

Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia

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

Respondent's Requests to Claimants to Produce Original Documents for Inspection

13 March 2015

Claimants' Response to State's Requests to Claimants to Produce Original Documents for Inspection

	Identification of Documents	Relevance and Materiality of Documents Requested	Responses/Objections to Document Request	Tribunal's Decision
1.	<p>Originals of the Letters dated 4 December 2007 from the Regent of East Kutai to PT Investama Resources (IR) and PT Investmine Nusa Persada (INP) concerning Payment of Provisioning of Territory, Fixed Contribution and Capability Security, in connection with IR's and INP's mining undertaking licenses for general survey.</p>	<p>In Exhibits C-92 and C-93, there are documents purporting to be letters from the Regent of East Kutai to IR (third page in Exhibit C-92) and INP (third page in Exhibit C-93) dated 4 December 2007. Both letters concern Payment of Provisioning of Territory, Fixed Contribution and Capability Security. According to Mr. Benjamin, "after the General Survey Licences were obtained for INP and IR . . . we paid the Dead Rent payments [and] a 'Seriousness Bond' that was required by the government for us to hold the licences. The Indonesian Government not only requested but also accepted these payments. This was yet another indication to us that we had validly issued licences" (Benjamin WS, ¶ 38 and n. 14, citing Exhibits C-92 and C-93).</p> <p>The signatures on the purported 4 December 2007 letters from the Regent are identical between themselves and to the signatures in the documents identified in Respondent's Application for Dismissal, ¶¶ 25, 26 (i-ii), i.e., the alleged general survey and exploration licenses, certification letters and certificates of</p>	<p>No such documents are in the possession, control or custody of the Claimants.</p>	<p>GRANTED AS SPECIFIED</p> <p>The Tribunal notes (i) the Claimants' statement that no responsive documents are in their possession, control or custody, and (ii) the Respondent's reply set out in its letter dated 30 March 2015 requesting the Claimants to provide the best copies of these documents at the inspection.</p> <p>In light of the fact that the requested originals should be in the possession of the Ridlatama Group, the Claimants should make best efforts to obtain said originals and produce them at the document inspection</p>

		<p>legality. Mr. Gideon Epstein, Respondent's forensic expert, has conducted an examination of the letters and found that the signatures on them appear to be from the same autopen model as the signatures on the other forged documents allegedly signed by Mr. Ishak in his capacity as Regent, like the general survey and exploration licenses.</p> <p>These letters are not recorded in the Regency's register of outgoing letters.</p>		<p>due to take place between 16 and 17 April 2015. If the originals cannot be retrieved, the Claimants shall provide the best copies of these documents at said inspection.</p>
2.	<p>Originals of the Letters from the Regent of East Kutai to PT Ridlatama Tambang Mineral (RTM) and PT Ridlatama Trade Powerindo (RTP) concerning Payment of Provisioning of Territory, Fixed Contribution and Capability Security, in connection with RTM's and RTP's mining undertaking licenses for general survey. The letters would bear a date between 24 May 2007 and 9 July 2007.</p>	<p>According to Mr. Benjamin, "[o]n 9 July 2007 . . . we paid the Dead Rent payments corresponding to the RTM and RTP General Survey Licences [and] a 'Seriousness Bond' that was required by the Government to maintain these licences. The Indonesian Government requested and accepted these payments. This confirmed to us that these licenses had been validly issued" (Benjamin WS, ¶ 21). However, he does not cite to any exhibits.</p> <p>With respect to similar payments in connection with the general survey licenses for the other two companies – IR and INP – Mr. Benjamin cites Exhibits C-92 and C-93 and says that these payments were made "as we had done with . . . RTM and RTP" (Benjamin WS, ¶ 38 and</p>	<p>No such documents are in the possession, control or custody of the Claimants.</p>	<p>GRANTED AS SPECIFIED</p> <p>The Tribunal notes (i) the Claimants' statement that no responsive documents are in their possession, control or custody, and (ii) the Respondent's reply set out in its letter dated 30 March 2015 requesting the Claimants to provide the best copies of these documents at the inspection.</p> <p>In light of the fact that the requested originals</p>

