

## R&E'S LITIGATION STATEMENT

1. During the era when the late Roger Brett Kebble ("**Kebble**") was the Chief Executive Officer of Randgold & Exploration Company Limited ("**R&E**") and JCI Limited ("**JCI**") "**the Kebble era**", having regard to the findings of R&E's forensic investigators John Louw & Co. (Pty) Limited, (formerly Umbono Financial Advisory Services (Pty) Limited) ("**JLMC**") and information furnished to R&E by third parties, R&E alleges that it was the victim of widespread frauds and misappropriations of its assets.
2. R&E contends that the frauds and misappropriations which appear to have been perpetrated against it and certain of its subsidiaries, comprised predominantly of the alleged misappropriation of R&E's listed securities and the channelling thereof (or the proceeds derived therefrom), to a variety of persons and entities, whom R&E has reason to believe gave rise to it and certain of its subsidiaries sustaining damages.
3. Arising from the alleged defalcations, the board of R&E which was re-constituted on 24 August 2005, appointed JLMC to undertake a forensic investigation into its affairs during the Kebble era.
4. The forensic investigations enabled R&E to identify various persons, including JCI whom R&E alleges caused R&E and its subsidiaries ("**the R&E group**") loss.
5. In consequence, R&E has instituted a number of actions against various persons and entities which are alleged to have given rise to the R&E group sustaining losses.
6. Such claims are broadly referred to below. For a more in-depth account of the various matters in which the R&E group has been engaged since the reconstitution of R&E's Board of Directors on 24 August 2005 ("**the date of reconstitution**"), R&E shareholders are referred to prior legal updates and statements in relation to legal matters and settlements concluded (as previously published by R&E), which should be read in conjunction with this Statement.

### *R&E's claims against JCI:*

#### *The Mediation against JCI*

7. On 7 April 2006, R&E and JCI concluded a written Mediation and Arbitration Agreement ("**the Arbitration Agreement**").
8. In terms of the Arbitration Agreement, R&E and its subsidiaries and associated companies on the one hand and JCI and its subsidiaries and associated companies on the other, were, for purposes of the mediation/arbitration, to be treated as single entities. JCI is defined to include both it and its subsidiaries and associated companies or in which JCI has an interest, whether directly or indirectly, including its interest in CMMS. (A similar definition applies to R&E and its subsidiaries and associated companies.)
9. The Arbitration Agreement contemplates two phases, the first, a mediation phase, the second, an arbitration phase.
10. Following the conclusion of the Arbitration Agreement, R&E's forensic investigators, JLMC, established that R&E enjoyed a number of claims against JCI.
11. Following the exchange of forensic reports prepared by JLMC on behalf of R&E and KPMG Forensic Services (Pty) Limited on behalf of JCI, R&E served a Statement of Claim on JCI, on 3 August 2006.
12. R&E's Statement of Claim initially comprised of 13 claims, approximating to R5,8 billion based on the highest value of such claims at the time of the issue thereof.
13. No Statement of Claim was served by JCI on R&E, however, on 8 September 2006, JCI served a Statement of Defence on R&E denying the claims against it.
14. In January 2007, R&E amended its Statement of Claim to introduce two new claims and in September 2008 amended its Statement of Claim further to introduce four additional claims. R&E's Statement of Claim presently comprises of 19 claims, although claim 19 is an alternative claim to claims 1 to 18 to R&E's Statement of Claim and amounts to R1 243 527 309.64.
15. R&E's claims are in the main, founded on the assertion that JCI allegedly misappropriated a vast array of listed securities beneficially owned by R&E, alternatively subsidiaries controlled by it, whilst other claims allegedly arise from the issue and allotment of shares in the issued share capital of R&E for no value received.
16. R&E maintains that JCI was represented by a variety of persons formerly employed by JCI or with which it had a relationship, who constituted the directing and controlling mind and will of JCI and one or more of its subsidiaries and associated companies who are alleged to have collaborated with JCI in the implementation of various schemes which were devised, to the detriment of the R&E group.

