

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION NO. 83-27A  
Sec. 4(b)(4)

JUN 8 1983

Mr. George H. Lanier  
King & Spalding  
2500 Trust Company Tower  
Atlanta, Georgia 30303

Dear Mr. Lanier:

This is in reply to your letter of November 23, 1981, and your subsequent correspondence of January 5, 1982, and February 2, 1982, concerning title I of the Employee Retirement Income Security Act of 1974 (ERISA), which is administered, as you know, by the Department of Labor (the Department). Specifically, you question whether section 4(b)(4) of ERISA title I excludes the Group Pension Scheme (the Plan) for employees and former employees of the London and Manchester Assurance Company, Ltd. (the Company), from coverage under title I of ERISA as the Plan is now operated. You also question whether, if applicable, the Department will continue to apply the section 4(b)(4) exclusion to the Plan after a proposed transaction described below takes place. The analyst assigned to this case informed you that your questions regarding coverage under title IV of ERISA should be directed to the Pension Benefit Guaranty Corporation (PBGC), 2020 K Street, N.W., Washington, D.C. 20006.

Your correspondence contains the following facts and representations. The Company, a corporation organized and domiciled in the United Kingdom, maintains no place of business in the United States; however, its employees are in the United States on business from time to time merely on a temporary basis. Participation in the Plan is limited to employees and former employees of the Company. All Plan participants are nonresident aliens, that is to say, no Plan participant is a United States citizen or resident. All Plan records concerning participation, accrual, vesting, and other matters necessary to determine and pay Plan benefits are maintained outside the United States.

Lonmanpen, Ltd., a corporation organized and domiciled in the United Kingdom, serves as Plan trustee. Except for 0.6 percent of its assets now held in a United States custodial bank account, all assets of the Plan are held outside the United States. Notwithstanding the above, you describe a proposed purchase by the Plan of United States investments and their holding and management within the United States. The proposed transaction consists of an investment management agreement between Lonmanpen, Ltd., and the Atlanta Capital Management Company, a registered investment advisor in Atlanta, Georgia, and a custodian agreement between Lonmanpen, Ltd., and the National Bank of Georgia, a bank domiciled in Atlanta, Georgia. The transaction thus entails a United States custodian holding Plan assets and a United States investment advisor managing investments on behalf of the Plan trustee.

You reference, in support of your views, PBGC Opinion 80-19, issued to interpret section 4021(b)(7) of ERISA which provides for substantially the same exclusion from coverage under

title IV of ERISA as provided by section 4(b)(4) of ERISA under title I. You believe the facts you present make a stronger case for application of the exclusion than was made by the plan described in PBGC Opinion 80-19 which was excluded from coverage. The plan described in PBGC Opinion 80-19 covered nonresident aliens whose work location and plan records were outside the United States. The plan arranged for its pension assets to be held by a trust company located and organized in the United States.

Section 4(b)(4) of ERISA excludes from coverage under title I of ERISA any plan which "... is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens ...." The Department previously interpreted section 4(b)(4) of ERISA in, among other opinions, ERISA Opinions 77-86A and 81-58A (copies enclosed).

In both opinions issued pursuant to section 4(b)(4) mentioned above, the Department based its determination on the following factors: the plans involved covered all or primarily all nonresident aliens, the work location of employees was outside of the United States, and the plan records and documents were maintained outside of the United States. The Department has not previously required plans which otherwise met the exclusion provision in section 4(b)(4) of ERISA to refrain from having assets held or invested in the United States merely for purposes of meeting the requirements for exclusion.

Based on the facts you have represented concerning the Company's contacts with the United States, the work location and nonresident alien status of the Company's employees and former employees while in covered employment under the Plan, and the conditions under which you now maintain and propose to maintain the Plan, the Department takes the position that the exclusion in section 4(b)(4) of ERISA applies to the Plan. Accordingly, under the conditions you describe concerning both the present and proposed operation of the Plan, the Plan is not covered under title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs

Enclosures