms of implementation of CSR are mostly used by developing countries, while European countries prefer side restrictions, including mandatory disclosure of information, publication of reports on social activities of companies, improving legislation in these areas. Therefore, it is not necessary to idealize any of the models of CSR. To achieve economic well-being and sustainable development of the state, socially positive obligations of companies alone are not enough. The state, in turn, must also implement strategies to overcome poverty, social inequality, improve the quality of education.

Laws on non-financial bottom lines. Apart from the legislative conceptualization of corporate social responsibility through the establishment of positive legal obligations, another form of implementation of CRS consists in effective regulation of other areas of public / private relations to raise environmental, social standards to curb corporate irresponsibility.[234]

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[230] Pushpa Sundar, "Five Years After CSR Became Mandatory, What Has It Really Achieved?" *The Wire*, 21 August 2018,
https://thewire.in/business/five-years-after-csr-became-mandatory-what-has-it-really-achieved
[231] Ibid.
[232] Min Yan, *supra note*, 7: 31.
[233] J. Sachs, Schmidt-Traub, G., Kroll, C., Lafortune, G., Fuller and G. and Woelm, F. "The Sustainable Development Goals and COVID-19. Sustainable Development Report 2020," Cambridge: Cambridge University Press, June 2020, 27.
[234] Min Yan, *supra note*, 7: 34.

UK Bribery Act (2010)[235] establishes the liability of a commercial organization if a person affiliated with the organization bribes another person to obtain a benefit or business advantage for such an organization – it creates incentives for building an anti-corruption system within companies to avoid corporate liability.

Modern Slavery Act (2015)[236] introduces anti-slavery and anti-trafficking provisions through the obligation of companies to publish an annual declaration on slavery and human trafficking, measures taken to eradicate slavery in their own supply chains.

Portuguese Labour Code (2009)[237] obliges employers to promote the productivity and employability of the worker, by providing him with adequate professional training to develop his qualification; provide the worker with adequate information and training to prevent the risk of an accident or illness.

Lithuanian Law on Equal Opportunities for Women and Men[238] obliges the employer to apply uniform selection when recruiting or promoting; ensure equal working conditions and opportunities for professional development; provide equal pay for the same work or for work to which equal value is attributed.

Regulation (EU) 2017/821 of the European Parliament and of the Council[239] laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. This Regulation establishes a Union system for supply chain due diligence to curtail opportunities for armed groups and security forces to trade in tin, tantalum and tungsten, their ores, and gold.

Despite the fact that the concept of corporate social responsibility in the modern sense involves the voluntary undertaking of companies that go beyond the laws and regulations to promote public

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[235] "Bribery Act 2010," Legislation.gov.uk, Accessed 17 September 2020, https://www.legislation.gov.uk/ukpga/2010/23/introduction

[236] "Modern Slavery Act 2015," Legislation.gov.uk, Accessed 17 September 2020, https://www.legislation.gov.uk/ukpga/2015/30/introduction/enacted

[237] "Labour Code," Official Gazette no. 30/2009, Series I of 2009-02-12, https://dre.pt/application/conteudo/123169278

[238] "Law on Equal Opportunities for Women and Men of Republic of Lithuania," no. VIII-947, 01 December 1998, Accessed 17 September 2020, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/488fe061a7c611e59010bea026bdb259?jfwid=q8i88l7y0&buildNumber=1476094870097

[239] "Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas," EUR-Lex, Accessed 17 September 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0821

welfare, the establishment or improvement of minimum social, environmental, labour standards can directly affect the business practices of companies.

Risk of reputational losses. Apart from the establishing obligations to comply with legislation governing corporate social responsibility through mandatory disclosure of non-financial information, approval of sustainable development strategies, the formation of CSR funds, however, as noted above, corporate social responsibility is not just about keeping the law. Along with the promotion of CSR by the state, this concept can be implemented through potential reputational losses for companies, which is more related to social pressure.

Transnational companies certainly have the potential resources to address environmental and social challenges. One of the factors of profitability of companies is the popularity, through the media, consumer awareness. In this regard, socially irresponsible behaviour can destroy built public images through business reputation. On the other hand, the voluntary implementation of social practices creates an image that contributes to commercial success.[240] Jordi Canals having identified the impact of socially responsible business practices on the reputation of companies, specified: "[...] the firm has to be profitable, but profitability alone is not enough to ensure the firm's long-term survival or improve its reputation as an institution".[241] Thus, despite the fact that states cannot absolutely standardize and oblige companies to implement CSR as an essential condition for achieving sustainable development of society, however, compliance with both internal and external dimensions of corporate social responsibility can improve the image of companies, which in turn increases capitalization, and vice versa, refusing from ideas and practices outlined above, damages reputational losses and contributes to the economic downturn.

