

In the matter of an arbitration
under the Arbitration Rules of
the United Nations Commission
on International Trade Law (2021)

PCA Case No. 2023-40

Permanent Court of Arbitration
Peace Palace
The Hague
The Netherlands

Day 2

Tuesday, 17 September 2024

Hearing on Preliminary Objections

Before:

PROFESSOR GABRIELLE KAUFMANN-KOHLER
MR WILLIAM KIRTLEY
PROFESSOR DONALD MCRAE

ZEPH INVESTMENTS PTE LTD

Claimant

-v-

THE COMMONWEALTH OF AUSTRALIA

Respondent

BRYCE WILLIAMS, registrar and legal counsel,
LILIA MENDOZA-ROSALES, assistant legal counsel, and
BENJAMIN CRADDOCK, senior case manager, appeared for
the Permanent Court of Arbitration.
Tribunal Secretary: LUKAS MONTOYA

Transcript produced by Trevor McGowan,
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MICHAEL SOPHOCLES, counsel and Claimant party assisting
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ELECTRONIC PRESENTATION OF EVIDENCE

JOHN LOPEZ, Opus 2 International

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08:52 1 Tuesday, 17 September 2024
 2 (9.30 am)
 3 THE PRESIDENT: So now we can start Day 2 of this hearing.
 4 Good morning to everyone; also to those who are watching
 5 remotely.
 6 We are ready to start with the examinations. Is
 7 there anything the parties would like to raise before we
 8 start with Mr Palmer's examination?
 9 DR DONAGHUE: There's nothing from us, Madam President.
 10 THE PRESIDENT: Thank you. On your side?
 11 MR PALMER: Nothing from us, no.
 12 THE PRESIDENT: Fine.
 13 Then, Mr Palmer, I would like to ask you to sit at
 14 the witness table.
 15 (9.31 am)
 16 MR CLIVE PALMER (called)
 17 THE PRESIDENT: Can you please switch on the microphone and
 18 then you leave it on, so you don't have to think about
 19 it as we go along.
 20 MR PALMER: Thank you.
 21 THE PRESIDENT: Do you have your witness statements with
 22 you?
 23 MR PALMER: Yes, they are here (indicating).
 24 THE PRESIDENT: I don't think you have to confirm to us that
 25 you are Clive Frederick Palmer. You are the CEO of

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09:32 1 THE PRESIDENT: Yes, please.
 2 MR BYRNE: We don't have any introductory questions.
 3 THE PRESIDENT: You don't. Fine.
 4 Then we can go directly to Respondent.
 5 DR DONAGHUE: Thank you, Madam President.
 6 (9.33 am)
 7 Cross-examination by DR DONAGHUE
 8 Q. Good morning, Mr Palmer.
 9 A. Good morning.
 10 Q. You are the ultimate 100% owner of both Mineralogy
 11 Proprietary Limited and the Claimant, Zeph Investments;
 12 is that right?
 13 A. I am the 100% owner of Zeph Investments, and
 14 Zeph Investments is the owner of Mineralogy.
 15 Q. Thank you.
 16 You agree that the decision to restructure the
 17 Mineralogy Group in December 2018 and January 2019 by
 18 interposing first Mineralogy International Limited and
 19 then Zeph was a decision made by you personally?
 20 A. Not at those dates. I made a decision back in June to
 21 structure offshore -- I think it's in my witness
 22 statement -- in early June. And subsequently -- if
 23 I can explain -- subsequently, I think it would have
 24 been in early January, I decided to do that structure
 25 that you've outlined.

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09:31 1 Zeph; you are also director of Zeph. You are also
 2 director of Mineralogy International, which we call MIL,
 3 and of Mineralogy.
 4 MR PALMER: That's correct, yes.
 5 THE PRESIDENT: You have provided us with a number of
 6 written statements, seven in total, but those which are
 7 relevant for our purposes today are witness
 8 statements 1, 5, 6 and 7?
 9 MR PALMER: That's correct, yes.
 10 THE PRESIDENT: That's correct, yes.
 11 You are heard as a witness. As a witness, you are
 12 under a duty to tell us the truth. I would like you to
 13 confirm this by reading the witness declaration into the
 14 record. It should be on the table in front of you.
 15 Is it?
 16 MR PALMER: Yes. I solemnly declare upon my honour and
 17 conscience that I will speak the truth, the whole truth,
 18 and nothing but the truth.
 19 THE PRESIDENT: Fine, thank you.
 20 So you know, obviously, how we proceed. There may
 21 be some introductory questions by the Claimant, and then
 22 we turn to the Respondent for cross-examination.
 23 MR PALMER: Certainly.
 24 THE PRESIDENT: Who will do the introductory questions?
 25 MR BYRNE: Thank you, Madam President.

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09:33 1 Q. Alright. So the dates that I put to you were the dates
 2 when the restructure occurred. Do you agree that the
 3 restructure occurred with Mineralogy International in
 4 December 2018?
 5 A. December 2018.
 6 Q. Yes.
 7 A. I think it was the 12th or 14th maybe. The 14th,
 8 I think.
 9 Q. And then with Zeph in -- we'll come to the precise
 10 dates, but in January 2019?
 11 A. Yes. That's correct, yes.
 12 Q. Yes. And my question was: the decision to undertake
 13 that restructure was a decision made by you personally?
 14 A. No. There was minutes -- board minutes, I think, which
 15 are in my witness statements. It was made by the boards
 16 of directors of the various different companies.
 17 I made a decision that I wanted to restructure the
 18 companies back in June 2018, as the ultimate holder of
 19 the companies --
 20 Q. Alright.
 21 A. -- but those actual decisions had to be made in the
 22 corporate structures and had to be endorsed by the
 23 directors, who had to independently exercise their own
 24 judgment in respect of those resolutions.
 25 Q. Alright. Well, can Mr Palmer be shown C1/17/19. This

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09:34 1 is your fifth witness statement at paragraph 51.
 2 (Pause)
 3 A. I'll just have a read of this.
 4 Q. Of course. You can turn it up, or you can probably see
 5 it on the screen in front of you, whichever is easier
 6 for you.
 7 A. Okay.
 8 Q. And I'm inviting your attention to the fifth line down.
 9 A. Okay. I'll just have a read of it. (Pause)
 10 I'll just have a look at the preceding paragraph
 11 quickly. (Pause)
 12 Yes, I've read that.
 13 Q. Yes, so all I was putting to you is what I thought was
 14 uncontroversial in paragraph 51: that the decision to
 15 incorporate in Singapore was a decision made by you
 16 personally, solely by you.
 17 A. It was. And it says here "[made] in June 2018" --
 18 Q. Yes. Well, I'm going to explore the date with you.
 19 A. Sure.
 20 Q. But I'm just focusing on who made the decision.
 21 A. Yes, I made the decision then that that was in my
 22 interest to do that.
 23 Q. Alright.
 24 Now, in your various witness statements, do you
 25 agree that you have identified the two dominant

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09:37 1 coal and considering tax aspects for my personal tax."
 2 And then there's a third reason:
 3 "It ... seemed beneficial to have [a] structure set
 4 up because it was good to diversify operations and seek
 5 ... business opportunities."
 6 Are they the reasons that you're putting to the
 7 Tribunal?
 8 A. Can I just have a check of that one? (Pause)
 9 I say in paragraph 84 that the dominant reasons were
 10 for the share swap and for coal and considering tax
 11 aspects. But I also say:
 12 "It also seemed beneficial to have the structure set
 13 up because it was good to diversify operations and to
 14 seek further business opportunities."
 15 Q. Okay. So just to set the parameters for what the
 16 Tribunal needs to consider, we have reason number 1,
 17 coal funding; reason number 2, personal tax; reason
 18 number 3, good to diversify operations and seek business
 19 operations. Is that the total universe of reasons that
 20 you are relying upon?
 21 A. That's right. That's when I made the decision in June,
 22 right?
 23 Q. Okay. But they're the only three reasons you're asking
 24 the --
 25 A. Four is --

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09:36 1 reasons -- sometimes you call them "dominant reasons" or
 2 sometimes you call them "primary reasons" -- but the two
 3 primary or dominant reasons for the restructure that
 4 introduces Zeph, as being: (1) to secure funding for the
 5 proposed Waratah coal mine in Queensland; and (2) to
 6 obtain personal tax benefits if you moved to Singapore?
 7 Do you agree that those are the two main reasons?
 8 A. Well, the other reason which I should -- I've talked
 9 about --
 10 Q. Can we focus on the first two and then come to others?
 11 A. Well, I think there's additional reason --
 12 Q. I'm going to ask you if there are others.
 13 A. Okay, sure.
 14 Q. But are the two that I've identified the two --
 15 A. They're two of the reasons. I wouldn't say that the
 16 taxation reasons is the main reason. I'd say the coal
 17 reason was a more primary reason, and there are other
 18 reasons coming on from that, once that was taken.
 19 Q. Alright.
 20 Can we show Mr Palmer C1/18/28. This is your sixth
 21 witness statement, paragraph 84. Again, it's probably
 22 on the screen in front of you.
 23 A. Mm-hm.
 24 Q. So you say:
 25 "... the dominant reason was to seek funding for

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09:39 1 Q. Four, alright.
 2 A. Sorry.
 3 Q. Okay. If you say "diversify" and "business
 4 opportunities" are different.
 5 A. Sure. Certainly, yes.
 6 Q. Okay, fine.
 7 Now, can we show Mr Palmer C1/4/69, which is your
 8 first witness statement at paragraph 119. There you are
 9 giving an account of a meeting with Mr Martino in
 10 March 2018 to seek his advice. And as you can see a few
 11 lines down that you situate it in time by saying it was
 12 after your birthday, so it must have been in late
 13 March 2018. That's how you're identifying the date?
 14 A. That's how I recall it.
 15 Q. Yes, okay. And at that meeting, you say that Mr Martino
 16 advised you to restructure through a Singapore company;
 17 is that right?
 18 A. I'm just reading it, Mr Donaghue. (Pause)
 19 Q. So particularly, to help you, at the top of 121.
 20 A. Sorry, I was looking at 119. Can we have 121?
 21 Q. 121 is just further down the page.
 22 A. I've only got 119.
 23 Q. Sorry.
 24 A. Sorry.
 25 Q. Paragraph 121 is now on the screen, if you see the first

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09:40 1 sentence. (Pause)
 2 A. Yes, Mr Martino advised me we should restructure in
 3 Singapore because we thought coal funding would be hard
 4 to get in Australia.
 5 Q. Yes. Now, can you just confirm for the Tribunal that
 6 there are no notes or agendas or recordings or any other
 7 documentary records of this meeting between you and
 8 Mr Martino in March 2018?
 9 A. Not that I'm aware of.
 10 Q. Alright. So you give quite a detailed account of this
 11 meeting from paragraph 119 through to paragraph 125 of
 12 this witness statement. And you're doing that just from
 13 your memory, unassisted by any documents?
 14 A. Can I just have a read of those, 119 to --
 15 Q. Of course. 119 to 125. (Pause)
 16 A. Yes, that's based on my memory and also access to those
 17 documents referred to in his statements, which I still
 18 have.
 19 Q. Being the three documents you put up in your opening
 20 yesterday: a newspaper article about the vetoing of the
 21 Adani loan, an article about the National Australia Bank
 22 ceasing loans, and the Coal Power Bill? They are the
 23 three documents you are talking about?
 24 A. No, there's an additional document which is in
 25 paragraph 122 I draw your attention to, which is

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09:44 1 restructuring in Singapore?
 2 A. Mm-hm.
 3 Q. And then there was another meeting in early August,
 4 mentioned in 132?
 5 A. Yes.
 6 Q. And another meeting at the end of August, mentioned in
 7 134?
 8 A. Mm-hm.
 9 Q. And another meeting in November, in 135?
 10 A. Yes.
 11 Q. Are there records of any of those meetings?
 12 A. Not that I can recall. I was in daily contact with
 13 Mr Martino on our business over that period of time.
 14 Q. And even though you're in daily contact with Mr Martino,
 15 you're able to tell this Tribunal five years later about
 16 that quite precise sequence of meetings, just from your
 17 memory?
 18 A. Yes, I am. I realised that that's what we were doing,
 19 sure. They were all pretty significant, those meetings.
 20 I think if you go to, say, paragraph 131, to be
 21 helpful:
 22 "The Chinese Government-owned companies had lodged
 23 appeals against" --
 24 THE PRESIDENT: Can we please scroll up so we see 131 on the
 25 screen.

