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COMMENTS ON THE THIRD DRAFT OF THE MINERAL AND PETROLEUM RESOURCES ROYALTY BILL – IMPALA PLATINUM HOLDINGS LIMITED

1. INTRODUCTION

1.1 Impala Platinum Holdings Limited ("Implats") encloses herewith comments on the Third Draft of the Mineral and Petroleum Resources Royalty Bill ("the Third Royalty Bill"), as released for a final round of public comment and parliamentary review by the National Treasury on 6 December 2007.

1.2 These comments are made on behalf of the Implats group of companies, including Impala Platinum Limited, Impala Refineries Services Limited ("IRS"), Marula Platinum (Pty) Limited and Afplats (Pty) Limited, hereinafter collectively referred to as Implats for ease of reference.

1.2 Implats is a member of the Chamber of Mines and has provided input into their detailed submission to Treasury in respect of the Third Royalty Bill, as well as the First Draft of the Royalty Administration Bill. Implats hereby formally endorse the comments of the Chamber of Mines. Amplification of some of these views is set out in this document.

1.3 Implats acknowledges the fundamental principles and objectives which underpin the Third Royalty Bill. However, we have some concerns relating to the proposed royalty formula which is based on a historical view, and does not take into account the significantly higher capital expenditure environment of the Platinum Industry in South Africa. These concerns can probably be addressed by opting for at least one of Implats' proposals in respect of the royalty formula to facilitate sustainability in the mining industry, whilst at the same time giving effect to the objective of the MPRDA.

2. COMMENTS TO ROYALTY FORMULA

2.1 <u>Historical view versus the current operating environment of the Platinum Industry</u>

2.1.1 *Anticipated Royalty Rates*

2.1.1.1 It is clear from Treasury's media statement as released on 6 December 2007 that anticipated royalty rates in terms of the proposed formula have been derived from information received from the mining industry for the period 2002 – 2006, being 2.7% on average for the Platinum Industry versus the average of 4.5% recommended by the Second Royalty Bill (refined 3% and unrefined 6%).

2.1.1.2.1 Treasury is therefore claiming that in terms of the proposed formula, royalty rates are lower or similar to the royalty rate structure proposed in the Second Royalty Bill. However this is not the case.

2.1.1.3 It should be noted that the combined Implats Group royalty rate under the Second Royalty Bill would have been 2.9%, based on refined product (which included differential rates for gold, nickel, silver, pgms and cobalt).

2.1.1.4 For the calendar year 2007, the Implats Group royalty rate would have been 3.71% in accordance with the Third Royalty Bill formula calculations. As of 1 January 2008, the royalty rate would be even higher due to significant increases in prices.

2.1.2 *Capital Expenditure*

2.1.2.1 The Platinum Industry is entering the same challenging environment, which the gold sector has already been experiencing over the last few years. Much of the remaining ore resources which occur at depths below 1200 metres (versus above 1200 metres over the previous few decades) require significantly more capital expenditure and long term certainty from a planning perspective in order to bring them to account.

2.1.2.2 To maintain current production capacity, Implats will need to spend significantly more capital expenditure going forward which will generate less cash than over previous years (even to the extent of putting Implats in a cash negative position, where it will need to borrow money to subsidise capital expenditure and to pay royalties). Implats is currently in a net debt position versus a net cash position it enjoyed in previous years.

2.1.2.3 In 2007 Implats announced that it intended spending R25 billion in capital expenditure over the next 5 year period, compared to R11 billion spent as capital expenditure over the previous 5 year period. R15 billion of this amount will be spent at Impala's Rustenburg operation to maintain production at 1.1 million platinum ounces. In February 2008 the development of 17 shaft was announced.

2.2 <u>Proposed Royalty Formula Options to be considered</u>

Implats acknowledges that the proposed royalty formula takes certain costs associated with the process of beneficiation into account. However, to further enhance the competitiveness and stability of the proposed royalty formula, Implats proposes that Treasury consider the following options that recognise the mining industry's significant commitments and which will place us in the same reasonable position as per the Second Royalty Bill where a 3% royalty rate on refined pgms was envisaged.

