

**IN THE MATTER OF AN ARBITRATION
UNDER THE ICSID RULES**

ICSID Case No. ARB/12/14 and ARB/12/40

B E T W E E N:

CHURCHILL MINING PLC
PLANET MINING PTY LTD

Claimants

-and-

THE REPUBLIC OF INDONESIA

Respondent

**CLAIMANTS' SECOND REQUEST FOR PRODUCTION
OF DOCUMENTS IN DOCUMENT AUTHENTICITY PHASE**

1. INTRODUCTION

1.1 The Republic of Indonesia (the "**Respondent**" or the "**State**") is hereby requested to produce the Documents described below to Churchill Mining PLC and Planet Mining Pty Ltd (the "**Claimants**").

2. GENERAL OBSERVATIONS

2.1 On 11 March 2015, two days before the Claimants were due to file their document production request in accordance with the schedule for the document authenticity phase set out at Annex 1 to the Tribunal's letter dated 4 March 2015 (the "**Claimants' First DPR**"), the State applied for leave to submit additional documents, including witness statements and a further handwriting examination report, into evidence ("**State's Application for Leave**").

2.2 While the Claimants did not oppose the State's Application for Leave, they reserved their rights to make further requests for the production of Documents in respect of the items of evidence that were to be subject of the State's Application for Leave (Claimants' First DPR, para. 4.1).

2.3 On 3 April 2015, the State submitted a supplemental witness statement for each of Mr. Ishak and Ms. Nurohmah, and a witness statement for each of Bambang Setiawan and Chaerul Djalil.

2.4 On 27 April 2015, the State submitted Mr. Epstein's fourth forensic handwriting examination report dated 27 April 2015 ("**Fourth Handwriting Examination Report**").

2.5 In the exercise of the rights they reserved, the Claimants now file this second document production request (the "**Claimant's Second DPR**") in response to the additional forgery allegations asserted by the State in its Application for Leave and its supporting documents, the witness statements and the Fourth Handwriting Report.

3. KEY TERMS AND EXPRESSIONS

3.1 The following terms as used in this Request shall have the meaning ascribed to them below. All other capitalised terms used but not defined in this Request shall have the meaning ascribed to them in the Parties' Statements and in the Claimants' First DPR.

a) "**Claimants' First DPR**" or "**First DPR**" means the Claimants' first document production request dated 13 March 2015;

b) "**Claimants' Second DPR**" or "**Second DPR**" means the Claimants' second document production request dated 29 April 2015;

- c) **"Ridlatama Borrow-for-use Recommendations"** means the following letters:
- i. Recommendation letter from Mr. Ishak as Regent of East Kutai to RTM's application for a borrow-for-use permit dated 29 December 2009; and
 - ii. Recommendation letter from Mr. Ishak as Regent of East Kutai to RTP's application for a borrow-for-use permit dated 29 December 2009.
- d) **"Ridlatama Technical Considerations"** means the following letters:
- i. Letter from Bambang Setiawan, Director General of Mineral, Coal and Geothermal at the MEMR, to the Ministry of Forestry relating to technical considerations for RTM's borrow-for-use application dated 22 September 2010;
 - ii. Letter from Bambang Setiawan, Director General of Mineral, Coal and Geothermal at the MEMR, to the Ministry of Forestry relating to technical considerations for RTP's borrow-for-use application dated 22 September 2010;
 - iii. Letter from Bambang Setiawan, Director General of Mineral, Coal and Geothermal at the MEMR, to the Ministry of Forestry relating to technical considerations for IR borrow-for-use application dated 22 September 2010; and
 - iv. Letter from Bambang Setiawan, Director General of Mineral, Coal and Geothermal at the MEMR, to the Ministry of Forestry relating to technical considerations for INP borrow-for-use application dated 22 September 2010.
- e) **"Ridlatama Seriousness Bond Requests"** means the following letters:
- i. Letter from Mr. Ishak as Regent of East Kutai regarding "Payment of Provisioning of Territory [sic] Fixed Contribution and Capability Security" addressed to IR and dated 4 December 2007; and
 - ii. Letter from Mr. Ishak as Regent of East Kutai regarding "Payment of Provisioning of Territory [sic] Fixed Contribution and Capability Security" addressed to INP and dated 4 December 2007.

3.2 Each reference to a corporation or natural person shall be deemed to include that corporation's or person's agents, lawyers, representatives and any other person who acted or purported to act on that corporation's or person's behalf.

3.3 With regard to certain requests herein, in order to clarify what is referred to, citations are given to relevant statements by the parties or relevant exhibits to those statements. Such citations should not be construed to limit the relevance of such requests.

4. **REQUEST TO PRODUCE**

4.1 For each of the Documents requested, the State is asked to produce all responsive documents within its possession, custody or control. For the avoidance of doubt, such documents include any document that is in the possession, custody or control of any other person and that the State is entitled (together or separately), legally, contractually or otherwise, to obtain upon request, in the original or in copy form.

4.2 The Claimants confirm that, to the best of their knowledge and belief, none of the Documents requested below are in their possession, custody or control.

5. **GENERAL OBSERVATIONS TO THE STATE'S OBJECTIONS**

5.1 The Claimants' responses to the State's specific objections are in the Redfern schedule that follows. However, the Claimants make the following general observations on the State's objections dated 4 May 2015 and 20 May 2015.

5.2 First, the Claimants did not object to the State's 11 March 2015 application for leave to introduce further documents, witness statements and an expert report (**State's Further Application**). However, the Claimants reserved their rights to make further requests for the production of Documents in respect of the items of evidence that were to be subject of the State's Application (Claimants' First DPR, para. 4.1) and the State did not object to that reservation (nor could it). In these circumstances especially, the State cannot (and should not) now oppose the Claimants' right to seek documents to test the allegations made by the additional documents introduced by the State.

