

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. 4

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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Introduction

The common session was held on March 1, 2013, by video link.

Participating in the video conference were:

Members of the Tribunal

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal
Mr. Michael Hwang S.C., Arbitrator
Professor Albert Jan van den Berg, Arbitrator

Assistant to the Tribunal

Mr. Magnus Jesko Langer

Assistant to Mr. Michael Hwang S.C.

Mr. Anthony Cheah Nicholls

ICSID Secretariat

Mr. Paul-Jean Le Cannu

Participating on behalf of Churchill Mining PLC and Planet Mining Pty Ltd

Mr. Stephen Jagusch, Quinn Emanuel Urquhart & Sullivan UK LLP
Mr. Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan UK LLP
Mr. Epaminontas Triantafilou, Quinn Emanuel Urquhart & Sullivan UK LLP

Participating on behalf of Respondent

Dr. Amir Syamsudin, Minister of Law and Human Rights of the Republic of Indonesia, Coordinator of Legal Representative Team of the President of the Republic of Indonesia
Mr. Isran Noor, Regent of East Kutai
Mr. Didi Dermawan, Legal Representative of the Regent of East Kutai and the Minister of Law and Human Rights of the Republic of Indonesia
Dr. Freddy Harris, Secretary of Team Churchill Mining Case, Ministry of Law and Human Rights of the Republic of Indonesia
Mr. Cahyo R. Muzhar, Ministry of Law and Human Rights of the Republic of Indonesia, Supporting Legal Team Member of Legal Representative Team of the President of the Republic of Indonesia
Mr. Richele S. Suwita, Advocate at DNC Advocates at Work, Supporting Legal Team Member of Legal Representative Team of the President of the Republic of Indonesia

Ms. Marcia S. Tanudjaja, Advocate at DNC Advocates at Work, Supporting Legal Team Member of Legal Representative Team of the President of the Republic of Indonesia

Mr. Bagus Priyonggo, Attorney General, Republic of Indonesia

Ms. Nindya Asih Martha Utami, Attorney General, Republic of Indonesia

The President of the Tribunal (President) opened the session at 7:00 am (EST) and welcomed the participants. The President introduced the Tribunal, the Secretary of the Tribunal (Secretary), the Assistant to the Tribunal, and the Assistant to Mr. Hwang, and invited the parties to introduce their respective representatives.

The Tribunal and the parties considered the following:

- The Agenda adopted by the Tribunal (Annex 1) that corresponds to the Draft Agenda circulated by the Secretary on February 27, 2013 and amended by letter of February 28, 2013; and
- The Draft Procedural Order No. 4 (Draft PO4; Annex 2) circulated by the Secretary on February 27, 2013.

The Tribunal and the parties discussed the items on the Agenda as they appear in the Draft PO4.

The session was adjourned at 8:21 am (EST).

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently uploaded to the FTP server established for the case for access by the Members of the Tribunal and the parties.

Following the session, the Tribunal now issues the present

Order

As indicated by the Tribunal in the Centre's letter of February 13, 2013, the purpose of the common session was two-fold: serving as the first session that the Tribunal was to hold in ICSID Case No. ARB/12/40 pursuant to Rule 13 of the ICSID Arbitration Rules; and providing an opportunity to address the practicalities of the consolidation of ICSID Case No. ARB/12/14 and ICSID Case No. ARB/12/40.

1. Consolidation

- 1.1. The Tribunal recalls that Churchill Mining PLC ("Churchill Mining"), Planet Mining Pty Ltd ("Planet Mining"), and the Republic of Indonesia ("Indonesia") have all agreed that the dispute between Churchill Mining and Indonesia, on the one hand, and the dispute between Planet Mining and Indonesia, on the other hand, be adjudicated by the same Tribunal in one consolidated ICSID proceeding (see, *inter alia*, letter of October 4, 2012 from Planet Mining; letter of October 12, 2012 from Churchill Mining; and letter of January 4, 2013 from Indonesia).

