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

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

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

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

Article 13
CAPITAL GAINS

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

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

3. a) Where

(i) a Contracting State (including, for this purpose in the case of Japan, the Deposit Insurance Corporation of Japan) provides, pursuant to the laws of that Contracting State concerning failure resolution involving imminent insolvency of financial institutions, substantial financial assistance to a financial institution that is a resident of that Contracting State, and

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

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

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

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

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

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