PROTOCOL

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

1. With reference to paragraph 2 of Article 1 of the Convention:

The term "fiscally transparent" means situations where, under the tax law of a Contracting State, income or part thereof of an entity or arrangement is taxed not at the level of the entity or arrangement but at the level of the persons who have an interest in that entity or arrangement as if that income or part thereof were directly derived by such persons at the time when that income or part thereof is realised whether or not that income or part thereof is distributed by that entity or arrangement to such persons.

2. Notwithstanding any provisions of the Convention, any income derived by a resident of Ukraine in respect of contributions made pursuant to a silent partnership (Tokumei Kumiai) contract or another similar contract may be taxed in Japan according to the laws of Japan, provided that such income arises in Japan and is deductible in computing the taxable income of the payer in Japan.

3. With reference to paragraph 5 of Article 23 of the Convention:

(a) (i) Where the competent authority of a Contracting State has suspended the procedure for resolving a case by mutual agreement pursuant to paragraphs 1 and 2 of Article 23 of the Convention (hereinafter in this paragraph referred to as the "mutual agreement procedure") with respect to a case because a case with respect to one or more of the same issues is pending before a court or administrative tribunal, the period provided in subparagraph (b) of paragraph 5 of that Article shall stop running until the case pending before the court or administrative tribunal has been suspended or withdrawn.

(ii) Where a person who presented a case and the competent authority of a Contracting State have agreed to suspend the mutual agreement procedure, the period provided in subparagraph (b) of paragraph 5 of Article 23 of the Convention shall stop running until the suspension has been lifted.

(iii) Where the competent authorities of the Contracting States agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph (b) of paragraph 5 of Article 23 of the Convention, that period shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

(b) (i) The following rules shall govern the appointment of arbitrators:

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