

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 97049 / March 6, 2023**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4386 / March 6, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21335**

**In the Matter of**

**RIO TINTO PLC,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Rio Tinto plc (“Rio Tinto” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter concerns Rio Tinto's violations of the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act (the "FCPA") in connection with a bribery scheme involving a consultant to retain Rio Tinto's existing mining rights in Guinea. Rio Tinto is a dual-listed metal and mining company with headquarters in Australia and the United Kingdom. On July 7, 2011, Rio Tinto hired a French investment banker and close friend of a former senior Guinean government official (the "Senior Government Official") as a consultant (the "Consultant") to help the company retain its mining rights in the Simandou mountain region in Guinea, with one of the world's largest undeveloped iron-ore deposits, by offering or paying money to benefit a Guinean government official. The Consultant began working in March 2011, without Rio Tinto having conducted adequate due diligence that was required for retaining third parties, began representing Rio Tinto without a written agreement defining the scope of his services or deliverables, and was paid \$10.5 million notwithstanding certain red flags. The Consultant, acting as Rio Tinto's agent, offered and attempted to make an improper payment to a Guinean government official in connection with Rio Tinto's successful efforts to retain its mining rights. None of the payments to the Consultant were accurately reflected in Rio Tinto's books and records, and it failed to have sufficient internal accounting controls in place to detect or prevent the misconduct.

#### Respondent

2. **Rio Tinto plc** along with Rio Tinto Ltd makes up Rio Tinto Group (collectively "Rio Tinto Group"). Rio Tinto plc is a UK company incorporated in England and Wales with shares listed on the London Stock Exchange and with American Depository Shares that trade on the NYSE. Rio Tinto Ltd is an Australian company incorporated in Victoria, Australia with shares listed on the Australian Stock Exchange and with debt listed on the NYSE and registered pursuant to Section 12(b) of the Exchange Act. Rio Tinto plc and Rio Tinto Ltd operate together as a single economic enterprise known as Rio Tinto Group and pursuant to Section 13 of the Exchange Act, jointly file annual reports on Form 20-F with consolidated financial statements and current reports on Forms 6-K. The companies have a common board of directors, and shareholders have a common economic interest in both companies.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

### **Other Relevant Individuals**

3. **Consultant** is a former consultant to Rio Tinto and a French citizen. Rio Tinto retained him in 2011 to help the company retain its mining rights in Guinea. During the relevant time period, the Consultant was simultaneously a senior advisor at a French investment bank and the director of his own consulting company. He was a former classmate of the Senior Government Official at the Paris Institute of Political Studies.

4. **The Rio Tinto Executive (“Rio Tinto Executive”)** oversaw Rio Tinto’s involvement in the Simandou settlement negotiations with the Government of Guinea during the relevant time period. He was also the principal point of contact for the Consultant at the company. As a result of his conduct discussed herein, Rio Tinto terminated the Rio Tinto Executive’s employment in November 2016. The Rio Tinto Executive is a dual UK and Australian citizen.

### **Background**

5. Between 1997 and 2006, Rio Tinto was granted mining and exploration rights to four section blocks of the Simandou mountain region in Guinea’s interior with one of the largest iron-ore deposits in the world. In late 2008, after a change in administrations, the Government of Guinea revoked Rio Tinto’s rights to two of the four sections—known as blocks one and two—for what the government viewed as Rio Tinto’s failure to take proactive steps to develop the mine. The Government of Guinea ultimately awarded blocks one and two to one of Rio Tinto’s competitors.

6. Thereafter, Rio Tinto deployed significant resources to try to develop the blocks it retained—blocks three and four. High-level executives made frequent visits to the mine to improve the company’s relationship with the government. In 2010, Guinea elected a new administration that declared all mining contracts be reexamined. As a result of this review, one of Rio Tinto’s competitors was stripped of its rights to blocks one and two in the Simandou region.