17. In respect of the claims predicated on the assertion that R&E's securities were misappropriated, R&E seeks to recover damages against JCI on a measure of the highest value at which such listed investments have traded subsequent to their alleged misappropriation. There are a number of alternatives to the claims predicated on theft, each of which (if established), afford unto R&E a lower quantum of damages respectively. Such alternatives are set out in the Overview of the R&E claims being Annexure 2 to this Circular to which the shareholders of R&E are referred.
18. JCI has denied in its Statement of Defence, that it was a wrongdoer or that it was a party to any frauds or misappropriations and consequently that it is indebted to R&E for the amounts claimed or at all. (JCI has however not formally responded to the four new claims introduced by R&E into its Statement of Claim in September 2008.)
19. To date, none of the claims of R&E against JCI have been proven, nor has R&E secured any formal awards against JCI in respect thereof.
20. On 26 August 2008, R&E announced that the merger, which at that stage was being proposed, had failed and that the dispute between the companies would be referred to arbitration. Subsequent hereto, the parties concluded two settlement agreements.
21. Following the lapsing of the settlement agreements concluded between R&E, JCI and JCI Investment Finance (Pty) Limited ("**JCIIF**") (initially on 31 August 2009 and subsequently on 16 September 2009), on 22 September 2009, R&E announced on SENS, that it was referring its disputes with JCI to arbitration.
22. On 6 November 2009, JCI issued an application out of the South Gauteng High Court (Johannesburg) ("**the JCI application**") for an order declaring that the disputes between R&E and JCI shall not be arbitrated upon and furthermore, that the Arbitration Agreement shall cease to have any effect with regard to such disputes.
23. Although R&E delivered a notice to oppose such application, in the light of the settlement agreement concluded between R&E, JCI and JCIIF on 20 January 2010 (which forms the subject matter of this Circular), R&E and JCI have agreed that pending the implementation of the settlement agreement, the JCI application will be held over and only returned to in the event of the settlement agreement not being implemented. Dependant hereon, the enforceability of the Arbitration Agreement may in due course need to be pronounced upon by the High Court. The outcome thereof will determine whether or not the arbitration proceeds.
24. Should the settlement with JCI not be implemented, R&E's claims against JCI will be pursued in the appropriate forum.

*The settlement agreement concluded with JCI and JCIIF:*

25. On 20 January 2010, R&E, JCI and JCIIF concluded a settlement agreement which has been extensively referred to in the main body of the Circular ("**the updated settlement agreement**"). The updated settlement agreement is subject to the fulfilment of a number of suspensive conditions. (The shareholders attention is directed to pages 31 and 32 of the Circular in this regard.) In broad terms, upon the implementation of the updated settlement agreement:
  - 25.1 JCI and JCIIF will cause 6 051 632 Gold Fields Limited ordinary shares ("**the GFL shares**") to be transferred to R&E;
  - 25.2 JCI will allot and issue 1 555 710 220 new JCI ordinary shares ("**the new JCI shares**") to R&E, representing approximately 44% of the issued share capital of JCI post the issue of such new JCI shares;
  - 25.3 R&E will, following the transfer of the GFL shares to R&E, make a capital distribution of the GFL shares to R&E's shareholders in proportion to their respective shareholdings;
  - 25.4 R&E will distribute its entire holding of JCI shares (which will consist of both the new JCI shares per the settlement and its existing JCI shares owned pre-settlement) to the R&E shareholders in terms of section 46 of the Income Tax Act, in proportion to R&E shareholders' respective shareholdings as detailed in the Circular.
26. Following the implementation of the updated settlement agreement, the JCI group and certain of JCI's directors and officers will be personally discharged from the R&E claims against them and vice versa.
27. The further details of the updated settlement agreement are detailed in the main section of the Circular.

*The Litigation Settlement Agreement:*

28. On 22 January 2010, R&E and African Strategic Investment (Holdings) Limited ("**ASI**") concluded an agreement with JCI, JCIIF, Investec Bank Limited ("**Investec**"), Investec Bank PLC ("**Investec PLC**"), Letseng Diamonds Limited ("**Letseng**"), Hawkhurst Investments Limited, Discus Limited, Global Management Overseas Limited, Latitude Investments Limited and the Azalia Trust ("**the Litigation Settlement Agreement**").
29. Certain legal proceedings in relation to various legal disputes, which legal disputes are defined in the Litigation Settlement Agreement, have been instituted amongst certain of the parties to the Litigation Settlement Agreement ("**the Litigation Disputes**").

