

ANNEX A

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

**Respondent's Request to Produce Documents
from the EKCP Archive of Rudy Endang Kurniawan**

1.	2.	3.	4.		5.	6.	7.
No.	Req. Party	Documents or Category of Documents Requested	Relevance and Materiality		Responses/ Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decisions
			Ref. to Submissions	Comments			
1.	Resp.	<p>The following documents from the list of "Documents received by the Claimants from Rudy Kurniawan's Archive" related to EKCP (hereinafter "the Kurniawan List", Ex. R-206. Claimants provided the Kurniawan List to Respondent on 9 June 2015):</p> <p>Nos. 6, 19, 26, 29, 30, 36, 50, 66, 74, 76, 79, 82, 91, 106, 108, 112, 114, 118, 119, 122, 123, 126, 128, 132, 140, 146, 147, 154, 155, 156, 157, 158, 167, 170, 177, 178, 191, 197, 198, 204, 208, 210, 211, 216, 225, 245, 256, 258, 259, 272, 273, 277, 281, 284, 287, 289, 295, 296, 297, 298, 300, 302, 303, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319.</p>	<p>The requested documents are those that were sent by the Ridlatama companies to the Government, including drafts of such documents, and acknowledgements or other documents received from the Government.</p> <p>The requested documents are of the type that Claimants consider to be the "true footprint of the Ridlatama licenses", i.e. their "evidence contradicting the State's case" on forgery (Claimants' Reply to the State's Application for Dismissal of the Claimants' Claims based on Forged and Fabricated Ridlatama Mining Licenses, dated 29 May 2009, ¶ 1(e)).</p> <p>Respondent had made a request for such documents on 13 March 2015 (Respondent's Document Request No. 42). While Claimants objected that the request was "overly broad and thus unduly burdensome," they were already in possession of the documents from the "EKCP" Archive of Mr. Kurniawan, (See Respondent's letter to Tribunal dated 3 June 2015,</p>	<p>The requested documents are relevant and material to Claimants' reliance on the communications to and from the Government as proof of authenticity of the impugned documents.</p> <p>While some of the documents may potentially be located by Respondent, searches by Respondent for such documents would be burdensome, especially in light of the short time left before the 3 July 2015 submission and the subsequent Hearing.</p> <p>The IBA Rules expressly recognize that a request for documents is proper even if such documents may be in the possession, custody or control of the requesting party, where it may be less burdensome and costly for another party to produce them (Ex. RLA-193, 1999 <i>IBA Working Party and 2010 IBA Rules of Evidence Review Subcommittee, Commentary on the Revised Text of the 2010 IBA Rules on the Taking of Evidence in International</i></p>	<p>According to the State, these documents are responsive to State DPR No. 42.</p> <p>For the Tribunal's ease of reference, State DPR No. 42 covered "[a]ll documents that were (1) sent from Claimants or Ridlatama to the Government or (2) received by Claimants or Ridlatama from the Government, which relate to the EKCP and on which Claimants rely as proof of the authenticity of the disputed documents, but which Claimants have not yet submitted as exhibits".</p> <p>The Claimants objected to this request and the Tribunal agreed, denying State DPR No. 42 because it "is overly broad and burdensome" (Procedural Order No. 16, Annex B).</p> <p>Accordingly, the Claimants were not ordered to produce any documents responsive to State DPR No. 42.</p> <p>For the record, the Claimants do not see any reason to depart from the general rule (as expressed in Article 3.3(a)(c)(i) of the IBA Rules) that a party cannot request documents that it already has in its possession, custody or control. The State has not shown why (in the language of the IBA Working Group, Exhibit RLA-193, p. 26) it would be "unreasonably difficult" for the State to obtain these documents itself (Comment 1).</p>	<p>Claimants do not dispute that the requested documents are relevant.</p> <p>Claimants were not ordered to produce any documents responsive to State DPR No. 42 as Claimants had objected that the request was "overly broad and thus unduly burdensome."</p> <p>It now became clear that while making that objection, Claimants were already in possession of responsive documents from the "EKCP" archive of Mr. Kurniawan (See Respondent's letter to Tribunal dated 3 June 2015, p. 3 citing Ex. R-205, Metadata of Exs. C-383/RK-02 and C-384/RK-03 received from the</p>	<p>GRANTED AS FURTHER NARROWED DOWN</p> <p>The Respondent does not dispute that the requested documents are within its possession, save for an unidentified number of documents whose description indicate that they are "only in Claimants', Ridlatama's or Kurniawan's possession".</p> <p>The Tribunal notes that the Respondent has not demonstrated having made any effort to locate any of the requested documents, merely alleging that it would require that inquiries be made to various organizations of Indonesia.</p> <p>However, in view of (i) the short time left prior to the Hearing on Document Authenticity and (ii) the fact that the requested documents are within the Claimants' possession, indexed and organized, the Tribunal orders the production of the requested documents, subject to the</p>