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09:42 1 a report from Bloomberg in the United States, which had
 2 carried out a thorough review of how accounting
 3 standards would be changed in the future to declare
 4 interests in coal mines, and coal financing would be
 5 harder to get funded through banks, which was taking
 6 place in the United States. And there was a concern
 7 expressed that that would sooner or later happen in
 8 Australia.
 9 Q. Alright. But none of those documents are records in any
 10 way of what you discussed with Mr Martino. So your
 11 recollection -- or your account of your conversation
 12 with Mr Martino is based on your memory of this meeting
 13 that occurred five years before you signed this witness
 14 statement?
 15 A. It's my recollection. I think I can say that they were
 16 devastating figures that I do remember, and real
 17 concerns to us, because of the nature of the over
 18 \$100 million that the group had invested in coal.
 19 Q. Now, your statement goes on, from 129, to talk about
 20 a series of further meetings with Mr Martino.
 21 A. Mm-hm.
 22 Q. So you say that -- as you've said a few times already
 23 this morning -- you made the decision in June 2018. But
 24 then in 130, do you see you say: in late July,
 25 Mr Martino advised you further about the benefits of

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09:45 1 MR PALMER: Sorry.
 2 THE PRESIDENT: Thank you.
 3 A. Paragraph 131, for example, it relates to a meeting
 4 I had with Mr Martino in respect of an appeal which had
 5 been lodged against our royalty judgment the year before
 6 in the Western Australia Supreme Court. And that was
 7 a very significant matter for us: it was one that
 8 required me to meet with him to discuss it. And in that
 9 meeting, we discussed other things in respect of
 10 Singapore and how that could be restructured.
 11 Q. In your fifth statement, Mr Palmer -- I won't show it to
 12 you unless you need me to -- you referred to the
 13 restructure as the "Martino restructure". So would you
 14 agree that his advice was important to your decision to
 15 restructure the group?
 16 A. I think when I got -- I decided to restructure in 2018,
 17 I had to determine what the structure would be, if you
 18 understand what I mean. There's a decision to say:
 19 we'll go to Singapore. How will we go to Singapore?
 20 What should the structure be?
 21 So I personally favoured at that time incorporating
 22 a company directly owned by me. And Mr Martino, over
 23 the period of time and as events changed, gave advice
 24 that we should have the three-tiered structure. At that
 25 time, in June 2018, we were developing our business in

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09:46 1 New Zealand separately. And it all came together later
2 on, after -- I never told Mr Martino that I intended
3 going his way or the other way. It wasn't until about
4 the 7th -- sometime after I returned on Christmas in
5 January 2019 that I made the final decision under which
6 structure.
7 Q. Thank you, Mr Palmer. We do have a lot of ground to
8 cover. My question was: did you rely heavily upon
9 Mr Martino's advice in the restructure that was
10 ultimately adopted?
11 A. I relied on my own independent judgment.
12 Q. Did you not rely upon Mr Martino's advice?
13 A. No, I considered all the advice I had got from him,
14 other situations that I researched, and I made the
15 decision.
16 Q. Alright.
17 Now, you're aware that Mr Martino had given
18 a statement -- about the meeting he had with you in June
19 and the subsequent meetings -- that was to be part of
20 the evidence in this Tribunal; you know that?
21 A. Mm-hm.
22 Q. Yes?
23 A. Yes, I'm aware of that.
24 Q. Yes. And you were present yesterday when I, during the
25 Respondent's opening, put up on the screen the letter

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09:49 1 Q. So is it your position that evidence from Mr Martino,
2 the only person who you've identified as having given
3 you advice about the restructure, is irrelevant in the
4 proceeding that's now before this Tribunal?
5 A. Well, it's not my evidence; it was a submission that
6 we made, it's what the document says. I draw your
7 attention to the last line of the second-last paragraph:
8 "The Claimant, however ..."
9 Can I just read that?
10 "The Claimant, however, reserves its position in
11 respect of use which may be made of the witness
12 statements/expert reports for the merits and damages
13 phase of the Arbitration."
14 So these witness statements haven't been drawn for
15 the merits and the damages stage; they've been drawn
16 primarily because in our case that we are presenting to
17 the Tribunal -- they are our witnesses -- we don't need
18 to prove that anymore, we don't think, because we've
19 accepted that there was an admission made by the
20 Respondent that the Amend[ment] Act was not foreseeable.
21 And --
22 Q. Mr Palmer, my question to you was: are you saying that
23 Mr Martino's version -- sorry, I withdraw that, because
24 this is not exactly the same question I put to you
25 before.

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09:47 1 that the Claimant wrote on 21 August withdrawing
2 Mr Martino and Mr Harris's evidence because it had
3 become irrelevant; do you recall that?
4 A. I don't recall it. But if you put the letter up,
5 I'll have a look at it.
6 Q. Well, I think -- I'm not sure that we can put it on the
7 screen, but I've got --
8 A. Can you hand up the letter?
9 Q. -- hard copies we can hand to the Tribunal.
10 THE PRESIDENT: Yes, you can do so, yes.
11 MR PALMER: Is that okay?
12 DR DONAGHUE: Can we hand a copy to Mr Palmer. (Handed)
13 So it's the third page, page 3 marked with the page
14 numbers at the bottom right-hand corner. And if you
15 could look at the third paragraph under the heading
16 "Witnesses and Experts", the second half of that
17 paragraph. Do you see where I'm referring to,
18 Mr Palmer?
19 A. Yes. I'll just have a read of the letter.
20 Q. Well, just focus on that paragraph. (Pause)
21 Let me know when you've finished reading that
22 paragraph, please.
23 A. Yes, I'm just down to "witness statements of ... Martino
24 and ... Nui ... Harris". (Pause)
25 Yes, sure.

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09:50 1 You can see you have given a detailed account of
2 your meeting with Mr Martino in March 2018 and the
3 meetings that followed, and you've seen those this
4 morning?
5 A. I wouldn't say it's detailed. But I've given
6 an outline, yes.
7 Q. Mr Martino had given an account, as the other person
8 present in those meetings. Are you saying that account
9 is irrelevant?
10 A. I'm saying that the whole thing's irrelevant in relation
11 to why we offshored. Yes, I do say [that].
12 Q. And you say that because you say that the Tribunal
13 shouldn't be considering the reason for the restructure
14 at all?
15 A. Well, it was our judgment. I think this is a really
16 forensic legal decision that we made to make sure we had
17 an efficient hearing here in The Hague.
18 Q. You thought the Commonwealth was wasting the Tribunal's
19 time by looking at this issue?
20 A. Yes, really I do, yes.
21 Q. And in order to prevent that waste of time occurring,
22 you decided that you would withdraw evidence that went
23 to those events, so that the Tribunal couldn't consider
24 it; that's what happened?
25 A. No, in light of the admissions that were made by the

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09:51 1 Commonwealth, we thought the matters were no longer
2 relevant. And we, quite frankly, thought the
3 Commonwealth would have the same view.
4 Q. Now, you describe, going back to paragraph 19 -- 119,
5 rather, of the same statement, paragraph 119, you
6 describe some of the things that you say Mr Martino said
7 to you. And do you see five lines down or so, you say:
8 "... [he] provided [you] with a copy of the
9 Coal-Fired Power Funding Prohibition Bill 2017 and [the]
10 Explanatory Memorandum. I was shocked by it."
11 Do you see that?
12 A. Yes, yes.
13 Q. And do you recall that yesterday in your opening, that
14 was one of the documents that you flashed up on the
15 screen, the front page of the Coal-Fired Power
16 Prohibition Bill?
17 A. Yes, I think we got a copy.
18 Q. You said you were "shocked by it".
19 A. Mm-hm.
20 Q. And just keep reading down:
21 "The Bill was being processed through the Australian
22 Parliament at the time when I perused the Bill ..."
23 A. Mm-hm.
24 Q. And:
25 "... it appeared to have the effect of banning the

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09:53 1 Section 5, which is the operative provision of the bill.
2 And can I invite you to have a look at Section 5(1).
3 (Pause)
4 A. Sorry.
5 Q. Have you got it, Section 5(1)?
6 A. Yes, okay.
7 Q. "5 Prohibition on Commonwealth support for coal-fired
8 power stations
9 (1) The Commonwealth or an authority of the
10 Commonwealth must not, on or after the commencement of
11 this Act:
12 (a) provide financial or other support to, or in
13 connection with, the refurbishment or building of
14 a coal-fired power station; or
15 (b) purchase, or assist the purchase or transfer of
16 ownership of, a coal-fired power station."
17 Focusing just on that provision -- and that's the
18 only substantive operative provision in this Act -- it's
19 about stopping the Commonwealth Government funding
20 coal-fired power stations; do you agree with that?
21 A. Well, I agree that's what that says. I haven't read the
22 whole bill recently.
23 Q. But you did read the whole bill?
24 A. Five years ago.
25 Q. Alright. Well, it's not a very long bill, Mr Palmer.

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09:52 1 financing of future coal projects. I subsequently spent
2 more time reading the Bill and [the] Explanatory
3 Memorandum, which confirmed my earlier fears."
4 Is that evidence true? Did you spend more time
5 examining the bill and the explanatory memorandum?
6 A. I did read it at the time. I can't recall it in detail
7 now --
8 Q. Okay.
9 A. -- but I recall looking at it.
10 Q. Alright. Well, I'll help with you that. Can we show
11 Mr Palmer Exhibit R-484, which is E2/484. And can you
12 just scroll down the page a little.
13 Can you see the bolded text in the middle of the
14 page, which to an Australian lawyer would be called the
15 "long title" of the bill? Do you agree with that?
16 A. I don't know, I'm not a lawyer.
17 Q. Okay, no. You were in Parliament for a while. You know
18 we have a long title of a bill?
19 A. Sure, yes.
20 Q. You see there that it says, "A bill for an Act to
21 prohibit Commonwealth support for coal-fired power
22 stations, and for related purposes"?
23 A. Yes.
24 Q. We'll go on.
25 Can we then bring up page E2/484/7. This is

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09:55 1 If it really is necessary, you can keep reading down
2 Section 5 and go over on to Section 6.
3 A. Sure.
4 Q. But you've seen the long title of the bill. The long
5 title of the bill says it's "A Bill ... to prohibit
6 Commonwealth support for coal-fired power Stations".
7 A. Yes.
8 Q. So it's the same thing as you see in Section 5.
9 A. Can I assist you with your enquiry, Mr ...?
10 Q. Well, my --
11 A. What's your question, sorry?
12 Q. My question is: having read that, how could you possibly
13 have thought it had anything to do with Waratah Coal,
14 which is not about Commonwealth funding and not about
15 coal-fired power stations?
16 A. Well, because I'm a politician and I look at what's
17 happening in the community. And if an extreme measure
18 like that's happening with coal-fired power stations,
19 and related to the debate with coal generally, that's
20 a sign to me that the community is shifting.
21 And our coal projects -- we had a coal-fired power
22 station, which I'm sure you're aware of, in the
23 Waratah Coal projects. And you'll be aware too of the
24 other letter I showed the other day where the Premier of
25 Queensland had written at the same time to the Prime

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09:56 1 Minister of Australia vetoing the funding of \$1 billion
2 of funding --
3 Q. Commonwealth funding.
4 A. The Commonwealth funding, yes, to the Adani project.
5 That's not the Commonwealth writing; it's the State
6 writing to the Commonwealth.
7 So all of these things were signs to me that the
8 writing was on the wall, that it was a general political
9 movement -- Extinction Rebellion, we've seen it here the
10 other day -- all across the world that coal -- the
11 financing of coal was going to become more difficult,
12 and especially in respect of the Bloomberg report I --
13 Q. Mr Palmer, what you actually said, if you go back to 119
14 of your statement, the last sentence of paragraph 119 of
15 your statement, you said:
16 "I just could not believe that a new law was being
17 contemplated that, as I understood it at the time ..."
18 And you said you went and read it:
19 "... would ban the financing of the [Waratah] coal
20 projects."
21 That's just plainly not what that bill was doing.
22 A. Well, firstly, the Waratah coal projects includes our
23 power station. And it was doing that, right? And it's
24 a matter of public record that we had a power station
25 before the environmental authority, to be funded by

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09:57 1 coal-fired power station from our coal mine. We had --
2 Q. The coal mine that doesn't exist?
3 A. Sorry? The plan was for the coal mine to be developed
4 to fund the -- to provide coal to the power station, and
5 also to export it.
6 But it generally indicated that there should be
7 a red flag for financing coal projects in Australia.
8 And I wasn't confident to invest hundreds of millions of
9 dollars going forward.
10 Q. "Coal projects" being coal-fired power stations?
11 A. Both, because obviously coal is used for a purpose:
12 it goes into a power station. So if you're banning the
13 power stations, you're in effect affecting the mines.
14 Q. Now, Mr Palmer, you also say earlier in that paragraph
15 that this bill was being "processed through the
16 Australian Parliament at the time". Did you make
17 enquiries about who introduced that bill?
18 A. No. I think it was -- I didn't make enquiries, but
19 I think I had a discussion at some time with Adam -- was
20 it Adam Bandt? It was --
21 Q. It was actually Senator Richard Di Natale, the then --
22 A. Di Natale, the leader of the Greens.
23 Q. The then leader of the Greens.
24 A. Yes.
25 Q. So it was introduced by the Australian Greens Party.