30. The provisions of the Litigation Settlement Agreement and the payments to be made in terms thereof constitute a settlement of the Litigation Disputes insofar as the parties to the Litigation Settlement Agreement are concerned. From an R&E perspective the Litigation Settlement Agreement settles the claims enjoyed by R&E and ASI against the other parties to the Litigation Settlement Agreement (on the terms thereof), including *inter alia*, the claims against Investec and Investec PLC only.
31. On 8 March 2010, the shareholders of JCI in general meeting voted in favour of the Litigation Settlement Agreement.
32. On 9 March 2010, the Litigation Settlement Agreement became unconditional, in consequence of which *inter alia*:
  - 32.1 JCI became obliged to pay an amount of R40 000 000.00 into an account nominated by Letseng;
  - 32.2 JCI became obliged to pay to Investec an amount of R267 500 000.00, in respect of which arrangements are being made to give effect hereto;
  - 32.3 following receipt of the amount of R267 500 000.00 Investec is obliged to release the assets of JCI and JCIIF held as security in terms of the Investec Loan Agreement;
  - 32.4 Letseng is to transfer 42 000 shares in the issued share capital of Randgold Resources Limited ("**RRL**") to R&E.
33. The Litigation Settlement Agreement is independent of the updated Settlement Agreement.
34. The salient terms of the Litigation Settlement Agreement appear in the main section of the Circular.
35. Further detail regarding both the updated settlement agreement and the Litigation Settlement Agreement were published on SENS on 28 January 2010 to which R&E's shareholders are referred.

**Claims against third parties:**

36. The following specific actions have been taken by the Board of R&E since the date of reconstitution:

**Liquidation of various corporations**

- 36.1 R&E has liquidated a number of entities whom it alleges participated in the schemes referred to either directly or indirectly, including *inter alia*, Tuscan Mood 1224 (Pty) Limited ("**Tuscan Mood**"), Viking Pony Properties 359 (Pty) Limited ("**Viking Pony**"), Investage 170 (Pty) Limited ("**Investage**") and BNC Investments (Pty) Limited ("**BNC**");
- 36.2 Section 417 and 418 enquiries have been held in respect of these liquidated entities in order *inter alia*, to identify persons who have wronged R&E, with a view to making possible recoveries against such persons. Further details hereof appear below.

**Paradigm Shift CC**

- 36.3 In the last quarter of 2005, R&E successfully brought an application out of the High Court to wind up Paradigm Shift. R&E has since proved a claim in the estate.

**Tuscan Mood**

- 36.4 Towards the end of 2005, R&E successfully brought an application out of the High Court to wind up Tuscan Mood. In 2008, R&E proved a claim in the insolvent estate of Tuscan Mood in the amount of R1,968 billion.

**Viking Pony**

- 36.5 Towards the end of 2005, R&E successfully brought an application out of the High Court to wind up Viking Pony and in 2006 proved a claim in the insolvent estate of Viking Pony.

**Investage**

- 36.6 In 2006, R&E successfully brought an application out of the High Court to wind up Investage and proved a claim in the insolvent estate of Investage in the amount of R69 million.

**BNC Investments (Pty) Limited ("**BNC**")**

- 36.7 In 2006, R&E successfully brought an application out of the High Court to wind up BNC and proved a claim in the insolvent estate of BNC in the amount of R169,5 million.
- 36.8 On 1 October 2008 the liquidators of BNC obtained an order against R&E directing it to make payment of such legal costs as are incurred by the liquidators from time to time in the prosecution of legal actions which they may pursue.

### *Sequestration of Kebble*

- 36.9 In March 2006, R&E posthumously sequestrated the estate of Kebble;
- 36.10 R&E initially proved a concurrent claim at the first meeting of creditors, in Kebble's estate, in the amount of R1.968 billion;
- 36.11 At a meeting specially convened by the trustees in Kebble's estate, in October 2006, R&E sought to prove further claims in Kebble's estate, in the amount of R711 539 099.26 ("**the additional claims**"). The additional claims were initially rejected by the Master of the High Court, however, R&E successfully reviewed the decision of the Master, such claims having been accepted into proof by the Cape High Court, in October 2007. R&E thus proved total claims in the deceased sequestrated estate of Kebble, in an amount of R2 679 539 099.26;
- 36.12 In March 2009, R&E and First Wesgold Mining (Pty) Limited ("**First Wesgold**") issued summons out of the Western Cape High Court against the Trustees of Brett Kebble's estate claiming additional relief against him. In due course, R&E and First Wesgold will seek to obtain judgment against Brett Kebble's estate in respect of such claims.
- 36.13 Arising from such claims, R&E made a substantial recovery in the amount of R41 million from Kebble's estate which the Master approved in December 2009 and was paid out in January 2010.