- 1.2. The Tribunal has taken note of the parties' respective comments on, and responses to, the Tribunal's questions set forth in the Centre's letter of February 13, 2013.¹ The Tribunal also heard the parties' positions on the modalities of consolidation at the common session. The Tribunal notes that all three parties have expressed the clear intent to resolve the claims submitted to this Tribunal jointly. The Tribunal endorses the parties' procedural choice which it agrees achieves the most reasonable, cost-effective, and fair result for all the parties under the circumstances. The Tribunal further notes that the only point on which the parties were not in agreement was whether the Tribunal should render one award (in respect of both Claimants) or two awards (one in respect of each Claimant).
- 1.3. In view of the parties' agreements and comments, it is hereby decided that:
- 1.3.1. This Tribunal shall adjudicate the dispute between Churchill Mining and Indonesia, on the one hand, and the dispute between Planet Mining and Indonesia, on the other hand, in one consolidated case to which Churchill Mining, Planet Mining, and Indonesia shall each be a party.
 - 1.3.2. The procedural calendar provided under Annex 3 to Procedural Order No. 1, amended by the Tribunal by letter of February 21, 2013 and supplemented by letter of March 1, 2013, shall apply in the consolidated case.
 - 1.3.3. The Tribunal's orders and decisions issued as of the date of the common session shall apply to all three parties, with the exception of Procedural Order No. 3 dealing with the Respondent's Request for provisional measures in the original ICSID Case No. ARB/12/14.
 - 1.3.4. The Tribunal shall decide at a later stage, after consultation with the parties, whether it renders one or two awards.
 - 1.3.5. The Centre shall maintain only one case account and issue requests for advances on costs to both Claimants jointly. ICSID's annual administrative fee shall be charged only once (i.e. to the consolidated case).
 - 1.3.6. The consolidated case shall be referred to as Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia (ICSID Case No. ARB/12/14 and 12/40).
- 1.4. The Tribunal has also taken note of Churchill's letter of February 27, 2013, together with its Amended Request for Arbitration purportedly adding PT Indonesia Coal Development (PT ICD) as Claimant in ICSID Case No. ARB/12/14. By letter of February 28, 2013, the Tribunal informed the parties

¹ Letter from Churchill Mining and Planet Mining dated February 15, 2013; letter from Indonesia dated February 18, 2013.

that it would deal with the request to add PT ICD as Claimant at the common session.

- 1.5. Having heard both parties' positions on the request at the common session, the Tribunal informed the parties by letter of March 4, 2013 that the request is denied. The reasons for the Tribunal's decision are set out at paragraph 1.6 below.
- 1.6. Pursuant to Article 36(2) of the ICSID Convention and ICSID Institutional Rule 2(1), the request for arbitration must identify each party to the proceedings with precision and indicate the date and the instrument by which each has given its consent to arbitration. Thereafter, no new party can be added except if all the others agree to its joinder. PT ICD was not included as a party in the request for arbitration that Churchill filed with the Centre on May 24, 2012. Indonesia stated at the common session that it did not consent to the addition of PT ICD as a party. In the circumstances, the Tribunal cannot but deny the request to add PT ICD as a Claimant in these proceedings.

2. Provisions of Procedural Order No. 1 that shall apply equally to both Churchill Mining and Planet Mining

2.1. The following provisions of Procedural Order No. 1 shall remain unchanged and apply as such in the consolidated case:

- Paragraph 1 (Applicable Arbitration Rules);
- Paragraph 3 (Fees and Expenses of the Tribunal Members);
- Paragraph 5 (Presence and Quorum);
- Paragraph 6 (Decisions of the Tribunal);
- Paragraph 7 (Delegation of Power to Fix Time Limits);
- Paragraph 10 (Place of Proceeding);
- Paragraph 11 (Procedural Language(s));
- Paragraph 12 (Means of Communications) as amended by the Tribunal by letter of February 5, 2013 ;
- Paragraph 13 (Written and Oral Procedures);
- Paragraph 18 (Records of Hearings);
- Paragraph 19 (Publication); and
- Paragraph 20 (Others Matters).

2.2. The other provisions of Procedural Order No. 1 shall be amended as provided in the paragraphs below.

3. Constitution of the Tribunal and the Tribunal Members' Declarations (paragraph 2 in Procedural Order No. 1)
Arbitration Rule 6

3.1. The Tribunal in ICSID Case No. ARB/12/14 was constituted on October 3, 2012, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and

that no party has any objection to the appointment of any Member of the Tribunal.

- 3.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the Secretary on September 20 and 21, and October 3, 2012.
 - 3.3. The Tribunal in ICSID Case No. ARB/12/40 was constituted on January 22, 2013, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
 - 3.4. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the Secretary on January 22, 2013.
4. Assistant to the Tribunal (paragraph 4 in Procedural Order No. 1)
- 4.1. The President explained to the parties at the First Session in ICSID Case No. ARB/12/14 that she considered that it would greatly assist the overall cost and time efficiency of the proceedings if the Tribunal had an assistant. The President proposed, with the approval of the other Members of the Tribunal, that a lawyer of Lévy Kaufmann-Kohler be appointed as assistant to the Tribunal. That lawyer's *curriculum vitae* was to be sent to Churchill Mining and Indonesia shortly, together with a declaration of confidentiality.
 - 4.2. The President further explained that the assistant would undertake only such specific tasks as are assigned to her/him by the Tribunal or the President. The assistant would be subject to the same confidentiality obligations as the Members of the Tribunal and would sign a declaration to that effect.
 - 4.3. Churchill Mining and Indonesia approved the appointment of an assistant to the Tribunal. If after having received the cv of the prospective assistant, they were to have any objection to raise, they would do so promptly. Otherwise, the appointment would become effective. It was also agreed that the assistant would receive an hourly fee of US\$150 (one hundred and fifty United States dollars) for her/his participation in the Tribunal's sessions or for other work performed in connection with the proceedings. She/he would also receive subsistence allowances and be reimbursed for her/his travel and other expenses within the limits prescribed by the Administrative and Financial Regulation 14.
 - 4.4. By letter of December 15, 2013, the Centre circulated the *curriculum vitae* and confidentiality undertaking of Mr. Magnus Jesko Langer further to the instructions of the President of the Tribunal. The President confirmed in that letter that Mr. Langer was independent from the parties.

