Protocol

At the signing of the Agreement between the Government of Japan and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Agreement"), the Government of Japan and the Government of the Hong Kong Special Administrative Region of the People's Republic of China have agreed upon the following provisions, which shall form an integral part of the Agreement.

1. With reference to subparagraph (d) of paragraph 1 of Article 3 of the Agreement, it is understood that the term "tax" shall not include any amount which represents a penalty or interest imposed under the laws of Japan or the Hong Kong Special Administrative Region relating to the taxes to which the Agreement applies.

2. With reference to subparagraph (e) of paragraph 1 of Article 3 of the Agreement, it is understood that the term "any other body of persons" includes a trust and a partnership.

3. With reference to clauses (iii) and (iv) of subparagraph (a) of paragraph 1 of Article 4 of the Agreement, it is understood that the term "a primary place of management and control" means a place where executive officers and senior management employees of a company or any other person make day-to-day key decisions for the strategic, financial and operational policies for the company or the person, and the staff of such company or person conduct the day-to-day activities necessary for making those decisions.

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

(a) any stock exchange established by the Stock Exchange of Hong Kong Limited;

(b) 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; and

(c) any other stock exchange which the competent authorities of the Contracting Parties agree to recognise for the purposes of that paragraph.

5. With reference to paragraph 1 of Article 17 of the Agreement, it is understood that the term "pensions and other similar remuneration" includes pensions and other similar remuneration paid in consideration of past employment or self-employment and social security pensions.

6. With reference to paragraph 5 of Article 24 of the Agreement:

(a) The competent authorities shall by mutual agreement establish a procedure which ensures that, except where actions or inaction of a person directly affected by the case hinder the resolution of the case or where the competent authorities and that person agree otherwise, an arbitration decision will be implemented within two years from a request for arbitration as referred to in paragraph 5 of Article 24 of the Agreement.

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

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

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

(iii) All arbitrators shall not be employees of the tax authorities of either of the Contracting Parties, nor shall they have previously dealt with the case presented pursuant to paragraph 1 of Article 24 of the Agreement in any capacity.