Internal Revenue Service

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Refer Reply To:
CC:CORP:B06
PLR-107486-05
Date:
August 5, 2005

Re:

Legend

Corporation X =

Corporation Y =

New Parent =

JVCo =

Sub 1 =

Group =

Country A =

Country B =

Class S Shares =

Class E Shares =

Class D Shares =

Bank 1 =

Bank 2 =

Depositary =

Designated Exchange Ratio =

a =

b =

c =

d =

e =

f =

g =

h =

j =

j =

k =

l =

m =

n =

o =

p =

Month =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear :

This letter responds to a request for rulings dated February 4, 2005, submitted on behalf of Corporation X, Corporation Y, and New Parent, regarding a proposed transaction. Additional information was received in letters dated March 28, April 22, and May 11, 2005. The information submitted in the request and later correspondence is summarized below.

Summary of Facts

Corporation X and Corporation Y are the shareholders of the Group, but are not themselves part of it and conduct no operations directly. Corporation X is a Country A corporation; Corporation Y was incorporated under the laws of Country B. Corporation X and Corporation Y have decided for business reasons to create a single parent company. To accomplish this, Corporation X and Corporation Y will engage in certain transactions (the "Proposed Transaction"). The steps of the Proposed Transaction, some of which have been completed, include the creation of New Parent, the Corporation X Transaction and the Corporation Y Transaction, each of which is defined below.

Creation of New Parent

New Parent was incorporated under the laws of Country B but is tax-resident in Country A. New Parent was purchased by JVCo, a Country A corporation, from a third party in Month, and until it was acquired by JVCo had only held certain *de minimis* portfolio investments. The b ordinary shares of JVCo are directly owned c by Corporation X and c by Corporation Y.

New Parent has outstanding a ordinary shares, which are all beneficially owned by JVCo. For Country B law purposes, the legal title to one New Parent ordinary share is held by Sub 1, a Country A corporation directly owned d by Corporation X and e by Corporation Y, which holds the share in trust for JVCo. In addition, New Parent has outstanding f Class S Shares and approximately g Class E Shares. Following the Proposed Transaction, New Parent also will have outstanding Class A ordinary shares ("Class A Stock") and Class B ordinary shares ("Class B Stock"). The Class A Stock and the Class B Stock are identical. However, under the laws of Country A and Country B, there are differences in the taxation of the dividends.

The Corporation X Transaction

The Corporation X Transaction includes the “Exchange Offer” and the “Deferred Share Route” each of which is defined below. On Date 1, New Parent offered to acquire all the outstanding Corporation X ordinary shares from their holders (the "Corporation X Shareholders") in exchange for shares of Class A Stock (the "Exchange Offer"). The Exchange Offer will remain open for a specified term, which may be extended by New Parent (the “Original Term”). Consummation of the Exchange Offer is subject to several conditions, including at least h of the outstanding Corporation X ordinary shares being tendered and not withdrawn by the end of the Original Term, and the Arrangement (as defined below) becoming effective. With certain exceptions, these conditions may be waived by New Parent with the consent of Corporation X and Corporation Y.

If the conditions to the Exchange Offer have been satisfied and/or waived at the end of the Original Term, the tendered Corporation X ordinary shares will be acquired by New Parent in exchange for Class A Stock. That exchange will be effected through the Deferred Share Route (as defined below).

As part of a plan with the Exchange Offer and as expressly contemplated by the Exchange Offer, New Parent may provide for a subsequent offer period (the “Grace Period”) in which Corporation X ordinary shares could be tendered in exchange for Class A Stock. The Grace Period is considered to be part of the Exchange Offer.

After the acquisition by New Parent of the shares in the Exchange Offer including the Grace Period, if any, New Parent may seek to acquire any Corporation X ordinary shares that were not tendered, with a view to obtaining i ownership of the Corporation X ordinary shares.

