

CHURCHILL MINING PLC AND PLANET MINING PTY LTD V. REPUBLIC OF INDONESIA (ICSID CASE NO. ARB/12/14 AND ARB/12/40)

RESPONDENT'S REQUEST FOR THE PRODUCTION OF DOCUMENTS: REDFERN SCHEDULE

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			
1.	Resp.	All the pleadings, including any statements of claim, statements of defense, exhibits thereto and any other writings or submissions in the case of PT Indonesia Coal Development (PT ICD) v. Andreas Rinaldi - <u>Claim of Unlawful Action (Onrechtmatige Daad) against Andreas Rinaldi</u> filed by PT Indonesia Coal Development with the District Court of Tangerang, Indonesia, in August 2011 and any appeals from the District Court of Banten.	Churchill's RfA dated 22 May 2012, ¶¶ 6, 26, 53, 55, 60, 81; Planet's RfA dated 26 November 2012, ¶¶ 4-5, 14-17, 20-22, 41, 43, 45, 47; Letter of the Government of Regency of East Kutai to ICSID dated 30 July 2012, p. 3; R-12, Churchill Mining Plc announcement, dated 18 June 2010 titled "Churchill takes direct ownership in the Ridlatama Tambang license area of the East Kutai Coal Project"; Churchill's announcements concerning its dispute with Ridlatama Group: R-13a; R-13b; R-13c; R-13d; R-14c, M&A Law Corporation (for and on behalf of Ridlatama Group and its members) letter to Churchill Mining PLC, dated 7 December 2011, ¶ 4; Respondent's Request for Provisional Measures dated 22 November 2012, ¶¶ 6-7 and R-RPM-2; Respondent's Reply to Claimant's Response to the Request for Provisional Measures, 7 January 2013, ¶	In their Requests for Arbitration, Churchill and Planet ("Claimants") alleged that they acquired or controlled or beneficially owned, ultimately owned or owned the mining licenses that had been granted to the Ridlatama companies and that were subject to the revocations by the Regent of East Kutai. The Claimants alleged that the revocations deprived them of their investments in the East Kutai Coal Project (EKCP) or/and denied them the use and development of EKCP. As proof of the alleged ownership of the licenses, Claimants filed in the Record documents concerning contractual arrangements between them and the Ridlatama companies. However, it emerged that Claimants' Indonesian subsidiary PT ICD and the Ridlatama companies, as well as Ridlatama's principals, shareholders and persons related to them are in dispute over the ownership of the licenses and the causes of the revocations of the licenses. <u>PT ICD has</u>	The Respondent's request is objectionable on grounds of relevance. Under Article 9.2(a) of the IBA Rules on the Taking of Evidence in International Arbitration 2010 (IBA Rules) ⁱⁱ the Arbitral Tribunal must exclude documents that are not sufficiently relevant to the case or material as to its outcome. The Respondent has failed to meet its burden because it has failed to explain how the requested documents are relevant to any issue before this Tribunal. Mere assertion is not sufficient to demonstrate such relevance. Moreover, litigation positions assumed by PT ICD and Mr. Rinaldi, neither of whom is a party to these ICSID proceedings, in an unrelated case before the Indonesian courts are neither relevant nor material to the outcome of the ICSID proceedings. Furthermore, the Respondent has failed to meet its burden of showing that it is unable itself to obtain requested documents from the relevant	The Respondent already explained the relevance and materiality of the requested category of documents. To elaborate further, the case of <i>PT ICD v. Andreas Rinaldi</i> concerns Andreas Rinaldi "as the controller of Ridlatama Group" (Ex. R-RPM-8, ¶ 2.23; see <i>id.</i> , ¶¶ 1.4, 1.13, 1.19.1, 1.19.2), who "had a dominant role during the negotiation on the terms of Investor Agreements". (<i>Id.</i> , ¶ 2.30). On the basis of said investor agreements, Churchill and Planet are claiming in the ICSID proceedings the <u>ownership and control from May 2007</u> of 75% of the interest in the East Kutai Coal Project (EKCP). (<i>See e.g.</i> , Planet's RfA, ¶ 15 and n. 13; Churchill's Production of Documents date 17 Dec. 2012, ¶ II.4.(c)-(f)). In the case against Mr Rinaldi, Churchill, through its subsidiary PT ICD, accused Mr Rinaldi of "breaches of the investors agreements". (Ex. R-13b, third para.). Thus, the dispute between PT ICD and Mr Rinaldi brought to the Tangerang	PARTIALLY GRANTED As indicated by Indonesia, the statement of claim is already on the record (Exh. R-RPM-8), and therefore no decision is required by the Tribunal. The Tribunal orders the production of any statements of defense, and the exhibits related to the statement of claim and any statements of defense, to the extent that they are related to the question of ownership over the disputed mining licenses. The Tribunal finds that the request for any other submissions or writings to be overly broad. The Tribunal also finds that the Claimants have made no attempt to substantiate their reservation relating to likely privileged and confidential materials.

