

amendment to our Articles of Association). The Board of Management requires approval of the Supervisory Board for such an issue.

At our annual General Meeting of Shareholders, held on April 3, 2008, the Board of Management was authorized for a period of 18 months, to issue shares and/or rights thereto representing up to a maximum of 5 percent of our issued share capital as of the date of authorization, plus an additional 5 percent of our issued share capital as of the date of authorization that may be issued in connection with mergers and acquisitions. At our annual General Meeting of Shareholders to be held on March 26, 2009, our shareholders will be asked to authorize the Board of Management (subject to the approval of the Supervisory Board) to issue shares and/or rights thereto through September 26, 2010.

Holders of our ordinary shares have a preemptive right of subscription in proportion to the aggregate nominal amount of the ordinary shares held by them to any issuance of ordinary shares for cash, which right may be restricted or excluded. Ordinary shareholders have no pro rata preemptive right of subscription to any ordinary shares issued for consideration other than cash or ordinary shares issued to employees. If authorized for this purpose by the General Meeting of Shareholders (either by means of a resolution or by an amendment to our Articles of Association), the Board of Management has the power, with the approval of the Supervisory Board, to restrict or exclude the preemptive rights of holders of ordinary shares. A designation may be renewed. At our annual General Meeting of Shareholders held on April 3, 2008, the Board of Management was authorized, subject to the aforementioned approval, to restrict or exclude preemptive rights of holders of ordinary shares. At our annual General Meeting of Shareholders to be held on March 26, 2009, our shareholders will be asked to grant this authority through September 26, 2010. At this annual General Meeting of Shareholders, the shareholders will be asked to grant authority to the Board of Management to issue shares or options separately. These authorizations will each be requested to be granted for a period of 18 months.

We may repurchase our issued ordinary shares at any time, subject to compliance with the requirements of Netherlands law and our Articles of Association. Although Netherlands law provides since June 11, 2008 that after such repurchases the aggregate nominal value of the ordinary shares held by ASML or a subsidiary must not be more than 50 percent of the issued share capital, our current Articles of Association provide that after such repurchases the aggregate nominal value of the ordinary shares held by ASML or a subsidiary must not be more than 10 percent of the issued share capital. Any such purchases are subject to the approval of the Supervisory Board and the authorization (whether by means of a resolution or by an amendment to our Articles of Association) of shareholders at our General Meeting of Shareholders, which authorization may not be for more than 18 months. The Board of Management is currently authorized, subject to Supervisory Board approval, to repurchase through October 3, 2009 up to a maximum of approximately 27 percent of our issued share capital as of the date of authorization (April 3, 2008) at a price between the nominal value of the ordinary shares purchased and 110 percent of the market price of these securities on Euronext Amsterdam or NASDAQ. At our annual General Meeting of Shareholders to be held on March 26, 2009, our shareholders will be asked to extend this authority through September 26, 2010.

#### **C. Material Contracts**

Not applicable.

#### **D. Exchange Controls**

There are currently no limitations, either under the laws of the Netherlands or in the Articles of Association of ASML, to the rights of non-residents to hold or vote ordinary shares. Cash distributions, if any, payable in euro on Amsterdam Shares may be officially transferred from the Netherlands and converted into any other currency without being subject to any Netherlands legal restrictions. However, for statistical purposes, such payments and transactions must be reported by ASML to the Netherlands Central Bank. Furthermore, no payments, including dividend payments, may be made to jurisdictions subject to certain sanctions, adopted by the government of the Netherlands, implementing resolutions of the Security Council of the United Nations. Cash distributions, if any, on New York Shares shall be paid in U.S. dollars, converted at the rate of exchange on Euronext Amsterdam at the close of business on the date fixed for that purpose by the Board of Management in accordance with the Articles of Association. See also Item 8.A. "Consolidated Statements and Other Financial Information, Dividend Policy".