5.3 Second, the State asserts that the Claimants' Second DPR is "*untimely and inadmissible to the extent that it calls for documents on the basis of facts that were available to them prior to their First Production Request dated 13 March 2015*" (State's 4 May 2015 letter, para. 1). The State's position is that the Claimants should have been sufficiently informed of the particulars of the State's additional allegations of forgery when the State *applied* to submit additional documents but *before* the actual witness statements and expert report were submitted (which did not occur until 3 April 2015 and 27 April 2015, respectively).

5.4 This is not a fair position for the State to take. The Claimants had to wait for the State to specify the irregularities it alleges exist on the face of the disputed Ridlatama Technical Considerations before they could make any request for the production of comparators and other test documents. The same is true of the Ridlatama Seriousness Bond Requests. Indeed, if the Claimants had requested documents purely on the basis of what the State said in its Further Application, they might well have failed the test for specificity set out in Article 9.2 of the

IBA Rules – a test noted by the State in its 23 March 2015 letter ("*The Request must identify each document or category of documents with precision.*").

- 5.5 The Claimants emphasise also that they filed the Second DPR *one day* after receiving Mr Epstein's fourth handwriting examination report, which set out – for the first time – Mr. Epstein's conclusion that Mr. Setiawan's signatures on the Ridlatama Technical Considerations are "mechanically produced using an Autopen technology" (Mr. Epstein's fourth handwriting report at para. 1 of Findings).
- 5.6 Third, the State asserts that with respect to the Claimants' Second DPR Nos. 1, 2, 3 and 5, the "*Claimants have known about the disputed Governor's Recommendations and MEMR Technical Considerations since September and October 2014*" (State's 4 May 2015 letter, para. 3). In assessing the strength of this assertion, it is worth recalling exactly what the State said in its Forgery Dismissal Application of 24 September 2014. In the State's Forgery Dismissal Application, the State alleged only that the following documents had been "*forged and fabricated*":
- 5.6.1 the East Kutai Coal Project mining undertaking licences for general survey and exploration issued by H. Awang Faroek Ishak (in his capacity as Regent of East Kutai) in 2007-2008 to each of (i) PT Ridlatama Trade Powerindo, (ii) PT Ridlatama Tambang Mineral, (iii) PT Ridlatama Investama Resources, and (iv) PT Investmine Nusa Persada (collectively, the "**Ridlatama Companies**") (State's Forgery Dismissal Application, para. 25);
- 5.6.2 four certification letters dated 8 April 2008 issued by Mr. Ishak (in his capacity as Regent of East Kutai) in respect of the Ridlatama Companies (State's Forgery Dismissal Application, para. 26 (i));
- 5.6.3 four certificates of legality dated 8 April 2008 issued by Mr. Ishak (in his capacity as Regent of East Kutai) in respect of the Ridlatama Companies (State's Forgery Dismissal Application, para. 26 (ii));
- 5.6.4 four letters of recommendation dated March 2010 issued by Mr. Ishak (in his capacity as Governor of East Kalimantan) to the Ministry of Forestry in relation to the issuance of "Borrow-for-Use Permits" for the Ridlatama Companies (State's Forgery Dismissal Application, para. 26 (iii)); and
- 5.6.5 four "Reenactment Decrees" dated 14 May 2010 issued by H. Isran Noor (in his capacity as Regent of East Kutai) to the Ridlatama Companies in relation to previously revoked mining exploitation licences (State's Forgery Dismissal Application, para. 26 (iv)).
- 5.7 Later, the State felt compelled to file four additional witness statements (two from *new* witnesses) and one expert report to add documents to its "*forged and fabricated*" list. It is self-evident from the fact that the State filed these expansive new materials that, in the first round

of document production (following the Forgery Dismissal Application), the Claimants did *not* have enough information to request the documents they now seek.

5.8 If the State is implying that the Claimants have somehow gained by waiting to request these documents, nothing could be further from the truth.

| 1 | 2 | 3 | 4 | | 5 | 6 | 7 |
|--|------------|--|---|--|--|---|-----------------------------|
| No. | Req. Party | Documents or Category of Documents Requested | Relevance and Materiality According to Requesting Party | | Responses/ Objections to Document Request | Reply to Objections to Document Requests | Tribunal's Decision |
| | | | Reference to Submissions | Comments | | | |
| I. Ridlatama Borrow-for-use Recommendations | | | | | | | |
| 1. | Cl. | All recommendations issued by the Governor of East Kalimantan to the Ministry of Forestry in support of borrow-for-use permit applications during the Relevant Period. | Mr. Ishak states in his second witness statement that he did not sign, issue or authorize the issuance of the Borrow-for-use Recommendations (Ishak Second WS, paras. 6-7). Further, Mr. Epstein states in his Fourth Handwriting Examination Report that Mr. Ishak's signatures appearing on the Borrow-for-use Recommendations "are from the same Autopen model that produced the previously identified disputed signatures" (Fourth Handwriting | The State claims that it is "absolutely clear" that the Borrow-for-Use Recommendations "were all forgeries" (State's Application for Leave, pg. 3). Further, the State alleges that PT ICD supplied to the Bawasda auditors "another fabricated document" (State's Application for Leave, pg. 3). The State also alleges that this "shows the <i>modus operandi</i> utilized by the Ridlatama Companies in fabricating supposedly official documents and calls into question the | <i>First</i> , there is no reason why Claimants could not have included this request in their First Production Request. Claimants have known since September 2014, at the latest, that the Respondent is disputing the alleged Governor's Recommendations in Ex. C-220 (Respondent's Application to Dismiss dated 24 September 2014, ¶ 26; Second Epstein Report dated 15 September 2014, p. 8). The challenged Recommendation dated 29 December 2009 (which was identified on 11 March 2015) is virtually identical to the forged recommendations in Ex. C-220. Accordingly, Claimants have been on notice about the forged | The Claimants will not proceed further with this request at this stage. However, the Claimants reserve their rights to renew this request in the merits phase of the proceedings. | NO DECISION REQUIRED |