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			22 and n. 18; R-RPM-8, Claim of Unlawful Action (Onrechtmatige Daad) against Andreas Rinaldi filed by PT Indonesia Coal Development with the District Court of Tangerang, on 15 August 2011.	sued Mr Andreas Rinaldi, "a member of the <u>Ridlatama Group</u> " in an <u>Indonesian court</u> . (See e.g., Ex. R-13b). Churchill explained that its claims against Ridlatama relate to the revocations of the licenses (See e.g., Ex. R-13a). The requested documents are relevant to the issue of the alleged ownership of the licenses by the Claimants and the timing of such ownership. The requested documents are material to the outcome of the ICSID cases brought against the Republic of Indonesia as the questions of the ownership are related to the Tribunal's jurisdiction <i>ratione materiae</i> and <i>ratione temporis</i> .	Indonesian court. The Respondent must show that it is somehow prevented from procuring these documents from its own courts. In the absence of such a showing, requiring the Claimants to produce the same documents is unduly burdensome; see IBA Rules Art. 9(2)(c). Further, the Respondent's request to produce "[a]ll pleadings...exhibits thereto and any other writings or submissions in the case" is open-ended, unspecific and as such overbroad and unduly burdensome. Besides, the Respondent has made no attempt to address the fact that within the overbroad and unspecific category of documents requested there are likely to be included privileged and confidential materials; see IBA Rules Art. 9(3)(a)-(c). ⁱⁱⁱ	District Court relates to the basis upon which the ICSID Claimants are claiming the interest in the EKCP and the timing of the alleged acquisition of the alleged interest. Therefore, the requested category of documents is relevant to whether Claimants have a basis to claim an investment in Indonesia, which is a material question for the determination of the Tribunal's jurisdiction <i>ratione materiae</i> and <i>ratione temporis</i> . As disclosed by Churchill Mining Plc in its publicly available Annual Report 2012, at p. 8, the Tangerang District Court dismissed PT ICD's claim against Mr Rinaldi and appeals were taken from the dismissal. Claimants cannot validly shield themselves from the production by stating that PT ICD and Rinaldi are not parties to the ICSID proceedings. Churchill and Planet are claiming full ownership and control of their subsidiary PT ICD (e.g., Planet's RfA, ¶¶ 4, 13-14, 40; Churchill's RfA, ¶¶ 42, 46), through which	

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						<p>they allegedly made the alleged investment in Indonesia (e.g., Churchill's RfA, ¶ 4; Planet's RfA, ¶ 41) Churchill has publicly held itself as an <i>alter ego</i> of PT ICD and has stated that it initiated the disputes with Ridlatama and several related individuals (e.g., Ex. R-13(a)). Andreas Rinaldi is allegedly "the controller of Ridlatama Group" (see above) which made the investors agreements on the basis of which the ICSID Claimants are alleging the investment in Indonesia. As explained above, the dispute relates to the alleged investment to which the ICSID proceedings also relate.</p> <p>Pursuant to the 2010 IBA Rules on Evidence ("IBA Rules"), Art. 3.3, the Respondent confirms that it is unable to obtain requested category of documents from the Indonesian Courts. As indicated above, only the initial claim, once registered with the clerk of the Court, becomes a public document. This is how the Respondent obtained a</p>	

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						<p>copy of such initial claim (Ex. R-RPM-8). However, subsequent submissions and exhibits thereto cannot be obtained from the Courts.</p> <p>As required by Art. 3.3 of the IBA Rules, the requested category of documents is narrow, specific and is described in sufficient detail, as it includes the submissions and exhibits of particular parties in the particular proceedings. All documents are presumably collected in a litigation docket or are stored in electronic form and readily producible. Claimants have not denied that they have the documents in question. In any case, Churchill and Planet have actual or constructive possession of the documents by reason of the full ownership and control of one of the parties to the proceedings.</p> <p>Under the IBA Rules, the burden to substantiate the objections to production, including on the basis of a privilege or confidentiality (Art. 9.3(a)-(c)), is on the Party making the objection. The Claimants failed to</p>	

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						<p>make and substantiate any such objection.</p> <p>Further, all the non-public documents produced by the Claimants would be kept confidential as required under Art. 3.13 of the IBA Rules.</p>	
2.	Resp.	Any and all decisions rendered by the courts in the case of PT Indonesia Coal Development (PT ICD) v. Andreas Rinaldi , filed by PT Indonesia Coal Development with the District Court of Tangerang, Indonesia, in August 2011, including the decision/s of the District Court of Tangerang and any decision/s on appeals from the District Court of Banten.	Same as in Request 1.	Same as in Request 1.	<p>The Respondent's request is objectionable on grounds of relevance. Under Article 9.2(a) of the IBA Rules the Arbitral Tribunal must exclude documents that are not sufficiently relevant to the case or material as to its outcome.</p> <p>The Respondent has failed to meet its burden because it has failed to explain how the requested documents are relevant to any issue before this Tribunal. Not only is the "Claim for Unlawful Action" unrelated to the present case, but also no final judgment has been reached as to its merits. Thus, the requested documents do not reflect a final determination of any issue of fact or law. Even if such a determination had been reached, it would not have been relevant and material as it neither binds</p>	<p>Respondent confirms that it has located a copy of the publicly available decision rendered by the District Court of Tangerang as well as a copy of the publicly available decision rendered on appeal. At the present time, Respondent withdraws Request 2 with respect to those decisions. However, Respondent confirms its request with respect to any other decisions rendered by the Court in the PT ICD against Andres Rinaldi case which are not publicly available.</p> <p>The relevance and materiality to this request are the same as in Request 1.</p>	<p>PARTIALLY GRANTED</p> <p>As indicated by Indonesia, it has located a copy of the publicly available decision rendered by the District Court of Tangerang as well as a copy of the publicly available decision rendered on appeal, and therefore no decision is required by the Tribunal.</p> <p>The Tribunal, however, takes note of the fact that the Claimants indicate that in these judicial proceedings "no final judgment has been reached as to its merits".</p> <p>The Tribunal therefore finds that Claimants should, as a continuing obligation, disclose to the Respondent any future final decision on the merits. The Tribunal also finds that the Claimants' should disclose</p>