In the 21st century, consumers in developed countries give preference to companies with a solid reputation and an active CSR policy. According to report of Cone Communications CSR Study (2017):[242] 87% of respondents buy goods and services of those companies that are involved in solving social, environmental and other socially significant problems; 63% of respondents hope that companies will become engines of social and environmental change for the better, even in the absence of legislative initiatives; 76% of consumer respondents (USA) refuse goods or services of commercial firms, whose philosophy contradicts their beliefs. Based on the above, companies cannot ignore

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[240] Bryn Jones and Peter Nisbet, *supra note*, 207: 299.
[241] Jordi Canals, *supra note*, 198: 63-64.
[242] Cone Communications, "2017 Cone Communications CSR STUDY," Accessed 15 September 2020, https://www.conecomm.com/research-blog/2017-csr-study

society's expectations and must respond appropriately through the integration of corporate social responsibility at both the national and international levels.

3.2. International Standards of Socially Responsible Conduct of Companies

A grey area exists between compliance with the law and beyond, if a company can avoid strict regulation of a particular country by moving its business to a country with more lenient corporate social responsibility regulation.[243] In this regard, international self-regulatory initiatives are one of the factors to eliminate the negative consequences caused by the activities of companies by promoting standards of corporate social responsibility.[244] Therefore, at the international level standards (ethical principles) have been established by adoption guidelines, declarations, standards, the most relevant of which are: UN Global Compact 2000[245], International standard "Guidance on social responsibility" 2010 (ISO 26000)[246], Commission's renewed EU strategy 2011-14 for Corporate Social Responsibility[247], OECD Guidelines for Multinational Enterprises[248], Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy[249], OECD Due Diligence Guidance for Responsible Business Conduct[250]. This basic set of internationally recognized principles and guidelines allows for the integration of corporate social responsibility at the global level, hence, government policies to promote CSR should be aligned with this framework.

UN Global Compact 2000[251] is a strategic policy initiative for companies seeking to align their business practices with the ten universally recognized principles of human rights, labor, environment and anti-corruption. It is a multi-stakeholder initiative involving diverse actors such as governments, companies, labor and civil society organizations, and the U.N. aimed at defining and promoting

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[243] Beate Sjåfjell and Linn Anker Sørensen, *supra note*, 215: 12-13.
[244] Christian Voegtlin and Nicola M. Pless, "Global Governance: CSR and the Role of the UN Global Compact," *Journal of Business Ethics* 122, no. 2 (June 2014): 3.
[245] United Nations Global Compact, "The Ten Principles of the UN Global Compact," accessed 06 September 2020, https://www.unglobalcompact.org/what-is-gc/mission/principles
[246] "Guidance on Social Responsibility, ISO 26000: 2010 (E)," *supra note*, 213.
[247] "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a renewed EU strategy 2011-14 for Corporate Social Responsibility," *supra note*, 191.
[248] OECD, "OECD Guidelines for Multinational Enterprises," 2011 Edition, Accessed 30 October 2020, http://www.oecd.org/daf/inv/mne/48004323.pdf
[249] International Labour Organization, "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy," 5th edition, March 2017, Accessed 20 September 2020, https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf
[250] OECD, "OECD Due Diligence Guidance for Responsible Business Conduct 2018," Accessed 18 September 2020, http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf
[251] "The Ten Principles of the UN Global Compact," *op. cit.*

corporate social responsibility.[252] Since establishing in 2000, the UN Global Compact has been able to reach a broad regulatory consensus on global ethical values and corporate social responsibility standards through its ten general principles and become a model for global governance initiatives.[253]

The UN Global Compact both promotes the internationalization of principles as part of companies' business strategies and facilitates cooperation and collective problem-solving between different stakeholders.[254] Companies that join the UN Global Compact commit at the CEO level to align their corporate strategies and operations with Ten Principles of the UN Global Compact and take actions to support Sustainable Development Goals.[255] The Ten Principles derived from UN declarations and conventions are essentially the common ground for responsible and ethical business activities, and are the values that companies must integrate into their daily business activity.

The Ten Principles of the UN Global Compact consist of: *businesses should support and respect the protection of internationally proclaimed human rights*[256] (applying of due diligence to avoid infringing human rights); *make sure that they are not complicit in human rights abuses*[257] (avoiding complicity); *businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining*[258] (the right of all employers and all workers to freely and voluntarily establish and join groups for the promotion and defense of their occupational interests); *the elimination of all forms of forced and compulsory labour*[259] (any work or service that is exacted from any person under the menace of any penalty, and for which that person has not offered himself or herself voluntarily); *the effective abolition of child labour*[260] (form of exploitation); *the elimination of discrimination in respect of employment and occupation*[261] (treating people differently or less favorably because of characteristics that are not related to their merit or the inherent requirements of the job); *businesses should support a precautionary approach to environmental challenges*[262] (the systematic application of risk assessment, risk management and risk

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[252] Surya Deva, "Global Compact: A Critique of The U.N.'s "Public-Private" Partnership for Promoting Corporate Citizenship," *Syracuse Journal of International Law and Commerce* 34, no. 1 (2006): 115, https://surface.syr.edu/jilc/vol34/iss1/4
[253] Christian Voegtlin and Nicola M. Pless, *supra note*, 244: 8.
[254] Surya Deva, *op. cit.*, 116.
[255] DNV GL, "Uniting Business in the Decade of Action: building on 20 years of progress," Accessed 30 October 2020, https://ungc-communications-assets.s3.amazonaws.com/docs/publications/UN-Global-Compact-Progress-Report-2020.pdf
[256] "The Ten Principles of the UN Global Compact," *supra note*, 245: Principle 1.
[257] Ibid., principle 2.
[258] Ibid., principle 3.
[259] Ibid., principle 4.
[260] Ibid., principle 5.
[261] Ibid., principle 6.
[262] Ibid., principle 7.

communication); *undertake initiatives to promote greater environmental responsibility*[263] (fewer raw material inputs and lower costs); *encourage the development and diffusion of environmentally friendly technologies*[264] (cleaner production processes and pollution prevention technologies); *businesses should work against corruption in all its forms, including extortion and bribery*[265] (restoring confidence and trust in business among investors, clients, employees and the public).