### *Action against Paul Main ("Main")*

- 36.14 On 2 October 2007, R&E served a summons on Main ("**Main**") for *inter alia*, the return of 900 000 shares in the issued share capital of RRL. Such action was broadened and replaced by a summons served on Main in August 2008, to which African Strategic Investments (Holdings) Limited (formerly Randgold Resources (Holdings) Limited) ("**Holdings**") was added as a party.
- 36.15 R&E, *alternatively* Holdings, claim that Main is obliged to return such shares and in the alternative hereto, the value thereof. In the further alternative, R&E and Holdings claim 550 000 RRL shares, alternatively the value thereof, based on an alleged undertaking from Main to return such shares.
- 36.16 R&E and Holdings also claim payment of the dividends which RRL declared for the financial year ended 31 December 2006 to holders of its shares, in respect of the RRL shares claimed.
- 36.17 The actions are being defended.
- 36.18 In October 2009, R&E and ASI issued a claim out of the High Court of Justice, Chancery Division claiming various relief against Main. The claim is being contested by Main who filed his defence thereto in March 2010.

### *Action against PriceWaterhouseCoopers ("PWC")*

- 36.19 On 7 March 2008, R&E issued summons out of the High Court of South Africa against PWC.
- 36.20 On 25 March 2008, PWC filed a notice to defend the action and on 29 July 2008 served an exception to the Particulars of Claim alleging that they were vague and embarrassing.
- 36.21 Following the arguing of an Exception on 16 September 2008, in respect of which judgment was handed down almost a year later, R&E is amending certain aspects of its claim.
- 36.22 The matter is proceeding as a defended one.

### *Action against inter alia certain former directors/employees*

- 36.23 In August 2008, R&E, ASI and First Wesgold issued summons out of the High Court of South Africa against the following persons:
- 36.23.1 Hendrik Christoffel Buitendag (the former financial director of R&E and JCI) ("**Buitendag**");
- 36.23.2 John Stratton (a former director of JCI) ("**Stratton**");
- 36.23.3 Charles Henry Delacour Cornwall (a former director of JCI) ("**Cornwall**");
- 36.23.4 Lieben Hendrik Swanevelder (the former group financial accountant of JCI);
- 36.23.5 John Chris Lamprecht (the former financial director of R&E and JCI) ("**Lamprecht**");
- 36.23.6 Lunga Raymond Ncwana (a former director of R&E and a director of Equitant Trading (Pty) Ltd);
- 36.23.7 Songezo Benton Mjongile (a former director of Equitant Trading (Pty) Ltd);

36.23.8 Equitant Trading (Pty) Ltd; and

36.23.9 Dimitrios Perevos,

claiming various relief against them.

36.24 These defendants have all filed notices to defend the action which is proceeding as a defended one.

*Action against Bookmark Holdings (Pty) Ltd (“Bookmark”)*

36.25 On 11 August 2008, R&E and ASI issued summons out of the High Court of South Africa against Bookmark, Sello Rasethaba (**“Rasethaba”**), and Lamprecht claiming various relief.

36.26 Such action is proceeding as a defended one.

*Action against Charles Orbach*

36.27 On 12 August 2008, R&E issued summons out of the High Court against Charles Orbach & Company (**“Charles Orbach”**) R&E's erstwhile statutory auditor, claiming certain relief.

36.28 This action too is proceeding as a defended one.

*Action against SocGen*

36.29 On 21 August 2008, R&E and ASI issued summons out of the High Court of South Africa against Societe Generale Johannesburg Branch (**“SocGen”**).

36.30 Although initially defended, such action has subsequently been settled, the details of which appear later herein.

*Action against Goldfields Operations Limited*

36.31 On 20 August 2008, R&E and ASI issued summons out of the High Court of South Africa against Goldfields Operations Limited (**“Goldfields”**), comprising of five claims.