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					<p>this Tribunal, nor bears sufficient relevance to any of the issues before it.</p> <p>Furthermore, the Respondent has failed to meet its burden of showing that it is unable to obtain itself the requested documents from its own courts. Absent such a showing, requiring the Claimants to produce the requested documents is unduly burdensome; <i>see</i> IBA Rules Art. 9(2)(c).</p>		any other decision containing information on the ownership of the disputed mining licenses, excluding any decisions dealing with procedural matters.
3.	Resp.	Any requests for disclosure of documents, listing the documents requested in the case of PT Indonesia Coal Development (PT ICD) v. Andreas Rinaldi , filed by PT Indonesia Coal Development with the District Court of Tangerang, Indonesia, in August 2011 and any decision/s on appeals from the District Court of Banten.	Same as in Request 1.	Same as in Request 1.	<p>The Respondent's request is objectionable on grounds of relevance. Under Article 9.2(a) of the IBA Rules the Arbitral Tribunal must exclude documents that are not sufficiently relevant to the case or material as to its outcome.</p> <p>The Respondent has failed to meet its burden because it has failed to explain the manner in which a listing of documents requested in connection with an unrelated matter is relevant and material to this case.</p> <p>Furthermore, the Respondent has failed to meet its burden of showing</p>	<p>The relevance and materiality are the same as in Request 1.</p> <p>Although Claimants state that no final judgment has been reached, Churchill had stated in its Annual Report of 2012 that the Tangerang District Court dismissed PT ICD's claim against Mr Rinaldi and that appeals were taken from the dismissal.</p> <p>Pursuant to Art. 3.3 of the IBA Rules, the Respondent confirms that it is unable to obtain requested category of documents from the Indonesian Courts. As indicated above, only the</p>	<p>DENIED</p> <p>The Tribunal rejects this request as it is unconvinced of its relevance; it also finds the request overly broad.</p>

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					<p>that it is unable to obtain requested documents from its own courts. Absent such a showing, requiring the Claimants to produce the requested documents is unduly burdensome; <i>see</i> IBA Rules Art. 9(2)(c).</p>	<p>initial claim, once registered with the clerk of the Court, becomes a public document. This is how the Respondent obtained a copy of such initial claim (Ex. R-RPM-8). However, subsequent submissions and exhibits thereto cannot be obtained from the Courts.</p> <p>As required by Art. 3.3 of the IBA Rules, the requested category of documents is narrow, specific and is described in sufficient detail, as it includes only a limited number of listings exchanged in the particular proceedings by particular parties. All documents are presumably collected in a litigation docket or are stored in electronic form and readily producible. Claimants have not denied that they have the documents in question. In any case, Churchill and Planet have actual or constructive possession of the requested listings by reason of the full ownership and control of one of the parties to the proceedings.</p> <p>Under the IBA Rules, the burden to substantiate the</p>	

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						<p>objections to production, including on the basis of a privilege or confidentiality (Art. 9.3(a)-(c)), is on the Party making the objection. The Claimants failed to substantiate any such objection.</p> <p>Further, all the non-public documents produced by the Claimants would be kept confidential as required under Art. 3.13 of the IBA Rules.</p>	
4.	Resp.	All the pleadings, including any statements of claim, statements of defense, exhibits thereto and any other writings or submissions in the arbitration case between PT Indonesia Coal Development (PT ICD) and Ms Florita, Ms Ani Setiawan and/or any other "Members of the Ridlatama Group" , in Singapore under the Rules of the International Chamber of Commerce (ICC).	<p>Churchill's Request for Arbitration dated 22 May 2012, ¶¶ 6, 26, 53, 55, 60, 81 and Exhibits C-014, ¶ 18; C-022, ¶ 19, C-026, ¶ 19;</p> <p>Planet's Request for Arbitration dated 26 November 2012, ¶¶ 4-5, 14-17, 20-22, 41, 43, 45, 47 and Exhibits P-21, ¶ 18; P-33, ¶ 19; P-40, ¶ 19; P-69;</p> <p>Letter of the Government of Regency of East Kutai to ICSID dated 30 July 2012, p. 3;</p> <p>R-12, Churchill Mining Plc announcement, dated 18 June 2010 titled "Churchill takes direct ownership in the Ridlatama Tambang license</p>	In their Requests for Arbitration, Claimants alleged that they acquired or controlled or beneficially owned, ultimately owned or owned the mining licenses that had been granted to the Ridlatama companies and that were subject to the revocations by the Regent of East Kutai. The Claimants alleged that the revocations deprived them of their investments in the East Kutai Coal Project (EKCP) or/and denied them the use and development of EKCP. As proof of the alleged ownership of the licenses, Claimants filed in the Record documents concerning contractual	<p>The Respondent's request is objectionable on grounds of relevance. Under Article 9.2(a) of the IBA Rules the Arbitral Tribunal must exclude documents that are not sufficiently relevant to the case or material as to its outcome.</p> <p>The Respondent has failed to meet its burden because it has failed to explain how the requested documents are relevant to any issue before this Tribunal. Moreover, the Claimants are not parties to the ICC arbitration referenced in this request. Positions assumed by PT ICD and other third parties in unrelated arbitration</p>	<p>The Respondent already explained the relevance and materiality of the requested category of documents. The Respondent refers to its further elaboration made in Request 1 and notes that PT ICD's claims against Ms Florita, Ms Ani Setiawan and/or any other "Members of the Ridlatama Group" were initiated at the same time and in the same context as PT ICD's claim against Mr Andreas Rinaldi (<i>see e.g.</i>, Ex. R-13a, R-13b and R-13d).</p> <p>Claimants cannot validly shield themselves from the production by stating that PT ICD and "other third parties", i.e., Members of</p>	<p>PARTIALLY GRANTED</p> <p>The Tribunal orders the production of any statements of claim and statements of defense, as well as the exhibits related to any statements of claim and statements of defense, to the extent that they are related to the question of ownership over the disputed mining licenses.</p> <p>The Tribunal also finds that the Claimants have made no attempt to substantiate their reservation relating to likely privileged and confidential materials.</p>

