



**STRICTLY PRIVATE AND CONFIDENTIAL**

18 March 2019

EITI International Secretariat  
Skippergata 22, 0154  
Oslo, Norway

**EITI Report – Validation of Sierra Leone**

Iluka Resources Limited (**Iluka**) and Sierra Rutile Limited (**SRL**) refer to the draft EITI report entitled Validation of Sierra Leone – Report on initial data collection and stakeholder consultation (**Validation Report**) which was provided to SLEITI MSG Members on Monday 11 March 2019.

The purpose of this letter is to provide comments on those sections of the report referring to SRL. We also attach a copy of the report marked to show suggested changes.

As you are aware, Iluka acquired SRL in December 2016 for AuD \$375 million (~US\$290 million).

**1. Capital Gains Tax**

The Validation Report on pages 56, 64, 65, 66 and 67 refers to capital gains tax payable in relation to Iluka's acquisition of SRL. We attach a Deed made on 26 October 2016 between the Sierra Leone Government, (**GoSL**) the NRA, SRL, Sierra Rutile Limited (a company incorporated under the laws of the British Virgin Islands), Iluka and Iluka Investments (BVL Limited).

Under Clause 2 of the Deed, GoSL and the NRA confirm that the full and final amount of all CGT and other Taxes payable in connection with the acquisition is US \$8million.

Clause 3(b) provides that if the acquisition is completed, the parties agree that the CGT Amount will be paid to GoSL in accordance with the Pala Direction (also attached). Iluka and SRL confirm that on completion of the acquisition, the CGT Amount was paid to GoSL in accordance with the provisions of the Deed.

**2. GoSL Loan to SRL**

The Validation Report refers on pages 55, 56, 57, 66 and 67 to a loan from GoSL to SRL.

Attached is a letter dated 27 October 2016 from GoSL to SRL relating to the loan from GoSL to SRL pursuant to a loan agreement dated 2 August 2004 (as amended from time to time including by an extension dated 15 July 2016). The letter confirms the terms upon which SRL agrees to repay GoSL loan on or before 15 December 2016. Iluka and SRL confirm that GoSL was fully repaid in November 2016, prior to Iluka's acquisition of SRL.

### 3. GoSL ownership of shares in SRL

On page 54 of the Validation Report there is reference to GoSL holding equity in SRL. Iluka's understanding of the relevant facts is as set out below.

Please read this section in conjunction with the **Annexure** to this letter, which contains an extract of the corporate structure chart that identifies the relevant SRL group companies and their associated acronyms that are referred to in this section.

- (a) The Sierra Rutile State Agreement was signed on 20 November 2001. It was subsequently scheduled to legislation and ratified by Parliament in the *Sierra Rutile Agreement (Ratification) Act 2002*, which came into force 21 March 2002.
- (b) The First Amendment Agreement to the Sierra Rutile State Agreement, dated 4 February 2004 (**First Amendment Agreement**), introduced an arrangement under which, between 2005 and 2011, SRL No. 3 transferred shares in SRHL to GoSL in lieu of PAYE taxes. The purpose of the First Amendment Agreement was to make the activities of SRL commercially viable (because at that time SRL could not afford to pay all of its PAYE taxes from the revenue produced by its operations).
- (c) During the period from 1 April 2005 to 31 December 2011, an aggregate of 7,085 SRHL shares were transferred by SRL No. 3 to GoSL pursuant to the First Amendment Agreement. Although the First Amendment Agreement provided for *up to* 30% of the shares of SRHL to be transferred by SRL No. 3 to the Government, as far as Iluka is aware only 7.085% of the shares of SRHL (7,085) were actually transferred during that period, based on the formula set out in the First Amendment Agreement.
- (d) In 2012, the arrangement put in place by the First Amendment Agreement (whereby shares in SRHL were transferred to GoSL in lieu of PAYE taxes) was ended by:
  - (i) the Second Amendment Agreement to the Sierra Rutile State Agreement, dated 30 April 2012 (**Second Amendment Agreement**); and
  - (ii) a Share Purchase Agreement dated 30 April 2012 between GoSL, SRL Acquisition No. 3 Limited and SRL (**Share Purchase Agreement**).
- (e) Pursuant to the Second Amendment Agreement and the Share Purchase Agreement:
  - (i) GoSL confirmed that the total amount of PAYE taxes due from SRL for the period from 1 April 2005 to 31 December 2011 was US\$8,739,192, and that this obligation had been duly paid and discharged by SRL No. 3 having transferred to the Government a total of 7,085 SRHL shares during that period;
  - (ii) SRL No. 3 repurchased the 7,085 SRHL shares which were held by GoSL for US \$13 million;
  - (iii) SRL Sierra Leone agreed to pay to the Government an amount of US\$5,299,368, as prepayment for PAYE taxes for the period from 1 April 2012 to 31 March 2014; and
  - (iv) with effect from 1 January 2012:
    - (A) PAYE taxes due from SRL would be paid directly to the GoSL (i.e. in the usual manner); and
    - (B) SRL No. 3's obligation to transfer shares in SRHL to GoSL was terminated.

