

CHINA HEILONGJIANG INTERNATIONAL ECONOMIC &  
TECHNICAL COOPERATIVE CORP., BEIJING SHOUGANG MINING  
INVESTMENT COMPANY LIMITED, AND QINHUANGDAOSHI QINLONG  
INTERNATIONAL INDUSTRIAL CO. LTD.

v.

MONGOLIA

PROCEDURAL ORDER NO. 1

2 November 2010



**Procedural Order No. 1**

WHEREAS, by their Request for Arbitration dated 12 February 2010, Claimants China Heilong International Economic & Technical Cooperative Corp., Beijing Shougang Mining Investment Company Limited, and Qinhuangdaoshi Qinlong International Industrial Co. Ltd. initiated this proceeding against Respondent Mongolia, asserting jurisdiction on the basis of the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China Concerning the Encouragement and Reciprocal Protection of Investments dated 26 August 1991 (the "Treaty"), with reference to the Foreign Investment Law of Mongolia and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Mongolian People's Republic for the Promotion and Protection of Investments dated 4 October 1991;

WHEREAS, by that Request, Claimants appointed Dr. Yas Banifatemi as Arbitrator in this proceeding;

WHEREAS, by letter dated 19 May 2010, Respondent appointed Mark A. Clodfelter, Esq., as Arbitrator in this proceeding;

WHEREAS, by letter dated 19 July 2010, Claimants requested that Meg Kinnear, Secretary-General of the International Centre for the Settlement of Investment Disputes, acting pursuant to Article 8(4) of the Treaty, appoint the President of the Tribunal;

WHEREAS, by letter dated 10 August 2010, Ms. Kinnear appointed Donald Francis Donovan, Esq., as President of the Tribunal;

WHEREAS, on 22 September 2010, the Tribunal circulated an agenda for a procedural meeting to be held in New York on 1 October 2010, and on 28 September 2010, addressed certain points on that agenda, and on 30 September 2010, received a joint communication from the parties addressing additional points on that agenda;

WHEREAS, on 1 October 2010, as scheduled, the Tribunal conducted a procedural meeting with the parties in the offices of Debevoise & Plimpton LLP in New York;

NOW, THEREFORE, the Tribunal issues this Procedural Order No. 1 reflecting the agreements reached during the procedural meeting and determining the issues left open as of the end of that meeting.



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**A. Constitution of the Tribunal**

1. The parties confirmed that the Tribunal had been properly constituted under Article 8(4) of the Treaty.

**B. Declarations by Tribunal Members**

2. Each Member of the Tribunal stated that he or she was independent and impartial, and each advised that there were no circumstances of which he or she was aware that might raise justifiable doubts about his or her independence and impartiality.
3. Contact information for the Members of the Tribunal is attached to this Order as Appendix A.

**C. Representatives of the Parties**

4. Claimants are represented by Peter Turner, Marie Stoyanov, Francisco Abriani, and Ben Love of Freshfields Bruckhaus Deringer LLP, in Paris, and Peter Pokwong Yuen and John Choog of Freshfields Bruckhaus Deringer LLP, in Hong Kong. Claimants are also represented by Professor James Crawford of The Lauterpacht Centre for International Law, Cambridge University.
5. Respondent is represented by Michael D. Nolan, Frédéric G. Sourgens, and Edward Baldwin, of Milbank, Tweed, Hadley & McCloy LLP, in Washington D.C.; T. Altangere, Ministry of Justice and Home Affairs, Mongolia; and Gankhuyag Sodnom, Deputy Permanent Representative of Mongolia to the United Nations.
6. Contact information for the representatives of the parties is attached to this Order as Appendix B.

**D. Administrative assistance of the PCA**

7. With the parties' consent, the Tribunal appoints the International Bureau of the PCA as administrator of the proceeding. The Tribunal expects that in light of the appointment of a Secretary, the PCA's administrative assistance will consist only of the handling of the financial aspects of the proceeding and, possibly, assistance with hearings.
8. The PCA shall be sent electronic copies of all filings and correspondence by the party making the filing or sending the correspondence, and it will handle deposits in respect of advances on costs and disbursements. The Tribunal requests that, on behalf of both parties, Claimants file with the PCA their Request for Arbitration and the letters appointing Mr. Clodfelter and Mr. Donovan, respectively.



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9. The PCA shall, if requested, make its hearing and meeting rooms in the Peace Palace in The Hague and elsewhere (Costa Rica, Singapore) available to the parties and the Tribunal at no charge. Costs of catering, court reporting, or other technical support associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the parties in equal shares.
10. Upon request, PCA staff shall carry out administrative tasks on behalf of the Tribunal, and shall bill their time in accordance with the PCA Schedule of Fees.
11. By Monday, 22 November 2010, the parties should advise whether they agree to (a) the listing of this case on the docket of the PCA and (b) the publication of decisions and awards in the case, either when rendered or upon conclusion.
12. The contact details of the PCA are set out on Appendix C to this Order.

