

SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND JAPAN  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF  
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL  
GAINS

**General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains signed on 2 February 2006, as amended by the Protocol signed on 17 December 2013 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the United Kingdom and Japan on 7 June 2017 (the “MLI”).

This document was prepared in consultation with the competent authority of Japan and represents our shared understanding of the modifications made to the Convention by the MLI.

The document was prepared on the basis of the MLI position of the United Kingdom submitted to the Depository upon ratification on 29 June 2018 and of the MLI position of Japan submitted to the Depository upon acceptance 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 take precedence and remain the 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 2017 OECD Model Tax Convention.

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

The authentic legal texts of the MLI, the Convention and the amending Protocol can be found at the following links:

[http://www.legislation.gov.uk/ukxi/2006/1924/pdfs/ukxi\\_20061924\\_en.pdf](http://www.legislation.gov.uk/ukxi/2006/1924/pdfs/ukxi_20061924_en.pdf)

[http://www.legislation.gov.uk/ukxi/2014/1881/pdfs/ukxi\\_20141881\\_en.pdf](http://www.legislation.gov.uk/ukxi/2014/1881/pdfs/ukxi_20141881_en.pdf)

<http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

The MLI position of the United Kingdom submitted to the Depository upon ratification on 29 June 2018 and the MLI position of Japan submitted to the Depository upon ratification on 26 September 2018 can be found on the [MLI Depository \(OECD\) webpage](#).

### **Disclaimer on the entry into effect of the provisions of the MLI**

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of 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 United Kingdom and Japan in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 29 June 2018 for the United Kingdom and 26 September 2018 for Japan.

Entry into force of the MLI: 1 October 2018 for the United Kingdom and 1 January 2019 for Japan.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Convention:

- 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 2019;
- In the United Kingdom, from 1 April 2020 for corporation tax and from 6 April 2020 for income tax and capital gains tax; and
- with respect to all other taxes levied by Japan, for taxes levied with respect to taxable periods beginning on or after 1 July 2019.

CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The United Kingdom of Great Britain and Northern Ireland and Japan,

*The following paragraph 3 of Article 6 of the MLI is included 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,

**[REPLACED by paragraph 1 of Article 6 of the MLI]** [Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains,]

*The following paragraph 1 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

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 *[this Convention]* for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

**Article 1**

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

*The following paragraphs 1 and 3 of Article 3 of the MLI replace paragraph 5 of Article 4 of this Convention:*

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

For the purposes of *[this Convention]*, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either *[Contracting State]* shall be considered to be income of a resident of a *[Contracting State]* but only to the extent that

the income is treated, for purposes of taxation by that [Contracting State], as the income of a resident of that [Contracting State]. In no case shall the provisions of this paragraph be construed to affect a [Contracting State's] right to tax the residents of that [Contracting State].

## Article 2

1. This Convention shall apply to the following taxes:

(a) in the case of Japan:

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the special income tax for reconstruction;
- (iv) the special corporation tax for reconstruction; and
- (v) the local inhabitant taxes

(hereinafter referred to as “Japanese tax”);

(b) in the case of the United Kingdom:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax

(hereinafter referred to as “United Kingdom tax”).

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, those referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective tax laws, or changes in other laws that significantly affect their obligations under the Convention, within a reasonable period of time after such changes.

## Article 3

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

- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;
- (b) 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 may exercise sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;

- (c) the terms “a Contracting State” and “the other Contracting State” mean Japan or the United Kingdom, as the context requires;
- (d) the term “tax” means Japanese tax or United Kingdom 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 “national” of a Contracting State means:
  - (i) in the case of the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom; and
  - (ii) in the case of Japan, any individual possessing the nationality of Japan and 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;
- (k) the term “competent authority” means:
  - (i) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative; and
  - (ii) in the case of Japan, the Minister of Finance or his authorised representative;
- (l) the term “business” includes the performance of professional services and of other activities of an independent character; and

- (m) the term “pension fund or pension scheme” means any plan, scheme, fund, trust or other arrangement that is:
  - (i) established under the laws of a Contracting State;
  - (ii) operated principally to administer or provide pensions, retirement benefits or other similar remuneration or to earn income or gains for the benefit of one or more such arrangements; and
  - (iii) exempt from tax in that Contracting State with respect to income or gains derived from activities described in clause (ii) of this subparagraph.

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 which 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**

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, place of incorporation or any other criterion of a similar nature, and also includes:

- (a) the Government of that Contracting State and any political subdivision or local authority thereof;
- (b) a pension fund or pension scheme established under the laws of that Contracting State; and
- (c) an organisation established under the laws of that Contracting State and operated exclusively for a religious, charitable, educational, scientific, artistic, cultural or public purpose (or for more than one of those purposes), only if all or part of its income or gains may be exempt from tax under the domestic 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, profits or gains from sources in that Contracting State.