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09:58 1 A. Yes.
2 Q. And would you agree -- including based on your time in
3 Parliament -- that legislation introduced by the
4 Australian Green Party can never be enacted without the
5 support of at least one of the major Australian
6 political parties?
7 A. That's normally the situation, depending upon the
8 political position of the Greens. In the Gillard
9 government, for example, they had the balance of power
10 and they were able to get a lot of their acts up --
11 Q. But only if they had the support of one of the other
12 major --
13 A. Normally, yes.
14 Q. Yes. This bill, I suggest to you, did not have the
15 support of either of the other political parties.
16 That's true, isn't it?
17 A. I didn't make any further enquiries, to be honest with
18 you, about it. I was just concerned that there was
19 a bill before the Parliament that would do this. It was
20 more or less looking at the signs of what was happening,
21 and the debate that the world was moving away from coal,
22 financial institutions were being utilised in a number
23 of western countries so coal financing was more
24 difficult. And my own bank had stopped financing
25 coal -- new projects in Australia, which --

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09:59 1 Q. We'll come to that in a moment. Can we just focus on
2 this bill.
3 A. Yes.
4 Q. My question is: is your evidence that you were relying
5 upon a bill introduced by the Greens Party, I think you
6 said without knowing whether it had the support of
7 either of the major parties, that was actually about
8 coal-fired power stations? That was part of your
9 reasoning, the first reason you produce in your witness
10 statement, for restructuring your corporate group to
11 Singapore? That's what you're saying?
12 A. That was one of the things I considered. I didn't rely
13 on it for anything in particular. I considered that to
14 format why I made that judgment.
15 Q. Well, it's one of the three things you've identified to
16 the Tribunal.
17 A. Yes, that's right, that's true.
18 Q. Alright. And it didn't actually provide any reason to
19 restructure to Singapore at all?
20 A. Sorry?
21 Q. A prohibition on Commonwealth support for coal-fired
22 power stations is quite a different topic from whether
23 or not you would be able to raise global finance for
24 a large coal mine. They are different topics.
25 A. Well, I think that's a naive assessment, with respect.

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10:00 1 The ability to raise finance, [in] my experience, is
2 often influenced by the community in which the money is
3 going to be raised. And in particular, in relation to
4 financial matters, it's well known that Singapore is
5 a much more serious financial centre of the world than
6 Sydney.
7 Q. Alright. Well, we'll come to that shortly.
8 Can I ask you to turn to 122 of the same statement,
9 which is C1/4/70.
10 A. Certainly.
11 Q. You'll see the heading "National Australia Bank will not
12 fund coal".
13 A. Yes.
14 Q. This is the second reason you gave. And if you look
15 about five lines down, you say:
16 "What really shook me up at the meeting was when
17 Mr Martino told me about the announcement made in
18 December 2017 by Mineralogy's bank, the National
19 Australia Bank, that it would not advance credit or
20 loans to coal ... anymore."
21 So you were relying upon an announcement by one
22 major Australian bank that it wouldn't fund coal
23 projects anymore as the second reason for the move?
24 A. Well, I think it had a -- the National Australia Bank
25 was my bank that I banked with for nearly 40 years, and

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10:02 1 those four (sic) banks, you can't rely on any advisor to
2 have any standing to raise this sort of capital. In
3 Singapore, it's just the opposite.
4 Q. So you said you made enquiries with some Australian
5 banks. Did you make enquiries with Singapore banks as
6 to whether any of them had similar announcements?
7 A. Not at that stage.
8 Q. Do you agree it would make little sense to restructure
9 to Singapore to access coal financing if Singapore banks
10 were making similar announcements to the Australian
11 announcements that had caused you to give up on
12 Australian funding?
13 A. No, because -- if I could just explain why -- most large
14 financings are done on a global basis and they normally
15 consist of credit committees. It's quite common for
16 most financial institutions that their credit committees
17 are made up of executives from the major financial
18 centres in the world, such as London, New York,
19 Hong Kong and Singapore. And you can access that
20 funding and that advisory service, and they're the
21 people that make the decisions on whether they'll go
22 ahead or not; not a bank in Singapore.
23 The funding we were seeking was much larger than
24 could be provided by one bank: it would normally be
25 a syndicate of banks, and that would normally be a --

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10:01 1 it was the bank that I'd be relying upon to do
2 a memorandum, to have the size to be able to raise
3 funds. So, you know, any bank, in financing large
4 amounts of capital, rely on their client relationship,
5 their track record and the element of trust. So I was
6 very surprised that this decision was made without
7 consultation with me.
8 Q. If you were really shaken up by the announcement that
9 the National Australia Bank wasn't going to fund coal
10 projects anymore, did it occur to you at the time to
11 make enquiries about whether any other banks had made
12 similar announcements?
13 A. Yes, I did make enquiries, I think it was with the
14 Bendigo Bank, it was with the -- which was owned at the
15 time, I think, by the Bank of Adelaide, from
16 recollection; they may have changed since then -- and
17 the ANZ Bank in Queensland. I met with one of their
18 executives, I can't recall the exact date but in that
19 period, and he had confirmed to me the ANZ Bank was no
20 longer funding coal projects in Australia and they
21 didn't intend to, so ...
22 But, you know, we have in Australia four (sic) large
23 banks: the ANZ Bank, the National Australia Bank, the
24 Commonwealth Bank, which is partly owned by the
25 Government. And if you really can't get the support of

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10:04 1 happen by an arranger. So we needed a skilful arranger
2 that supported the project and we'd go ahead with it.
3 And in this sort of environment -- and that couldn't be
4 found in Australia. And Singapore is one of the major
5 and was the closest major financier in the world.
6 But my decision was based on that we couldn't fund
7 the project in Australia, and that as a director of the
8 company, unless I could find another way, I would have
9 to write off the investment and close the project down
10 as my responsibilities under the Corporations Law.
11 I didn't want to do that.
12 Q. Alright. So you didn't know at the time that one of the
13 three major Singaporean banks -- I'll put this to you --
14 that one of them, DBS, already had a policy against
15 funding coal mines?
16 A. No, I didn't.
17 Q. You didn't know?
18 A. No.
19 Q. But your evidence seems to be you would have been
20 untroubled even if you'd known that at the time, even
21 though it really shook you up when the NAB made the same
22 announcement?
23 A. Well, NAB shook me up more because I was close to them
24 and I knew them, right?
25 My decision wasn't so much based on what any bank

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10:05 1 did in Singapore in particular, it was based on my
2 alternatives: either close the project down, wind it up.
3 And my duties as a director were to come up with a plan
4 to try to get this project funded on an international
5 basis. And based on my previous experience -- and we
6 had raised \$100 million more through Queensland Nickel
7 on ships in Singapore probably three years ago -- the
8 advisors in Singapore were better placed to launch this
9 international financing if we could.

10 THE PRESIDENT: Dr Donaghue, do you mind if I ask for
11 a clarification?

12 DR DONAGHUE: Not at all.

13 THE PRESIDENT: I understand what you are saying about
14 the red flags, that coal would be more difficult to
15 finance as a general trend in the world. However, what
16 I don't understand is why you cannot raise financing in
17 Singapore without having a company that's incorporated
18 in Singapore.

19 A. Oh, sorry, that's another question. Well, as I said to
20 you, that was just my own judgment, based -- as I said,
21 I had previously been raising funds in Hong Kong, and
22 we --

23 THE PRESIDENT: Did you have a company incorporated in
24 Hong Kong to raise funds in Hong Kong?

25 A. Yes, I think we did, yes, at the time.

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10:07 1 debt funding to come after the equity was raised, right?
2 And so the question just came up generally in the
3 meeting, "Oh, well, where are you going to raise your
4 debt funding?" I said, "Well, I thought Singapore or
5 Hong Kong". That's what I said, from memory. And
6 he said, "Oh, well, if you're going to raise money in
7 Singapore, you're better to have a Singapore subsidiary
8 as a project vehicle and not have the funding all tied
9 up in the group". That's all the comment was.

10 And for that reason, I said: well, if we're going to
11 Singapore, we'll get a Singapore company.

12 THE PRESIDENT: And on this basis you made the decision to
13 incorporate in Singapore, without enquiring further?

14 A. Yes, I did, because I had a lot of confidence in the
15 people in the meeting, which was Linklaters, other US
16 lawyers, from memory.

17 THE PRESIDENT: But that was ten years before.

18 A. That's right. But I'm a very conservative person,
19 right? That's what I did.

20 THE PRESIDENT: The problem is the world is not necessarily
21 conservative; it moves on, right?

22 A. Well, yes. I've done alright.

23 But for me, at the time I made the decision, was:
24 I didn't want to not do my duty as a director, right?
25 And I had to come up with a quick plan at that time, in

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10:06 1 THE PRESIDENT: You think you did?
2 A. Yes. That was back 16 years ago, so I'd have to check
3 the records. But I think we did.

4 DR DONAGHUE: Just to clarify, you're talking about equity
5 fundraising, not debt finance?

6 A. That's correct, yes. That was different. But I'm just
7 trying to say that it's quite common for large
8 international transactions to be -- to have an entity or
9 subsidiaries in various countries.

10 THE PRESIDENT: In various countries, I understand that
11 easily. What I'm not sure of is that you have to be
12 incorporated in the jurisdiction where at least the lead
13 bank would be.

14 A. Well --

15 THE PRESIDENT: Is this what you're saying?

16 A. Well, if I can just explain.
17 My judgment was based upon a conversation I had back
18 in 2008 with a lawyer from Linklaters, who suggested to
19 me that it was always better to have a financial vehicle
20 in the local jurisdiction.

21 THE PRESIDENT: But that was about an IPO in Hong Kong --

22 A. No, that was about --

23 THE PRESIDENT: -- if I'm not mistaken.

24 A. No, that was about fundraising, because there was an IPO
25 to raise equity, and then in the business plan there was

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10:08 1 June 2018, to provide a way forward for us, because
2 I genuinely believed, rightly or wrongly, that we
3 wouldn't be able to raise coal financing or actually get
4 a good advisor from Australia.

5 Now, when you have a good advisor, one of the
6 critical things is his bank is going to provide some of
7 the money. That gives other people confidence. So if
8 you're going to raise a couple of billion dollars, you'd
9 hope to have an advisor that would take \$50 million or
10 \$100 million of the capital. So I didn't think that
11 that would be achievable in Australia. So --

12 THE PRESIDENT: I think you answered my question.

13 A. Sorry.

14 THE PRESIDENT: So we're fine, and I apologise for the
15 interruption.

16 DR DONAGHUE: Not at all, Madam President.
17 Can we move on to a different matter. Can Mr Palmer
18 be shown C1/18/28, which is your sixth witness
19 statement, Mr Palmer, at paragraph 86. Do you see that
20 on the screen?