36.32 The matter is proceeding as a defended one.

*Action against Lamprecht, Buitendag and Stratton*

36.33 On 21 August 2008, R&E and ASI issued summons out of the High Court of South Africa against Lamprecht, Buitendag and Stratton.

36.34 Such action is similarly proceeding as a defended one.

*Action against Investec and Investec PLC*

36.35 On 22 August 2008, R&E and ASI issued summons out of the High Court of South Africa against Investec (**“the SA action”**).

36.36 In 2008, ASI and R&E also issued a claim out of the High Court of Justice, Chancery Division, London, against Investec PLC and Investec (**“the UK action”**).

36.37 Although initially defended, given that the Litigation Settlement Agreement became unconditional on 9 March 2010, both actions have become settled.

*Action against Patricia Beale (“Beale”)*

36.38 On 30 October 2008, R&E and ASI served summons out of the High Court of South Africa against Beale.

36.39 The matter is being defended.

*Action against BNC*

36.40 In January 2009, Roger Kebble (**“Roger”**) proceeded with an application out of the South Gauteng High Court (Johannesburg) to set aside a subpoena to attend an enquiry into the trade, dealings and affairs of BNC at the beginning of February 2009. R&E was cited as a respondent to the application. R&E did not oppose the application, but filed an affidavit addressing certain aspects of the application which warranted clarification. In March 2009, the application was dismissed by the South Gauteng High Court. (Roger was declined leave to appeal against the judgment, resulting in him petitioning the Supreme Court of Appeal for leave to appeal which application was also unsuccessful.)

## *General*

37. Certain of the claims feature in more than one action. Were the Plaintiffs to succeed in making a recovery in any action against a Defendant(s) in respect of such claims, recoveries made would need to be taken into account in determining the extent of the Defendant(s) liability in any other action.

## *Possible joinder of JCI*

38. The possibility exists that one or all of the persons against whom R&E, ASI and First Wesgold have instituted action may seek to join JCI in the respective actions.
39. Should this occur, such persons may claim a contribution from JCI, in respect of any indebtedness which may ultimately be found to be due by them to R&E, Holdings and First Wesgold as the case may be in which event, the indemnity provisions in terms of the updated settlement agreement which are referred to in the Circular, may come into operation.
40. The extent to which recourse may be sought against JCI and to what extent JCI may be joined, remains to be seen.

## *Settlements concluded:*

### *Equitant Trading (Pty) Limited ("Equitant")*

41. In March 2006, R&E concluded an agreement with Equitant in partial settlement of certain claims enjoyed by R&E against Equitant. In terms of such settlement, 56 million JCI shares and R890 321.61 were transferred to R&E.

### *Itsuseng Strategic Investments (Pty) Limited ("Itsuseng") and Itsuseng Financial Services (Pty) Limited ("Financial Services")*

42. In March 2006, R&E concluded a settlement agreement with Itsuseng and Financial Services in partial settlement of certain claims enjoyed by R&E against Itsuseng and Financial Services. Itsuseng agreed to transfer 9 013 410 JCI shares and a further 16 857 179 JCI shares to R&E, together with an amount of R3,5 million. In addition, Financial Services undertook to pay an amount of R5,2 million to R&E.

### *George Poole ("Poole")*

43. R&E has concluded an agreement with Poole, which is subject to various ongoing obligations that are due by Poole to R&E.

### *Roger Kebble ("Roger")*

44. A settlement agreement with Roger was initially concluded on 1 October 2006. Following a dispute arising in regard to the cancellation of the agreement by R&E, a further agreement was concluded between R&E, JCI and Roger in February 2008, the effect of which was to reinstate the earlier agreement. Roger has made payment to R&E of R30 million in terms of the agreements, which are similarly subject to various ongoing obligations that are due by Roger to R&E.

### *John de Villiers Berry ("Berry"), Marjorie Maria Labuschagne ("Labuschagne"), Emmarentia Oosthuizen ("Oosthuizen") and Maureen Louise Snashall ("Snashall")*

45. In May to June 2006, following separate actions having been instituted against R&E by Berry, Labuschagne, Oosthuizen and Snashall, R&E concluded settlement agreements with each of them. The settlement agreements were subject to confidentiality undertakings.