**E. Compensation of the Arbitrators**

13. By its email dated 28 September 2010, the Tribunal proposed that its Members be compensated at a rate of US \$700/hour for services as arbitrator rendered during the proceeding. By their joint communication of 30 September 2010, the parties advised that they “consider[ed] that given the reference to the ICSID arbitration rules in the Treaty, the arbitrators should be remunerated on the ICSID scale.”
14. At the 1 October 2010 procedural meeting, the Tribunal advised the parties that it had proposed the rate set forth in the 28 September communication on the basis of consultation with Brooks Daly, Deputy Secretary-General of the Permanent Court of Arbitration, and Meg Kinnear, Secretary-General of the International Centre for the Settlement of Investment Disputes. Specifically, the Tribunal noted that Mr. Daly had advised that standard rates in ad hoc investment treaty arbitrations administered by the PCA ranged between €500 to €600 (excluding higher rates in one or two other proceedings that he did not consider representative), and that Ms. Kinnear had advised that the range of compensation for arbitrators in non-Convention arbitrations administered by ICSID, including those under the Additional Facility, ranged from US\$500 to US\$900. Accordingly, the Tribunal advised, its Members believed it appropriate to set compensation at a point in the middle of those ranges.
15. By its Article 8(5), the Treaty provides that “[t]he tribunal shall determine its own procedure.” “However,” Article 8(5) continues, “the Tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Centre for Settlement of Investment Disputes.”
16. The Tribunal notes that by the terms of Article 8(5), it “may” take those Rules as “guidance.” Further, as it suggested at the hearing, the Tribunal notes that the standards for compensation of Tribunal members in proceedings governed by the



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ICSID Convention is found not in the Rules, but in the ICSID Administrative and Financial Regulations.

17. The Tribunal asked the parties to state their respective positions, in light of the language of Article 8(5), as to whether (a) the Tribunal had final authority to set its own compensation, or (b) the Tribunal would be bound by an agreement of the parties on that point. Claimants advised that, in their view, the Tribunal and the parties needed to come to an agreement as to compensation, failing which the Tribunal would have no obligation to serve. Respondent advised that, in its view, compensation was a component of procedure, and therefore the language of Article 8(5) conferred final authority on the Tribunal to set its own compensation. In turn, Claimants advised that in light of Respondent's position, they would consent to any compensation the Tribunal determined.
18. The Tribunal also asked whether the parties would consent to a request by the Tribunal that the PCA, whose administrative services it has been determined the Tribunal would employ, set the Tribunal's compensation, if the Tribunal determined to proceed in that manner. The parties advised that they would consent to that course.
19. In sum, Respondent acknowledges the Tribunal's authority to set its compensation, and in light of Respondent's position, Claimants consent to such compensation as the Tribunal may set. At the same time, the parties have advised that they would consent to a request by the Tribunal that the PCA set its Members' compensation.
20. In these circumstances, by a letter sent to the PCA simultaneously with the issuance of this Order, the Tribunal requests that the PCA recommend a rate at which the Tribunal should be compensated, which rate the Tribunal will adopt in setting its Members' compensation.

**F. Appointment of Secretary**

21. The parties concurred in the appointment of a Secretary by the Tribunal, who will be compensated at the rate of US\$275/hour.
22. With the parties' consent, the Tribunal appoints Peter Kim, Esq., of Debevoise & Plimpton LLP, in New York, as its Secretary.

**G. Advances on costs and payment of invoices**

23. With the parties' consent, the Tribunal orders that by 30 November 2010, an advance on costs of US \$40,000 each shall be deposited to the PCA account in accord with the instructions set out in Appendix C to this Order.



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24. The PCA will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the parties to make supplementary deposits in respect of advances on costs.
25. All payments to the Tribunal shall be made from the deposit, and the Members of the Tribunal shall submit periodic invoices in respect of their fees and expenses in no less than quarterly intervals. Fees and expenses of the PCA shall be paid in the same manner as the Tribunal's fees and expenses.
26. The PCA does not charge a fee for the holding of the deposit, but any transfer fees or other bank charges will be charged to the account. No interest will be paid on the deposit.

**H. Seat of arbitration**

27. Article 8 of the Treaty does not specify the juridical seat of the arbitration, and the parties agree that the Tribunal has authority to designate the seat. The Tribunal discussed the possible seats with the parties, and all parties expressed their understanding that judicial proceedings relating to the award could be filed in the seat. Claimants expressed a preference for Stockholm or Geneva as the seat, but indicated that they would consent to New York; Respondent expressed a preference for Singapore, but also indicated that it would consent to New York.
28. In these circumstances, the Tribunal designates New York, New York, U.S.A., as the juridical seat of the arbitration.
29. The Tribunal notes the parties' mutual expectation that Singapore will be the most efficient venue to hold evidentiary hearings, but it makes no final order on that point at this time.

