

ADS holders if 60 days have passed, the depositary told us it wants to resign but a successor depositary has not been appointed and accepted its appointment.

After termination, the depositary and its agents will do the following under the deposit agreement but nothing else: collect distributions on the deposited securities, sell rights and other property, and deliver shares and other deposited securities upon cancellation of the ADSs. Four months after termination, the depositary may sell any remaining deposited securities by public or private sale. After that, the depositary will hold the money it received on the sale, as well as any other cash it is holding under the deposit agreement for the pro rata benefit of the ADS holders that have not surrendered their ADSs. It will not invest the money and has no liability for interest. The depositary's only obligation will be to account for the money and other cash. After termination, our only obligations will be to indemnify the depositary and to pay fees and expenses of the depositary that we agreed to pay.

#### **C. Material contracts**

For information regarding certain of our material contracts, see "Item 7.B. Major Shareholders and Related Party Transactions - Related Party Transactions." For a description of our stock option plans, see "Item 6.E. Directors, Senior Management and Employees - Share Ownership - Options to Purchase our Securities." For a description of our Amended 2012 Credit Agreement and our agreements relating to our long-term and short-term indebtedness, see Note 8, "Short-Term Borrowings, Other Financial Liabilities and Short-Term Borrowings from Related Parties" and Note 9, "Long-Term Debt and Capital Lease Obligations" of the Notes to Consolidated Financial Statements, included in this report.

#### **D. Exchange controls**

##### ***Exchange Controls and Other Limitations Affecting Security Holders.***

At the present time, Germany does not restrict the export or import of capital, except for certain restrictions on transactions based on international embargo or terror prevention resolutions concerning for example Iraq, the People's Republic of Korea, Russia, Sudan or Syria. However, the Federal Ministry of Economics and Energy (*Bundesministerium für Wirtschaft und Energie*) may - in exceptional cases - review and prohibit the direct or indirect acquisition of 25% or more of the shares or voting rights in a German company by a person or company with residency outside of the European Union or the European Free Trade Area if such acquisition constitutes a sufficiently serious threat to the public security or order. This provision is also applicable on other means of acquisition, e.g. asset deals, and mergers. Further, for statistical purposes only, every resident individual or corporation residing in Germany must report to the German Federal Bank (*Deutsche Bundesbank*), subject only to certain immaterial exceptions, any payment received from or made to an individual or a corporation resident outside of Germany if such payment exceeds €12,500 (or the corresponding amount in other currencies). In addition, residents must report (i) monthly any claims against, or any liabilities payable to, non-resident individuals or corporations, if such claims or liabilities, in the aggregate exceed €5 million at the end of any month and (ii) quarterly claims against, or liabilities payable to, non-residents arising under derivative financial instruments (*derivative Finanzinstrumente*) if the claims, or liabilities, under (i) exceed €500 million at the end of the quarter. Further, residents must report yearly the value (*Stand*) of the assets (*Vermögen*) of (i) non-resident companies in which either 10% or more of the shares or of the voting rights in a company are attributed to the resident, or more than 50% of the shares or of the voting rights are attributed to the resident and/or to one or more non-resident companies which are controlled by the resident and (ii) of the resident's non-resident branch offices and permanent establishments. Likewise, residents must report yearly the value of the assets of (i) resident companies in which either 10% or more of the shares or of the voting rights in a company are attributed to a non-resident, or more than 50% of the shares or the voting rights are attributed to a non-resident and/or to one or more resident companies which are controlled by a non-resident and (ii) of a non-resident's resident branch offices and permanent establishments.

There are no limitations imposed by German law or our Articles of Association (*Satzung*) on the right of a non-resident to hold our shares or the ADSs evidencing shares.

#### **E. Taxation**

##### **U.S. and German Tax Consequences of Holding ADSs**

The discussion below is intended only as a descriptive summary and does not purport to be a complete analysis of all potential German tax and U.S. federal income tax ("USFIT") tax consequences relating to

the ownership and disposition of ADSs of the Company. Each holder of ADSs should consult its own tax advisors with respect to the particular German and USFIT tax consequences of the ownership and disposition of ADSs in light of its particular circumstances, including the application of the German and USFIT tax considerations discussed below, as well as the application of state, local, foreign or other laws.

This summary is based on the current tax laws of Germany and the United States, including the current "Convention between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital and to Certain Other Taxes", as amended through the 2006 Protocol ("Protocol") to the conventions which entered into force on December 28, 2007 (the "Treaty"). The Protocol is effective in respect of withholding taxes for amounts paid on or after January 1, 2007. Changes related to other taxes on income became effective on January 1, 2008.