- 4.5. By letter of December 18, 2013, Counsel for Churchill expressly informed the Tribunal that it had no objection to Mr. Langer's appointment as the assistant to the Tribunal.
 - 4.6. By letter of February 5, 2013, further to the instructions of the President, the Centre confirmed that the appointment of Mr. Langer as assistant to the Tribunal in ICSID Case No. ARB/12/14 had become effective.
 - 4.7. The Tribunal notes that the parties have no objection to Mr. Langer's appointment as the assistant to the Tribunal in the consolidated case.
5. Representation of the Parties (paragraph 8 in Procedural Order No. 1)
Arbitration Rule 18
- 5.1. Each party shall be represented in the consolidated case by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the Tribunal and the ICSID Secretariat promptly of such intended designation.
 - 5.2. By letter of January 24, 2013, Quinn Emanuel Urquhart & Sullivan UK LLP ("Quinn Emanuel") informed the Tribunal in ICSID Case No. ARB/12/14 that Churchill Mining would no longer be represented by Hogan Lovells International LLP ("Hogan Lovells") and that Messrs. Stephen Jagusch, Anthony Sinclair, and Epaminontas Triantafilou of Quinn Emanuel had been designated as its new representatives. By letter of January 29, 2013, Hogan Lovells confirmed that it had withdrawn from its representation of Churchill Mining. By letter of January 31, 2013, Quinn Emanuel submitted a power of attorney from Churchill Mining appointing Messrs. Stephen Jagusch and Anthony Sinclair.
 - 5.3. By letter of letter of January 24, 2013, Quinn Emanuel also informed the Tribunal in ICSID Case No. ARB/12/40 that Planet Mining would no longer be represented by Freshfields Bruckhaus Deringer LLP ("Freshfields") and that Messrs. Stephen Jagusch, Anthony Sinclair, and Epaminontas Triantafilou of Quinn Emanuel had been designated as its new representatives. By letter of February 1, 2013, Quinn Emanuel submitted a power of attorney from Planet Mining appointing Messrs. Stephen Jagusch and Anthony Sinclair.
 - 5.4. By email of February 22, 2013, Indonesia submitted a "substitute power of attorney" in relation to ICSID Case No. ARB/12/14 appointing the following individuals: Didi Dermawan, Legal Representative of Regent of East Kutai; Dr. Freddy Harris of the Directorate General of General Law Administration, Ministry of Law and Human Rights of the Republic of Indonesia; Cahyo R. Muzar of the Ministry of Foreign Affairs of the Republic of Indonesia; Ibrahim Senen, Gita Syahrani, Gunadarma, Rivan F. Ramadhan, Rizky Amelia, Eracita M. Effendy, Lidia I. Sumbayak, Marcia S. Tanudjaja, and Richele S. Suwita, all of DNC Advocates.

5.5. By letter of March 7, 2013, Freshfields confirmed that it no longer represents Planet Mining Pty Ltd in ICSID Case No. ARB/12/40.

5.6. Accordingly, the parties are represented as follows:

For Churchill Mining and Planet Mining

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richele-advocate@work-dnc.com

6. Apportionment of Costs and Advance Payments to ICSID (paragraph 9 in Procedural Order No. 1)
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 6.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 6.2. By letter of October 8, 2012, ICSID requested that Churchill Mining and Indonesia each pay US\$100,000 to defray the initial costs of the proceeding in ICSID Case No. ARB/12/14. By letter of October 18, 2012, ICSID confirmed receipt of Churchill's share of the initial advance payment. By letter of November 6, 2012, ICSID confirmed receipt of Indonesia's share of the initial advance payment.
- 6.3. By letters of February 21 and 22, 2013, Churchill and Indonesia each consented to the costs of the common session being covered by funds from the advance payments made in ICSID Case No. ARB/12/14.
- 6.4. ICSID shall request further advances in the consolidated case as needed. Such requests shall be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.