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			<p>area of the East Kutai Coal Project”;</p> <p>Churchill’s announcements concerning its dispute with Ridlatama Group: R-13a; R-13b; R-13c; R-13d;</p> <p>Respondent’s Request for Provisional Measures dated 22 November 2012, ¶¶ 6-7 and R-RPM-2;</p> <p>R-14a, PT INP letter to PT ICD dated 9 November 2011;</p> <p>R-14b, PT INR letter to PT ICD dated 9 November 2011.</p>	<p>arrangements between them and the Ridlatama companies. However, it emerged that Claimants’ Indonesian subsidiary PT ICD and the Ridlatama companies, as well as Ridlatama’s principals, shareholders and persons related to them are in dispute over the ownership of the licenses and the causes of the revocations of the licenses. <u>PT ICD has brought arbitration claims in Singapore</u> against certain “members of the Ridlatama Group” for their alleged breaches of the investors agreements (<i>See e.g.</i>, Ex. R-13b), even though certain investment agreements had been terminated on the basis of PT ICD’s failures to pay Ridlatama for the alleged 75% interest in the licenses. (<i>See e.g.</i>, R-13c; R-14a; R-14b; P-69). Churchill explained that its claims against Ridlatama relate to the revocations of the licenses (<i>See e.g.</i>, Ex. R-13a). The requested documents are relevant to the issue of the alleged ownership of the licenses by the Claimants and the timing of such ownership.</p>	<p>proceedings are neither relevant nor material to the outcome of the ICSID proceedings.</p> <p>Furthermore, certain information before the ICC arbitral tribunal is confidential pursuant to a confidentiality agreement between the parties to that proceeding.</p> <p>Further, the Respondent's request to produce "[a]ll the pleadings...exhibits thereto and any other writings or submissions in the arbitration case" is open-ended, unspecific and as such overbroad and unduly burdensome. Besides, the Respondent has made no attempt to address the fact that within the overbroad and unspecific category of documents requested there are likely to be included privileged and confidential materials; <i>see</i> IBA Rules Art. 9(3)(a)-(c) & n. (iii), <i>infra</i>.</p>	<p>the Ridlatama Group, are not parties to the ICSID proceedings. Churchill and Planet are claiming full ownership and control of their subsidiary PT ICD (<i>e.g.</i>, Planet’s RfA, ¶¶ 4, 13-14, 40; Churchill’s RfA, ¶¶ 42, 46), through which they allegedly made the alleged investment in Indonesia (<i>e.g.</i>, Churchill’s RfA, ¶ 4; Planet’s RfA, ¶ 41) Churchill has publicly held itself as an <i>alter ego</i> of PT ICD and has stated that it initiated the disputes with Ridlatama and several related individuals (<i>e.g.</i> Ex. R-13(a)). As for the Ridlatama Group and its Members, on the basis of the agreements with Ridlatama and its Members the ICSID Claimants are alleging the investment in Indonesia. As explained above, the dispute relates to the alleged investment to which the ICSID proceedings also relate.</p> <p>As required by Art. 3.3 of the IBA Rules, the requested category of documents is narrow, specific and is described in sufficient detail, as it</p>	

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				The requested documents are material to the outcome of the ICSID cases brought against the Republic of Indonesia as the questions of the ownership are related to the Tribunal's jurisdiction <i>ratione materiae</i> and <i>ratione temporis</i> .		includes the submissions and exhibits of particular parties in the particular proceedings. All documents are presumably collected in a litigation docket or are stored in electronic form and readily producible. Claimants have not denied that they have the documents in question. In any case, Churchill and Planet have actual or constructive possession of the documents by reason of the full ownership and control of one of the parties to the proceedings. Under the IBA Rules, the burden to substantiate the objections to production, including on the basis of a privilege or confidentiality (Art. 9.3(a)-(c)), is on the Party making the objection. The Claimants failed to substantiate any such objection. Further, all the non-public documents produced by the Claimants would be kept confidential as required under Art. 3.13 of the IBA Rules.	
5.	Resp.	Any and all awards, interim awards and decisions	Same as Request 4.	Same as Request 4.	The Respondent's request is objectionable on grounds of	The relevance and materiality is the same as in	PARTIALLY GRANTED