### **Rio Tinto Retains Consultant as its Agent**

7. In March 2011, while searching for an advisor to help the company retain its mining rights, Rio Tinto executives identified a French investment banker and former classmate of the Senior Government Official as a potential consultant. Email discussions amongst the company’s senior executives highlighted the potential Consultant’s history and ongoing friendship with the Senior Government Official as the main reasons for hiring him. At the time, the potential Consultant had no direct work experience relating to the mining business generally or in Guinea specifically.

8. The Rio Tinto Executive contacted the Consultant and confirmed his connection to the Senior Government Official at the time. Afterward, a lower level Rio Tinto employee ran a cursory background check on the Consultant, without any additional due diligence. The Consultant began working on behalf of Rio Tinto—purportedly representing the company’s

interests during discussions with the Government of Guinea and routinely reporting information back to the Rio Tinto Executive—before a written agreement was executed defining the scope of his employment, fees, or deliverables. No written agreement of any sort was in place for the majority of the Consultant’s employment and a written contract was only executed one day before Rio Tinto paid the Consultant.

9. With the Consultant’s influence by offering money to a Guinean government official, Rio Tinto successfully secured its mining rights to blocks three and four by entering into a Settlement Agreement with the Government of Guinea on April 22, 2011, pursuant to which it paid \$700 million to the Guinean Public Treasury.

### **Rio Tinto Pays Consultant \$10.5 Million**

10. The Consultant’s fees remained undetermined throughout the course of the settlement negotiations with the Government of Guinea and even after the settlement was reached on April 22, 2011. The Consultant negotiated his fees with the Rio Tinto Executive, repeatedly stressing that the Senior Government Official often asked whether the company had paid him yet.

11. At times when working on behalf of Rio Tinto, there were red flags suggesting that the Consultant may have also been providing advice to the Senior Government Official. Specifically, in an April 26, 2011 email to the Rio Tinto Executive, the Consultant wrote, “[the Senior Government Official] says I should remain on the Republic of Guinea’s side and not become a RT’s [sic] employee. He says that if I sign a contract with RT, he cannot trust my advice anymore...” In another email, the Consultant wrote “...I rendered a service that no investment bank could have rendered. You are the only witness of it, with the [Senior Government Official] himself, of course that is why he asks [sic] whether RT treats me well.” A few days later, the Consultant wrote “...I was predestined to save RT’s skin in Guinea. Without bragging, the [Senior Government Official’s] decision would probably have been different if I had not happened to be there...” He followed up with, “[The Senior Government Official] says I deserve a fee for the work I have done up to now, but the fee should be a lump amount that does not compromise my independence in the future.” Finally, in a May 10, 2011 email, he wrote, “the [Senior Government Official] is always asking: ‘did you find an arrangement with RT? They owe you a lot because without you I would have signed with the Chinese...’”

12. The above emails presented red flags about whether the Consultant was working for Rio Tinto or the Senior Government Official, and whether some portion of the Consultant’s fees would be paid to the Senior Government Official. Other than these emails and other feedback, it is unclear what services, if any, the Consultant provided to Rio Tinto over approximately four months.

13. Rio Tinto executives debated the amount and form of the Consultant’s payment, with one executive expressing concern about issuing a lump sum payment that the Consultant was demanding, allegedly with the Senior Government Official’s prompting, writing “tell [the

Consultant] one big lump looks like a bribe and people will wonder where the money went.” Despite these concerns, Rio Tinto executives eventually approved two lump sum payments to the Consultant for his alleged services. Executives debated how much the Consultant should be paid in emails in which the Rio Tinto Executive described “very unique and unreplicable services and closeness to the [Senior Government Official]” provided by the Consultant. The CEO responded that, when considering the fees, they should “think about the optics to [the Government of Guinea].”

14. Notwithstanding the aforementioned concerns, the company agreed to pay the Consultant \$10.5 million in two tranches and entered into a written agreement with the Consultant on July 7, 2011, four months after the Consultant purportedly began representing the company’s interests and one day before Rio Tinto paid the Consultant the first tranche.

