SYNTHESISED TEXT OF

THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

AND

THE CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

General disclaimer on this Synthesised text document

This document presents the synthesised text for the application of the Convention between the Kingdom of the Netherlands and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and Protocol signed on 25 August 2010 (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "MLI") signed by the Netherlands and Japan on 7 June 2017.

The document was prepared on the basis of the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 and of the MLI position of Japan submitted to the Depositary upon ratification on 26 September 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI remain the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the OECD Model Tax Convention (as updated on 21 November 2017).

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as "Covered Tax Agreement" and "Convention", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the authentic legal texts of the MLI).
- Convention between the Kingdom of the Netherlands and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.
- Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 and the MLI position of Japan submitted to the Depositary upon ratification 26 September 2018).

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Netherlands and Japan in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

29 March 2019 for the Netherlands and 26 September 2018 for Japan.

Entry into force of the MLI:

1 July 2019 for the Netherlands and 1 January 2019 for Japan.

Entry into effect of the MLI provisions:

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 (Mutual Agreement Procedure) have effect with respect to this Convention:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and

b) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI (Mutual Agreement Procedure) has effect with respect to this Convention for a case presented to the competent authority of a Contracting State on or after 1 July 2019, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

Convention between the Kingdom of the Netherlands and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

The Kingdom of the Netherlands

and

Japan,

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

The following paragraph 1 and paragraph 3 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Convention:

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Convention for the indirect benefit of residents of third jurisdictions),

Article 1. Persons covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2. Taxes covered

1 This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2 There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of any property and taxes on the total amounts of wages or salaries paid by enterprises.

3 The existing taxes to which this Convention shall apply are:

a) in the case of Japan:

(i) the income tax (*Shotokuzei*);

(ii) the corporation tax (*Hojinzei*); and

(iii) the local inhabitant taxes (*Juminzei*)

(hereinafter referred to as "Japanese tax"); and

b) in the case of the Netherlands:

(i) the income tax (*de inkomstenbelasting*);

(ii) the wages tax (*de loonbelasting*);

(iii) the company tax (*de vennootschapsbelasting*), including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act (*Mijnbouwwet*); and

(iv) the dividend tax (*de dividendbelasting*)

(hereinafter referred to as "Netherlands tax").

4 This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws, within a reasonable period of time after such changes.

Article 3. General definitions

1 For the purposes of this Convention, unless the context otherwise requires:

a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;

b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

c) the terms "a Contracting State" and "the other Contracting State" mean Japan or the Netherlands, as the context requires;

d) the term "tax" means Japanese tax or Netherlands tax, as the context requires;

e) the term "person" includes an individual, a company and any other body of persons;

f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

g) the term "enterprise" applies to the carrying on of any business;

h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

j) the term "competent authority" means:

(i) in the case of Japan, the Minister of Finance or his authorised representative; and (ii) in the case of the Netherlands, the Minister of Finance or his authorised representative;

k) the term "national" means:

(i) in the case of Japan, any individual possessing the nationality of Japan, any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created or organised under the laws of Japan; and

(ii) in the case of the Netherlands, any individual possessing the nationality of the Netherlands and any legal person, partnership or association deriving its status as such from the laws in force in the Netherlands;

l) the term "business" includes the performance of professional services and of other activities of an independent character; and

m) the term "pension fund" means any person that:

(i) is established and regulated as such under the laws of a Contracting State;

(ii) is operated principally to administer or provide old age, disability or survivor's pensions, retirement benefits or other similar remuneration or to earn income for the benefit of other pension funds; and

(iii) is exempt from tax in that Contracting State with respect to income derived from the activities described in clause (ii).

2 As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Contracting State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

Article 4. Resident

1 For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature, and also includes:

a) that Contracting State and any political subdivision or local authority thereof;

b) a pension fund established and regulated as such under the laws of that Contracting State; and

c) a person established and operated in that Contracting State principally for a religious, charitable, educational, scientific, artistic, cultural or public purpose, only if all or a part of its income is exempt from tax under the laws of that Contracting State.

This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

2 Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;

c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;

d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3 Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the Contracting State in which its place of head or main office is situated.

The following paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI replace paragraph 3 of Article 4 of this Convention:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Convention a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention.

4 Where, pursuant to any provisions of this Convention, a Contracting State reduces the rate of tax on, or exempts from tax, an item of income of a resident of the other Contracting State and under the laws in force in that other Contracting State the resident is subject to tax by that other Contracting State only on that part of such item of income

which is remitted to or received in that other Contracting State, then the reduction or exemption shall apply only to so much of such item of income as is remitted to or received in that other Contracting State.

