

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

FREEPORT-MCMORAN INC.
Applicant on Annulment

and

REPUBLIC OF PERU
Respondent on Annulment

ICSID Case No. ARB/20/08
Annulment Proceeding

**DECISION ON THE APPLICANT'S REQUEST FOR
RECONSIDERATION OF THE DECISION ON SUSPENSION
OF THE PROCEEDING**

Members of the *ad hoc* Committee

Sir Christopher Greenwood, President

Ms. Dyalá Jiménez Figueres

Ms. Carita Wallgren-Lindholm

Assistant to the President of the *ad hoc* Committee

Mr. Arjun Solanki

Secretary of the *ad hoc* Committee

Ms. Marisa Planells-Valero

Date of dispatch to the Parties: 17 April 2026

TABLE OF CONTENTS

I. PROCEDURAL HISTORY..... 1

II. THE PARTIES' POSITIONS..... 1

 A. The Applicant's Position..... 1

 B. The Respondent's Position..... 2

III. THE COMMITTEE'S ANALYSIS..... 3

IV. DECISION..... 5

I. PROCEDURAL HISTORY

1. On 10 April 2026, the Committee issued its Decision on the Respondent’s Request for Suspension of the Proceedings (the “**Decision on Suspension**”). The Decision suspended the annulment proceeding pending the outcome of the proceeding on the Respondent’s request for interpretation of the Award, vacated the hearing dates scheduled for 5 and 6 May 2026, and reserved the question of costs.
2. The same day, the Applicant submitted a request for reconsideration of the Decision (the “**Applicant’s Request**”).
3. On 11 April 2026, the Committee invited the Respondent to respond to the Applicant’s Request by 14 April 2026.
4. The Respondent duly submitted its response on 14 April 2026.

II. THE PARTIES’ POSITIONS

A. THE APPLICANT’S POSITION

5. The Applicant contends that the Committee has the power to reconsider a decision to suspend proceedings and maintains that it should exercise that power in the present case, on the ground that the Decision was based on a misunderstanding of the scope of the issues addressed by the Parties.¹
6. According to the Applicant, the power of the Committee to reconsider a decision follows from Article 53 of the 2006 ICSID Arbitration Rules. It relies upon the decision in *Churchill Mining* in support.²
7. The Applicant further maintains that the Committee erred in its Decision when it held that, if the Tribunal were to interpret the Award in the manner suggested by the Respondent, there would be a “marked shift” in the nature of the case on annulment: from the Tribunal’s

¹ Applicant’s letter of 10 April 2026, p. 4.

² Applicant’s letter of 10 April 2026, p. 2; *Churchill Mining v. Indonesia*, ICSID Case Nos. ARB/12/14 and 12/40, Procedural Order No. 13, 18 November 2014, para. 20 (**Annex 1** to Applicant’s letter).

treatment of the merits to its treatment of jurisdiction in respect of the claim for interest and penalties on the Royalties Assessments. According to the Applicant, the Parties have already “extensively argued” the issue of whether the Tribunal’s treatment of jurisdiction over that claim failed to state reasons and involved a serious departure from a fundamental rule of procedure.³ The Applicant therefore contends that, on the basis of the Committee’s reasoning, the request for suspension should have been dismissed.⁴ The Applicant also emphasises that the Parties have been preparing to address these issues fully in the upcoming hearing, with the result that there would be no need for a supplementary hearing even if the Tribunal were to accept the Respondent’s interpretation. It adds that, as the Committee itself observed, the Respondent’s Request for Suspension was highly untimely, and the Respondent has offered no adequate explanation for that delay.⁵

B. THE RESPONDENT’S POSITION

8. The Respondent counters that the power of a committee to reconsider a decision on a matter of this kind is one which can be exercised only in the most exceptional circumstances.⁶ It contends that the Applicant’s reliance on *Churchill Mining* is misplaced since that case concerned “an objective informational gap” that emerged after the earlier decision, and not, as here, a disagreement with a reasoned procedural determination made on the material before the Committee.⁷
9. The Respondent argues that the Applicant’s request makes assumptions about the way in which the Tribunal might deal with the Respondent’s request for interpretation of the Award which are impermissible. The Respondent further contends that “if the Tribunal were to interpret the Award consistent with Perú’s understanding, the interpretation

³ Applicant’s letter of 10 April 2026, pp. 1-2.

⁴ Applicant’s letter of 10 April 2026, p. 2.

⁵ Applicant’s letter of 10 April 2026, p. 4.

