# MANAGING RISK IN MULTINATIONALS
## PARENTAL RESPONSIBILITY

James Brady, Sarah Haddad and Hannah Whitney of Cleary Gottlieb Steen & Hamilton LLP look at the implications for risk management in multinational groups of a recent case on parent company responsibility for overseas subsidiary operations.

When does a parent company assume responsibility for its subsidiaries' operations? That question was considered by the Supreme Court in its recent decision in *Vedanta Resources PLC and another v Lungowe and others*, which has potentially significant implications for UK parent companies of multinational groups (*[2019] UKSC 20; see News brief "Parent company liability: your place or mine?", www.practicallaw.com/w-020-1794*).

It is the first time that the court has considered the duty of care owed by UK-domiciled parent companies to third parties that are affected by the actions of a foreign subsidiary. In ruling that the claimants had a sufficiently arguable case against a parent company for claims in respect of the actions of its subsidiary, the court provided useful guidance on the parent-subsidiary relationship.

This article considers the main elements of the court's decision and assesses the practical implications of the decision, focusing on what this could mean for multinationals with a UK-domiciled parent company, particularly those operating in high-risk industries and jurisdictions.

### KEY FACTS

*Vedanta* concerned a claim brought by 1,826 Zambian citizens (the claimants) who live near the Nchanga Copper Mine owned by a Zambian company, Konkola Copper Mines plc (KCM). The claimants alleged that their health and farming activities had been damaged by repeated discharges of toxic matter from the mine into their communities' watercourses.

KCM is a subsidiary of Vedanta Resources plc (Vedanta), which is incorporated and domiciled in the UK and, at the time the claim was brought, was listed on the London Stock Exchange, although it has since been taken private. The claims were brought against both KCM and Vedanta for common law negligence and breach of statutory duty: against KCM as operator of the mine; and against Vedanta on the basis that, the claimants alleged, Vedanta exercised at all material times a very high level of control and direction over KCM's mining operations and its compliance with applicable health, safety and environmental standards.

To establish jurisdiction over Vedanta, the claimants relied on Article 4 of the recast Brussels Regulation (*1215/2012/EU*) (Article 4) which provides that, as a default position, an EU-domiciled person may be sued in the country of its domicile. They then relied on the necessary or proper party gateway in Practice

Direction 6B(3.1) of the Civil Procedure Rules to establish English jurisdiction over KCM, and applied for and obtained permission to serve the claim form on KCM out of the jurisdiction.

Vedanta and KCM both challenged the jurisdiction of the English courts, but were unsuccessful both at first instance and in the Court of Appeal (*see News briefs "Claims against UK parent companies: a cautionary reminder", www.practicallaw.com/2-631-2546 and "Jurisdiction and parent company liability: a catch-22 for English-domiciled companies", www.practicallaw.com/w-011-7056*).

## JURISDICTION

The Supreme Court ruling therefore was on the question of jurisdiction; that is, whether the English courts have jurisdiction to determine the claims against both KCM and Vedanta. In reaching its decision the court considered two issues:

- Whether the claim should be struck out as an abuse of EU law. Vedanta and KCM had argued that the claim against Vedanta had been brought for the sole purpose of using it as an anchor defendant to found jurisdiction against KCM. The court dismissed this argument, and noted that the High Court had made factual findings that there was a sufficient case against Vedanta which the court would not re-open and that European Court of Justice (ECJ) jurisprudence demonstrates the centrality of the principle that a defendant can generally be sued in its place of domicile.

- Whether the English courts otherwise had jurisdiction, applying the jurisdictional test that applies in anchor defendant cases.

The court held that the English courts did have jurisdiction. The nub of the reasoning was that the claim would be more appropriately tried against both Vedanta and KCM in Zambia, but that access to justice issues meant that the claimants would not get substantial justice in Zambia, and the claim could therefore proceed in England.

