

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. 19

Pre-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

I. PROCEDURAL BACKGROUND

1. On 14 July 2015 in accordance with Procedural Order No. 15 as amended on 11 June 2015, the President of the Tribunal and the Parties held a pre-hearing telephone conference to discuss the organization of the Hearing on Document Authenticity (the “Hearing”). On 13 July 2015, the Centre informed the Parties that with the agreement of the co-arbitrators, the President of the Tribunal would conduct the telephone conference alone, it being understood that any disputed matters would be referred to the full Tribunal for decision. Claimants and Respondent agreed to this conduct of the pre-hearing telephone conference.
2. The following persons attended the conference call:

Tribunal

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal

ICSID Secretariat

Ms. Aurélie Antonietti, ICSID Legal Counsel

Assistant to the Tribunal

Mr. Magnus Jesko Langer, Assistant

Claimants

Mr. Nicholas Smith, Churchill Mining Plc
Mr. David Quinlivan, Churchill Mining Plc
Mr. Russell Hardwick, Churchill Mining Plc

Mr. Audley Sheppard, Clifford Chance LLP
Mr. Ben Luscombe, Clifford Chance
Mr. Sam Luttrell, Clifford Chance
Ms. Montse Ferrer, Clifford Chance

Respondent

Mr. Cahyo R. Muzhar, Ministry of Law and Human Rights
Mr. Ardiningrat Hidayat, Ministry of Law and Human Rights
Mr. Agvirta A. Sativa, Ministry of Law and Human Rights
Mr. Agung Pushandaka, Indonesian Investment Coordinating Board
Nova, Indonesian Investment Coordinating Board
Mr. Bagus Priyonggo, Office of the Attorney General
Mr. Herry Horo, Office of the Attorney General
Mr. Sigit Pudjianto, Ministry of Domestic Affairs
Chandra, Ministry of Domestic Affairs

Mr. Mark O'Donoghue, Curtis, Mallet-Prevost, Colt & Mosle LLP
Ms. Claudia Frutos-Peterson, Curtis, Mallet-Prevost, Colt & Mosle LLP
Mr. Marat Umerov, Curtis, Mallet-Prevost, Colt & Mosle LLP
Ms. Christina Trahanas, Curtis, Mallet-Prevost, Colt & Mosle LLP
Mr. Wemmy Muharamsyah, DNC Advocates At Work
Mr. Richele S. Suwita, DNC Advocates At Work
Ms. Deila Taslimbe, DNC Advocates At Work
Mr. Alvian P. Putera, DNC Advocates At Work
Mr. Benjamin Harahap, DNC Advocates At Work

3. The conference started at 14:00 CET and was adjourned at 15:25 CET.
4. The President of the Tribunal and the Parties discussed the items set out in the draft of this procedural order, which had been circulated on 9 July 2015 and other matters raised by the Parties during the conference call.
5. An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently uploaded to the BOX server established for the case for access by the Members of the Tribunal and the Parties.
6. On this basis, the Tribunal now issues this order in final form.

II. ORGANIZATION OF THE HEARING

A. Location

7. The Hearing will be held at the following venue:

Maxwell Chambers
32 Maxwell Road
#03-01
Singapore 069115

B. Schedule

8. The hearing shall take place from 3 to 8 August 2015 and on 10 August from noon on, 9 August being a day off and the morning of 10 August being reserved time.
9. The hearing shall commence at 9:00 and proceed until 17:00, subject to any adjustment required by the course of the examinations, with a one hour lunch break and at least two coffee breaks.
10. Subject to paragraph 23 below, the general schedule for the hearing is set as follows:
 - Day 1 (3 August): opening statements
 - Day 2 (4 August): expert examination (if necessary, the hearing may last beyond 17:00 that day)
 - Days 3-6 (5-7 and 8 August if needed): witness examination

- Day 7 (10 August): reserve time in the morning; closing statements and procedural discussions from noon on.

C. Attendance

11. Each Party shall inform ICSID by 23 July 2015 of the members of its delegation.

D. Oral Statements

12. The Parties may present opening statements of max 3 hours each. The Parties may present closing statements of max. 2 hours each. The Respondent will make its opening and closing statements first.

E. Documentation

13. Each Party shall endeavor to provide to the Tribunal (3 copies), the Secretary of the Tribunal (1 copy), the Assistant of the Tribunal (1 copy), the interpreters (3 copies) and the opposing Party (3 copies):
 - A list of key exhibits and legal authorities to be used during the Hearing (with hyperlinks to the relevant exhibit) in electronic copy by 24 July 2015, and to be included on a USB key to be received by the Members of the Tribunal, the Secretary of the Tribunal and the Assistant of the Tribunal by 29 July 2015 at the latest or to be handed over at the beginning of the Hearing.
 - Witness and expert examination bundles to be provided at the beginning of each witness or expert examination. Bundles of direct examination need only be provided if new developments have occurred after the witness's or expert's last written statement that the Party presenting the witness wishes to introduce on the basis of documents.
14. The Parties may use demonstrative exhibits (such as charts, tabulations, etc.), provided they (i) identify the source in the record from which they are derived, (ii) do not contain information not in the record, and (iii) are filed in electronic format by 31 July 2015 at 6:00 pm if they are part of the opening presentations or by 8:00 pm on the eve of the day of their use if used in the course of the Hearing, including as part of the closing presentations. Hard copies shall be submitted prior to their use (in the number specified in para. 12).
15. The Parties may use PowerPoint or other usual slides for their oral statements and, subject to the rule on demonstrative exhibits in para. 14, shall submit hard copies (in the number specified in para. 13) prior to the beginning of the statement and electronic copies later on the same day.
16. Documents that do not form part of the record may not be presented at the Hearing unless otherwise agreed by the Parties or authorized by the Tribunal.