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| | | | <p>Examination Report, Findings, para. 3).</p> | <p>good faith of Claimants in relying upon those documents for the purposes of this arbitration" (State's Application for Leave, pg. 3).</p> <p>The Documents requested are relevant and material because they will allow for the contested Ridlatama Borrow-for-use Recommendations to be compared to borrow-for-use recommendations validly-issued by Mr. Ishak. This comparison will, in turn, allow for the authenticity of the Ridlatama Borrow-for-use Recommendations to be properly evaluated.</p> | <p>Governor's Recommendations for at least eight months. Mr. Epstein's relevant conclusion in the Fourth Report at page 5 is that the disputed signatures of Mr. Ishak appearing on the two purported recommendations for RTM and RTP dated 29 December 2009 (exhibits R-144 and R-145) are from the same Autopen model that produced the previously identified signatures <u>on the four recommendations for RTM, RTP, INP and IR dated 11 March 2010 and 22 March 2010</u> (Ex. C-220), referred to in the Second Epstein Report.</p> <p>The request is burdensome coming at this late date.</p> <p><i>Second</i>, the request for "all recommendations" from 2007 to June 2010 (the "Relevant Period") is overly broad and calls for recommendations issued when Mr. Ishak did not hold the position of Governor.</p> <p><i>Third</i>, whereas this request is untimely, burdensome</p> | | |
|--|--|--|--|--|--|--|--|

| | | | | | | | |
|---|-----|--|--|--|---|---|-----------------------------|
| | | | | | <p>and overly broad, the request is also improper because it seeks documents that contain commercial information protected from production under Rule 9(2)(e) of the IBA Rules.</p> <p><i>Fourth</i>, without waiving the above objections, on 4 May 2015, Respondent already produced Mr. Ishak's signed recommendations issued in 2009-2010 for Nusantara's borrow-for-use permits. Claimants cannot show a need for additional documents, since the produced documents provide a sufficient basis for any comparison that they wish to make.</p> | | |
| II. Ridlatama Technical Considerations | | | | | | | |
| 2. | Cl. | Laws, statutes, policies, guidelines, rules, regulations, manuals, memoranda or other Documents setting out the procedure, whether public or internal, by which officials, employees or agents of the MEMR prepared, drafted, executed | Mr. Djalil states that each document or letter issued by the MEMR needs to be made in accordance with "the standards prescribed by the MEMR Regulation, from the form of the letter, letterhead and numbering, to the stamp and paper used | According to the State, in addition to the allegedly forged signatures, the Ridlatama Technical Considerations display "other indications that [they] are not authentic" which include a number of alleged departures from the "standards prescribed | <p><i>First</i>, the request as formulated by Claimants is both vague and overbroad, and not limited to the standards referred to in Mr. Djalil's witness statement.</p> <p><i>Second</i>, without waiving this objection, on 4 May 2015, Respondent produced Regulation of the Minister of Energy and Mineral Resources Number</p> | The Claimants have reviewed the Regulation of the Minister of Energy and Mineral Resources Number 52 Year 2006 regarding Official Correspondence and Archives (" Regulation 52 ") produced by the State. However, Regulation 52 does <i>not</i> mention any of the specific "standards prescribed by the MEMR" | NO DECISION REQUIRED |

| | | | | | | | |
|----|-----|---|--|--|--|---|--|
| | | and issued technical considerations in support of borrow-for-use permits in 2009 and 2010. | for each letter" (Djalil WS, para. 10). | by the MEMR Regulation" as set out in the Annex to Mr. Djalil's witness statement (State's Application for Leave, pg. 5; Djalil WS, paras. 17-21 and Annex). The Documents requested are relevant and material to determine what the "standards prescribed by the MEMR Regulation" were in 2009 and 2010. These Documents are necessary in order to establish whether the Ridlatama Technical Considerations deviated from these standards. | 52 Year 2006 regarding Official Correspondence and Archives. Additionally, Respondent will produce the Attachment to Regulation of the Minister of Energy and Mineral Resources Number 52 Year 2006 regarding Official Correspondence and Archives. | including "the form of the letter, letterhead and numbering" or the "stamp and paper" (Djalil WS, para. 10). The Claimants look forward to receiving and reviewing the <i>Attachment</i> to Regulation 52. | |
| 3. | Cl. | All technical considerations ("internal records version" and external versions sent to document recipients), and any relevant attachments to such technical considerations, from the Director General of Mineral, | Mr. Setiawan states that holders of mining rights who apply for forestry permits related to the mining activities of exploration and exploitation, are required to request a technical consideration from the Director General of Mineral and Coal | The form and content of the Ridlatama Technical Considerations have been put in issue by the State. The Documents requested are relevant and material because they will allow for the contested | <i>First</i> , Claimants are incorrect in stating that MEMR's Technical Considerations in respect to borrow-for-use permits are addressed to mining license holders. They are addressed to the Ministry of Forestry, which issues borrow-for-use permits, and copied to applicants. In any event, Claimants cannot show a need for | As to the first point, the Claimants wish to clarify that, as noted by the State, MEMR technical considerations are <i>addressed</i> to the Ministry of Forestry, although they are <i>provided to</i> the mining licence-holders for their borrow-for-use permit applications. | GRANTED AS NARROWED DOWN As to admissibility, the Tribunal notes that in its Letter of 9 October 2014 the Respondent indicated that, as a result of "recent inquiries", it had identified Exhibits C-252 to C-255 as "additional suspect" and "forged letters" since (i) |