## **German Taxation**

### *Tax Treatment of Dividends*

German corporations are required to withhold tax on dividends paid to resident and non-resident shareholders at a rate of 25% (plus solidarity surcharge). The tax withholding obligation in general applies regardless of whether and, if so, to what extent the dividend is exempt from tax at the shareholder's level.

For non-resident shareholders the withholding tax rate of 25% may be reduced up to 0%, e.g. on the basis of a double tax treaty. For corporate non-German holders, forty percent (40%) of the withheld and remitted withholding tax may be refunded upon application at the German Federal Tax Office (at the address noted below), which would generally result in a net dividend tax of 15% (plus solidarity surcharge). The entitlement of corporate non-German holders to further reductions of the withholding tax under an applicable income tax treaty remains unaffected. A partial refund of this withholding tax can be obtained by U.S. holders under the Treaty (see discussion below). Foreign corporations will generally have to meet certain activity or substance criteria defined by applicable law in order to receive an exemption from or a (partial) refund of German dividend withholding tax.

### *Taxation of Capital Gains*

If the shares are not held as business assets of a domestic business, capital gains realized by non-German holder are only taxable in Germany if the disposing holder holds (or has held at any time in the last five years) 1% or more of the Company's stated capital. Under the Treaty, a U.S. Holder who is not a resident of Germany for German tax purposes will not be liable for German tax on capital gains realized or accrued on the sale or other disposition of ADSs unless the ADSs are part of the business property of a permanent establishment located in Germany or are part of the assets of a fixed base of an individual located in Germany and used for the performance of independent personal services.

### *Refund Procedures*

To claim a refund under the Treaty, the U.S. Holder must submit an application for refund to the German tax authorities, with the original bank voucher, or certified copy thereof issued by the paying entity documenting the tax withheld within four years from the end of the calendar year in which the dividend is received.

Claims for refund are made on a special German claim for refund form, which must be filed with the German Federal Tax Office: Bundeszentralamt für Steuern, An der Kuppe 1, D-53225 Bonn, Germany. The claim refund forms may be obtained from the German Federal Tax Office at the same address where the applications are filed, or from the Embassy of the Federal Republic of Germany, 4645 Reservoir Road, N.W., Washington, D.C. 20007-1998, or can be downloaded from the homepage of the Bundeszentralamt für Steuern ([www.bzst.de](http://www.bzst.de)).

U.S. Holders must also submit to the German tax authorities a certification (on IRS Form 6166) with respect to their last filed U.S. federal income tax return. Requests for IRS Form 6166 are made on IRS Form 8802, which requires payment of a user fee. IRS Form 8802 and its instructions can be obtained from the IRS website at [www.irs.gov](http://www.irs.gov).

## *Other German Taxes*

There are no German transfer, stamp or other similar taxes that would apply to U.S. holders who purchase or sell ADSs.

## **United States Taxation**

The following discussion describes the material USFIT consequences relating to the ownership and disposition of the ADSs by a U.S. Holder (as defined below) who holds ADSs as capital assets. The discussion below is intended only as a descriptive summary and does not purport to be a complete analysis of all of the potential U.S. tax consequences of holding ADSs of the Company. In particular, this discussion does not address all of the tax consequences that may be relevant to specific U.S. Holders in light of their particular circumstances or to U.S. Holders subject to special tax rules, such as insurance companies, regulated investment companies, real estate investment trusts, grantor trusts, traders that have elected the "mark-to-market" method of accounting, a U.S. expatriate within the meaning of Sections 877 or 877A of the Code, tax-exempt entities (including a private foundation, an "individual retirement account" or a Roth IRA), investors holding ADSs through partnerships or other fiscally transparent entities, investors liable for the alternative minimum tax, investors that hold ADSs as part of a straddle or a hedge, investors whose functional currency is not the U.S. dollar, and financial institutions and dealers in securities. U.S. Holders should consult their tax advisors regarding U.S. federal, state and local tax consequences of owning and disposing of ADSs.

This discussion is based on the Internal Revenue Code of 1986, as amended (the "Code"), Internal Revenue Service ("IRS") rulings and pronouncements, judicial decisions, and income tax treaties to which the U.S. is a party, all as now in effect and all of which are subject to change or differing interpretations, possibly with retroactive effect.