⁶ Respondent’s letter of 14 April 2026, p. 3, citing *Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited (TANESCO)*, ICSID Case No. ARB/10/20, Award, September 12, 2016, at para. 322 (**Annex 3** to the Respondent’s letter) and *Mathias Kruck and others v. Kingdom of Spain*, ICSID Case No. ARB/15/23 (**Annex 4** to the Respondent’s letter).

⁷ Respondent’s Letter of 14 April 2026, pp. 3-4.

proceeding and resulting decision could affect all the issues before the Committee and the manner in which they are pleaded”.⁸

10. Finally, the Respondent argues that, as the Tribunal’s decision on interpretation will become part of the Award, it would be imprudent to proceed with the annulment proceeding while the Tribunal is considering the request for interpretation.⁹

III. THE COMMITTEE’S ANALYSIS

11. The Committee has carefully considered the submissions of both Parties regarding the Applicant’s Request. It agrees with the Applicant that it has the power to reconsider its Decision on Suspension but is not persuaded that it should reverse that Decision.
12. The Committee accepts that, in their pleadings in the annulment proceeding, both Parties have made observations about the Tribunal’s treatment of the issue of jurisdiction in respect of the claim for interest and penalties on the Royalties Assessments.¹⁰ It was aware of that fact, and took it into account, in arriving at its Decision on Suspension.
13. In the case of the Applicant, these observations were relatively brief submissions, made very much as an alternative to the Applicant’s main case, which is based on the way in which the Tribunal dealt with the merits of the claim in the Award. The issue of jurisdiction is dealt with only very briefly in the Application for Partial Annulment and in the Memorial, with much of that discussion focusing on why the reasoning on jurisdiction is at odds with the decision on the merits and thus cannot constitute a proper justification for that decision.¹¹
14. The Respondent devoted more of its Counter-Memorial to the way in which the Tribunal dealt with the issue of jurisdiction over the claim for interest and penalties on the Royalties Assessments. That is scarcely surprising since the Respondent maintains that the Tribunal

⁸ Respondent’s Letter of 14 April 2026, p. 3.

⁹ Respondent’s Letter of 14 April 2026, p. 2.

¹⁰ Applicant’s Application for Partial Annulment, paras. 52-53, 58-59; Memorial on Annulment, paras. 60-61 and 65-66; Reply on Annulment, paras. 6, 51-55 and 65-72; Respondent’s Counter-Memorial on Annulment, paras. 180-203, 223-246; Respondent’s Rejoinder, paras. 63-81 and, in part, paras. 125-134.

¹¹ Application for Partial Annulment, paras. 52-53, 58-59; Memorial on Annulment, paras. 60-61, 65-66.

held that it did not have jurisdiction over that claim.¹² The Respondent's submissions on this point prompted the Applicant to develop its arguments about the Tribunal's handling of the issue of jurisdiction in the Reply.¹³ The Respondent then replied on this issue in its Rejoinder.¹⁴ In each pleading, however, the engagement with the alternative basis for annulment remained directed principally to the question of inconsistency between the Tribunal's reasoning on jurisdiction and its decision on the merits, rather than to the standalone reasoning and procedural adequacy of a decision rejecting jurisdiction.

15. While the Committee thus has before it some argument on the issue of whether the Tribunal failed to state reasons and committed a serious breach of a fundamental rule of procedure in its handling of the issue of jurisdiction over the claim for interest and penalties on the Royalties Assessments, it is difficult to escape the conclusion that those arguments would have been significantly more extensive and perhaps focussed in a different fashion if that had been the only or main issue on annulment.
16. Moreover, the Committee cannot – and should not – try to predict what form any decision by the Tribunal on the Respondent's request for interpretation might take. Even if the Tribunal were to accept the Respondent's argument that the Award rejected jurisdiction over the claim for interest and penalties on the Royalties Assessments, the Committee would need to hear from the Parties on the reasoning of the Tribunal regarding that interpretation.
17. For these reasons, the Committee considers that there is no basis for it to reverse its Decision on Suspension of the proceeding and accordingly rejects the Applicant's Request.

¹² Respondent's Counter-Memorial on Annulment, paras. 180-203, 223-246.

¹³ Reply on Annulment, paras. 6, 51-55 and 65-72.

¹⁴ Rejoinder on Annulment, paras. 63-81 and, in part, 125-134.

IV. DECISION

18. For the reasons set forth above, the Committee DECIDES as follows:

- (1) the Applicant's Request to reconsider the Decision of 10 April 2026 suspending the proceeding is dismissed;
- (2) the question of costs is reserved.

On behalf of the *ad hoc* Committee:

[Signed]

Sir Christopher Greenwood
President of the *ad hoc* Committee
Date: 17 April 2026