

## EXCHANGE CONTROLS

Payments in foreign currency with respect to certain foreign exchange transactions including international investments between Colombian residents and non-Colombian residents must by law be conducted through the commercial exchange market. Therefore, any foreign currency income or expenses under the ADRs must be channeled through that market. Transactions conducted through the commercial exchange market are made at market rates freely negotiated with authorized intermediaries (banks, financial corporations, administrators and others).

Foreign capital investments must be made through authorized foreign exchange investment management companies. Only brokerage firms, trusts and investment management companies, subject to the inspection and supervision of the Superintendency of Finance are allowed to make investments in the local Colombian market on behalf of foreign investors, and, when referring to portfolio investments, such firms, trusts and investment management companies also act as the investors' local representatives.

Colombian law provides that the Colombian Central Bank may intervene in the foreign exchange market at its own discretion at any time. Likewise, from time to time, the Colombian government introduces amendments to the International Investment Statute. The Colombian Central Bank may also limit the remittance of dividends and/or investments of foreign currency received by Colombian residents whenever international reserves fall below an amount equal to three months of imports. We cannot assure you that the Colombian Central Bank will not intervene in the future. However, since the establishment of the current foreign exchange regime in 1991, the Colombian Central Bank has never taken such action. See "Item 3. Key Information–Risk Factors–Risks Relating to Colombia's political and regional environment."

### *Registration of Foreign Investment Represented in Underlying Shares*

Colombia's International Investment Statute, which has been amended from time to time through related decrees and regulations, regulates the manner in which non-Colombian resident entities and individuals can invest in Colombia and participate in the Colombian securities markets. Among other requirements, the statute mandates registration of certain foreign exchange transactions with the Colombian Central Bank and specifies procedures to authorize and administer certain types of foreign investments. Additionally, pertinent information must be updated yearly.

Under these foreign investment regulations, the failure of a foreign investor to report or register with the Colombian Central Bank foreign exchange transactions relating to investments in Colombia on a timely basis may prevent the investor from obtaining remittance rights, constitute an exchange control infraction, and result in a fine.

Foreign investors who acquire ADRs are not required to register the investment with Colombian authorities. Holders of ADRs will benefit from the registration to be obtained by the custodian for our common shares underlying the ADRs in Colombia, which permits the custodian to convert dividends and other distributions with respect to the common shares into foreign currency and remit the proceeds abroad. If investors in ADRs choose to surrender their ADRs and withdraw common shares, they must register their investment in the common shares as a portfolio investment through their local representative. The local representative is the brokerage firm, trust company or investment management company that acts on behalf of the holders for the common shares in Colombia, and the request for registration is made by them through the transmission of consolidated information to the Colombian Central Bank.

In obtaining its own foreign investment registration, an investor who surrenders its ADRs and withdraws common shares may incur expenses and/or suffer delays in the application process. Investors would only be allowed to transfer dividends abroad or transfer funds received as distributions relating to our common shares after their foreign investment registration procedure with the Colombian Central Bank has been completed. In addition, the depositary's foreign investment registration may also be adversely affected by future legislative changes, but its rights to transfer dividends abroad or profits arising from distributions relating to our common shares must be maintained according to Colombian law and foreign investment treaties entered into by Colombia, except when Colombia's international reserves fall below an amount equivalent to three months' worth of imports.

## TAXATION

### **Colombian Tax Considerations**

The following is a general description of the Colombian tax considerations for investments in common shares in Colombia or for the purchase of ADSs, in a foreign securities market. This description is based on applicable law in effect as of the date of this annual report, which may be subject to change. Please note that changes in tax regulations may apply retroactively, which in turn may affect the validity of the information provided herein.

Prospective purchasers of common shares or ADSs should consult their own tax advisors for a detailed analysis of the tax consequences resulting from the acquisition, ownership and disposition of common shares or ADSs.

### **General Rules**

Entities and individuals who are residents or are domiciled in Colombia or are considered residents in Colombia for tax purposes, are subject to Colombian income tax on their worldwide income. Non-resident entities and non-resident individuals are subject to income tax in Colombia solely on their Colombian-source income which, as a general rule, originates in the sale of assets located in the country at the time of the sale, in the exploitation of tangible and intangible assets in Colombia, and in the rendering of services within the Colombian territory. Double taxation treaties signed by Colombia, if applicable, provide for special rules regarding income tax.