The Deferred Share Route

The following steps have occurred or will occur in conjunction with the Corporation X Transaction to mitigate the imposition of Country B tax:

i. On Date 2, Corporation Y and Corporation X each acquired a c interest in JVCo from Sub 1.

ii. On Date 2, Corporation X and Corporation Y capitalized JVCo by transferring to it, in the aggregate, approximately j and k in cash.

iii. On Date 3, New Parent issued to JVCo approximately g Class E Shares in exchange for approximately j in cash. The Class E Shares have an aggregate par value equal to their subscription price of approximately j. At the time of their issuance the Class E Shares carried limited preferred rights.

iv. On Date 4, JVCo transferred legal title to the Class E Shares to Bank 1 as nominee for JVCo. JVCo retained the beneficial interest in the Class E Shares.

v. On Date 5, Bank 1 transferred the title to the Class E Shares to the Depositary for entry in to the clearance system.

vi. On Date 6, JVCo declared that it held the beneficial interest in the Class E Shares in trust proportionately for the Corporation X Shareholders ("Trust 1").

vii. At the end of the Original Term, the Corporation X ordinary shares that have been tendered to New Parent and not withdrawn will be accepted by New Parent. As a result, New Parent will become the owner of the tendered Corporation X ordinary shares.

viii. At the end of the Original Term and upon delivery of the tendered Corporation X ordinary shares, a number of Class E Shares held by JVCo in Trust 1 for the Corporation X Shareholders will be reclassified into Class A Stock. The number of Class E Shares that are reclassified will be based on the Designated Exchange Ratio in the Exchange Offer. Under the terms of Trust 1, the reclassified Class A Stock will be transferred to tendering Corporation X Shareholders. The remaining un-reclassified Class E Shares in Trust 1 will continue to be held for the benefit of non-tendering Corporation X Shareholders.

ix. After the Exchange Offer, New Parent may redeem the remaining un-reclassified Class E Shares, or it may allow them to remain in Trust 1 for a period of no more than l months to facilitate the acquisition by New Parent of

Corporation X ordinary shares that were not acquired in the Exchange Offer (including the Grace Period).

x. Trust 1 will remain in existence until all such subsequent exchanges are completed. At the end of those exchanges, but no later than l months after the consummation of the Exchange Offer (including the Grace Period), New Parent will redeem any remaining un-reclassified Class E Shares for m and Trust 1 will be dissolved.

Corporation Y Transaction

In the “Corporation Y Transaction,” New Parent will acquire Corporation Y ordinary shares through an arrangement under Country B law (the "Arrangement") in exchange for Class B Stock. Pursuant to the Arrangement: all outstanding Corporation Y ordinary shares will be cancelled by Corporation Y; Corporation Y will issue new ordinary shares to New Parent, resulting in ownership by New Parent of i of the ordinary shares of Corporation Y; and New Parent will issue new shares of Class B Stock to the former holders of ordinary shares of Corporation Y (the "Corporation Y Shareholders"). In addition, as a step in the Dividend Access Mechanism (as defined below) Corporation Y will issue n Class D Shares to Bank 2. Prior to the Arrangement, Corporation Y cancelled and repaid, in cash, all Corporation Y preferred shares.

Additionally, the following steps (the "Dividend Access Mechanism") have occurred or will occur in connection with the Corporation Y Transaction:

i. Pursuant to the Arrangement, the Corporation Y articles of association have been amended to provide for n Class D Shares. The Class D Shares have no voting rights; are redeemable at the option of Corporation Y for par value, which is o; are entitled upon liquidation or winding up of Corporation Y to par value, which is o; and dividends will be paid on the Class D Shares only if declared by the Directors of Corporation Y out of Corporation Y’s available surplus or current profits. There is no obligation on the part of Corporation Y or its Directors to declare any dividends on the Class D Shares. The maximum amount of dividends that may be declared on the Class D Shares for any dividend period will equal the aggregate amount of the dividend declared by New Parent with respect to the Class B Stock for that dividend period.

ii. The New Parent articles of association provide that, to the extent that a dividend is actually paid on the Class D Shares with respect to any dividend period, the dividend payable on the Class B Stock by New Parent for that period will be reduced by a corresponding amount.

iii. On the effective date of the Corporation Y Transaction and as part of the Arrangement, Corporation Y will issue the Class D Shares to Bank 2 (the

"Trustee"), an unrelated third party, to hold under a trust ("Trust 2") the material terms of which are as follows:

(1) The Trustee will hold for the benefit of the holders of the Class B Stock ("the Class B Stockholders") any dividends that are actually paid on the Class D Shares, and will promptly transmit any such dividends to the Class B Stockholders in the same manner as dividends on the Class B Stock are (or would be) transmitted. The Class B Stockholders will have no interest in any other asset or property or right of Trust 2, and will have no right to compel the Trustee to enforce any obligations that Corporation Y might have under the terms of the Class D Shares.

