

## **ROYAL BAFOKENG PLATINUM LIMITED**

(Incorporated in the Republic of South Africa)

(Registration number: 2008/015696/06)

JSE share code: RBP ISIN: ZAE000149936

("RBPlat" or the "Company")

### **UPDATE ON VARIOUS MATTERS PERTINENT TO THE IMPLATS MANDATORY OFFER**

Shareholders of RBPlat are referred to the mandatory offer by Impala Platinum Holdings Limited ("**Implats**") to RBPlat shareholders, the terms of which are set out in the Implats offer circular posted on 17 January 2022 (the "**Mandatory Offer**"), and to the RBPlat offeree response circular to RBPlat shareholders, dated 11 February 2022 (the "**Response Circular**").

Shareholders of RBPlat are also referred to:

- the announcements released on SENS by Implats regarding the issuance of a compliance certificate by the Takeover Regulation Panel ("**TRP**") for the Mandatory Offer, the last of which was released on SENS on 29 March 2023;
- the announcement released on SENS by RBPlat on 10 November 2022 regarding the frustrating action complaint by Northam Platinum Holdings Limited ("**Northam**"); and
- the announcement released on SENS by RBPlat on 2 December 2022 regarding a further complaint by Northam under section 168 of the Companies Act, 2008 (the "**Companies Act**"), relating to, *inter alia*, the Response Circular.

Shareholders are further referred to the termination of Northam's proposed offer to RBPlat shareholders, as communicated by Northam in its SENS announcement dated 5 April 2023, as well as to the Company's SENS announcement on 6 April 2023 in this regard.

### **IMPLATS COMPLIANCE CERTIFICATE**

As announced on SENS by Implats on 15 December 2022, Implats requested the TRP to issue it with a compliance certificate in relation to the Mandatory Offer ("**Compliance Certificate**") on 16 November 2022. The TRP indicated that certain outstanding complaints made by Northam in relation to alleged non-compliance by RBPlat with the Companies Act and the Companies Regulations, 2011 ("**Regulations**") needed to be resolved first, before a Compliance Certificate could be issued.

Implats appealed the TRP's ruling to the Takeover Special Committee ("**TSC**") on 21 March 2023 and this was dismissed by the TSC on 31 March 2023. The consequence of this is that the TRP's original ruling stands and the TRP will only issue Implats with a Compliance Certificate once the complaints as set out below are resolved. The status of these complaints, and the proposed manner which the Company intends to resolve these matters, are set out below.

The Company remains highly concerned about the ongoing delays in relation to the closing of the Mandatory Offer. These have resulted in the Company effectively being under offer for over a year and a half, which has

been a significant drain on management time and had detrimental implications on the Company's ability to implement strategic initiatives. Following Northam electing not to proceed with its proposed offer, the Mandatory Offer remains the only offer currently available to RBPlat shareholders. The Company accordingly believes it is in the best interests of its shareholders for the Company to take all steps necessary to resolve the outstanding matters in the most expeditious way possible to facilitate the issue of the Compliance Certificate. This will allow for the closing and implementation of the Mandatory Offer.

The Company has been exploring ways to expedite the resolution of these outstanding issues and will update shareholders accordingly as soon as it has decided on the appropriate course of action. In the interim, however, it sets out below for the benefit of shareholders the status of the various matters following the hearings that were held before the TSC on 19 and 21 March 2023.

### **FRUSTRATING ACTION COMPLAINT BY NORTHAM**

On 26 April 2022 RBPlat announced, *inter alia*, the retirement of the Chief Executive Officer ("**CEO**") and the Chief Operating Officer ("**COO**") with effect from 7 April 2022, as well as the conclusion of fixed term contracts with these two executives to ensure their retention until such time as the corporate action was finalised (which contracts, as announced on SENS on 11 April 2023, have recently been extended). Their retirement resulted in the automatic pro-rated aggregate accelerated vesting and issue of 560 176 RBPlat shares to the CEO and the COO in terms of the rules of the RBPlat Full Share Plan (as previously approved by shareholders) (the "**Share Issuance**"). The Share Issuance was approved by the TRP prior to being implemented, and Implats, as the offeror, confirmed that it had no objection thereto.