5 For the purposes of applying this Convention:

a) an item of income:

(i) derived from a Contracting State through an entity that is organised in the other Contracting State; and

(ii) treated as the income of the beneficiaries, members or participants of that entity under the tax laws of that other Contracting State;

shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that entity who is a resident of that other Contracting State, to the extent that such beneficiaries, members or participants are residents of that other Contracting State and satisfy any other conditions specified in the Convention, without regard to whether the income is treated as the income of such beneficiaries, members or participants under the tax laws of the first-mentioned Contracting State;

b) an item of income:

(i) derived from a Contracting State through an entity that is organised in the other Contracting State; and

(ii) treated as the income of that entity under the tax laws of that other Contracting State;

shall be eligible for the benefits of the Convention that would be granted to a resident of that other Contracting State, without regard to whether the income is treated as the income of the entity under the tax laws of the first-mentioned Contracting State, if such entity is a resident of that other Contracting State and satisfies any other conditions specified in the Convention;

c) an item of income:

(i) derived from a Contracting State through an entity that is organised in a state other than the Contracting States; and

(ii) treated as the income of the beneficiaries, members or participants of that entity under the tax laws of the other Contracting State and under the tax laws of the state where the entity is organised;

shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that entity who is a resident of that other Contracting State, to the extent that such beneficiaries, members or participants are residents of that other Contracting State and satisfy any other conditions specified in the Convention, without regard to whether the income is treated as the income of such beneficiaries, members or participants under the tax laws of the first-mentioned Contracting State, provided that the state where the entity is organised has concluded with the first-mentioned Contracting State a convention which contains provisions for effective exchange of information on tax matters;

d) an item of income:

(i) derived from a Contracting State through an entity that is organised in a state other than the Contracting States; and

(ii) treated as the income of that entity under the tax laws of the other Contracting State;

shall not be eligible for the benefits of the Convention; and

e) an item of income:

(i) derived from a Contracting State through an entity that is organised in that Contracting State; and

(ii) treated as the income of that entity under the tax laws of the other Contracting State;

shall not be eligible for the benefits of the Convention.

Article 5. Permanent establishment

1 For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2 The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop; and

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3 A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4 Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

The following paragraph 2 of Article 13 of the MLI applies to paragraph 4 of article 5 of this Convention:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS (*Option A*)

Notwithstanding Article 5 of the Convention, the term "permanent establishment" shall be deemed not to include:
a) the activities specifically listed in paragraph 4 of Article 5 of this Convention as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Convention as modified by paragraph 2 of Article 13 of the MLI:

Article 5 of the Convention, as modified by paragraph 2 of Article 13 of the MLI, shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Convention; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5 Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom the provisions of paragraph 6 apply – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6 An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7 The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

The following paragraph 1 of Article 15 of the MLI applies to provisions of this Convention:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of Article 5 of the Convention, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Article 6. Income from immovable property

1 Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2 The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3 The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4 The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7. Business profits

1 The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in that other Contracting State but only so much of them as is attributable to that permanent establishment.

2 Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3 In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4 Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5 No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6 For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7 Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. Shipping and air transport

1 Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2 Notwithstanding the provisions of Article 2, where an enterprise of a Contracting State carries on the operation of ships or aircraft in international traffic, that enterprise, if an enterprise of the Netherlands, shall be exempt from the enterprise tax of Japan, and, if an enterprise of Japan, shall be exempt from any tax similar to the enterprise tax of Japan which may hereafter be imposed in the Netherlands.

3 The provisions of the preceding paragraphs of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9. Associated enterprises

1 Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2 Where a Contracting State includes, in accordance with the provisions of paragraph 1, in the profits of an enterprise of that Contracting State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

The following paragraph 1 of Article 17 of the MLI replaces paragraph 2 of Article 9 of this Convention:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

Where a Contracting State includes in the profits of an enterprise of that Contracting State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3 Notwithstanding the provisions of paragraph 1, a Contracting State shall not change the profits of an enterprise of that Contracting State in the circumstances referred to in that paragraph after seven years from the end of the taxable year in which the profits that would be subject to such change would, but for the conditions referred to in that paragraph, have accrued to that enterprise. The provisions of this paragraph shall not apply in the case of fraud or wilful default.

Article 10. Dividends

1 Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2 However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company that has owned, directly or indirectly, shares representing at least 10 per cent of the voting power of the company paying the dividends for the period of six months ending on the date on which entitlement to the dividends is determined; or

b) 10 per cent of the gross amount of the dividends in all other cases.

3 Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State and is either:

a) a company that has owned, directly or indirectly, shares representing at least 50 per cent of the voting power of the company paying the dividends for the period of six months ending on the date on which entitlement to the dividends is determined; or

b) a pension fund, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund.

4 The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5 The provisions of subparagraph a) of paragraph 2 and subparagraph a) of paragraph 3 shall not apply in the case of dividends paid by a company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in Japan.

6 The term “dividends” as used in this Article means income from shares, *“jouissance”* shares or *“jouissance”* rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the tax laws of the Contracting State of which the company making the distribution is a resident.

7 The provisions of paragraphs 1, 2, 3 and 10 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

8 Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Contracting State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

9 A resident of a Contracting State shall not be considered the beneficial owner of dividends paid by a resident of the other Contracting State in respect of preferred shares or other similar interests if such preferred shares or other similar interests would not have been established or acquired unless a person:

a) that is not entitled to benefits with respect to dividends paid by a resident of that other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and

b) that is not a resident of either Contracting State;

owned equivalent preferred shares or other similar interests in the first-mentioned resident.

10 Notwithstanding the provisions of paragraphs 1, 2 and 8, dividends paid by a company whose capital is divided into shares and which, under the laws of a Contracting State, is a resident of that Contracting State, to an individual who is a resident of the other Contracting State may be taxed in the first-mentioned Contracting State in accordance with the laws of the first-mentioned Contracting State, if that individual – either alone or with his or her spouse or one of their relatives by blood or marriage in the direct line – directly or indirectly, owns at least 5 per cent of a particular class of shares in that company. This provision shall apply only if the individual to whom the dividends are paid was a resident of the first-mentioned Contracting State at any time or the entire time during the last ten years preceding the year in which the dividends are paid and provided that, at the time he or she became a resident of the other Contracting State, the above-mentioned conditions regarding share ownership in the said company were satisfied and only insofar as part of the assessment that has been issued in connection with the above-mentioned share ownership and with his or her emigration is still outstanding under the laws of the first-mentioned Contracting State.