### *Ownership of ADSs in general*

For USFIT purposes, a holder of ADSs generally will be treated as the owner of the shares represented by such ADSs. The U.S. Treasury Department has expressed concern that depositories for ADSs, or other intermediaries between the holders of shares of an issuer and the issuer, may be taking actions that are inconsistent with the claiming of U.S. foreign tax credits by U.S. Holders of such receipts or shares. Accordingly, the analysis regarding the availability of a U.S. foreign tax credit for German taxes and sourcing rules described below could be affected by future actions that may be taken by the U.S. Treasury Department.

### *Tax Treatment of Dividends*

Subject to the discussion below under "Passive Foreign Investment Company Considerations," a U.S. Holder that receives a distribution with respect to ADSs generally will be required to include the U.S. dollar value of the gross amount of such distribution (before reduction for any German withholding taxes) in gross income as a dividend when actually or constructively received to the extent of the U.S. Holder's pro rata share of the Company's current and/or accumulated earnings and profits (as determined under U.S. federal income tax principles). To the extent a distribution received by a U.S. Holder is not a dividend because it exceeds the U.S. Holder's pro rata share of the Company's current and accumulated earnings and profits, the distribution will be treated first as a tax-free return of capital and reduce (but not below zero) the adjusted tax basis of the U.S. Holder's ADSs. To the extent the distribution exceeds the adjusted tax basis of the U.S. Holder's ADSs, the remainder will be taxed as capital gain.

With respect to non-corporate U.S. Holders, certain dividends received from a qualified foreign corporation will be subject to USFIT at a maximum rate of 20% (rather than the higher rates of tax generally applicable to items of ordinary income, the maximum of which is 39.6%), provided that the ADSs in respect of which such dividend is paid have been held for at least 61 days during the 121 day period beginning 60 days before the ex-dividend date and certain other requirements are met. Periods during which you hedge a position in our ADSs or related property may not count for purposes of the holding period test. The dividends would also not be eligible for the lower rate if you elect to take dividends into account as investment income for purposes of limitations on deductions for investment income. Provided (i) the ADSs of the Company are regularly tradable on the NYSE (or certain other stock exchanges) and/or the Company qualifies for benefits under the income tax treaty between the U.S. and Germany and (ii) the Company is not a passive foreign investment company (discussed below), the Company will be treated as a qualified foreign corporation for this purpose. This reduced rate will not be available in all

situations, and U.S. Holders should consult their tax advisors regarding the application of the relevant rules to their particular circumstances.

For U.S. federal income tax purposes, U.S. Holders are subject to tax on dividends paid by German corporations, which may qualify for a foreign tax credit for certain German income taxes paid. The amount of the refund of German withholding tax and the determination of the foreign tax credit allowable against USFIT depend on whether the U.S. Holder is a corporation owning at least 10% of the voting stock of the German corporation ("Corp U.S. Holder").

In the case of a Corp U.S. Holder, the aggregate German withholding tax rate of 26.375% (consisting of a 25% withholding tax and a 1.375% solidarity surcharge) is reduced under the Treaty to 5% of the gross amount of the dividend. Corp U.S. Holders may, therefore, apply for a refund of German withholding tax in the amount of 21.375% of the gross amount of the dividends. A Corp U.S. Holder will generally not be eligible for the "dividends-received deduction" under Section 243 of the Code with respect to such dividends.

In the case of any U.S. Holder other than a corporation owning at least 10% of the voting stock of the Company ("Other U.S. Holder"), the German withholding tax is partially refunded under the Treaty to reduce the withholding tax to 15% of the gross amount of the dividend. In this case, for each \$100 of gross dividend that we pay to an Other U.S. Holder, the dividend is subject to withholding tax of \$26.38, \$11.38 which is refunded, resulting in a net tax of \$15. For U.S. foreign tax credit purposes, the Other U.S. Holder would report dividend income of \$100 (to the extent paid out of current and accumulated earnings and profits) and foreign taxes paid of \$15, for purposes of calculating the foreign tax credit or the deduction for taxes paid.

Under the Treaty, the refund of German tax, including the withholding tax, Treaty payment and solidarity surcharge, will not be granted when the ADSs are part of the business property of a U.S. Holder's permanent establishment located in Germany or are part of the assets of an individual U.S. Holder's fixed base located in Germany and used for the performance of independent personal services. In this case, however, withholding tax and solidarity surcharge may be credited against German income tax liability.