**I. Language of arbitration**

30. The parties agree that the language of the arbitration shall be English.

**J. Transcription of hearing**

31. The parties agree that the hearing and any other meetings with the Tribunal shall be transcribed.

**K. Communications**

32. All communications with the Tribunal or other parties shall be made at the addresses indicated on Appendices A and B unless any party or Member of the Tribunal advises a change of address.



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33. Prehearing submissions should be served as indicated in Section N below. Any other substantial submissions in support of or in opposition to an application for relief should be served in like manner. All routine notifications and communications should be served by email, and no copy need follow by facsimile, regular mail, or courier.
- L. Delegation of power to fix time limits**
34. The parties agree that the President, acting alone, shall have the power to grant short extensions to time limits, subject to such consultation with the other Members of the Tribunal as he deems appropriate.
- M. Procedural rules**
35. As noted, Article 8 of the Treaty authorizes the Tribunal to determine its own procedure, but at the same time provides that "the Tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes." Claimant has proposed that, to ensure certainty in the procedure, the Tribunal adopt the revised UNCITRAL Rules to govern the proceedings.
36. Especially given the statement in the Treaty that the Tribunal may, if it thinks it appropriate, refer to the ICSID Rules as guidance on questions of procedure, the Tribunal sees no reason at this time to adopt rules to govern the proceedings beyond the directions in this Order. It expects that should it be called upon to rule on any procedural issue, the parties will bring to its attention such guidance from the ICSID Rules, the UNCITRAL Rules, or other authorities as they deem appropriate.
37. This ruling is without prejudice to an application that, as to a specific issue or set of issues, the Tribunal specify in advance the rules or procedures that would govern that issue.
- N. Prehearing submissions**
38. The parties have agreed that the proceedings shall be divided into two phases, the first covering jurisdiction and liability, the second, if necessary, quantum.
39. The parties agreed at the hearing that Claimants' prehearing submissions shall be due four and a half months after the date of the hearing and Respondent's six months after that. Taking account of the overall schedule, the Tribunal fixes Tuesday, 1 March 2011 as the due date for Claimants and Thursday, 1 September 2011 as the due date for Respondent.
40. Claimants agreed to four and a half months after the date for final document production for their reply. and Respondent requested six months for its rejoinder.



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Taking account of the schedule for document production we set below, and of the utility of completing the exchange of prehearing submissions by November 2012, we set the due date for Claimants' reply submissions at Friday, 8 June 2012 and for Respondents' rejoinder submissions at Friday, 16 November 2012. The parties should treat these deadlines as firm, with brief extensions that would not compromise the remaining schedule to be available by consent or for good cause shown.

41. Each round of prehearing submissions shall consist of a memorial and any witness statements, expert reports, exhibits, and authorities submitted in support. Subject to a request to allow a witness or expert briefly to supplement or summarize his or her testimony, the witness statements and expert reports will serve as the direct testimony of each witness and expert. The paragraphs of all memorials, witness statements, and expert reports shall be consecutively numbered.
42. Any witness statement subscribed by the witness in a language other than English shall be submitted in the original language with a translation into English.
43. There should be a single numbering sequence for all exhibits, whether submitted as attachments to a witness statement or independently. Respondent's exhibits should start at a number sufficiently high to ensure no overlap with Claimants'. A document already submitted and designated by one party should be referred to by that number by another party. Any document not in English shall be accompanied by a translation into English. An index to a party's exhibits, cumulative after the first submissions, with the exhibit number, date of the document, and brief description, should be submitted with each round of submissions.
44. The parties are encouraged to submit only core exhibits in hard copy, with a complete set of exhibits provided by CD. No inference shall be drawn, or argument heard, from a party's decision to include or not include a specific document in the core set initially submitted in hard copy.

**O. Document production**

45. Taking account of the parties' respective proposals set forth in their 30 September 2010 submission and the further discussion at the procedural meeting, the Tribunal directs that any requests for the disclosure of documents be made in the form of a Redfern schedule by Monday, 3 October 2011 and responses to any such requests by Wednesday, 30 November 2011.
46. At a time during the week of 5 December 2011 to be determined, the Tribunal will convene a conference call to address any issues that the Parties cannot resolve.



