

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. 16

Document inspection and document production

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

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I. PROCEDURAL BACKGROUND

1. Pursuant to paragraph 33(3) of Procedural Order No. 13, paragraph 36(iii) and (v) of Procedural Order No. 15, and in accordance with the Tribunal's letters dated 29 January, 6 February and 4 March 2015, the Parties have submitted on 13 March 2015 simultaneous requests to produce (i) documents for inspection purposes, including original documents to be made available at the time of document inspection; and (ii) other documents limited to matters of document authenticity.
2. On 23 March 2015, each Party simultaneously filed its responses and/or objections to the other Party's requests.
3. On 30 and 31 March 2015, each Party filed its replies to the objections, including its observations as to the scope of the other Party's voluntary production of requested documents.
4. The present order deals with (i) the Parties' document production requests (Section II below); (ii) their requests for the inspection of original documents (Section III below); and (iii) the logistics and procedure of the upcoming document inspection (Section IV below).

II. DOCUMENT PRODUCTION

5. The Tribunal incorporates by reference the standards for document production set out in Section II of Procedural Order No. 5. Accordingly, the Tribunal will seek guidance from the 2010 IBA Rules on the Taking of Evidence in International Arbitration. In particular, the Tribunal will rule on the Parties' requests taking into account (i) the *prima facie* relevance of the request (which includes the relevance to the dispute and materiality to the outcome); (ii) the specificity of the request; (iii) whether the requested documents are likely to exist and to be within the possession, custody or control of the requested Party; and (iv) any counterbalancing considerations, such as legal privileges, confidentiality, and the burden which production would impose on the requested Party.

6. The Claimants' and the Respondent's document production requests are addressed in Annex A and Annex B of the present Order respectively.

III. DOCUMENT INSPECTION

7. The Tribunal incorporates by reference the standards for document inspection set out in Section III of Procedural Order No. 10. Accordingly, the Tribunal will seek guidance from the 2010 IBA Rules on the Taking of Evidence in International Arbitration, relying in particular on Articles 3.12(a), 7 and 9 of said Rules. Accordingly, the Tribunal will only grant document inspection requests if (i) the original is identified with sufficient precision; (ii) the inspection of the original appears relevant to matters in dispute in the document authenticity phase and material to the outcome of such phase; (iii) it is likely that the original exists and is within the possession, control or custody of the other Party; and (iv) there is no legitimate countervailing interest militating against the inspection of the original.
8. The Claimants' document inspection requests are included in their Redfern Schedule containing their document production requests. The Tribunal's decision regarding the Claimants' document inspection requests are set out in Annex A to the present Order. The Tribunal further notes that the Claimants have also requested in their letter dated 13 March 2015 the production of stamps and ink pads used by the Regent of East Kutai and the Governor of East Kalimantan between 1 January 2007 and 30 June 2010. The Respondent has provided its comments on that request in its letters dated 27 March and 3 April 2015. The Tribunal is awaiting the Claimants' reply due on 7 April 2015 and will deal with that request separately.
9. The Respondent's document inspection requests are set out in a Redfern Schedule dated 13 March 2015. The Respondent further requested the production of a further original for inspection set out in request No. 35 of its Redfern Schedule containing the document production requests. The Respondent's requests are dealt with in Annex C of the present Order, and in Annex B of the present Order as regards request No. 35.

IV. LOGISTICS AND PROCEDURE OF THE DOCUMENT INSPECTION

a. Date and time of document inspection

10. In accordance with the Parties' agreement and subject to any agreed change in schedule, the document inspection shall take place between 16 April 2015 from 2:00 pm local time to 5:30 pm local time, and 17 April 2015 from 9:30 am local time to 5:30 pm local time at the latest. The inspection will take place in a dedicated room (the "inspection room") at Maxwell Chambers in Singapore. The Parties are invited to inform ICSID as soon as possible and in any event no later than 9 April 2015 whether the inspection room should have any particular characteristics, in the absence of which ICSID will make the same arrangements as for the document inspection that took place on 29 August 2014.