7. Schedule for Submission of Pleadings (paragraph 14 in Procedural Order No. 1)
Arbitration Rules 20(1)(c) and 31

- 7.1. By letter of February 21 and March 1, 2013, the Tribunal amended the schedule for written submissions provided under paragraph 14 of Procedural Order No. 1 and its Annex 3 as follows:
 - 7.1.1. Churchill Mining and Planet Mining shall file their Memorial by March 13, 2013;
 - 7.1.2. Respondent shall file its Objections to Jurisdiction by April 8, 2013;
 - 7.1.3. Churchill Mining and Planet Mining shall file a Response to the Objections to Jurisdiction by April 30, 2013; and
 - 7.1.4. Respondent shall file a Reply to the Response to the Objections to Jurisdiction by May 6, 2013.
- 7.2. In the event that the parties have filed any witness statements and expert reports in respect of jurisdiction together with their submissions above, they shall identify which witnesses and experts they intend to cross-examine at the hearing by no later than May 6, 2013;

- 7.3. The Tribunal (or its President by delegation of her co-arbitrators) will hold a telephone conference with the parties on May 8, 2013, at 7:00 am EST to address all outstanding matters in relation to the organization of the hearing on jurisdiction.
- 7.4. At the common session, Respondent informed the Tribunal that it wished to file a request for production of documents with respect to disputes that have allegedly arisen between Claimants and the Ridlatama group out of their contractual arrangements, which Claimants have submitted as evidence of ownership of their investment (the "Request"). In the circumstances and for the reasons indicated by the Tribunal in the Centre's letter of March 1, 2013, the Tribunal established and hereby confirms the following schedule for document production to address the Request:
- 7.4.1. Respondent shall file its Request by Wednesday, March 6, 2013;
- 7.4.2. Churchill Mining and Planet Mining shall state their response to the Request and any objections thereto by Monday, March 11, 2013;
- 7.4.3. Respondent shall respond to the aforementioned objections, if any, by Thursday, March 14, 2013;
- 7.4.4. The Tribunal shall rule on the objections, if any, by Tuesday, March 19, 2013;
- 7.4.5. Churchill Mining and Planet Mining shall produce those documents for which no objection has been sustained by the Tribunal by Friday, March 22, 2013.
- 7.5. The calendar for the consolidated case is restated in Annex 3 to this order.
- 7.6. Paragraphs 14.4 and 14.5 of Procedural Order No. 1 remain unchanged.
8. Document Production (paragraph 15 in Procedural Order No. 1)
- 8.1. Paragraph 15.1 of Procedural Order No. 1 is amended as follows:
- The Tribunal has taken note that, in principle, the parties will have no document production requests in connection with jurisdiction other than the Respondent's Request for Document Production of November 22, 2012, which is dealt with in paragraph 14.5 above. At the common session, the Respondent stated that it intended to make additional document requests in connection with jurisdiction. The schedule which the Tribunal established by letter of March 1, 2013 to address Respondent's second Request for Document Production is provided under paragraph 7.4 of Procedural Order No. 4.
- 8.2. Paragraphs 15.2 to 15.13 remain unchanged.

9. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation (paragraph 16 in Procedural Order No. 1)
Convention Article 43(a); Arbitration Rules 24 and 33-36

9.1. Paragraph 16.7 of Procedural Order No. 1 is amended as follows:

By the date set out in paragraph 7.2 of Procedural Order No. 4, the parties will identify the witnesses and experts of the opposing party (having filed written statements and expert reports) whom it intends to cross-examine. Shortly after the parties' notifications, the Tribunal will indicate the witnesses or experts not called by the parties whom it wishes to question, if any.

9.2. Paragraphs 16.1 to 16.6 and 16.8 to 16.13 remain unchanged.

10. Hearings (including Pre-Hearing Organizational Meetings) (paragraph 17 in Procedural Order No. 1)
Arbitration Rule 13(2)

10.1. Paragraph 17.3 of Procedural Order No. 1 is amended as follows:

The Tribunal shall hold a pre-hearing telephone conference with the parties to address any outstanding matters regarding the organization of the hearing on the date specified in paragraph 7.3 of Procedural Order No. 4.

10.2. Paragraphs 17.1 and 17.2 of Procedural Order No. 1 remain unchanged.

11. Other Matters

11.1. A consolidated version of Procedural Orders No. 1 and 4 shall be issued in due course.

For and on behalf of the Tribunal

[Signed]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: March 18, 2013

ANNEX 1

**Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia
(ICSID Case No. ARB/12/14)**

Date: March 1, 2013

By video link

**Time: 7:00 am (Washington, D.C. time); 12:00 noon (London time);
1:00 pm (Geneva and Brussels time; 7:00 pm (Jakarta time); and 8:00 pm (Singapore time)**

Draft Agenda

1. Consolidation – Principle and main aspects of implementation
2. Provisions of Procedural Order No. 1 that shall also apply equally to Planet Mining
3. Provisions of Procedural Order No. 1 amended for purposes of the consolidated case:
 - 3.1 Constitution of the Tribunal and the Tribunal Members' Declarations (paragraph 2 in Procedural Order No. 1)
 - 3.2 Assistant to the Tribunal (paragraph 4 in Procedural Order No. 1)
 - 3.3 Representation of the Parties (paragraph 8 in Procedural Order No. 1)
 - 3.4 Apportionment of Costs and Advance Payments to ICSID (paragraph 9 in Procedural Order No. 1)
 - 3.5 Schedule for Submission of Pleadings (paragraph 14 in Procedural Order No. 1)
 - 3.6 Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation (paragraph 16 in Procedural Order No. 1)
 - 3.7 Hearings (including Pre-Hearing Organizational Meetings) (paragraph 17 in Procedural Order No. 1)
4. Other Matters



