

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)
Annulment Proceeding**

PROCEDURAL ORDER NO. 2 ON THE ORGANIZATION OF THE HEARING

Members of the ad hoc Committee

Judge Dominique Hascher, President of the *ad hoc* Committee
Professor Dr. Karl-Heinz Böckstiegel, Member of the *ad hoc* Committee
Professor Jean Kalicki, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Laura Bergamini

June 19, 2018

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I. Procedural Background

1. On June 11, 2018, the President of the Committee and the parties held a pre-hearing telephone conference from 7:00am to 7:48am Washington D.C. time.

2. The following participants joined the conference:

Members of the Committee

Judge Dominique Hascher, President of the Committee

ICSID Secretariat

Ms. Laura Bergamini, Secretary of the Committee

On behalf of the Applicants

Mr. Audley Sheppard, Clifford Chance

Dr. Sam Luttrell, Clifford Chance

Dr. Romesh Weeramantry, Clifford Chance

Ms. Clementine Packer, Clifford Chance

On behalf of the Respondent:

Ms. Claudia Frutos-Peterson, Curtis, Mallet-Prevost, Colt & Mosle LLP

Mr. Mark H. O'Donoghue, Curtis, Mallet-Prevost, Colt & Mosle LLP

Mr. Marat Umerov, Curtis, Mallet-Prevost, Colt & Mosle LLP

Mr. Kevin Meehan, Curtis, Mallet-Prevost, Colt & Mosle LLP

Mr. Soenardi Pardi, Hendra Soenardi

Mr. Victor Ricardo, Hendra Soenardi

Mr. Cahyo R. Muzhar, Ministry of Law and Human Rights of the Republic of Indonesia

3. The President of the Committee and the parties considered the parties' emails of May 24, 2018, advising the Committee of the agreements they were able to reach on the schedule of the hearing and its organization and of their respective positions where they were unable to reach an agreement.

4. An audio recording of the pre-hearing telephone conference was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Committee and the parties.

5. The parties' agreements and the Committee's decisions regarding the schedule of the hearing and its organization are recorded in the Procedural Order below.

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II. The Committee's decisions and orders

A. Hearing schedule and allocation of time

(i) Days and hours reserved for the hearing

6. The hearing shall take place between 9.00am and 6.00pm on July 16, 2018, and between 9.00am and 6.30pm on July 17, 2018 (with flexibility as necessary for efficiency).

(ii) Sequence of hearing

7. On May 24, 2018, the parties submitted a joint indicative timetable for the hearing day of July 16, 2018, and their respective proposed timetables for the hearing day of July 17, 2018. The parties' proposed timetables were discussed during the pre-hearing telephone conference.
8. The hearing schedule is attached to this Procedural Order as Annex A.

(iii) Allocation of time between the parties

9. Pursuant to paragraph 17.5 of Procedural Order No. 1 the parties shall be allocated equal time at the hearing. Accordingly, time should in principle be divided equally between the parties in accordance with the hearing schedule set forth in Annex A, with a degree of flexibility depending on how the hearing is progressing and subject to the control of the President.

(iv) The Committee's questions

10. While specific time is reserved to the Committee's questions in Annex A, the parties agree that they will accommodate any questions that the Committee may have within the timetable agreed for the hearing.

(v) Manner of time keeping

11. The Secretary of the Committee shall keep time using the chess-clock method and shall account at the end of each day for the time incurred by the Committee and each party.
12. Time incurred by the Committee's questions, responses to those questions, and any procedural interventions by the Committee shall not count against the parties' allotted time.

B. Examination of Professor Ida Nurlinda

13. The parties disagree on whether Professor Ida Nurlinda should be heard at the hearing.

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14. By email of May 24, 2018, the Applicants have indicated that they do not wish to cross examine Professor Nurlinda. The Respondent has advised that Professor Nurlinda will attend the hearing and is available to answer the questions that the Committee may wish to ask. The Respondent has indicated that Professor Nurlinda would testify in Bahasa.
15. After having heard the parties' arguments and given careful consideration to their respective positions, the Committee has determined that it will not question Professor Nurlinda at the hearing. An efficient planning of the two-day hearing, originally scheduled for the Application for Annulment only, should also reserve sufficient time to present their arguments on both that and the Respondent's Application to Terminate Stay of Enforcement and Request for Security for Costs. Accordingly, Professor Nurlinda's presence at the hearing is not required, and the ICSID Secretariat will not make any arrangements to provide interpretation during the hearing.

C. Hearing Materials

- (i) Rules on the use and distribution of visual aids, including demonstrative exhibits and PowerPoint presentations during the hearing (see POI, para. 17.7)*
16. Hard copies of any PowerPoint presentations shall be distributed prior to their use at the hearing, with one copy for each Member of the Committee, one copy for the court reporter, one copy for the Secretary of the Committee and two copies for the opposing party. The parties shall also exchange electronic copies of their PowerPoint presentations via e-mail and transmit them to the Secretary of the Committee and the Members of the Committee before the end of the hearing.
- (ii) Rules on the submission of new documents into the record during hearing*
17. Paragraph 15.3 of Procedural Order No. 1 will continue to apply during the hearing.
- (iii) Hearing bundles*
18. The parties agree not to provide additional copies of their submissions for the purposes of the hearing, and have indicated that each party will ensure that the Members of the Committee have copies of the parties' submissions and factual exhibits in the format requested by the Committee Members.
19. For the sake of good order, the Committee requests that, at the hearing, the parties provide Professor Böckstiegel, Judge Hascher and the Secretary of the Committee with paper copies of the exhibits or legal authorities (or parts thereof) to which they intend to refer in their oral presentations.
- (iv) USB drives including all briefs, exhibits and authorities, and hyperlinked consolidated indices of exhibits and legal authorities*
20. The parties shall provide by June 28, 2018 to each of the Members of the Committee and the Secretary of the Committee, a joint USB Drive containing electronic versions of all the materials

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filed in the annulment proceeding (in an easily navigable form) and hyperlinked indices to all of the exhibits and authorities.

D. Transcripts

21. Paragraph 18.3 of Procedural Order No. 1 will apply to the arrangements for the correction of the transcripts.

E. Post-hearing briefs and statements of costs

22. Pursuant to paragraph 19 of Procedural Order No. 1, timing and format of post-hearing briefs and statements of costs shall be determined at end of hearing in consultation with the parties.

F. List of issues

23. By email of May 24, 2018, the Applicants proposed that the Committee indicate to the parties in advance of the hearing the matters that it would like the parties' oral submissions to cover. The Respondent has stated that it does not consider such a list of issues to be necessary because the relevant issues have already been framed in the parties' submissions.
24. The Committee has no special instructions regarding content, but instead defers to the parties regarding the issues they consider most appropriate to address during oral submissions.



Judge Dominique Hascher
President of the Committee
Date: June 19, 2018

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Annex A
Hearing Schedule

Day 1 – Monday, July 16, 2018	
9:00am – 9:15am	Introduction / Housekeeping matters, if any
9:15am – 11:15am	Applicants’ Opening Statement
11:15am – 11:30am	Coffee Break
11:30am – 1:30pm	Respondent’s Opening Statement
1:30pm – 2:30pm	Lunch Break
2:30pm – 3:15pm	Applicants’ Rebuttal Submissions
3:15pm – 3:45pm	Coffee Break
3:45pm – 4:30pm	Respondent’s Rebuttal Submissions
4:30pm – 6:00pm	Questions from the Committee and/or recess to allow the Committee to formulate written questions
Day 2 – Tuesday, July 17, 2018	
9:00am – 9:15am	Housekeeping matters, if any
9:15am – 10:15am	Applicants’ responses to the questions from the Committee
10:15am – 11:15am	Respondent’s responses to the questions from the Committee

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11:15am – 11:30am	Coffee Break
11:30am – 12:15pm	Further questions from the Committee
12:15pm – 1:15pm	Lunch Break
1:15pm – 2:15pm	Respondent's submissions on its Termination Application
2:30pm – 3:30pm	Applicants' submission on the Respondent's Termination Application
3:30pm – 3:40pm	Coffee Break
3:40pm – 4:10pm	Respondent's rebuttal on its Termination Application
4:10pm – 4:20pm	Coffee Break
4:20pm – 4:50pm	Applicants' rebuttal on the Respondent's Termination Application
4:50pm – 5:00pm	Coffee Break
5:00pm – 6:30pm	Questions from the Committee and answers to the Committee's questions Housekeeping matters and Committee's concluding remarks