21 A. Paragraph 86, is it?

22 Q. Yes. You can see there, from the second sentence, that
23 as you've been saying this morning, you decided in June
24 to implement the restructure. And then you say:
25 "When I discovered that nothing of substance had

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10:09 1 happened some five months later, I was disappointed and
 2 demanded we get things moving ... I am not in business
 3 to tread water. I led by example ..."
 4 A. Mm-hm.
 5 Q. So would you agree that that evidence that we see there
 6 is your explanation for the apparent urgency with which
 7 Zeph was incorporated in January 2019?
 8 A. No.
 9 Q. You wouldn't agree with that?
 10 A. No.
 11 Q. Alright. Did you see -- well, you would have seen
 12 yesterday during --
 13 A. I can tell you the urgency.
 14 Q. Well, could you just answer my question, Mr Palmer. You
 15 were present when I put up on the screen, in our opening
 16 yesterday, a series of emails starting on Saturday night
 17 on 16 January and that finished on Sunday, with multiple
 18 references to how urgent it was to incorporate the
 19 company, and then the company was incorporated on the
 20 Monday. You saw that email chain?
 21 A. Yes, that was in January.
 22 Q. January 2019.
 23 A. Not November 2018, right?
 24 Q. No, indeed.
 25 A. Sorry, I'm just ...

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10:11 1 Q. I'm all ears, Mr Palmer. Please do.
 2 A. Okay.
 3 So as you'll see, the incorporation date, I think it
 4 was 21 January. And Michael Mash[ayanyika], who appears
 5 in the record, returned to Australia in December,
 6 I think it was, and indicated that we had an opportunity
 7 to buy a shipping company in Singapore, and that that
 8 opportunity was limited: unless we could close the
 9 transaction out by 30 January, we would lose that
 10 opportunity. And the company was incorporated on
 11 21 June, and we obtained ownership of Visco I think
 12 about ten days later, through the lawyers, on
 13 31 January.
 14 Q. Okay. So you're now saying the urgency was because of
 15 the brilliant business opportunity accorded by the
 16 opportunity to acquire the engineering companies?
 17 A. Yes, we thought it was a good opportunity.
 18 Q. What due diligence had you done to reach that
 19 conclusion?
 20 A. Well, we'd done the due -- Michael Mash had been up
 21 there, and we'd done the due diligence on the clients
 22 that they service and the people they provide to those
 23 clients. And we identified --
 24 Q. Is there a single document to suggest that's true?
 25 A. Well, I'd have to look at his statements at the time.

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10:10 1 Q. The question I put to you was: did you agree that the
 2 evidence is your explanation for the urgency of Zeph
 3 being incorporated in January 2019? And you --
 4 A. No, I don't agree.
 5 Q. You did not agree with that?
 6 A. No.
 7 Q. Do you agree that Zeph was incorporated in situations of
 8 urgency in January 2019?
 9 A. Yes, I do.
 10 Q. You do agree with that. Alright.
 11 Now, you also agree that Zeph did not immediately
 12 take steps to seek to approach any Singaporean banks to
 13 raise coal financing straight after its incorporation?
 14 That's true, isn't it?
 15 A. Yes, that's true.
 16 Q. And you didn't immediately take steps to proceed to
 17 obtain any personal tax advantages from Zeph being
 18 there?
 19 A. That's true, yes.
 20 Q. So the two principal or dominant rationales that you
 21 identified don't explain the urgency that we see in that
 22 email chain in January 2019; do you agree with that?
 23 A. Yes, I can explain it to you.
 24 Q. Well ...
 25 A. If you want me to.

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10:13 1 But at the time, anyway, this is what he said to me,
 2 right? And we wanted to get into shipping because we'd
 3 already funded three ships through Singapore in our
 4 nickel business, all carriers, and we thought that that
 5 was a good sector to get into. So we saw that that
 6 sector had 60 people, and the amount of money they'd
 7 want was less than I'd earn in two days, so we thought
 8 it worth buying that structure and get moving with it.
 9 Q. As the learned President put to you in starting, you've
 10 given seven witness statements in this proceeding.
 11 A. Mm-hm.
 12 Q. What you've just said doesn't appear in any of them, not
 13 one. You've never said that in any of the seven
 14 statements you've sworn for this proceeding.
 15 A. Well, you've never asked me before.
 16 Q. Well, you've given accounts of the reasons you were
 17 doing this restructure --
 18 A. Mm-hm.
 19 Q. -- and you've never said, "Oh, I couldn't pass up the
 20 opportunity to acquire Visco".
 21 A. Well, I mean, it's on the record that we acquired it
 22 within ten days of it being incorporated. It's not in
 23 any way unusual for me. I normally don't tell people
 24 why I do things in business.
 25 Q. Okay. So just to make sure I'm clear, you say the

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10:14 1 reason for the urgency was to acquire Visco. There's no
2 documentary evidence of due diligence on Visco?
3 A. Not that I'm aware.
4 Q. Or either of the other two engineering companies?
5 A. No. It was my decision, that we could risk the money.
6 Q. You've read, I assume, all the evidence the Respondent
7 filed in these proceedings; is that true?
8 A. No, not all the evidence, no.
9 Q. You haven't read all of the evidence, okay.
10 Are you aware that Professor Lys has analysed the
11 accounts of the engineering companies?
12 A. No.
13 Q. You're not aware of that at all?
14 A. No.
15 Q. Okay.
16 A. Oh, sorry, I am aware from what you said yesterday.
17 Q. Yes, alright.
18 So the Claimant, your team, didn't choose to put on
19 any evidence disputing Professor Lys's analysis of the
20 engineering companies; that's true, isn't it?
21 A. That's true.
22 Q. And is it reasonable for the Tribunal to proceed on the
23 basis that that means you didn't have any basis to
24 dispute his analysis of the accounts of the engineering
25 companies?

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10:16 1 Q. Well, you do have access to it.
2 A. Yes.
3 Q. You've chosen not to read it.
4 A. But as I said, my decision was solely based on that
5 I wanted to get into that sector in Singapore. There
6 were a number of employees, we knew the people that they
7 were doing with, and we thought: it only costs a day or
8 two's income to do it. That was the basis we did it on.
9 Q. Alright.
10 Can I ask you to look back to your first witness
11 statement. This is C1/4/72.
12 A. What number is it?
13 Q. Paragraph 131.
14 A. 171 (sic).
15 Q. It's page 71. You can see it on the screen. It's under
16 the heading "Royalty Judgment Appeal".
17 A. At 131?
18 Q. Yes.
19 A. Yes.
20 Q. And you refer to the fact that:
21 "The Chinese Government-owned companies ..."
22 The CITIC companies:
23 "... had lodged appeals against the [CITIC]
24 Judgment. Because of this, no applications or
25 appointments could be [made] with ... arrangers or

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10:15 1 A. I don't think so. I think the procedural order doesn't
2 require us to cross-examine people. I'd have to go to
3 the procedural order.
4 Q. Well, the procedural order doesn't require you to
5 cross-examine --
6 A. Sorry --
7 Q. -- but it says it goes to weight.
8 A. -- I just wanted to complete. I thought it said that it
9 would be taken that we didn't dispute them.
10 Q. No. But then in the end, we have an expert economist
11 analysing the accounts that says these companies were
12 all failing, and no evidence to suggest otherwise.
13 A. Well, the advice I received was that he wasn't much of
14 an expert to worry about.
15 Q. Professor Lys?
16 A. That's correct, yes. So we -- I accepted that advice.
17 Q. Alright.
18 A. I don't think -- I think the advice was he hadn't worked
19 at all in industry in his life since graduation.
20 Q. He was analysing relevantly here the accounts of
21 a company. You're suggesting that a man with his
22 distinguished academic record can't read the financial
23 statements of a company?
24 A. Well, yes, as I said, I haven't got access to his
25 analysis, I haven't read it.

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10:17 1 Singapore banks until the appeal was resolved ...
2 I concluded in late July of 2018 we had time to
3 establish the Newco and complete the restructure and
4 there was no ... rush. On the contrary the prudent
5 course was to await the outcome of the appeal."
6 So you say you decided in June 2018 to do the
7 restructure, but then in July you decided to wait until
8 the outcome of the royalties judgment; is that right?
9 A. As far as the seeking of the finance, it would be,
10 because the banks -- you only get one opportunity to go
11 and put your best foot forward, and the royalty judgment
12 was giving us -- well, it gives us now about
13 \$600 million a year.
14 Q. Just focusing on what you've said:
15 "... we had time to establish the Newco and complete
16 the restructure ..."
17 So what you decided to do was to defer the
18 restructure until the appeal in the royalties judgment
19 was over? That's what you say.
20 A. No. I said we had time to do that. The assumption is,
21 you're saying, to do the restructure. But the
22 assumption was that wouldn't need -- we couldn't
23 approach the banks until such time as we had the outcome
24 of the royalty judgment, so our cashflow and revenue
25 would be certain. Otherwise I'd see that as a red flag,

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10:18 1 because there's still appeal.
 2 Q. Mr Palmer, I'm not making an assumption, I'm just
 3 reading what you wrote, that:
 4 "... I concluded in July of 2018 we had time to
 5 establish the Newco ..."
 6 Which is what you were calling Zeph in this
 7 statement.
 8 A. Yes.
 9 Q. "... and there was no need to rush. On the contrary the
 10 prudent course was to await the outcome ..."
 11 A. That's true.
 12 Q. So you decided to await the outcome of the royalties
 13 judgment for the restructure?
 14 A. Not for the restructure but for a -- there was no need
 15 to -- well ...
 16 Q. "[C]omplete the restructure", that's what you wrote.
 17 A. Yes, well, that was our view at that time, in July 2018.
 18 Q. Now, the appeal judgment on the royalties judgment, will
 19 you take it from me, was handed down on 21 May 2019?
 20 A. That's correct, yes.
 21 Q. Yes. And that, for the Tribunal's reference, is CLA-6,
 22 which is Opus FI/6. You don't need to bring it up.
 23 So the royalties judgment that you decided it would
 24 be prudent to wait for didn't happen until five months
 25 after the restructure?

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10:20 1 company, it would [be] easier to get funds ..."
 2 So this is the topic the learned President was
 3 asking you about.
 4 And then:
 5 "Mr Martino advised that the quickest way to
 6 establish operations in Singapore for Newco would be to
 7 incorporate a new company and then [to] acquire ...
 8 established business[es] ..."
 9 That doesn't look like -- well, I withdraw that.
 10 Now, do you agree that there are only three banks in
 11 Singapore that were candidates for arranging
 12 international project finance on the scale that you were
 13 talking about?
 14 A. No.
 15 Q. Other than DBS, OCBC and UOB, which banks do you say
 16 were capable of arranging --
 17 A. Credit Suisse.
 18 Q. A Singaporean bank?
 19 A. It's a bank -- it's a world bank operating in Singapore
 20 and it raises funds --
 21 Q. And Sydney.
 22 A. Sorry?
 23 Q. And Sydney.
 24 A. No. No decision-makers of Credit Suisse were ever in
 25 Sydney; just supplicants that can suck up to the

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10:19 1 A. That's true, yes.
 2 Q. So that, having decided it was prudent to wait, you
 3 didn't. And the reason you've given is: Visco was such
 4 a great opportunity you should proceed. Is that right?
 5 A. That's right.
 6 Q. And that's not something you felt the need to say in any
 7 of your statements?
 8 A. No. I'm not used to being accountable to anybody.
 9 Q. Alright.
 10 Now, Mr Palmer, you say that Mr Martino told you
 11 Singapore banks -- this is in the same statement we're
 12 in, it's paragraph 126 and 127 -- that Singapore banks
 13 "were [still] lending to coal projects", and that having
 14 a Singapore company -- I'm reading here from 126.
 15 A. I'm sorry, I can't -- is that coming up?
 16 Q. Sorry, yes, let's wait till it comes up.
 17 So you see the heading "Singapore Banks Lending for
 18 Coal"?
 19 A. Yes.
 20 Q. You had further conversations with Martino over the
 21 coming months:
 22 "... he ... advised that Singapore banks were
 23 lending to coal ... He told me ... once a restructure
 24 was achieved to ensure that the shares ... were owned by
 25 a Newly Incorporated Company (Newco), being a Singapore

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10:21 1 Australian Government, you know? That's a lot of
 2 rubbish.
 3 Q. So you count as a Singaporean bank global banks that
 4 have branches in Singapore?
 5 A. I count as a Singaporean bank people that have
 6 individuals located in Singapore that can produce money.
 7 And there are a number of international banks that have
 8 very senior people, who are the managing director for
 9 all of Asia, normally based in Singapore, and those
 10 people serve on the credit committees of all the major
 11 banks, in my experience. They don't serve on banks in
 12 Sydney. And the people that serve on the banks in
 13 Sydney are very much interested in the domestic
 14 operation, rather than the international operation.
 15 Q. Can we show Mr Palmer, please, D2/2/4. (Pause)
 16 This is an extract --
 17 A. I still haven't got it, sorry.
 18 Q. When you see it; I'm just telling you where it's come
 19 from.
 20 A. Yes.
 21 Q. It's a page from the first witness statement of one of
 22 the Respondent's experts, Mr George Rogers.
 23 You can see in paragraph A.1.1.2 that Mr Rogers has
 24 "specialised in the financing of mines for over
 25 30 years", and has "structured, lent and advised on

