

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. 20

Post-Hearing Matters

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

1. From 3 to 10 August 2015, the Tribunal held a hearing on document authenticity in Singapore. Following the procedural discussion held by the Tribunal and the Parties at the end of the hearing, the Tribunal issues the present order.

I. CORRECTIONS TO THE HEARING TRANSCRIPT

2. Pursuant to paragraph 18.4 of Procedural Order No. 1, the Parties shall attempt to agree on corrections to the hearing transcript and shall submit their corrections by **24 August 2015**, be they agreed or not. In case of disagreement, the Tribunal will decide.

II. POST-HEARING BRIEFS

3. The Parties shall simultaneously submit a first post-hearing brief commenting on the evidence gathered at the hearing and responding to the questions of the Tribunal set forth below in paragraph 6. Pursuant to the Parties' agreement of 17 August 2015 (the "Parties' agreement"), such brief shall be filed on **12 October 2015**. It should not exceed 50 pages (with answers to Tribunal questions). The first post-hearing brief shall append no new documents, except for legal authorities in connection with question (h.) in paragraph 6 below or except with prior leave of the Tribunal.
4. Pursuant to the Parties' agreement, the second post-hearing brief shall be filed on **9 November 2015**. It shall append no new documents, except for legal authorities strictly in rebuttal of those filed with the other Party's first post-hearing brief or except with prior leave of the Tribunal.
5. Having considered the positions set forth by the Parties at the end of the hearing, the Tribunal confirms that the Parties are to address matters falling within the scope of Procedural Order No. 15 especially paragraph 34. In other words, the Parties shall address (i) the factual question whether the impugned documents are authentic or not and (ii) the legal consequences of a finding of forgery. Matter (i) includes the question whether, if they were not handwritten, the impugned signatures were affixed with authority. Matter (ii) about the legal position in the event of forgery does not cover the effect of the possible invalidity of the survey and exploration licenses on the

exploitation licenses. The present directions come in lieu of any different comments made by the Tribunal at the hearing.

III. QUESTIONS

6. In addition to addressing all the matters which they deem appropriate to further their positions, the Parties are invited to answer the following questions in their first post-hearing brief, it being specified that such answer should be set out in a separate section and may be given by way of cross-references to other sections or submissions:

- a. Summary of positions, both factual and legal, with respect to adverse inferences.
- b. What are the consequences of disregarding Mr. Noor's evidence?
- c. What is the relevance of the official seals (chops) of the Regency, the provincial government, and the MEMR for purposes of the assessment of the authenticity?
- d. What is the evidence showing that the issuance of the impugned documents was authorized or not?
- e. Subject to paragraph 5 above, in the event that the signatures on
 - i. the survey and exploration licenses and/or
 - ii. the re-enactment decrees and/or
 - iii. the legality and cooperation letters and/or
 - iv. the payment letters and/or
 - v. the borrow-for-use recommendation letters and/or
 - vi. the borrow-for-use technical consideration letters

are not handwritten or not authorized, what would be the legal consequences on each Party's case?

- f. If only the re-enactment decrees were found not to be handwritten or to be unauthorized, what would be the effect on the Claimants' case?
- g. If it were established that only Ridlatama engaged in forgery, what would be the effect on the Claimants' case?
- h. Comments as a matter of fact and law, on the references to corruption and other improper payments, which certain witnesses made in the course of the hearing.
- i. What is the relevance of Nusantara's involvement?
- j. Assuming the Tribunal were to come to the conclusion that the impugned documents are not authentic or not authorized, what issues would remain to be resolved in fact and law?

IV. STATEMENT OF COSTS

- 7. The Parties shall submit simultaneously their cost submissions within three weeks after the second post-hearing briefs. They may then comment on the other Party's submission within two weeks.

On behalf of the Tribunal

[Signed]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 20 August 2015