| | | | | | | | |
|--|--|---|--|---|--|---|--|
| | | <p>Coal and Geothermal of the MEMR addressed to mining licences holders in East Kutai in furtherance of applications for forestry permits in 2009 and 2010.</p> | <p>of MEMR (Setiawan WS, para. 8).</p> <p>Mr. Setiawan also asserts that he never authorised anyone to sign or place his signature on Ridlatama's Technical Considerations (Setiawan WS, para. 9). According to him, MEMR never used any automated mechanical device or signature stamps to sign letters (Setiawan WS, para. 9).</p> <p>In addition to the allegedly forged signatures, Mr. Setiawan and Mr. Djalil set out the numerous alleged "irregularities" identified on the Ridlatama Technical Considerations (Setiawan WS, paras. 11-16; Djalil WS, paras. 15-21 and Annex).</p> | <p>Ridlatama Technical Considerations to be compared to other technical considerations that were issued by the MEMR in 2009 and 2010. This comparison will, in turn, allow for the authenticity of the Ridlatama Technical Considerations to be properly evaluated.</p> | <p>additional technical considerations for comparison purposes because they now have such documents. Without waiving any objections, Respondent has already produced, on 4 May 2015, responsive documents of the Nusantara companies, which allow for the Ridlatama MEMR Technical Considerations to be properly evaluated.</p> <p><i>Second</i>, Claimants have known about the disputed MEMR Technical Considerations since October 2014 (Respondent's letter dated 9 October 2014, n. 12, citing exhibits C-252 to C-255, R-131 and R-139; Third Epstein Report dated 13 October 2014). Accordingly, Claimants have been on notice about the forged MEMR Technical Considerations, and irregularities in those Considerations, for seven months. They should have included this request in their First Production Request.</p> <p>It is unfair to place the burden on Respondent to</p> | <p>However, the Claimants do not accept the State's assertion that they have already received the documents requested. The Claimants requested <i>all</i> MEMR technical considerations, but the State only produced (on 4 May 2015) Nusantara's MEMR technical considerations.</p> <p>While it is true that Nusantara's MEMR technical considerations are a sub-set of the technical considerations being requested here, they are plainly insufficient to serve as a set of comparator documents for testing what Mr. Setiawan and Mr. Djalil say about the required format of a MEMR technical consideration.</p> <p>As to the second point, please see Section 5 above (<i>General Observations to the State's Objections</i>).</p> <p>As to the third point, the Claimants are happy to narrow this request by limiting it to the year 2010.</p> | <p>the signatures were identical and (ii) the NIP of Mr. Setiawan was wrong (see Respondent's Letter of 9 October 2014, p. 3, n. 12). In addition, the Respondent filed on 13 October 2014 the Third Expert Report of Mr. Epstein indicating that the signatures of Mr. Setiawan in Exhibits C-252 to C-255 were identical and mechanically made.</p> <p>However, the Respondent only filed the Witness Statements of Messrs. Setiawan and Djalil on 3 April 2015, which identify various <i>new</i> "irregularities" in Exhibits C-252 to C-255, including in respect of the initials, stamps, and attachments (see Setiawan WS, ¶¶ 14-16, and Djalil WS, ¶¶ 15-21).</p> <p>Accordingly, the request is deemed admissible.</p> <p>As to the merits of the request, the requested documents appear <i>prima facie</i> relevant, although the request seems too broad. The Tribunal notes that the Respondent already</p> |
|--|--|---|--|---|--|---|--|

| | | | | | | | |
|----|-----|--|--|--|---|--|---|
| | | | | | <p>conduct a new search for documents at this late date.</p> <p><i>Third</i>, Claimants' request is overbroad in requesting documents from the 2009-2010 period, when the disputed MEMR Technical Considerations are <u>dated 22 September 2010</u> (exhibits C-252 to C-255). It should be noted that these disputed letters documents were dated <u>4 months after the revocation of the mining undertaking licenses</u> and <u>1 month after commencement of the proceedings at the Samarinda State Administrative Court in August 2010</u>.</p> <p><i>Fourth</i>, whereas this request is untimely, burdensome and overly broad, the request is also improper because it seeks documents that contain commercial information protected from production under Rule 9(2)(e) of the IBA Rules.</p> | <p>As to the fourth point, the Claimants are happy to confer with counsel for the State regarding the use of the confidentiality regime applicable to the first document production phase for the documents sought under this request.</p> | <p>produced Nusantara's MEMR Technical Considerations.</p> <p>Under the circumstances, the Tribunal can see the merit of the Claimants' request for a larger set of comparator documents.</p> <p>Therefore, the Tribunal grants this request as narrowed down by the Claimants to the year 2010.</p> <p>Finally, the confidentiality regime applicable to the first document production request shall apply to responsive documents containing sensitive information.</p> |
| 4. | Cl. | All applications for borrow-for-use permits received by the Ministry of Forestry for general | In her second witness statement dated 31 March 2015, Ms. Nurohmah corrects her first | The State relies on Ms. Nurohmah's statements set out in her first and second witness statements | <i>First</i> , Claimants misrepresent the Respondent's submissions with respect to the incompleteness of the | The Claimants do not propose to engage with all of what the State has said in response to this request, as much of the State's | GRANTED AS FURTHER NARROWED DOWN |