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10:23 1 several billion US dollars of project finance debt for
2 mining projects across the world".
3 He worked for Rothschild & Sons, "the pre-eminent
4 lender to mining projects" at the time he was there;
5 Morgan Grenfell; set up -- as what you can see in
6 1.1.5 -- the mining project business of Investec Bank.
7 And at 1.1.8, at around the time, in 2017 to 2019, that
8 you were considering the restructure, he was "in active
9 discussions with potential coal lenders and investors
10 during the period".
11 You're aware, aren't you, that the Claimant was
12 entitled to cross-examine Mr Rogers?
13 A. The Claimant was, yes.
14 Q. Yes. Or it was open to the Claimant to engage its own
15 expert to join issue with the things said by Mr Rogers;
16 you're aware you could have done that?
17 A. Could have done that, yes.
18 Q. You didn't do either of those things?
19 A. No. Do you want to know why?
20 Q. No, I don't.
21 THE PRESIDENT: Can I just ask why?
22 A. Well, we looked at Mr Rogers's CV and we saw that his
23 most recent experience in 2017 was in Poland and that
24 that deal never went ahead. And in looking at his CV --
25 looking at a normal CV of a real project financier, it

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10:25 1 A. Okay.
2 So there was that reason which I've just explained
3 to you about the CV, et cetera. But the other reason
4 was that we did take a forensic decision that we thought
5 it was best to assist the Tribunal efficiently in
6 dealing with the real matters that would be at this
7 hearing, and I think I said that yesterday.
8 So that's all.
9 THE PRESIDENT: That's fine. That answers my question,
10 thank you.
11 DR DONAGHUE: Now, can Mr Palmer be shown D2/2/11.
12 You see there the paragraph marked F.6.2.1?
13 A. Sorry, it's just changed.
14 Q. The top paragraph on the page.
15 A. "To identify any preference for financing"; that one?
16 Q. Yes, that one.
17 A. "... the coal projects ..."
18 Q. So you can see Mr Rogers is referring to a database
19 called the IJ Global database --
20 A. Mm-hm.
21 Q. -- which is, for your information, the same database as
22 was mentioned in the Straits Times article that you
23 referred to yesterday. And you can see there that,
24 relying on data in that database Mr Rogers says:
25 "... none of the three Singapore banks ..."

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10:24 1 normally has the deals they've done, "I raised so much
2 from so-and-so", and it normally lists the transactions
3 they've done.
4 And we find people in merchant banks that have just
5 worked for them, have not been the decision-makers, and
6 really have little experience in how money comes
7 together on that scale. And that's why we didn't think
8 he was worth dealing with.
9 THE PRESIDENT: Why did you not get as your expert someone
10 who would have the credentials that you were missing in
11 Mr Rogers?
12 A. Well, certainly we could have done that. But we
13 formed -- I don't know whether this is privileged or not
14 privileged, but I'll just say the answer.
15 THE PRESIDENT: Yes, maybe -- well, answer if you want to
16 answer.
17 A. Yes.
18 THE PRESIDENT: If you don't want to answer, then you don't
19 have to.
20 A. No, I'd rather answer. I'd rather answer, so we know --
21 DR DONAGHUE: Can I just say before Mr Palmer answers,
22 depending on what he's going to say, if this is about to
23 be an attack on Mr Rogers --
24 A. No, it's not about Mr Rogers attack.
25 DR DONAGHUE: Alright.

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10:27 1 The three Singapore banks that he identifies back in
2 paragraph 4.1.2 --
3 A. Which was the indigenous Singapore banks; is that
4 correct?
5 Q. Yes.
6 A. Sorry, just to --
7 Q. The three based in Singapore, none of them had ever been
8 involved in financing a new coal mine. You have no
9 basis to dispute that, do you?
10 A. I don't think that's correct, but I've got no basis to
11 say.
12 Q. You've got no basis to say.
13 A. No.
14 Q. He's saying he relied on the database to get that data,
15 and you can't tell the Tribunal different, can you?
16 A. Well, I'd just say it's not relevant.
17 We were considering the large international banks
18 that were based in Singapore and have managers for all
19 of Asia, including China and Hong Kong. That's what we
20 were targeting when we went to Singapore. It wasn't
21 just a bank that was a Singapore bank collecting
22 Singapore savings. He's talking about Singapore banks,
23 I think, that are based in Singapore, that are normally
24 like trading banks.
25 I hope that's helpful.

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10:28 1 Q. Now, going to D2/2/22. (Pause)
 2 A. Yes?
 3 Q. Just pardon me one moment.
 4 A. Okay.
 5 Q. So again, just inviting you to read 5.7.1, 5.7.2.
 6 A. Mm-hm.
 7 Q. Again, you have no basis upon which you dispute that;
 8 you just say you were -- do you agree with that?
 9 A. I'll just read it. (Pause)
 10 I don't know anything about that really. I look at
 11 G.5.7.3 on the same page, where he says that he would
 12 have expected me and Mr Martino to have met those three
 13 Singapore banks, which we never would have, because they
 14 don't have the lead arranging experience that we were
 15 seeking on a global scale, from the international
 16 finance community, to access through Singapore.
 17 Q. Your evidence seems to be, Mr Palmer, if I'm
 18 understanding you correctly, that you wanted to
 19 restructure Mineralogy to have a company based in
 20 Singapore even though the banks that you wanted to talk
 21 to were not banks based in Singapore. If their central
 22 offices were somewhere else, why not relocate to the
 23 jurisdiction where the central offices were?
 24 A. Well, how international banks are structured is they
 25 have various regions where they have CEOs that have

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10:31 1 DR DONAGHUE: He is.
 2 THE PRESIDENT: Yes, so it's --
 3 A. I just give you the example.
 4 THE PRESIDENT: I mean, I understand what you're saying.
 5 You're saying global banks have in Singapore their head
 6 offices for the Asian region --
 7 A. That's correct.
 8 THE PRESIDENT: -- and therefore they have people who can
 9 make decisions at the --
 10 A. At the top level.
 11 THE PRESIDENT: -- at the regional level more than elsewhere
 12 in Asia.
 13 A. Yes.
 14 THE PRESIDENT: Is that a correct summary?
 15 A. Yes. And also that they can go to the very top level on
 16 a global basis too from that.
 17 THE PRESIDENT: Of the global management?
 18 A. If they need to, yes. That's what we're trying to say.
 19 THE PRESIDENT: Thank you. Sorry for the interruption.
 20 DR DONAGHUE: No, thank you, Madam President.
 21 Can Mr Palmer be shown D2/2/24.
 22 A. Yes, I'm there.
 23 Q. Can you see the heading "Bank appetite for coal in ...
 24 2019"?
 25 A. Yes, I can, yes.

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10:30 1 authority to carry out deals at that level, and they
 2 have various approval levels on that authority, and
 3 money is allocated between the different areas. And
 4 also they have a global credit committee, which then has
 5 representatives on that committee which look if there
 6 are special deals that should be filtered down.
 7 So basically, we wanted to get to those people, and
 8 those people were in Singapore.
 9 Q. You're saying that Singapore was a particular locus of
 10 expertise for mining finance; is that your proposition?
 11 A. Yes, well, for example, there was --
 12 Q. Can you just answer the question. For mining finance,
 13 there was special banking expertise in Singapore?
 14 A. Yes, there were, yes.
 15 Q. That's your evidence?
 16 A. Yes. Well, can I answer the question?
 17 Q. Please.
 18 A. If you go to the expert that we have in this procedure,
 19 Mr Migliucci, he gives his CV and he shows you he's
 20 a former head of Credit Suisse in Singapore. He lists
 21 the financing deals he did internationally: you'll find
 22 there's a couple of trillion dollars worth of deals
 23 there.
 24 THE PRESIDENT: Is Migliucci not one of those who has been
 25 withdrawn?

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10:33 1 Q. Can I ask you to read the first paragraph under that
 2 heading, and then the third paragraph, 7.1.3. (Pause)
 3 A. Yes.
 4 Q. I'll ask that we scroll down. You can see there's
 5 a table with Xs indicating banks with a policy that
 6 would prevent lending for new thermal coal mines. So
 7 ANZ didn't have such a policy, BBVA did.
 8 Then if we scroll on to the next page, you can see
 9 there's lots of crosses, lots of banks' policies
 10 against. And then paragraph 7.1.4 --
 11 A. Are these Singapore banks, sorry?
 12 Q. No, they're not just Singaporean banks.
 13 A. Ah, sorry. Okay.
 14 Q. We've got quite a number of Australian banks, quite of
 15 number of others: Canadian, African. So you could ...
 16 A. Is there a question?
 17 Q. Well, I'm asking you to look at the whole table.
 18 I asked you to read 7.1.1. There Mr Rogers says these
 19 are banks which, in his experience, were "the major
 20 project financiers of new mines". That's what you're
 21 seeing in this table.
 22 A. Yes.
 23 Q. And you can see most of them have a policy against
 24 lending to new thermal coalmines.
 25 A. Well, we'd say it's just not true.

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10:34 1 Q. It's just not true?
 2 A. That's not true. I can give an explanation why we'd say
 3 it's just not true is because, for example, the Adani
 4 project, which was next to our project, was funded in
 5 Singapore, the same size project as us, during 2021.
 6 Q. You said that yesterday as well. What evidence do you
 7 have to support the proposition that Adani was funded in
 8 Singapore?
 9 A. By discussions with the CEO of Adani, who told me how he
 10 organised the funding. They established a company in
 11 Singapore and they arranged funding -- there were
 12 merchant banks that provided funding through the various
 13 suppliers of equipment that were happy to participate in
 14 the syndicate, right? And there were banks who were
 15 happy to come in from India. And the State Bank of
 16 India underwrote the whole deal.
 17 And that's exactly the same project as ours. They
 18 went to Singapore.
 19 Q. So that's a hearsay account you're giving, based on
 20 a conversation with a CEO. That's --
 21 A. Well, I don't know where this guy has got his
 22 information, or I don't know how many deals he's done or
 23 how many mines he's built.
 24 Q. Well, you know he's done billions of dollars' worth of
 25 funding.

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10:37 1 any project debt for their new ... mine, and no
 2 likelihood of being able to raise anything approaching
 3 US\$3.5 bn."
 4 A. Well, you know, my assets are \$23 billion. I can raise
 5 \$8-10 billion from most banks if I want to, right?
 6 Q. But you weren't proposing to fund Galilee Coal yourself.
 7 A. Well, if necessary, I might have. But I wasn't at that
 8 stage of the process: I was still going to Singapore,
 9 because I believed it could be funded by the people
 10 there.
 11 I don't think Mr Rogers, with the greatest respect
 12 to him, dealing with public information on the internet
 13 or wherever he does it, knows the people who will
 14 provide the money or put up the hard security.
 15 Q. Contrary to the published lending policies of the banks?
 16 A. I think published lending policies are rubbish. These
 17 sort of deals are done a lot differently. If you'd been
 18 involved in them -- and I've been involved in a few --
 19 Q. The published lending policy of the NAB really "shook
 20 [you] up", such that you needed to restructure to
 21 Singapore.
 22 A. Well, that was particularly because it was the bank
 23 I banked with.
 24 Q. Are they rubbish or aren't they?
 25 A. Sorry?

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10:35 1 A. Well --
 2 Q. But basically the point, Mr Palmer, is: if you have
 3 a problem with this evidence, you cross-examine, you
 4 provide evidence of your own. You have done nothing to
 5 assist the Tribunal in knowing how to deal with the
 6 evidence put forward by an expert with 30 years and
 7 billions of dollars of experience.
 8 A. Well, I don't regard him as an expert.
 9 Q. So --
 10 A. Hold on. And secondly, we have tried to assist the
 11 Tribunal by not dealing with evidence which we think is
 12 irrelevant to our case.
 13 Q. So you've assisted the Tribunal by leaning on unanswered
 14 expert evidence, which you now contend you don't accept
 15 is correct?
 16 A. Well, this is opinion evidence, it's not evidence of
 17 fact.
 18 Q. Can Mr Palmer be shown D2/2/26, which is just over the
 19 page, in fact (paragraph G.7.1.5).
 20 I just put this to you as a matter of fairness,
 21 Mr Palmer. Mr Rogers concluded, based on the
 22 information above, that:
 23 "... a brief analysis of publicly available lending
 24 policies would have shown [you] and Mr Martino that
 25 there was little likelihood of ... being able to raise

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10:38 1 Q. Are they rubbish or aren't they? You can't say,
 2 "It shook me up and I had to restructure, but then I can
 3 ignore them when they're everywhere else".
 4 A. Well, it was my bank that had had a discussion with me
 5 about that, and I had considerable funds in the bank at
 6 the time. So yes, I was surprised about that, that's
 7 honest and true.
 8 But it's not the way that these sort of things are
 9 done, by looking at general characteristics. I mean, on
 10 your last slide you showed that all the Australian banks
 11 weren't funding coal. And that's the reason we decided
 12 to go to -- that's what Mr Rogers said on the last
 13 slide.
 14 Q. Actually, can we go back to that slide on the previous
 15 page, 7.1.4. So it actually shows that some of the only
 16 banks in the world that were still funding coal were
 17 Australian banks.
 18 A. Well, you've got down there the ANZ Bank in 2003. And
 19 we're now talking about 2018, 15 years later. You've
 20 got the CBA: they were last funding \$32 million in 2003.
 21 Westpac: Mr Rogers says they've never project-financed
 22 a new coal mine. I just know that not to be true. OCB:
 23 they're not international banks who we would have gone
 24 to.
 25 Q. Those two being actually two of the three Singaporean

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10:39 1 banks.
 2 A. Well, as I said, I think there's cross-purposes when
 3 we're referring to banks in Singapore that we think had
 4 the capacity to assist us, and Singaporean banks which
 5 are active in the home lending market or the retail
 6 market. It's a different type of bank in mind. But
 7 that's all.
 8 Q. Alright. Can we bring up D2/2/18, please.
 9 Can you see the heading 6.5.1, "That the company
 10 should move to a 'major top financial centre'"?
 11 A. Sorry, is it D2?
 12 Q. No, it's G, sorry: G.5.1.
 13 A. Okay.
 14 Q. "... the company should move to a 'major top financial
 15 centre'". This was part of the advice Mr Martino is
 16 said to have given you.
 17 A. Yes.
 18 Q. And Mr Rogers says:
 19 "This was unusual advice because:
 20 "a. The company was already Australian, and Sydney
 21 was a leading centre for mining finance, in a way that
 22 Singapore was not.
 23 "b. Mr Martino would have seen that in the 'Global
 24 Financial Centres' survey, which he favoured ... [that]
 25 Sydney [was] ranked 7th best out of 100, only 3 ...

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10:41 1 So in my experience, if we want to raise that amount
 2 of money, it requires a large amount of trust between
 3 individuals to make those decisions. I just didn't
 4 think I could do that here in Australia, and I thought
 5 I could do it in Singapore. And I had to come up
 6 quickly with a proposal and push forward because
 7 I didn't want to put the company or the project into
 8 liquidation, or to remove it from the balance [sheet],
 9 because of Australian accounting standards.
 10 Q. So you had to come up with it quickly. You say you came
 11 up with it in June 2018?
 12 A. That's the decision.
 13 Q. Yes. When did you first approach the Singaporean banks
 14 to raise the money?
 15 A. Well, unfortunately, as you rightly said, we couldn't do
 16 that because of the appeal on the royalty B matter.
 17 Q. Well, I said that you said you decided not to.
 18 A. Well, maybe I'll just explain it to you, if you'll let
 19 me.
 20 Q. Well, I asked you a question, which was when you first
 21 approached the banks.
 22 A. Yes, well --
 23 Q. You said you had to do it urgently to avoid liquidation.
 24 So when did you do it?
 25 A. Yes, I'm just trying to give you an answer.

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10:40 1 behind Singapore. This is an immaterial difference ...
 2 "c. None of the three leading Singapore banks had
 3 any track record in, or reputation for, [financing]
 4 mining project finance.
 5 "d. ... there is no necessity to move closer to
 6 project finance banks.
 7 "e. A project of this size, which required
 8 'billions of dollars' ..."
 9 Your statement said 8 billion:
 10 "... would require a long list of international
 11 lending banks. You can't move close to [them] all ..."
 12 What's your answer to that?
 13 A. Well, the answer is, of course, that people that make
 14 the decisions to lend the money have to be met, talked
 15 with. For example, Singapore has got a large casino;
 16 a lot of the deals are done at the casino with the
 17 Chinese banks and others that come there.
 18 And they are done between different people if you're
 19 going to that level of lending. It's like international
 20 arbitration, I guess: there's a closed club of people
 21 that do these sort of deals; they're not accessible in
 22 Australia. There's a big difference between number
 23 three on world table and number seven, because it's only
 24 the top four that have representatives in the credit
 25 committees which make the decisions.

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10:42 1 We haven't approached the banks because of the
 2 Amend[ment] Act, basically. And the reason for that
 3 being we couldn't do it before was because we had the
 4 appeal: we then had a High Court appeal which finished
 5 in February.
 6 And then the arbitrator in the domestic arbitration
 7 said he would have a hearing by the end of the year.
 8 The independent expert for the State said the damages
 9 are in the order of \$27 billion. So we were just
 10 six months away, in our view, from that. And we thought
 11 if we got \$27 billion cash, we may not need the whole
 12 \$8 million, or we might [not] need it at all.
 13 Q. So, Mr Palmer, when you say you needed to do it urgently
 14 to avoid liquidation --
 15 A. Yes.
 16 Q. -- you still hadn't done it by August 2020, when the
 17 Amendment Act was passed, for the various reasons you've
 18 given.
 19 A. Mm-hm.
 20 Q. And the liquidation hadn't happened.
 21 A. Yes.
 22 Q. Is that right?
 23 A. I said I had --
 24 Q. Two years later.
 25 A. No, I think you're misunderstanding. I'd like to

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10:43 1 explain it to you if I could, right?
 2 What the situation was: that we had to make
 3 a decision that we had a viable plan forward with the
 4 project, right, so we could avoid having to write the
 5 project down or write it off. And I was confident, and
 6 I was encouraged that we could raise the funding if we
 7 had the right people behind the project, and I was
 8 prepared to do that. But I had these other impediments
 9 I had to deal with legally in the interim.
 10 Q. Now, as to your confidence that you could raise the
 11 funding, can we show you, please, D2/2/23.
 12 A. Yes.
 13 Q. Can you read paragraph 6.1.4:
 14 "... chart of the financing of new coal mines
 15 globally in the period from 2003 to January 2019,
 16 [again] taken from the IJ Global database."
 17 The one "stand-out case" is a Russian mine funded by
 18 "a Russian state development bank".
 19 Leaving that aside:
 20 "... the total debt committed in any one year
 21 [globally is] less than US\$300m."
 22 And as you can see if we go over the page to the
 23 next paragraph (G.6.1.5):
 24 "Excluding the Russian deal, the average loan
 25 size ..."

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10:46 1 a syndicate, in putting all that together.
 2 Q. Mr Palmer, you're running all sorts of different funding
 3 issues together here.
 4 A. No --
 5 Q. Your evidence is about relocating to secure debt funding
 6 from banks; it's not about some other structuring
 7 arrangement. The evidence that you've given so far --
 8 unless you're changing your evidence -- is about debt
 9 funding from banks, not about any other way you might
 10 have raised the money.
 11 A. It's normal for banks to sponsor that and act as
 12 arranger and put their imprimatur on it and say we're in
 13 there for \$200 million in debt funding and we're the
 14 arranger. And, you know, with respect, I used to
 15 lecture at this at Deakin University for five years and
 16 put these deals together on export credits with other
 17 export agencies.
 18 Q. So you say it just doesn't --
 19 A. So I don't need an expert to tell me how to do a deal
 20 like this.
 21 Q. Okay. But you did say earlier to the Tribunal that --
 22 A. Someone that doesn't --
 23 Q. -- the mood or the trend was going against lending to
 24 coal projects in Australia, and that was significant?
 25 A. That's right.

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10:45 1 So the total in any year is less than 300:
 2 "... the average loan size [is] ... US\$182m."
 3 You say you could raise 3.5 billion?
 4 A. Sure.
 5 Q. Sure?
 6 A. I could write a cheque for that now if I wanted to. But
 7 let me --
 8 Q. Mr Palmer, we're not talking about you funding it
 9 yourself through equity.
 10 A. Okay. Well, maybe I'd raise it from myself. But let me
 11 just explain.
 12 These large financings of \$8 billion or more are not
 13 all funded by banks. Banks may be arrangers, they may
 14 sort them out. A lot of them are funded by export
 15 credit agencies which governments set up around the
 16 world to sell equipment or services to the project, and
 17 you will have a state guarantee equivalent to what the
 18 purchase would be.
 19 So when you -- and there are other people who'll
 20 want to buy coal, like coal mines, and they want
 21 a long-term coal contract so that they can be assured
 22 they've got supply so that they can operate, right?
 23 There will be other local industries or suppliers, such
 24 as people like Siemens, for example, that sell turbines:
 25 they might -- they're happy to participate in

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10:47 1 Q. What this data shows is that that trend is global,
 2 against lending to new coal projects, such that there is
 3 not very much going on each year: less than
 4 \$300 million. You say that's irrelevant, do you?
 5 A. Well, we know there are 700 coal mines in construction
 6 in China now, there are 600 in India; some of them are
 7 being funded by the State Bank of India and the State
 8 Bank of China. We know this is just not correct
 9 information. But, you know, it's not significant.
 10 Q. So this is another example of information in an expert
 11 report that you haven't contradicted and you haven't
 12 tested by cross-examination, but you still say should be
 13 disregarded; that's your position?
 14 A. Look, I'm not challenging the report. I'm just saying
 15 that our forensic decision, as I've said before, was
 16 that these sort of things are only relevant to an issue
 17 which is now behind us because of what we had perceived
 18 as the admission by the Commonwealth that the
 19 Amend[ment] Act was not foreseeable. That's as far as
 20 it goes.
 21 Q. Alright.
 22 Can we move, I hope briefly, to a different topic
 23 before the break, if that's convenient, which is to the
 24 Singapore 2008 meeting that you've already mentioned
 25 briefly this morning.

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10:48 1 A. Yes.
 2 Q. As I understand it, in your sixth --
 3 A. What number is that?
 4 Q. Sorry. Well, it's referred to in your sixth statement
 5 at paragraph 89, at C1/18/29.
 6 A. C1/18/29.
 7 Q. Your sixth statement at paragraph 89 is what I'm now
 8 referring to. You can see it on the screen.
 9 A. Yes, sure.
 10 Q. You seem there to accept that this meeting was not about
 11 restructuring or relocating to Singapore; it was in the
 12 context of the IPO discussion in Hong Kong. That's
 13 right, isn't it?
 14 A. That's correct, yes.
 15 Q. Okay. So to the extent that your fifth statement
 16 implies or might suggest otherwise, you weren't
 17 intending to suggest that?
 18 A. No, I wasn't. I was just simply saying: at that meeting
 19 I had the discussion which I described earlier, and that
 20 was the state of my knowledge of that issue.
 21 Q. Yes. And that's a discussion that occurred, now,
 22 16 years ago?
 23 A. Well, it would have been -- I'm just trying to think,
 24 I'm just trying to work it out.
 25 When was this statement done?

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10:50 1 I normally make my own decisions.
 2 Q. Alright. Well, that's a useful segue, Mr Palmer, to the
 3 next document, which is Exhibit C-191, which is
 4 E1/491/1.
 5 A. Number 91, is it, or ...?
 6 Q. C-491. It should come up on the screen in a moment.
 7 (Pause)
 8 Can we go to the next page of that document, please.
 9 Actually, the page after that. So the next page as
 10 well.
 11 So you can see it's the Project Blast "Prospectus
 12 drafting session".
 13 A. Mm-hm.
 14 Q. And you might be able to see at the bottom of the page
 15 there's the date: "4 - 6 September 2008".
 16 A. Yes.
 17 Q. This is the one document relating to that meeting that
 18 I think anyone has been able to find.
 19 A. Yes.
 20 Q. Do you recognise the document?
 21 A. Yes.
 22 Q. So as its heading suggests, "Prospectus drafting
 23 session", it's about equity fundraising.
 24 A. Yes.
 25 Q. Do you agree?