### Real triable issue

The main basis of the defendants' jurisdiction challenge was that there was no real, triable issue that Vedanta had done anything to assume a duty of care or incur liability. The presence of a real, triable issue against an anchor defendant is a necessary element of establishing jurisdiction over a party who is said to be a "necessary or proper party" to that claim. In the absence of a real, triable issue against Vedanta, the English court would lack jurisdiction over KCM. Vedanta and KCM argued that this case involves an assertion of a new category of common law negligence and that concluding Vedanta owed a duty of care to the claimants directly would involve a novel and controversial extension of the text beyond any established categories. This was rejected by the court. As established by previous case law, liability of a parent company in relation to the activities of its subsidiaries is not, of itself, a distinct category.

The court therefore had to consider whether, as the claimants alleged, there was a sufficient case that Vedanta had intervened in the conduct of operations at the mine owned by KCM to such an extent that it had itself (and not just vicariously) incurred a duty of care towards the claimants.

The claimants cited materials published by Vedanta in which it had asserted its responsibility for the maintenance of proper standards of environmental control over the activities of its subsidiaries, and for the implementation of those standards throughout its group by training, monitoring and enforcement. These included a publicly available sustainability report which emphasised that the board of Vedanta had oversight over the operations of all Vedanta's subsidiaries and specifically referred to problems with toxic discharges into water, in particular at the mine. In addition, the claimants cited a management services agreement between Vedanta and KCM, under which Vedanta was required to provide various services to KCM, including employee training.

The court decided that these materials provided a sufficient basis to conclude that the claimants had an arguable case against Vedanta. Lord Briggs (giving a judgment with which the other judges agreed) concluded that, even where group-wide policies do not themselves give rise to such a duty of care to third parties, they may do so if the parent company takes active steps, by training, supervision and enforcement, so that they are implemented by relevant subsidiaries. The parent may incur the relevant responsibility to third parties if, in published materials, it holds itself out as exercising that degree of supervision and control of its subsidiaries, even if it does not in fact do so. Critically, the court said that on the basis of the published materials, Vedanta "may fairly be said" to have asserted its own assumption of responsibility for its subsidiary.

This decision was (strictly) about whether there was a sufficiently arguable case to be made; it was not intended to determine whether Vedanta had actually incurred a duty of care to the claimants, which is an issue for determination at trial, as is the issue of whether Vedanta had breached any duty.

Nevertheless, the court's conclusion may represent a challenging proposition for large corporations, given that those types of published materials, reports and other documents are widespread. It is common (and there is pressure) for large companies to publish (and publicise) their commitments, policies and reports relating to: health and safety; the environment; sustainability; employment rights; human rights; social performance, and others to similar effect. Furthermore, disclosures and information on those matters will often be expected by investors and may be required by legislation (*see "Corporate governance and public reporting obligations" below*).

Companies and their advisers should bear in mind that materials in which the parent company stresses its responsibility for the operations of its subsidiaries and demonstrates knowledge of issues at particular subsidiaries, whether environmental or otherwise, may well be relied on as establishing a duty of care on the part of the parent company (*see "Practical considerations for multinationals" below*).

### Proper place for a claim against a foreign subsidiary

Having determined that there was a sufficiently arguable case against Vedanta, the court had to consider the question of whether England was the proper place in which to bring the claim against KCM. In the words of the court, this was the most difficult issue in the appeal.

The lower courts addressed this question in the traditional way, by assessing a broad swathe of connecting factors, such as the place where the damage occurred, the place where the wrongful acts were committed, the language of the claimants, and the location of the various witnesses who might be called. Although these were nearly all in favour of Zambia as the proper place in which to bring the claim, the lower courts took the view that these factors were outweighed by the risk of irreconcilable judgments arising from separate proceedings in different jurisdictions.

This had become a real risk since the English courts' historic common law power to stay proceedings against an English-domiciled anchor defendant such as Vedanta was extinguished following the ECJ ruling in *Owusu v Jackson and others,* meaning that the claim against Vedanta would proceed in any event (*C-281/02; see News brief "Regulating jurisdiction: English courts' discretion is curtailed", www.practicallaw.com/2-200-6688*).