For purposes of Colombian taxation, an individual is a resident if he or she meets any of the following criteria:

- (i) remains in Colombia for more than 183 calendar days within any given 365-consecutive-day term;
- (ii) is related to the Colombian Government's foreign service or to individuals who are at the Colombian Government's foreign service and who, by virtue of the Vienna Conventions on diplomatic and consular relations, is exempt from taxes during the time of service; or
- (iii) is a Colombian national and:
  - has a spouse or permanent companion, or dependent children, who are Residents, or
  - 50% or more of his or her total income is sourced in Colombia, or
  - 50% or more of his or her assets are managed in Colombia, or
  - 50% or more of his or her assets are deemed to be located in Colombia, or
  - has failed to provide proof of residency in another country (different from Colombia) upon previous official request by the Colombian tax office, or
  - is a resident of a country deemed a tax haven under Colombian law.

For purposes of Colombian taxation, an entity is deemed to be a national, and, therefore, is subject to taxation in Colombia as a resident, if it meets any of the following criteria:

- (i) it has its place of business or its place of effective management in Colombia during the corresponding year or taxable period;
- (ii) it has its main domicile in the Colombian territory; or
- (iii) it has been incorporated in Colombia, in accordance with Colombian laws.

Pursuant to the Colombian Tax Statute, a foreign company or non-resident individual has a permanent establishment in Colombia when said company or individual performs activities in Colombia through: (i) a fixed place of business (i.e., branches, factories or offices), or (ii) an individual who is not an independent agent empowered to execute agreements on behalf of the foreign company. Permanent establishments are considered Colombian taxpayers in connection with the income and taxable gains attributed to said permanent establishment. A foreign company or entity will not be deemed to have a permanent establishment by the sole fact that it acts through a broker or any other independent agent.

## ***Tax Treatment of a Non-Resident of Colombia who Purchases an ADS in a Foreign Securities Market***

### ***Dividends***

As a general rule, dividends paid to foreign companies, foreign entities or non-Colombian residents who are investing in Colombian shares directly or through a foreign investment capital fund, or FICF, are treated as Colombian-source income, and thus are subject to Colombian income tax.

To avoid double taxation, dividends are not subject to tax at the shareholder level when they are paid out of corporate profits that have been previously taxed at the corporate level. If the accounting or commercial earnings of a Colombian company exceed the tax profits subject to income tax at the corporate level, then the excess distributed as dividends is subject to income tax at the shareholder level. If the shareholder is a non-resident, the applicable tax rate is 33%. Further regulation and decrees are pending to be enacted by the government, as a consequence of the tax reform (Law 1607 of 2012 which entered into force on January 1, 2013).

If the shareholder is a non-resident entity or a non-resident individual investing through an FICF on portfolio investments, the applicable withholding tax rate is 25% and it is applied on the basis of the total amounts distributed, assuming that the dividends cannot be attributed to a permanent establishment in Colombia belonging to the shareholder. Foreign shareholders subject to such withholding taxes are not required to file an income tax return in Colombia.

Therefore, dividends distributed out of taxed earnings at the corporate level to shareholders who are non-residents will be exempt from income, withholding and remittance taxes. This exception does not apply in the case of distributions paid out of non-taxed earnings at the corporate level, which would be subject to the 33% income tax rate.

### ***Taxation of Capital Gains from the sale of ADSs***

Capital gains obtained from the sale of ADSs by non-resident entities, Colombian individuals who are not residents in Colombia or foreign non-resident individuals, are not subject to income tax in Colombia as such sale does not result in Colombian-source income to the extent that the ADSs are not deemed to be owned in Colombia.

If the holder of the ADSs who is a non-resident entity, a Colombian individual who is not a resident in Colombia or a foreign non-resident individual, decides to surrender the ADSs and withdraw the underlying common shares, it is arguable that such transaction does not constitute a capital gain subject to income tax in Colombia. However, different interpretations may be adopted by the Colombian Tax Authorities on this matter.

## ***Tax Treatment in Colombia of Non-Resident who Purchases Ecopetrol's Shares in Colombia's Securities Market***

### ***Dividends***

As a general rule, dividends paid to foreign companies or foreign entities, non-Colombian residents, who are investing in Colombian shares directly or through a FICF are treated as Colombian-source income; thus, they are subject to Colombian income tax.

To avoid double taxation, dividends are not subject to tax at the shareholder level when they are paid out of corporate profits that have been previously taxed at the corporate level. If the accounting or commercial earnings of a Colombian company exceed the tax profits subject to income tax at the corporate level, then the excess distributed as dividends is subject to income tax at the shareholder level. If the shareholder is a non-Colombian resident, the applicable tax rate is 33%. Further regulation and decrees are pending to be enacted by the government, as a consequence of the tax reform (Law 1607 of 2012 which entered into force on January 1, 2013).