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10:49 1 Q. Well, this sixth statement was quite recent.
 2 A. Okay. So it was -- maybe it was more than -- yes,
 3 16 years ago.
 4 Q. 16 years ago?
 5 A. Yes.
 6 Q. So it's a very long time ago, and you don't have any
 7 notes of it; is that right?
 8 A. We normally only keep records for six years.
 9 Q. I'm not criticising you not having the notes; I'm just
 10 saying you couldn't refresh your memory by reference to
 11 any note of the discussion.
 12 A. That's true, yes.
 13 Q. So you're relying on your memory of a 16-year-old
 14 conversation as part of the foundation for your
 15 restructuring decision; is that what you say?
 16 A. Yes. Well, I'm just saying that's what happened.
 17 Q. And it's not possible that things might have changed in
 18 the world in the 16 years since, such that you should
 19 have updated that advice?
 20 A. Well, that was the state of my knowledge at the time
 21 I made the decision, and that was the reason I made the
 22 decision.
 23 Q. But it was the state of your knowledge only because
 24 you didn't seek any other advice about it?
 25 A. I normally don't seek advice on my business affairs.

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10:51 1 A. Yes, sure.
 2 Q. And we can see, if you go a few pages on -- it's
 3 page 61, I think, I hope. That number might be wrong.
 4 Can you go on just two or three pages, to a document
 5 page headed "Agenda -- Logistics" (PDF page 6). That's
 6 the one.
 7 A. Mm-hm.
 8 Q. Can you see a list of attendees?
 9 A. Yes, I can.
 10 Q. So you were there?
 11 A. Yes, I was.
 12 Q. There were a group of people from UBS; a group of people
 13 from Macquarie Capital; a group of people from
 14 Blake Dawson -- that's an Australian law firm?
 15 A. Yes.
 16 Q. A group of people from Shearman & Sterling, which is
 17 a US law firm?
 18 A. Yes.
 19 Q. And a couple of people from Linklaters, which is a UK
 20 law firm; correct?
 21 A. That's correct, yes.
 22 Q. Okay.
 23 So usually you don't take advice. Sometimes you do.
 24 Sometimes you assemble a team of international advisors,
 25 where that's appropriate for a significant activity by

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10:52 1 the group. That's right, isn't it?
 2 A. No, these were advisors to the banks who were doing the
 3 prospectus. They were retained by the banks to provide
 4 them with independent advice. And Baljeet Singh, who is
 5 also a director of the Claimant, was in charge of the
 6 drafting and coordination of the prospectus, and this
 7 was to discuss some of the expert reports that we had
 8 that were to go in the prospectus.
 9 Q. You can see if we go over the page, you can see there's
 10 a heading, "Outstanding items from weekly call". So
 11 this is one instalment of a regular meeting of this
 12 group in the course of developing the IPO --
 13 A. The prospectus, yes.
 14 Q. The prospectus for the proposed IPO in Hong Kong?
 15 A. That's correct.
 16 Q. Now, that IPO related, did it not, to a company called
 17 RDI?
 18 A. Resource ... what was it called? It wasn't RDI,
 19 it was --
 20 Q. I think it was Resource Development International or
 21 something like that.
 22 A. Something -- yes, yes.
 23 Q. I'll check.
 24 A. It was a resource company, as you say.
 25 Q. It was a resource company that was a subsidiary of

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10:55 1 Balmoral tenements held by [Mr Palmer]."
 2 So the IPO was relating to a company connected with
 3 iron ore in the Balmoral tenements; is that right?
 4 A. It was a multi-commodity company. It had iron ore,
 5 it had coal, it had oil and gas, a whole range of
 6 things, right? Rights to, I should say.
 7 Q. But essentially, insofar as you are saying that this
 8 meeting is relevant to the Tribunal, it's a meeting
 9 because -- you're saying that effectively on the
 10 sidelines of this meeting about the prospectus,
 11 Linklaters, who you've just said were actually advising
 12 the banks, gave you some advice sort of on the side
 13 about restructuring for debt finance in Singapore; is
 14 that the idea?
 15 A. The prospectus, from my memory, had business plans in it
 16 which required debt and equity capital, and so much of
 17 the equity would come from the raising and the
 18 additional money would come from debt finance. Those
 19 projects may not have been large ones, but that was how
 20 it was set up.
 21 So the topic was raised, "Well, that's your equity;
 22 how do you propose to raise your debt?" And we just
 23 discussed it with them, you know, probably not for more
 24 than ten minutes, I suppose.
 25 Q. Okay.

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10:53 1 Mineralogy; is that correct?
 2 A. I can't remember, to be honest with you.
 3 Q. I might --
 4 A. Anyway, it was a company we were associated with.
 5 Q. Yes. I might see if we can prompt your memory. Can we
 6 bring up E2/544 (R-544).
 7 This is a press report from around the time headed
 8 "Palmer makes formal bid for Australasian". And if we
 9 go down a little, to the second page near the bottom,
 10 you can see there's a reference there to RDI being
 11 "granted approval for listing of RDI's shares on the
 12 [Hong Kong Stock Exchange]"?
 13 A. Yes. So with respect, if you look at "Below is the full
 14 announcement", you'll see that RDI is Resource
 15 Development International. That's the real name of the
 16 company. So that's why I didn't realise -- sorry.
 17 Q. No, I apologise for putting the abbreviation to you.
 18 But it's said that RDI was going to launch
 19 a \$5 billion initial public offering on the Hong Kong
 20 Stock Exchange later this year?
 21 A. Yes.
 22 Q. And then on the second page, it says RDI was:
 23 "... recently ... formed to acquire ... iron ore,
 24 nickel, exploration and energy interests, including
 25 rights to ... 20 billion tonnes of iron ore [on] the

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10:56 1 A. There was an exchange between people.
 2 Q. Just to be clear, Resource Development International was
 3 your company, wasn't it?
 4 A. I think the shell may have been owned by Mineralogy at
 5 that time, but it was being listed as an IPO in
 6 Hong Kong.
 7 Q. Yes.
 8 A. It had a number of Chinese companies that were
 9 subscribing hundreds of millions of dollars to it.
 10 Q. Well, that was the idea when the IPO went ahead. But at
 11 the time this was occurring, I'm just looking at the
 12 article --
 13 A. They'd signed up to buy the shares, I think, from
 14 memory.
 15 Q. And just looking at the top of the page that's on the
 16 screen, the very first line on the page:
 17 "RDI [had] appointed Macquarie Bank and UBS to
 18 manage the proposed IPO."
 19 So you'd appointed the two banks?
 20 A. I hadn't personally; the company had.
 21 Q. The company had, yes.
 22 A. And the people on the company, directors were people
 23 like Alexander Downer, who was the foreign minister --
 24 previous foreign minister of Australia. There was a lot
 25 of independent directors, because they had to be -- it

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10:57 1 was different to Mineralogy, how I operate as a private
2 company: they had to have a public face.
3 And it had to -- we needed a lot of lawyers, the
4 banks did, because with the stock exchange in Hong Kong
5 they have very restrict requirements: a prospectus has
6 to be drafted in such a way for an IPO, that sort of
7 thing. So that's what the meeting was about.
8 Q. Do you recall when Mineralogy acquired Waratah Coal?
9 Would you agree it was in December 2007?
10 A. It was somewhere around there.
11 Q. Around there.
12 A. There was a number of transactions, right?
13 Q. Yes.
14 A. Because it was -- from memory, it was a Canadian
15 company, I think, and we had to incorporate a Canadian
16 subsidiary for some reason, I can't remember why. And
17 it was taken over in a number of steps. But that should
18 be on the public record.
19 DR DONAGHUE: Indeed.
20 Madam President, I note the time. That might be
21 a convenient time for the morning break, if that's
22 suitable.
23 THE PRESIDENT: Yes, it is about one hour and a half. If
24 this is a good time in your sequence for the break, then
25 we would take the break now for 20 minutes and resume at

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11:21 1 Q. So there you can see a heading, "Decision to
2 Restructure". And then in paragraph 128, you say:
3 "I also carried out some further research of my own
4 and reached the conclusion that, in circumstances where
5 I was personally living in Singapore, when dividends are
6 paid by Mineralogy to Newco ... to a bank not domiciled
7 in Singapore that there potentially would be no personal
8 tax payable on such dividends. The idea that there
9 could be, in essence, no requirement to pay personal tax
10 on dividends if I decided to move to Singapore was also
11 appealing."
12 Would you agree that tax can be a complicated and
13 specialist field?
14 A. It can be.
15 Q. And you would agree that Mineralogy Propriety Limited
16 and Zeph both seek advice from tax professionals,
17 including Mr Sorensen, formerly of PwC?
18 A. When they're doing a transaction they -- I don't know
19 really. Sometimes they do, yes.
20 Q. Indeed --
21 A. They lodge their returns every year.
22 Q. -- would you agree that Mineralogy did actually seek
23 advice in relation to the very restructure involving the
24 interposition of Zeph into the structure, on the
25 Australian tax ramifications of that restructure?

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10:58 1 11.20.
2 While you are on the witness stand, Mr Palmer, you
3 of course know the rules.
4 MR PALMER: Sure.
5 THE PRESIDENT: You are not to speak to anyone, of your team
6 or otherwise.
7 MR PALMER: Yes, sure. Will I be taken somewhere?
8 THE PRESIDENT: You can of course have a coffee while you
9 sit lonely somewhere.
10 MR PALMER: Yes, okay. So --
11 THE PRESIDENT: Good. Let's resume in 20 minutes.
12 (10.59 am)
13 (A short break)
14 (11.20 am)
15 THE PRESIDENT: Mr Palmer, you are ready to continue?
16 MR PALMER: I am, thanks.
17 THE PRESIDENT: Dr Donaghue, you are too?
18 DR DONAGHUE: I am, thank you.
19 THE PRESIDENT: Please.
20 DR DONAGHUE: Mr Palmer, can we turn to the second of the
21 dominant or principal rationales that you identified at
22 the start: the personal tax rationale.
23 I invite you to look at paragraph 128 of your first
24 witness statement, which is C1/4/71. (Pause)
25 A. Yes.

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11:22 1 A. They received advice in respect of stamp duty and
2 Australian taxation for rollovers. That's all I can
3 remember.
4 Q. What about the tax residency of Zeph?
5 A. No.
6 Q. No?
7 A. No.
8 Q. Alright. And the tax residency of Mineralogy?
9 A. No, it was -- I only realised: if I changed -- the two
10 things I looked at was: if I changed my residency to
11 Singapore, and my dividends are paid in a non-taxable
12 jurisdiction such as Monaco or somewhere like that, that
13 there's no tax for me to pay on my dividend. So that's
14 what I was personally concerned about. I thought: if
15 we're going to Singapore, this is another good aspect.
16 What the case of the companies would be -- I didn't
17 have any intention of leaving for Singapore overnight or
18 anything. But we would obviously get advice from tax
19 people when the decision was made that we wanted to go
20 to Singapore, which could be in a few years' time or
21 something.
22 Q. So you restructured, and one of the primary reasons was
23 to get a tax benefit. But you didn't need advice about
24 that because you were going to get advice after the
25 restructuring if you were going to implement it; is that

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11:24 1 what you're saying?
 2 A. It was common knowledge to me that being -- not being
 3 a resident of Australia would mean I wouldn't have to
 4 pay tax in Australia. I mean, I'd been in the faculty
 5 of law and business for ten years; that was a very
 6 understandable thing to do. And I had all the tax
 7 legislation on that point.
 8 Q. That's true, Mr Palmer. But we're not just talking
 9 about you moving to Singapore; we're talking about
 10 restructuring your corporate group to interpose
 11 a company in Singapore.
 12 A. Well, I was thinking of myself. Strangely, I know
 13 people don't normally do that. But I was thinking about
 14 what's my position going to be, and that's all I was
 15 considering.
 16 Q. And if the tax ramifications of including the company in
 17 Singapore had been negative for the Mineralogy Group,
 18 that would have had negative implications for you
 19 personally as well, wouldn't it?
 20 A. Not really. You see, the money I get out is money I can
 21 spend without accountability to the board, to the
 22 directors and also to the public, to remain in credit
 23 and solvent. So I put a high premium on the most amount
 24 that I can receive. I'm not going to receive more. If
 25 it's tax-free to me, it's a lot better for me. That's