15. On July 8, 2011, Rio Tinto paid \$7.5 million to the Consultant’s Swiss bank account and, on July 12, 2011, placed the remaining \$3 million in an escrow account at the same Swiss bank to be released after December 31, 2015, provided that Rio Tinto continued to retain its mining rights over blocks three and four. At the Consultant’s request, Rio Tinto authorized the release of the \$3 million from escrow to the Consultant on February 25, 2016. The Rio Tinto Executive initiated both payments improperly using manual payment forms generally limited for payments up to AUD \$5,000, instead of going through the company’s prescribed process for higher amounts. The payments also irregularly were made out of Hamersley Iron Pty Limited, an Australian-based, wholly-owned subsidiary of Rio Tinto Limited, instead of Rio Tinto plc. Lower level employees expressed concerns about the payments being accounted for out of Hamersley instead of an entity on the Rio Tinto plc side of the dual-listed structure. In a July 21, 2011 email, another Rio Tinto executive explained the reason for paying out of Hamersley: “[a]s you are aware, the urgency and confidentiality prescribed for the payment meant we needed to make some quick decisions at the time on how to organize the payment and subsequent transfer.” In 2011, Rio Tinto did not have a system in place to flag such irregularities.

16. Rio Tinto ultimately never developed blocks three and four of the Simandou region or extracted anything of value from them because, in part, declining iron ore prices made mining in the Simandou region economically not viable. The company capitalized the \$700 million Settlement Agreement on the balance sheet as a prepayment for an intangible asset until 2014, when it was transferred into intangible assets for exploration, before being written off as an expense in 2015, so that it has zero current carrying value.

#### **Consultant Attempts to Pay a Bribe to a Government Official**

17. Days after Rio Tinto made the initial payment to the Consultant and placed the remaining balance in the escrow account, the Consultant attempted to transfer \$822,506 on July 15, 2011 from his Swiss bank account to a Hong Kong company owned by a Guinean national with links to government officials. The bank held up the transaction over concerns about the company’s ties to Guinean officials. When the bank questioned the Consultant, he explained that he was making the payment on behalf of a second Guinean government official (the “Junior Government Official”) to the Senior Government Official. The Junior Government Official was

a close advisor to the Senior Government Official. The attempted transaction was ultimately blocked by the bank.

18. During an interview with the bank, the Consultant told bank employees that he would make the payment out of one of his other accounts at another bank. Subsequently, the Hong Kong company paid \$200,000 for re-election campaign t-shirts to a t-shirt company in China on July 29, 2011. That same t-shirt company eventually made shirts for the Senior Government Official's reelection campaign. Those shirts match the description on the invoice the Consultant submitted to the Swiss bank when attempting the \$822,506 payment, further corroborating that the attempted payment from funds that Rio Tinto paid him was intended as a political contribution to the Senior Government Official's reelection campaign or, at the very least, a payment to the Junior Government Official.

### **LEGAL STANDARDS AND VIOLATIONS**

19. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be the cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

#### **Rio Tinto Violated Exchange Act Section 13(b)(2)(A)**

20. As a result of the conduct described above, Rio Tinto violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer.

#### **Rio Tinto Violated Exchange Act Section 13(b)(2)(B)**

22. In addition, as a result of the conduct described above, Rio Tinto violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

## **COOPERATION AND REMEDIATION**

23. In determining to accept the Offer of Settlement, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. Rio Tinto cooperated in the Commission's investigation by identifying and timely producing key documents identified in the course of its own internal investigation, providing the facts developed in its internal investigation, and making current or former employees available to the Commission staff.

24. Rio Tinto's remedial efforts included termination of employees responsible for the misconduct and enhancements to its internal accounting controls. Rio Tinto strengthened its ethics and compliance organization; enhanced its code of conduct, policies and procedures regarding, among other things, gifts, hospitality, due diligence, and the use of third parties; enhanced its whistleblower program; improved its monitoring systems and internal controls related to manual payments and third parties; enhanced its anticorruption risk assessments and transaction testing of compliance controls; and increased training of employees and third parties on anti-bribery issues.

### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer of Settlement.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Respondent shall, within thirty days of the entry of this Order, pay a civil money penalty in the amount of \$15,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following three ways:

1. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofin.htm>; or
3. Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Rio Tinto as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Ansu N. Banerjee, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Los Angeles, California 90071.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary