

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia
(ICSID Case No. ARB/12/14 and 12/40)**

PROCEDURAL ORDER NO. 6

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal
Mr. Michael Hwang S.C., Arbitrator
Professor Albert Jan van den Berg, Arbitrator

Secretary of the Tribunal
Mr. Paul-Jean Le Cannu

Assistant to the Tribunal
Mr. Magnus Jesko Langer

Introduction

In accordance with paragraph 7.3 of Procedural Order No. 4, the pre-hearing telephone conference was held on 8 March 2013.

Participating in the telephone conference were:

Members of the Tribunal

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal
Mr. Michael Hwang S.C., Arbitrator
Professor Albert Jan van den Berg, Arbitrator

Assistant to the Tribunal

Mr. Magnus Jesko Langer

Assistant to Mr. Michael Hwang S.C.

Mr. Anthony Cheah Nicholls

ICSID Secretariat

Ms. Aurélie Antonietti
Mr. Paul-Jean Le Cannu

Participating on behalf of Churchill Mining PLC and Planet Mining Pty Ltd

Mr. Stephen Jagusch, Quinn Emanuel Urquhart & Sullivan UK LLP
Mr. Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan UK LLP
Mr. Epaminontas Triantafilou, Quinn Emanuel Urquhart & Sullivan UK LLP

Participating on behalf of Respondent

Mr. Didi Dermawan, Legal Representative of the Regent of East Kutai and the Minister of Law and Human Rights of the Republic of Indonesia
Mr. Richele S. Suwita, Advocate at DNC Advocates at Work, Supporting Legal Team Member of Legal Representative Team of the President of the Republic of Indonesia
Ms. Marcia S. Tanudjaja, Advocate at DNC Advocates at Work, Supporting Legal Team Member of Legal Representative Team of the President of the Republic of Indonesia

The President of the Tribunal (President) opened the session at 7:15 am (EST) and welcomed the participants. The President introduced the Tribunal, the Secretary of the Tribunal (Secretary), the Assistant to the Tribunal, and the Assistant to Mr. Hwang, and invited the parties to introduce their respective representatives.

The Tribunal and the parties considered the organization of the jurisdictional hearing and in particular the following agenda items:

- The cross-examination of Dr. Nono A. Makarim;
- Time allocation and sequence of oral arguments;
- Logistical issues; and
- Other matters.

The session was adjourned at 8:05 am (EST).

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently uploaded to the FTP server established for the case for access by the Members of the Tribunal and the parties.

Following the pre-hearing telephone conference, the Tribunal now issues the present

Order

1. Having invited the parties to submit their views on the conduct of Dr. Makarim's cross-examination as well as time allocation and the sequence of the parties' oral arguments, the Tribunal has determined that the Schedule for the Hearing on Jurisdiction shall be as follows:

DAY 1 (Monday, 13 May 2013)		
TIME	PROCEDURAL STEP	LENGTH OF TIME
9:00 – 9:10	Preliminary remarks	10 minutes
9:10 – 9:20	Respondent's opening statement	10 minutes
9:20 – 9:30	Claimants' opening statement	10 minutes
Examination of Claimants' Expert Witness		
9:30 – 9:40	Direct examination	10 minutes
9:40 – 10:40	Cross-examination	1 hour
10:40 – 11:00	Coffee break	20 minutes
11:00 – 12:00	Cross-examination	1 hour
12:00 – 12:30	Re-direct examination	30 minutes
12:30 – 12:45	Tribunal's questions	15 minutes
12:45 – 14:00	Lunch break	1 hour 15 minutes
First Round of Oral Submissions		
14:00 – 16:30	Respondent's oral submissions	2 hours 30 minutes
DAY 2 (Tuesday, 14 May 2013)		
9:00 – 11:00	Claimants' oral submissions	2 hours
11:00 – 11:15	Coffee break	15 minutes
11:15 – 12:45	Claimants' oral submissions	1 hour 30 minutes
12:45 – 13:00	Tribunal's questions	15 minutes
13:00 – 14:00	Lunch break	1 hour
Second Round of Oral Submissions		
14:00 – 14:30	Respondent's answers to Tribunal's questions and closing statement	30 minutes
14:30 – 15:00	Claimants' answers to Tribunal's questions and closing statement	30 minutes
15:00 – 15:15	Closing remarks	15 minutes

1.1. Accordingly, each side has approximately 5 hours for use during the hearing (4h50 for the Claimant and 5h10 for the Respondent, the difference taking into consideration to some extent the longer cross-examination time). If a Party wishes to change the allocation of its time for a given step, it may do so provided that it stays within its total allocation of 4h50 and 5h10 respectively and provided that the overall structure of the hearing schedule (Mr. Makarim's examination on Monday morning; Respondent's oral arguments on Monday afternoon; Claimant's oral arguments on Tuesday morning; and second round on Tuesday early afternoon) remains unaltered.

2. Logistical issues

2.1. The Centre confirmed that the verbatim transcript of the hearing will be available in real-time and that electronic copies of the transcript would be provided to the parties and the Tribunal on a same-day basis. The Centre invited the parties to confirm whether the court reporter should also provide them with a hard copy of the transcript at the end of the first day of the hearing.

2.2. The Centre recalled that the set-up at Maxwell Chambers will take place on Sunday, 12 May 2013 from 12:00 pm to 3:00 pm local time. The Centre confirmed that both parties submitted the list of attendees for the set-up on 24 and 25 April 2013.

2.3. The parties did not raise any further logistical issues.

3. Other matters

3.1. Powers of Attorney

3.1.1. The Respondent indicated that it will provide a new power of attorney before the hearing. The Tribunal confirms receipt on 8 May 2013 of the following three power of attorney from the Republic of Indonesia:

- a special power of attorney dated 14 January 2013 in relation to “the request submitted by Planet Mining Pty Ltd with Registration Number: ARB/12/40”;
- a substitute power of attorney dated 26 April 2013 in relation to “the claim of Churchill Mining PLC against the Government of the Republic of Indonesia at International Centre for Settlement of Investment Disputes with the registration number of: ICSID Case No. ARB/12/14”; and
- a substitute power of attorney dated 26 April 2013 in relation to “the claim of Planet Mining Pty Ltd against the Government of the Republic of Indonesia at International Centre for Settlement of Investment Disputes with the registration number of: ICSID Case No. ARB/12/40.”

3.1.2. The Tribunal notes that the aforementioned substitute powers of attorney appoint Ms. Frutos-Peterson of the law firm Curtis Mallet-Prevost, Colt & Mosle LLP, along with other representatives.

3.2. Attendance of Ms. Alexandra Gerungan, Dr. Makarim's law partner

3.2.1. Dr. Makarim's law partner, Ms. Alexandra Gerungan, who has assisted in the preparation of the expert report, may attend the hearing, it being understood that she will not be cross-examined or participate in the cross-examination of Dr. Makarim.

3.3. New evidentiary material

3.3.1. The Parties have now filed their written submissions on jurisdiction in accordance with the procedural schedule provided in paragraph 7 and Annex 3 of Procedural Order No. 4. The Tribunal recalls that pursuant to paragraph 15.11 of Procedural Order No. 1 and paragraph 8.2 of Procedural Order No. 4, introduction by a party of evidentiary materials following the filing of the last written submission will be permitted only in exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.

3.4. Oral presentation materials

3.4.1. Each Party may provide the Tribunal, the other party and the Secretariat with a hard copy of its oral presentation or with a bundle of documents prior to beginning its first round of oral arguments.

For and on behalf of the Tribunal

[Signed]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 8 May 2013