Royal Dutch Shell ordered to reduce its global emissions by 45% by 2030

In a significant judgment that will be of considerable interest around the world, on 26 May 2021, the Hague District Court in the Netherlands ordered that Royal Dutch Shell ("RDS"), on behalf of itself and its wider group (the "Shell Group"), cut its CO2 emissions by 45% by 2030, compared to 2019 levels. The Court's landmark ruling, which draws on the growing series of climate change agreements like the Paris Agreement, along with human rights standards such as those in the UN Guiding Principles, is likely to have significant implications for multinational companies, even those operating outside the oil and gas or energy sector.

The legal basis for the reduction obligation imposed on RDS is the "unwritten standard of care" set out in Book 6 Section 162 of the Dutch Civil Code. The Court adopted an expansive approach in interpreting this standard of care, considering not only RDS' corporate structure and the parent company's policy-making role for the Shell Group, but also on external sources, such as the rights of affected individuals under the European Convention of Human Rights and the duty to respect human rights set out in the UN Guiding Principles. In considering the latter, the Court pronounced that "*[d]ue to the universally endorsed content of the UNGP, it is irrelevant whether or not RDS has committed itself to the UNGP",* a further reminder that businesses must also be alive to the obligations set out in so-called "soft law" instruments such as the UNGPs and the OECD Guidelines throughout their supply chains.

Such "standard of care" cases are not new. Indeed, in other jurisdictions such as England and Wales, the courts have increasingly grappled with the possibility that parent companies such as RDS might owe a duty of care to persons for activities of their overseas subsidiaries (*see,* among others, *Vedanta v Lungowe; Okpabi v RDS*). In *Milieudefensie*, the Court put particular emphasis on the "*policy-setting influence RDS has over the companies in the Shell group"* in ordering that an "obligation of results" (i.e. to reduce direct emissions) extended also to the Shell Group. It remains to be seen whether climate change lawyers will seek to bring to cases based on a 'standard of care' with respect to climate change in other jurisdictions.

However, the Court's judgment extends even beyond the Shell Group structure; in effect the order creates out a dual responsibility for RDS. Although RDS has an "obligation of results" in relation to the climate change reduction of itself and its group, it additionally has a "significant best-efforts obligation" when it comes to business relations of the Shell group – meaning that RDS is also considered responsible for the emissions of its end-customers.

According to the District Court:

"*[o]n RDS rests an obligation of results as regards the Scope 1 emissions of the Shell group as well as a significant best-efforts obligation as regards the business relations of the Shell group, including the end-users, whereby RDS may be expected to take the necessary steps to remove or prevent the serious risks ensuring from the CO2 emissions generated by them, and to use its influence to limit any lasting consequences as much as possible"* (para. 4.4.37).

The Court was clearly cognisant of the impact of its judgment, expressly acknowledging that its order will have "*far-reaching consequences for RDS and the Shell Group*" that would require a change of policy and adjustment of the company energy offering. In that regard, the Court reasoned that "*the compelling common interest that is served by complying with the reduction obligation outweighs the negative consequences RDS might face due to the reduction obligation and also the commercial interests of the Shell group"* (para. 4.4.54).

While the Court appeared to be alive to the likelihood of an appeal (and it is expected that this judgment will make its way through the Dutch appellate courts), the court's decision is provisionally enforceable against RDS.

Climate change litigation is growing across the world. Within the last year alone, climate change cases have been heard in Ireland (*Friends of the Irish Environment v Ireland)*, Canada (*References re Greenhouse Gas Pollution Pricing Act*), France (*L'Affaire du Siècle*), among many other jurisdictions, especially in relation to States and their obligations under relevant international treaties. Indeed, the day following the Dutch court's ruling, the Federal Court of Australia also handed down its judgment in *Sharma v Minister for the Environment,* recognising a novel duty of care owed by the Minister to not cause harm to the applicants by way of personal injury (which injury is allegedly occasioned by the effects of climate change) in connection with the extension of the Vickery coal mine in New South Wales. However, the *Milieudefensie* judgment is a significant marker in this sea of climate change litigation in its imposition of direct legal obligations for business to take tangible action (even action which may significantly affect their commercial interests) to reduce their greenhouse gas emissions.

***

If you have any questions about the issues addressed in this Client Alert, or if you would like a copy of any of the materials we reference, please do not hesitate to contact us:

Julianne Hughes-Jennett
Email: jhughesjennett@quinnemanuel.com
Phone: +44 20 7653-2220

Marjun Parcasio
Email: marjunparcasio@quinnemanuel.com
Phone: +44 20 7653-2011

To view more memoranda, please visit www.quinnemanuel.com/the-firm/publications/
To update information or unsubscribe, please email updates@quinnemanuel.com