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47. Uncontested disclosure of documents should commence as soon as practicable, proceed on a rolling basis, and be completed by Thursday, 22 December 2011.
48. By the same date, the Tribunal will rule on any contested issues.
49. Final production of documents should be completed by Friday, 3 February 2012.
50. In arguing its position on any dispute relating to document production, a party may refer to the IBA Rules on the Taking of Evidence in International Arbitration (29 May 2010) to the extent the party believes appropriate, but those Rules will not bind the Tribunal.
51. The Tribunal considers that the general practice in international arbitration is that documents sought by the adverse party may be produced in the language in which they are found, and it therefore makes no order as to translation of documents at this time, except to state its understanding that any translations of responsive documents already prepared at the time of production in the ordinary course of business should also be considered responsive and be produced. Recognizing the potential burden of translation on both sides, however, the Tribunal urges the parties to discuss a protocol on translation, and the ruling in this order is without prejudice to any application that may be made once the requests for disclosure have been served. Any such application should be made by the date on which the responses to requests for disclosure are due.

**P. Objections to exhibits or translations**

52. On or before Monday, 1 October 2012, Claimants shall raise any objections as to the authenticity or completeness of any exhibit submitted with Respondent's initial prehearing submissions, and Respondent as to the authenticity or completeness of any exhibit submitted with Claimants' initial and reply prehearing submissions. On or before Friday, 21 December 2012, Claimants will raise any such objections to any exhibits submitted with Respondent's rejoinder submissions. Relevance objections shall be reserved for the hearing, but in making any such objection, the parties should keep firmly in mind the Tribunal's authority to assess weight.
53. By the same dates, the parties shall raise any objections to the translation of witness statements or exhibits, without prejudice to proposals of an alternative translation, for good cause shown, at a later time.

**Q. Witnesses**

54. On or before Wednesday, 5 December 2012, each side shall identify which of the other side's witnesses and experts they wish to be made available for cross-examination at the hearing. The sponsoring side shall be responsible for securing attendance of the witness.



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55. On or before the same date, the parties shall advise of any witnesses who will testify in a language other than English and provide the name and credentials of the interpreter. The nonsponsoring party shall have the right to have a different interpreter present at the hearing.

**R. Prehearing conference**

56. At a time during the week of 10 December 2012 to be determined, the Tribunal shall convene a prehearing conference by telephone to settle all hearing procedures and logistics, including the time needed for the hearing, any request for opening arguments, the sequence and expected length of testimony of each witness to be called, the procedure for interpretation if any, sequestering of witnesses, the most efficient means of presenting exhibits, the use and exchange of demonstratives, and joint arrangements for a reporting service with LiveNote capability. The Tribunal requests the parties to confer on all such issues prior to that conference.

**S. Hearing**

57. The parties shall reserve the weeks of 14 and 21 January 2013 for a hearing on jurisdiction and liability. The location and precise schedule will be determined later.
58. A summary of the procedural schedule, including prehearing submissions, disclosure of documents, and the hearing, is attached to this Order as Appendix D.

**T. Posthearing proceedings**

59. Directions as to posthearing proceedings are reserved for the conclusion of the hearing.

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We will appreciate the parties' continued cooperation.

New York, New York  
2 November 2010

Yas Banifatemi

Mark A. Clodfelter



Donald Francis Donovan, President  
For the Tribunal



Appendix A

The Tribunal

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Appendix B

Claimants' Representatives

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T. Altangere  
Ministry of Justice and Home Affairs  
Mongolia  
(Respondent to supply contact information)



Appendix C

Permanent Court of Arbitration  
Attn: Mr. Garth Schofield  
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ING Bank N.V.  
The Hague  
The Netherlands  
Account number: 02 02 86 511  
BIC: INGBNL2A  
IBAN: NL75 INGB 002 028 6511  
Name of beneficiary: Permanent Court of Arbitration  
Reference: China Heilongjiang et al. v. Mongolia



Appendix DSchedule of Arbitration

22 November 2010	Parties to advise position on listing of case on PCA docket and publication of decisions and awards
30 November 2010	Advance on costs
1 March 2011	Claimants' prehearing submissions
1 September 2011	Respondent's prehearing submissions
3 October 2011	Requests for disclosure of documents
30 November 2011	Responses to requests for disclosure of documents, including any application concerning translation of documents to be disclosed
During week of 5 December 2011	Conference call re document disclosure
22 December 2011	Uncontested disclosure completed
22 December 2011	Tribunal ruling on contested issues
3 February 2012	Final production of documents completed
8 June 2012	Reply submissions



1 October 2012	Objections to exhibits or translation of witness statements or exhibits from initial and reply submissions
16 November 2012	Rejoinder submissions
5 December 2012	Identification of witnesses and experts for cross-examination and of witnesses who will testify in language other than English
During week of 10 December 2012	Prehearing conference call
21 December 2012	Objections to exhibits or translation of witness statements or exhibits from rejoinder submissions
14-25 January 2013	Hearing on jurisdiction and liability
Directions reserved	Posthearing submissions