Subsequently, Northam lodged a complaint with the TRP, alleging, *inter alia*, that the Share Issuance, and the contractual arrangements entered into with the CEO and COO, contravened section 126 of the Companies Act (which prohibits action by an offeree company which could frustrate an offer). RBPlat disputed this complaint, which was dismissed by the TRP. Northam appealed the TRP's decision to the TSC, which overturned the TRP's decision and found that the Share Issuance contravened section 126(1)(b) of the Companies Act and that RBPlat must correct the contravention "*in a manner provided for in the Companies Act and Regulations*". The TSC further ordered the TRP to investigate Northam's complaint in relation to the fixed term contracts and the deferred awards thereunder.

As announced on SENS on 10 November 2022, RBPlat was of the view that the TSC ruling was both legally and factually flawed and, in February 2023, it launched an application to the High Court to review the TSC ruling (the "**Review**"). The Review has been opposed by Northam. The TRP and TSC have agreed to abide by the High Court's decision on the Review.

Given the pending Review, the Company requested the TSC to stay its ruling until such time as the Review was determined. The TSC declined to do so on the basis that it did not have the requisite authority. The Company has been advised by its legal advisors that it has reasonable prospects of success in the Review. However, it is mindful of the fact that this process, particularly as it has been opposed by Northam, may be lengthy, and is unlikely to ensure expeditious resolution of this matter. Accordingly, notwithstanding that the Company remains strongly of the view that the Share Issuance and fixed term contracts were implemented lawfully and did not contravene section 126 of the Act, it is currently considering with its advisors other possible steps that it can take

to resolve these matters as soon as possible and it will update shareholders with any further developments in this regard.

### **COMPLAINT BY NORTHAM IN RELATION TO INDEPENDENT BOARD AND RESPONSE CIRCULAR**

On 2 December 2022, RBPlat advised its shareholders that Northam had made various complaints to the TRP relating to, *inter alia*, the Response Circular. The complaint by Northam further alleged that the members of the independent board of RBPlat (the "**Independent Board**") are not independent as required by the Regulations.

RBPlat disputed the various complaints raised by Northam. Northam's complaints regarding the Response Circular and the independence of the Independent Board members were subsequently dismissed by the TRP (other than in relation to the independent expert report, which is dealt with below). Northam appealed this ruling on 19 March 2023, and its appeal was dismissed by the TSC on 31 March 2023, meaning that the original TRP ruling on these matters stands.

Accordingly, this matter is now resolved and no further steps are required by the Company. The Independent Board reiterates that it firmly believes it has acted at all times, and continues to act, in the best interests of the shareholders of the Company and in accordance with its obligations under the Companies Act and the Regulations.

### **SUPPLEMENT TO INDEPENDENT EXPERT REPORT**

The Response Circular included a report by the Independent Expert ("**Report**"), dated 8 February 2022, in which it expressed the opinion ("**Opinion**") that the Mandatory Offer was fair and reasonable to RBPlat shareholders at that time.

In this regard, regulation 90(6)(f) of the Regulations requires the fair and reasonable opinion included in a response circular to include "*a range of final valuation values attributable to the relevant securities or assets and a most likely value used as the core number for purposes of the expression of the opinion*". The Independent Expert and Independent Board believe that this was complied with, as the range at which the Independent Expert believed the Mandatory Offer would be fair (being a range of between 0.22 and 0.34 Implats shares for every one RBPlat share, after deducting the cash amount of R90.00 per RBPlat share) ("**Value Range**") is set out in paragraph 11 of the Report, which also contains the most likely value used as the core number (being the midpoint value of 0.28 Implats shares for every one RBPlat share, after deducting the cash amount of R90.00 per RBPlat share).

The Response Circular, including the Report containing the Value Range, was submitted to and approved by the TRP before being distributed to RBPlat shareholders.

In its abovementioned complaints to the TRP, Northam alleged that certain disclosures were omitted from the Report, including certain additional value ranges. Given that the TRP had previously been satisfied with the disclosures in the Report, as evidenced by its approval of the Response Circular and Report, RBPlat did not believe it necessary to respond in detail to these particular allegations or to obtain the input of the Independent Expert. However, the TRP ruled that certain further disclosures raised by Northam were to be included in the Report, including additional value ranges for Implats and RBPlat shares ("**First Ruling**").