2. Where by reason of the provisions of paragraph 1 of this Article 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 does not have 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. **[REPLACED by paragraph 1 of Article 4 and subparagraph e) of paragraph 3 of Article 4 of the MLI]** [Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by the Convention, except those provided by paragraph 1 of Article 23, Article 24 and Article 25 of the Convention.]

*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 [*this 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 [*this 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 [*this Convention*].

4. Where, pursuant to any provision of this Convention, a Contracting State reduces the rate of tax on, or exempts from tax, income, profits or gains 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 income, profits or gains which is remitted to or received in that other Contracting State, then the reduction or exemption shall apply only to so much of such income, profits or gains as is remitted to or received in that other Contracting State.

5. **[REPLACED by paragraphs 1 and 3 of Article 3 of the MLI]** [For the purposes of applying this Convention:

(a) an item of income, profit or gain:

- (i) derived from a Contracting State through an entity that is organised in the other Contracting State; and
- (ii) treated as an item of income, profit or gain 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 an item of income, profit or gain is treated as an item of income, profit or gain of such beneficiaries, members or participants under the tax laws of the first-mentioned Contracting State.

(b) an item of income, profit or gain:

- (i) derived from a Contracting State through an entity that is organised in the other Contracting State; and
- (ii) treated as an item of income, profit or gain 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 an item of income, profit or gain is treated as an item of income, profit or gain 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, profit or gain:

- (i) derived from a Contracting State through an entity that is organised in that Contracting State; and
- (ii) treated as an item of income, profit or gain of that entity under the tax laws of the other Contracting State;

shall not be eligible for the benefits of the Convention.]

## **Article 5**

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 a 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) of this paragraph, 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 4 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

[*Paragraph 4 of Article 5 of this Convention*] 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 this 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.

*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 [*Article 5 of this 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.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person – other than an agent of an independent status to whom the provisions of paragraph 6 of this Article apply – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf 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 of this Article 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.

#### **Article 6**

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 of this Article 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 of this Article shall also apply to the income from immovable property of an enterprise.

#### **Article 7**

1. 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 that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 of this Article may be taxed in that other Contracting State.

2. For the purposes of this Article and Article 23 of this Convention, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 of this Article are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the

enterprise.

3. Where, in accordance with paragraph 2 of this Article, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other Contracting State, the other Contracting State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.

4. Where profits include items of income, profits or gains 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**

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. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. Notwithstanding the provisions of Article 2 of this Convention, 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 United Kingdom, shall be exempt from the enterprise tax in Japan, and, if an enterprise of Japan, shall be exempt from any tax similar to the enterprise tax in Japan which may hereafter be imposed in the United Kingdom.

4. 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, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

### **Article 9**

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. **[REPLACED by paragraph 1 of Article 17 of the MLI]** [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 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 [this Convention] and the competent authorities of the [Contracting States] shall if necessary consult each other.

3. Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State shall not change the profits of an enterprise of that Contracting State in the circumstances referred to in that paragraph, if an enquiry into the profits of that enterprise is not initiated within ten years from the end of the taxable year or chargeable period 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 or if the inability to initiate an enquiry within the prescribed period is attributable to the actions or inaction of that enterprise.

## Article 10

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 dividends are beneficially owned by a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
3. Notwithstanding the provisions of paragraph 2 of this Article, 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 either:
  - (a) 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) is a pension fund or pension scheme, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund or pension scheme.
4. The provisions of paragraphs 2 and 3 of this Article 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 3 of this Article 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 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 payer is a resident.
7. The provisions of paragraphs 1, 2 and 3 of this Article 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 of this Convention shall apply.
8. Where a company which is a resident of a Contracting State derives income, profits or gains 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 income, profits or gains 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 stock or other similar interest if such preferred stock or other similar interest 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 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;

held equivalent preferred stock or other similar interest in the first-mentioned resident.

10. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.]

## Article 11

1. Interest 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. Notwithstanding the provisions of paragraph 1 of this Article, interest arising in a Contracting State that is determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person, or any other interest similar to such interest arising in a Contracting State, may 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. 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. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article. Income dealt with in Article 10 of this Convention shall not be regarded as interest for the purposes of this Convention.

4. The provisions of paragraphs 1 and 2 of this Article 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 of this Convention shall apply.

5. 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 exceeds, for whatever reason, 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.

6. A resident of a Contracting State shall not be considered the beneficial owner of interest 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 the 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;

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

7. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.]

## Article 12

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 of this Article 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 of this Convention 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 paid exceeds, for whatever reason, 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 in respect of the use of intangible property if such royalties would not have been paid to the resident unless the resident pays royalties in respect of the same intangible 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.

6. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right or property in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.]