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		<p>rendered in the case of PT Indonesia Coal Development (PT ICD) v. Ms Florita, Ms Ani Setiawan and/or any other "Members of the Ridlatama Group", Arbitration in Singapore under the Rules of the International Chamber of Commerce (ICC).</p>			<p>relevance. Under Article 9.2(a) of the IBA Rules the Arbitral Tribunal must exclude documents that are not sufficiently relevant to the case or material as to its outcome.</p> <p>The Respondent has failed to meet its burden because it has failed to explain how the requested documents are relevant to any issue before this Tribunal. moreover, any conclusion reached by the ICC tribunal as to the interpretation and effect of the agreement based on which it has been constituted is neither relevant nor material, as it would not bind this Tribunal.</p> <p>Furthermore, certain information before the ICC arbitral tribunal is confidential pursuant to a confidentiality agreement between the parties to that proceeding.</p>	<p>Request 4.</p> <p>As required by Art. 3.3 of the IBA Rules, the requested category of documents is narrow, specific and is described in sufficient detail, as it includes only a limited number of awards and rendered in the particular proceedings involving particular parties. All documents are presumably collected in a litigation docket or are stored in electronic form and readily producible. Claimants have not denied that they have the documents in question. In any case, Churchill and Planet have actual or constructive possession of the documents by reason of the full ownership and control of one of the parties to the proceedings.</p> <p>Under the IBA Rules, the burden to substantiate the objections to production, including on the basis of a privilege or confidentiality (Art. 9.3(a)-(c)), is on the Party making the objection. The Claimants failed to substantiate any such objection.</p>	<p>The Tribunal orders Claimants to disclose any decision containing information on the ownership of the disputed mining licenses, to the exclusion of decisions related to procedural matters.</p>

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						Further, all the non-public documents produced by the Claimants would be kept confidential as required under Art. 3.13 of the IBA Rules.	
6.	Resp.	Any requests for disclosure of documents, listing the documents requested in the case of PT Indonesia Coal Development (PT ICD) v. Ms Florita, Ms Ani Setiawan and/or any other "Members of the Ridlatama Group" , Arbitration in Singapore under the Rules of the International Chamber of Commerce (ICC).	Same as Request 4.	Same as Request 4.	<p>The Respondent's request is objectionable on grounds of relevance. Under Article 9.2(a) of the IBA Rules the Arbitral Tribunal must exclude documents that are not sufficiently relevant to the case or material as to its outcome.</p> <p>The Respondent has failed to meet its burden because it has failed to explain the manner in which a listing of documents requested in connection with an arbitration between persons that are not participants in these proceedings are relevant and material to this case.</p> <p>Furthermore, certain information before the ICC arbitral tribunal is confidential pursuant to a confidentiality agreement between the parties to that proceeding.</p>	<p>The relevance and materiality are the same as in Request 4.</p> <p>As required by Art. 3.3 of the IBA Rules, the requested category of documents is narrow, specific and is described in sufficient detail, as it includes only a limited number of listings exchanged in the particular proceedings by particular parties. All documents are presumably collected in a litigation docket or are stored in electronic form and readily producible. Claimants have not denied that they have the documents in question. In any case, Churchill and Planet have actual or constructive possession of the requested listings by reason of the full ownership and control of one of the parties to the proceedings.</p> <p>Under the IBA Rules, the burden to substantiate the</p>	<p>DENIED</p> <p>The Tribunal rejects this request as it is not convinced of its relevance and finds it too broad.</p>

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						<p>objections to production, including on the basis of a privilege or confidentiality (Art. 9.3(a)-(c)), is on the Party making the objection. The Claimants failed to substantiate any such objection.</p> <p>Further, all the non-public documents produced by the Claimants would be kept confidential as required under Art. 3.13 of the IBA Rules.</p>	
7.	Resp.	All the pleadings, including any statements of claim, statements of defense, exhibits thereto and any other writings or submissions in the proceedings initiated by Ms Florita and Ms Ani Setiawan against PT Indonesia Coal Development (PT ICD), PT Techno Coal Utama Prima (PT TCUP), PT Ridlatama Tambang Mineral (PT RTM) in South Jakarta District Court and the proceedings initiated by Ms Florita and Ms Ani Setiawan against PT Indonesia Coal Development (PT ICD), PT Techno Coal Utama	<p>Churchill's Request for Arbitration dated 22 May 2012, ¶¶ 6, 26, 53, 55, 60, 81;</p> <p>Planet's Request for Arbitration dated 26 November 2012, ¶¶ 4-5, 14-17, 20-22, 41, 43, 45, 47;</p> <p>Letter of the Government of Regency of East Kutai to ICSID dated 30 July 2012, p. 3;</p> <p>R-12, Churchill Mining Plc announcement, dated 18 June 2010 titled "Churchill takes direct ownership in the Ridlatama Tambang license area of the East Kutai Coal Project";</p> <p>R-13d, Churchill Mining Plc announcement, dated 21</p>	In their Requests for Arbitration, Claimants alleged that they acquired or controlled or beneficially owned, ultimately owned or owned the mining licenses that had been granted to the Ridlatama companies and that were subject to the revocations by the Regent of East Kutai. The Claimants alleged that the revocations deprived them of their investments in the East Kutai Coal Project (EKCP) or/and denied them the use and development of EKCP. As proof of the alleged ownership of the licenses, Claimants filed in the Record documents concerning contractual	The Claimants repeat the objection raised to Request 1.	The Respondent already explained the relevance and materiality of the requested category of documents. To elaborate further, the case of Ms Florita and Ms Ani Setiawan against PT ICD, PT TCUP and PT RTM, as well as the case of Ms Florita and Ms Ani Setiawan against PT ICD, PT TCUP and PT RTP challenged the legality and validity of the <u>November 2007</u> grants of shares in PT PT RTM and PT RTP from Ms Florita and Ms Ani Setiawan in the interest of PT ICD. (<i>See, e.g.</i> , Ex. R-13d, Churchill's announcement, dated 21 December 2011, titled	PARTIALLY GRANTED The Tribunal orders the production of any statements of claim and statements of defense, as well as any exhibits to any statements of claim and statements of defense, to the extent that they are related to the question of ownership over the disputed mining licenses. The Tribunal finds that the request for any other submissions or writings to be overly broad and not specific enough. The Tribunal also finds that the Claimants have made no attempt to substantiate

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			
		Prima (PT TCUP), PT Ridlatama Trade Powerindo (PT RTP) in South Jakarta District Court , and any appeals from the South Jakarta District Court.	December 2011, titled "Dispute with Ridlatama"; Respondent's Request for Provisional Measures dated 22 November 2012, ¶¶ 6-7 and R-RPM-2.	arrangements between them and the Ridlatama companies. However, it emerged that Claimants' Indonesian subsidiary PT ICD and the Ridlatama companies, as well as Ridlatama's principals, shareholders and persons related to them are in dispute over the ownership of the licenses and the causes of the revocations of the licenses. Certain <u>shareholders of the Ridlatama companies have sued PT ICD in an Indonesian court</u> seeking the declaration that PT ICD's alleged 75% interests in PT RTM and PT RTP are null and void, including by reason of PT ICD's failures to pay Ridlatama for the alleged interest in the licenses. (<i>See e.g.</i> , R-13d). The requested documents are relevant to the issue of the alleged ownership of the licenses by the Claimants and the timing of such ownership. The requested documents are material to the outcome of the ICSID cases brought against the Republic of Indonesia as the questions of the ownership are related		<p>"Dispute with Ridlatama"). On the basis of said grants, the Claimants allegedly directly owned 75% of the shares in PT RTM and PT RTP that held the mining licenses. (<i>See e.g.</i>, Planet's RfA, ¶ 20 and nn. 39, 40; Churchill's RfA, ¶ 6). A declaration by the Court concerning the legality and validity of said grants is relevant to the question of whether Claimants held an interest in EKCP and thus material for the determination of Tribunal's jurisdiction <i>ratione materiae</i> and <i>ratione temporis</i>.</p> <p>The Respondent is aware that in other similar cases in the past, various Panels of Judges in South Jakarta District Court have rendered judgments declaring such agreements on the granting of shares to be null and void by law.</p> <p>Claimants cannot validly shield themselves from the production by stating that PT ICD and Members of the Ridlatama Group are not parties to the ICSID proceedings. As explained</p>	their reservation relating to likely privileged and confidential materials.

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			
				to the Tribunal's jurisdiction <i>ratione materiae</i> and <i>ratione temporis</i> .		<p>above, Churchill and Planet are claiming full ownership and control of their subsidiary PT ICD through which they allegedly made the alleged investment in Indonesia. Churchill has publicly held itself as an <i>alter ego</i> of PT ICD and has stated that it initiated the disputes with Ridlatama and several related individuals (e.g. Ex. R-13(a)). As for Ms Florita and Ms Ani Setiawan, it is their alleged grant of shares in the companies of the Ridlatama Group that the Claimants invoke as the basis of their direct ownership of the PT RTM and PT RTP and as a basis of the Claimants' alleged interest in the EKCP.</p> <p>The Respondent obtained the copies of the statements of claims since, as was explained in Request 1, the initial claim, once registered with the clerk of the Court, becomes a public document. However, subsequent submissions and exhibits thereto cannot be obtained from the Courts.</p> <p>As required by Art. 3.3 of</p>	

1.	2.	3.	4.		5.	6.	7.
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			Ref. to Submissions	Comments			
						<p>the IBA Rules, the requested category of documents is narrow, specific and is described in sufficient detail, as it includes the submissions and exhibits of particular parties in the particular proceedings. All documents are presumably collected in a litigation docket or are stored in electronic form and readily producible. Claimants have not denied that they have the documents in question. In any case, Churchill and Planet have actual or constructive possession of by reason of the full ownership and control of one of the parties to the proceedings.</p> <p>Claimants claim that “certain information before the ICC arbitral tribunal is confidential pursuant to a confidentiality agreement between the parties to that proceeding.” Claimants need to produce the alleged confidentiality agreement concluded between the parties in the ICC case. Under the IBA Rules, the burden to substantiate the objections to production,</p>	

1.	2.	3.	4.		5.	6.	7.
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			Ref. to Submissions	Comments			
						<p>including on the basis of a privilege or confidentiality (Art. 9.3(a)-(c)), is on the Party making the objection. Claimants failed to make and substantiate any such objection.</p> <p>Further, all the non-public documents produced by the Claimants would be kept confidential as required under Art. 3.13 of the IBA Rules.</p>	
8.	Resp.	Any and all decisions rendered by the courts in the proceedings initiated by Ms Florita and Ms Ani Setiawan against PT Indonesia Coal Development (PT ICD), PT Techno Coal Utama Prima (PT TCUP), PT Ridlatama Tambang Mineral (PT RTM) in the South Jakarta District Court and the proceedings initiated by Ms Florita and Ms Ani Setiawan against PT Indonesia Coal Development (PT ICD), PT Techno Coal Utama Prima (PT TCUP), PT Ridlatama Trade Powerindo (PT RTP) in the South Jakarta District Court , including the	Same as Request 7.	Same as Request 7.	The Claimants repeat the objection raised to Request 2.	<p>Respondent confirms that it has located a copy of the publicly available decision rendered by the South Jakarta District Court as well as a copy of the publicly available decision rendered on appeal. At the present time, Respondent withdraws Request 8 with respect to those decisions. However, Respondent confirms its request with respect to any other non-public decisions rendered by the Court in the case of Ms Florita and Ms Ani Setiawan against PT ICD, PT TCUP and PT RTM, as well as the case of Ms Florita and Ms Ani Setiawan against PT ICD,</p>	<p>PARTIALLY GRANTED</p> <p>As indicated by Indonesia, it has located a copy of the publicly available decision rendered by the South Jakarta District Court as well as a copy of the publicly available decision rendered on appeal, and therefore no decision is required by the Tribunal.</p> <p>It appears from the Claimants' comments that no final decision on the merits has been rendered in these proceedings.</p> <p>The Tribunal therefore finds that Claimants should, as a continuing obligation, disclose to the Respondent any future final decision on</p>