Upon becoming aware of the First Ruling, the Independent Expert engaged with the Independent Board and responded to the various allegations made by Northam, to illustrate the Report's compliance with the applicable disclosure requirements in the Regulations. However, so as not to delay matters, RBPlat opted not to appeal the First Ruling to the TSC. Instead, at the request of the Independent Board, the Independent Expert issued a supplement to the Report ("**Report Supplement**"), containing additional information and clarifying certain items, for the avoidance of doubt. Shareholders are referred to RBPlat's announcement on SENS dated 2 December 2022, in this regard. The TRP approved publication of the 2 December 2022 announcement and the issuing of the Report Supplement (which did not include additional value ranges) and held that they were sufficient to give effect to the First Ruling (this finding by the TRP being referred to below as the "**Second Ruling**").

Northam appealed to the TSC, arguing that the Second Ruling by the TRP was invalid. The TSC held *inter alia* that, having issued the First Ruling, the TRP could not thereafter make the Second Ruling. The TSC did not express a view on whether the additional value range disclosures sought by Northam were, in fact, a requirement in terms of the Regulations.

Pursuant to the above, it is confirmed that, in order to determine the Value Range included in the Report, the Independent Expert calculated the following separate fair value ranges for an RBPlat share and an Implats share, as at 8 February 2022 (the date of the Report):

- in respect of an RBPlat share, a value range between R183.44 and R213.04 per share, with a midpoint of R198.24 per share, this being the most likely value used as the core number; and
- in respect of an Implats share, a value range between R364.38 and R418.00 per share, with a midpoint of R391.19 per share, this being the most likely value used as the core number.

When considering the above value ranges, RBPlat shareholders should bear the following in mind:

- these values should not be viewed in isolation, given that they were calculated at the time on a comparable basis in order to arrive at the Value Range, bearing in mind that the Mandatory Offer consideration included a share-for-share swap ratio, on which the Independent Expert was required to express its opinion;
- the Report, containing the Independent Expert's Opinion that the Mandatory Offer is fair and reasonable, was issued more than 14 months ago, on 8 February 2022. This may result in material information incorporated in the Opinion being invalid or outdated through the passage of time as new facts and circumstances may have arisen since, given the delays mentioned above, including subsequent global events, industry and company specific changes, macro-economic factors, and current and forecasted metal prices, which may affect the Opinion if updated; and
- as indicated in the Report, during its valuation analysis the Independent Expert relied on financial and other information, including prospective financial information obtained from RBPlat, Implats and various public, financial and industry sources. The Independent Expert's conclusions are dependent on such information being complete and accurate in all material respects.

The Independent Expert has issued a further supplement to its Report, containing the above value ranges for RBPlat and Implats shares ("**Further Report Supplement**"). The Further Report Supplement is available for inspection at the Company's offices situated at The Pivot, No 1 Monte Casino Boulevard, Block C, 4th Floor, Fourways.

Shareholders are also referred to the Report, where further information regarding the Independent Expert's assumptions, procedures and valuation methodology (including key value drivers and sensitivity analyses on the discounted cash flow valuations conducted) is set out. For a full understanding of the Independent Expert's Opinion, RBPlat shareholders are advised to read the full Report together with the Report Supplement and the Further Report Supplement.

The disclosure of the above value ranges (which were taken into account by the Independent Expert in calculating the Value Range) does not impact the Opinion (as at 8 February 2022) contained in the Report.

The Independent Board was previously provided by the Independent Expert with the fair value ranges for an RBPlat share and an Implats share as at 8 February 2022 prior to expressing its opinion on the Mandatory Offer in the Response Circular and as such is of the firm view that this additional disclosure is **not material** and **does not affect or alter its opinion that the Mandatory Offer is fair and reasonable**.

#### **RESPONSIBILITY STATEMENT**

The Independent Board, individually and collectively, accepts responsibility for the accuracy of the information contained in this announcement which relates to RBPlat. To the best of the Independent Board's knowledge and belief, the information contained in this announcement is true and nothing has been omitted which is likely to affect the importance of such information.

Johannesburg

26 April 2023

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