| | | | | | | | |
|--|--|--|---|--|--|---|---|
| | | <p>survey, exploration and exploitation mining activities in East Kutai in 2010.</p> | <p>witness statement. She now states that the Ridlatama Group applied for borrow-for-use permits twice, not only on 9 September 2009 but also on 13 April 2010.</p> <p>According to Ms. Nurohmah, Ridlatama's first applications (9 Sep 2009) were incomplete, not because the Ridlatama companies only submitted photocopies of the MEMR technical considerations, but because the Ridlatama companies did not submit these technical considerations at all (Nurohmah Second WS, para. 11). Ms. Nurohmay also claims that Ridlatama's second applications (13 April 2010) were also incomplete because they too did not include technical considerations</p> | <p>(despite these being inherently contradictory) for the allegation that the Ridlatama Group perpetuated the alleged fraud by providing incomplete applications for borrow-for-use permits (Forgery Dismissal Application, para. 32; State's Application for Leave, pg. 5).</p> <p>The Documents requested are relevant to establish whether the Ridlatama Group's borrow-for-use applications were in fact incomplete as compared to other similarly situated companies that successfully applied for such permits.</p> <p>In their First DPR, the Claimants requested these Documents for the purposes set out above (Claimants' First DPR No. 37). The Tribunal determined that this document request,</p> | <p>Ridlatama applications. Incompleteness is not itself alleged to be a fraud, and the lack of original or legalized MEMR Technical Considerations in the applications did not lead to a detection of forgery. This was clearly explained by Respondent in response to Claimants' 13 March 2015 document request no. 37.</p> <p><i>Second</i>, Dra. Nurohmah's two witness statements are not "inherently contradictory". Her two statements indicated that Ridlatama's borrow-for-use applications -the 9 September 2009 ("2009 application") and the 13 April 2010 ("2010 application") were incomplete for several reasons, one of which was the absence of original or legalized MEMR Technical Considerations (First Nurohmah WS, ¶ 13 and accompanying exhibits; Second Nurohmah WS, ¶ 11 and accompanying exhibits). The correction made in the Second Nurohmah WS clarified that there were no</p> | <p>response pertains to issues that will be addressed in the merits of this arbitration.</p> <p>The Claimants note, simply, that all they seek here is a temporal expansion of the Tribunal's existing order in respect of the Claimants' First DPR No. 37 so that the scope of disclosure is aligned with the allegations the State is making now (i.e. one more year to cover the second borrow-for-use permit application in 2010).</p> <p>For the record, the Claimants also take issue with the State's allegation that they have misrepresented the State's submissions. In the State's Forgery Dismissal Application, the State accused the Ridlatama Group of "<i>perpetuating the alleged fraud [by] providing incomplete applications for borrow-for-use permits</i>". If a document is said to be a <i>perpetuation</i> of a fraud, the allegation of fraud must</p> | <p>As to admissibility, the Tribunal notes that Ms. Nuromah addressed for the first time the 2010 applications for borrow-for-use permits in her Second Witness Statement dated 31 March 2015 (see Nuromah 2nd WS, ¶¶ 11-12) . Accordingly, the request is admissible.</p> <p>As to the merits, the Tribunal recalls that in PO16 it limited the production to documents of 2009 because Ms. Nurohmah's written testimony only addressed the 2009 applications for borrow-for-use permits in her First Witness Statement (see Annex A, Request No. 37). In light of Ms. Nuromah's new explanations and the fact that Ridlatama's second application was filed in April 2010, the Tribunal accordingly extends the period to include responsive documents for the first six months of 2010.</p> <p>Finally, the confidentiality regime applicable to the first document production request shall apply to</p> |
|--|--|--|---|--|--|---|---|

| | | | | | | | |
|--|--|--|--|---|---|-------------------------------------|---|
| | | | <p>(Nurohmah Second WS, para. 12).</p> | <p>while <i>prima facie</i> relevant, was overly burdensome. As such, the Tribunal limited the production of responsive documents to the year 2009.</p> <p>Given the fresh allegations of forgery by the State, in particular Ms. Nurohmah's assertions regarding the Ridlatama Group's second set of applications for borrow-for-use permits made on 13 April 2010, the Claimants request these Documents for the year 2010.</p> | <p>MEMR Technical Considerations in the 2009 application. The Second Nurohmah WS added that the 2010 application did not contain MEMR Technical Considerations either. Those clarifications do not warrant a search for "all applications" for borrow-for-use permits received by the Ministry of Forestry in 2010. Nor does that warrant a re-consideration of the Tribunal's earlier ruling that production should be limited to 2009 documents.</p> <p><i>Third</i>, Respondent has produced applications for borrow-for-use permits in connection with mining activities in East Kutai received by the Ministry of Forestry in 2009, which is when the first Ridlatama applications were submitted. Those 2009 documents should be sufficient for Claimants' purposes, particularly since the 2010 application was a re-submission of Ridlatama's original application.</p> <p>Moreover, without waiving objections, on 4 May 2015,</p> | <p>attach to that document too.</p> | <p>responsive documents containing sensitive information.</p> |
|--|--|--|--|---|---|-------------------------------------|---|

| | | | | | | |
|--|--|--|--|--|---|--|
| | | | | | <p>Respondent produced borrow-for-use applications of the Nusantara companies submitted to the Ministry of Forestry in 2010 and 2011.</p> <p><i>Fourth</i>, there are no “fresh allegations of forgery” with regard to the MEMR Technical Considerations in either Second Nurohmah WS, or in any part of Respondent’s submission of 3 April 2015 concerning the alleged MEMR documents. Respondent had clearly identified these documents as forged in October 2014 (Respondent’s letter dated 9 October 2014, n. 12, citing exhibits C-252 to C-255, and submitted the Third Epstein Report dated 13 October 2014, concerning those documents; <i>See also</i> Respondent’s letter dated 11 March 2015, Section B, filed before Claimants’ first document production request).</p> <p><i>Fifth</i>, neither of the Ridlatama 2009 and 2010 applications to the Ministry of Forestry attached</p> | |
|--|--|--|--|--|---|--|