(2) The Trustee will hold for the benefit of Corporation Y any dividends that are received by the Trustee on the Class D Shares but that remain unclaimed by the relevant Class B Stockholder for l years; the Trustee will pay these forfeited dividends over to Corporation Y after the end of that l-year period. The Trustee will also hold for the benefit of Corporation Y any earnings received by Trust 2 from the investment of Trust 2 assets, which the Trustee will pay over from time to time to Corporation Y.

iv. If New Parent declares dividends on the Class A Stock and the Class B Stock with respect to a particular dividend period, the articles of association of New Parent require it to declare dividends per share that are equal (on a pre-tax basis) for the Class A Stock and the Class B Stock.

v. Following a dividend declaration by New Parent, Corporation Y may declare a dividend on the Class D Shares with respect to the same dividend period.

vi. If a dividend on the Class D Shares is actually received by the Trustee from Corporation Y, the Trustee will promptly pay that amount to the Class B Stockholders.

vii. The only right Class B Stockholders have under Trust 2 is to force the Trustee to disburse cash payments actually received from Corporation Y. The Class B Stockholders will also have the right, alternatively (though not additionally), to be paid such amounts from and against New Parent.

viii. The dividend otherwise payable by New Parent to the Class B Stockholders will be reduced by the amount of the dividend (if any) received by them through Trust 2. To the extent that the dividend received by them through Trust 2 is less than the aggregate dividend declared by New Parent on the Class B Stock, an amount equal to the shortfall will be paid directly by New Parent to the Class B Stockholders.

ix. Corporation Y can choose not to declare and pay dividends on the Class D Shares at any time, which effectively suspends the Dividend Access Mechanism. Corporation Y can also choose to terminate, and at the request of New Parent must terminate, the Dividend Access Mechanism at any time by redeeming the Class D Shares for o.

Representations

The following representations are made with respect to the Proposed Transaction:

(a) Pursuant to the Proposed Transaction, the Corporation X Shareholders who receive Class A Stock in the Exchange Offer (including any extension of the Original Term or during the Grace Period) ("Participating Corporation X Shareholders") and the Corporation Y Shareholders who receive Class B Stock in the Arrangement (together, the "Transferors") will receive their New Parent stock in exchange for the transfer or cancellation of their Corporation X ordinary shares and Corporation Y ordinary shares, respectively.

(b) In connection with the Proposed Transaction, (i) no stock or securities will be issued for services rendered to or for the benefit of New Parent and (ii) no stock or securities will be issued for indebtedness of New Parent that is not evidenced by a security or for interest on indebtedness of New Parent which accrued on or after the beginning of the holding period for the debt.

(c) To the knowledge of New Parent, Corporation X, Corporation Y, and their respective representatives, none of the assets to be transferred were received by the Transferors as part of a plan of liquidation of another corporation.

(d) No income items, interests in or assets of a partnership, patents or patent applications, copyrights, franchises, trademarks or trade names, "technical know-how" or accounts receivable will be transferred to New Parent pursuant to the Proposed Transaction.

(e) It is expected that the Corporation X Shareholders will transfer at least h of the Corporation X ordinary shares to New Parent pursuant to the Corporation X Transaction (although New Parent has the right to waive this requirement of the Exchange Offer). Corporation X has solely ordinary shares outstanding. New Parent will acquire all Corporation Y ordinary shares pursuant to the Corporation Y Transaction. Corporation Y had solely ordinary shares and approximately l million of Corporation Y preferred shares outstanding. The preferred shares were cancelled on Date 7. The Corporation X ordinary shares and the Corporation Y ordinary shares acquired by New Parent pursuant to the Proposed Transaction are not subject to any liabilities and no liabilities of the

Transferors are being assumed by New Parent pursuant to the Proposed Transaction.

(f) The Proposed Transaction is not the result of the solicitation by a promoter, broker or investment house.

(g) The Transferors will not retain any rights in their Corporation X ordinary shares or Corporation Y ordinary shares to be transferred to New Parent.

(h) No licenses or leases will be granted in exchange for stock or securities in connection with the Proposed Transaction.

(i) None of the assets to be transferred to New Parent pursuant to the Proposed Transaction will be leased back to the Transferors or a related taxpayer within the meaning of section 267 or any member of an affiliated group within the meaning of section 1504.

(j) No debt relating to the Corporation X ordinary shares or Corporation Y ordinary shares being transferred is being assumed by New Parent pursuant to the Proposed Transaction.

(k) The adjusted basis and the fair market value of the assets to be transferred to New Parent pursuant to the Proposed Transaction will be equal to or exceed the sum of the liabilities to be assumed by New Parent plus any liabilities to which such assets are subject.

