

the foreign ownership of the capital stock of a Spanish company to over 50%. In specific instances, the Counsel of Ministers may agree to suspend, all or part of, Royal Decree 664/1999 following a proposal of the Minister of Economy, or, in some cases, a proposal by the head of the government department with authority for such matters and a report of the Foreign Investment Body. These specific instances include a determination that the investments, due to their nature, form or condition, affect activities, or may potentially affect activities relating to the exercise of public powers, national security or public health. Royal Decree 664/1999 is currently suspended for investments relating to national defense. Whenever Royal Decree 664/1999 is suspended, the affected investor must obtain *prior* administrative authorization in order to carry out the investment.

#### **E. Taxation.**

The following is a discussion of the material Spanish and U.S. federal income tax consequences to you of the acquisition, ownership and disposition of the ADSs or shares.

This discussion only applies to you if you are a beneficial owner of shares or ADSs and are:

- a citizen or resident of the United States for United States federal income tax purposes,
- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized under the laws of the United States or any state of the United States,
- an estate or trust the income of which is subject to United States federal income tax without regard to its source.

The discussion of Spanish tax consequences below applies to you only if you are a non-resident of Spain and ownership of ADSs or shares is not effectively connected with a permanent establishment or fiscal base in Spain and only to U.S. residents entitled to the benefits of the Spanish-U.S. income tax treaty.

You should consult your own tax adviser as to the particular tax consequences to you of owning the shares or ADSs including your eligibility for the benefits of any treaty between Spain and the country of your residence for the avoidance of double taxation, the applicability or effect of any special rules to which you may be subject, and the applicability and effect of state, local, foreign and other tax laws and possible changes in tax law.

For purposes of the Spanish-U.S. income tax treaty and the U.S. Internal Revenue Code of 1986, as amended, United States holders of ADRs will generally be treated as the owners of the ADSs evidenced by the ADRs and of the shares represented by such ADSs.

#### **Spanish tax considerations**

The following is a summary of material Spanish tax matters and is not exhaustive of all the possible tax consequences to you of the acquisition, ownership and disposition of ADSs or shares. This discussion is based upon the tax laws of Spain and regulations thereunder, which are subject to change, possibly with retroactive effect.

##### ***Taxation of dividends***

Under Spanish law, if you do not reside in Spain for tax purposes, dividends paid by a Spanish resident company to you are subject to Spanish Non-Resident Income Tax at a 15% rate, which is also the rate to which you may be entitled to under the Spain-US Income Tax Treaty.

We will levy the withholding tax on the gross amount of dividends at a 15% tax rate, following the procedures set forth by the Order of April 13, 2000.

##### ***Taxation of capital gains***

Under the Spanish law, any capital gains derived from securities issued by persons residing in Spain for tax purposes are considered to be Spanish source income and, therefore, are taxable in Spain. For Spanish tax purposes, income obtained by you if you are a U.S. resident from the sale of ADSs or shares will be treated as capital gains. Spanish nonresident income tax is currently levied at a 35% tax rate on capital gains obtained by persons not residing in Spain for tax purposes who are not entitled to the benefit of any applicable treaty for the avoidance of double taxation.

Notwithstanding the above, capital gains derived from the transfer of shares in an official Spanish secondary stock market by any holder who is resident in a country that has entered into a treaty for the avoidance of double taxation with Spain containing an "exchange of information" clause will be exempt from taxation in Spain. In addition, under the Spain-U.S. Income Tax Treaty, capital gains realized by you upon the disposition of ADSs or shares will not be taxed in Spain provided you have not held, directly or indirectly, 25% of our capital during the twelve months preceding the disposition of the stock. You may be required to establish that you are entitled to this exemption by providing to the relevant Spanish tax

authorities an IRS certificate of residence in the United States, together with the appropriate Spanish tax form, not later than 30 days after the capital gain was realized.

#### ***Spanish wealth tax***

Individuals not residing in Spain who hold shares or ADSs located in Spain are subject to the Spanish wealth tax (Spanish Law 19/1991), which imposes a tax on property located in Spain on the last day of any year. The Spanish tax authorities may take the view that all shares of Spanish corporations and all ADSs representing such shares are located in Spain for Spanish tax purposes. If such a view were to prevail, non-residents of Spain who held shares or ADSs on the last day of any year would be subject to the Spanish wealth tax for such year at marginal rates varying between 0.2% and 2.5% of the average market value of such shares or ADSs during the last quarter of such year.

#### ***Spanish inheritance and gift taxes***

Transfers of shares or ADSs upon death or by gift are subject to Spanish inheritance and gift taxes (Spanish Law 29/1987) if the transferee is a resident in Spain for tax purposes, or if the shares or ADSs are located in Spain at the time of gift or death, regardless of the residence of the beneficiary. In this regard, the Spanish tax authorities may determine that all shares of Spanish corporations and all ADSs representing such shares are located in Spain for Spanish tax purposes. The applicable tax rate, after applying all relevant factors, ranges between 0 and 81.6% for individuals.

Gifts granted to corporations non-resident in Spain are subject to Spanish Non-Resident Income Tax at a 35% tax rate on the fair market value of the shares as a capital gain. If the donee is a United States corporation, the exclusions available under the Treaty described in the section "Taxation of capital gains" above will be applicable.

#### ***Expenses of transfer***

Transfers of ADSs or shares will be exempt from any transfer tax or value-added tax. Additionally, no stamp tax will be levied on such transfers.

#### **U.S. Tax Considerations**

The following summary describes the material United States federal income tax consequences of the acquisition, ownership and disposition of ADSs or shares, but it does not purport to be a comprehensive description of all of the tax considerations that may be relevant to a particular person's decision to acquire such securities. The summary applies only to U.S. Holders (as described below) that hold ADSs or shares as capital assets for tax purposes and does not address special classes of holders, such as:

- certain financial institutions;
- insurance companies;
- dealers and traders in securities or foreign currencies;
- holders holding ADSs or shares as part of a hedge, straddle or conversion transaction;
- holders whose "functional currency" is not the U.S. dollar;
- holders liable for alternative minimum tax;
- tax exempt organizations;
- partnerships or other entities classified as partnerships for U.S. federal income tax purposes; or
- holders that own 10% or more of our voting shares.

The summary is based upon tax laws of the United States including the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"), administrative pronouncements, judicial decisions and final, temporary and proposed Treasury Regulations, changes to any of which may affect the tax consequences described herein possibly with retroactive effect. In addition, the summary is based on the Convention Between the United States and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the "Treaty") and is based in part on representations of the Depositary and assumes that each obligation provided for in or otherwise contemplated by the Deposit Agreement or any other related document will be performed in accordance with its terms. Prospective purchasers of the ADSs or shares are urged to consult their own tax advisers as to the United States, Spanish or

other tax consequences of the purchase, ownership and disposition of ADSs or Shares in their particular circumstances, including the effect of any U.S. state or local tax laws.

As used herein, a “U.S. Holder” is a beneficial owner of ADSs or shares that is, for United States federal income tax purposes:

- a citizen or resident of the United States;
- a corporation created or organized in or under the laws of the United States or of any political subdivision thereof; or
- an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

In general, for United States federal income tax purposes, U.S. Holders of ADSs will be treated as the holders of the underlying shares represented by those ADRs. Accordingly, no gain or loss will be recognized if a U.S. Holder exchanges ADSs for the underlying Shares represented by those ADSs.

The U.S. Treasury has expressed concerns that parties to whom ADSs are released may be taking actions that are inconsistent with the claiming of foreign tax credits for U.S. holders of ADSs. Such actions would also be inconsistent with the claiming of the reduced rate of tax, described below, applicable to dividends received by certain non-corporate holders. Accordingly, the creditability of Spanish taxes and the availability of the reduced tax rate for dividends received by certain non-corporate holders, each described below, could be affected by actions taken by parties to whom the ADSs are pre-released.

#### ***Taxation of Distributions***

Subject to the discussion of the passive foreign investment company rules below, to the extent paid out of our current or accumulated earnings and profits (as determined in accordance with United States federal income tax principles), distributions, including any Spanish withholding tax, made with respect to ADSs or shares (other than certain distributions of our capital stock or rights to subscribe for shares of our capital stock) will be includible in the income of a U.S. Holder as ordinary dividend income. Such dividends will not be eligible for the “dividends received deduction” generally allowed to corporations receiving dividends from domestic corporations under the Code. To the extent that a distribution exceeds our current and accumulated earnings and profits, it will be treated as a nontaxable return of capital to the extent of the U.S. Holder’s tax basis in the ADSs or shares, and thereafter as capital gain. The amount of the distribution will equal the U.S. dollar value of the euros received, calculated by reference to the exchange rate in effect on the date such distribution is received (which, for U.S. Holders of ADSs, will be the date such distribution is received by the Depositary), whether or not the Depositary or U.S. Holder in fact converts any euros received into U.S. dollars at that time. Any gains or losses resulting from the conversion of euros into U.S. dollars will be treated as ordinary income or loss, as the case may be, of the U.S. Holder and will be U.S. source. Dividends generally will constitute foreign source “passive” or “financial services” income for U.S. foreign tax credit purposes.

Subject to meeting certain conditions, dividends paid to a non-corporate U.S. holder paid before January 1, 2009 will be taxed at a maximum rate of 15%. Non-corporate holders should consult their own tax advisers to determine the implications of the rules regarding this favorable rate in their particular circumstances.

Subject to certain generally applicable limitations, a U.S. Holder will be entitled to a credit against its U.S. federal income tax liability, or a deduction in computing its U.S. federal taxable income, for Spanish withholding taxes. A U.S. Holder may be required to recognize ordinary income or loss attributable to currency fluctuations upon its receipt of a refund in respect of Spanish withholding tax to the extent that the U.S. dollar value of the refund differs from the U.S. dollar equivalent of the refund amount on the date the underlying dividend was received.

A U.S. Holder must satisfy minimum holding period requirements in order to be eligible to claim a foreign tax credit for foreign taxes withheld on dividends. U.S. Holders are urged to consult their own tax advisers to determine whether they are subject to any special rules that limit their ability to make effective use of foreign tax credits.

#### ***Sale and Other Disposition of ADSs or Shares***

Subject to the discussion of the passive foreign investment company rules below, gain or loss realized by a U.S. Holder on the sale or exchange of ADSs or shares will be subject to United States federal income tax as capital gain or loss in an amount equal to the difference between the U.S. Holder’s tax basis in the ADSs or shares and the amount realized on the disposition. Gain or loss, if any, will be U.S. source for foreign tax credit purposes. The deductibility of capital losses is subject to limitations. Long-term capital gain of a non-corporate U.S. holder is generally taxed at a preferential rate.