Subject to certain complex limitations, any German tax withheld from distributions in accordance with the Treaty will be deductible or creditable against your U.S. federal income tax liability. Any dividends will constitute foreign source income for foreign tax credit limitation purposes. If the dividends are taxed as qualified dividend income (as discussed above), the amount of the dividend taken into account for purposes of calculating the foreign tax credit limitation will in general be limited to the gross amount of the dividend, multiplied by the reduced tax rate applicable to qualified dividend income and divided by the highest tax rate normally applicable to dividends. However, such foreign tax credit may be disallowed if the U.S. Holder held such ADSs or equity shares for less than a minimum period during which the U.S. Holder is not protected from risk of loss, or is obligated to make payments related to the dividends. The limitation on foreign taxes eligible for credit is calculated separately with respect to specific classes of income. For this purpose, any dividends distributed by us with respect to ADSs or equity shares will generally constitute "passive category income" but could, in the case of certain U.S. Holders, constitute "general category income." The rules relating to the determination of the foreign tax credit are complex and U.S. Holders should consult their tax advisors to determine whether and to what extent a credit would be available in their particular circumstances, including the effects of any applicable income tax treaties.

Dividends paid in euro to a U.S. Holder of ADSs will be included in the U.S. Holder's income in a dollar amount calculated by reference to the exchange rate in effect on the date the dividends are included in income by such U.S. holder, including the deemed refund of German withholding tax. If dividends paid in euro are converted into U.S. dollars on the date included in income, U.S. Holders generally should not be required to recognize foreign currency gain or loss in respect of the dividend income.

#### *Taxation of Capital Gains*

Subject to the discussion below under "Passive Foreign Investment Company Considerations", upon a sale, exchange, or other disposition of the ADSs, a U.S. Holder will generally recognize gain or loss for USFIT purposes in an amount equal to the difference between the amount realized and the U.S. Holder's tax basis in the ADSs. Such gain or loss will generally be capital gain or loss if the ADSs are held by the U.S. Holder as a capital asset, and will be long-term capital gain or loss if the U.S. Holder's holding period for the ADSs exceeds one year. Individual U.S. Holders are generally taxed at a maximum 20% rate on net

long-term capital gains. The deductibility of capital losses is subject to limitations. Any such gain or loss that you recognize generally will be treated as U.S. source income or loss for foreign tax credit limitation purposes. You should consult your own tax advisor regarding the availability of a foreign tax credit or deduction in respect of any German tax imposed on a sale or other disposition of ADSs.

*Taxation of foreign currency gains upon refund of German withholding taxes.*

U.S. Holders of ADSs who receive a refund attributable to reduced withholding taxes under the Treaty may be required to recognize foreign currency gain or loss, which will be treated as ordinary income or loss, to the extent that the dollar value of the refund on the date it is received by the U.S. Holders differs from the dollar equivalent of the refund on the date the dividend on which such withholding taxes were imposed was received by the depositary or the U.S. Holder, as the case may be.

*Passive Foreign Investment Company Considerations*

Special adverse USFIT rules apply to U.S. Holders owning shares of a Passive Foreign Investment Company ("PFIC"). In general, if you are a U.S. Holder, we will be a PFIC with respect to you if for any taxable year in which you held our ADSs or shares: (i) at least 75% of our gross income for the taxable year is passive income or (ii) at least 50% of the value, determined on the basis of a quarterly average, of our assets is attributable to assets that produce or are held for the production of passive income. The determination of whether we are a PFIC will be made annually. Accordingly, it is possible that we may become a PFIC in the current or any future taxable year due to changes in our asset or income composition.

Passive income generally includes dividends, interest, royalties, rents (other than certain rents and royalties derived in the active conduct of a trade or business), annuities and gains from the disposition of assets that produce passive income. Any cash we hold, including the cash raised in this offering, generally will be treated as held for the production of passive income for the purpose of the PFIC test, and any income generated from cash or other liquid assets generally will be treated as passive income for such purpose. If a non-U.S. corporation owns at least 25% by value of the shares of another corporation, the non-U.S. corporation is treated for purposes of the PFIC tests as owning its proportionate share of the assets of the other corporation, and as receiving directly its proportionate share of the other corporation's income.

Although we do not believe that we are currently a PFIC, the determination of PFIC status is highly factual and based on technical rules that are difficult to apply. Accordingly, there can be no assurances that we will not be a PFIC for the current year or any future taxable year. U.S. Holders should consult their own tax advisors regarding the application of the PFIC rules to their investment in our ADSs.

*Tax on Net Investment Income and Certain Reporting Obligations*

In addition to regular USFIT, certain U.S. Holders that are individuals, estates, or trusts are subject to a 3.8% tax on all or a portion of their "net investment income," which may include all or a portion of their dividend income and net gain from the sale, exchange or other disposition of their ADSs.

