DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 01 2004

Uniform Issue List: 404A.00-00

Attention:

Legend:

Company A =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

Subsidiary 6 =

Agreement C =

Agreement D =

Agreement E =

Country M =

Agency N =

Fund L =

Arrangement P =

Dear

This is in response to your request dated April 2, 2003, for a private letter ruling submitted by your authorized representative. Correspondence dated September 9, 2003, January 8, 2004, and January 9, 2004, supplemented the request. Your representative has submitted the following facts and representations:

Company A, a domestic corporation, is the common parent of a controlled group of corporations, including six wholly owned Country M subsidiaries (Subsidiaries 1 through 6 (the six Subsidiaries")) referred to collectively as Company B. Company A and Company B are together referred to as "Company". Company B currently provides its employees and retirees with pension benefits under a number of pension plans in Country M. These plans are unfunded. Company B pays for the benefits out of its corporate assets, and a reserve for the pension liabilities is carried on Company B's books for financial accounting purposes. The Company has determined that it would be beneficial to set aside assets to provide all or a portion of Company B's promised pension benefits through Arrangement P a contractual trust agreement consisting of three fiduciary agreements (Agreements C, D, and E), rather than continuing a wholly unfunded arrangement. The six Subsidiaries will each enter into a separate Agreement C with the "Trustee" (described below). Each Agreement C will be identical, except that the agreement will reflect the applicable entity entering into the agreement. There will be a single Fiduciary Agreement D between the Trustee and "Administrator" (described below). There will also be a single Fiduciary Agreement between the Administrator and the "Beneficiaries' Trustee" (described below). It is possible that, in connection with future acquisitions or reorganizations, additional Country M subsidiaries of Company A may participate in Arrangement P. In that case, each additional subsidiary will have a separate Agreement C with the Trustee.

Arrangement P would segregate assets that would be available to pay benefits to participants on an ongoing basis and to provide benefits to participants in the event Company B became unable to satisfy pension promises at some time in the future. These assets would be available to pay pension benefits either directly to participants or by providing funds to Agency N (Country M's pension guaranty agency), to the extent it becomes liable for benefits. Assets in excess of those, if any, transferred to Agency N to support benefits guaranteed by it would continue to be available to provide pension benefits directly to participants. The Company expects that its auditors will treat the pension obligations secured by the assets in Arrangement P as "funded" for purposes of Financial Accounting Standard 87.

Under Agreement C, the six Subsidiaries will each transfer funds relating to their respective promised pension benefits to a separate membership corporation that serves as the Trustee, and is subject to the terms of Arrangement P. The Trustee is a legal entity that is not owned by Company B. The Trustee's members will receive guidance from an advisory board which may include a representative of a Country M works council representing employees of the Company and other members such as independent consultants. The Trustee's members will also receive guidance from an investment committee which will likely include members of the Trustee and others with expertise in finance. The Trustees' members may be directors or officers of Company B. Amounts contributed to the Trustee will, in turn, be transferred to the Administrator.

The Administrator is a legal entity that is completely separate from Company B, although, like the Trustee, its members may be directors or officers of Company B. The assets relating to the six Subsidiaries participating in Arrangement P are maintained separately in the "Trust". The Administrator, which will act on the basis of instructions given by the Trustee (or an investment committee thereof) exists solely to simplify administration and facilitate pledging of the assets. The Trustee shall transfer the assets to the Administrator. Under Article 2 of Agreement D, the Administrator shall hold, invest and administer the Trust assets in accordance with Article 3 of Agreement D. The Administrator is authorized to make dispositions of property within the bounds of these guidelines. The Administrator will invest all the assets pursuant to Fund L

arrangements or separate accounts. Fund L arrangements are similar to United States investment management arrangements for a single employer, plan, or other institutional investor. Licensed investment managers will manage the assets in each Fund L, and this management is subject to the fiduciary laws of Country M. The alternative separate account arrangements also may involve an investment manager, though the investments would often be in mutual funds or their equivalents.