Article 11. Interest

1 Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2 However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3 Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if:

a) the interest is beneficially owned by the Government of that other Contracting State, a political subdivision or local authority thereof, or the central bank of that other Contracting State or any institution owned by that Government;

b) the interest is beneficially owned by a resident of that other Contracting State with respect to debt-claims guaranteed, insured or indirectly financed by the Government of that other Contracting State, a political subdivision or local authority thereof, or the central bank of that other Contracting State or any institution owned by that Government;

c) the interest is beneficially owned by a resident of that other Contracting State that is either:

(i) a bank;

(ii) an insurance company;

(iii) a securities company; or

(iv) any other enterprise, provided that in the three taxable years preceding the taxable year in which the interest is paid, the enterprise derives more than 50 per cent of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and more than 50 per cent of the assets of the enterprise consist of debt-claims against persons that do not have with the enterprise a relationship described in subparagraph a) or b) of paragraph 1 of Article 9;

d) the interest is beneficially owned by a pension fund that is a resident of that other Contracting State, provided that such interest is not derived from the carrying on of a business, directly or indirectly, by such pension fund; or

e) the interest is beneficially owned by a resident of that other Contracting State and paid with respect to indebtedness arising as a consequence of the sale on credit by a resident of that other Contracting State of any equipment, merchandise or service.

4 The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the tax laws of the Contracting State in which the income arises. Income dealt with in Article 10 shall not be regarded as interest for the purposes of this Convention.

5 The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6 Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the interest, whether such person is a resident of a Contracting State or not, has in a Contracting State or a state other than the Contracting States, a permanent establishment in connection with which the indebtedness on which the interest is paid were incurred, and such interest is borne by such permanent establishment, then:

a) if the permanent establishment is situated in a Contracting State, such interest shall be deemed to arise in that Contracting State; and

b) if the permanent establishment is situated in a state other than the Contracting States, such interest shall not be deemed to arise in either Contracting State.

7 Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8 A resident of a Contracting State shall not be considered the beneficial owner of interest arising in the other Contracting State in respect of a debt-claim if such debt-claim would not have been established unless a person:

a) that is not entitled to benefits with respect to interest arising in the other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and

b) that is not a resident of either Contracting State;

owned an equivalent debt-claim against the first-mentioned resident.

Article 12. Royalties

1 Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other Contracting State.

2 The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, or secret formula or process, or for information concerning industrial, commercial or scientific experience.

3 The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4 Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

5 A resident of a Contracting State shall not be considered the beneficial owner of royalties arising in the other Contracting State in respect of the use of the right or property if such royalties would not have been paid to the resident unless the resident paid royalties in respect of the use of the same right or property to a person:

a) that is not entitled to benefits with respect to royalties arising in the other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and

b) that is not a resident of either Contracting State.

Article 13. Capital gains

1 Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2 Gains derived by a resident of a Contracting State from the alienation of shares in a company or of interests in a partnership or trust may be taxed in the other Contracting State where the shares or the interests derive at least 50 per cent of their value directly or indirectly from immovable property referred to in Article 6 and situated in that other Contracting State, unless the relevant class of the shares or the interest is traded on a recognised stock exchange specified in subparagraph c) of paragraph 8 of Article 21 and the resident and persons related or connected to that resident own in the aggregate 5 per cent or less of that class of the shares or the interests.

The following paragraph 1 of Article 9 of the MLI applies to paragraph 2 of Article 13 of this Convention:

ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATTION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

Paragraph 2 of Article 13 of the Convention:

a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and

b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions of the Convention.

3

a) Where

(i) a Contracting State (including, for this purpose in the case of Japan, the Deposit Insurance Corporation of Japan) provides, pursuant to the laws of that Contracting State concerning failure resolution involving imminent insolvency of

financial institutions, substantial financial assistance to a financial institution that is a resident of that Contracting State, and

(ii) a resident of the other Contracting State acquires shares in the financial institution from the first-mentioned Contracting State,

the first-mentioned Contracting State may tax gains derived by the resident of the other Contracting State from the alienation of such shares, provided that the alienation is made within five years from the first date on which such financial assistance was provided.

b) The provisions of subparagraph a) shall not apply if the resident of that other Contracting State acquired any shares in the financial institution from the first-mentioned Contracting State before the entry into force of this Convention or pursuant to a binding contract entered into before the entry into force of the Convention.

4 Gains from the alienation of any property, other than immovable property, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Contracting State.

