

Newmont discontinues arbitration after export restriction

 By Jackwell Feris

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On 30 June 2014 the International Centre for Settlement of Investment Disputes (ICSID) received a request for arbitration from Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara (Newmont) for the institution of arbitration proceedings under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention), in respect of a dispute with the Republic of Indonesia relating to the restrictions imposed by the Indonesia government on the export of raw or semi-processed minerals such as copper.



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The disputes was pursuant to the Indonesian Parliament passing Law No. 4 of 2009 on Mineral and Coal Mining. The new mining law has two aspects which appears to have caused a dampening effect on foreign investment in the Indonesian resources sector, namely:

- the export of unprocessed minerals after 12 January 2014 is prohibited, requiring mining companies to process and refine their product in Indonesia; and
- accelerate divestment requirement, under which foreign shareholders in companies holding a mining production permit are required to divest shares to achieve majority Indonesian ownership within ten years from the commencement of commercial production.

On 25 August 2014, prior to the constitution of an Arbitral Tribunal, the ICSID Secretariat received a letter from Newmont, requesting the discontinuance of the proceedings.

Relevance to South Africa:

- The measures Indonesia imposed with its new mining law are similar to those contemplated by South Africa and other African countries;
- despite the termination of certain of South Africa's Bilateral Investment Treaties (BITS), foreign investors still have

recourse to international arbitration forums (except for the ICSID) during such sunset periods contemplated by the respective terminated BITs; and

- this is specifically important in relation to similar export restrictions South Africa intends to impose as discussed above.

ABOUT JACKWELL FERIS

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