What troubled the court about this analysis, however, was that the anchor defendant, Vedanta, had offered to submit to the jurisdiction of the Zambian courts, so that the whole case could be tried there. While this did not prevent the claimants from continuing their claim against Vedanta in England or provide any basis for displacing Article 4 as conferring a right to do so on the claimants, it nevertheless led the court to state that: "[T]he reason why the parallel pursuit of a claim in England against Vedanta and in Zambia against KCM would give rise to a risk of irreconcilable judgments is because the claimants have chosen to exercise that right to continue against Vedanta in England, rather than because Zambia is not an available forum for the pursuit of the claim against both defendants...Why (it may be asked) should that risk be a decisive factor in the identification of the proper place, when it is a factor which the claimants, having a choice, have brought upon themselves?"

The court reasoned that, if the lower courts' analysis on this point were correct, the risk of irreconcilable judgments would likely be decisive in every case in which the claimants have a right to sue the anchor defendant in England, regardless of the strength of the other connecting factors with the foreign jurisdiction. The English court would, in effect, be compelled to allow proceedings to continue by the inevitable priority given to the risk of irreconcilable judgments.

For cases involving multiple defendants that are within the EU, claimants may either: initiate separate proceedings against each defendant in the EU member state in which that defendant is domiciled, and in doing so incur a risk of irreconcilable judgments; or choose to bring a single set of proceedings against all of the defendants in one member state where any one of the defendants is domiciled, thereby actively negating that risk (*Article 8(1), recast Brussels Regulation*) (Article 8(1)). It could be seen as inconsistent, and indeed unjustifiable, to refuse to extend this approach to claimants suing defendants that are domiciled in countries outside of the EU, as was the effect of the ruling of the lower courts in *Vedanta*.

With the argument regarding the risk of irreconcilable judgments dismissed as inconsistent with Article 8(1) and irrelevant in light of Vedanta's readiness to submit to the jurisdiction of the Zambian courts, the court turned to the standard range of connecting factors to establish whether England truly was the proper place for this litigation to proceed. In the court's opinion, there was little in the facts of the case to suggest that the claim against KCM should be litigated before the English courts. After all:

- The allegedly wrongful acts and damage occurred principally in Zambia.
- The running and operation of the mine was subject to Zambian law.
- The claimants themselves, the defendants' witnesses and the documents were located in Zambia.

## Limited categories in which parent companies may be liable

In *AAA and others v Unilever plc and Unilever Tea Kenya Limited*, a number of allegations were raised by certain residents and employees of a tea plantation near the town of Kericho, Kenya (the claimants) against the plantation owner Unilever Tea Kenya Limited (UTKL), a registered Kenyan company, and its parent company Unilever plc (Unilever), an English public company (*[2018] EWCA Civ 1532; see News brief "Parent company liability: a different formulation", www.practicallaw.com/w-015-8854*).

Kenya experienced a surge of mob violence in the aftermath of the 2007 presidential election, including on the plantation. The mobs committed rapes, murders and acts of violence against the claimants, and also damaged property on the plantation.

Seeking recovery on account of alleged poor risk management at the plantation, the claimants lodged a claim against both Unilever and UTKL in the English courts, which required them to prove that they had a good arguable claim against Unilever. The Court of Appeal, overturning the High Court decision, found that the claimants had failed to demonstrate a sufficient connection between the actions and omissions of Unilever, and the damage suffered by the claimants, and therefore held that there was no relationship of proximity required to establish that a duty of care was owed.

The court noted certain categories of cases where it might be more likely to hold parent companies liable for their subsidiaries, for example situations where:

- The parent company has taken over the management of the subsidiary, wholly or jointly with that subsidiary, with regard to the activity in relation to which allegations are levied.
- The parent company has given advice to the subsidiary on managing a particular type of risk.