b. Attendance

11. The Parties shall each provide ICSID with a list of participants to the document inspection and specify the role of each of them by 9 April 2015. The Tribunal Secretary will attend the inspection and supervise the process in accordance with the procedure and instructions set out below.

c. Types of inspection techniques allowed

12. The inspection techniques that the Parties and their experts will use during the inspection shall be in accordance with accepted industry practice.
13. Unless otherwise agreed, each Party and its expert shall inspect the documents in the inspection room.
14. Each Party shall, under the supervision of ICSID, be allowed to take copies of the originals presented for inspection by the other Party.

d. Audio and video recording of the inspection

15. There shall be an audio and video recording of the document inspection. The Parties are invited to inform ICSID as soon as possible, but no later than 9 April 2015, of any specific requirements they may have that may affect the specifications of the video recording, such as the need to conduct part of the inspection in a dark room.

e. Objections or comments by a Party during the inspection

16. Any objection or comment that a Party may have with respect to the inspection conducted by the other Party or its expert at any time during the inspection shall be audio and video recorded. The inspection may then proceed and the Tribunal shall address the objection after the inspection if necessary, upon the relevant Party's request in writing.

V. ORDER

a. Claimants' document production requests

17. In the application of the relevant standards and for the reasons set out in the Redfern Schedule attached as Annex A, the Tribunal:
- (1) Takes note that no decision is required regarding the Claimants' requests Nos. 4, 7, 9, 14, 15, 18, 29, 38, 39, and 44;
 - (2) Grants the Claimants' requests Nos. 2, 5, 10, 11, 16, 17, 20, 23, 24, 25, 27, 30, 31, 32, 35, 43, and 45;
 - (3) Grants the Claimants' requests Nos. 1, 6, 8, 12, 13, 19, 21, 22, 26, 28, 33, 34, 36, 37, 40, and 41, with the scope specified in the Redfern Schedule attached as Annex A; and
 - (4) Denies the Claimants' requests Nos. 3 and 42.

b. Respondent's document production requests

18. In the application of the relevant standards and for the reasons set out in the Redfern Schedule attached as Annex B, the Tribunal:
- (1) Takes note that no decision is required regarding the Respondent's requests Nos. 1, 2, 6-15, 18-20, 24, 29, 31-33, and 43;
 - (2) Grants the Respondent's requests Nos. 3-5, 16, 17, 21, 22, 34, and 36-40;
 - (3) Grants the Respondent's requests Nos. 27, 28, 30, 35, and 41, with the scope specified in the Redfern Schedule attached as Annex B; and

- (4) Denies the Respondent's requests Nos. 23, 25, 26, and 42.

c. Claimants' document inspection requests

19. In the application of the relevant standards and for the reasons set out in the Redfern Schedule attached as Annex A, the Tribunal:

- (1) Takes note that no decision is required regarding the Claimants' requests Nos. 14 and 44;
- (2) Grants the Claimants' requests Nos. 5, 20, 23, 30, 31, and 32;
- (3) Grants the Claimants' requests Nos. 13, 33, and 34, with the scope specified in the Redfern Schedule attached as Annex A;
- (4) Orders the Respondent to make the requested originals available for inspection; and
- (5) Denies all other requests.

d. Respondent's document inspection requests

20. In the application of the relevant standards and for the reasons set out in the Redfern Schedule attached as Annex C, the Tribunal:

- (1) Takes note that no decision is required regarding the Respondent's request No. 5;
- (2) Grants the Respondent's requests Nos. 1-4, 6 and 7 with the scope set out in Annex C;
- (3) Orders the Claimants to make the requested originals available for inspection, or at least to provide best copies of such documents as regards requests Nos. 1-4, 6 and 7 if the originals cannot be retrieved from the Ridlatama Group; and
- (4) Denies all other requests.

21. For the reason set out in the Redfern Schedule attached as Annex B, the Tribunal:

- (1) Grants the Respondent's request No. 35; and
- (2) Orders the Claimants to make the requested originals available for inspection.

e. Logistics and procedure of the document inspection

22. The rules and directions provided under Section IV of this Order shall govern the logistics and procedure of the document inspection scheduled to take place on 16-17 April 2015.

On behalf of the Tribunal

[*Signed*]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 6 April 2015