5 Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated by that resident in international traffic or any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

6 Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

7 Notwithstanding the provisions of paragraph 6, gains derived from the alienation of shares in or *"jouissance"* rights or debt-claims on a company whose capital is divided into shares and which, under the laws of a Contracting State, is a resident of that Contracting State or from the alienation of part of the rights attached to the said shares, *"jouissance"* rights or debt-claims by an individual who is a resident of the other Contracting State may be taxed in the first-mentioned Contracting State in accordance with the laws of the first-mentioned Contracting State and with their interpretation, including the interpretation of the term "alienation", if that individual – either alone or with his or her spouse or one of their relatives by blood or marriage in the direct line – directly or indirectly, owns at least 5 per cent of a particular class of shares in that company. This provision shall apply only if the individual who derives the gains was a resident of the first-mentioned Contracting State at any time or the entire time during the last ten years preceding the year in which the gains are derived and provided that, at the time he or she became a resident of the other Contracting State, the above-mentioned conditions regarding share ownership in the said company were satisfied and only insofar as part of the assessment that has been issued in connection with the above-mentioned share ownership and with his or her emigration is still outstanding under the laws of the first-mentioned Contracting State.

Article 14. Income from employment

1 Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2 Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable year concerned,

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and

c) the remuneration is not borne by a permanent establishment which the employer has in that other Contracting State.

3 Notwithstanding the provisions of the preceding paragraphs of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 15. Directors' fees

Directors' fees and other payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 16. Entertainers and sportspersons

1 Notwithstanding the provisions of Articles 7 and 14, income derived by an individual who is a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2 Where income in respect of personal activities exercised in a Contracting State by an individual in his capacity as an entertainer or a sportsperson accrues not to the individual himself but to another person who is a resident of the other Contracting State, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the individual are exercised.

Article 17. Pensions and annuities

1 Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, including social security payments, beneficially owned by a resident of a Contracting State shall be taxable only in that Contracting State. However, such pensions and other similar remuneration, including social security payments, may also be taxed in the other Contracting State if they arise in that other Contracting State and they are not adequately subject to tax in the first-mentioned Contracting State.

2 Annuities derived and beneficially owned by an individual who is a resident of a Contracting State shall be taxable only in that Contracting State. However, such annuities may also be taxed in the other Contracting State if they arise in that other Contracting State and they are not adequately subject to tax in the first-mentioned Contracting State. The term "annuities" as used in this Article means a stated sum paid periodically at stated times during the life of the individual, or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3 Lump sums in lieu of the right to receive a pension or other similar remuneration, or to receive an annuity, paid to an individual who is a resident of a Contracting State shall be taxable only in that Contracting State. However, such lump sums may also be taxed in the other Contracting State if they arise in that other Contracting State.

Article 18. Government service

1 a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State or political subdivision or local authority, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who:

(i) is a national of that other Contracting State; or

(ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2 a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds to which contributions are made or created by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State or political subdivision or local authority shall be taxable only in that Contracting State.

b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.

3 The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 19. Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State. The exemption provided by this Article shall apply to a business apprentice only for a period not exceeding one year from the date he first begins his training in the first-mentioned Contracting State.

Article 20. Other income

1 Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention (hereinafter referred to as "other income" in this Article) shall be taxable only in that Contracting State.

2 The provisions of paragraph 1 shall not apply to other income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such other income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the other income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3 Where, by reason of a special relationship between the resident referred to in paragraph 1 and the payer or between both of them and some other person, the amount of other income exceeds the amount which would have been agreed upon between them in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the other income shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

4 A resident of a Contracting State shall not be considered the beneficial owner of other income arising in the other Contracting State in respect of the right or property if such other income would not have been paid to the resident unless the resident paid other income in respect of the same right or property to a person:

a) that is not entitled to benefits with respect to other income arising in the other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and

b) that is not a resident of either Contracting State.

Article 21. Limitation on benefits

1 Except as otherwise provided in this Article, a resident of a Contracting State that derives income from the other Contracting State described in paragraph 3 of Article 10, paragraph 3 of Article 11 or Article 12, 13 or 20 shall be entitled to the benefits granted for a taxable year by the provisions of those paragraphs or Articles only if such resident is a qualified person as defined in paragraph 2 and satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits.

2 A resident of a Contracting State is a qualified person for a taxable year only if such resident is either:

a) an individual;

b) the Government of a Contracting State, any political subdivision or local authority thereof, the Bank of Japan, the Central Bank of the Netherlands or a person that is owned, directly or indirectly, by the Government of a Contracting State or a political subdivision or local authority thereof;

c) a company, if the principal class of its shares is listed or registered on a recognised stock exchange and is regularly traded on one or more recognised stock exchanges, provided that, if the shares are listed or registered on a recognised stock exchange specified in clause (iii) or (iv) of subparagraph c) of paragraph 8, the primary place of management and control of the company is in the Contracting State of which it is a resident;

d) a person that is either:

(i) a person as described in subparagraph b) or c) of paragraph 1 of Article 4, provided that in the case of a person described in subparagraph b) of that paragraph:

(aa) as of the end of the prior taxable year more than 50 per cent of the person's beneficiaries, members or participants are individuals who are residents of either Contracting State; or

(bb) more than 75 per cent of the contributions made to the person is derived from residents of either Contracting State which are qualified persons; or

(ii) a bank, an insurance company or a securities company that is established and regulated as such under the laws of the Contracting State of which it is a resident; or

e) a person other than an individual, if residents of either Contracting State that are qualified persons by reason of subparagraph a), b), c) or d) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 per cent of the voting power of the person.

3 Notwithstanding that a company that is a resident of a Contracting State may not be a qualified person, that company shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or Article 12, 13 or 20 with respect to an item of income described in those paragraphs or Articles derived from the other Contracting State if that company satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits and shares representing at least 75 per cent of the voting power of that company are owned, directly or indirectly, by seven or fewer persons who are equivalent beneficiaries.