The investment guidelines for the Administrator's investments will be provided in accordance with local law and regulations by an investment committee of the Trustee that is subject to prudence requirements under Country M law. The Trustee and the Administrator are obligated under the terms of Agreement C and Agreement D to monitor the investment committee and to take any actions necessary to ensure that the assets held in Arrangement P are handled prudently and in accordance with the terms of Arrangement P. The investment guidelines will be subject to the standards set forth in the fiduciary agreements, as described above, and will take the form of a schedule attached to Agreement C and Agreement D. The Trustee retains the right to reclaim the assets from the Administrator in order to make benefit payments.

Agreement C provides that the Trustee is to use the assets exclusively for the retirement benefits promised to the employees (subject to the limited exceptions noted below). It sets forth the contractual fiduciary responsibilities of the Trustee, prohibits self dealing, and limits investment in Company B securities. Specifically, Article 1(c) of Agreement C includes language designed to incorporate the exclusive benefit provisions of section 401(a)(2) of the Internal Revenue Code (the "Code"). Article 2(e) contains prohibited transaction provisions essentially paralleling those of section 4975 of the Code. Article 12 contains a "prudent person" standard parallel to section 404(a) of the Employee Retirement Income Security Act of 1974. In the normal course of business, Article 6(g) of Agreement C provides that the trustee will satisfy all outstanding benefit claims of certain, or all of the beneficiaries secured by the trust corpus. If the employer satisfies the benefit claims itself, it is not entitled to reimbursement from the Trustee.

Transfers of Company B contributions to the Trustee will be irrevocable, subject to specific limited exceptions. Agreement C provides that the employer may make discretionary contributions to the Trustee to be used by the Trustee to fund the employer's pension liabilities (which under the law of Country M will remain obligations of the employer). Agreement C further provides that, once contributed, amounts cannot be returned to the employer except in very limited instances. The exceptions are for returning any assets remaining after all obligations to a covered employees and beneficiaries have been satisfied, and returning any erroneous payments made to the Trustee, such as if a check were erroneously made payable to the Trustee rather than a proper recipient, but only within one year of the date the employer first has knowledge of the mistake. Under the terms of Agreement C, the employer cannot amend the provisions of the contract that prohibit the return of contributions to the employer.

Agreement C also contains provisions concerning the transfer of rights to Arrangement P assets held for employees who, in the event of an asset sale of a portion of Company B's business, move to a new employer. Under the law of Country M, the buyer in an asset sale automatically assumes the pension liability related to active employees who transfer to employment with the buyer, regardless of whether any pension assets related to that liability are transferred. Depending on the extent to which the pension liabilities for the transferred employees are funded through Arrangement P, and the size of the employee population and associated liabilities moving to a buyer, a sale transaction might or might not cause the Arrangement P

assets held with respect to the employer whose assets are sold to exceed the pension liabilities, if any, remaining with Company B with respect to that employer. If after a sale occurs, the Arrangement P assets held with respect to the relevant employer are less than or equal to the present value of the pension claims of remaining pension beneficiaries with respect to that employer, then the fiduciary agreements do not call for any special treatment; the assets can remain available to provide pension security for the benefit of participants who were not transferred to the buyer. If, however, the value of the Arrangement P assets, for the employer whose business assets are sold, exceeds the present value of pension benefits to be provided to that employer's present and former employees, then the excess assets are to be transferred for the benefits of another employer whose pension obligations are secured under Arrangement P. If any excess remains because the employers' pension obligations are fully funded under Arrangement P, the excess must be used to secure the pension benefits of the transferred employees by purchasing annuities or under an arrangement that is the "equivalent of a trust" under section 404A of the Code. Under the provisions of Agreement C, excess assets cannot be returned to Company B until all pension obligations are satisfied or extinguished.