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			
		decision/s of the District Court of the South Jakarta District Court and the decisions of any appeals of the court's decision/s.				PT TCUP and PT RTP. The relevance and materiality to this request are the same as in Request 7. In addition, Respondent notes that the Court may have declared certain grants of shares in PT RTM and PR RTP in the interest of PT ICD not valid, as it has done with respect to similar transactions in the past.	the merits. The Tribunal finds furthermore that the Claimants should disclose any other decision containing information on the ownership of the disputed mining licenses, to the exclusion of any decisions dealing with procedural matters.
9.	Resp.	Any requests for disclosure of documents, listing the documents requested in the proceedings initiated by Ms Florita and Ms Ani Setiawan against PT Indonesia Coal Development (PT ICD), PT Techno Coal Utama Prima (PT TCUP), PT Ridlatama Tambang Mineral (PT RTM) in the South Jakarta District Court and the proceedings initiated by Ms Florita and Ms Ani Setiawan against PT Indonesia Coal Development (PT ICD), PT Techno Coal Utama Prima (PT TCUP), PT Ridlatama Trade Powerindo (PT RTP) in the South Jakarta District	Same as Request 7.	Same as Request 7.	The Claimants repeat the objection raised to Request 3.	The relevance and materiality are the same as in Request 7. Pursuant to Art. 3.3 of the IBA Rules, the Respondent confirms that it is unable to obtain requested category of documents from the Court. As indicated above, only the initial claim, once registered with the clerk of the Court, becomes a public document. However, subsequent submissions and exhibits thereto cannot be obtained from the Courts. As required by Art. 3.3 of the IBA Rules, the requested category of documents is narrow, specific and is described in sufficient detail, as it includes only a limited	DENIED The Tribunal rejects this request as it is unconvinced of its relevance and finds it very broad.

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			
		Court.				<p>number of listings exchanged in the particular proceedings by particular parties. All documents are presumably collected in a litigation docket or are stored in electronic form and readily producible. Claimants have not denied that they have the documents in question. In any case, Churchill and Planet have actual or constructive possession of the requested listings by reason of the full ownership and control of one of the parties to the proceedings.</p> <p>Under the IBA Rules, the burden to substantiate the objections to production, including on the basis of a privilege or confidentiality (Art. 9.3(a)-(c)), is on the Party making the objection. The Claimants failed to make and substantiate any such objection.</p> <p>Further, all the non-public documents produced by the Claimants would be kept confidential as required under Art. 3.13 of the IBA Rules.</p>	
10.	Resp.	Copies of any and all correspondence exchanged	Churchill's Request for Arbitration dated 22 May	In their Requests for Arbitration, Claimants	The Respondent's request makes no reference to	The Respondent already explained the relevance and	DENIED

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			
		between PT ICD and any of the Ridlatama Group Companies and/or their respective shareholders (collectively "the parties") and/or counsel for the parties that relates to the claims or defenses of each of the party concerning the dispute relating to the alleged ownership of the licenses by way of the contractual arrangements or otherwise.	2012, ¶¶ 6, 26, 53, 55, 60, 81; Planet's Request for Arbitration dated 26 November 2012, ¶¶ 4-5, 14-17, 20-22, 41, 43, 45, 47; Letter of the Government of Regency of East Kutai to ICSID dated 30 July 2012, p. 3; Respondent's Request for Provisional Measures dated 22 November 2012, ¶¶ 6-7 and R-RPM-2.	alleged that they acquired or controlled or beneficially owned, ultimately owned or owned the mining licenses that had been granted to the Ridlatama companies and that were subject to the revocations by the Regent of East Kutai. The Claimants alleged that the revocations deprived them of their investments in the East Kutai Coal Project (EKCP) or/and denied them the use and development of EKCP. As proof of the alleged ownership of the licenses, Claimants filed in the Record documents concerning contractual arrangements between them and the Ridlatama companies. However, it emerged that Claimants' Indonesian subsidiary PT ICD and the Ridlatama companies, as well as Ridlatama's principals, shareholders and persons related to them are in dispute over the ownership of the licenses and the causes of the revocations of the licenses. PT ICD and Ridlatama initiated various international arbitration and domestic litigation proceedings relating to the	specific documents, categories of documents, or limited relevant time periods. Thus, the Respondent's request for "any and all correspondence exchanged between PT ICD and any of the Ridlatama Group [of] Companies and/or their respective shareholders" is overbroad and unduly burdensome; IBA Rules Art. 3(3). ^{vii} In addition, the Respondent's request is objectionable on grounds of relevance. Under Article 9.2(a) of the IBA Rules the Arbitral Tribunal must exclude documents that are not sufficiently relevant to the case or material as to its outcome. The Respondent has failed to meet its burden because it has failed to explain how the requested documents are relevant to any issue before this Tribunal. Moreover, the Respondent's request for correspondence between PT ICD, the Ridlatama Group, and their respective counsel is privileged under law, and	materiality of the requested category of documents. As required by Art. 3.3 of the IBA Rules, the requested category of documents is narrow, specific and is described in sufficient detail, as it includes only the correspondence exchanged by particular parties with regard to the alleged ownership of the licenses. Claimants have not denied that they have the documents in question. In any case, Churchill and Planet have actual or constructive possession of the requested documents by reason of the full ownership and control of one of the parties to the dispute. Under the IBA Rules, the burden to substantiate the objections to production, including on the basis of a privilege or confidentiality (Art. 9.3(a)-(c)), is on the Party making the objection. The Claimants failed to make and substantiate any such objection. Further, all the non-public documents produced by the Claimants would be kept	The Tribunal finds that the request is overly broad and unduly burdensome for the Claimants.