Surya Deva analyzing the significance of the UN Global Compact, emphasized: "[...] the Compact – though still a work in progress – has paved the way for the U.N.'s engagement with key non-state actors to tackle pressing challenges of the 21st century"[266]. The advantages of companies following the principles set out in the UN Global Compact are as follows: adoption of internationally recognized management, environmental and social practices; promoting sustainable development solutions in partnership with governments, UN agencies, and civil society; use of resources and instruments of the UN Global Compact to engage in environmental, social practices.[267]

To summaries, despite the general nature of the principles and the lack of an effective mechanism for monitoring of compliance, the UN Global Compact assists companies in managing risks and opportunities in the environmental and social spheres, promotes social well-being by through socially responsible conduct of companies, creates a basis for long-term success.

ISO 26000:2010, Guidance on Social Responsibility[268], prepared by ISO/TMB Working Group on Social Responsibility provides guidance on the basic principles of social responsibility and ways to integrate socially responsible behaviour into the business activities of companies. It is to be pointed out that standard does not change the legislation and obligations of states, but rather helps to define social responsibility and translate principles and issues into effective actions based on international norms of behaviour.[269]

ISO 26000:2010 substantiates the competitive advantages of companies' implementation of CSR, supports the win-win argument, emphasizing that companies can become more profitable by

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[263] "The Ten Principles of the UN Global Compact," *supra note*, 245: Principle 8.
[264] Ibid., principle 9.
[265] Ibid., principle 10.
[266] Surya Deva, *supra note*, 252: 150.
[267] Jagbir Singh Kadyan, "United Nations Global Compact and Corporate Social Responsibility", *International Journal of Science and Research (IJSR)* 5, no.10 (October 2016): 478, https://ssrn.com/abstract=3377290
[268] "Guidance on Social Responsibility, ISO 26000: 2010 (E)," *supra note*, 213.
[269] Post Publication Organization (PPO), "Practical overview of the linkages between ISO 26000:2010, Guidance on social responsibility and OECD Guidelines for Multinational Enterprises (2011)," February 6, 2017, https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100418.pdf

considering environmental and social issues.[270] CSR is defined as "the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that contributes to sustainable development"[271]. Hence, social responsibility is defined rather as a moral obligation that encourages companies to go beyond the law framework in promoting socially responsible behavior to achieve sustainable development.

To achieve sustainable development, companies must adhere to the seven main principles around which the ISO 26000:2010 is concentrated: *ethical behavior*[272] (developing and using governance structures that help disseminate ethical behaviour within the organization), *respect for the rule of law*[273] (compliance with all applicable laws and regulations), *respect for international norms of behaviour*[274] (compliance with international laws and regulations), *respect for stakeholder interests*[275] (considering the rights, claims, and interest of all stakeholders), *accountability*[276] (being answerable for decisions and activities and their impacts on society, the economy, and the environment), *transparency*[277] (openness about decisions and activities of the organization regarding the relevant social, economic, and environmental aspects of its operations) and *respect for human rights*[278] (respect and foster the rights covered in the international Bill on Human Rights).

ISO 26000:2010 emphasizes that the expectations of the company's stakeholders (shareholders, managers, employees) do not always coincide with the expectations of society, which are equated to sustainable development.[279] The main argument that organizational decisions will lead to sustainable development only if they meet public expectations.[280] To identify the relevant stakeholders, companies should be guided by the main question: "Who might be positively or negatively affected by the organization's decisions or activities?"[281] However, ISO 26000:2010 avoids the complex question of how sustainability can be constructed through dialogue and interaction with

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[270] Andrew Johnston, "ISO 26000: Guiding Companies to Sustainability Through Social Responsibility?" University of Oslo Faculty of Law Research Paper no. 2012-11 (June 2012), 114, https://ssrn.com/abstract=2083479
[271] "Guidance on Social Responsibility, ISO 26000: 2010 (E)," *supra note*, 213: paragraph 2.18.
[272] Ibid., paragraph 4.4.
[273] Ibid., paragraph 4.6.
[274] Ibid., paragraph 4.7.
[275] Ibid., paragraph 4.5.
[276] Ibid., paragraph 4.2.
[277] Ibid., paragraph 4.3.
[278] Ibid., paragraph 4.8.
[279] Ibid., paragraph 5.2.1.
[280] Andrew Johnston, *op. cit.*
[281] "Guidance on Social Responsibility, ISO 26000: 2010 (E)", *op. cit.*, paragraph 5.3.2.

stakeholders.[282] In particular, Andrew Johnston notes: “Nor is there any necessary link between what society expects and what sustainability requires”[283] and offers an alternative approach: “[...] to require corporations to consider directly whether decisions are sustainable and to review decisions in the light of experience and feedback from stakeholders”[284].