		n. 14. <i>See also</i> Benjamin WS, ¶ 17; Claimants’ letter dated		should be in the possession of the Ridlatama Group, the Claimants should make best efforts to obtain said originals and produce them at the document inspection due to take place between 16 and 17 April 2015. If the originals cannot be retrieved, the Claimants shall provide the best copies of these documents at said inspection.
3.	Originals of all versions of letters from the Regent of East Kutai to each of INP and IR dated 12 May 2009.	On 12 May 2009, the Regent of East Kutai allegedly issued letters of approval or recommendation regarding cooperation and amendment to the share composition of the Ridlatama Companies. With respect to RTM and RTP, there are two versions of this letter – one is an approval, the other is a recommendation (<i>See</i> Exhibits P-61 (RTM), P-62 (RTP). <i>See also</i> Exhibits R-053, R-054). With respect to INP and IR, Claimants only provided one version of the letters – the “approvals” (<i>See</i> Exhibits P-63 / R-055 (INP), P-64 / R-056 (IR)). Respondent believes that Claimants also	No such documents are in the possession, control or custody of the Claimants.	GRANTED AS SPECIFIED The Tribunal notes (i) the Claimants’ statement that no responsive documents are in their possession, control or custody, and (ii) the Respondent’s reply set out in its letter dated 30 March 2015 requesting the Claimants to provide

		<p>have “recommendations” for INP and IR, similar to those found in Exhibits P-61 and P-62. This belief is based on the observation that the documentation procured by Ridlatama and put forward by Claimants as exhibits almost invariably pertains to each of the four companies.</p> <p>Claimants should both versions have such letters in original form. During the Inspection of 29 August 2014, Claimants produced the originals of the Approvals for Cooperation and Amendment to Share Composition of RTM and RTP, but failed to produce the originals of the Recommendation for Amendment to Share Composition of RTM and RTP (Ramadani WS, Annex items 18, 19).</p> <p><i>See also</i> Respondent’s Memorial on Objections to Jurisdiction, ¶¶ 101-102; Respondent’s letter dated 9 October 2014, pp. 5-6, n. 23; Planet Mining Request for Arbitration, ¶ 19 and n. 37, citing Exhibits P-61 to P-64.</p>		<p>the best copies of these documents at the inspection.</p> <p>In light of the fact that the requested originals should be in the possession of the Ridlatama Group, the Claimants should make best efforts to obtain said originals and produce them at the document inspection due to take place between 16 and 17 April 2015. If the originals cannot be retrieved, the Claimants shall provide the best copies of these documents at said inspection.</p>
4.	<p>Originals of the Letters dated 5 August 2009 from the East Kutai Forestry Police Squad to RTM (Exhibit C-179), RTP (Exhibit C-180), IR (Exhibit C-181), INP (Exhibit C-182) and Ridlatama Group (Exhibit C-183).</p>	<p>According to Claimants, “Ridlatama operated throughout at the EKCP with the express knowledge and direct involvement of the local forestry police, under the authority of the East Kutai Department of Forestry, as well as representatives of other local authorities” (Claimants’ Memorial, ¶ 230, citing</p>	<p>No such documents are in the possession, control or custody of the Claimants.</p>	<p>GRANTED AS SPECIFIED</p> <p>The Tribunal notes (i) the Claimants’ statement that no responsive documents are in their possession,</p>

		<p>Exhibits C-179 to C-183, East Kutai Forestry Police letters to Ridlatama dated 5 August 2009).</p> <p>Respondent disputes the authenticity of these letters allegedly signed by the late Mr. Julhadie (Hearing on Jurisdiction, Tr. 13052013, 232:13-235:25; Respondent’s Rejoinder to Claimants’ Application for Provisional Measures dated 27 May 2014, n. 42; Exhibit R-142, Unofficial Transcript of 21 October 2014 Teleconference, p. 10).</p> <p>Moreover, the disputed letters dated <u>5 August 2009</u> in Exhibits C-179 to C-183 make reference to “Technical Consideration[s] from the Directorate General of Mineral and Coal.” The only such documents on record are dated <u>22 September 2010</u> (Exhibits C-252 to C-254), which have multiple indicia of forgery. (Respondent’s Application for Dismissal, ¶ 26(iii); Third Epstein Report dated 13 October 2014).</p>		<p>control or custody, and (ii) the Respondent’s reply set out in its letter dated 30 March 2015 requesting the Claimants to provide the best copies of these documents at the inspection.</p> <p>In light of the fact that the requested originals should be in the possession of the Ridlatama Group, the Claimants should make best efforts to obtain said originals and produce them at the document inspection due to take place between 16 and 17 April 2015. If the originals cannot be recovered, the Claimants shall provide the best copies of these documents at said inspection.</p>
5.	Originals of the Letters dated 22 September 2010 from the Director	Respondent’s letter dated 9 October 2014, n. 12:	The Claimants will produce all such documents for physical	NO DECISION