| | | | | | |
|--|--|--|--|--|--|
| | | | | <p>recommendations from MEMR. <u>The forged MEMR recommendations were attached to Churchill's letter to the Ministry of Forestry dated 1 July 2011</u> (Second Nurohmah WS, ¶¶ 13-14 and Ex. R-155), which was more than a year after the mining undertaking licenses were revoked. Therefore, the requested documents – “all applications for borrow-for-use permits received by the Ministry of Forestry” – are <u>irrelevant to the question of authenticity of the alleged MEMR's Technical Considerations</u>.</p> <p><i>Sixth</i>, whereas this request misrepresents Respondent's arguments, seeks information which is irrelevant to the question of authenticity and is overly broad, the request is improper because it seeks documents containing commercial information protected from production under Rule 9(2)(e) of the IBA Rules.</p> | |
|--|--|--|--|--|--|

| | | | | | | | |
|----|-----|---|---|---|---|---|---|
| 5. | Cl. | All Documents executed and issued by Mr Setiawan on 21, 22 and 23 September 2010. | Mr. Djalil states that "other letters signed by Mr. Setiawan both before and after 22 September 2010 indicate that Mr Setiawan was using his new NIP at that time" (Djalil WS, para. 17). | The Documents requested are relevant and material as comparators: they will enable the Claimants and the Tribunal to compare and examine the manner in which documents were executed by Mr. Setiawan on the date the allegedly forged Ridlatama Technical Considerations were issued, as well as one day before and one day after such date (these additional days being necessary to assure that an adequate set of comparator documents is provided). | <p><i>First</i>, Claimants already have sufficient documents signed by Mr. Setiawan that are sufficient to act as comparators. One such document dated 21 September 2010 is found in Ex. R-157. Other responsive documents are found in exhibits R-131 and R-139. They show the NIP used in December 2009 and October 2010 – before and after the date of the forged Technical Considerations. Djalil WS, ¶¶ 13, 17, 20 referred to those exhibits.</p> <p><i>Second</i>, Respondent identified forgery of the MEMR Technical Considerations in October 2014 (Respondent’s letter dated 9 October 2014, n. 12, citing exhibits C-252 to C-255, R-131 and R-139; Third Epstein Report dated 13 October 2014). Accordingly, Claimants have been on notice about the forged MEMR Technical Considerations, and irregularities in those Considerations, for seven months. There is no reason why Claimants could not have included this request in their First Production</p> | <p>These documents must be provided.</p> <p>The Claimants could have requested all of Mr. Setiawan’s correspondence for a month (or more) on either side of the critical date (22 September 2010), but they did not. Instead, the Claimants kept their request extremely narrow – to just one day on either side of the disputed signature day. And the State will not even give the Claimants that much.</p> <p>This is disappointing, especially considering that the Claimants’ did not oppose the State’s application to introduce the further documents from which this request flows.</p> <p>On any view, it is not appropriate for the State to be the sole judge of the sample that is to be used to test its allegations with respect to Mr. Setiawan’s technical considerations, and that is exactly what the State is trying to do.</p> <p>As to the first point, the State claims that three of</p> | <p>GRANTED</p> <p>As to admissibility, the Tribunal notes that, although the Respondent indicated in its Letter of 9 October that the NIP (state’s employee’s identification number) of Mr. Bambang Setiawan used in the suspect documents was wrong (see Respondent’s Letter dated 9 October 2014, p. 3, n. 12), the Witness Statement of Mr. Djalil of 3 April 2015 elaborates on this point (see Djalil WS, ¶¶ 17 and 18).</p> <p>Accordingly, the request can be deemed admissible.</p> <p>On the merits, the request is specific and appears <i>prima facie</i> relevant.</p> |
|----|-----|---|---|---|---|---|---|

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| | | | | | <p>Request. It is unfair to place the burden on Respondent to conduct an additional search for documents at this late date, particularly when comparator documents have been in Claimants' possession for many months.</p> | <p>its exhibits include responsive documents that should be sufficient for purposes of comparing them to the allegedly forged Ridlatama Borrow-for-Use Technical Considerations. That is both incorrect and unreasonable.</p> <p>Out of the three exhibits (R-157, R-131 and R-139) only one letter is dated 21, 22 or 23 September 2010 (see page 2 of Exhibit R-157). The other letters signed by Mr Setiawan are dated in 2009 (except one which is dated October 2010).</p> <p>The State has put at issue the form and format of Mr. Setiawan's signatures and NIP numbers as provided on a letter dated 22 September 2010. As such, the purpose of this request is not to receive <i>any</i> letter signed by Mr. Setiawan, but letters signed by Mr Setiawan immediately before and after the date in question of the alleged forgery.</p> <p>As to the second point, please see Section 5 above</p> | |
|--|--|--|--|--|--|--|--|