#### **E. Taxation**

##### **Netherlands Taxation**

The statements below represent a summary of current Netherlands tax laws, regulations and judicial interpretations thereof. The description is limited to the material tax implications for a holder of ordinary shares who is not, or is not deemed to be, a resident of the Netherlands for Netherlands tax purposes (a "Non-resident Holder"). This description does not address special rules that may apply to special classes of holders of ordinary shares and should not be read as extending by implication to matters not specifically referred to herein. As to individual tax consequences, each investor in ordinary shares should consult his or her tax counsel.

**General**

The acquisition of ordinary shares by a non-resident of the Netherlands should not be treated as a taxable event for Netherlands tax purposes. The income consequences in connection with owning and disposing of our ordinary shares are discussed below.

**Substantial Interest**

A person that, directly or indirectly, owns five percent or more of our share capital, or who is entitled to five percent of the voting power in the shareholders meeting, or holds options to purchase five percent or more of our share capital, is deemed to have a substantial interest in our shares, respectively, our options, as applicable. A deemed substantial interest also exists if (part of) a substantial interest has been disposed of, or is deemed to be disposed of, in a transaction where no taxable gain has been recognized. Special attribution rules exist in determining the presence of a substantial interest.

**Income Tax Consequences for Individual Non-resident Holders on Owning and Disposing of the Ordinary Shares**

An individual who is a Non-resident Holder will not be subject to Netherlands income tax on received income in respect of our ordinary shares or capital gains derived from the sale, exchange or other disposition of our ordinary shares, provided that such holder:

- does not carry on and has not carried on a business in the Netherlands through a permanent establishment or a permanent representative to which the ordinary shares are attributable;
- does not hold and has not held a (deemed) substantial interest in our share capital or, in the event the Non-resident Holder holds or has held a (deemed) substantial interest in our share capital, such interest is, respectively was, a business asset in the hands of the holder;
- does not share and has not shared directly (through the beneficial ownership of ordinary shares or similar securities) in the profits of an enterprise managed and controlled in the Netherlands which (is deemed to) own(s), respectively (is deemed to have) has owned, our ordinary shares;
- does not carry out and has not carried out any activities which generate taxable profit or taxable wages to which the holding of our ordinary shares was connected;
- does not carry out and has not carried out employment activities in the Netherlands, does not serve and has not served as a director or board member of any entity resident in the Netherlands, and does not serve and has not served as a civil servant of a Netherlands public entity with which the holding of our ordinary shares is or was connected; and
- is not an individual that has elected to be taxed as a resident of the Netherlands.

**Corporate Income Tax Consequences for Corporate Non-resident Holders**

Income derived from ordinary shares or capital gains derived from the sale, exchange or disposition of ordinary shares by a corporate Non-resident Holder is taxable if:

- the holder carries on a business in the Netherlands through a permanent establishment or a permanent agent in the Netherlands (Netherlands enterprise) and the ordinary shares are attributable to this permanent establishment or permanent agent, unless the participation exemption (discussed below) applies; or
- the holder has a substantial interest in our share capital, which is not attributable to his enterprise; or
- certain assets of the holder are deemed to be treated as a Netherlands enterprise under Netherlands tax law and the ordinary shares are attributable to this Netherlands enterprise.

To qualify for the Netherlands participation exemption, the holder must generally hold at least five percent of our nominal paid-in capital and meet certain other requirements.

**Dividend Withholding Tax**

In general, a dividend distributed by us in respect of our ordinary shares will be subject to a withholding tax imposed by the Netherlands at the statutory rate of 15 percent.

Dividends include:

- dividends in cash and in kind;
- deemed and constructive dividends;
- consideration for the repurchase or redemption of ordinary shares (including a purchase by a direct or indirect ASML subsidiary) in excess of qualifying average paid-in capital unless such repurchase is made for temporary investment purposes or is exempt by law;
- stock dividends up to their nominal value (unless distributed out of qualifying paid-in capital);
- any (partial) repayment of paid-in capital not qualifying as capital for Netherlands dividend withholding tax purposes; and
- liquidation proceeds in excess of qualifying average paid-in capital for Netherlands dividend withholding tax purposes.