### Article 13

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 of this Convention 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 an interest in a partnership or trust may be taxed in the other Contracting State where the shares or the interest derive at least 50 per cent of their value directly or indirectly from immovable property referred to in Article 6 of this Convention 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 7 of Article 22 of this Convention and the resident and persons related or connected to that resident hold or own in the aggregate 5 per cent or less of that class of the shares or the interest.

3. Where

(a) 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

(b) 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.

4. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, 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 an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise 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.

#### **Article 14**

1. Subject to the provisions of Articles 15, 17 and 18 of this Convention, 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 of this Article, 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 or year of assessment concerned;
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
  - (c) the remuneration is not borne by a permanent establishment which the employer has in the 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 and other similar 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**

1. Notwithstanding the provisions of Articles 7 and 14 of this Convention, income derived by 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 sportsman, 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 entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

## **Article 17**

Subject to the provisions of paragraph 2 of Article 18 of this Convention, pensions and other similar remuneration beneficially owned by a resident of a Contracting State shall be taxable only in that Contracting State.

## **Article 18**

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 thereof, 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 of this Article, 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 a political subdivision or local authority thereof 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 of this Convention 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**

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 arise from sources outside that 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**

Notwithstanding any other provisions of this Convention, any income, profits or gains derived by a sleeping partner in respect of a sleeping partnership (Tokumei Kumiai) contract or other similar contract may be taxed in the Contracting State in which such income, profits or gains arise, and according to the laws of that Contracting State.

#### **Article 21**

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, which are not dealt with in the foregoing Articles of this Convention (hereinafter referred to as "other income"), other than income paid out of trusts or the estates of deceased persons in the course of administration, shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 of this Convention, if the beneficial owner of such 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 income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of the Convention shall apply.
3. Where, by reason of a special relationship between the resident referred to in paragraph 1 of this Article and the payer, or between both of them and some other person, the amount of other income exceeds the amount (if any) 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 applicable provisions of this Convention.
4. A resident of a Contracting State shall not be considered the beneficial owner of other income in respect of the right or property if such other income would not have been paid to the resident unless the resident pays 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.

5. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right or property in respect of which the other income is paid to take advantage of this Article by means of that creation or assignment.]

## Article 22

1. Except as otherwise provided in this Article, a resident of a Contracting State that derives income, profits or gains described in paragraph 3 of Article 10 or paragraph 1 of Article 11; or in Articles 12, 13 or 21 of this Convention from the other Contracting State shall be entitled to the benefits granted for a taxable year or chargeable period by the provisions of those paragraphs or Articles only if such resident is a qualified person as defined in paragraph 2 of this Article 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 or chargeable period only if such resident is either:

(a) an individual;

(b) a qualified governmental entity;

(c) a company if the principal class of its shares is listed, registered or admitted to dealings on a recognised stock exchange specified in clause (i) or (ii) of subparagraph (c) of paragraph 7 of this Article and is regularly traded on one or more recognised stock exchanges;

(d) a person other than an individual or a company if the principal class of units in that person is listed, registered or admitted to dealings on a recognised stock exchange specified in clause (i) or (ii) of subparagraph (c) of paragraph 7 of this Article and is regularly traded on one or more recognised stock exchanges;

(e) a person described in subparagraph (b) or (c) of paragraph 1 of Article 4 of this Convention, provided that in the case of a person described in subparagraph (b) of that paragraph as of the end of the prior taxable year or chargeable period more than 50 per cent of the person's beneficiaries, members or participants are individuals who are residents of either Contracting State;

(f) a person other than an individual if residents of either Contracting State that are qualified persons by reason of subparagraphs (a), (b), (c), (d) or (e) 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; or

- (g) a trust or trustee of a trust in their capacity as such if at least 50 per cent of the beneficial interests in the trust is held, directly or indirectly, by persons who are either:
  - (i) qualified persons by reason of subparagraphs (a), (b), (c), (d) or (e) of this paragraph; or
  - (ii) equivalent beneficiaries as defined in clause (i) of subparagraph (e) of paragraph 7 of this Article.

3. Notwithstanding that a company that is a resident of a Contracting State may not be a qualified person, it shall be entitled to the benefits otherwise accorded to residents of a Contracting State by the provisions of paragraph 3 of Article 10 or paragraph 1 of Article 11; or of Articles 12, 13 or 21 of the Convention with respect to an item of income, profit or gain described in those paragraphs or Articles derived from the other Contracting State if it 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 the company are owned, directly or indirectly, by seven or fewer persons who are equivalent beneficiaries.