February 28, 2013

By email

Churchill Mining PLC
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Republic of Indonesia
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By email

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Republic of Indonesia
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President of the Republic of Indonesia
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By email

c/o Dr. Amir Syamsuddin, S.H., M.H.
Minister of Law and Human Rights
Kementerian Hukum dan Hak Asasi Manusia
Jalan H.R. Rasuna Said Kav. 6-7
Kuningan Jakarta 12940
Indonesia

Re: Churchill Mining PLC v. Republic of Indonesia
(ICSID Case No. ARB/12/14)
and
Planet Mining Pty Ltd v. Republic of Indonesia
(ICSID Case No. ARB/12/40)

Dear Sirs,

The President of the Tribunal has asked me to convey the following message to the parties:

The Tribunal will deal with Claimants' request to add PT Indonesia Coal Development as Claimant as part of agenda item 1, and specifically as new item 1.2 bis of Draft Procedural Order No. 4. The Tribunal will seek Respondent's views on this addition.

Yours sincerely,

[Signed]

Paul-Jean Le Canu
Secretary of the Tribunal

cc: Members of the Tribunal

ANNEX 2

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)**

DRAFT PROCEDURAL ORDER NO. 4

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
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Introduction

The common session was held on March 1, 2013, by video link.

Participating in the video conference were:

Members of the Tribunal

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal
Mr. Michael Hwang S.C., Arbitrator
Professor Albert Jan van den Berg, Arbitrator

ICSID Secretariat

Mr. Paul-Jean Le Cannu

Tribunal Assistant

Mr. Magnus Jesko Langer

Participating on behalf of Churchill Mining PLC and Planet Mining Pty Ltd

Mr. Stephen Jagusch, Quinn Emanuel Urquhart & Sullivan UK LLP
Mr. Anthony Sinclair, Quinn Emanuel Urquhart & Sullivan UK LLP
Mr. Epaminontas Triantafilou, Quinn Emanuel Urquhart & Sullivan UK LLP

Participating on behalf of Respondent

Mr. Amir Syamsudin, Minister of Law and Human Rights of the Republic of Indonesia, Coordinator of Legal Representative Team of the President of the Republic of Indonesia
Mr. Isran Noor, Regent of East Kutai
Mr. Didi Dermawan, Legal Representative of the Regent of East Kutai and the Minister of Law and Human Rights of the Republic of Indonesia
Dr. Freddy Harris, Secretary of Team Churchill Mining Case, Ministry of Law and Human Rights of the Republic of Indonesia
Mr. Cahyo R. Muzhar, Ministry of Law and Human Rights of the Republic of Indonesia, Supporting Legal Team Member of Legal Representative Team of the President of the Republic of Indonesia
Mr. Richele S. Suwita, Advocate at DNC Advocates at Work, Supporting Legal Team Member of Legal Representative Team of the President of the Republic of Indonesia
Ms. Marcia S. Tanudjaja, Advocate at DNC Advocates at Work, Supporting Legal Team Member of Legal Representative Team of the President of the Republic of Indonesia
Mr. Bagus Priyonggo, Attorney General, Republic of Indonesia
Ms. Nindya Asih Martha Utami, Attorney General, Republic of Indonesia

Mr. Riyatno, Head of Legal Affairs, Investment Coordination Board of the Republic of Indonesia

Mr. Endang Supriyadi, Investment Coordination Board of the Republic of Indonesia

Prof. Zuhdan Arif, Head of Legal Affairs, Ministry of Internal Affairs of the Republic of Indonesia

Ms. S. Purwaningsih, Ministry of Internal Affairs of the Republic of Indonesia

Ms. Siti Nurlaita Avianti, Ministry of Internal Affairs of the Republic of Indonesia

The President of the Tribunal (President) opened the session at [7:00 am] (EST) and welcomed the participants. The President introduced the Tribunal, the Secretary of the Tribunal (Secretary), and the Assistant and invited the parties to introduce their respective representatives.

The Tribunal and the parties considered the following:

- The Agenda adopted by the Tribunal (Annex 1) that corresponds to the Draft Agenda circulated by the Secretary on February 27, 2013; and
- The Draft Procedural Order No. [4] (Draft PO[4]; Annex 2) circulated by the Secretary on February 27, 2013.

The Tribunal and the parties discussed the items on the Agenda as they appear in the Draft PO[4].

The session was adjourned at [time] (EST).

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently uploaded to the FTP server established for the case for access by the Members of the Tribunal and the parties.

Following the session, the Tribunal now issues the present

Order

As indicated by the Tribunal in the Centre's letter of February 13, 2013, the purpose of the common session was two-fold: serving as the first session that the Tribunal was to hold in ICSID Case No. ARB/12/40 pursuant to Rule 13 of the ICSID Arbitration Rules; and providing an opportunity to address the practicalities of the consolidation of ICSID Case No. ARB/12/14 and ICSID Case No. ARB/12/40.

1. Consolidation

1.1. The Tribunal recalls that Churchill Mining PLC ("Churchill Mining"), Planet Mining Pty Ltd ("Planet Mining"), and the Republic of Indonesia ("Indonesia") have all agreed that the dispute between Churchill Mining and Indonesia, on the one hand, and the dispute between Planet Mining and Indonesia, on the other hand, be adjudicated by the same Tribunal in one consolidated ICSID proceeding (see, *inter alia*, letter of October 4, 2012 from Planet Mining; letter

of October 12, 2012 from Churchill Mining; and letter of January 4, 2013 from Indonesia).

1.2. The Tribunal has taken note of the parties' respective comments on, and responses to, the Tribunal's questions set forth in the Centre's letter of February 13, 2013.¹

1.3. In view of the parties' agreements and comments, it is hereby decided that:

1.3.1. There shall be one single consolidated case to which Churchill Mining, Planet Mining, and Indonesia shall each be a party.

1.3.2. The procedural calendar provided under Annex 3 to Procedural Order No. 1 and amended by the Tribunal by letter of February 21, 2013, shall apply in the consolidated case.

1.3.3. The Tribunal's orders, decisions and award rendered as of the date of the common session shall apply to all three parties, with the exception of the forthcoming Procedural Order No. 3 dealing with the Respondent's Request for provisional measures in the original ICSID Case No. ARB/12/14.

1.3.4. The Centre shall maintain only one case account and issue requests for advances on costs to both Claimants jointly, not separately. ICSID's annual administrative fee shall be charged only once (i.e. to the consolidated case).

1.3.5. The consolidated case shall be referred to as Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia (ICSID Case No. ARB/12/14).

1.3.6. Planet Mining Pty Ltd v. Republic of Indonesia (ICSID Case No. ARB/12/40) shall be discontinued.

2. Provisions of Procedural Order No. 1 that shall apply equally to both Churchill Mining and Planet Mining

2.1. The following provisions of Procedural Order No. 1 shall remain unchanged and apply as such in the consolidated case:

- Paragraph 1 (Applicable Arbitration Rules);
- Paragraph 3 (Fees and Expenses of the Tribunal Members);
- Paragraph 5 (Presence and Quorum);
- Paragraph 6 (Decisions of the Tribunal);

¹ Letter from Churchill Mining and Planet Mining dated February 15, 2013; letter from the Indonesia dated February 18, 2013.

- Paragraph 7 (Delegation of Power to Fix Time Limits);
- Paragraph 10 (Place of Proceeding);
- Paragraph 11 (Procedural Language(s));
- Paragraph 12 (Means of Communications) as amended by the Tribunal by letter of February 5, 2013 ;
- Paragraph 13 (Written and Oral Procedures);
- Paragraph 15 (Document Production);
- Paragraph 18 (Records of Hearings);
- Paragraph 19 (Publication); and
- Paragraph 20 (Others Matters).

2.2. The other provisions of Procedural Order No. 1 shall be amended as provided in the paragraphs below.

3. Constitution of the Tribunal and the Tribunal Members' Declarations (paragraph 2 in Procedural Order No. 1)
Arbitration Rule 6

3.1. The Tribunal in ICSID Case No. ARB/12/14 was constituted on October 3, 2012, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

3.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the Secretary on September 20 and 21, and October 3, 2012.

3.3. The Tribunal in ICSID Case No. ARB/12/40 was constituted on January 22, 2013, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

3.4. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the Secretary on January 22, 2013.

4. Assistant to the Tribunal (paragraph 4 in Procedural Order No. 1)

4.1. The President explained to the parties at the First Session in ICSID Case No. ARB/12/14 that she considered that it would greatly assist the overall cost and time efficiency of the proceedings if the Tribunal had an assistant. The President proposed, with the approval of the other Members of the Tribunal, that a lawyer of Lévy Kaufmann-Kohler be appointed as assistant to the Tribunal. That lawyer's *curriculum vitae* was to be sent to Churchill Mining and Indonesia shortly, together with a declaration of confidentiality.

- 4.2. The President further explained that the assistant would undertake only such specific tasks as are assigned to her/him by the Tribunal or the President. The assistant would be subject to the same confidentiality obligations as the Members of the Tribunal and would sign a declaration to that effect.
 - 4.3. Churchill Mining and Indonesia approved the appointment of an assistant to the Tribunal. If after having received the cv of the prospective assistant, they were to have any objection to raise, they would do so promptly. Otherwise, the appointment would become effective. It was also agreed that the assistant would receive an hourly fee of US\$150 (one hundred and fifty United States dollars) for her/his participation in the Tribunal's sessions or for other work performed in connection with the proceedings. She/he would also receive subsistence allowances and be reimbursed for her/his travel and other expenses within the limits prescribed by the Administrative and Financial Regulation 14.
 - 4.4. By letter of December 15, 2013, the Centre circulated the *curriculum vitae* and confidentiality undertaking of Mr. Magnus Jesko Langer further to the instructions of the President of the Tribunal. The President confirmed in that letter that Mr. Langer was independent from the parties.
 - 4.5. By letter of December 18, 2013, Counsel for Churchill expressly informed the Tribunal that it had no objection to Mr. Langer's appointment as the assistant to the Tribunal.
 - 4.6. By letter of February 5, 2013, further to the instructions of the President, the Centre confirmed that the appointment of Mr. Magnus Langer as assistant to the Tribunal in ICSID Case No. ARB/12/14 had become effective.
 - 4.7. The Tribunal notes that the parties have no objection to Mr. Langer's appointment as the assistant to the Tribunal in the consolidated case.
5. Representation of the Parties (paragraph 8 in Procedural Order No. 1)
Arbitration Rule 18
- 5.1. Each party shall be represented in the consolidated case by its respective counsel listed below and may designate additional agents, counsel, or advocates by notifying the Tribunal and the ICSID Secretariat promptly of such intended designation.
 - 5.2. By letter of January 24, 2013, Quinn Emanuel Urquhart & Sullivan UK LLP ("Quinn Emanuel") informed the Tribunal in ICSID Case No. ARB/12/14 that Churchill Mining would no longer be represented by Hogan Lovells International LLP ("Hogan Lovells") and that Messrs. Stephen Jagusch, Anthony Sinclair, and Epaminontas Triantafilou of Quinn Emanuel had been designated as its new representatives. By letter of January 29, 2013, Hogan Lovells confirmed that it had withdrawn from its representation of Churchill Mining. By letter of January 31, 2013, Quinn Emanuel submitted a power of

attorney from Churchill Mining appointing Messrs. Stephen Jagusch and Anthony Sinclair.

- 5.3. By letter of letter of January 24, 2013, Quinn Emanuel also informed the Tribunal in ICSID Case No. ARB/12/40 that Planet Mining would no longer be represented by Freshfields Bruckhaus Deringer LLP (“Freshfields”) and that Messrs. Stephen Jagusch, Anthony Sinclair, and Epaminontas Triantafilou of Quinn Emanuel had been designated as its new representatives. By letter of February 1, 2013, Quinn Emanuel submitted a power of attorney from Planet Mining appointing Messrs. Stephen Jagusch and Anthony Sinclair.
- 5.4. By email of February 22, 2013, Indonesia submitted a “substitute power of attorney” in relation to ICSID Case No. ARB/12/14 appointing the following individuals: Didi Dermawan, Legal Representative of Regent of East Kutai; Dr. Freddy Harris of the Directorate General of General Law Administration, Ministry of Law and Human Rights of the Republic of Indonesia; Cahyo R. Muzar of the Ministry of Foreign Affairs of the Republic of Indonesia; Ibrahim Senen, Gita Syahrani, Gunadarma, Rivan F. Ramadhan, Rizky Amelia, Eracita M. Effendy, Lidia I. Sumbayak, Marcia S. Tanudjaja, and Richele S. Suwita, all of DNC Advocate.
- 5.5. Accordingly, the parties are represented as follows:

For Churchill Mining and Planet Mining

Mr. Stephen Jagusch
Mr. Anthony Sinclair,
Mr. Epaminontas Triantafilou
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16 Old Bailey
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Tel:
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For Indonesia

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6. Apportionment of Costs and Advance Payments to ICSID (paragraph 9 in Procedural Order No. 1)
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 6.1. The parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 6.2. By letter of October 8, 2012, ICSID requested that Churchill Mining and Indonesia each pay US\$100,000 to defray the initial costs of the proceeding in ICSID Case No. ARB/12/14. By letter of October 18, 2012, ICSID confirmed receipt of Churchill's share of the initial advance payment. By letter of November 6, 2012, ICSID confirmed receipt of Indonesia's share of the initial advance payment.
- 6.3. By letters of February 21 and 22, 2013, Churchill and Indonesia each consented to the costs of the common session being covered by funds from the advance payments made in ICSID Case No. ARB/12/14.
- 6.4. ICSID shall request further advances in the consolidated case as needed. Such requests shall be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.

7. Schedule for Submission of Pleadings (paragraph 14 in Procedural Order No. 1)
Arbitration Rules 20(1)(c) and 31

- 7.1. By letter of February 21, 2013, The Tribunal amended the schedule for written submissions provided under paragraph 14 of Procedural Order No. 1 and its Annex 3 as follows:
 - 7.1.1. Churchill Mining and Planet Mining shall file their Memorial by March 13, 2013;
 - 7.1.2. Respondent shall file its Objections to Jurisdiction by April 8, 2013;
 - 7.1.3. Churchill Mining and Planet Mining shall file a Response to the Objections to Jurisdiction by April 30, 2013;
- 7.2. In the event that the parties have filed any witness statements and expert reports in respect of jurisdiction together with their submissions above, they shall identify which witnesses and experts they intend to cross-examine at the hearing by no later than May 6, 2013;
- 7.3. The Tribunal (or its President by delegation of her co-arbitrators) will hold a telephone conference with the parties on May 8, 2013, at 7:00 am EST to address all outstanding matters in relation to the organization of the hearing

on jurisdiction.