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			<p>p. 3 <i>citing</i> Ex. R-205, Metadata of Exs. C-383/RK-02 and C-384/RK-03 received from the archive of Mr. Kurniawan), and such documents have been reviewed, indexed and organized by Claimants. Claimants then decided which documents to use in their 29 May 2015 Reply, but clearly have other similar items, which they withheld. The requested documents also include those that underlie the documents, receipt of which the Government is said to have acknowledged, e.g., documents underlying the reports on the activities.</p>	<p><i>Arbitration</i>, pp. 8, 26; 2010 IBA Rules on the Taking of Evidence in International Arbitration, Articles (3)(c)(i), 9(2)(c)). At this stage of the document authenticity phase, production by Claimants of the documents on the Kurniawan List would be the most efficient and practical solution as Claimants have all such documents in their immediate possession.</p>		<p>archive of Mr. Kurniawan). Claimants do not deny this. The requested documents are indexed and organized and Claimants can easily produce them. In contrast, it would be burdensome and unreasonably difficult for Respondent to search for and collect any of these specific documents, as inquires concerning their existence and availability would need to be made to various organizations of Indonesia. Based on Respondent's experience with the document production process, agencies in the Government do not necessarily keep copies of all</p>	<p>following. The documents whose description does not clearly show that they have been sent from the Claimants or Ridlatama to the Government or received by the Claimants or Ridlatama from the Government are not subject to this order.</p>

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						documents. Further, it is evident from the description of the requested documents that some of them are only in Claimants', Ridlatama's or Kurniawan's possession. The difficulty and the burden associated with efforts to collect the requested documents through liaising with various agencies are severely exacerbated by the short time left before the Hearing.	
2.	Resp.	Document No. 7 in the Kurniawan List.	The requested documents are said to be photographs of members of the Ridlatama team taken <u>on 27 March 2009</u> . Claimants have produced several photographs from that date in response to Respondent's Request No. 7. According to Claimants, they are from a meeting between representatives of the	The photographs are relevant and material to Claimants' assertion that the issuance of the licenses were photographed in some instances. While the photographs produced under Respondent's request do not evidence issuance of any licenses, there is no reason to withhold selected photographs of the same	These photographs are of members of the Ridlatama team alone. No Regency of East Kutai (or other State) officials are pictured, and the scene of the photographs is a car-park. These photographs are neither responsive to State DPR Nos. 1-22, 24, 27, 29-35, 37-40 or 43 nor relevant or material to the document authenticity phase.	Respondent notes that while Claimants produced a number of photographs that are said to be dated 27 March 2009, Claimants are resisting to produce selected two photographs from the same date.	NO DECISION REQUIRED