A reduction of Netherlands dividend withholding tax can be obtained if:

- the participation exemption applies and the ordinary shares are attributable to a business carried out in the Netherlands;

- the dividends are distributed to a qualifying EU corporate holder satisfying the conditions of the EU Parent-Subsidiary Directive; or
- the rate is reduced by a Tax Treaty.

A Non-resident Holder of ordinary shares can be eligible for a partial or complete exemption or refund of all or a portion of the above withholding tax under a Tax Treaty that is in effect between the Netherlands and the Non-resident Holder's country of residence. The Netherlands has concluded such treaties with the United States, Canada, Switzerland, Japan, most European Union member states, as well as many other countries. Under the Treaty between the United States and the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the "Tax Treaty"), dividends paid by us to a Non-resident Holder that is a resident of the United States as defined in the Tax Treaty (other than an exempt organization or exempt pension trust, as discussed below) are generally liable to 15 percent Netherlands withholding tax or, in the case of certain United States corporate shareholders owning at least 10 percent of our voting power, a reduction to five percent, provided that it does not have an enterprise or an interest in an enterprise that is, in whole or in part, carried on through a permanent establishment or permanent representative in the Netherlands to which the dividends are attributable. The Tax Treaty provides for a complete exemption from tax on dividends received by exempt pension trusts and exempt organizations, as defined therein. Except in the case of exempt organizations, the reduced dividend withholding tax rate (or exemption from withholding) can be applied at the source upon payment of the dividends, provided that the proper forms have been filed in advance of the payment. Exempt organizations remain subject to the statutory withholding rate of 15 percent and are required to file for a refund of such withholding.

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A Non-resident Holder may not claim the benefits of the Tax Treaty unless (i) it is a resident of the United States as defined therein, or (ii) it is deemed to be a resident on the basis of the provisions of article 24(4) of the Tax Treaty, and (iii) its entitlement to those benefits is not limited by the provisions of article 26 (limitation on benefits) of the Tax Treaty.

In this respect it is noted that the United States and the Netherlands have agreed on a protocol to the Tax Treaty. It provides for (among others) a 0 percent dividend withholding tax rate on dividends, provided certain requirements are met. One of these requirements is that the shareholder is a company which owns directly shares representing 80 percent of the voting power in our company. In addition, abovementioned article 26 (limitation on benefits) has been adjusted. Some requirements to the various tests mentioned in article 26 will become more severe and others will be moderated.

#### ***Dividend Stripping Rules***

Under Netherlands tax legislation regarding anti-dividend stripping, no exemption from, or refund of, Netherlands dividend withholding tax is granted if the recipient of dividends paid by us is not considered the beneficial owner of such dividends.

#### ***Gift or Inheritance Taxes***

Netherlands gift or inheritance taxes will not be levied on the transfer of ordinary shares by way of gift, or upon the death of a Non-resident Holder, unless:

- (1) the transfer is construed as an inheritance or as a gift made by or on behalf of a person who, at the time of the gift or death, is deemed to be, resident of the Netherlands; or
- (2) the ordinary shares are attributable to an enterprise or part thereof that is carried on through a permanent establishment or a permanent representative in the Netherlands.

For purposes of Netherlands gift and inheritance tax, an individual of Netherlands nationality is deemed to be a resident of the Netherlands if he has been a resident thereof at any time during the ten years preceding the time of the gift or death. For purposes of Netherlands gift tax, a person not possessing Netherlands nationality is deemed to be a resident of the Netherlands if he has resided therein at any time in the twelve months preceding the gift.

**Value Added Tax**

No Netherlands value added tax is imposed on dividends in respect of our ordinary shares or on the transfer of our shares.

**Residence**

A Non-resident Holder will not become resident, or be deemed to be resident, in the Netherlands solely as a result of holding our ordinary shares or of the execution, performance, delivery and/or enforcement of rights in respect of our ordinary shares.