(l) There is no indebtedness between New Parent and the Transferors and there will be no indebtedness created in favor of the Transferors as a result of the Proposed Transaction.

(m) Following the Proposed Transaction, approximately g Class A ordinary shares (i.e., the Class A Stock), will be outstanding and held by Participating Corporation X Shareholders (assuming that i of the Corporation X ordinary shares will be acquired by New Parent in the Exchange Offer), and approximately p Class B ordinary shares (i.e., the Class B Stock), will be outstanding and held by Corporation Y Shareholders. All the outstanding Class A Stock and Class B Stock will be issued to the Transferors as consideration for the Corporation X ordinary shares and Corporation Y ordinary shares acquired by New Parent in the Proposed Transaction. Each share of Class A Stock and Class B Stock will entitle its holder to one vote per share on all matters submitted to the common shareholders of New Parent, to receive dividends as may be declared by the New Parent Board of Directors (subject to, with respect to Class B Stock, alternative payment of dividends by way of the Dividend Access Mechanism to the extent dividends are declared by the Corporation Y Board of Directors on the Class D Shares) and to receive a proportionate share of net assets of New Parent upon dissolution. No consideration other than

Class A Stock and Class B Stock will be issued to the Transferors pursuant to the Proposed Transaction.

(n) Immediately after the Proposed Transaction, and assuming i of the Corporation X ordinary shares will be acquired by New Parent in the Exchange Offer, New Parent will have outstanding (i) approximately g shares of Class A Stock, which will be held by Participating Corporation X Shareholders and (ii) approximately p shares of Class B Stock, which will be held by Corporation Y Shareholders (as well the Class S Shares, which will be held by JVCo). The Class A Stock and the Class B Stock, in the aggregate, will have i of the voting power of all classes of New Parent stock and (except for the Class S Shares) will represent the only outstanding classes of New Parent stock.

(o) The Proposed Transaction will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(p) All exchanges in connection with the Corporation Y Transaction and the Corporation X Transaction (to the extent Corporation X ordinary shares are acquired at the end of the Original Term) will occur on approximately the same date. Exchanges in connection with the Corporation X Transaction (to the extent Corporation X ordinary shares are tendered during any Grace Period) will take place shortly thereafter.

(q) No stock of New Parent issued pursuant to the Proposed Transaction will be placed in escrow or will be issued later under a contingent stock arrangement (other than shares of Class A Stock and Class B Stock that may be held in a trust or similar arrangement with respect to and in order to continue to meet compensatory obligations to employees, officers and directors).

(r) There is no plan to issue stock of New Parent in the near future other than in connection with the Proposed Transaction, and no public offering of New Parent stock is planned.

(s) No rights, warrants, or subscriptions of New Parent are outstanding or will be issued or offered pursuant to the Proposed Transaction.

(t) To the knowledge of New Parent, Corporation X, Corporation Y, and their respective representatives, there is no plan or intention on the part of any Transferor to dispose of any Class A Stock or Class B Stock received pursuant to the Proposed Transaction.

(u) There are and will be no options to purchase Class A Stock and Class B Stock from the Transferors.

(v) There is no plan or intention on the part of New Parent to redeem or otherwise reacquire any stock or indebtedness to be issued in the Proposed Transaction,

other than on the open market pursuant to a general stock repurchase program or for purposes of hedging stock option grants.

(w) Taking into account any issuance of additional shares of New Parent stock, any issuance of stock for services, the exercise of any New Parent stock rights, warrants, or subscriptions, a public offering of New Parent stock and the sale, exchange, transfer by gift or other disposition of any of the stock of New Parent to be received in the Proposed Transaction, the Transferors will be in "control" of New Parent within the meaning of section 368(c).

(x) The Proposed Transaction allows the Group to simplify its existing corporate structure, increase its capital raising flexibility, and provide greater management accountability, efficiency and transparency at all levels of the Group.

(y) The Transferors will receive stock, securities or other property approximately equal to the fair market value of the property transferred to New Parent pursuant to the Proposed Transaction.

(z) New Parent will remain in existence and retain and use the assets transferred to it pursuant to the Proposed Transaction in a trade or business.

(aa) There is no plan or intention by New Parent to dispose of the assets transferred to it pursuant to the Proposed Transaction other than in the normal course of business operations.

(bb) The Transferors, on one hand, and Corporation X, Corporation Y, New Parent, and the Group, on the other hand, will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.

(cc) New Parent will not be an investment company within the meaning of section 351(e)(1) and section 1.351-1(c)(1)(ii) of the regulations immediately after the Proposed Transaction.