### 4. SRL decision not to provide EITI Reporting in 2017.

The Validation Report mentions several times that SRL did not provide EITI reporting in 2016. In our letter to SLEITI dated 3 August 2017, we confirmed both SRL and Iluka are very supportive of SLEITI and its ongoing efforts to achieve greater transparency in Sierra Leone's natural resources sector. We also advised that the past records of SRL (prior to the acquisition by Iluka) are poor and many payments have not been recorded clearly or accurately. Ultimately we were unable to verify the

records sufficiently to allow us to provide the information to SLEITI. We confirm that we intend to provide the necessary information for future requests.

**5. Page 67 of the Validation Report**

This page contains a paragraph referring to allegations of corruption and improper payments to GoSL. These relate to conduct prior to Iluka's acquisition of SRL and are unrelated to the GoSL Loan and the capital gains tax paid. On that basis, we request that this reference be removed from the Validation report.

Should you have any queries we would welcome the opportunity to discuss this letter and our proposed amendments to the Validation Report to ensure that it accurately reflects the true position in relation to SRL.

Yours sincerely



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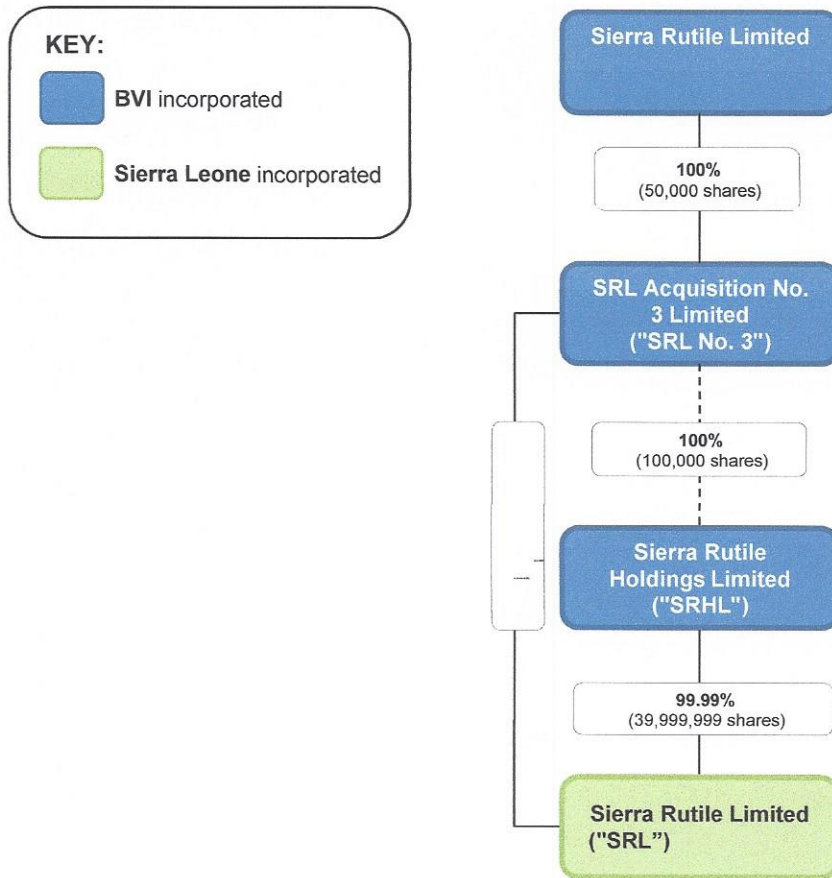


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## Annexure

### Extract from SRL group corporate structure



#### Notes:

- This is an extract of the SRL group corporate structure in 2012, identifying only those entities which are relevant to the matters discussed in the letter.
- In December 2013, after the Sierra Leone Government's SRHL shares were bought back by SRL No. 3, Sierra Rutile (UK) Limited was interposed between SRL No. 3 and SRHL (such that Sierra Rutile (UK) Limited now holds all of the issued shares in SRHL).