

D. Exchange controls

Restrictions on Foreign Investments

Under present regulations, foreign investors may transfer invested capital, capital gains and dividends out of Spain without limitation on the amount other than applicable taxes. See “Taxation”. On July 4, 2003, Law 19/2003 was approved which updates Spanish exchange control and money-laundering prevention provisions, by recognizing the principle of freedom of the movement of capital between Spanish residents and non-residents. The law establishes procedures for the declaration of capital movements for purposes of administrative or statistical information and authorizes the Spanish Government to take measures which are justified on grounds of public policy or public security. It also provides the mechanism to take exceptional measures with regard to third countries if such measures have been approved by the European Union or by an international organization to which Spain is a party. The Spanish stock exchanges and securities markets are open to foreign investors. Royal Decree 664/1999, on Foreign Investments (April 23, 1999), established a new framework for the regulation of foreign investments in Spain which, on a general basis, will no longer require any prior consents or authorizations from authorities in Spain (without prejudice to specific regulations for several specific sectors, such as television, radio, mining, telecommunications, etc.). Royal Decree 664/1999 requires notification of all foreign investments in Spain and liquidations of such investments upon completion of such investments to the Investments Registry of the Ministry of Economy and Finance, strictly for administrative statistical and economical purposes. Only investments from “tax haven” countries (as they are defined in Royal Decree 1080/1991), shall require notice before and after performance of the investment, except that no prior notice shall be required for: (1) investments in securities or participations in collective investment schemes that are registered with the CNMV, and (2) investments that do not increase the foreign ownership of the capital stock of a Spanish company to over 50%. In specific instances, the Council of Ministers may agree to suspend, all or part of, Royal Decree 664/1999 following a proposal of the Minister of Economy and Competitiveness, 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 ownership and disposition of ADSs or shares.

The discussion of Spanish tax consequences below applies to you only if you are a non-resident of Spain and your ownership of ADSs or shares is not effectively connected with a permanent establishment or fiscal base in Spain and you are a U.S. resident entitled to the benefits of the Convention Between the United States of America 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”).

On January 14, 2013, the United States of America and the Kingdom of Spain signed a protocol amending the Treaty, which needs to be ratified by both countries, and will become effective three months following the date on which notice is provided by the later of the countries to provide notice that its internal procedures for effectiveness have been fulfilled. When this protocol becomes effective, taxation described under the Treaty in this section may be altered.

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.

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, dividends paid by a Spanish resident company to a holder of ordinary shares or ADSs not residing in Spain for tax purposes and not operating through a permanent establishment in Spain are subject to Spanish Non-Resident Income Tax at a 21% rate. Royal Decree-Law 20/2011 has temporarily increased from 19% to 21% the rate applicable until December 31, 2013.

In addition, according to the Spanish Non-Resident Income Tax Law, if you are resident in the European Union or in a country, such as the United States, with which there is an effective exchange of information for tax purposes as defined in Spanish Law 36/2006 and you do not operate in Spain through a permanent establishment, dividends up to 1,500 euros, considering all Spanish-source dividends you may obtain in the calendar year, are exempt from Spanish taxation. However, Spanish withholding tax will nevertheless be required to be deducted from the gross amount of the dividends, and you will have to seek a refund of such withholding taxes from the Spanish tax authorities, following the standard refund procedure described below.

We will withhold tax on the gross amount of dividends at a 21% tax rate, following the procedures set forth by the Order of April 13, 2000. However, under the Treaty and subject to the fulfillment of certain requirements, you may be entitled to a reduced rate of 15%.

To benefit from the Treaty's reduced rate of 15%, you must provide our depository, JPMorgan Chase Bank, N.A., with a certificate from the U.S. Internal Revenue Service (the "IRS") stating that to the knowledge of the IRS, you are a resident of the United States within the meaning of the Treaty. The IRS certificate is valid for a period of one year.

According to the Order of April 13, 2000, to get a direct application of the Treaty-reduced rate of 15%, the certificate referred to above must be provided to our depository before the tenth day following the end of the month in which the dividends were distributable by us. If you fail timely to provide our depository with the required documentation, you may obtain a refund of the 6% in excess withholding that would result from the Spanish tax authorities in accordance with the procedures below.

A scrip dividend (such as a dividend described in Item 4 of Part I, "Information on the Company—A. History and development of the company—Principal Capital Expenditures and Divestitures—Recent events") will be treated as follows:

- If the holder of ordinary shares or ADSs elects to receive newly issued ordinary shares or ADSs it will be considered a delivery of fully paid-up shares free of charge and, hence, will not be considered income for purposes of the Spanish Non-Resident Income Tax. The acquisition value, both of the new ordinary shares or ADSs received in the scrip dividend and of the ordinary shares or ADSs from which they arise, will be the result of dividing the total original cost of the shareholder's portfolio by the number of shares, both old and new. The acquisition date of the new shares will be that of the shares from which they arise.
- If the holder of ordinary shares or ADSs elects to sell the rights on the market, the amount obtained from the sale of rights will be deducted from the acquisition value of the shares from which the rights arose. If the amount obtained from such sale is higher than the acquisition value of the shares from which the rights arose, the excess amount will be treated as a capital gain for the holder in the fiscal year in which the transfer takes place (please refer to "—Taxation of capital gains" below).
- If the holder of ordinary shares or ADSs elects to receive the proceeds from the sale of rights back to us at a fixed price, the tax regime applicable to the amounts received will be that applicable to cash dividends described above.

Spanish refund procedure

According to Spanish Regulations on Non-Resident Income Tax, approved by Royal Decree 1776/2004, dated July 30, 2004, as amended, a refund of the amount withheld in excess of the rate provided by the Treaty can be obtained from the relevant Spanish tax authorities. To pursue the refund claim, if you are a U.S. resident entitled to the benefits of the Treaty, you are required to file all of the following:

- a Spanish 210 Form,
- the certificate referred to in the preceding section, and
- evidence that Spanish Non-Resident Income Tax was withheld with respect to you.

The refund claim must be filed within four years of the date on which the withheld tax was collected by the Spanish tax authorities. According to Order EHA/3316 of December 17, 2010, the 210 Form may be filed on or after February 1st of the calendar year following the year in which the dividend was paid.

You are urged to consult your own tax adviser regarding refund procedures and any U.S. tax implications of receipt of a refund.

Taxation of capital gains

Under 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. If you are a U.S. resident, income from the sale of ADSs or shares will be treated as capital gains for Spanish tax purposes. Since January 1, 2012, Spanish Non-Resident Income Tax is levied at a 21% rate on capital gains realized 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. Royal Decree-Law 20/2011 has temporarily increased the applicable rate from 19% to 21% until December 31, 2013.

Notwithstanding the above, capital gains derived from the transfer of shares on an official Spanish secondary stock market by any holder who is a resident of 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 Treaty, if you are a U.S. resident, 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% or more of our stock during the twelve months preceding the disposition of the stock. You are 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 210 Form, between January 1st and January 20th of the calendar year following the year in which the transfer of shares took place.

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 might 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 on the average market value of such shares or ADSs during the last quarter of such year.

Law 4/2008 amended the Spanish wealth tax law, introducing a 100% tax rebate and eliminating the obligation to file any form for tax periods starting as of January 1, 2008. However, Royal Decree-Law 13/2011 of September 16, extended by Law 16/2012, has temporarily restored the wealth tax abolishing the 100% tax rebate until January 1, 2014 and introduced a €700,000 tax free amount.

As a result of Royal Decree-Law 13/2011 and Law 16/2012, non-residents of Spain who held shares, ADSs, or other assets or rights located in Spain according to Spanish wealth tax law, on the last day of 2012 and 2013 whose combined value exceeds €700,000 might be subject to the Spanish wealth tax on that excess amount at marginal rates varying between 0.2% and 2.5%, and would be obliged to file the corresponding wealth tax return.

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 of Spain for tax purposes, or if the shares or ADSs are located in Spain at the time of gift or death, or the rights attached thereto could be exercised or have to be fulfilled in the Spanish territory, regardless of the residence of the beneficiary. In this regard, the Spanish tax authorities might 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 21% tax rate on the fair market value of the shares as a capital gain. Royal Decree-Law 20/2011 has temporarily increased from 19% to 21% the rate applicable until December 31, 2013. 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 Spanish transfer tax or value-added tax. Additionally, no Spanish stamp tax will be levied on such transfers.

U.S. Federal Income Tax Considerations

The following summary describes the material U.S. federal income tax consequences of the 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 defined below) that hold ADSs or shares as capital assets for U.S. federal income tax purposes. In addition, it does not describe all of the tax consequences that may be relevant in light of the U.S. Holder's particular circumstances, including the potential application of the provisions of the Internal Revenue Code of 1986, as amended (the "Code") known as the Medicare contribution tax, state, local or non-United States tax laws, and tax consequences applicable to U.S. Holders subject to special rules, such as:

- financial institutions;
- insurance companies;
- dealers and traders in securities that use a mark-to-market method of tax accounting;
- persons holding ADSs or shares as part of a "straddle", conversion transaction or integrated transaction;
- persons whose "functional currency" is not the U.S. dollar;
- persons liable for the alternative minimum tax;
- tax exempt entities, including "individual retirement accounts" and "Roth IRAs";
- partnerships or other entities classified as partnerships for U.S. federal income tax purposes;
- persons that own or are deemed to own 10% or more of our voting shares;
- persons that acquired our ADSs or shares pursuant to the exercise of an employee stock option or otherwise as compensation; or
- persons holding ADSs or shares in connection with a trade or business outside the United States.

If an entity that is classified as a partnership for U.S. federal income tax purposes holds shares or ADSs, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partnerships holding shares or ADSs and partners in such partnerships should consult their tax advisers as to the particular U.S. federal income tax consequences of owning and disposing of the shares or ADSs.

This summary is based on the Code, administrative pronouncements, judicial decisions, final, temporary and proposed Treasury Regulations, and the Treaty, all as of the date hereof, changes to any of which may affect the tax consequences described herein, possibly with retroactive effect. In addition, this summary 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. U.S. Holders are urged to consult their own tax advisers as to the U.S., Spanish and other tax consequences of the ownership and disposition of ADSs or shares in their particular circumstances.

As used herein, a "U.S. Holder" is, for U.S. federal income tax purposes, a beneficial owner of ADSs or shares who is eligible for the benefits of the Treaty and is:

- a citizen or individual resident of the United States;

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- a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any state thereof or the District of Columbia; or
- an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.

In general, for U.S. federal income tax purposes, U.S. Holders of ADSs will be treated as the owners of the underlying shares represented by those ADSs. 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 American depositary shares are released before delivery of shares to the depositary (“pre-release”), or intermediaries in the chain of ownership between U.S. holders and the issuer of the security underlying the American depositary shares, may be taking actions that are inconsistent with the claiming of foreign tax credits by U.S. holders of American depositary shares. These 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 U.S. Holders, each described below, could be affected by actions taken by these parties or intermediaries.

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 U.S. federal income tax principles), distributions, including the amount of any Spanish withholding tax, made with respect to ADSs or shares (other than certain pro rata 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 foreign-source ordinary dividend income. Because we do not maintain calculations of our earnings and profits under U.S. federal income tax principles, it is expected that distributions generally will be reported to U.S. Holders as dividends. These dividends will be included in a U.S. Holder’s income on the date of the U.S. Holder’s (or in the case of ADSs, the depositary’s) receipt of the dividends, and will not be eligible for the “dividends-received deduction” generally allowed to corporations receiving dividends from domestic corporations under the Code. 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 that distribution is received (which, for U.S. Holders of ADSs, will be the date that 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. If the dividend is converted into U.S. dollars on the date of receipt, a U.S. Holder generally will not be required to recognize foreign currency gain or loss in respect thereof. A U.S. Holder may have foreign currency gain or loss if the euros are converted into U.S. dollars after the date of receipt. Any gain or loss resulting from the conversion of euros into U.S. dollars will be treated as ordinary income or loss, as the case may be, and will be U.S.-source.

A scrip dividend (such as a dividend described in Item 4 of Part I, “Information on the Company—A. History and development of the company—Principal Capital Expenditures and Divestitures—Recent events”) will be treated as a distribution of cash, even if a U.S. Holder elects to receive the equivalent amount in shares. In that event, the U.S. Holder will be treated as having received the U.S. dollar fair market value of the shares on the date of receipt, and that amount will be the U.S. Holder’s tax basis in those shares. The holding period for the shares will begin on the following day.

Subject to generally applicable limitations that may vary depending upon a U.S. Holder’s individual circumstances, the discussion above regarding concerns expressed by the U.S. Treasury, and the discussion of the passive foreign investment company rules below, under current law, dividends paid to certain non-corporate U.S. holders may be taxable at rates applicable to long-term capital gains. A U.S. Holder must satisfy minimum holding period requirements in order to be eligible to be taxed at these favorable rates. Non-corporate holders are urged to consult their own tax advisers regarding the availability of the reduced rate on dividends in their particular circumstances.

Subject to certain generally applicable limitations that may vary depending upon a U.S. Holder’s circumstances and subject to the discussion above regarding concerns expressed by the U.S. Treasury, a U.S. Holder will be entitled to a credit against its U.S. federal income tax liability for Spanish income taxes withheld at a rate not exceeding the rate provided by the Treaty. Spanish income taxes withheld in excess of the rate applicable under the Treaty will not be eligible for credit against a U.S. Holder’s federal income tax liability. See “Spanish tax considerations – Spanish refund procedure” for a discussion of how to obtain amounts withheld in excess of the applicable Treaty rate. The limitation on foreign taxes eligible for credit is calculated separately with regard to specific classes of income. Instead of claiming a credit, a U.S. Holder may, at its election, deduct such otherwise creditable Spanish taxes in computing taxable income, subject to generally applicable limitations. An election to deduct foreign taxes instead of claiming foreign tax credits applies to all taxes paid or accrued in the taxable year to foreign countries and possessions of the United States.