4 Where the provisions of subparagraph e) of paragraph 2 or paragraph 3 apply:

a) in respect of taxation by withholding at source, a resident of a Contracting State shall be considered to satisfy the conditions described in that subparagraph or paragraph for the taxable year in which the payment of an item of income is made if such resident satisfies those conditions during the twelve month period preceding the date of the payment or, in the case of dividends, the date on which entitlement to the dividends is determined; and

b) for all other cases, a resident of a Contracting State shall be considered to satisfy the conditions described in that subparagraph or paragraph for the taxable year in which the item of income is derived if such resident satisfies those conditions on at least half the days of the taxable year.

5

a) Notwithstanding that a resident of a Contracting State may not be a qualified person, that resident shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or Article 12, 13 or 20 with respect to an item of income described in those paragraphs or Articles derived from the other Contracting State if:

(i) that resident is carrying on business in the first-mentioned Contracting State (other than the business of making or managing investments for the resident's own account, unless the business is banking, insurance or securities business carried on by a bank, insurance company or securities company);

(ii) the item of income derived from that other Contracting State is derived in connection with, or is incidental to, that business; and

(iii) that resident satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits.

b) If a resident of a Contracting State derives an item of income from a business carried on by that resident in the other Contracting State or derives an item of income arising in the other Contracting State from any of its associated enterprises carrying on business in that other Contracting State, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item of income only if the business carried on in the first-mentioned Contracting State is substantial in relation to the business carried on in the other Contracting State. Whether such business is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.

c) In determining whether a person is carrying on business in a Contracting State under subparagraph a), the business conducted by a partnership in which that person is a partner and the business conducted by persons

connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, shares representing at least 50 per cent of the voting power of the company) or a third person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, shares representing at least 50 per cent of the voting power of the company) in each person. In any case, a person shall be considered to be connected to another if, on the basis of all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

6

a) Notwithstanding that a resident of a Contracting State may not be a qualified person, that resident shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or Article 12, 13 or 20 with respect to an item of income described in those paragraphs or Articles derived from the other Contracting State if:

(i) that resident functions as a headquarters company for a multinational corporate group;

(ii) the item of income derived from that other Contracting State either is derived in connection with, or is incidental to, the business referred to in clause (ii) of subparagraph b); and

(iii) that resident satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits.

b) A resident of a Contracting State shall be considered a headquarters company for a multinational corporate group for the purpose of subparagraph a) only if:

(i) that resident provides a substantial portion of the overall supervision and administration of the group or provides financing for the group;

(ii) the group consists of companies which are resident in, and are carrying on business in, at least five countries, and the business carried on in each of the five countries generates at least 5 per cent of the gross income of the group;

(iii) the business carried on in any one country other than that Contracting State generate less than 50 per cent of the gross income of the group;

(iv) no more than 50 per cent of its gross income is derived from the other Contracting State;

(v) that resident has, and exercises, independent discretionary authority to carry out the functions referred to in clause (i); and

(vi) that resident is subject to the same income taxation rules in that Contracting State as persons described in paragraph 5.

c) For the purpose of subparagraph b), a resident of a Contracting State shall be deemed to satisfy the gross income requirements described in clause (ii), (iii) or (iv) of that subparagraph for the taxable year in which the item of income is derived if the resident satisfies each of those gross income requirements when averaging the gross income of the three taxable years preceding that taxable year.

7 A resident of a Contracting State that is neither a qualified person nor entitled under paragraph 3, 5 or 6 to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 3 of Article 11 or Article 12,13 or 20 with respect to an item of income described in those paragraphs or Articles shall, nevertheless, be granted such benefits if the competent authority of the other Contracting State determines, in accordance with its laws or administrative practice, that the establishment, acquisition or maintenance of such resident and the conduct of its operations did not have as one of the principal purposes the obtaining of such benefits.

8 For the purposes of this Article:

a) the term “principal class of shares” means the class or classes of shares of a company which in the aggregate represent a majority of the voting power of the company;

b) the term “shares” shall include depository receipts of shares or trust certificates of shares;

c) the term “recognised stock exchange” means:

(i) financial instruments firms association under the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;

(ii) any regulated market established in the Netherlands subject to regulation by the Authority for the Financial Markets (or its successor) under a license as meant in paragraph 1 of Article 5:26 of the Act on Financial Supervision (or its successor) of the Netherlands;

(iii) the Irish Stock Exchange, the London Stock Exchange, the Swiss Stock Exchange and the stock exchanges of Brussels, Dusseldorf, Frankfurt, Hamburg, Hong Kong, Johannesburg, Lisbon, Luxembourg, Madrid, Mexico, Milan, New York, Paris, Seoul, Singapore, Stockholm, Sydney, Toronto and Vienna and the NASDAQ System; and

(iv) any other stock exchange which the competent authorities of the Contracting States agree to recognise for the purposes of this Article;

d) the term "equivalent beneficiary" means:

(i) a resident of a state that has a convention for the avoidance of double taxation and the prevention of fiscal evasion between that state and the Contracting State from which the benefits of this Convention are claimed such that:

(aa) that convention contains provisions for effective exchange of information;

(bb) that resident is a qualified person under the limitation on benefits provisions in that convention or, when there are no such provisions in that convention, would be a qualified person when that convention is read as including provisions corresponding to paragraph 2; and

(cc) with respect to an item of income referred to in paragraph 3 of Article 10, paragraph 3 of Article 11 or Article 12, 13 or 20 that resident would be entitled under that convention to a rate of tax with respect to the particular class of income for which the benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or

(ii) a qualified person by reason of subparagraph a), b), c) or d) of paragraph 2;

e) the term "associated enterprises" means enterprises which have a relationship with each other as described in subparagraph a) or b) of paragraph 1 of Article 9; and

f) the term "gross income" means the total revenues derived by an enterprise from its business, less the direct costs of obtaining such revenues.