- 7.4. A hearing on jurisdiction will take place on May 13, 2013, May 14 being kept as a reserve day (see paragraph 17 of Procedural Order No. 1).
- 7.5. The calendar for the consolidated case is restated in Annex 3 to this order [to be established after the common session].
- 7.6. Paragraphs 14.4 and 14.5 of Procedural Order No. 1 remain unchanged.
8. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation (paragraph 16 in Procedural Order No. 1)
Convention Article 43(a); Arbitration Rules 24 and 33-36
- 8.1. Paragraph 16.7 of Procedural Order No. 1 is amended as follows:
- By the date set out in paragraph 7.2 of Procedural Order No. [4], the parties will identify the witnesses and experts of the opposing party (having filed written statements and expert reports) whom it intends to cross-examine. Shortly after the parties' notifications, the Tribunal will indicate the witnesses or experts not called by the parties whom it wishes to question, if any.
- 8.2. Paragraphs 16.1 to 16.6 and 16.8 to 16.13 remain unchanged.
9. Hearings (including Pre-Hearing Organizational Meetings) (paragraph 17 in Procedural Order No. 1)
Arbitration Rule 13(2)
- 9.1. Paragraph 17.3 of Procedural Order No. 1 is amended as follows:
- The Tribunal shall hold a pre-hearing telephone conference with the parties to address any outstanding matters regarding the organization of the hearing on the date specified in paragraph 7.3 of Procedural Order No. [4].
- 9.2. Paragraphs 17.1 and 17.2 of Procedural Order No. 1 remain unchanged.
10. Other Matters

For and on behalf of the Tribunal

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: March #, 2013

ANNEX 1

**Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia
(ICSID Case No. ARB/12/14)**

Date: March 1, 2013

By video link

**Time: 7:00 am (Washington, D.C. time); 12:00 noon (London time);
1:00 pm (Geneva and Brussels time; 7:00 pm (Jakarta time); and 8:00 pm (Singapore time)**

Draft Agenda

1. Consolidation – Principle and main aspects of implementation
2. Provisions of Procedural Order No. 1 that shall also apply equally to Planet Mining
3. Provisions of Procedural Order No. 1 amended for purposes of the consolidated case:
 - 3.1 Constitution of the Tribunal and the Tribunal Members' Declarations (paragraph 2 in Procedural Order No. 1)
 - 3.2 Assistant to the Tribunal (paragraph 4 in Procedural Order No. 1)
 - 3.3 Representation of the Parties (paragraph 8 in Procedural Order No. 1)
 - 3.4 Apportionment of Costs and Advance Payments to ICSID (paragraph 9 in Procedural Order No. 1)
 - 3.5 Schedule for Submission of Pleadings (paragraph 14 in Procedural Order No. 1)
 - 3.6 Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation (paragraph 16 in Procedural Order No. 1)
 - 3.7 Hearings (including Pre-Hearing Organizational Meetings) (paragraph 17 in Procedural Order No. 1)
4. Other Matters

ANNEX 2

ANNEX 3

ANNEX 3

CONSOLIDATED SCHEDULE OF WRITTEN PLEADINGS AND HEARING	
First Request for Document Production	
December 17, 2012	Churchill Mining's production of the documents requested by Respondent on November 22, 2012, together with a brief explanatory note
Request for Provisional Measures	
December 17, 2012	Churchill Mining's Response to the Request for Provisional Measures
January 7, 2013	Respondent's Reply
January 21, 2013	Churchill Mining's Rejoinder
Jurisdiction/Merits	
March 6, 2013	Respondent's Second Request for Document Production
March 11, 2013	Churchill Mining and Planet Mining's Response and Objections to the Request for Document Production
March 13, 2013	Churchill Mining and Planet Mining's Memorial
March 14, 2013	Respondent's Response to Objections to the Request for Document Production
March 19, 2013	Tribunal's decision on the Objections to the Request to Document Production
March 22, 2013	Churchill Mining and Planet Mining's production of documents for which no objection has been sustained by the Tribunal
April 8, 2013	Respondent's Objections to Jurisdiction
April 30, 2013	Churchill Mining and Planet Mining's Response to the Objections to Jurisdiction
May 6, 2013	Respondent's Reply to the Response to the Objections to Jurisdiction Parties identify which witnesses and experts they intend to cross-examine at the hearing
May 8, 2013 7:00 am (EST)	Pre-hearing telephone conference
May 13, 2013 (May 14, 2013 reserved)	Hearing on Jurisdiction