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			
				contractual arrangements through which PT ICD and Claimants allegedly owned a 75% interest in the mining licenses. The requested documents are relevant to the issue of the alleged disputed ownership of the licenses. The requested documents are material to the outcome of the ICSID cases brought against the Republic of Indonesia as the questions of the ownership are related to the Tribunal's jurisdiction <i>ratione materiae</i> and <i>ratione temporis</i> .	therefore cannot be the subject of disclosure; <i>see</i> IBA Rules Art. 9(2)(b) & n. (iii), <i>infra</i> .	confidential as required under Art. 3.13 of the IBA Rules.	
11.	Resp.	All pleadings, decisions, document requests and correspondence in cases or arbitral proceedings initiated by or against Claimants or any entity owned or controlled by either of them relating to the ownership or control, directly or indirectly, of their investments in the East Kutai Coal Project (EKCP).	See Requests 1-10.	This request is intended to cover any other cases or arbitrations to which Claimants and any of their affiliates are a party which bear on their alleged ownership, control or other rights with respect to the East Kutai Coal Project (EKCP). The requested documents are material to the outcome of the ICSID cases brought against the Republic of Indonesia as the questions of the ownership are related to the Tribunal's jurisdiction <i>ratione materiae</i> and	The Respondent's request makes no reference to specific documents, categories of documents, or relevant time periods. This request constitutes an attempt by the Respondent to introduce a catch-all provision that will encompass documents not captured by requests 1-10. The Respondent's request is open-ended and unspecific, and therefore overbroad and unduly burdensome; <i>see</i> IBA Rules Art. 3(3) & n. (vii), <i>infra</i> .	The Respondent already explained the relevance and materiality of the requested category of documents. Seeing that the validity of Claimants' alleged investment in Indonesia is subject to a number of pending or concluded disputes between the participants of various agreements that Claimants invoked in the ICSID proceedings as the evidence of their alleged investment, it is not implausible that there are disputes not	DENIED The Tribunal finds that the request is overly broad and not specific enough.

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
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				<i>ratione temporis.</i>	Further, Claimants repeat their objections to Requests 1-10 in respect of the lack of relevance and materiality to the outcome of the present proceedings of documents pertaining to unrelated arbitrations or litigations.	<p>otherwise captured in the Requests 1 to 10 over matters that are relevant and material to the determination of the Tribunal's jurisdiction.</p> <p><i>See, e.g.,</i> Ex. R-RTM-2, where Ridlatama asserted that Churchill's claims to 75% of interest in EKCP are false and defamatory.</p> <p>Claimants have not denied that they have the documents in question.</p> <p>As required by Art. 3.3 of the IBA Rules, the Respondent is seeking only a narrow and specific category of documents. All such documents are related to the disputes that involve the parties to the agreements on the basis of which the Claimants are claiming their interest in EKCP. As explained above, Claimants have the possession of all such documents. The Claimants failed to make and substantiate any objection based on a privilege or confidentiality. Further, all the non-public documents produced by the Claimants would be kept confidential</p>	

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
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						as required under Art. 3.13 of the IBA Rules.	

Instructions:

- (1) **This request encompasses all documents within the possession, custody or control of Claimants.**
- (2) **The term “document” has the meaning attributed to it under the 2010 IBA Rules on the Taking of Evidence in International Arbitration, that is: “a writing of any kind, whether recorded on paper, electronic means, audio or visual recordings or any other mechanical or electronic means of storing or recording information.**
- (3) **The documents requested should be produced in the manner in which they are maintained, identifying the Claimant on behalf of which they are being produced. If the documents requested are stored electronically, Claimants may produce the electronic versions of such documents.**

ⁱⁱ According to Section 15.3 of Procedural Order No. 1 in ICSID Case No ARB/12/14, incorporated by reference to the present consolidated proceedings, "Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) shall guide the Tribunal and the parties regarding document production."

ⁱⁱⁱ *See, e.g., 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration* at 25 ("Article 9.2(b) provides protection for documents and other evidence that may be covered by certain privileges, under the appropriate applicable law, such as the attorney-client privilege, professional secrecy or the without prejudice privilege. The Working Party felt that it was important that such privileges be recognised in international arbitration.")

^{vii} *1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration* at 8 ("Article 3.3 is designed to prevent a broad "fishing expedition", while at the same time permitting parties to request documents that can be identified with reasonable specificity and which can be shown to be relevant to the case and material to its outcome.")