The claimants conceded that they could not ground their claims within the first category above. In addition, with respect to the second category, documentary evidence established that UTKL did not receive relevant advice from Unilever on matters related to risk management, and that UTKL understood itself as responsible for its own risk management policy. Accordingly, any potential omissions that led to violence and property damage on the plantation were not attributable to Unilever and the case could not be tried against Unilever or UTKL in the English courts.

- A judgment of the Zambian court would be recognisable and enforceable in England against Vedanta.

In summing up this aspect of the case, the court said: "If substantial justice was available to the parties in Zambia as it is in England, it would offend the common sense of all reasonable observers to think that the proper place for this litigation to be conducted was England, if the risk of irreconcilable judgments arose purely from the claimants' choice to proceed against one of the defendants in England rather than, as is available to them, against both of them in Zambia."

However, in the end, it was the lack of provision of substantial justice in Zambia that proved to be the most pertinent factor.

### Access to justice

The court held that even if a court were to conclude, as it had in this case, that a foreign jurisdiction is the proper place in which the case should proceed, the court may nonetheless permit (or decline to set aside) service of English proceedings on the foreign defendant if it is satisfied that there is a real risk that substantial justice would not be carried out in that foreign jurisdiction.

In ruling that there was a real risk that substantial justice would not be available in the Zambian courts, the High Court had focused on two main factors from which an access to justice issue arose:

- The practical impossibility of funding group claims in Zambia where the claimants all lived in extreme poverty.

- The absence of legal teams of sufficient size, experience and expertise to enable the case to be dealt with competently, given its unavoidable scale and complexity.

KCM challenged these conclusions in the Court of Appeal, supported by a written intervention from the Attorney General of Zambia. KCM argued that:

- Previous case law had established that funding issues ought only to incur a finding of lack of substantial justice in exceptional circumstances.

- Substantial justice requires that the claimants take their forum as they find it, and direct comparisons between the relatively rudimentary way in which cases may be litigated in Zambia and the likely elaborate treatment of the case by well-resourced legal teams in London was unfair.

- The High Court did not pay due regard to considerations of comity and the requirement for cogent evidence.

These arguments were dismissed by the Court of Appeal, which held that the access to justice considerations were relevant to the question of substantial justice. The court dismissed the argument regarding funding issues by pointing to the fact that the absence of litigation funding in this case was not the sole or conclusive factor in deciding the issue of substantial justice.

With regard to the question of comity, the court noted that the finding on substantial justice was based on an access to justice issue, rather than an indictment of the independence or competence of the judiciary in Zambia or any lack of a fair civil procedure suitable for handling large group claims. The court therefore declined to overturn the finding that the claimants would not obtain substantial justice in Zambia, and ruled that the claim could proceed in England against both defendants.

## PRACTICAL IMPLICATIONS FOR MULTINATIONALS

There are a number of key considerations in this developing area of law and practice, particularly for those multinationals operating in high-risk industries and jurisdictions.

*Vedanta* is a useful reminder that parent companies of large multinational organisations, and their advisers, should think carefully about how to achieve a balance between, on the one hand, their statutory and regulatory reporting obligations, the need to maintain stakeholder engagement and their desire to commit to voluntary reporting, sustainability targets, anti-bribery and anti-corruption efforts, and on the other hand, the public statements that they make, materials that they publish about the level of control and supervision they exercise over the particular activities of their subsidiaries, and about their responsibility for those activities.

### Corporate governance and public reporting obligations

Under section 172 of the Companies Act 2006 (2006 Act) (section 172), directors of UK companies owe a duty to act in the way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. In doing so, the 2006 Act specifies that the directors must have regard to a number of considerations affecting various stakeholders, including:

- The interests of the company's employees.

- The impact of the company's operations on the community and the environment.

- The desirability of the company maintaining a reputation for high standards of business conduct.

There has been a considerable amount of guidance on the section 172 duty and relevant considerations for engagement with stakeholders such as employees, suppliers and the wider community: for instance, the GC100 (the association of general counsel and company secretaries of FTSE 100 companies) has issued guidance suggesting that directors should put in place appropriate policies and processes at subsidiary company level, as well as board level and management level, and providing an illustrative example of how the section 172 duty might come into play in considering the impact of a decision on employees, the community and the environment.

Companies are also subject to various public reporting obligations, for instance:

- Sections 414A to 414D of the 2006 Act, which require companies to prepare a strategic report for each financial year for the purposes of informing shareholders and helping them assess how the directors have performed their section 172 duty. For large companies, this has to include a specific section 172 statement describing how the directors had regard to the matters specified in section 172 when performing this duty. In addition, for quoted companies there is a further requirement to include in the strategic report information about environmental matters (including the impact of the company's business on the environment), the company's employees, and social, community and human rights issues, including information about any of the company's policies in relation to those matters and the effectiveness of those policies, or alternatively, state if the report does not contain such information. The Financial Reporting Council has published guidance on the strategic report including the section 172 report, and gives examples of what might be addressed, including that a company might explain the factors which the board considers important to the company's reputation for high standards of business conduct and the actions taken during the year to ensure that its reputation is maintained (*see feature article "Corporate governance reforms: widening responsibilities" www.practicallaw.com/w-016-1385*).

- The EU Non-Financial Reporting Directive (*2014/95/EU*), which requires large companies to publish reports on the policies that they implement in relation to matters such as environmental protection, anti-corruption and bribery, and human rights.

- The Modern Slavery Act 2015, which requires companies supplying goods or services with an annual turnover of £36 million or more to publish an annual slavery and human trafficking statement. This statement should disclose the steps the company has taken to ensure that no slavery or human trafficking is taking place in the business or its supply chains, or alternatively, disclose if it has not taken any preventative steps (*see feature article "Supply chain reporting: complying with the Modern Slavery Act 2015", www.practicallaw.com/6-622-9282*).

In addition, investors are likely to demand robust and transparent corporate governance standards that may involve extensive public disclosure on certain matters and companies may voluntarily wish to make relevant statements regarding their foreign operations in the court of efforts to appear responsible and engaged (*see "Public and intra-group communications" below*).

### Superior knowledge of parent companies regarding issues

In *Chandler v Cape plc*, Mr Chandler, a former employee of the defunct Cape Building Products Ltd (Cape Products) initiated a claim against its parent company Cape plc (Cape) (*[2012] EWCA Civ 525; www.practicallaw.com/6-519-6273*).

Mr Chandler alleged that his work environment at Cape Products exposed him to asbestos dust from a nearby factory, leading to his diagnosis of asbestosis many years later. He alleged that Cape assumed responsibility for the safety of the employees of its subsidiary, and therefore owed him a duty of care with regards to the safety of his work environment, which it had breached.

The court found that Cape owed a duty of care to Mr Chandler, which it had breached. In doing so, the court laid out the following four-part metric for the circumstances in which a parent company would have a duty of care to the employees of its subsidiary in relation to their health and safety:

- If the businesses of the parent and subsidiary were the same in the relevant respect.

- If the parent company had, or ought to have had, superior knowledge of the relevant aspect of health and safety in the particular industry.

- If the parent company knew, or ought to have known, that the subsidiary's system of work was unsafe.

- If the parent company foresaw, or ought to have foreseen, that the subsidiary or its employees would rely on it using its superior knowledge for the employees' protection.

The court further remarked that, for the purposes of satisfying the final limb of this test, it may be sufficient to show a general pattern of intervention by the parent company.

### Duties of care

Importantly, the Supreme Court judgment confirmed that there is no distinct duty of care owed by parent companies to third parties to prevent third parties being harmed by activities of their subsidiaries (in contrast to *AAA and others v Unilever plc [2018] EWCA Civ 1532; see box "Limited categories in which parent companies may be liable"*). For a parent company to be found liable to a third party as a result of the activities of its subsidiaries it is still necessary to prove that:

- The parent company owed a duty to a third party.

