

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

The Government of Japan and the Government of the State of Kuwait,

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

Have agreed as follows:

Article 1  
Persons Covered

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

Article 2  
Taxes Covered

1. This Convention shall apply to the following taxes:

(a) in the case of Japan:

- (1) the income tax;
- (2) the corporation tax; and
- (3) the local inhabitant taxes

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

(b) in the case of Kuwait:

- (1) the corporate income tax;
- (2) the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);
- (3) the contribution from the net profits of Kuwaiti shareholding companies payable to support the national budget;

- (4) the Zakat; and
- (5) the tax imposed to support national employees

(hereinafter referred to as "Kuwaiti tax").

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

### Article 3 General Definitions

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

- (a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
- (b) the term "Kuwait" means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Japan or Kuwait, as the context requires;
- (d) the term "tax" means Japanese tax or Kuwaiti 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" means:
  - (1) in the case of Japan, any individual possessing the nationality of Japan, any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created or organised under the laws of Japan; and
  - (2) in the case of Kuwait, any individual possessing the nationality of Kuwait and any legal person, partnership or association deriving its status as such from the laws in force in Kuwait;
- (k) the term "competent authority" means:
  - (1) in the case of Japan, the Minister of Finance or an authorised representative of the Minister of Finance; and
  - (2) in the case of Kuwait, the Minister of Finance or an authorised representative of the Minister of Finance; and
- (l) the term "business" includes the performance of professional services and of other activities of an independent character.

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 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office or any other criterion of a similar nature, and also includes that Contracting State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

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

- (a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;

- (d) if his status cannot be determined under the provisions of subparagraphs (a) to (c), the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

4. Where, pursuant to any provisions of this Convention, a Contracting State reduces the rate of tax on, or exempts from tax, income of a resident of the other Contracting State and under the laws in force in that other Contracting State the resident is subjected to tax by that other Contracting State only on that part of such income which is remitted to or received in that other Contracting State, then the reduction or exemption shall apply only to so much of such income as is remitted to or received in that other Contracting State.

#### Article 5 Permanent Establishment

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

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

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise he will not be considered an agent of an independent status within the meaning of this paragraph.

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 Income from Immovable Property

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

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

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

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

Article 7  
Business Profits

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, and which would be deductible if the permanent establishment were an independent enterprise which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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

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

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

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

#### Article 8 International Traffic

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

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

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

#### Article 9 Associated Enterprises

1. Where

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

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

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

3. Notwithstanding the provisions of paragraph 1, a Contracting State shall not change the profits of an enterprise of that Contracting State in the circumstances referred to in that paragraph, if an examination of that enterprise is not initiated within seven years from the end of the taxable year in which the profits that would be subject to such change would, but for the conditions referred to in that paragraph, have accrued to that enterprise. The provisions of this paragraph shall not apply in the case of fraud or wilful default or if the inability to initiate an examination within the prescribed period is attributable to the actions or inaction of that enterprise.

#### Article 10 Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged

shall not exceed:

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

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The provisions of subparagraph (a) of paragraph 2 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.

4. 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 company making the distribution is a resident.

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

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

Article 11  
Interest

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

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

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

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

4. For the purposes of paragraph 3, the terms "the central bank" and "institution wholly owned by that Government" mean:

- (a) in the case of Japan:
  - (1) the Bank of Japan;
  - (2) the Japan Finance Corporation;
  - (3) the Japan International Cooperation Agency;  
and
  - (4) the Nippon Export and Investment Insurance;
- (b) in the case of Kuwait:
  - (1) the Central Bank of Kuwait;

- (2) Kuwait Investment Authority;
  - (3) Kuwait Petroleum Corporation;
  - (4) the Public Institution for Social Security;  
and
  - (5) Kuwait Fund for Arab Economic Development;  
and
- (c) such other similar institution the capital of which is wholly owned by the Government of a Contracting State as based upon the exchange of diplomatic notes between the Governments of the Contracting States.

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

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

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

## Article 12 Royalties

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

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

3. 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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

### Article 13 Capital Gains

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

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

3. (a) Where

- (1) substantial financial assistance to a financial institution that is a resident of a Contracting State is provided by the Government of that Contracting State pursuant to the laws concerning failure resolution involving imminent insolvency of financial institutions of that Contracting State, and
- (2) a resident of the other Contracting State acquires shares in the financial institution from the Government of the first-mentioned Contracting State,

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

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

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

5. Gains derived by 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  
Income from Employment

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

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

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable year concerned;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in that other Contracting State.

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

Article 15  
Directors' Fees

Directors' fees and other 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  
Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by an individual who is a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a 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 individual in his capacity as an entertainer or a sportsman accrues not to the individual himself but to another person who is a resident of the other Contracting State, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the individual are exercised.

Article 17  
Pensions

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

Article 18  
Government Service

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

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

- (1) is a national of that other Contracting State; or
- (2) did not become a resident of that other Contracting State solely for the purpose of

- rendering the services.
2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds to which contributions are made or created by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State or political subdivision or local authority shall be taxable only in that Contracting State.
- (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

#### Article 19 Students

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

#### Article 20 Sleeping Partnership

Notwithstanding any other provisions of this Convention, any income and 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 and gains arise and according to the laws of that Contracting State.

Article 21  
Other Income

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, other income beneficially owned by a resident of a Contracting State and arising in the other Contracting State may also be taxed in that other Contracting State.

Article 22  
Elimination of Double Taxation

1. 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 Kuwait which may be taxed in Kuwait in accordance with the provisions of this Convention, the amount of Kuwaiti tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

2. In the case of Kuwait:

- (a) Where a resident of Kuwait derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in both Kuwait and Japan, Kuwait shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Japan and as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Japan.