4. Where the provisions of subparagraphs (f) or (g) of paragraph 2 or the provisions of paragraph 3 of this Article 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 the relevant subparagraph or paragraph for the taxable year or chargeable period in which the payment is made if such resident satisfies those conditions during the twelve month period preceding the date of payment of an item of income, profit or gain (or, in the case of dividends, the date on which entitlement to the dividends is determined);
- (b) for all other cases, a resident of a Contracting State shall be considered to satisfy the conditions described in subparagraphs (f) or (g) of paragraph 2 or in paragraph 3 of this Article for the taxable year or chargeable period in which the payment is made if such resident satisfies those conditions on at least half the days of the taxable year or chargeable period.

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 or paragraph 1 of Article 11; or of Articles 12, 13 or 21 of this Convention with respect to an item of income, profit or gain described in those paragraphs or Articles derived from the other Contracting State if the 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 dealer), the income, profits or gains derived from the other Contracting State is derived in connection with, or is incidental to, that business and 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, profit or gain from a business carried on by that resident in the other Contracting State or derives an item of income, profit or gain arising in the other Contracting State from a person that has with the resident a relationship described in subparagraph (a) or (b) of paragraph 1 of Article 9 of this Convention, the conditions described in subparagraph (a) of this paragraph shall be considered to be satisfied with respect to such item of income, profit or gain 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 purpose of this paragraph will be determined on the basis of all the facts and circumstances.

(c) In determining whether a person is carrying on business in a Contracting State under subparagraph (a) of this paragraph, 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 possesses 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 another person possesses, 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 resident of a Contracting State that is neither a qualified person nor entitled under paragraph 3 or 5 of this Article to the benefits granted by the provisions of paragraph 3 of Article 10 or paragraph 1 of Article 11; or of Articles 12, 13 or 21 of this Convention with respect to an item of income, profit or gain 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 domestic law 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.

7. For the purposes of this Article:

- (a) the term “qualified governmental entity” means the Government of a Contracting State, any political subdivision or local authority thereof, the Bank of Japan, the Bank of England or a person that is wholly owned, directly or indirectly, by the Government of a Contracting State or a political subdivision or local authority thereof;
- (b) the term “principal class of shares” means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power of the company. If no single class of ordinary or common shares represents the majority of the voting power of the company, the “principal class of shares” is that class or those classes that in the aggregate represent a majority of the voting power of the company;
- (c) the term “recognised stock exchange” means:

- (i) the London Stock Exchange and any other recognised investment exchange within the meaning of the Financial Services Act 1986 or, as the case may be, the Financial Services and Markets Act 2000;
  - (ii) any stock exchange established under the terms of the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
  - (iii) the Swiss Stock Exchange, the Irish Stock Exchange and the stock exchanges of Amsterdam, Brussels, Düsseldorf, Frankfurt, Hamburg, Johannesburg, Luxembourg, Madrid, Milan, New York, Paris, Singapore, Stockholm, Sydney, Toronto and Vienna and the NASDAQ System; and
  - (iv) any other stock exchange which the competent authorities agree to recognise for the purposes of this Article;
- (d) the term “units” includes shares and any other instrument, not being a debt-claim, granting an entitlement to share in the assets or income of, or receive a distribution from, the person. The term “principal class of units” means the class of units which represents the majority of the value of the person. If no single class of units represents the majority of the value of the person, the “principal class of units” is that class or those classes that in the aggregate represent the majority of the value of the person; and
- (e) an equivalent beneficiary is:
- (i) a resident of a state that has a convention for the avoidance of double taxation 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 limitation on benefits provisions (Tokuten Joko) in that convention or, where 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 of this Article (or for the purposes of subparagraph (g) of paragraph 2 of this Article, a provision corresponding to clause (i) of that subparagraph); and
    - (cc) with respect to an item of income, profit or gain referred to in paragraph 3 of Article 10 or paragraph 1 of Article 11; or in Articles 12, 13 or 21 of this Convention that resident would be entitled under that convention to a rate of tax with respect to the particular class of income, profit or gain 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 subparagraphs (a), (b), (c), (d) or (e) of paragraph 2 of this Article.



## Article 23

1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom or, as the case may be, regarding the exemption from United Kingdom tax of a dividend arising in a territory outside the United Kingdom or of the profits of a permanent establishment situated in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Japanese tax payable under the laws of Japan and in accordance with this Convention, whether directly or by deduction, on income, profits or chargeable gains from sources within Japan (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same income, profits or chargeable gains by reference to which the Japanese tax is computed;
- (b) a dividend which is paid by a company which is a resident of Japan to a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax, when the conditions for exemption under the law of the United Kingdom are met;
- (c) the profits of a permanent establishment in Japan of a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax when the exemption is applicable under the law of the United Kingdom and the conditions for exemption under the law of the United Kingdom are met;
- (d) in the case of a dividend not exempted from tax under subparagraph (b) of this paragraph which is paid by a company which is a resident of Japan to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit mentioned in subparagraph (a) of this paragraph shall also take into account the Japanese tax payable by the company in respect of its profits out of which such dividend is paid.