The following paragraphs 1 through 3 of Article 10 of the MLI apply and supersede the provisions of this Convention:

ARTICLE 10 – ANTI-ABUSE RULE FOR PERMANENT ESTABLISHMENTS SITUATED IN THIRD JURISDICTIONS

1. Where:

a) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and

b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits of the Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Convention.

2. Paragraph 1 shall not apply if the income derived from the other Contracting State described in paragraph 1 is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than then business of making, managing or simply holding investments for the enterprise's own

account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

3. If benefits under the Convention are denied pursuant to paragraph 1 with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2. The competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

Notwithstanding any provisions of the Convention, a benefit under the Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Convention.

Article 22. Elimination of double taxation

1 Subject to the provisions of the laws of Japan regarding the allowance as a credit against the Japanese tax of tax payable in any country other than Japan, where a resident of Japan derives income from the Netherlands which may be taxed in the Netherlands in accordance with the provisions of this Convention, the amount of the Netherlands tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

2 Where the income derived from the Netherlands is dividends paid by a company which is a resident of the Netherlands to a company which is a resident of Japan and which has owned at least 10 per cent either of the voting shares issued by the company paying the dividends, or of the total shares issued by that company, during the period of six months immediately before the day when the obligation to pay dividends is confirmed, such dividends shall be excluded from the basis upon which the Japanese tax is imposed. Such exclusion shall be subject to the provisions, other than the provisions with regard to ownership requirements of shares, of the laws of Japan regarding the exclusion of dividends from the basis upon which the Japanese tax is imposed.

3 The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed or shall be taxable only in Japan.

4 However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 5 of Article 11, paragraph 3 of Article 12, paragraphs 1, 2, 3 and 4 of Article 13, paragraphs 1 and 3 of Article 14, paragraphs 1 and 2 of Article 17, subparagraph a) of paragraph 1 and subparagraph a) of paragraph 2 of Article 18 and paragraph 2 of Article 20 may be taxed or shall be taxable only in Japan and are included in the basis referred to in paragraph 3, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

The following paragraph 2 of Article 5 of the MLI applies to paragraph 4 of Article 22 of this Convention with respect to residents of the Netherlands:

ARTICLE 5 OF THE MLI – APPLICATION OF METHODS FOR ELIMINATION OF DOUBLE TAXATION (*Option A*)

Paragraph 4 of Article 22 of the Convention shall not apply where Japan applies the provisions of the Convention to exempt income derived by a resident of the Netherlands from tax or to limit the rate at which such income may be taxed. In the latter case, the Netherlands shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Japan. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income which may be taxed in Japan.

5 Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraphs 2 and 10 of Article 10, paragraph 2 of Article 11, paragraph 7 of Article 13, Article 15, paragraphs 1 and 2 of Article 16 and paragraph 3 of Article 17 may be taxed in Japan to the extent that these items are included in the basis referred to in paragraph 3. The amount of the deduction shall be equal to the tax paid in Japan on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the deduction which would be allowed if the items of income so included were the sole items of income for which the Netherlands gives a reduction under the provisions of the Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the deduction of Netherlands tax is concerned with respect to the aggregation of income from more than one country and the carry forward of the tax paid in Japan on the said items of income to subsequent years.

6 Notwithstanding the provisions of paragraph 4, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in Japan on items of income which according to paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 5 of Article 11, paragraph 3 of Article 12 and paragraph 2 of Article 20 may be taxed in Japan to the extent that these items are included in the basis referred to in paragraph 3, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 5 of this Article shall apply accordingly.

7 For the purposes of the preceding paragraphs of this Article, income beneficially owned by a resident of a Contracting State which may be taxed or shall be taxable only in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

Article 23. Non-discrimination

1 Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2 The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3 Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 4 of Article 12 or paragraph 3 of Article 20 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

4 Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and

connected requirements to which other similar enterprises of the first-mentioned Contracting State are or may be subjected.

5 The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description imposed on behalf of a Contracting State or of its political subdivisions or local authorities.

Article 24. Mutual agreement procedure

1 Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 24 of this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of either Contracting State.

2 The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3 The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. In particular the competent authorities of the Contracting States may agree:

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits, or allowances between persons;

c) to the settlement of conflicting application of the Convention, including conflicts regarding:

(i) the characterisation of particular items of income;

(ii) the characterisation of persons;

(iii) the application of source rules with respect to particular items of income; and

(iv) the meaning of any term used in the Convention; and

d) to advance pricing arrangements.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4 The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves and their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

5 Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Contracting State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these Contracting States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

Article 25. Exchange of information

1 The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2 Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3 In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4 If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5 In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26. Assistance in the collection of taxes

1 Each of the Contracting States shall endeavour to collect such taxes imposed by the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected.