- (b) Such deduction in either case shall not, however, exceed that part of the tax on income or on capital, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Japan.

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

#### Article 23 Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is 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. The provisions of this paragraph shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. 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, paragraph 8 of Article 11 or paragraph 6 of Article 12 apply, 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.

5. In this Article, the term "taxation" means taxes which are the subject of this Convention.

#### Article 24 Mutual Agreement Procedure

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

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

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

Article 25  
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic 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.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic 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, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

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

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

#### Article 26 Miscellaneous Rules

The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded either:

- (a) by the laws of a Contracting State in the determination of the tax imposed by that Contracting State; or
- (b) by any other bilateral agreement between the Contracting States or any multilateral agreement to which the Contracting States are parties.

#### Article 27 Members of Diplomatic Missions and Consular Posts

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

#### Article 28 Headings

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

Article 29  
Entry into Force

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

2. This Convention shall be applicable:

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

Article 30  
Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention by giving written notice to the other Contracting State, through the diplomatic channel, 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) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;
- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and

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

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

DONE in two originals at Kuwait this seventeenth day of February, 2010, in the Japanese, Arabic and English languages, all the three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government  
of Japan:

Masatoshi Muto

For the Government  
of the State of Kuwait:

Khalifa M. Hamada

## Protocol

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

1. With reference to paragraph 1 of Article 4 of the Convention:

- (a) It is understood that the term "resident of a Contracting State" includes:
  - (1) a pension fund established under the laws of that Contracting State; and
  - (2) an organisation, an institution or an entity the capital of which is owned by that Contracting State (together with such capital owned by any other state or states other than that Contracting State), established under the laws of that Contracting State and operated for a religious, charitable, educational, scientific, artistic, cultural or public purpose.
- (b) It is further understood that, in the case of Kuwait, the term "resident of a Contracting State" includes:
  - (1) an individual who is a Kuwaiti national, provided that the individual has a substantial presence, permanent home or habitual abode in Kuwait and that his personal and economic relations are closer to Kuwait than to any state other than Kuwait; and
  - (2) a company which is incorporated in Kuwait and has its place of head or main office there.

2. With reference to paragraph 6 of Article 5 of the Convention, it is understood the fact that an enterprise of a Contracting State is acting in that Contracting State as a sole distributor of an enterprise of the other Contracting State or has an exclusive sales agreement with an enterprise of the other Contracting State shall not of itself constitute either enterprise a permanent establishment of the other.

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

4. With reference to Article 8 of the Convention, it is understood that 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.

5. With reference to paragraph 3 of Article 10 of the Convention, it is understood that a company referred to in that paragraph includes any entity which is established or created under the Act on Securitisation of Assets (Law No. 105 of 1998) or the Act on Securities Investment Trust and Securities Investment Corporations (Law No. 198 of 1951) of Japan, and which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in Japan in accordance with the taxation laws of Japan.

6. With reference to Article 11 of the Convention, notwithstanding the provisions of paragraph 2 of that Article, interest arising in Kuwait and beneficially owned by a pension fund established under the laws of Japan shall be taxable only in Japan.

7. With reference to paragraph 2 of Article 13 of the Convention, it is understood that the term "recognised stock exchange" means:

- (a) any stock exchange established by a Financial Instruments Exchange or an approved-type financial instruments firms association under the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
- (b) Kuwait Stock Exchange; and
- (c) any other stock exchange which the competent authorities of the Contracting States agree to recognise for the purposes of that paragraph.

8. With reference to paragraph 3 of Article 13 of the Convention, for the purposes of applying that paragraph, in the case of Japan, the term "the Government of that Contracting State" includes the Deposit Insurance Corporation of Japan.

9. Notwithstanding the provisions of paragraph 1 of Article 14 of the Convention, remuneration which an employee of an air carrier wholly owned by the government of a Contracting State who is or was immediately before visiting the other Contracting State a resident of the first-mentioned Contracting State receives in respect of services rendered to the air carrier in that other Contracting State shall not be taxed in that other Contracting State. The exemption provided by this paragraph shall apply to the employee only for a period not exceeding five years from the date on which he begins rendering services in that other Contracting State.

10. With reference to Article 22 of the Convention, it is understood that the implementation of the provisions of the laws of each Contracting State relevant to the application of that Article is not affected by the provisions of subparagraph (b)(4) of paragraph 1 of Article 2 of the Convention.

11. With reference to Article 23 of the Convention:

- (a) the provisions of that Article shall not be construed as obliging a Contracting State to grant to a resident of the other Contracting State the benefit of preference, privilege or any other treatment which shall be accorded to a resident of a state other than the Contracting States by virtue of the formation of a customs union or a free trade area or by virtue of any regional arrangement relating wholly or partly to taxation, to which the first-mentioned Contracting State is a party;

- (b) the provisions of paragraphs 2 and 4 of that Article will not be fully implemented by Kuwait until Kuwait or any political subdivision or local authority thereof establishes the taxation generally applicable to enterprises which are carrying on activities in Kuwait;
- (c) the taxation on a resident of Japan in respect of a permanent establishment which that resident has in Kuwait shall not be less favourably levied in Kuwait than the taxation levied on a resident of a state other than the Contracting States carrying on the same activities in respect of a permanent establishment in Kuwait; and
- (d) enterprises of Kuwait, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of Japan, shall not be subjected in Kuwait 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 the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of any state other than the Contracting States are or may be subjected.

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

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

DONE in two originals at Kuwait this seventeenth day of February, 2010, in the Japanese, Arabic and English languages, all the three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government  
of Japan:

Masatoshi Muto

For the Government  
of the State of Kuwait:

Khalifa M. Hamada