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			Ridlatama Group and officials of the Regency of East Kutai relating to the upgrading of the licenses.	date involving Ridlatama, which Mr. Kurniawan provided to Claimants.		Having noted Claimants' comments, Respondent does not insist on the production.	
3.	Resp.	Documents Nos. 49, 124, 190, 203, 261, 290, 301, 304 in the Kurniawan List.	Claimants allegedly believed that the "EKCP" was not in a <u>conservation</u> forest area, <u>protected</u> forest area or <u>production</u> forest area. (Claimants' Memorial on Merits, ¶ 205. <i>See also</i> Benjamin WS, ¶¶ 127-129). They note that Ridlatama made enquiries "into the status of the EKCP area with respect to forestry" (Hardwick WS, ¶ 18). They also state that their "initial thorough investigations had established that" the EKCP was not in an area that required a forestry permit. (Hardwick WS, ¶ 105. <i>See also</i> Benjamin WS, ¶ 127). In 2009, Ridlatama is said to have informed Claimants of the Forestry Decree dated 15 March 2001 to which Map No. 1816 was attached. The map showed that the EKCP was within a production forest area. Mr. Benjamin states that this map "directly	Respondent requested such documents in Request No. 33. Claimants responded that no such documents were in their possession, control or custody, and that two documents corresponding to this request had already been introduced into evidence. It appears that Claimants have more responsive documents, i.e. the documents on the Kurniawan List. These specific documents are requested as they appear relevant to Claimants' awareness of whether or not the "EKCP" was located within an area that required a forestry permit and whether the failure to apply for forestry permits was due to the alleged belief that the "EKCP" was not in a production forest area. Thus the requested documents are relevant and	According to the State, these documents are responsive to State DPR No. 33, which required that the Claimants produce "[a]ll memoranda, lists, notes, etc., other than Mr. Gunter's presentations referred to above, provided to Ridlatama, ICD or Churchill as to whether the 'EKCP' was located within an area that required a forestry permit, including, but not limited to, memoranda, lists, notes, etc. received from the Mining Bureau of East Kutai or other agencies in connection with the Ridlatama Companies applying for the mining undertaking licenses in 2007 and 2008" (emphasis added). The language used in State DPR No. 32 was broad, but the Claimants understood it to mean documents (of the types specifically listed) that actually informed Ridlatama, PT ICD or Churchill "whether" the EKCP was located in a forest area. The references to submissions included in State DPR No. 33 confirmed this reading. State DPR No. 33 was certainly not understood by the Claimants to mean any documents relating to the borrow-	Documents Nos. 49, 124, 190 and 261 are minutes of a public consultation with the residents of the sub-districts in relation to the preparation of the AMDAL (environmental approval) documents. The minutes appear to be <i>prima facie</i> relevant, because the AMDAL documents in Claimants' exhibits C-122 to C-125 in the record mention presence of production forest (<i>hutan produksi</i>) in the areas of RTM, RTP, IR and INP. Borrow-for-use permits were required for such	GRANTED AS FURTHER NARROWED DOWN The Tribunal finds that documents nos. 49, 124, 190, 261, and 304 are not responsive to Indonesia's Document Production Request No. 33 (see PO16, Annex B). Hence, production of these documents is denied. By contrast, documents nos. 203 and 290 appear to be responsive to Request No. 33. Hence, production of these documents is granted. Finally, the Tribunal notes that no decision is required with respect to document no. 301.

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			<p>conflicted with the maps we had seen during consultations we had with the mining office at the East Kutai Regency when we carried out our due diligence” (Benjamin WS, ¶ 127).</p>	<p>material to authenticity of the impugned documents, including the mining undertaking licenses in connection with which the borrow-for-use permits were sought only after the 27 March 2009 exploitation stage upgrades were obtained.</p> <p>The IBA Rules expressly recognize that a request for documents is proper even if such documents may be in the possession, custody or control of the requesting party, where it may be less burdensome and costly for another party to produce them (<i>See</i> Comments to Request 1, above).</p>	<p>for-use permit applications the Ridlatama Companies filed. Indeed, if that was the intended scope of the request, the documents sought would not have been relevant or material to the State’s Forgery Dismissal Application.</p> <p>For completeness, the Claimants make the following more specific observations on the documents in question:</p> <ul style="list-style-type: none"> • Documents 49, 124, 190 and 261 are minutes for each of RTM, RTP, IR and INP of a public consultation with the residents of the sub-district Busang in relation to the preparation of the AMDAL (environmental approval) documents. The State has not shown how minutes relating to the consultation meetings held with local stakeholders for environmental approval to undertake coal exploration activities are documents provided to Ridlatama, PT ICD or Churchill to "<i>as to whether the 'EKCP' was located within an area that required a forestry permit</i>". • Document 203 is the instruction from the Regional Secretary of East Kutai to INP dated 3 June 2009 regarding the recommendation for a borrow-for-use forestry permit. The State has not shown how this document was provided to Ridlatama, PT ICD or Churchill to inform them "<i>as to whether the 'EKCP' was located within an area that required a</i> 	<p>areas under the law.</p> <p>Concerning Document No. 203, it is obvious from its description that the instruction was related to the presence of a forest area requiring a borrow-for-use permit, as well as to the process of obtaining recommendations for borrow-for-use permits. Recommendations allegedly obtained by the Ridlatama companies are impugned documents.</p> <p>Concerning Document No. 290, it is obvious from its description that the letter is related to the presence of a forest area requiring a borrow-for-use permit, as well as to the process of</p>	

