

U.K. Miner Challenges Indonesia

Churchill Mining Raises Possibility of International Arbitration in Dispute Over Multibillion-Dollar Deposit

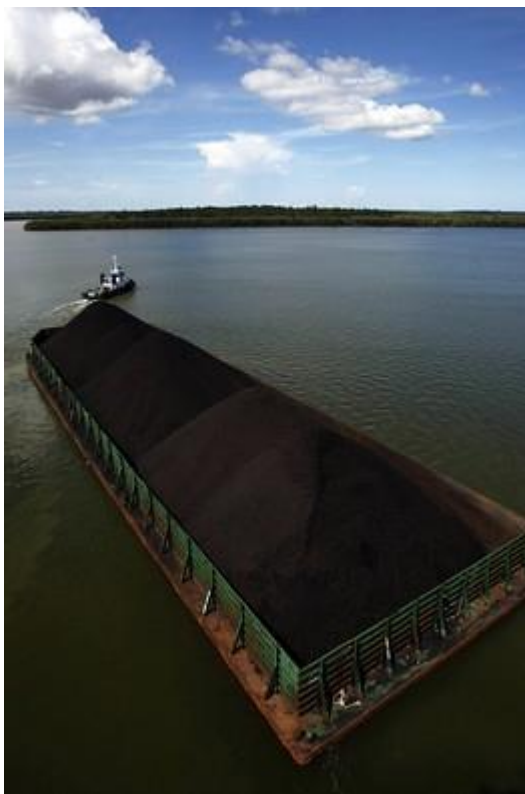
- **Article**

By [ERIC BELLMAN](#)

JAKARTA, Indonesia—[Churchill Mining](#) PLC has moved toward taking Indonesia to international arbitration, saying the company was unfairly stripped of a multibillion-dollar coal discovery in the jungles of Borneo.

Stymied by Indonesian courts and regulators, the London-based company has sent a letter to the country's president and other officials, threatening to seek arbitration.

While the dispute goes to the core of Churchill's business, the struggle also offers a cautionary tale for any company interested in diving into Indonesia's booming commodities sector.



Reuters

A barge transports coal from the Berau district of East Kalimantan province, in Indonesia.

Churchill in 2008 uncovered a giant deposit in the coal-rich province of East Kalimantan on the island of Borneo. The company says it had the proper government licenses to explore and extract coal and has invested more than \$40 million on the project. Churchill's surveys eventually showed that it had discovered 2.73 billion tons

of coal, making the deposit the second-largest reserve in Indonesia and the seventh-largest in the world.

But within months of announcing its discovery—enough coal to generate a billion dollars in revenue annually for decades, the company estimates—Churchill started running into trouble. The local government started sending mixed messages on whether Churchill's licenses were valid, and a rival company said it had the mining rights to the same region. An official in East Kalimantan revoked Churchill's licenses, saying the company had cut protected forest illegally, which Churchill denies.

After taking the matter to Indonesian courts and regulators, with no satisfaction, the company says it sent a letter to Indonesian President Susilo Bambang Yudhoyono, the country's foreign minister and four other government offices last week. The letter outlines Churchill's complaints and asks for assistance. It represents the first step toward seeking international arbitration as the company has to establish that it has exhausted Indonesian remedies before Churchill can bring the dispute to a global body. Churchill says it could seek redress at the International Centre for Settlement of Investment Disputes in Washington.

"If an amicable resolution cannot be achieved, we regret that Churchill will have no other choice than to initiate international arbitration against the republic of Indonesia, thus putting Indonesia's reputation as a reliable country for foreign investment at risk," says the letter, a copy of the which was reviewed by The Wall Street Journal. "The treatment of Churchill...has raised significant questions for foreign investors about the Indonesian government's willingness to maintain a reliable legal environment for foreign investment."



A spokesman for President Yudhoyono said Thursday that the letter hadn't reached the president.

The spokesman, Julian Pasha, said mining licensing issues are handled on the local level. "We are not involved and have no knowledge about the case," he said.

"However the Indonesian position is clear. We are committed to creating a good investment climate for investors."

Churchill's rights to the coal were revoked last year after local officials said the company had cut down protected forest. Churchill challenged the decision, but two Indonesian courts affirmed the local regent's decision. The company is waiting for the case to be heard by Indonesia's Supreme Court, which could take years.

Separately, Indonesia's Nusantara Group has been given licenses to explore for coal and exploit the area where Churchill discovered resources, according to the Churchill letter and court documents. Churchill says earlier licenses held by Nusantara had expired.

Attempts to reach Nusantara have been unsuccessful.

Churchill's share price has plunged more than 90% this year as the company has said that it no longer has control of the coal discovery, which is the company's principal asset.

Churchill Executive Chairman David Quinlivan said the company had planned to build a port and other infrastructure to start exporting the coal but now is conserving its money for a long battle. The company still has \$15 million in cash reserves, he said.

While Indonesia is the largest economy in Southeast Asia and the world's largest exporter of thermal coal, much of the multibillion-dollar coal business is managed by local governments, which have considerable power over the implementation of projects. Investors have to conduct thorough due diligence, have smart local partners and line up powerful political backers, analysts say.

"I feel sorry" for Churchill, said a foreign coal investor. His company looked at exploring in the same region years ago but was concerned about overlapping claims and unpredictable local leaders, he said. "You have to do your homework."

"Resource-wise, Indonesia is a fantastic country with enormous mineral wealth," Mr. Quinlivan said. "But you have to be able to guarantee foreign investors they will have security of title, and it can't be stripped away from them by these sorts of things."

Many analysts and investors said trying to find treasure in the jungles of Borneo often is confusing. Unclear regulations, overlapping government jurisdictions and the absence of precise, current maps outlining various parties' claims add to the hurdles in such areas as oil exploration, expansion of palm-oil plantations, geothermal-power development, executives and analysts said.

—Yayu Yuniar
contributed to this article