**United States Taxation**

The following is a discussion of the material United States federal income tax consequences relating to the acquisition, ownership and disposition of ordinary shares by a United States Holder acting in the capacity of a beneficial owner (as defined below). This discussion deals only with ordinary shares held as capital assets and does not deal with the tax consequences applicable to all categories of investors, some of which (such as tax-exempt entities, financial institutions, dealers in securities/traders in securities that elect a mark-to-market method of accounting for securities holdings, insurance companies, investors owning directly, indirectly or constructively 10 percent or more of our outstanding voting shares, investors who hold ordinary shares as part of hedging or conversion transactions and investors whose functional currency is not the U.S. dollar) may be subject to special rules. In addition, the discussion does not address any alternative minimum tax or any state, local, FIRPTA related United States federal income tax consequences, or non-United States tax consequences.

This discussion is based on the U.S.-Netherlands Income Tax Treaty ("Treaty") and the Internal Revenue Code of 1986, as amended to the date hereof, final, temporary and proposed Treasury Department regulations promulgated, and administrative and judicial interpretations thereof, changes to any of which subsequent to the date hereof, possibly with retroactive effect, may affect the tax consequences described herein. In addition, there can be no assurance that the Internal Revenue Service ("IRS") will not challenge one or more of the tax consequences described herein, and we have not obtained, nor do we intend to obtain, a ruling from the Internal Revenue Service or an opinion of counsel with respect to the United States federal income tax consequences of acquiring or holding shares. Prospective purchasers of ordinary shares are advised to consult their tax advisers with respect to their particular circumstances and with respect to the effects of United States federal, state, local or non-United States tax laws to which they may be subject.

As used herein, the term "United States Holder" means a beneficial owner of ordinary shares that for United States federal income tax purposes whose holding of ordinary shares does not form part of the business property or assets of a permanent establishment or fixed base in the Netherlands; who is fully entitled to the benefits of the Treaty in respect of such ordinary shares; and is:

- an individual citizen or resident of the United States;
- a corporation or other entity treated as a corporation for United States federal income tax purposes created or organized in or under the laws of the United States or of any political subdivision thereof;
- an estate of which the income is subject to United States federal income taxation regardless of its source; or
- a trust whose administration is subject to the primary supervision of a court within the United States and which has one or more United States persons who have the authority to control all of its substantial decisions.

If an entity treated as a partnership for United States federal income tax purposes owns ordinary shares, the United States federal income tax treatment of a partner in such partnership will generally depend upon the status and tax residency of the partner and the activities of the partnership. A partnership that owns ordinary shares and the partners in such partnership should consult their tax advisors about the United States federal income tax consequences of holding and disposing of the ordinary shares.

**Taxation of Dividends**

United States Holders will include in gross income as foreign-source dividend income the gross amount of any distribution (before reduction for Netherlands withholding taxes) ASML makes out of its current or accumulated earnings and profits (as determined for United States federal income tax purposes) when the distribution is actually or constructively received by the United States Holder. Distributions will not be eligible for the dividends-received deduction generally allowed to United States corporations in respect of dividends received from other United States corporations. The amount of the dividend distribution includible in income of a United States Holder should be the U.S. dollar value of the foreign currency (e.g. euro) paid, determined by the spot rate of exchange on the date of the distribution, regardless of whether the payment is in fact converted into U.S. dollars. Distributions in excess of current and accumulated earnings and profits, as determined for United States federal income tax purposes, will be treated as a non-taxable return of capital to the extent of the United States Holder's basis in the ordinary shares and thereafter as

taxable capital gain. ASML does not maintain calculations of its earnings and profits under United States federal income tax principles.

