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Churchill Mining Takes The Fight For East Kutai To The Indonesian Courts, And To The Court Of International Public Opinion

By Alastair Ford

Crunch time for David Quinlivan came in March 2011. At that point he had to decide whether he was going to suffer the slings and arrows that appeared to have holed [Churchill Mining](#) below the waterline, or whether he was going to take arms against Churchill's sea of troubles, and by opposing, end them. Not an easy choice, one imagines, given that amidst all the bubbling froth and confusion that surrounded the revocation of Churchill's rights over its East Kutai coal project in Indonesia, the hand of one of the country's richest men was just about discernible stirring the pot.

But David's no stranger to mining, and he's no push over either. As far as industry qualifications go, he ticks lots of boxes: he's a fellow of the Australian Institute of Mining and Metallurgy, a Chartered Professional Mining Engineer, and he holds a First Class Mine Managers certificate. He's also been around the block once or twice at the corporate level, having had a long association with Mt Gibson Iron, with Avoca Gold, and with Alacer, the rising mid-tier star that emerged out of the combination of Avoca with Anatolia. He knows what it takes to be a director, what the pitfalls and responsibilities are, and what the stakes are when things start going wrong.

And one way or another, things had gone wrong at Churchill, big time. Billions of tonnes of JORC compliant coal had been wrested from its grasp by the actions of a rival claimant to the same ground. And perhaps unsurprisingly, the company's biggest shareholder, a Swiss fund called Pala, had lost faith in the chief executive Paul Mazak. Crunch time. From minding his own business as a non-exec on a company that had apparently been just on the verge of finalising funding to the tune of over a billion dollars, he was suddenly thrust into the limelight. On 21st March 2011 came the announcement, which was very specific in its detail: David had been appointed executive chairman and was to take over the "day-to-day running" of the company.

What precisely that would mean wasn't entirely clear at that stage. The context was a drop in the Churchill share price from 120p to less than 20p, so in that sense the worst was already over. But what to do now? Even if David were to take arms against Churchill's sea of troubles, how was he to oppose, and hopefully end them? So far, since the rival claim from local miner Nusantara came in, Churchill has spent around US\$2 million in legal bills. The official channels are being flooded with Churchill's legal petitions, and David Quinlivan has got to know his way around the four different tiers of the Indonesian legal system.

That's step one. But David is also mindful that Churchill's case will benefit exponentially from the oxygen of publicity. "We've been providing briefings to all the missions in Indonesia", he says, and he's drawn up a document summarizing the key issues in the Churchill case which he aims to circulate as widely as possible. In it he argues that the credibility of Indonesian governance, the country's legal system, and its openness to foreign investors are all called into doubt by the court action which revoked the East Kutai licence.

All true, no doubt. But life's never simple. The issues around the ownership of East Kutai are murky, and although the Churchill case looks strong on paper, Nusantara's claim also has a certain shaky substance to it. Nusantara used to have a claim over the same ground, but it expired in 2006. Along came Churchill and its partners, who then picked up the ground in good faith. However, the licence was then reissued to Nusantara in 2008 by a certain colourful local official, unbeknownst to Churchill, and while the Churchill licence was still valid. The two licenses then ran concurrently without bumping into each other until Churchill was on the verge of pressing the development button, at which point Nusantara put its head over the parapet and objected, successfully. In the midst of all that, just to muddy the water, Indonesia introduced a new mining code, under which all licences were re-classified. Sound complicated? – that was the simplified version.

Meanwhile, the talk in the pubs and the bars of Jakarta is rife with theories as to who's actually behind the move against Churchill. The most common version is that one of the backers of Nusantara sold a majority stake in the East Kutai ground to Indonesia's third richest man, even though he didn't actually own the rights to it. Realising that he might have been sold a pup, the buyer responded by convincing the seller, in no uncertain terms, to get the problem fixed, and fast. So he backtracked, squared things with the local official who then ducked away from an investigation by the Aim team, and the issue rolled on. As things stand, he's got his way, Churchill's lost out, and the old, questionable claims have been upheld.

The irony, though, is that Nusantara is now on the property doing exactly the same work in the forests that Churchill was censured for doing. No censure for Nusantara so far, and no revocation of its licences either. Under WTO rules and bilateral treaties, that's illegal, David points out. How much ice that argument will eventually cut in Indonesia, which is famously corrupt, remains to be seen. But Churchill is still hopeful that it can cut some sort of a deal. As far as damages and compensation are concerned, David's not keen. "That's a long hard road to hoe", he says. "That's the last option. You just don't want to be doing a scorched earth policy." There's still US\$19.5 million in the Churchill kitty, so the company can afford to keep exploring its options for now. One of those options, of course, is that it gets another asset. But we're a little way away from that outcome just yet.

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