	<p>General of Minerals, Coal and Geothermal of the Ministry of Energy and Mineral Resources to the Director General of Forestry Planology of the Ministry of Forestry for INP (Exhibit C-252), IR (Exhibit C-253), RTP (Exhibit C-254) and RTM (Exhibit C-255).</p>	<p>“These letters, which were submitted by Claimants as Exhibits C-252 to C-255, were dated 22 September 2010 and addressed to the Ministry of Forestry in the context of the four Ridlatama Companies’ applications for Borrow-for-Use permits. Those documents have identical signatures, indicating that they were not written by a human hand, and their reference numbers were used in other letters for other addressees in respect of other matters. <i>See</i> Exhibit R-139, Compendium of Letters Signed by Mr. Bambang Setiawan Bearing the Same Reference Numbers as Exhibits C-252 to C-255. Further, the NIP [civil servant identification number] of Mr. Bambang Setiawan used in the suspect documents was wrong, as is evident by comparing the NIP in those documents with the NIP in the letters in Ex. R-139 and Ex. R-131.”</p> <p>Third Epstein Report dated 13 October 2014, p. 3: “[T]he signatures were not freely and naturally written by a human hand and . . . all four signatures are exactly the same without any natural variation This model was used to mechanically make the signatures appearing on the four disputed documents.”</p>	<p>inspection.</p>	<p>REQUIRED</p>
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6.	<p>Original of Purported Recommendation No. 522.21/5213/Ek from the Governor of East Kalimantan, H. Awang Faroek Ishak, to the Minister of Forestry dated 29 December 2009, regarding Utilization of Forest Area in the name of PT Ridlatama Tambang Mineral.</p>	<p>The Purported Recommendation from Governor Ishak is virtually identical to the fabricated recommendations dated 11 and 22 March 2010 from Governor Ishak, which are referenced in Exhibit C-220 (purported Recommendations from Governor of East Kalimantan to Ministry of Forestry concerning Forest Area Lease for Ridlatama Group dated 22 March 2010). (See Respondent's request for leave dated 11 March 2015, pp. 2-3).</p> <p>Mr. Gideon Epstein, Respondent's forensic expert, has conducted an examination of a copy of the Purported Recommendation and found that the signature of Mr. Ishak in that document is identical to the signatures in Exhibit C-220 and appears to be from the same autopen model as the signatures in those letters.</p> <p>Moreover, Mr. Ishak has confirmed that he did not sign the Purported Recommendation and Dra. Nurohmah has confirmed that the Purported Recommendation is not registered with the Ministry of Forestry.</p> <p>Respondent will submit additional witness statements by Mr. Ishak and Dra. Nurohmah, as well as Mr. Epstein's report in due course.</p>	<p>No such documents are in the possession, control or custody of the Claimants.</p>	<p>GRANTED AS SPECIFIED</p> <p>The Tribunal notes (i) the Claimants' statement that no responsive documents are in their possession, control or custody, and (ii) the Respondent's reply set out in its letter dated 30 March 2015 requesting the Claimants to provide the best copies of these documents at the inspection.</p> <p>In light of the fact that the requested originals should be in the possession of the Ridlatama Group, the Claimants should make best efforts to obtain said originals and produce them at the document inspection due to take place between 16 and 17 April 2015. If the originals cannot be</p>
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				retrieved, the Claimants shall provide the best copies of these documents at said inspection.
7.	Original of Chief of East Kutai Police Letter to the Director of Ridlatama Group/ Investmine Group No. Pol.: B/2276/XII/2009/Reskrim dated 28 December 2009 (Exhibit C-210).	<p>The letter dated 28 December 2009 was allegedly issued by the Chief of Police of East Kutai in response to a letter from the Director of Ridlatama Group / Investmine Group. It purports to confirm that the police did not find the existence of criminal act such as forgery (<i>e.g.</i>, First Quinlivan WS, ¶ 64).</p> <p>Respondent's preliminary investigations raise questions about the authenticity of this document.</p>	No such document is in the possession, control or custody of the Claimants.	<p>GRANTED AS SPECIFIED</p> <p>The Tribunal notes (i) the Claimants' statement that no responsive documents are in their possession, control or custody, and (ii) the Respondent's reply set out in its letter dated 30 March 2015 requesting the Claimants to provide the best copies of these documents at the inspection.</p> <p>In light of the fact that the requested originals should be in the possession of the Ridlatama Group, the Claimants should make best efforts to obtain said originals and</p>

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