



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 18, 1990

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1990-8

R. Todd Johnson
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, D.C. 20005-2088

Dear Mr. Johnson:

This responds to your letter dated April 30, 1990, requesting an advisory opinion on behalf of The CIT Group Holdings, Inc. ("CIT") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment and operation of a political action committee by a corporation that is majority-owned by a foreign bank.

You state that CIT is a Delaware corporation and has its principal place of business in New York. Directly or through its subsidiaries, it provides financial services, including business financing and leasing, consumer financing, factoring, and commercial financing.

From May, 1984, until December 29, 1989, CIT was a direct wholly-owned subsidiary of Manufacturers Hanover Corporation, a Delaware corporation ("Manufacturers"). You state that, in 1989, CIT and its subsidiaries had net income of \$126,156,000 and total net assets of \$10,145,350,000 from their operations. On December 29, 1989, Dai-Ichi Kangyo Bank Ltd. ("DKB"), a Japanese bank, purchased 60 per cent of the issued and outstanding stock of CIT from Manufacturers. Manufacturers continues to own 40 per cent of CIT's stock.

The Board of Directors of CIT is composed of six members appointed by DKB, two members appointed by Manufacturers, and two members appointed by CIT. Five of the six members appointed by DKB are Japanese nationals. The remaining five Board members are all citizens of the United States.

Prior to January, 1990, eligible personnel of CIT were solicited for contributions to Manufacturer's separate segregated fund, the Manufacturers Hanover Association for Responsible Government Fund. CIT is considering the establishment of its own separate segregated fund ("CITPAC") which would solicit the eligible employees of CIT and its direct and indirect subsidiaries and make contributions to Federal and state candidates.^{1/} You state that members of the Board of Directors of CIT who are foreign nationals under the definition of 2 U.S.C. 441e "will abstain from voting on matters concerning CITPAC, its activities and the selection of individuals to operate and exercise decision-making authority with respect to the political contributions and political expenditures of CITPAC." You state that CITPAC would be "directed and controlled" by executive officers of CIT, all of whom are United States citizens, and that "[t]hese would be the only individuals with decision-making authority for CITPAC." Finally, you state that CITPAC would solicit only personnel who are U.S. citizens or are lawfully admitted for permanent residence.

You ask whether the establishment and operation of CITPAC under the circumstances presented would violate 2 U.S.C. 441e.

The Act and Commission regulations prohibit foreign nationals from making a contribution directly or through any other person, or making an expenditure, in connection with an election to any political office. In addition, it is unlawful to solicit, accept or receive a contribution from a foreign national. 2 U.S.C. 441e(a); 11 CFR 110.4(a)(1) and (2). As defined in the Act, the term "person" includes a corporation or a committee. 2 U.S.C. 431(11).

The term "foreign national" includes a "foreign principal" as defined by 22 U.S.C. 611(b). 2 U.S.C. 441e(b)(1); 11 CFR 110.4(a)(4). Section 611(b) defines a "foreign principal" as including:

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

Under 22 U.S.C. 611(b), a corporation organized under the laws of any state within the United States, with a principal place of business within the United States, is not a foreign principal and, accordingly, would not be a foreign national under 2 U.S.C. 441e. As a discrete corporate entity organized under the laws of Delaware and with New York as its principal place of business, CIT is not a foreign principal and, therefore, may establish and operate a separate segregated fund subject to certain conditions set out in your request.

In addressing situations involving the political committees of domestic subsidiaries, the Commission has consistently sought to ensure that foreign nationals do not make contributions in connection with an election through the direction or control of a PAC. See Advisory Opinions 1989-29, 1983-31, 1983-19, 1982-34, 1981-36, 1980-111, 1980-100, and 1978-21. The Commission subsequently promulgated regulations affirming this conclusion at 11 CFR 110.4(a)(3).

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

The Commission notes the reference in your proposal to the decision-making process for CITPAC. The Commission conditions its approval of your proposal not just on the basis that the members of CIT's Board who are foreign nationals will abstain from voting on matters concerning CITPAC and its activities, but also on the basis that they will abstain from voting on the selection of individuals to operate the PAC and exercise decision-making authority with respect to PAC contributions and expenditures. These conditions are necessary to ensure the exclusion of foreign nationals from direct or indirect participation in the decision-making process related to the administration and conduct of the committee.^{2/} The Commission also conditions its approval upon your representation that individuals who are foreign nationals will not be solicited for contributions to CITPAC.^{3/} Advisory Opinions 1989-29, 1983-19, 1980-111, 1980-100, and 1978-21. See 2 U.S.C. 441e(b)(2).

This response constitutes an advisory opinion concerning the application of the Act or regulations prescribed by the Commission to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Lee Ann Elliott
Chairman for the Federal Election Commission

Enclosures (AOs 1989-29, 1983-31, 1983-19, 1982-34, 1981-36, 1980-111, 1980-100, and 1978-21)

1/ Because you have not asked whether CITPAC would be an affiliated committee of Manufacturer's separate segregated fund, and because the issue of affiliated committee status is not implicated or necessarily raised by your 441e question, the Commission does not address the affiliation issue in this opinion. See generally 2 U.S.C. 441a(a)(5) and 11 CFR 100.5(g). See also 11 CFR 112.1(a)-(c).

2/ This exclusion pertains not just to the CIT Board members, but to any other foreign nationals, including shareholders and officers. See Advisory Opinions 1980-100 and 1978-21.

3/ Of course, any solicitations for contributions must conform with all other applicable provisions of the Act and Commission regulations.