2. Subject to the provisions of the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, where a resident of Japan derives income from the United Kingdom which may be taxed in the United Kingdom in accordance with the provisions of this Convention, the amount of the United Kingdom 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 the amount of the Japanese tax which is appropriate to that income.

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

## Article 24

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.
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. The provisions of this paragraph 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, paragraphs 9 or 10 of Article 10, paragraphs 5, 6 or 7 of Article 11, paragraphs 4, 5 or 6 of Article 12, or paragraphs 3, 4 or 5 of Article 21 of this Convention apply, dividends, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, 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.

## Article 25

1. **[The first sentence of paragraph 1 of Article 25 of this Convention is REPLACED by paragraph 1 of Article 16 of the MLI]** [Where a resident of a Contracting State 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 24 of the Convention, 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 or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

*The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 25 of this Convention:<sup>1</sup>*

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<sup>1</sup> In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 January 2019, except for cases that were not eligible to be

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. **[SUPERSEDED by the second sentence of paragraph 2 of Article 16 of the MLI]** [Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States, except such limitations as apply for the purposes of giving effect to such an agreement.]

*The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Convention:<sup>2</sup>*

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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. 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 for the purposes of reaching an agreement in the sense of the preceding paragraphs of this Article.
5. Where,
- (a) under paragraph 1 of this Article, 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 of this Article 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.

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presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

<sup>2</sup> In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting Jurisdiction on or after 1 January 2019, except for cases that were not eligible to be presented as of that date under this Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

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.

6. The provisions of paragraph 5 of this Article shall not apply to cases falling within paragraph 3 of Article 4 of this Convention.

## **Article 26**

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 law 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 of the Convention.

2. Any information received under paragraph 1 of this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law 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 of this Article, 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both Contracting States and the competent authority of the other Contracting State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 of this Article 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.

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 of this Article 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 of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank or other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. However, 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.

### **Article 26A**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2 of this Convention.

2. The term “revenue claim” as used in this Article means an amount owed in respect of the taxes covered by Article 2 of this Convention which are imposed on behalf of the Contracting States, and in respect of the following taxes, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount:

(a) in the case of Japan:

- (i) the consumption tax;
- (ii) the inheritance tax; and
- (iii) the gift tax;

(b) in the case of the United Kingdom:

- (i) the value added tax; and
- (ii) the inheritance tax;

(c) any other tax agreed upon between the Governments of the Contracting States through an exchange of diplomatic notes.

3. When a revenue claim of a Contracting State is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, that revenue claim shall, at the request of the competent authority of that Contracting State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other Contracting State in accordance with the provisions

of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other Contracting State that met the conditions allowing that other Contracting State to make a request under this paragraph.

4. When a revenue claim of a Contracting State is a claim in respect of which that Contracting State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that Contracting State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other Contracting State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other Contracting State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Contracting State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4 of this Article, a revenue claim accepted by the competent authority of a Contracting State for purposes of paragraph 3 or 4 of this Article shall not, in that Contracting State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Contracting State by reason of its nature as such. In addition, a revenue claim accepted by the competent authority of a Contracting State for the purposes of paragraph 3 or 4 of this Article shall not, in that Contracting State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Notwithstanding the provisions of paragraph 5 of this Article, acts carried out by a Contracting State in the collection of a revenue claim accepted by the competent authority of that Contracting State for purposes of paragraph 3 or 4 of this Article, which, if they were carried out by the other Contracting State, would have the effect of suspending or interrupting the time limits applicable to the revenue claim according to the laws of that other Contracting State, shall have such effect under the laws of that other Contracting State. The first-mentioned Contracting State shall inform the other Contracting State about such acts.

7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

8. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 of this Article and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned Contracting State, the relevant revenue claim ceases to be

(a) in the case of a request under paragraph 3 of this Article, a revenue claim of the first-mentioned Contracting State that is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, or

(b) in the case of a request under paragraph 4 of this Article, a revenue claim of the first-mentioned Contracting State in respect of which that Contracting State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned Contracting State shall promptly notify the competent authority of the other Contracting State of that fact and, at the option of the other Contracting State, the first-mentioned Contracting State shall either suspend or withdraw its request.

9. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy;
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that Contracting State is clearly disproportionate to the benefit to be derived by the other Contracting State;
- (e) to provide assistance if that Contracting State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

10. Before assistance is lent under the provisions of this Article, the competent authorities of both Contracting States shall agree upon the mode of application of this Article, including an agreement to ensure comparable levels of assistance to each of the Contracting States. In particular, the competent authorities of both Contracting States shall agree on a limit to the number of applications for assistance that a Contracting State may make in a particular year, as well as a minimum monetary threshold for a revenue claim for which assistance is sought, and procedural rules related to the remittance of amounts collected pursuant to the provisions of this Article.