The options are set out in order of preference to the Implats Group:

2.2.1 Total Capital Expenditure Deduction

	CY2007 3rd Draft Bill	**CY 2007 Capital Deduction**
Gross revenue	18,346.80	18,346.80
Less: Allowable expenses to arrive at ex-mine value	701.32	701.32
NSR Value against which royalty is applied	17,645.48	17,645.48
EBITDA	8,497.50	8,497.50
Minus capital expenditure		(2,720.60)
		5,776.90
EBITDA/Gross revenue percentage	46.32	
(EBITDA – capex) Gross revenue percentage		31.49
Percentage applied based on a 12.5 factor	3.71	2.52
Formula royalty	653.81	444.49

2.2.2 Cap royalty rate at maximum of 3%

	CY2007 3rd Draft Bill	**CY 2007 Cap at 3% Royalty**
Gross revenue	18,346.80	18,346.80
Less: Allowable expenses to arrive at ex-mine value	701.32	701.32
NSR Value against which royalty is applied	17,645.48	17,645.48
EBITDA	8,497.50	8,497.50
EBITDA/Gross revenue percentage	46.32	46.32
Percentage applied based on a 12.5 factor	3.71	
Percentage capped at 3%		3.00
Formula royalty	653.81	529.36

2.2.3 *EBITDA x changed factor 15*

	CY2007 3rd Draft Bill	CY 2007 EBITDA X Factor 15
Gross revenue	18,346.80	18,346.80
Less: Allowable expenses to arrive at ex-mine value	701.32	701.32
NSR Value against which royalty is applied	17,645.48	17,645.48
EBITDA	8,497.50	8,497.50
EBITDA/Gross revenue percentage	46.32	46.32
Percentage applied based on a 12.5 factor	3.71	
Percentage applied based on a 15 factor		3.09
Formula royalty	653.81	544.84

2.2.4 *EBIT x factor 12.5*

	CY2007 3rd Draft Bill	CY 2007 EBIT x Factor 12.5
Gross revenue	18,346.80	18,346.80
Less: Allowable expenses to arrive at ex-mine value	701.32	701.32
NSR Value against which royalty is applied	17,645.48	17,645.48
EBITDA	8,497.50	8,497.50
Minus: amortization and depreciation		(612.90)
		7,884.60
EBITDA/Gross revenue percentage	46.32	
(EBITDA – amortization and depreciation)/ Gross revenue percentage		42.98
Percentage applied based on a 12.5 factor	3.71	3.44
Formula royalty	653.81	606.66

3. GENERAL COMMENTS

3.1 We emphasise once again that Implats supports the specific and general comments made by the Chamber of Mines in their detailed submission on their member's behalf. However, we need to emphasise the importance of the issue of "*readily saleable condition".*

3.2 "Readily Saleable Condition"

3.2.1 It is Implats' understanding from various discussions with Treasury that in terms of platinum group metals (pgms), "*readily saleable condition"* is pgms in the form of concentrate ore, which is the first saleable condition of these metals and the form in which junior mining companies sell their product to other companies for further processing to final refined product.

3.2.2 To emphasise the Chamber's comments in this regard, in the absence of clarity on this matter (by way of schedule to the Bill, rather than by regulation by the Minister of Finance), it is difficult to assess the ambit of what is being considered as processing *"beyond its initial readily saleable condition"*, as well as the further implication of the Third Royalty Bill.

3.2.3 It is therefore difficult to raise comments / concerns in respect of the parts of the Third Royalty Bill, where reference is made to this unclear concept.

3.2.4 This aspect could specifically have a major impact on junior mining companies, if the *"readily saleable condition"* is defined at a point beyond pgm concentrate ore – the royalty then becoming payable on the arm's length value of the mineral (as if sold in the form of a *"readily saleable condition"*).

4. IN CONCLUSION

4.1 The raised concerns and comments highlight the critical issues that Implats wishes to address in the Third Royalty Bill from our company's perspective.

4.2 We reiterate our support of the Chamber's detailed comments, including its comments on drafting and the technical aspects of the Third Royalty Bill, as well as the First Draft of the Royalty Administration Bill.

4.3 Implats would like to take this opportunity to thank the Minister of Finance, the Portfolio Committee on Finance and the officials of Treasury for its commitment to ensuring that through bilateral discussion with the Mining Industry and other affected parties, the Third Royalty Bill will be developed to enhance the mining industry and beneficiation in South Africa.

5. PRESENTATION AT PUBLIC HEARING

Implats would also like to make use of the opportunity granted by the Portfolio Committee of Finance to make presentation on the Third Royalty Bill at the envisaged Public Hearing scheduled for either 11 or 19 March 2008. Kindly let us have the details as soon as it is available.

Yours sincerely

DAWN EARP
EXECUTIVE DIRECTOR