

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. 18

Respondent's Document Production Request

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

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I. PROCEDURAL BACKGROUND

1. On 3 June 2015, the Respondent requested that the Tribunal order the Claimants to produce all documents in Mr. Kurniawan's possession relating to the East Kutai Coal Project (the "EKCP"). On 9 June 2015, the Claimants opposed the order sought, indicating at the same time that they would be willing to discuss the production of individual documents on a list of all documents provided to them by Mr. Kurniawan (other than those attached to his witness statement) (the "Kurniawan List"), subject to the Respondent's ability to demonstrate that each requested document is responsive to the Respondent's document production requests Nos. 1-22, 24, 27, 29-35, 37-40 or 43 ruled upon in Procedural Order No. 16 and that it is not already in its possession, custody or control.
2. On 11 June 2015, the Tribunal directed the Parties to follow the process proposed by the Claimants and to revert to the Tribunal if needed.
3. On 14 June 2015, the Respondent sent a letter to the Claimants requesting the immediate production of all documents on the Kurniawan List, while at the same time pointing more specifically to a number of documents on that list.
4. On 23 June 2015, the Respondent informed the Tribunal that, save for the production of "several new copies of already existing exhibits", the Claimants did not provide any additional documents from the Kurniawan List, thus prompting the Respondent's transmittal to the Claimants of its requests in the Redfern Schedule format.
5. On 24 June 2015, the Tribunal invited the Claimants to file their responses to the Respondent's requests by 29 June 2015 and the Respondent to file its replies by 1 July 2015, which both sides did.
6. The present order deals with the Respondent's document production requests and addresses first the applicable standards (II), before reaching its decision (III).

II. APPLICABLE STANDARDS FOR DOCUMENT PRODUCTION

7. 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.

8. The Respondent's document production requests are addressed in Annex A of the present Order.
9. In light of the limited time until the Hearing on Document Authenticity and the context in which this production arises, the documents ordered to be produced shall be deemed to be part of the record as soon as the Claimants have communicated them to the Respondent and the Tribunal. The Claimants shall produce the documents within **1 week, i.e. by 13 July 2015**, and shall assign exhibit numbers to each document. The Parties will have an opportunity to address these documents in the oral arguments and in witness examination (both direct and cross-examination).

III. ORDER

10. In the application of the relevant standards and for the reasons set forth in the Redfern Schedule attached as Annex A, the Tribunal:
 - (1) Takes note that no decision is required regarding the Respondent's requests Nos. 2, 4 and 5;
 - (2) Grants the Respondent's requests Nos. 1 and 3, with the scope specified in the Redfern Schedule attached as Annex A; and
 - (3) Denies all other requests;
 - (4) Orders the Claimants to communicate the documents to the Respondent and the Tribunal within **1 week, i.e. by 13 July 2015**, and shall assign exhibit numbers to each document.

On behalf of the Tribunal

[*Signed*]

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