| | | | | | | (General Observations to the State's Objections). | |
|----|-----|---|---|---|---|---|--|
| 6. | Cl. | The "registry books" or other similar Document maintained by the MEMR during 2009 and 2010. | Mr. Djalil states that "all outgoing documents of MEMR are recorded in the registry books" (Djalil WS, para. 10). | <p>The State's evidence refers to various MEMR registry books.</p> <p>The BPK relied on the MEMR's register when it concluded that the general survey licences of RTM and RTP were registered with the MEMR (BPK Report, R-32 Attachment 3, pg. 2). In their First DPR, the Claimants made a request for such a registry (the State has yet to provide this document to the Claimants) (Claimants' First DPR No. 35).</p> <p>Mr. Djalil now states that the MEMR has registry books that record outgoing documents such as technical considerations issued by the MEMR (Djalil WS, para. 10).</p> | <p>First, this request is overbroad and seeks documents that are irrelevant to the issues in this Arbitration. In response to Respondent's 13 March 2015 document request no. 29, Claimants confirmed that there were no Technical Considerations from MEMR in 2009 for the "EKCP", and that the 22 September 2010 Technical Considerations were the only ones allegedly issued in connection with the Ridlatama's applications for borrow-for-use permits.</p> <p>Consequently, register books for 2009 and for all of 2010 are not relevant "to the question of whether or not the MEMR issued the Ridlatama Technical Considerations [dated 22 September 2010] (as these would have been recorded in the registry books" (Claimants' Comment on the Relevance).</p> <p>Second, Respondent's evidence is that the numbers in the <u>alleged 22 September 2010</u></p> | <p>The Claimants are willing to narrow their request here so that the State need only provide copies of the MEMR registry book for the three days covered by Request 5 above (21, 22 and 23 September 2010, i.e. the disputed signature day and one day on either side).</p> <p>For the same reasons as explained above under Request 5, these documents must be provided if the Claimants are to be able to test what the State and its witnesses say about Mr. Setiawan's technical considerations.</p> <p>In addition, the Claimants are happy to accept the State's offer of a copy of the MEMR registry book page for 15 October 2010.</p> | <p>GRANTED AS NARROWED DOWN</p> <p>As to admissibility, the Tribunal notes that Mr. Djalil provides new explanations on the MEMR registry books in his Witness Statement of 31 March 2015 (see Djalil WS, ¶ 10).</p> <p>Accordingly, the request is admissible.</p> <p>As to the merits, the Tribunal notes at the outset that the Respondent has stated that it will produce the MEMR register book for 22 September 2010 and for 15 October 2010.</p> <p>The Tribunal finds the requested documents, as narrowed down, to be <i>prima facie</i> relevant and sufficiently specific.</p> <p>While the Respondent offered to produce the MEMR register book for 22 September 2010, the Tribunal is of the view that the production of the</p> |

| | | | | | | | |
|----|-----|--|---|--|--|--|--|
| | | | | <p>It is not clear whether the registry books referred to by the BPK are the same as those referred to by Mr Djalil, but the context would indicate that they are <i>different</i> registry books – one pertaining to mining undertaking licences, and the other one pertaining to forestry permits and related documentation.</p> <p>Accordingly, the Document requested is relevant and material to the question of whether or not the MEMR issued the Ridlatama Technical Considerations (as these would have been recorded in the registry books referred to by Mr. Djalil).</p> | <p><u>Technical Considerations</u> (exhibits C-252 to C-255) belong to <u>other letters signed by Mr. Setiawan on 15 October 2015</u> (Djalil WS, ¶ 18, citing Ex. R-139; Respondent’s letter dated 9 October 2014, n. 12, citing Ex. R-139).</p> <p>Accordingly, Respondent will produce the MEMR register book for 22 September 2010. Respondent will also produce the MEMR register book for 15 October 2010, recording the letters found in Ex. R-139.</p> <p><i>Third</i>, whereas this request is otherwise overly broad, encompassing records and information that are irrelevant to the question of authenticity, the request is also improper because it seeks documents that contain commercial information protected from production under Rule 9(2)(e) of the IBA Rules.</p> | | <p>MEMR register book for 21 September and 23 September is warranted under the circumstances. Accordingly, the Tribunal orders the production of copies of the MEMR registry book covering the dates of 21 and 23 September 2010.</p> <p>Finally, the confidentiality regime applicable to the first document production request shall apply to responsive documents containing sensitive information.</p> |
| 7. | Cl. | A complete digital image of the database generated and maintained by MEMR recording all incoming | Mr. Djalil explains that all incoming documents are recorded in a database at the | The Document requested is relevant and material to the issue of whether or not the Ridlatama Technical | <i>First</i> , this request is patently overbroad in that it calls for documents unrelated to Ridlatama and Claimants and having no | The Claimants will not proceed further with this request at this stage. However, the Claimants reserve their rights to renew this request in the | NO DECISION REQUIRED |

| | | | | | | |
|--|--|--|--|---|---|--|
| | | documents between May 2009 and May 2010. | MEMR (Djalil WS, para. 10). According to Ms Nurohmah, Ridlatama's first and second applications were incomplete because they did not include the Ridlatama Technical Considerations (Nurohmah Second WS, paras. 11-12). | Considerations were in fact submitted to the MEMR with the relevant borrow-for-use applications. This, in turn, goes to the wider issue of whether the Ridlatama Technical Considerations were valid and authentic. | relevance at all to this Arbitration. <i>Second</i> , Respondent's evidence is that MEMR, as the authority that issues certain Technical Considerations, did not <u>issue</u> the Technical Considerations dated 22 September 2010. The request misconstrues Respondent's submissions by stating that relevance of the requested documents is in "whether or not the Technical Considerations were in fact <u>submitted</u> to the MEMR" (emphasis added). The requested documents are irrelevant to whether MEMR issued the Technical Considerations dated 22 September 2010. <i>Third</i> , in any event, the request is overly broad in calling for "all incoming documents between May 2009 and May 2010." The alleged Technical Considerations of MEMR (exhibits C-252 to C-255) all refer to Ridlatama's applications for Technical Considerations dated 27 May 2010. Therefore, if Claimants' purpose is to ascertain whether or not the | merits phase of these proceedings, at which point this database will be highly relevant. |
|--|--|--|--|---|---|--|

| | | | | | | | |
|---|-----|--|--|--|---|--|---|
| | | | | | <p>applications for “Technical Considerations” were in received by MEMR, the only relevant period is the end of May 2010.</p> <p><i>Fourth</i>, Claimants should not be permitted to require additional production by Respondent when <u>Claimants have failed to comply with the Tribunal’s orders to produce Ridlatama’s applications for the Technical Considerations</u> (PO No. 16, ¶ 18(2), granting Request Nos. 37-40; <i>Id.</i>, Annex B, Request Nos. 37-40).</p> <p><i>Fifth</i>, whereas this request is overly broad, impermissible, and seeks to obtain irrelevant records, the request is also improper because it seeks documents that contain commercial information protected from production under Rule 9(2)(e) of the IBA Rules.</p> | | |
| III. Ridlatama Seriousness Bond Requests | | | | | | | |
| 8. | Cl. | All instructions by the Regency of East Kutai or any of its agencies, representatives or agents, including | Mr. Ishak states that he "never provided instructions to mining companies to pay a seriousness bond or other payment | The Documents requested are relevant and material to determine how mining licence holders were | <i>First</i> , the request is vague and overly broad as to the categories of the documents requested (“all instructions . . . <u>in relation</u> . . . to payment | The State's allegation is that Mr Ishak did not sign the Ridlatama Seriousness Bond Requests because he "never provide[s] instructions to mining | GRANTED AS FURTHER NARROWED DOWN As to admissibility, the Tribunal notes that, in his |