To summaries, there is certainly different understanding of the concept of sustainable development and ways to achieve it, but in the context of CSR ISO 26000:2010 promotes the integration of social responsibility into the company through proper communication and reporting, confidence building, participation in broader voluntary initiatives etc. In this regard, in contradiction to international recommendations that promote CSR, but leave uncertain questions about the practical integration of the CSR model, ISO 26000: 2010 translates the principles into specific decisions of managers.

A renewed EU strategy 2011-14 for Corporate Social Responsibility[285] is aimed at promoting CSR of business, creating favorable conditions for sustainable growth, responsible business behavior and long-term job creation in the medium and long term.

The starting point in the analysis of the strategy is the evolution in the definition of corporate social responsibility by the European Commission.[286] In 2001, the European Commission’s Green Paper - Promoting a European framework for corporate social responsibility determined CSR as “[...] a concept where companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”[287], therefore, at the beginning of the 21st century, CSR was considered as nothing more than a voluntary initiative of companies. Ten years later, the European Commission did not merely attempt to gradually adjust the definition of CSR, but instead launched a new concept of corporate social responsibility.[288] Identifying the modern understanding of corporate social responsibility in the renewed strategy, the Commission defined CSR rather as “the responsibility of enterprises for their impacts on society”[289], than simply the voluntary

[282] Andrew Johnston, “Constructing Sustainability Through CSR: A Critical Appraisal of ISO 26000,” University of Oslo Faculty of Law Research Paper no. 2011-33 (August, 2011), 19, https://ssrn.com/abstract=1928397
[283] Andrew Johnston, *supra note*, 270: 117.
[284] Ibid.
[285] “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a renewed EU strategy 2011-14 for Corporate Social Responsibility,” *supra note*, 191.
[286] Beate Sjåfjell and Linn Anker Sørensen, *supra note*, 215: 16.
[287] “Green paper - Promoting a European framework for corporate social responsibility,” *supra note*, 202.
[288] Beate Sjåfjell and Linn Anker Sørensen, *op. cit.*, 17,
[289] “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a renewed EU strategy 2011-14 for Corporate Social Responsibility,” *op. cit.*

integration of social aspects into business practice. Certainly, it's difficult to regulate voluntary practice, therefore, the new understanding of CSR is more progressive, because unlike the concept of voluntary practice of companies, CSR is considered as the responsibility of companies to society, that should be an integral part of managers' duties.

The new approach to CSR requires companies to ensure the integration of social, environmental, ethical, human rights and consumer issues into their business operations to create value for all stakeholders, society as a whole and to prevent possible negative consequences from the activities of companies.[290] However, the actualization of CSR for all categories of business remains an unresolved issue, because "[...] for most small and medium-sized enterprises, especially micro-enterprises, the CSR process is likely to remain informal and intuitive"[291]. This statement does not give grounds to claim that corporate social responsibility is a legal obligation for medium or small companies.[292] Even for large enterprises, the scope of responsibilities is narrowed to the obligation to adopt "[...] a long-term, strategic approach to CSR, and to explore opportunities for developing innovative products, services and business models that contribute to societal wellbeing and lead to higher quality and more productive jobs"[293]. Even in the case of possible adverse effects, companies are merely "[...] encouraged to carry out risk-based due diligence, including through their supply chains"[294].

In summary, the renewed strategy of the European Commission is certainly a tool for introducing CSR into the daily activities of companies through the establishment of responsibilities at both the European Union and Member States level to promote corporate social responsibility, there is a clear understanding that "through CSR, enterprises can significantly contribute to [...] sustainable development and a highly competitive social market economy "[295]. However, at the same time it is necessary to identify the nature of corporate social responsibility as a moral or legal obligation, to develop a program to promote corporate social responsibility through social dialogue, investment, training, and finally legal restrictions, to establish an effective mechanism for applying legal consequences for non-compliance.

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[290] "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a renewed EU strategy 2011-14 for Corporate Social Responsibility," *supra note*, 191: paragraph 3.1.
[291] Ibid.
[292] Beate Sjåfjell and Linn Anker Sørensen, *supra note*, 215: 19.
[293] "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a renewed EU strategy 2011-14 for Corporate Social Responsibility," *op. cit.*
[294] Ibid.
[295] Ibid., paragraph 1.2.

OECD Guidelines for Multinational Enterprises[296] contains recommendations addressed by governments to multinational enterprises (in line with internationally recognized standards) on responsible business conduct in a global context. It is not a mandatory collection of principles and standards for responsible business conduct, but rather contains the expectations of governments and society regarding the conduct of multinational companies.

OECD Guidelines for Multinational Enterprises establishes the following obligations:

1) In *general policy*, companies must comply with national laws and regulations, consider, prevent and mitigate the negative effects on human rights, workers' rights, the environment and corruption.[297] It is obvious that, in essence, effective control over the fulfillment of this duty lies with the nation states.

2) Transnational companies are expected to *publish information* on their business activities and financial results on a regular and transparent basis.[298] Publishing financial and non-financial information is a way to integrate corporate social responsibility into the business practices of companies.

3) Multinational enterprises must *respect human rights;* they are expected to find ways to prevent and mitigate the negative consequences for human rights and take corrective action in the event of negative human rights consequences that have already occurred.[299]

4) Companies must *respect the rights of their employees* and cooperate with workers' representatives. In this regard, companies call for the fight against discrimination, child labor and forced and compulsory labor.[300] This principle is part of the concept of considering the interests of all stakeholders in corporate governance.

5) They are encouraged to prevent and mitigate the *negative effects on the environment.*[301] As analyzed in Chapter 2, due to the focus on short-term benefits, the environmental aspect is not considered in decision making. Therefore, shareholders and company managers must integrate long-term strategies and initiatives.

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[296] "OECD Guidelines for Multinational Enterprises," *supra note*, 248.
[297] Ibid., pp. 19-26.
[298] Ibid., pp. 27-30.
[299] Ibid., pp. 31-34.
[300] Ibid., pp. 35-41.
[301] Ibid., pp. 42-46.

6) Companies must play a key role in the *fight against corruption* and bribery through internal control and ethical behavior.[302] In addition, the active participation of the state in the fight against corruption through an effective system of control and punishment seems necessary.

7) Multinational companies must adhere to *fair and honest marketing practices* and ensure the safety and quality of their products and services.[303]

8) Multinational enterprises are influencing economic and social development by *spreading new technologies* around the world. They also play an important role in the development of innovation.[304]

9) Multinational companies *must comply with current competition laws* and refrain from restricting competition that promotes market functioning and economic growth.[305] Undoubtedly, competition contributes to the "socialization of companies", as corporate social responsibility gives a competitor an advantage, including in the economic aspect.

10) It is important that transnational enterprises contribute to the financing of public finances in host countries by *paying taxes* in a timely and appropriate manner.[306] In this aspect, the Action Plan on Base Erosion and Profit Shifting (2013)[307] and the Model Tax Convention on Income and on Capital (2017)[308] are important, which are aimed at counteracting the erosion of the tax base and the withdrawal of profits.

In addition, the OECD Guidelines for Multinational Enterprises establishes a mechanism to monitor compliance with its provisions by National Contact Points (each country that adhere to the OECD Guidelines for Multinational Enterprises should establish National Contact Points), that promote awareness of the Guidelines and, upon request, express an opinion on whether a particular multinational company has operated in accordance with the Guidelines.

Among the advantages of the application of the OECD Guidelines for Multinational Enterprises are: favorable lending conditions and access to capital markets; selection of stable potential business partners; transparency and trust in the strategy of CSR; environmental protection;

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[302] "OECD Guidelines for Multinational Enterprises," *supra note*, 248: 47-50.
[303] Ibid., pp. 51-54.
[304] Ibid., pp. 55-56.
[305] Ibid., pp. 57-59.
[306] Ibid., pp. 60-63
[307] OECD, "Action Plan on Base Erosion and Profit Shifting, 2013," OECD Publishing, Accessed 13 November 2020, http://dx.doi.org/10.1787/9789264202719-en
[308] OECD, "Model Tax Convention on Income and on Capital: Condensed Version, 2017," OECD Publishing, Accessed 13 November 2020,
https://doi.org/10.1787/20745419

dialogue between stakeholders.[309] Although the OECD Guidelines for Multinational Enterprises is certainly a form of soft law, the stated norms and standards can grow into a form of national law, in particular through: influence on the practice of states, that will lead to the emergence of customary international law or through the transformation into an international treaty.[310]

Thereby, the OECD Guidelines for Multinational Enterprises complement established international practices in the form of soft law, providing mutual obligations for states and companies to integrate into national legislation and business practices of companies environmental, social aspects. In this way, national governments receive an internationally recognized mechanism to promote CSR on the one hand, and companies an incentive to do business responsibly. At the same time, it is necessary to expand the scope of application of the principles to the entire supply chain, to improve the institutional structure of national contact points, to establish an effective process of investigating possible violations of the Guidelines.

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy[311] offers guidelines to multinational enterprises, governments, and employers' and workers' organizations in such areas as employment, training, conditions of work and life, and industrial relations. Due to the impact of multinational companies on the economy and social welfare of states, the Tripartite Declaration is one of the main international documents on corporate responsibility for human rights.[312] The Tripartite Declaration to some extent reflects the standards that are already included in national legislation, so it emphasizes the need for companies to harmonize their practices with national rules, social goals and structure of countries in which they operate.[313]

The Tripartite Declaration is based on commitments for multinational companies in the field of *employment*[314] (employment promotion, social security, elimination of forced or compulsory labor, equality of opportunity and treatment, security of employment), *employee training*[315], *conditions of*

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[309] Alice Harbach-Forel, Antonio Hautle, Alex Kunze and Nadja Meier, "OECD Guidelines for Multinational Enterprises in practice: Guidance for application in business operations," 2nd edition, January, 2018, https://www.seco.admin.ch/dam/seco/en/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/CSR/ZentraleCSR-Instrumente/OECD_Broschuere_Leitsaetze.pdf.download.pdf/OECD_Broschuere_Leitsaetze.pdf

[310] Jernej Letnar Černič, "Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational Enterprises," *Hanse Law Review* 3, 1 (December, 2008): 82, http://ssrn.com/abstract=1317263

[311] "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy," *supra note*, 249.