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					<p><i>forestry permit</i>".</p> <ul style="list-style-type: none"> Document No. 290 is a letter from the Head of Forestry Department of East Kutai to the Forestry Department of East Kalimantan regarding RTP's request for a technical consideration for a borrow-for-use forestry permit. The State has not shown how this document was provided to Ridlatama, PT ICD or Churchill to inform them "<i>as to whether the 'EKCP' was located within an area that required a forestry permit</i>". Document No. 301 is a letter from the Forestry Department to the Governor of East Kalimantan regarding an analysis result of forestry area use based on an application from PT Hutan Persada Lestari. The State has not shown how a letter regarding a company unrelated and unaffiliated to the Ridlatama Group (and to the EKCP) is responsive to State DPR No. 33 (let alone provided to Ridlatama, PT ICD or Churchill to inform them "<i>as to whether the 'EKCP' was located within an area that required a forestry permit</i>"). Document No. 304 is an undated map of Kalimantan. The State has not shown how this document was (i) provided to Ridlatama, PT ICD or Churchill in 2007, 2008 or 2009; (ii) provided to any of these entities "<i>in connection with the Ridlatama</i> 	<p>obtaining recommendations for borrow-for-use permits. Recommendations allegedly obtained by the Ridlatama companies are impugned documents.</p> <p>Having noted Claimants' comments regarding Document No. 301, Respondent does not insist on its production.</p> <p>Concerning Document No. 304, given Claimants' reliance on other maps of the area allegedly not showing the forest areas, an undated map of East Kalimantan in the possession of Ridlatama appears to be <i>prima facie</i> relevant.</p>	

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					<p><i>Companies applying for the mining undertaking licenses"; or (iii) provided to these entities to inform them "as to whether the 'EKCP' was located within an area that required a forestry permit".</i></p> <p>The Claimants also repeat Comment 1 above.</p>	Respondent also repeats its reply made in Request 1.	
4.	Resp.	Documents Nos. 39-48 relating to IR; Nos. 86-90, 92-101 relating to RTM; Nos. 166, 180-189 relating to INP; Nos. 223, 224, 226-235, 237-243, 263 relating to RTP, in the Kurniawan List.	The requested documents relating to IR and INP concern the establishment of these companies' presence in the Regency of East Kutai in 2008, well after the alleged issuance of their general survey licenses (November 2007), and in most instances – well after the alleged upgrade of the licenses to exploration stage (April 2008). The requested documents relating to RTM and RTP are sought as comparators to the documents of IR and INP.	The requested document is relevant to whether INP and IR were established in the Regency of East Kutai at the time when they obtained the alleged mining undertaking licenses for general survey and at the time their alleged exploration stage upgrades were issued. The timing of such establishment is relevant and material to whether these companies were established in the Regency as set forth by the alleged licences, at the time they conducted the mining activities, and whether they conducted them “without getting caught” (Claimants' Reply, ¶ 147). The IBA Rules expressly recognize that a request for documents is proper even if such documents may be in	The Claimants fail to see how general corporate documents of the Ridlatama companies could be seen as responsive to State DPR Nos. 1-22, 24, 27, 29-35, 37-40 or 43 or relevant or material to the State's Forgery Dismissal Application. For the record, the Claimants note that the establishment of RTM, RTP, IR and INP in East Kutai is undisputed. The Claimants also repeat Comment 1 above.	Having noted Claimants' comments, Respondent does not insist on the production.	NO DECISION REQUIRED