- That duty was breached by the parent company.

- That breach of duty caused harm to the third party.

The court also rejected the notion that a parent company could never incur a duty of care in respect of the activities of its subsidiaries by issuing group-wide policies and guidelines, and then expecting the management of each subsidiary to abide by them. For instance, the court noted that a parent company could still be liable if their policies and guidelines contained systemic errors which, when implemented by the subsidiary, caused harm to third parties (*see box "Superior knowledge of parent companies regarding issues"*).

It also appears that it is possible for a duty to arise outside of the parent-subsidiary context, in other relationships such as supplier relationships. Indeed, there seems to be no reason why a company could not be held liable for abuses and misconduct in its supply chain more generally. For instance, claimants could, in principle, argue that a multinational company exercises a sufficiently high level of control and direction over a specific aspect of a supplier's operations so as to incur a duty of care by requiring its suppliers to comply with specified health, safety and environmental standards, conducting training, sanctioning non-compliance, and similar.

Given the many and various models of management that may exist within a multinational group, a one-size-fits-all approach to risk management seems unlikely to emerge. Considerations for companies in this regard will be heavily fact-specific and context-specific, depending on existing corporate structures and the industry in which the company operates. These elements will

## Mandatory policies across group companies

In *Okpabi and others v Royal Dutch Shell Plc and another*, citizens of Nigeria who lived in and around the Niger Delta (the claimants) brought claims against Royal Dutch Shell plc (Shell), a UK company, and one of its subsidiaries, Shell Petroleum Development Company of Nigeria Ltd (SPDC), a incorporated company in Nigeria (*[2018] EWCA Civ 191; see News brief "Parent company liability: clarity over extra-territorial human rights claims", www.practicallaw.com/w-013-8911*).

The claimants alleged that leaks of oil from pipelines and associated infrastructure operated by SPDC into the Niger Delta had caused actionable environmental damage. The claimants alleged that Shell owed them a duty of care because Shell exercised control over the pipelines responsible for the leaks or, alternatively, because Shell assumed a direct responsibility to protect locals from environmental damage caused by oil leaks.

The Court of Appeal concluded that Shell did not owe a duty of care to the claimants. In making this decision, the court examined an array of factors, including: mandatory policies, design and engineering standards that Shell applied across its group companies; the extent of supervision to ensure the implementation of Shell's standards; financial control by Shell over SPDC; and the level of direction and oversight exercised by Shell over SPDC's operations.

While the evidence showed that Shell was concerned about environmental damage, this alone was insufficient to prove that Shell controlled SPDC's operations, or that it had direct responsibility for the acts or omissions at the heart of the claim.

Of relevance particularly to large multinational corporations, the court noted that if a parent company merely adopts mandatory policies that apply to their group companies this cannot be taken to mean that the parent has control of the operations of any one of those group companies so as to create a duty of care in favour of any person affected by those policies.

inform whether parent companies may prefer to try to avoid undertaking a duty of care altogether or, alternatively, accept that a duty of care may arise but do what they can to ensure that that duty is discharged.

**Group-wide policies.** For multinationals with policies and guidelines that apply generally to all group companies rather than specific subsidiaries, the parent company should ensure that the policies and guidelines are clear in delegating responsibility for their implementation to the individual subsidiaries, to avoid a situation in which it is seen to be exercising a high degree of control over a particular subsidiary's operations (*see box "Mandatory policies across group companies"*).

**Subsidiary-specific arrangements.** By contrast, in a situation where there are more detailed and specialised procedures in place governing the actions of group companies, it is likely that a duty of care on behalf of the parent company will be established (*see box "Superior knowledge of parent companies regarding issues"*). In that scenario, it is more sensible to have in place clear policies and processes, and take steps to ensure that subsidiaries follow reasonable procedures. This may include, for example, putting in place processes to ensure reporting on compliance, providing training or best practice guidance, implementing audit procedures, maintaining whistleblowing channels and generally ensuring that the parent is exercising proper oversight.