(dd) New Parent is not eligible to make the election under section 1362(a) to be taxed as a "small business corporation" as defined in section 1361(a).

(ee) To the knowledge of New Parent, Corporation X, Corporation Y, and their respective representatives, no Transferor is under the jurisdiction of a court in a Title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(ff) New Parent will not be a "personal service corporation" within the meaning of section 269A.

(gg) Neither New Parent, Corporation X or Corporation Y will be a "controlled foreign corporation" within the meaning of section 957(a), immediately before or after the Proposed Transaction.

(hh) Neither New Parent, Corporation X or Corporation Y will be a "passive foreign investment company" within the meaning of section 1297(a) immediately before or after the Proposed Transaction.

(ii) Neither Trust 1 nor Trust 2 will have any commercial purposes apart from non-U.S. tax mitigation purposes, nor any commercial activities apart from ministerial activities related to these non-U.S. tax purposes.

Rulings

Based solely on the information submitted and on the representations set forth above, we rule that:

(1) Given the limited purposes of the Deferred Share Route and the Dividend Access Mechanism and the limited authority granted to the trustees, the arrangements are not trusts within the meaning of § 301.7701-4(a), and therefore are disregarded. See generally Rev. Rul. 73-100, 1973-1 C.B. 309, and Rev. Rul. 76-265, 1976-2 C.B. 448, for illustrations of arrangements that do not constitute trusts.

(2) Based on ruling (1) above, for U.S. Federal income tax purposes, the Deferred Share Route (including the issuance of the Class E Shares and the existence of Trust 1) will be disregarded and will be considered merely a mechanical means of accomplishing the exchange of Corporation X ordinary shares for New Parent Class A Stock in the Corporation X Transaction.

(3) The Exchange Offer and the Arrangement will be treated for U.S. Federal income tax purposes as a single, integrated transfer of property (the Corporation X ordinary shares and the Corporation Y ordinary shares) by the Transferors to New Parent in exchange for New Parent Class A Stock and Class B Stock (as described above). Thus no gain or loss will be recognized by the Transferors on the exchange of their stock for New Parent Stock. Sections 351(a) and 357(a).

(4) The Transferors will not recognize any gain or loss under section 367(a) on the exchange of their Corporation X ordinary shares or Corporation Y ordinary shares, as the case may be, for New Parent stock in the Exchange Offer or the Arrangement, as the case may be, except for any Transferor who is a 5-percent stockholder of New Parent for purposes of section § 1.367(a)-3(b) of the regulations (a "New Parent 5-percent Stockholder") immediately after the Proposed Transaction and does not enter into a gain recognition agreement

(within the meaning of section § 1.367(a)-8 of the regulations) (an "Excluded Transferor").

(5) The basis in the New Parent stock to be received by each Transferor (other than an Excluded Transferor) in the Exchange Offer or the Arrangement, will be the same as its basis in the Corporation X ordinary shares or Corporation Y ordinary shares surrendered in exchange therefor. Section 358(a).

(6) The holding period of each Transferor (other than an Excluded Transferor) in its New Parent stock will include the period for which such Transferor held its Corporation X ordinary shares or Corporation Y ordinary shares surrendered in exchange therefor, provided such Corporation X ordinary shares or Corporation Y ordinary shares were held as capital assets within the meaning of section 1221.

(7) Based on ruling (1) above, for U.S. Federal income tax purposes, the Dividend Access Mechanism (including Trust 2 and the Class D Shares) will be disregarded and will be considered merely a mechanical means of paying certain distributions on the Class B Stock.

(8) Dividends paid to the holders of the Class A Stock and the Class B Stock (including dividends paid in respect of the Class B Stock through the Dividend Access Mechanism) will be considered for U.S. Federal income tax purposes to be distributions paid by New Parent to its shareholders with respect to its stock under section 301.

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. Further, we express no opinion about the tax treatment on the exchange of the Corporation Y preferred stock for cash. Additionally, no opinion is expressed as to the reporting requirements of U.S. Persons exchanging stock under sections 367 and 6038B and the regulations thereunder with respect to the Proposed Transaction. See, however, Treas. Reg. §1.6038B-1(b)(2)(i).

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Procedural Statements

This ruling letter is directed only to the taxpayers who requested it and applies only to the facts of the Proposed Transaction. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to each of the taxpayers and to their authorized representative.

Sincerely,

_____
Lewis K. Brickates
Branch Chief, Branch 4
Associate Chief Counsel (Corporate)

cc: