

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. 11

Document inspection

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. Background

1. The Tribunal recalls that on 16 May 2014, Indonesia requested that the Tribunal order the Claimants to present for inspection the originals of 31 documents (the “Respondent’s Request”).¹ By letter of 28 May 2014, the Claimants objected to the Respondent’s Request. By letter of 6 June 2014, the Respondent submitted comments on the Claimants’ objections and reiterated its request for inspection.
2. By letter of 20 June 2014, the Claimants requested that the Tribunal order the Respondent to present for inspection the originals of (i) all revocation decrees issued by the Regent in connection with the Claimants’ mining licenses, and (ii) the Nusantara group’s license extension applications, if the Tribunal were minded to entertain the Respondent’s request for document inspection at this stage of the proceedings rather than at the hearing on the merits (the “Claimants’ Request”). By letter of 9 July 2014, the Respondent objected to the Claimants’ Request.
3. In its Procedural Order No. 10 of 22 July 2014, the Tribunal granted both the Respondent’s and the Claimants’ Requests and ordered each Party to make the requested originals available for inspection. Specifically, the Tribunal ordered that the Parties make the respective originals available for simultaneous inspection at the World Bank Office in either Washington D.C. or Singapore or Paris, under the supervision of ICSID personnel and in the presence of representatives of both Parties, including their authenticity experts if any. The Tribunal also invited the Parties to agree by 8 August 2014 on a date, time and place (World Bank Office in either Washington D.C. or Singapore or Paris) to perform such inspection by no later than the end of August 2014. Lastly, The Tribunal ordered that each Party provide to the other Party, at least one week in advance of the inspection, a list of the persons who will attend the inspection on its behalf.
4. By emails of 8, 13, and 14 August 2014, the Parties informed the Tribunal that they had failed to agree on date and place for the document inspection. By email of 18 August 2014, the Tribunal informed the Parties of its decision that the inspection would take place in the week of 25 August 2014 in Singapore.

¹ See also Annex 1 to the Respondent’s Request entitled “List of disputed documents”.

5. By email of 19 August 2014, the Claimants informed the Tribunal that they would be available to attend the document inspection, in Singapore, on 29 August 2014. By email of 20 August 2014, the Respondent objected to the “Claimants’ last minute attempt to delay to the Inspection” and requested that the Tribunal fix 26 August 2014 as the date for the document inspection in Singapore. By subsequent email of the same date, the Claimants explained why they and their expert could not attend the document inspection in Singapore prior to 29 August 2014.
6. This Procedural Order addresses in further detail the logistics and procedure of the upcoming document inspection.

II. Date and time of document inspection

7. The Tribunal refers to the Parties' communications of 13 and 14 August 2014, the Centre's communication of 18 August 2014, and the subsequent correspondence from the Parties of 19 and 20 August 2014. In light of all relevant circumstances, the Tribunal has decided that the document inspection shall take place in Singapore on 29 August 2014 from 9:30 am local time to 5:30 pm local time at the latest. The inspection will be held in a dedicated room (the "inspection room") either in the offices of the World Bank or at Maxwell Chambers. The venue will be confirmed by 25 August 2014 at the latest.. The Parties are invited to inform ICSID as soon as possible and in any event no later than 25 August 2014 as to whether the inspection room should have any particular characteristics (e.g. layout, space needed for expert equipment, need for a dark room, projector, etc).

III. Attendance

8. The Parties shall each provide the Centre with a list of participants to the document inspection and specify the role of each of them by 25 August 2014. Ms. Angela Ting, paralegal at ICSID, will attend the inspection and supervise the process in accordance with the Tribunal's decision of 18 August 2014² and the below procedure and instructions.

IV. Types of inspection techniques allowed

9. The inspection techniques that the Parties and their experts intend to use during the inspection shall be in accordance with accepted industry practice.
10. Unless otherwise agreed, each Party shall, under supervision of ICSID, be allowed to take copies of the originals presented for inspection by the other Party.
11. Unless otherwise agreed, each Party and its expert shall inspect the documents in the inspection room.

² See email from ICSID dated 18 August 2014.

V. Audio and video recording of the inspection

12. There shall be an audio and video recording of the document inspection. The Parties are invited to inform the Centre as soon as possible, but no later than 25 August 2014, of any specific requirements they may have that may affect the quality of the video recording, such as the need to conduct part of the inspection in a dark room.

VI. Objections or comments by a Party during the inspection

13. Any objection or comment that a Party may have with respect to the inspection conducted by the other Party or its expert at any time during the inspection shall be audio and video recorded. The inspection may proceed and the objection shall be addressed by the Tribunal after the inspection if necessary, upon the relevant Party's request in writing.

VII. Decision

14. For the foregoing reasons, the Tribunal orders as follows:
 - (i) The document inspection shall take place in Singapore on 29 August 2014 from 9:30 am local time to 5:30 pm local time at the latest. The venue for the inspection (either the offices of the World Bank or Maxwell Chambers) will be confirmed by 25 August 2014 at the latest. The Parties are invited to inform ICSID as soon as possible and in any event no later than 25 August 2014 as to whether the inspection room should have any particular characteristics (e.g. layout, space needed for expert equipment, need for a dark room, projector, etc).
 - (ii) The Parties shall each provide the Centre with a list of participants to the document inspection and specify the role of each of them by 25 August 2014.
 - (iii) The inspection techniques that the Parties' experts intend to use during the inspection shall be in accordance with accepted industry practice.

- (iv) Unless otherwise agreed, each Party shall, under supervision of ICSID, be allowed to take copies of the originals presented for inspection by the other Party.
- (v) Unless otherwise agreed, each Party and its expert shall inspect the documents in the inspection room.
- (vi) There shall be an audio and video recording of the document inspection. The Parties are invited to inform the Centre by 25 August 2014 of any specific requirements they may have that may affect the quality of the video recording, such as the need to conduct part of the inspection in a dark room.
- (vii) Any objection or comment that a Party may have with respect to the inspection conducted by the other Party or its expert at any time during the inspection shall be audio and video recorded. The inspection may proceed and the objection shall be addressed by the Tribunal after the inspection if necessary, upon the relevant Party's request in writing.

On behalf of the Tribunal

[Signed]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 21 August 2014