[312] Jernej Letnar Černič, "Corporate Responsibility for Human Rights: Analyzing the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy," *Miskolc Journal of International Law* 6, no. 1 (2009): 26, https://ssrn.com/abstract=1459548

[313] "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy," *op. cit.*, paragraph 8,

[314] Ibid., paragraphs 13-36.

[315] Ibid., paragraphs 37-40.

work and life[316] (wages, benefits and conditions of work, safety and health) *and industrial relations*[317] (freedom of association and the right to organize, collective bargaining, access to remedy and examination of grievances).

The Tripartite Declaration is important primarily as an interpretative document, because companies' obligations regarding labor standards are primarily derived from national law. In this context, Andrew Clapham noted: "[...] despite the fact that the Tripartite Declaration contains only recommendations, the Declaration provides material evidence that the international labour law regime has come to include human rights obligations for national and multinational enterprises"[318]. However, despite the universal nature of the Tripartite Declaration, the redundancy of the existing legal obligations imposed on the company is one aspect that makes its widespread adoption unlikely and unattractive to national governments.[319] In this aspect, a possible option is to include an assessment of the impact of companies on human rights in the periodic reports on the implementation of the Tripartite Declaration.[320]

To summaries, although the Tripartite Declaration is of a rather recommendatory nature and employs indirect methods to ensure compliance with international standards, it contains recommendations that are essentially based on internationally recognized norms in the field of protection of workers' rights and it is one of the factors shaping the international human rights protection regime.

OECD Due Diligence Guidance for Responsible Business Conduct[321] seeks to provide practical support to companies in implementing the OECD Guidelines for Multinational Enterprises[322] through clear language explanations of due diligence recommendations, and to promote common understanding between governments and stakeholders on due diligence for responsible business conduct. OECD Due Diligence Guidance for Responsible Business Conduct describes the measures that companies should take to conduct due diligence on human rights, including workers and industrial relations, environment, bribery and corruption, disclosure, and consumer interests.[323] It provides a step-by-step description of the due diligence process, in order to identify and prevent negative

[316] "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy," *supra note*, 249: paragraphs 41-46.
[317] Ibid., paragraphs 47-68.
[318] Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006), 215.
[319] Jernej Letnar Černič, *supra note*, 312: 28.
[320] Ibid., p.33.
[321] "OECD Due Diligence Guidance for Responsible Business Conduct 2018," *supra note*, 250.
[322] "OECD Guidelines for Multinational Enterprises," *supra note*, 248.
[323] "OECD Due Diligence Guidance for Responsible Business Conduct 2018," *op. cit.*

consequences from the business activities of companies through: embedding responsible business conduct into policies and management systems; identifying and assessing actual and potential adverse impacts associated with the enterprise's operations, products or services; ceasing, preventing and mitigating adverse impacts; tracking implementation and results; communicating how impacts are addressed; and providing for or cooperating in remediation.[324] In addition, The Due Diligence Guidance contains an Appendix with detailed explanations, tips and illustrations of due diligence for responsible business conduct, with a focus on each of the six core measures.

It is important to note that, OECD Due Diligence Guidance for Responsible Business Conduct is not limited to providing practical advice and facilitating mutual understanding between governments and other stakeholders, but also promotes the implementation of the standards set out in the UN Guiding Principles on Business and Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.[325] Such harmonization of international standards as set out in the number of voluntary initiatives is a general guideline that promotes legal certainty, enables companies to focus on specific principles, and allows governments to integrate them into national legislation.

Currently, there are strong incentives for companies to implement due diligence processes for responsible business conduct.[326] As described above, companies face significant public pressure and reputational losses due to disregard for the interests of all stakeholders, as the dogma of shareholder primacy does not allow to achieve sustainable development. In this context, the role of OECD Due Diligence Guidance for Responsible Business Conduct seems particularly valuable, as it provides practical support not only to companies but also to governments in integrating internationally recognized principles into domestic law. Therefore, OECD Due Diligence Guidance for Responsible Business Conduct has a number of practical features that indicate the possibility of effective implementation of CSR in the daily business practice of companies. The practical nature of OECD Due Diligence Guidance for Responsible Business Conduct eliminates it among the recommendations, strategies and declarations described above, as it explains the basic steps and measures to be taken by the company, rather than general principles.

Moreover, OECD Due Diligence Guidance for Responsible Business Conduct recognizes the need for companies to take a flexible approach to due diligence for responsible business conduct, and provides practical guidance to practitioners on how to navigate decisions when things are not moving

[324] "OECD Due Diligence Guidance for Responsible Business Conduct 2018," *supra note*, 250: 21.
[325] Ibid., p, 11.
[326] Catie Shavin, "Unlocking the Potential of the New OECD Due Diligence Guidance on Responsible Business Conduct", *Business and Human Rights Journal* 4, 1 (January 2019): 142, https://doi.org/10.1017/bhj.2018.28

neatly, linearly.[327] Finally, OECD Due Diligence Guidance for Responsible Business Conduct promotes CSR for all sectors of the economy, that certainly helps to create common guidelines for companies and governments to integrate standards of responsible business conduct.

Thereby, OECD Due Diligence Guidance for Responsible Business Conduct has the potential to become a valuable tool for companies and governments to integrate responsible business conduct, it is a practical guide for companies' business activity, and a general guideline for collaboration. However, due to the scale of modern transnational companies, it is necessary to promote such standards to the widest possible range of companies and countries in order to achieve the overall result in the form of sustainable development.

To conclude this chapter, society's expectations about the role of companies have been always changing. The emergence of new social values and the constant development of economies have led to the emergence of new expectations about companies. However, economic crises, globalization have forced companies on the one hand and society on the other to re-evaluate the purpose of companies and turn to the concept of CSR as an alternative model of corporate governance. Briefly summarizing:

✓ The concept of CSR is a system of relations between companies from the one hand and society and state from the other, that aims to promote effective human resources management, health and safety at work, adaptation to change, reduction of consumption of natural resources, reduction of pollutant emissions into the environment, integration and interaction of companies with local communities, interaction and mutual control with business partners, suppliers and consumers, adhere internationally recognized standards and guarantee the provision of fundamental human rights.

✓ Compliance with both internal and external dimensions of CSR can improve the business reputations of companies, which in turn increases capitalization, and vice versa, refusing from ideas and practices outlined above, damages reputational losses and contributes to the economic downturn.

✓ CSR is an effective strategy for the company's self-development, building effective relationships with local communities and society as a whole. By investing in the corporate social responsibility segment, companies ensure sustainable development for the future.

✓ The concept of corporate social responsibility can be implemented both through legalization, authorization, public funding, encouragement and with minimal state influence in the process.

[327] Catie Shavin, *supra note*, 326: 143.

- ✓ The globalization of processes contributes in particular to the unification of social standards of behaviour, that allows companies to create universal guidelines, policy documents that can be implemented in different parts of the world.
- ✓ Voluntary initiatives cannot lead to systemic change, so governments need to integrate international standards into national legislation by supporting initiatives that allow companies to assess and meet relevant societal expectations. National standards and capabilities should also be considered.
- ✓ Implementation of CRS policy allows to obtain an appropriate level of safety in the workplace, guarantees of human rights, cooperation of companies with local communities creates opportunities for local people, career prospects, solves problems of unemployment, allows to involve the companies in the projects financed by the state, deepens their cooperation.
- ✓ Short-term strategies cannot lead to sustainable development of the company. Corporate social responsibility as a model of company management and long-term development strategy is the tool that will allow companies in the 21st century to meet the expectations of both shareholders and society, to achieve sustainable development.

CONCLUSIONS

1. The historical development of the purpose of companies in view of the change of government-society relations, establishment of private property, industrial revolution, division of ownership and management of companies has led to the transformation of companies from a public agent to a tool for shareholder enrichment and shareholder primacy dominance.

2. The purpose of the company's existence has always determined the principles of its existence due to the dominant understanding of the company as a form of association, a state instrument or a means of promoting private interests. The company, as a separate legal entity, is not responsible for the personal obligations of shareholders, is uninterrupted in existence due to the transferable shares, has a management structure through delegation of powers and provides investor ownership through the right to control the company and the right to receive net profit. Mentioned features determine the understanding of the company as an entity with its own identity, and company managers as fiduciaries of companies, not shareholders.

3. The shareholder primacy is not a requirement of corporate law, but rather a social behavioral norm due to the vagueness of the purpose of companies in national law. Thus, due to the number of stakeholders, the impact of companies on society as a whole, the purpose of the companies can not be narrowed only to enrich the value of shareholders.

4. Corporate social responsibility is a system of relations between companies on the one hand and society and the state on the other, aimed at promoting effective human resource management, health and safety at work, adaptation to change, reducing consumption of natural resources, reducing emissions, integration and interaction companies with local communities.

5. Corporate social responsibility is essentially a voluntaristic concept, as it implies a moral obligation of companies to the society in which they operate, to go beyond the law in integrating socially responsible policies into business activities. However, states still find ways to directly and indirectly implement corporate social responsibility policy in national legislation, in particular through mandatory disclosure of non-financial information, the obligation to establish funds for social expenditures, periodic reporting on social activities, development of codes of business conduct, recommendations etc.

6. An important role in integrating corporate social responsibility into companies' business activity is played by international standards contained in strategies, guidelines, recommendations and combining national experience, form an additional mechanism for governments, company leaders to

achieve long-term success. However, achieving systemic change and socialization of companies through voluntary initiatives without effective control mechanisms does not seem possible, therefore, it is necessary to harmonize at the national states level standards and principles of socially responsible conduct of companies. Thus, corporate social responsibility as an alternative conceptual model of corporate governance is a necessary prerequisite for long-term success of companies in the 21st century, a tool to meet the interests of all stakeholders and achieve sustainable development.