2 In no case shall the provisions of paragraph 1 be construed so as to impose upon either of the Contracting States endeavouring to collect the taxes the obligation to carry out administrative measures at variance with the laws and

administrative practice of that Contracting State or which would be contrary to the public policy (ordre public) of that Contracting State.

Article 27. Members of diplomatic missions and consular posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28. Territorial extension

1 This Convention may be extended, either in its entirety or with any necessary modifications, to the parts of the Kingdom of the Netherlands which are not situated in Europe. Any such extension shall take effect from such date and shall be subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

2 Unless otherwise agreed, the termination of this Convention shall not also terminate any extension of the Convention to any part of the Kingdom of the Netherlands to which it has been extended under this Article.

Article 29. Headings

The headings of the Articles of this Convention are inserted for convenience of reference only and shall not affect the interpretation of the Convention.

Article 30. Entry into force

1 This Convention shall be approved in accordance with the legal procedures of each of the Contracting States and shall enter into force on the thirtieth day after the date of exchange of diplomatic notes indicating such approval.

2 This Convention shall be applicable:

a) in the case of Japan:

(i) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the Convention enters into force;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the Convention enters into force; and

(iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after 1 January in the calendar year next following that in which the Convention enters into force; and

b) in the case of the Netherlands:

(i) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the Convention enters into force;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year and period beginning on or after 1 January in the calendar year next following that in which the Convention enters into force; and

(iii) with respect to other taxes, as regards taxes for any taxable year and period beginning on or after 1 January in the calendar year next following that in which the Convention enters into force.

3 The Convention between the Government of the Kingdom of the Netherlands and the Government of Japan for the Avoidance of Double Taxation with respect to Taxes on Income, with Protocol, signed at The Hague on 3 March, 1970, as amended by the Protocol signed at The Hague on 4 March, 1992 (hereinafter in this Article referred to as "the prior Convention") shall cease to be applicable from the date upon which this Convention applies in respect of the taxes to which the Convention applies in accordance with the provisions of paragraph 2 of this Article.

4 Notwithstanding the provisions of paragraph 3, where any person entitled to benefits under the prior Convention would have been entitled to greater benefits thereunder than those under this Convention, the prior Convention shall, at the election of such person, continue to apply in its entirety for the period of twelve months from the date on which the provisions of this Convention otherwise would apply under paragraph 2.

5 The prior Convention shall terminate on the last date on which it applies in accordance with the provisions of the preceding paragraphs of this Article.

Article 31. Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

a) in the case of Japan:

(i) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and

(iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and

b) in the case of the Netherlands:

(i) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year and period beginning on or after 1 January in the calendar year next following that in which the notice is given; and

(iii) with respect to other taxes, as regards taxes for any taxable year and period beginning on or after 1 January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at Tokyo this 25th day of August 2010, in duplicate, in the English language.

For the Kingdom of the Netherlands:

PH. DE HEER

For Japan:

KOICHI TAKEMASA

Protocol

At the signing today of the Convention between the Kingdom of the Netherlands and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Convention"), the Kingdom of the Netherlands and Japan have agreed upon the following provisions, which shall form an integral part of the Convention.

1. With reference to clause (iii) of subparagraph m) of paragraph 1 of Article 3 of the Convention, it is understood that a pension fund shall be treated as exempt from tax on income derived with respect to the activities described in clause (ii) of that subparagraph even though it is subject to the tax stipulated in Articles 8 or 10-2 of the Corporation Tax Law (Law No. 34 of 1965) of Japan or paragraph 1 of Article 20 of its supplementary provisions.

2. With reference to Articles 6 and 13 of the Convention, rights to the exploration and exploitation of natural resources shall be regarded as immovable property situated in the Contracting State to whose seabed – and subsoil thereof – these rights apply. Furthermore, the aforementioned rights include rights to interests in, or benefits from assets that arise from, that exploration or exploitation.

3. With reference to Article 7 of the Convention, it is understood that in the case of profits from survey, supply, installation or construction activities, only so much of them will be attributable to a permanent establishment as results from the actual performance of such activity by that permanent establishment.

4. With reference to Article 9 of the Convention, it is understood that the fact that the enterprises that have a relationship with each other as described in subparagraph a) or b) of paragraph 1 of that Article have concluded arrangements among them to share the costs and risks of developing, producing or obtaining assets, services, or rights, and to determine the nature and extent of the interests of each participant in those assets, services, or rights, shall not of itself satisfy the conditions as meant in paragraph 1 of that Article.

5. With reference to Articles 10 and 13 of the Convention, the Netherlands treats income received in connection with the whole or partial winding-up of a company or a purchase of own shares by a company as dividends as referred to in Article 10 of the Convention and not as capital gains as referred to in Article 13 of the Convention.

6. With reference to paragraph 3 of Article 11 of the Convention, the terms "the central bank" and "institution owned by that Government" mean:

a) in the case of Japan:

(i) the Bank of Japan;

(ii) the Japan Finance Corporation;

(iii) the Japan International Cooperation Agency;

(iv) the Nippon Export and Investment Insurance; and

(v) such other similar institution the capital of which is owned by the Government of Japan as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes; and

b) in the case of the Netherlands:

(i) the Central Bank of the Netherlands (de Nederlandsche Bank NV);

(ii) the Netherlands Development Finance Company (de Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden NV);

(iii) the Netherlands Investment Bank for Developing Countries (de Nederlandse Investeringsbank voor Ontwikkelingslanden NV); and

(iv) such other similar institution the capital of which is owned by the Government of the Netherlands as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes.