This type of scenario could also arise where a parent company has entered into contractual arrangements requiring it to have a high level of involvement in a particular subsidiary's operations, such as through a management services agreement. Again, the company's focus should be on implementing effective oversight to ensure that any duty of care that may arise has been adequately discharged.

### Public and intra-group communications

Multinationals should exercise caution around any public statements or intra-group communications about the parent company's responsibility for, and control over specific, identified problems in its subsidiaries in areas such as environmental damage, corruption and bribery, human rights abuses, and similar. This may be problematic for companies that are subject to statutory reporting requirements or regulatory obligations (*see "Corporate governance and public reporting obligations" above*).

In these situations, companies should ensure that all public statements are carefully reviewed and verified to ensure that they provide an accurate reflection of the company's processes. Overly broad statements or "spin" should be avoided.

### Corporate transactions

Companies and investors entering into mergers and acquisitions and capital markets transactions are increasingly alert to the risks that may arise from the activities of subsidiaries that may end up being visited on the acquirer and possible knock-on effects, such as an impact on share price and negative publicity.

To take a recent example, there were particularly acute implications in the recent acquisition of US agrochemicals company Monsanto by German multinational group Bayer, following US court rulings that a herbicide produced by Monsanto is linked to cancer. Bayer has subsequently been involved in extensive litigation and has been ordered to pay substantial sums in compensation with many more cases ongoing. *Vedanta* is likely further to focus attention on these issues and risks, with counterparties seeking specific disclosures in a diligence context of any issues that may give rise to liability for the parent company and incorporating additional risk-related warranties about the company's operations in transaction documents.

## LEGAL REGIME AROUND PARENT-SUBSIDIARY RELATIONSHIPS

It is also possible that legislators will act to make multinationals more accountable for the activities of their subsidiaries worldwide. Certainly, there have been some moves in that direction already, with the following legislation either in force or being contemplated:

- The Modern Slavery Act 2015 in the UK, which requires large companies to publish an annual slavery and human trafficking statement and which may be further strengthened in due course, following the independent review commissioned by the government. In May 2019, the independent review made a number of recommendations for reform, including the removal of a provision allowing companies to report that they have not taken any steps towards addressing modern slavery in their supply chains, and stronger sanctions for non-compliance. If the government implements these recommendations, it could potentially require greater oversight and proactivity in managing modern slavery risks by UK-based parent companies (*see Briefing "Transparency in supply chains: the latest UK developments", www.practicallaw.com/w-020-9323*).

- France's 2017 Duty of Vigilance law, which requires multinational organisations to establish and report, on an annual basis, systems to prevent human rights violations and environmental damage throughout their chain of production, including for their subsidiaries.

- The proposed Responsible Business Initiative in Switzerland, which would make companies based in Switzerland liable for human rights abuses and environmental violations of their foreign subsidiaries and which, at the time of writing, looks like it may be put to a nationwide referendum.

- A proposed EU-wide law requiring companies to carry out human rights due diligence in their supply chains, which was recently put forward by the European Parliament as part of its Shadow EU Action Plan on Responsible Business Conduct, although the European Commission has so far not committed to tabling new legislation in this regard.

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## IMPLICATIONS OF *VEDANTA*

It remains to be seen how the claim against Vedanta will be decided if the case proceeds to trial on the merits. A decision in that case would likely have greater implications for the scope of the duty of a parent company than the Supreme Court's decision on jurisdiction. Another case to watch is *Okpabi v Royal Dutch Shell plc* (*see box "Mandatory policies across group companies"*). The claimants in *Okpabi* have announced their intention to appeal to the Supreme Court and a ruling could provide further guidance and clarity on this issue.

In any event, companies, their advisers, and practitioners should continue to monitor developments in this complex and important area of law.

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