

Outcome of Specific Instance under OECD Guidelines on Multinational Enterprises: Mr and Mrs C / Southern Response - NZ Permanent Trustees Ltd.

Summary

On 15 June 2015 Mr and Mrs C, through their representative, the NGO Wider Earthquake Communities Action Network (WeCAN), filed a Specific Instance against Southern Response Earthquake Services Limited (Southern Response) and New Zealand Permanent Trustees Limited (NZPT) for allegedly operating in violation of the OECD Guidelines for Multinational Enterprises in relation to human rights resulting from their construction and repair activities following the Canterbury earthquakes.

Following investigation and consideration of the claim, the NCP rejected it on 9 March 2016 as being out of scope of the Guidelines and informed the claimants that it would not be proceeded with, as neither Southern Response nor NZPT is a multinational enterprise (MNE).

Background

Allied Mutual Insurance (AMI) Insurance began in Christchurch, New Zealand in 1926 and grew to be the second biggest residential insurer in New Zealand. It was a Mutual insurance company, owned by policyholders through the AMI Member Trust. The company operated only within New Zealand.

The Canterbury earthquake sequence after late 2010 had a major impact on AMI's financial state given its high level of exposure to the Christchurch market, the cost of earthquake claims and doubts over its ability to obtain reinsurance cover. In April 2011, AMI received capital support from the New Zealand Government to ensure stability in the insurance market and that claims by policyholders could continue to be met.

However difficulties continued and large losses eventually resulted in the restructuring and sale of the company, including the Government taking on responsibility for managing AMI's existing claims. In December 2011 Insurance Australia Group (IAG) announced its intention to purchase AMI, which was approved by regulatory authorities in April 2012. On 5 April 2012 AMI separated into two companies,

- **Southern Response** - a new Crown-owned company with a Board of Directors appointed by the Crown as sole shareholder, established to settle claims by AMI policyholders for Canterbury earthquake damage which occurred before 5 April 2012 (the date AMI was sold to IAG). As claims are settled progressively, Southern Response will gradually wind down and then close.
- **AMI Insurance** - owned by IAG as of 5 April 2012. AMI continues to provide day to day insurance and is responsible for all policyholder claims for any damage (including earthquakes) which occurred after 5 April 2012.

Claim

The claimants argued that despite being owned by Government, Southern Response undertakes commercial activities through its management of the AMI claims, and its use of AMI's available reinsurance cover and international reinsurance generally, establishes the international link required to bring it within the scope of the Guidelines.

The claimants also alleged that NZPT had 'link complicity'- a linked business relationship - with AMI and Southern Response because of their then role as trustee for the AMI Member Trust; AMI's activities requiring international reinsurance, and because in undertaking its business as a professional trustee, NZPT is itself engaged in numerous international investment activities.

Outcome

The NCP did not consider that either Southern Response or NZPT are MNEs for the purposes of the Guidelines, so do not fall within their scope. The Specific Instance Procedure only relates to MNEs.

Southern Response is entirely owned by the New Zealand Government, and only operates in New Zealand. It is responsible for settling claims by AMI policyholders for Canterbury earthquake damage which occurred before 5 April 2012. It does not compete in the insurance market, has a purely domestic operation, and does not have a transnational focus. In terms of reinsurance, obtaining goods or services from overseas does not, in itself, make an entity an MNE. If that were the case, there would be very few entities that could ever be excluded from the scope of the Procedure

NZPT is not an MNE given its functions and because it cannot meaningfully be considered an MNE in light of the text and purpose of the *Guidelines*. NZPT is a registered New Zealand company. It operates in New Zealand and is wholly owned by Public Trust (a Crown entity). NZPT's engagement with AMP's Superannuation Master Trust did not make it an MNE, nor could AMI's reinsurance activities sensibly make the NZPT an MNE.

Ultimately, as neither NZPT nor Southern Response are considered to be MNEs, the NCP declined the application.