RECOMMENDATIONS

Master Thesis identifies a number of problems in determining the purpose of companies in the 21st century, including the lack of clear separation of company interests and shareholder interests, discretion of directors, which led to the emergence of shareholder primacy as a social behavioural norm, voluntary nature of corporate social responsibility, lack of an effective mechanism for monitoring companies' compliance with socially responsible conduct. Therefore, the implementation of the following initiatives and recommendations is necessary:

1. To establish a definition of the company's interests at the national legislative level. To identify the requirement to take into consideration the interests of all stakeholders (shareholders, employees, managers, society as a whole) during the business decisions making process.
2. To enshrine at the legislative level of countries the concept of corporate social responsibility, with the need for periodic reporting on the assessment of the impact of companies' activity and the measures taken to implement CSR policy.
3. Acting in the interests of the company, directors must consider the risks and implications for the sustainable development of companies, calculate the long-term interests of the company, the interests of shareholders, employees, customer interest, the interest of the community in which the company operates and the interests of society as a whole.
4. To develop at the national level and harmonize at the international level sustainability criteria to create a clear framework for business conduct of companies and clear indicators for assessing the performance of companies in terms of compliance with these criteria.
5. To designate precise criteria for assessing the company's compliance with the established principles of corporate social responsibility in the areas of human resources management, labor protection and labor safety, consumption of natural resources, emissions into the environment, interaction with local communities.
6. To implement international corporate social standards into national legislation, in particular the provisions of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (promotion of employment, ensuring appropriate working conditions), ISO 26000: 2010, Guidance on Social Responsibility (openness about decisions and activities of the company regarding the social, economic, and environmental aspects), OECD Due Diligence Guidance for Responsible Business Conduct (due diligence process on the possible negative impact of business decisions on human rights, environment, bribery and corruption, disclosure, and consumer interests).

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ABSTRACT

Master Thesis identifies the characteristics of companies that distinguish them from other forms of human associations, describes the essence and historical development of the company′s purpose concept, specifies the most appropriate model of corporate governance in the 21st century due to the modern environmental, social and economic challenges through comparative analysis of legal aspects.

The research determines short-termism as a result of maximizing shareholder value and its impact on the social well-being of societies, identifies corporate social responsibility as an alternative to shareholder primacy and a necessary prerequisite for achieving sustainable development.

Keywords: company’s purpose, shareholder primacy, short-termism, corporate social responsibility, sustainable development.

PURPOSE OF A COMPANY IN 21st CENTURY: COMPARATIVE ANALYSIS OF LEGAL ASPECTS

Yevhen Shot

SUMMARY

Master Thesis determines the purpose of the existence of companies through a comparative analysis of basic theoretical concepts and practices, legislation and case law of continental and common law countries.

The first chapter describes the historical development of the purpose of companies in the context of changing socio-economic and political conditions, identifies the constitutive features of companies that distinguish them from other organizational entities. The company has a separate legal personality, is not responsible for the personal obligations of creditors, is uninterrupted in existence through the transferable shares, delegates powers and has an internal structure, provides investor ownership through the possibility of obtaining a net income and control over the company. In light of the above, companies exist for a specific purpose that should not be equated with the interests of any stakeholder group.

The second chapter determines the shareholder primacy as the dominant concept of corporate governance. In particular, based on a comparative analysis of legislation and case law, it has been established that the shareholder primacy is a social behavioral norm rather than a requirement of corporate law. Shareholders are not owners of companies in the private law sense of ownership, shareholders' interests are not homogeneous, shareholders are not residual claimants, the company influences employees, creditors, customers, contractors, creating different expectations and interests that need to be balanced. Giving priority to any of the stakeholder groups has an impact on the position of others, so the concept of shareholder primacy does not correspond to modern socio-economic and political conditions. Maximizing the value of shareholders contributes to the formation of short-term decision-making, leads to social inequality, environmental and economic challenges. Thus, the value of companies exceeds the value of shareholders. Due to described circumstances, companies, governments and society overestimate the purpose of companies through the integration of the stakeholder value concept, that can be implemented through: the obligation of managers to consider the interests of all stakeholders in decision-making, two-tier board structure, the possibility of creating benefit companies, that declare their purpose to create a public benefit.

The third chapter describes corporate social responsibility as a major trend of the 21st century and a model that requires the implementation of economic, social and environmental standards in the decision-making process. Corporate social responsibility promotes the provision of an adequate level of safety in the workplace, guaranteeing human rights, cooperation of companies with local communities, training of employees, reduction of emissions into the environment. Certainly, companies cannot refuse to provide consumers with profitable goods and services, but in order to achieve sustainable development, shareholders, managers, legislators must define the purpose of companies in the context of potential environmental, social and economic consequences.

Annex No. 4
Form approved on 20 November 2012 by the decision No. 1SN-10
of the Senate of Mykolas Romeris University

HONESTY DECLARATION
30/11/2020
Vilnius

I, **Yevhen Shot**, student of
(name, surname)

Mykolas Romeris University (hereinafter referred to University), **Law School, European and International Business Law**
(Faculty /Institute, Programme title)

confirm that the Master thesis titled

"Purpose of a Company in 21st Century: Comparative Analysis of Legal Aspects:

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

(signature

Yevhen Shot
(name, surname)