4. Notwithstanding any provisions of the Convention, any income derived by a silent partner who is a resident of a Contracting State in respect of a silent partnership (Tokumei Kumiai) contract or another similar contract concluded under the laws of Japan or any contract similar to those contracts concluded under the laws of Ecuador which are introduced after the date of signature of the Convention may be taxed in the other Contracting State according to the laws of that other Contracting State, provided that such income arises in that other Contracting State and is deductible in computing the taxable income of the payer in that other Contracting State.

5. (a) Where:

(i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and

(ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits under the Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any provisions of the Convention.

(b) The provisions of subparagraph (a) shall not apply if the income derived from the other Contracting State described in that subparagraph emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

(c) If the benefits under the Convention are denied pursuant to the provisions of subparagraph (a) with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of subparagraphs (a) and (b) (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

6. It is understood that nothing in the Convention shall be construed so as to prevent a Contracting State from requiring a resident of either Contracting State to satisfy the procedural requirements for granting a benefit of the Convention provided for in the domestic law of the first-mentioned Contracting State.

7. It is understood that the headings of the Articles of the Convention are inserted for convenience of reference only and shall not affect the interpretation of the Convention.

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

DONE in duplicate at Quito this fifteenth day of January, 2019, in the Japanese, Spanish and English languages, all texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

For Japan:

首藤祐司

For the Republic of Ecuador:

José Valencia