7. With reference to Article 15 of the Convention, where a company is a resident of the Netherlands, the term "members of the board of directors" includes both a *"bestuurder"* and a *"commissaris"*. The terms *"bestuurder"* and

"commissaris" mean respectively persons who are charged with the general management of the company and persons who are charged with the supervision thereof.

8. With reference to Articles 17 and 18 of the Convention, it is understood that whether and to what extent a pension or other similar remuneration falls under Article 17 or under Article 18 of the Convention is determined by the nature (private or governmental) during the period or periods in which the entitlement to such pension or other similar remuneration was built up.

9. Nothing in the Convention shall prevent Japan from imposing tax at source, in accordance with its laws, on any income and gains derived by a person pursuant to a sleeping partnership (*Tokumei Kumiai*) contract or other similar contract.

10. With reference to subparagraph c) of paragraph 2 of Article 21 of the Convention, the shares in the principal class of shares of a company are considered to be regularly traded on one or more recognised stock exchanges in a taxable year if the aggregate number of the shares in that class traded on such stock exchange or exchanges during the twelve months ending on the day before the beginning of that taxable year is at least 6 per cent of the average number of the shares outstanding in that class during that twelve-month period.

11. With reference to subparagraph c) of paragraph 2 of Article 21 of the Convention, the "primary place of management and control" of a company will be in the Contracting State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) more in that Contracting State than in any other state and the staff of such persons conduct the day-to-day activities necessary for preparing and making those decisions more in that Contracting State than in any other state.

12. With reference to paragraph 5 of Article 24 of the Convention:

a) The competent authorities shall by mutual agreement establish a procedure in order to ensure that an arbitration decision will be implemented within two years from a request for arbitration as referred to in paragraph 5 of Article 24 of the Convention unless actions or inaction of a person directly affected by the case presented pursuant to that paragraph hinder the resolution of the case or unless the competent authorities and that person agree otherwise.

b) An arbitration panel shall be established in accordance with the following rules:

(i) An arbitration panel shall consist of three arbitrators with expertise or experience in international tax matters.

(ii) Each competent authority shall appoint one arbitrator. The two arbitrators appointed by the competent authorities shall appoint the third arbitrator who serves as the chair of the arbitration panel in accordance with the procedures agreed by the competent authorities.

(iii) All arbitrators shall not be employees of the tax authorities of the Contracting States, nor have had dealt with the case presented pursuant to paragraph 1 of Article 24 of the Convention in any capacity.

(iv) The competent authorities shall ensure that all arbitrators and their staff agree, in statements sent to each competent authority, prior to their acting in an arbitration proceeding, to abide by and be subject to the same confidentiality and non-disclosure obligations described in paragraph 2 of Article 25 of the Convention and in the applicable domestic laws of the Contracting States.

(v) Each competent authority shall bear the cost of its appointed arbitrator and its own expenses. The cost of the chair of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the competent authorities in equal shares.

c) The competent authorities shall provide the information necessary for the arbitration decision to all arbitrators and their staff without undue delay.

d) An arbitration decision shall be treated as follows:

(i) An arbitration decision has no formal precedential value.

(ii) An arbitration decision shall be final, unless that decision is found to be unenforceable by the courts of one of the Contracting States due to a violation of paragraph 5 of Article 24 of the Convention, of this paragraph or of any procedural rule determined in accordance with subparagraph a) of this paragraph that may reasonably have affected

the decision. If the decision is found to be unenforceable due to the violation, the decision shall be considered not to have been made.

e) Where, at any time after a request for arbitration has been made and before the arbitration panel has delivered a decision to the competent authorities and the person who made the request for arbitration, the competent authorities have solved all the unresolved issues submitted to the arbitration, the case shall be considered as resolved pursuant to paragraph 2 of Article 24 of the Convention and no arbitration decision shall be provided.

f) The provisions of paragraph 5 of Article 24 of the Convention and this paragraph shall apply mutatis mutandis to a case presented pursuant to paragraph 1 of Article 26 of the Convention between the Government of the Kingdom of the Netherlands and the Government of Japan for the Avoidance of Double Taxation with respect to Taxes on Income, with Protocol, signed at The Hague on 3 March, 1970, as amended by the Protocol signed at The Hague on 4 March, 1992 (hereinafter referred to as "the prior Convention"), unless the competent authorities agree that, on the basis of special reasons, the case is not a case which the provisions of paragraph 5 of Article 24 of the Convention and this paragraph shall apply mutatis mutandis to. However, where the competent authority of a Contracting State, before the entry into force of the Convention, has presented to the competent authority of the other Contracting State the case presented pursuant to paragraph 1 of Article 26 of the prior Convention, the term "the presentation of the cases to the competent authority of the other Contracting State" as referred to in subparagraph b) of paragraph 5 of Article 24 of the Convention shall be replaced with "the entry into force of the Convention" for the purpose of applying this subparagraph.

13. With reference to paragraphs 3 and 5 of Article 25 of the Convention, a Contracting State may decline to supply information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the domestic laws of that Contracting State.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Tokyo this 25th day of August 2010, in duplicate, in the English language.

For the Kingdom of the Netherlands:

PH. DE HEER

For Japan:

KOICHI TAKEMASA