Individuals who are U.S. Holders, and who hold "specified foreign financial assets" (as defined in section 6038D of the Code), including debt or ordinary shares of a non-U.S. corporation that are held for investment and not held in an account maintained by a U.S. "financial institution" (as defined in section 6038D of the Code), whose aggregate value exceeds US\$50,000 during the tax year, may be required to attach to their tax returns for the year certain specified information. An individual who fails to timely furnish the required information may be subject to a penalty. Additionally, in the event a U.S. Holder does not file the required information, the statute of limitations may not close before such information is filed. Under certain circumstances, an entity may be treated as an individual for purposes of the foregoing rules.

*United States Information Reporting and Backup Withholding*

Dividends paid on, and proceeds on a sale or other dispositions of, ADSs paid to a U.S. Holder within the United States or through U.S.-related financial intermediaries are subject to information reporting and may be subject to backup withholding at a current rate of 28% unless you (1) are a corporation or other exempt recipient or (2) provide a taxpayer identification number and certify (on IRS Form W-9) that no loss of exemption from backup withholding has occurred.

Backup withholding tax is not an additional tax, and any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a U.S. Holder's U.S. federal income tax liability, provided the required information is furnished to the IRS.

Non-U.S. Holders are generally not subject to information reporting or backup withholding. However, a non-U.S. holder may be required to provide a certification (generally on IRS Form W-8BEN or W-8BEN-E) of its non-U.S. status in connection with payments received in the United States or through a U.S.-related financial intermediary in order to establish its exemption from information reporting and backup withholding.

U.S. and non-U.S. Holders may be subject to other U.S. information reporting requirements. U.S. and non-U.S. Holders should consult their own advisors regarding the application of U.S. information reporting rules in light of their particular circumstances.

#### **U.S. and German Gift and Inheritance Tax Considerations**

The transfer of ADS to another person by way of gift or inheritance is generally subject to German gift or inheritance tax only if (i) the decedent, the donor, the heir, donee or any other beneficiary maintained a domicile or his/her habitual abode in Germany, or has its place of management or statutory seat in Germany at the time of the transfer, or is a German citizen who has spent no more than five consecutive years outside Germany without maintaining a residence in Germany (special rules apply to certain former German citizens who neither maintain their domicile nor have their habitual abode in Germany), (ii) the ADS were held by the decedent or donor as part of business assets for which a permanent establishment or other fixed place of business was maintained in Germany or for which a permanent representative in Germany had been appointed, or (iii) the decedent or donor, at the time of the inheritance or gift, held either individually or collectively with related parties, held directly or indirectly, at least 10% of the Company's registered share capital.

The U.S.-Germany estate, inheritance and gift tax treaty provides that an individual whose domicile is determined to be in the U.S. for purposes of such treaty will not be subject to German inheritance and gift tax, the equivalent of the U.S. federal estate and gift tax, on the individual's death or making of a gift unless the ADSs are part of the business property of a permanent establishment located in Germany or are part of the assets of a fixed base of an individual located in Germany and used for the performance of independent personal services. An individual's domicile in the U.S., however, does not prevent imposition of German inheritance and gift tax with respect to an heir, donee, or other beneficiary who is domiciled in Germany at the time the individual died or the gift was made.

Such U.S.-Germany estate, inheritance and gift tax treaty also provides a credit against U.S. federal estate and gift tax liability for the amount of inheritance and gift tax paid in Germany, subject to certain limitations, in a case where ADSs are subject to German inheritance or gift tax and U.S. federal estate or gift tax.

The above summary is not intended to constitute a complete analysis of all tax consequences relating to the ownership and disposition of ADSs. U.S. Holders should consult their own tax advisors concerning the tax consequences of the ownership and disposition of ADSs in light of their particular circumstances, including the application of the U.S. federal income tax considerations discussed above, as well as the application of state, local, foreign or other laws.

#### **H. Documents on display**

We file periodic reports and information with the Securities and Exchange Commission and the New York Stock Exchange. You may inspect a copy of these reports without charge at the Public Reference Room of the Securities and Exchange Commission at 100 F Street N.E., Washington, D.C. 20549 or at the Securities and Exchange Commission's regional offices 233 Broadway, New York, New York 10279 and 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. The public may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1-800-SEC-0330. The Securities and Exchange Commission also maintains an Internet site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the Securities and Exchange Commission. The Securities and Exchange Commission's World Wide Web address is <http://www.sec.gov>.