#### **Article 27**

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.

*The following paragraph 1 of Article 7 of the MLI replaces paragraph 10 of Article 10, paragraph 7 of Article 11, paragraph 6 of Article 12 and paragraph 5 of Article 21 of the Convention:*

#### ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

Notwithstanding any provisions of [*this Convention*], a benefit under [*this 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 [*this Convention*].

## Article 28

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 United Kingdom:
    - (i) with respect to taxes withheld at source, to income derived on or after 1st January in the calendar year next following that in which the Convention enters into force;
    - (ii) subject to clause (i) of subparagraph (a) of this paragraph, with respect to income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Convention enters into force; and
    - (iii) with respect to corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Convention enters into force; and
  - (b) in Japan:
    - (i) with respect to taxes withheld at source, for amounts taxable on or after 1st January in the calendar year next following that in which the Convention enters into force; and
    - (ii) with respect to taxes on income which are not withheld at source and the enterprise tax, as regards income for any taxable year beginning on or after 1st January in the calendar year next following that in which the Convention enters into force.
3. The Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Tokyo on 10th February 1969 as amended by the Protocol signed at Tokyo on 14th February 1980 (“the prior Convention”) shall cease to be effective from the date upon which this Convention has effect in respect of the taxes to which the Convention applies in accordance with the provisions of paragraph 2 of this Article.
4. In respect of the development land tax and the petroleum revenue tax to which the prior Convention applies, the prior Convention shall cease to be effective from the date upon which this Convention enters into force.
5. The prior Convention shall terminate on the last date on which it has effect in accordance with



this Article.

6. Notwithstanding the entry into force of this Convention, an individual who is entitled to the benefits of Article 22 of the prior Convention at the time of the entry into force of this Convention shall continue to be entitled to such benefits until such time as he would have ceased to be entitled to such benefits if the prior Convention had remained in force.

### **Article 29**

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 United Kingdom:

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

(ii) subject to clause (i) of subparagraph (a) of this paragraph, with respect to income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given; and

(iii) with respect to corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given; and

(b) in Japan:

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

(ii) with respect to taxes on income which are not withheld at source and the enterprise tax, as regards income for any taxable year beginning on or after 1st 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 in duplicate at London, this second day of February, 2006, in the Japanese and English languages, each text being equally authoritative.

For the United Kingdom of  
Great Britain and  
Northern Ireland:

For Japan:

Dawn Primarolo

Y Nogami

## Protocol

At the signing of the Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains (hereinafter referred to as “the Convention”), the United Kingdom of Great Britain and Northern Ireland and Japan have agreed upon the following provisions, which shall form an integral part of the Convention.

1. With reference to subparagraph (m) of paragraph 1 of Article 3 of the Convention:

A pension fund or pension scheme 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 (as they may be amended from time to time without changing the general principle hereof).

2. With reference to Article 7 of the Convention:

Where a resident of the United Kingdom is a member of a partnership established under the laws of Japan, nothing in the Convention shall prevent the United Kingdom from taxing that resident on his share of any income, profits or gains of that partnership.

3. With reference to paragraph 1 of Article 14 of the Convention:

It is understood that the benefits, income or gains enjoyed by employees under share or stock option plans relating to the period between grant and exercise of an option are regarded as “other similar remuneration” for the purposes of that Article.

It is further understood that where an employee:

- (a) has been granted a share or stock option in the course of an employment;
- (b) has exercised that employment in both Contracting States during the period between grant and exercise of the option;
- (c) remains in that employment at the date of the exercise; and
- (d) under the domestic law of the Contracting States, would be taxable in both Contracting States in respect of such benefits, income or gains;

then, in order to avoid double taxation, the Contracting State of which, at the time of the exercise of the option, the employee is not a resident may tax only that proportion of such benefits, income or gains which relates to the period or periods between grant and exercise of the option during which the individual has exercised the employment in that Contracting State. With the aim of ensuring that no unrelieved double taxation arises, the competent authorities of the Contracting States shall endeavour to resolve by mutual agreement under Article 25 of the Convention any difficulties or doubts arising as to the interpretation or application of Articles 14 and 23 of the Convention in relation to such share or stock option plans.

4. With reference to subparagraph (e) of paragraph 7 of Article 22 of the Convention:

It is understood that for the purpose of applying paragraph 3 of Article 10 of the Convention, in order to determine whether a person, owning shares, directly or indirectly, in the company claiming the benefits of the Convention, is an equivalent beneficiary, such person shall be deemed to hold the same voting power in the company paying the dividends as the company claiming the benefits holds in such company.

5. With reference to paragraph 5 of Article 25 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 25 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) The competent authority of each Contracting State shall appoint one arbitrator who may be a national of that Contracting State. The two arbitrators appointed by the competent authorities shall appoint the third arbitrator who will serve as the chair of the arbitration panel in accordance with the procedures agreed by the competent authorities.

(iii) No arbitrator shall be an employee of the tax authority of either Contracting State, nor have dealt with the case presented pursuant to paragraph 1 of Article 25 of the Convention in any capacity. The third arbitrator shall not be a national of either Contracting State, nor have had his usual place of residence in either Contracting State, nor have been employed by either Contracting State.

(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 26 of the Convention and under the applicable domestic laws of the Contracting States.

(v) Each competent authority shall bear the costs of its appointed arbitrator and its own expenses. The costs 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 25 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 reached an agreement on all the unresolved issues submitted to the arbitration, the case shall be considered as resolved pursuant to paragraph 2 of Article 25 of the Convention and no arbitration decision shall be provided.

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

DONE in duplicate at London this second Day of February, 2006, in the Japanese and English languages, each text being equally authoritative.

For the United Kingdom of  
Great Britain and  
Northern Ireland:

Dawn Primarolo

For Japan:

Y Nogami

## Exchange of Notes

Embassy of Japan  
London  
2 February 2006

Excellency:

I have the honour to refer to the Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which was signed today (hereinafter referred to as “the Convention”) and to the Protocol also signed today which forms an integral part of the Convention, and to make, on behalf of the Government of Japan, the following proposals:

1. With reference to subparagraph (m) of paragraph 1 of Article 3 of the Convention:

It is understood that the term “pension fund or pension scheme” includes the following and any identical or substantially similar funds or schemes which are established pursuant to legislation introduced after the date of signature of the Convention:

(a) funds or schemes established as the pension or retirement benefits systems implemented under the following laws in Japan:

- (i) National Pension Law (Law No.141 of 1959);
- (ii) Employees’ Pension Insurance Law (Law No.115 of 1954);
- (iii) The Law Concerning Mutual Aid Association for National Public Officials (Law No.128 of 1958);
- (iv) The Law Concerning Mutual Aid Association for Local Public Officials and Personnel of Similar Status (Law No.152 of 1962);
- (v) The Law Concerning Mutual Aid for Private School Personnel (Law No.245 of 1953);
- (vi) Coal-Mining Pension Fund Law (Law No.135 of 1967);
- (vii) Defined-Benefit Corporate Pension Law (Law No. 50 of 2001);
- (viii) Defined-Contribution Pension Law (Law No. 88 of 2001);
- (ix) Farmers’ Pension Fund Law (Law No.127 of 2002);
- (x) Corporate Tax Law (Law No. 34 of 1965);
- (xi) Small and Medium Enterprises Retirement Allowance Mutual Aid Law (Law No.160 of 1959);
- (xii) Small Enterprise Mutual Relief Projects Law (Law No.102 of 1965); and
- (xiii) Cabinet Order of Income Tax Law (Cabinet Order No. 96 of 1965); and

(b) under the laws of the United Kingdom, employment related arrangements (other than a social security scheme) approved as retirement benefit schemes for the purpose of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988, personal pension schemes approved under Chapter IV of Part XIV of that Act and schemes approved under Part 4 of the Finance Act 2004.

It is further understood that the term “pension fund or pension scheme” includes, in the case of Japan, investment funds or trusts where all of the interest of the funds or trusts are held by pension funds or pension schemes, and in the case of the United Kingdom, pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension funds or

pension schemes.

2. With reference to paragraph 3 of Article 10 of the Convention:

It is understood that, in the case of Japan, the date on which entitlement to the dividends is determined is the end of the accounting period for which the distribution of profits takes place.

3. With reference to Articles 10, 11 and 12 of the Convention:

It is understood that trustees or managers of investment funds established in a Contracting State may submit a claim relating to the benefits afforded by the provisions of those Articles. The admission of any claim in whole or in part by the other Contracting State may be made subject to such conditions as that other Contracting State thinks proper to impose. The competent authorities may consult with a view to resolving difficulties which occur if such conditions are imposed. Investment funds include, in the case of Japan, an investment trust as defined in paragraphs 3 and 22 of Article 2 of the Investment Trust and Investment Corporation Law (Law No.198 of 1951), a loan trust as defined in paragraph 1 of Article 2 of the Loan Trust Law (Law No.195 of 1952), a jointly operated trust as defined in subparagraph 11 of paragraph 1 of Article 2 of the Income Tax Law (Law No.33 of 1965) and a Special Purpose Trust as defined in paragraph 13 of Article 2 of the Liquidation of Assets Law (Law No.105 of 1998).

4. With reference to paragraph 5 of Article 11 and paragraph 4 of Article 12 of the Convention:

It is understood that these paragraphs do not, of themselves, permit Contracting States to recharacterise interest or royalties as a different type of income.

5. With reference to Article 19 of the Convention:

It is understood that a payment will be considered to arise from sources outside a Contracting State if the payer is located outside that Contracting State. It is further understood that, where appropriate, substance prevails over form in determining the identity of the payer.

6. It is understood that the provisions of the laws of each Contracting State referred to in this note include those as may be amended from time to time without changing the general principle hereof.

If the foregoing understanding is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to suggest that the present note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the Convention.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Mr Yoshiji Nogami  
The Japanese Ambassador  
to the Court of St. James  
London

London  
2 February 2006

Excellency:

I have the honour to acknowledge receipt of Your Excellency's Note of today's date which in translation reads as follows:

"I have the honour to refer to the Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains which was signed today (hereinafter referred to as "the Convention") and to the Protocol also signed today which forms an integral part of the Convention, and to make, on behalf of the Government of Japan, the following proposals:

1. With reference to subparagraph (m) of paragraph 1 of Article 3 of the Convention:

It is understood that the term "pension fund or pension scheme" includes the following and any identical or substantially similar funds or schemes which are established pursuant to legislation introduced after the date of signature of the Convention:

(a) funds or schemes established as the pension or retirement benefits systems implemented under the following laws in Japan:

- (i) National Pension Law (Law No.141 of 1959);
- (ii) Employees' Pension Insurance Law (Law No.115 of 1954);
- (iii) The Law Concerning Mutual Aid Association for National Public Officials (Law No.128 of 1958);
- (iv) The Law Concerning Mutual Aid Association for Local Public Officials and Personnel of Similar Status (Law No.152 of 1962);
- (v) The Law Concerning Mutual Aid for Private School Personnel (Law No.245 of 1953);
- (vi) Coal-Mining Pension Fund Law (Law No.135 of 1967);
- (vii) Defined-Benefit Corporate Pension Law (Law No. 50 of 2001);
- (viii) Defined-Contribution Pension Law (Law No. 88 of 2001);
- (ix) Farmers' Pension Fund Law (Law No.127 of 2002);
- (x) Corporate Tax Law (Law No. 34 of 1965);
- (xi) Small and Medium Enterprises Retirement Allowance Mutual Aid Law (Law No.160 of 1959);
- (xii) Small Enterprise Mutual Relief Projects Law (Law No.102 of 1965); and
- (xiii) Cabinet Order of Income Tax Law (Cabinet Order No. 96 of 1965); and

(b) under the laws of the United Kingdom, employment related arrangements (other than a social security scheme) approved as retirement benefit schemes for the purpose of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988, personal pension schemes approved under Chapter IV of Part XIV of that Act and schemes approved under Part 4 of the Finance Act 2004.

It is further understood that the term "pension fund or pension scheme" includes, in the case of Japan, investment funds or trusts where all of the interest of the funds or trusts are held by pension funds or pension schemes, and in the case of the United Kingdom, pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension funds or pension schemes.



2. With reference to paragraph 3 of Article 10 of the Convention:

It is understood that, in the case of Japan, the date on which entitlement to the dividends is determined is the end of the accounting period for which the distribution of profits takes place.

3. With reference to Articles 10, 11 and 12 of the Convention:

It is understood that trustees or managers of investment funds established in a Contracting State may submit a claim relating to the benefits afforded by the provisions of those Articles. The admission of any claim in whole or in part by the other Contracting State may be made subject to such conditions as that other Contracting State thinks proper to impose. The competent authorities may consult with a view to resolving difficulties which occur if such conditions are imposed. Investment funds include, in the case of Japan, an investment trust as defined in paragraphs 3 and 22 of Article 2 of the Investment Trust and Investment Corporation Law (Law No.198 of 1951), a loan trust as defined in paragraph 1 of Article 2 of the Loan Trust Law (Law No.195 of 1952), a jointly operated trust as defined in subparagraph 11 of paragraph 1 of Article 2 of the Income Tax Law (Law No.33 of 1965) and a Special Purpose Trust as defined in paragraph 13 of Article 2 of the Liquidation of Assets Law (Law No.105 of 1998).

4. With reference to paragraph 5 of Article 11 and paragraph 4 of Article 12 of the Convention:

It is understood that these paragraphs do not, of themselves, permit Contracting States to recharacterise interest or royalties as a different type of income.

5. With reference to Article 19 of the Convention:

It is understood that a payment will be considered to arise from sources outside a Contracting State if the payer is located outside that Contracting State. It is further understood that, where appropriate, substance prevails over form in determining the identity of the payer.

6. It is understood that the provisions of the laws of each Contracting State referred to in this note include those as may be amended from time to time without changing the general principle hereof.

If the foregoing understanding is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to suggest that the present note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the Convention."

The foregoing proposal being acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention.

I take this opportunity to extend to Your Excellency the assurance of my highest consideration.

Dawn Primarolo  
London