Protocol

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

1. It is understood that:

(a) Except to the extent provided in subparagraph (b), the Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article 4 of the Convention).

(b) The provisions of subparagraph (a) shall not affect the benefits conferred by a Contracting State under the Convention in accordance with paragraphs 2 and 3 of Article 9, and Articles 18, 19, 24, 25, 26 and 29 of the Convention.

2. With reference to paragraphs 1 and 2 of Article 2 of the Convention:

The term "Japanese tax" or "New Zealand tax" shall not include any amount which represents a penalty or interest imposed under the laws of Japan or New Zealand, respectively, relating to the taxes to which the Convention applies.

3. With reference to paragraph 3 of Article 4 of the Convention:

It is understood that the term "any other relevant factors" includes:

(a) where the senior day-to-day management is carried on;

(b) which Contracting State's law governs the legal status;

(c) where the accounting records are held; and

(d) where business is carried on.

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

(a) It is understood that an enterprise of a Contracting State shall not be considered to operate equipment in the other Contracting State where the enterprise leases equipment under a lease contract that is solely for the provision of equipment, including a bareboat lease contract.

(b) It is understood that the factors of size, quantity or value of equipment or the role of equipment in income producing activities are relevant in determining whether the equipment is substantial on the basis of the facts and circumstances of each particular case.

(c) It is understood that the term "substantial equipment" may include oil or drilling rigs, platforms and other structures used in the petroleum or mining industry.

5. With reference to subparagraph (a) of paragraph 6 of Article 7 of the Convention:

It is understood that in the case of Japan the term "a trust which is treated as a company for tax purposes" means a trust, the trustee of which is subject to tax in respect of profits derived from business carried on by the use of trust estate.

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

It is understood that in determining, for the purposes of those Articles, whether dividends, interest or royalties are beneficially owned by a resident of New Zealand:

(a) dividends, interest or royalties arising in Japan in respect of which a trustee who is a resident of New Zealand is subject to tax in New Zealand; or

(b) dividends arising in Japan in respect of which a trustee who is a resident of New Zealand would be subject to tax in New Zealand but for an application of an exemption that applies generally to those dividends under the law of New Zealand,

shall be treated as being beneficially owned by that trustee.

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