Under Agreement E, the Trustee's rights to the assets are pledged to a single "Beneficiaries' Trustee" who would act on behalf of the beneficiaries. Under this agreement, the Trustee promises to pay a specified amount to the Beneficiaries' Trustee to pay pension benefit claims in the event of Company B's insolvency or similar specified event. The specified amount consists of an initial amount, which is equal to the value of the assets held in the Trust at the time Agreement E is entered into, plus an amount of anticipated appreciation for the upcoming year, plus a specified reserve amount. The amount of the security interest is then reset each year based on the value of the assets at that time, and the anticipated appreciation and reserve are again added to this amount. The Beneficiaries' Trustee is obligated to assert claims for pension benefits on behalf of the pension beneficiaries in the event of insolvency or similar specified events. The beneficiaries' rights under Agreement E may not be limited or taken away without their consent. You represent that this is a common enforceable method of perfecting security interests in Country M. Once entered into, Agreement E cannot, by its terms and under the law of Country M, be revoked or otherwise limited by Company B or the Trustee.

Agency N cannot access assets held under Arrangement P except to the extent it becomes obligated to pay the pension benefits, but it will succeed to the pension beneficiaries' rights to the assets to the extent it becomes so obligated. Accordingly, the fact that Agency N assumes certain pension obligations does not make pledged assets available to general creditors of the employer in the event of bankruptcy. These assets are available to Agency N, and are not part of the employer's bankruptcy estate. To the extent that benefits exceed the amount guaranteed by Agency N, the separate legal status of the Trustee and the rights given to the Beneficiaries' Trustee under Agreement E, allow these entities, instead of Agency N or any general creditors, to receive the assets. Only if all pension obligations have been satisfied can the assets be retransferred to the employer and then become part of the insolvency estate. Therefore, in the event of bankruptcy of Company B, the pledged assets will not be available for reversion to Company B and thereby become subject to the claims of the creditors of Company B before being used to satisfy pension obligations.

Based on the foregoing, you have requested a ruling that Arrangement P, as described above is the "equivalent of a trust" which meets the requirements section 401(a)(2) of the Code within the meaning of section 404A(b)(5).

Under section 404A of the Code, amounts paid or accrued by an employer under a qualified foreign plan will be deductible for the taxable year for which amounts are taken into account under 404A. Section 404A(b) states that qualified funded plan contributions are properly taken into account for the taxable year in which paid. Section 404A(b)(5) states that a contribution will be taken into account only if it is paid to a trust or the "equivalent of a trust" that meets the requirements of section 401(a)(2).

Section 401(a)(2) provides that for a trust to be qualified under Code section 401(a) it must be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or the income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees or their beneficiaries.

Pursuant to the facts, as submitted, (1) the Trustee and Administrator which will hold the plan assets are separate legal entities; (2) Arrangement P assets are not subject to the claims of the creditors, prior to the satisfaction of all pension obligations; (3) the Agreements C, D, and E provide that the assets cannot be used or diverted to any other use other than providing benefits under the retirement plan of the employer; and (4) the Agreements C, D, and E and the applicable Country M laws ensure that a person who has a legally enforceable duty to operate the fund prudently holds the assets.

Thus, it appears that the trust and accompanying documents meet the requirements of section 404A(b) of the Code. Accordingly, we conclude that the trust described in Arrangement P is the "equivalent of a trust "which meets the requirements section 401(a)(2) of the Code within the meaning of section 404A(b)(5).

Your authorized representative stated that earnings and profits of the subsidiaries are being reduced using book reserves. The federal tax consequences of any change in accounting method (e.g. revoking a qualified reserve plan election under section 404A(f)(2) and electing to apply the qualified funded plan method described in section 404A(b)) are not addressed by this private letter ruling.

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions concerning this private letter ruling, please contact **************** (**ID** **-*****) at (***) ***-**** (not a toll-free number).

Sincerely Yours,

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Notice of Intention to Disclose
Deleted Copy of Ruling