If the shareholder is a non-resident entity or a non-resident individual investing through a FICF on portfolio investments, the applicable withholding tax rate is 25% and it is applied on the basis of the total amounts distributed, assuming that the dividends cannot be attributed to a permanent establishment in Colombia belonging to the shareholder. Foreign shareholders subject to said withholding taxes are not required to file an income tax return in Colombia.

Therefore, dividends distributed out of taxed earnings at the corporate level to shareholders who are non-residents, will be exempt from income, withholding and remittance taxes. This exception does not apply in the case of distributions paid out of non-taxed earnings at the corporate level which would be subject to the 33% income tax rate.

#### *Taxation of Capital Gains for the Sale of Shares*

Capital gains obtained in the sale of shares listed on the BVC and owned by the same beneficial owner, are not subject to income tax in Colombia, provided that the shares sold during the taxable year do not represent more than 10% of the outstanding shares of the listed company. Pursuant to Article 18 of Decree 2634 of 2012, sellers of shares are not required to file an income tax return for the transfer of securities that are listed in the National Registry of Securities and Issuers (*Registro Nacional de Valores y Emisores* or *RNVE*) as long as the foreign investment is treated as a portfolio investment under article 3 of Decree 2080 of 2000.

If the abovementioned requirements are not met, the capital gain obtained in the sale of shares is subject to income tax or capital gains tax, under the following rules:

- The gain or loss arising therefrom will be equivalent to the difference between the sale price and the tax basis of the shares. As a general rule, the tax basis of shares is equal to the price paid for such shares (*i.e.*, cost of acquisition).
- The applicable tax rate and the withholding tax rate have to be determined on a case-by-case basis.

#### ***Tax Treatment by Non-Resident Who Purchase Ecopetrol's Shares in the BVC Market and Exchange them for ADSs***

##### *Dividends*

Payment of dividends made from Colombia to a non-resident are subject to the tax treatment described above. Therefore, payments to holders of ADSs are not subject to income, withholding or remittance taxes. Dividends paid to the Depositary of ADSs arising from Colombian shares are not subject to taxation, unless dividends are paid out of earnings that were not taxed at the corporate level, in which case they will be subject to income tax in Colombia at a 33% rate via withholding tax.

##### *Taxation on Capital Gains for the Sale of Shares*

Assuming that the exchange of securities is treated as a sale of Ecopetrol's shares, the seller is subject to the tax treatment described above.

Therefore, capital gains obtained in the sale of shares listed on the BVC and owned by the same beneficial owner, are not subject to income tax in Colombia, provided that the shares sold during the taxable year do not represent more than 10% of the outstanding shares of the listed company. Pursuant to Article 18 of Decree 2634 of 2012, sellers of shares are not required to file an income tax return for the transfer of securities that are listed in the RNVE as long as the foreign investment is treated as a portfolio investment under article 3 of Decree 2080 of 2000.

If the abovementioned requirements are not met, the capital gain obtained in the sale of shares is subject to income tax or capital gains tax, under the following rules:

- The gain or loss arising therefrom will be equivalent to the difference between the sale price and the tax basis of the shares. As a general rule, the tax basis of shares is equal to the price paid for such shares (*i.e.*, cost of acquisition).
- The applicable tax rate and the withholding tax rate has to be determined in a case-by-case basis.

#### **U.S. Federal Income Tax Consequences**

This summary describes the principal U.S. federal income tax consequences of the ownership and disposition of common shares or ADSs, but it does not purport to be a comprehensive description of all of the U.S. tax consequences that may be relevant to a decision to hold or dispose of common shares or ADSs. This summary applies only to purchasers of common shares or ADSs who will hold the common shares or ADSs as capital assets and does not apply to special classes of holders such as dealers in securities or currencies, holders whose functional currency is not the U.S. dollar, holders of ten percent or more of our shares (taking into account shares held directly or through depositary arrangements), tax-exempt organizations, financial institutions, holders liable for the alternative minimum tax, securities traders who elect to account for their investment in common shares or ADSs on a mark-to-market basis, partnerships or other pass-through entities, insurance companies, U.S. expatriates, and persons holding common shares or ADSs in a hedging transaction or as part of a straddle, conversion or other integrated transaction for U.S. federal income tax purposes. The statements regarding U.S. tax law set forth in this summary are based on U.S. law as in force on the date of this annual report, and changes to such law subsequent to the date of this annual report may affect the tax consequences described herein (possibly with retroactive effect). This summary is also based in part on the representations of the Depositary and the assumption that each obligation in the deposit agreement and any related agreement will be performed in accordance with its terms.

Each holder is encouraged to consult such holder's tax advisor concerning the overall tax consequences to it, including the consequences under laws other than U.S. federal income tax laws, of an investment in common shares or ADSs.

In this discussion, references to a "U.S. Holder" are to a beneficial holder of a common share or an ADS (1) that is a citizen or resident of the United States of America, (2) that is a corporation, or any other entity taxable as a corporation, organized under the laws of the United States of America, any state thereof or the District of Columbia, or (3) that is otherwise subject to U.S. federal income taxation on a net basis with respect to the common shares or ADS.

For purposes of the U.S. Internal Revenue Code of 1986, as amended, which we call the "Code," holders of ADSs will generally be treated as owners of the common shares represented by such ADSs.

This discussion does not address U.S. federal estate and gift tax or the alternative minimum tax consequences of holding common shares or ADSs. In addition, this discussion does not address the state, local and non-U.S. tax consequences of holding our common shares or ADSs.

#### *Distributions on Common Shares or ADSs*

A distribution to U.S. Holders made by us of cash or property with respect to common shares or ADSs generally will be treated as a dividend for U.S. federal income tax purposes to the extent paid out of our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). A U.S. Holder of common shares or ADSs generally will be taxed on such dividend as ordinary income. Distributions in excess of our current or accumulated earnings and profits will be treated first as a tax-free return of capital reducing such U.S. Holder's adjusted tax basis in the common shares or ADSs. Any distribution in excess of such adjusted tax basis will be treated as capital gain and will be either long-term or short-term capital gain depending upon whether the U.S. Holder held the common shares or ADSs for more than one year. Distributions of additional common shares or ADSs to U.S. Holders that are part of a pro rata distribution to all of our shareholders generally will not be subject to U.S. federal income tax. We do not maintain calculations of our earnings and profits under U.S. federal income tax principles, and, therefore, U.S. Holders should expect that any distributions generally will be reported as dividends for U.S. federal income tax purposes. As used below, the term "dividend" means a distribution that constitutes a dividend for U.S. federal income tax purposes.

The amount of any distribution will include the amount of any Colombian tax withheld on the amount distributed, and the amount of a distribution paid in Pesos will be measured by reference to the exchange rate for converting Pesos into U.S. dollars in effect on the date the distribution is received by the Depositary (or by a U.S. Holder in the case of a holder of common shares). If the Depositary (or U.S. Holder in the case of a holder of common shares) does not convert such Pesos into U.S. dollars on the date it receives them, it is possible that the U.S. Holder will recognize foreign currency loss or gain, which would be ordinary loss or gain, when the Pesos are converted into U.S. dollars. Dividends paid by us will not be eligible for the dividends received deduction allowed to corporations under the Code.

Subject to certain exceptions for short-term and hedged positions, the dividends received by an individual with respect to the ADSs will be subject to taxation at a maximum rate of 20.0% if the dividends are "qualified dividends." Dividends paid on the ADSs will be treated as qualified dividends if (1) the ADSs are readily tradable on an established securities market in the United States and (2) we were not, in the year prior to the year in which the dividend was paid, and are not, in the year in which the dividend is paid, a passive foreign investment company ("PFIC"). The ADSs are listed on the New York Stock Exchange, and will qualify as readily tradable on an established securities market in the United States so long as they are so listed. Based on our audited financial statements and relevant market and shareholder data, we believe that we were not treated as a PFIC for U.S. federal income tax purposes with respect to our 2012 taxable year. In addition, based on our audited financial statements and our current expectations regarding the value and nature of our assets, the sources and nature of our income, and relevant market and shareholder data, we do not anticipate becoming a PFIC for the 2013 taxable year. Based on existing guidance, it is not clear whether dividends received with respect to the common shares will be treated as qualified dividends. In addition, the U.S. Treasury has announced its intention to promulgate rules pursuant to which holders of ADSs or common shares and intermediaries through whom such securities are held will be permitted to rely on certifications from issuers to treat dividends as qualified for tax reporting purposes. Because such procedures have not yet been issued, it is not clear whether we will be able to comply with them. Holders of ADSs and common shares should consult their own tax advisers regarding the availability of the reduced dividend tax rate in the light of the considerations discussed above and their own particular circumstances.