| | | | | | | | |
|--|--|--|--|--|---|--|--|
| | | <p>the Mining and Energy Bureau, to mining licence holders in relation to the holders' mining licence payment obligations, including, but not limited to the seriousness bond and dead rent, during 2007 and 2008.</p> | <p>obligation in a mining area. The holder of a mining licence is under an obligation to comply with any payment obligations" (Ishak Second WS, para. 11).</p> | <p>informed of their obligations to comply with any payment requirements imposed on them as mining licence holders. This examination, will, in turn, allow for the authenticity of the Ridlatama Seriousness Bond Requests to be properly evaluated.</p> <p>In addition, the Documents requested are relevant and material to Mr Ishak's credibility as a witness.</p> | <p>obligations" (emphasis added).</p> <p><i>Second</i>, in seeking production of "[a]ll instructions by the Regency of East Kutai or any of its agencies, representatives or agents, including the Mining and Energy Bureau," Claimants are requesting documents that are irrelevant to the issues in this Arbitration. Respondent's evidence is that the Regent did not and would not issue specific instructions to mining companies to pay seriousness bond and dead rent. Respondent does not dispute that the Mining Bureau issued instructions to pay such obligations. Therefore, production of payment instructions by the Mining Bureau or by any other "agencies, representatives or agents" of the Regency of East Kutai would be irrelevant to whether the Regent himself issued the disputed instructions.</p> <p><i>Third</i>, responsive documents – payment instructions issued by the Regent – do not exist,</p> | <p>companies to pay a seriousness bond or other payment obligation".</p> <p>In this request the Claimants are simply trying to ascertain who issues such payment requests if not Mr. Ishak.</p> <p>The Claimants are happy to narrow this request by limiting it to requests to pay seriousness bonds by the Regency of East Kutai, or any of its agencies, representatives or agents during 2007 and 2008.</p> <p>As to the State's third objection, the Claimants' document request does not mention "the Regent", but rather "the <i>Regency</i>" (emphasis added).</p> <p>As to the fourth point, it is true that the State has already produced one document that is responsive to this request – this being the Regency's 2008 request for payment by Nusantara of applicable fees. However, one document is obviously</p> | <p>Second Witness Statement of 31 March 2015, Mr. Ishak provides new testimony as regards the issuance of instructions to pay seriousness bonds or other payment obligations (see Ishak 2nd WS, ¶ 11).</p> <p>Accordingly, the request is admissible.</p> <p>As to the merits, the Tribunal notes at the outset the Respondent's representation that the Regent does not issue instructions in relation to payment obligations, and that no responsive documents exist in this respect. However, the Claimants' request is not limited to instructions of the Regent, but of the Regency, it being undisputed that responsive documents exist in this respect.</p> <p>The requested documents appear to be <i>prima facie</i> relevant. However, even as narrowed down by the Claimants, the request is still too broad, in particular because none of the disputed mining licences was issued prior to May</p> |
|--|--|--|--|--|---|--|--|

| | | | | | | |
|--|--|--|--|---|--|--|
| | | | | <p>because the Regent would not issue such instructions.</p> <p><i>Fourth</i>, without waiving any objections, on 28 April 2015, Respondent produced responsive documents issued for the Nusantara companies by the Mining Bureau of East Kutai. Please see the List of Documents of the Nusantara Group, including items 167, 170, 171.</p> <p><i>Fifth</i>, the request is overly broad as to the time period. At issue are purported Regent's instructions dated 4 December 2007 (found in exhibits C-92 and C-93). In response to Respondent's document request no. 7, Claimants failed to produce similar Regent's instructions in connection the alleged May 2007 mining licenses.</p> <p><i>Sixth</i>, whereas this request is overly broad, vague, and seeks to obtain irrelevant documents, the request is also improper because it seeks documents that contain commercial information protected from</p> | <p>insufficient as a comparator set.</p> <p>As to the fifth point, the Claimants are happy to narrow this request by limiting it to the year 2007.</p> <p>As to the fifth point, the Claimants are happy to confer with counsel for the State regarding the use of the confidentiality regime applicable to the first document production phase for the documents sought under this request.</p> | <p>2007. Accordingly, the Tribunal orders production of documents for the period of May to December 2007.</p> <p>Finally, the confidentiality regime applicable to the first document production request shall apply to responsive documents containing sensitive information.</p> |
|--|--|--|--|---|--|--|

| | | | | | | | |
|--|--|--|--|--|---|--|--|
| | | | | | production under Rule 9(2)(e) of the IBA Rules. | | |
|--|--|--|--|--|---|--|--|

Respondent's Note dated 19 May 2015:

Any documents which are produced by Respondent in response to Claimants' Second Request for Production of Documents ("Claimants' Second Request") or pursuant to any order of the Tribunal concerning Claimants' Second Request, and which are stamped or marked "Confidential" by Respondent, shall be treated as Confidential Documents, which means that they shall be covered by the terms of the Confidentiality Agreement executed by the Parties on 30 April 2015.

Respondent requests that Claimants confirm that they and their Counsel will treat all such documents as Confidential Documents.