Subject to limitations provided in the United States Internal Revenue Code, a United States Holder may generally deduct from its United States federal taxable income, or credit against its United States federal income tax liability, the amount of qualified Netherlands withholding taxes. However, Netherlands withholding tax may be credited only if the United States Holder does not claim a deduction for any Netherlands or other non-United States taxes paid or accrued in that year. In addition, Netherlands dividend withholding taxes will likely not be creditable against the United States Holder's United States tax liability to the extent ASML is not required to pay over the amount withheld to the Netherlands Tax Administration. Currently, a Netherlands corporation that receives dividends from qualifying non-Netherlands subsidiaries may credit source country tax withheld from those dividends against Netherlands withholding tax imposed on a dividend paid by a Netherlands corporation, up to a maximum of three percent of the dividend paid by the Netherlands corporation. The credit reduces the amount of dividend withholding that ASML is required to pay to the Netherlands Tax Administration but does not reduce the amount of tax ASML is required to withhold from dividends.

Dividends received by a United States Holder will generally be taxed at ordinary income tax rates. However, the Jobs and Growth Tax Reconciliation Act of 2003, (the "2003 Tax Act") and subsequently the Tax Increase and Prevention Act of 2006 reduces to 15 percent the maximum tax rate for certain dividends received by individuals through taxable years beginning on or before December 31, 2010, so long as the stock has been held for more than 60 days during the 120 day period beginning 60 days before the ex-dividend date. The rules governing foreign tax credit are complex and we suggest each United States Holder to consult its own tax advisor to determine whether, and to what extent, a foreign tax credit will be available. Dividends received from "qualified foreign corporations" generally qualify for the reduced rate. A non-United States corporation (other than a foreign personal holding company, foreign investment company, or passive foreign investment company) generally will be considered to be a qualified foreign corporation if (i) the shares of the non-United States corporation are readily tradable on an established securities market in the United States or (ii) the non-United States corporation is eligible with respect to substantially all of its income for the benefits of a comprehensive income tax treaty with the United States which contains an exchange of information program and the Tax Treaty has been identified as a qualifying treaty. Individual United States Holders should consult their tax advisors regarding the impact of the provisions of the 2003 Tax Act on their particular situations.

#### **Taxation on Sale or Other Disposition of Ordinary Shares**

Upon a sale or other disposition of ordinary shares, a United States Holder will generally recognize capital gain or loss for United States federal income tax purposes in an amount equal to the difference between the amount realized, if paid in U.S. dollars, or the U.S. dollar value of the amount realized (determined at the spot rate on the settlement date of the sale) if proceeds are paid in currency other than the U.S. dollar, as the case may be, and the United States Holder's tax basis (determined in U.S. dollars) in such ordinary shares. Generally, the capital gain or loss will be long-term capital gain or loss if the holding period of the United States Holder in the ordinary shares exceeds one year at the time of the sale or other disposition. The deductibility of capital losses is subject to limitations for United States federal income tax purposes. Gain or loss from the sale or other disposition of ordinary shares generally will be treated as United States source income or loss for United States foreign tax credit purposes. Generally, any gain or loss resulting from currency fluctuations during the period between the date of the sale of the ordinary shares and the date the sale proceeds are converted into U.S. dollars will be treated as ordinary income or loss from sources within the United States. Each United States Holder should consult its tax advisor with regard to the translation rules of its adjusted basis and the amount realized upon a sale or other disposition of its ordinary shares if purchased in, or sold or disposed of for, a currency other than U.S. dollar.

#### **Information Reporting and Backup Withholding**

Information returns may be filed with the IRS in connection with payments on the ordinary shares or proceeds from a sale, redemption or other disposition of the ordinary shares. A "backup withholding" tax may apply to these payments if the beneficial owner fails to provide a correct taxpayer identification number to the paying agent and to comply with certain certification procedures or otherwise establish an exemption from backup withholding. Any amounts withheld under the backup withholding rules might be refunded (or credited against the beneficial owner's United States federal income tax liability, if any) depending on the facts and provided that the required information is furnished to the IRS.

The discussion set forth above is included for general information only and may not be applicable depending upon a holder's particular situation. Holders should consult their tax advisors with respect to the tax consequences to them of the purchase, ownership and disposition of shares including the tax consequences under state, local and other tax laws and the possible effects of changes in United States federal and other tax laws.

#### **F. Dividends and Paying Agents**

Not applicable.