A U.S. Holder will be entitled, subject to a number of complex limitations and conditions, to claim a U.S. foreign tax credit in respect of any Colombian income taxes withheld on dividends received on common shares or ADSs. U.S. Holders who do not elect to claim a credit for any foreign income taxes paid during the taxable year may instead claim a deduction in respect of such Colombian income taxes provided the U.S. Holder elects to deduct (rather than credit) all foreign income taxes for that year. Dividends received with respect to the common shares or ADSs will be treated as foreign source income, subject to various classifications and other limitations. For the purposes of the U.S. foreign tax credit limitations, the dividends paid with respect to our common shares or ADSs should generally constitute "passive category income." The rules relating to computing foreign tax credits or deducting foreign income taxes are extremely complex, and U.S. Holders are urged to consult their own independent tax advisors regarding the availability of foreign tax credits with respect to any Colombian income taxes withheld.

#### *Sale, Exchange or Other Taxable Dispositions of Common Shares or ADSs*

A U.S. Holder generally will recognize capital gain or loss upon the sale, exchange or other taxable disposition of common shares or ADSs in an amount equal to the difference between the amount realized on the sale, exchange or other taxable disposition of the common shares or ADSs and the U.S. Holder's adjusted tax basis in the common shares or ADSs. Any gain or loss will be long-term capital gain or loss if the common shares or ADSs have been held for more than one year. Certain non-corporate U.S. Holders (including individuals) may be eligible for preferential rates of U.S. federal income tax in respect of long-term capital gains. The deductibility of capital losses is subject to limitations under the Code.

If you are a U.S. Holder of common shares or ADSs, the initial tax basis of your common shares or ADSs will be the U.S. dollar value of the Peso-denominated purchase price determined on the date of purchase. If the common shares or ADSs are treated as traded on an "established securities market," a cash basis U.S. Holder, or, if it elects, an accrual basis U.S. Holder, will determine the dollar value of the cost of such common shares or ADSs by translating the amount paid at the spot rate of exchange on the settlement date of the purchase. If you convert U.S. dollars to Pesos and immediately use that currency to purchase common shares or ADSs, such conversion generally will not result in taxable gain or loss to you.

With respect to the sale or exchange of common shares or ADSs, the amount realized generally will be the U.S. dollar value of the payment received determined on (1) the date of receipt of payment in the case of a cash basis U.S. Holder and (2) the date of disposition in the case of an accrual basis U.S. Holder. If the common shares or ADSs are treated as traded on an "established securities market," a cash basis taxpayer, or, if it elects, an accrual basis taxpayer, will determine the U.S. dollar value of the amount realized by translating the amount received at the spot rate of exchange on the settlement date of the sale.

If a Colombian income tax is withheld or otherwise imposed on the sale, exchange or other taxable disposition of common shares or ADSs, the amount realized by a U.S. Holder will include the gross amount of the proceeds of that sale or other disposition before deduction of the Colombian income tax. Capital gain or loss, if any, realized by a U.S. Holder on the sale, exchange or other taxable disposition of common shares or ADSs generally will be treated as U.S. source income or loss for U.S. foreign tax credit purposes. Consequently, in the case of a disposition of a common share or ADS that is subject to Colombian income tax imposed on the gain, the U.S. Holder may not be able to benefit from the foreign tax credit for the Colombian income tax (because the income or loss on the disposition would be U.S. sourced), unless the U.S. Holder can apply the credit against U.S. federal income tax payable on other income from foreign sources. Alternatively, the U.S. Holder may take a deduction for the Colombian income tax if it does not elect to claim a foreign tax credit for any foreign income taxes paid or accrued during the taxable year.

Deposits and withdrawals of common shares in exchange for ADSs will not result in the realization of gain or loss for U.S. federal income tax purposes.

#### *Backup Withholding and Information Reporting*

In general, dividends on common shares or ADSs, and payments of the proceeds of a sale, exchange or other taxable disposition of common shares or ADSs, paid within the United States, by a U.S. payor through certain U.S.-related financial intermediaries to a U.S. Holder are subject to information reporting and may be subject to backup withholding at a current rate of 28% unless the holder (1) establishes that it is a corporation or other exempt recipient or (2) with respect to backup withholding, provides an accurate taxpayer identification number and certifies that it is a U.S. person and that no loss of exemption from backup withholding has occurred.