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				the possession, custody or control of the requesting party, where it may be less burdensome and costly for another party to produce them (<i>see</i> Comments to Request 1, above).			
5.	Resp.	Documents Nos. 54, 77, 80, 83 in the Kurniawan List.	<p>Around the time of the alleged issuance of the general survey licenses of RTM and RTP, Ridlatama made Mr. Kurniawan “the Head of Government Relations for the Group” (Kurniawan WS, ¶ 20).</p> <p>He was then made a director of IR around 3 March 2009, the position he left around 4 October 2010, five months after the licenses were revoked (<i>see</i> Ex. C-016, Company Data – PT Investama Resources).</p> <p>The requested documents relate to Mr. Kurniawan as the director of IR.</p>	<p>The requested documents appear relevant to Mr. Kurniawan’s role in the procurement of the impugned documents and his incentive to procure them.</p> <p>The IBA Rules expressly recognize that a request for documents is proper even if such documents may be in the possession, custody or control of the requesting party, where it may be less burdensome and costly for another party to produce them (<i>see</i> Comments to Request 1, above).</p>	<p>These documents are general corporate documents regarding changes to the directors, shareholders and management of IR. These documents are neither responsive to State DPR Nos. 1-22, 24, 27, 29-35, 37-40 or 43 nor relevant or material to the State’s Forgery Dismissal Application.</p> <p>For the record, the Claimants note that Rudy Kurniawan's role as director and employee of the Ridlatama Group is undisputed.</p> <p>The Claimants also repeat Comment 1 above.</p>	Having noted Claimants’ comments, Respondent does not insist on the production.	NO DECISION REQUIRED
6.	Resp.	All the documents related to Ridlatama Steel (RS) and Ridlatama Power (RP) from the Archive of Mr. Rudy Kurniawan.	According to Kurniawan WS, ¶ 22 “[t]he Ridlatama companies that were involved in the EKCP – first as applicants and later as license holders were . . . (e) PT Ridlatama Steel (RS); and (f) PT Ridlatama Power	Documents relating to RS and RP are relevant to authenticity of the impugned documents of the other Ridlatama Companies, as licenses of RS and RP for general survey were applied for	<p>These documents are neither responsive to State DPR Nos. 1-22, 24, 27, 29-35, 37-40 or 43 nor relevant or material to the document authenticity phase.</p> <p>For the record, the Claimants note that RS and RP's mining licences (or any other documents relating to RS and RP)</p>	The documents are requested as a result of Mr. Kurniawan’s recent witness statement in which he refers to the areas of RS and RP	DENIED The Tribunal notes that the mining licences of PT RS and PT RP are undisputed. Furthermore, the Tribunal notes that, until this late stage, the Respondent has not sought to obtain other

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			(RP).” However, the Kurniawan List does not contain any documents related to RS and RP, whereas it contains numerous documents related to the other “EKCP” companies of RTM, RTP, INP and IR.	and issued close in time to the issuance of the alleged licenses of RTM and RTP for general survey. Moreover, the areas of RS and RP were in close proximity to the mining areas of RTM, RTP, INP and IR. In case of RP, its area was adjacent to the areas of RTM and IR. Unlike the RTM, RTP, INP and IR licenses, the Regent signed the RS and RP licenses. The IBA Rules expressly recognize that a request for documents is proper even if such documents may be in the possession, custody or control of the requesting party, where it may be less burdensome and costly for another party to produce them (<i>see</i> Comments to Request 1, above).	are undisputed. The Claimants also repeat Comment 1 above.	as areas of “EKCP.” The documents relating to RS and RP, the Ridlatama companies that held genuine general survey licenses, are relevant, <i>inter alia</i> , for purposes of their comparisons with the impugned documents of the other “EKCP” companies - RTM, RTP, INP and IR and related documentation. Respondent also repeats its reply made in Request 1.	documents related to these two companies in connection with the document authenticity phase. Accordingly, the Tribunal is of the view that the requested documents, in addition to being overbroad, do not appear to be <i>prima facie</i> relevant for the authenticity issue.

Instructions:

- (1) This Request encompasses all documents within the possession, custody or control of Claimants or Mr. Rudy Kurniawan.
- (2) The term “document” has the meaning attributed to it under the 2010 IBA Rules on the Taking of Evidence in International Arbitration, that is: “a writing of any kind, whether recorded on paper, electronic means, audio or visual recordings or any other mechanical or electronic means of storing or recording information.”
- (3) The documents requested should be produced in the manner in which they are maintained. If the documents requested are stored electronically, Claimants may produce the electronic versions of such documents.

Reservation of Rights: Respondent reserves its rights to request that Claimants produce further documents.