F. Original documents

17. The Parties will make available the originals and best available copies inspected at the document inspections of 29 August 2014 and 16-17 April 2015 for the time of examination of the experts.

G. Format and Scope of Examinations

18. Examination of witnesses and experts shall proceed as follows:
 - Direct examination of fact witnesses: The Party presenting fact witness may briefly examine the witness to introduce the witness, make corrections to the written statements and address matters that have arisen since the filing of the witness's last statement;
 - Direct examination of experts: In lieu of direct examination, each expert may make a presentation (with the support of a PowerPoint presentation if he so wishes) of maximum 1 hour setting forth in particular his methodology, conclusions, and areas of agreement and disagreement with the opposing expert;
 - Cross-examination: The other Party may then cross-examine the witness/expert in relation to matters arising out of his or her witness statement or expert report, or direct examination, or other relevant matters of which the witness/expert has direct and personal knowledge related to this phase of proceedings; and
 - Re-direct examination: The Party presenting the witness/expert may then re-examine the witness in relation to matters arising out of the cross-examination.
19. In accordance with paragraph 16.8 of Procedural Order No. 1 ("PO1"), examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
20. In accordance with paragraph 16.10 of PO1, the Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant. The Tribunal may limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant. The Tribunal may also direct that a witness be recalled for further examination at any time.
21. Following examination of the experts by the Parties, the Tribunal may require the forensic experts to answer questions from the Tribunal concurrently (expert conferencing).

H. Order of Appearance of Witnesses and Experts

22. The experts shall be heard before the fact witnesses, the Respondent's expert being first. Subject to a different agreement by the Parties or authorization of the Tribunal, the

Respondent's fact witnesses shall appear first (in the order determined by the Respondent) and shall be followed by the Claimants' fact witnesses (in the order determined by the Claimants).

23. Taking into account the general schedule set out in paragraph 10, the Parties are invited to consult with each other with a view to establishing a detailed scheduling proposal indicating the order of appearance of witnesses, the date and approximate time at which each witness or expert will be presented, being understood that the witnesses and experts will have to be available one half day before and after the scheduled time. The Parties are requested to submit such proposal to the Tribunal by 23 July 2015.

I. Sequestration

24. In accordance with paragraph 16.12 of PO1, unless the Parties and the Tribunal agree otherwise, fact witnesses shall not be allowed in the hearing room before giving their oral evidence with the exception of party representatives. They shall not be given access to the audio recordings and the transcripts of the opening statements and the examinations of the other witnesses before being heard. Where a Party presents one or more of its representatives as a fact witness, one of these Party representatives shall be allowed in the hearing room at all times provided that she/he gives her/his oral evidence first when the examination of witnesses of her/his party starts.
25. Experts may attend the hearing at any time.
26. If there are breaks during the examination of a fact or expert witness, the Tribunal shall direct the witness not to communicate with anyone with respect to his or her evidence.

J. Allocation of Time

27. Together with opening and closing statements (which are not to exceed the maximum times stated in para. 12 above), each Party shall have a total of 17 hours for the entire hearing. The Tribunal may grant short extensions if circumstances so require.
28. Time spent on direct and re-direct examination shall be counted toward the time account of the Party presenting the witness or expert. Time spent on cross-examination shall be counted toward the time account of the Party conducting the cross-examination. Time spent on expert conferencing (see above para. 20) shall be counted in half toward opposing side's time accounts.
29. Questions from the Tribunal, answers to those questions, and procedural interventions by the Tribunal shall not be counted against each Party's time.
30. The Secretary of the Tribunal shall keep a record of each Party's use of time in accordance with the chess clock method and shall report at the end of each day.

III. LOGISTICS

A. Language

31. In accordance with paragraph 11.1 of PO1, the Parties shall present oral statements in English.
32. In accordance with paragraph 11.2 of PO1, witnesses may testify in either English or Bahasa. The ICSID Secretariat shall arrange for simultaneous interpretation services to be provided during the hearing.
33. In accordance with paragraph 11.3 of PO1, the Parties shall bear interpretation costs equally, subject to final allocation of costs by the Tribunal.

B. Transcripts and Sound Recordings

34. The Hearing shall be sound recorded and transcribed verbatim in real time in English. Testimony given in Bahasa will be transcribed from the English interpretation and sound recorded.
35. The ICSID Secretariat shall arrange for sound recording and for court reporting services and shall liaise with the Parties accordingly.
36. The Parties may jointly agree on corrections to the transcripts within 2 weeks following the Hearing. In case of disagreement, the Tribunal will decide.

C. Other logistical aspects

37. ICSID will liaise with the Parties on other logistical aspects (set up, catering, etc.).

IV. POST-HEARING BRIEFS

38. At the conclusion of the Hearing, in consultation with the Parties, the Tribunal will determine whether post-hearing submissions are necessary and, if so, give directions on the time limits, format, and content.

For and on behalf of the Tribunal

[Signed]

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