### *Masupatsela Angola Mining Ventures (Pty) Limited ("Masupatsela")*

46. Following an application having been issued by Masupatsela out of the South Gauteng High Court (Johannesburg) in October 2006, in which R&E was cited as the Second Respondent, Masupatsela agreed to withdraw such application against R&E, in April 2007.

### *Kabusha Mining and Finance (Pty) Limited ("Kabusha"), Trinity Holdings (Pty) Limited ("Trinity Holdings") and Viking Pony*

47. In September 2006, R&E, JCI, Kabusha, Trinity Holdings and Viking Pony concluded a settlement agreement in settlement of claims by R&E against Kabusha and Trinity Holdings regarding certain Afilease shares. The settlement agreement provided further for the settlement of a number of other matters between the parties thereto.

## *Application for the liquidation of R&E*

48. In March 2006, Trinity Preferred Endowment Fund, Trinity Preferred Living Annuity Fund, Greg Becker, Martin du Plessis, the Trustees for the time being of the JWA Trust, Rory Sweet and Silver Strand Absolute Return Fund LP (collectively "**Trinity and six others**"), proceeded with an application for the liquidation of R&E out of the South Gauteng High Court (Johannesburg). In September 2006, the liquidation application was withdrawn by Trinity and six others by agreement between the parties.

#### *Interdict application*

49. In March 2007, Trinity Preferred Provident Fund, Trinity Protected Provident Fund, Trinity Preferred Living Annuity Fund, Clear Horizon Multi Strategy Fund En Commandite Partnership, Trinity Protected Living Annuity Fund (collectively “**the Trinity Applicants**”), proceeded with an application for interdictory relief out of the South Gauteng High Court (Johannesburg) against David Nurek, Peter Gray (“**Gray**”), Andrew Nissen and R&E, for various relief. The application was opposed and on 4 June 2007 was settled in terms of a written settlement agreement concluded between the parties thereto. On 7 June 2007, the Trinity Applicants formally withdrew the application.

#### *Application to set aside deemed Annual General Meeting of 9 March 2007*

50. On 10 April 2007, the Trinity Applicants (as referred to above), issued an application out of the North Gauteng High Court (Pretoria) against the Registrar of Companies and R&E, purposed at reviewing and setting aside the decision of the Registrar to convene an Annual General Meeting in terms of the provisions of Section 179(4) of the Companies Act. Such application was subsequently withdrawn on 7 June 2007.

#### *T-Sec and others*

51. Following the issue of summons by R&E and ASI out of the South Gauteng High Court (Johannesburg) in August 2008 against Tlotlisa Securities (Pty) Limited (“**T-Sec**”), Tlotlisa Holdings Limited (“**T-Sec Holdings**”), Gray and Leonard Steenkamp (“**Steenkamp**”), a settlement agreement was concluded in February 2009. In terms of the settlement agreement, T-Sec was obliged to make payment of R14 million to R&E, which it has paid. The action against Gray for payment of an amount of R80 million was not settled in terms of the settlement agreement, however, should the updated settlement agreement between R&E, JCI and JCIF be implemented, Gray will be released from this claim.

#### *SocGen*

52. R&E, ASI and SocGen *inter alia* concluded a settlement agreement which was signed by SocGen on 27 November 2009 in terms of which SocGen agreed to make payment of a Settlement Amount of R5 million to R&E. The Settlement Amount has been paid by SocGen.

#### *Hart*

53. On 27 October 2008, summons was issued against R&E out of the High Court of South Africa by Keith Archie Hart (“**Hart**”).
54. The claim was based on a contract of sale allegedly entered into by R&E and Hart, in which R&E was alleged to have sold used mining equipment to Hart, which contract was subsequently cancelled.
55. The matter has been settled between the parties, the terms of which are subject to confidentiality provisions.

#### *Frankel*

56. In 2007, summons was issued by Sydney Frankel against JCIF and R&E for payment of R3 311 000.00 in respect of fees allegedly owing arising out of the disposal of certain Western Areas shares to Goldfields. The matter has since been settled and has been withdrawn against R&E.

#### *Investec and Investec PLC*

57. Following the Litigation Settlement Agreement having become unconditional on 9 March 2010, the SA action and the UK action were settled in terms thereof.