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11:26 1 So you can see on the screen this is an email from
 2 Mr Sorensen on 22 January 2019, which is addressed,
 3 "Dear Clive". This is an email that Mr Sorensen wrote
 4 to you; do you agree?
 5 A. Can I just read it first? (Pause)
 6 Yes, it's addressed to me. I hadn't seen it before.
 7 Q. Well, you would have seen it on 22 January 2019.
 8 A. Well, yes, I don't get all -- I don't deal with all my
 9 emails. I get thousands of emails a week from people
 10 for all different sorts of things.
 11 Q. Mr Sorensen was at the time --
 12 A. I'm not denying he wrote the email or he sent it to me,
 13 right?
 14 Q. And that he's a partner at PwC?
 15 A. He is a partner at PwC, yes.
 16 Q. Who gives tax advice to the Mineralogy Group?
 17 A. At that time he was, yes.
 18 Q. And he was giving you advice about the interposition
 19 resolutions, the resolutions by which Zeph becomes part
 20 of the Mineralogy Group?
 21 A. Mm-hm.
 22 Q. And he says:
 23 "We need to [be able to] clearly demonstrate that
 24 [they] were made in Australia ... the majority of the
 25 directors are Australian resident [in order] to ensure

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11:25 1 how I looked at it, right?
 2 Q. Even if we accept that's true, are you saying it
 3 wouldn't have been a relevant factor for you to try to
 4 protect Mineralogy's tax position in relation to the
 5 restructure?
 6 A. First, I would just say it's hypothetical because
 7 I wasn't moving to Singapore. Four years later, I was
 8 considering moving to Singapore: I discussed it with my
 9 wife, she didn't want to go, to take the children out of
 10 school. So it's just hypothetical.
 11 Tax law changes yearly. And when it does change,
 12 and if we did try to do that, we'd certainly get the
 13 best advice for the company.
 14 Q. Mr Palmer, you moving to Singapore was hypothetical.
 15 You inserting Zeph into the corporate structure is
 16 a thing that actually happened in January 2019.
 17 A. Mm-hm.
 18 Q. So if that thing that had actually happened had adverse
 19 ramifications from a tax point of view, that would have
 20 been a relevant consideration?
 21 A. Well, I think by general knowledge we know that that
 22 couldn't have any relative disadvantage for us at that
 23 time.
 24 Q. Alright. Can you be shown, please, R-600. (Pause)
 25 E2/600/1.

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11:27 1 ... tax residency is established for Mineralogy
 2 International Pte Ltd."
 3 That's Zeph. That's right?
 4 A. Yes.
 5 Q. So PwC is giving you advice about the tax resident
 6 status of Zeph as part of the restructure. You must
 7 agree with that?
 8 A. Yes, that would have been dealt with with Michael Mash,
 9 who was the CEO -- CFO, and that's who it's copied to.
 10 Q. Yes, but it's addressed to you.
 11 A. It is, but I wouldn't have seen it. As soon as it's
 12 a financial matter going to accounting, it goes to our
 13 chief financial officer who deals with that.
 14 Q. You would not have seen an email to you about the
 15 resolutions designed to give effect to the restructure
 16 inserting MIL?
 17 A. My involvement in this was to say to give it to
 18 Graham Sorensen to do, and to deal with Michael Mash.
 19 I authorised Graham to get involved. And after that,
 20 I wouldn't have seen it. And I was told it was all
 21 resolved until the resolutions came back. Because we
 22 employ many people, thousands of people, and I can't see
 23 everything that's happening.
 24 Q. Alright.
 25 Can we scroll down on that page that's on the screen

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11:29 1 to the bottom of the screen. I don't know if there's
2 any sensitivity about this, Mr Palmer, so I won't use
3 the name. But do you see the name that is bolded near
4 the bottom of that email, where there's an email from
5 a name to Graham Sorensen?
6 A. Yes, I do.
7 Q. Do you see that?
8 A. Yes.
9 Q. So I won't read it out loud, but that's a name you use;
10 is that correct?
11 A. It is, yes.
12 Q. So that's an email sent by you to Mr Sorensen?
13 A. It's sent from my email. It would have been sent by my
14 secretary, who could have sent it based on instructions
15 from Michael. I can't say until I see what it says.
16 Q. Well, if we scroll further down, so Michael sent
17 an email to you saying:
18 "Hi Clive
19 Min Int Pte ... was ..."
20 A. I haven't got that.
21 Q. Sorry, you don't have that? Alright.
22 A. Sorry.
23 Q. Sorry, I apologise. You've got it now. Do you see it
24 in front of you?
25 A. "Min Int ... [has] been incorporated find document

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11:30 1 Q. So you've sent -- seemingly from your phone, not your
2 EA -- you've sent from your phone --
3 A. Is that -- could I look at the phone so I can --
4 Q. Well, it just says, "Sent from my iPhone".
5 A. Okay.
6 Q. Underneath your [signature], underneath your name,
7 "Clive".
8 A. Okay, yes. Well, certainly that letter would have been
9 sent on authority of the companies, there's no doubt
10 about that. I can't personally recall it, but
11 I wouldn't deny it was sent to then.
12 Q. But you would now accept, looking at this document, that
13 Mineralogy and Zeph were receiving tax advice as part of
14 the restructure? Do you agree with that?
15 A. On these letters, that's all I'd say on these letters.
16 Q. Yes.
17 A. But that was -- I didn't imagine that was the case. It
18 was just given to Graham to deal with the restructure.
19 They were providing -- yes, they were providing tax
20 advice for land tax and things like that.
21 Q. Now, whatever the position with the group is, your
22 evidence is that you didn't receive any advice yourself?
23 A. No.
24 Q. The reason for the restructure, in terms of your
25 personal tax benefit, was based on your own internet

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11:30 1 attached.
2 Kind regards".
3 Q. So you've been told by Michael that it's been
4 incorporated on 21 January --
5 A. Yes.
6 Q. -- and you've then forwarded that --
7 A. Yes.
8 Q. -- to Mr Sorensen the next day. And Mr Sorensen has
9 responded to you the same day --
10 A. I can't see any of this, sorry.
11 Q. Maybe we could go back. I'll go through it more slowly.
12 If we go to the second page.
13 A. So this is a response from him to me; that's what you're
14 saying, is it?
15 Q. That's what I'm saying. So if we're working our way
16 back up the email chain --
17 A. Okay.
18 Q. -- Michael sends an email to you on 21 January saying:
19 Zeph has been incorporated.
20 A. Yes.
21 Q. Then the next email on the chain going up the document
22 is the one from the name we're not using to Mr Sorensen,
23 where you forward it: "See below and attached", is what
24 you say, "Clive".
25 A. Yes.

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11:32 1 research?
2 A. It was one of the things I considered, what my position
3 would be personally, because at that time I was 64 years
4 of age and I was reaching close to retirement.
5 Q. I understand.
6 Now, can we look again back at the first paragraph
7 I showed you in your first witness statement at
8 paragraph 128. So this is C1/4/71 again.
9 A. Mm-hm.
10 Q. You say in the second line:
11 "... in circumstances where I was permanently living
12 in Singapore ..."
13 And in the second-last line:
14 "... if I decided to move to Singapore ..."
15 So you were contemplating -- this plan involved you
16 actually -- would only take effect if you actually moved
17 at some future point?
18 A. If I actually became a resident of Singapore.
19 Q. Yes. And also, looking back to the second to third
20 lines:
21 "... [if] I was personally living in Singapore, when
22 dividends are paid by Mineralogy to Newco ..."
23 To Zeph.
24 A. Yes.
25 Q. So the plan required you to be resident in Singapore at

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11:33 1 the time when the dividends were paid; is that right?
 2 A. That's right. We had -- I also considered that the
 3 companies had flexibility on when they paid dividends.
 4 For example --
 5 Q. That's the very question I was about to ask you. So --
 6 A. Well, maybe I'll just keep explaining.
 7 So, for example, if we earned 200 -- say we earned
 8 \$400 million a year for five years, right? That would
 9 be \$1.2 billion of retained profits which hadn't been
 10 distributed; may have been franked dividends. But then
 11 if I moved in, say, year number 3, but a dividend wasn't
 12 declared till year number 5, then the entire amount
 13 would be tax-free, which would save me about 24% of
 14 that, or \$250 million.
 15 So that was in my mind and that was something that
 16 was attractive to me. I thought it was -- sort of
 17 tipped the scales that it seems to be a good thing to
 18 do.
 19 Q. But the plan worked as long as --
 20 A. I was --
 21 Q. -- dividends weren't paid out --
 22 A. Yes.
 23 Q. -- until you made the move, whenever you made the move?
 24 A. Well, hypothetically, if you moved in, say, year 4 and
 25 you paid out dividends in year 6, that dividend could be

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11:35 1 the longer term, considering I was 64 years old and
 2 I wanted to have a situation where I got a final payment
 3 to spend on my retirement, for the rest of my life.
 4 Q. Now, do you agree that the essence of the plan, if I can
 5 call it that, depended on you ceasing to be
 6 an Australian tax resident?
 7 A. That's correct, yes.
 8 Q. That was the key point?
 9 A. Yes, I'd have to cease to be a resident of Australia and
 10 become a resident of Singapore.
 11 Q. Or of somewhere else?
 12 A. Yes, of somewhere else. But it would have to be
 13 a jurisdiction where the dividend wouldn't be taxable.
 14 Q. Wouldn't be taxed.
 15 A. Or you could do it by sending it to Monaco, a tax-free
 16 jurisdiction, and they allowed that, right?
 17 Q. But if you were still an Australian tax resident, even
 18 if you'd been living overseas, you wouldn't have got the
 19 benefit you were seeking. So the key point --
 20 A. That's right, yes.
 21 Q. Yes, okay.
 22 Now, can I show you, please, part of the report of
 23 Professor Graeme Cooper. This is D2/6/18. You can see
 24 on the screen there heading 6.1, "Requirements for the
 25 successful loss of Australian tax residence". Can you

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11:34 1 for the whole six years, and if that was, say, paid to
 2 Monaco and you lived in Singapore, there would be no tax
 3 to pay on that at all by me.
 4 Q. It follows, doesn't it, from that analysis or
 5 description of the scheme --
 6 A. It's not a scheme, it's a legal --
 7 Q. Of the plan. No, no, I'm not using that word
 8 pejoratively. It follows from that description of what
 9 you had in mind that it didn't create -- there was no
 10 urgency about the restructure to achieve that, because
 11 you could control when the dividends were paid?
 12 A. Exactly. There was no -- on that point, there was no
 13 urgency to do it. But there was no reason to stop it
 14 being done as a structure. That's probably what we
 15 could say, right?
 16 Q. Now, I think it follows from what you've just said, but
 17 none of your statements actually assert that at the time
 18 of the restructure in December 2018/January 2019, you
 19 actually had a concrete plan to move; it was just that
 20 you were entertaining the possibility that you might.
 21 Is that fair?
 22 A. Well, I had a concrete plan to discuss it with my wife,
 23 but she vetoed it four years later, right? Many of us
 24 are controlled by our wives or husbands, I suppose. But
 25 from a commercial point of view, it made sense to me in

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11:36 1 see that? I'm not asking you at the moment to read
 2 this.
 3 Have you read this report before?
 4 A. No. Do you want me to read it?
 5 Q. No, I don't want you to read all of this, because
 6 it will take too long. But if we go --
 7 A. Sorry. Let me read what's on the screen.
 8 Q. There's a description from 38, and what I'm going to
 9 take you to is the summary, Mr Palmer. So you can see
 10 it starts at paragraph 38.
 11 A. Yes.
 12 Q. And if we scroll down a few pages, it's a reasonably
 13 long conversation, and it arrives at a summary at
 14 paragraph 47. And I do invite you to read the summary
 15 once it comes up on the screen in front of you.
 16 It's on D2/6/21, I believe.
 17 A. Sure.
 18 Q. Thank you. It's the bottom paragraph on that page. So
 19 this is Professor Cooper's distillation of what's there
 20 before:
 21 "... if Mr Palmer wished to be certain that he had
 22 successfully shed his Australian tax residence, he would
 23 be well advised to divest any Australian residential
 24 accommodation, take his family with him to Singapore,
 25 return to Australia infrequently and for short periods

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11:38 1 and for reasons of necessity, remove his personal
2 effects from Australia, realise any Australian portfolio
3 investments, relinquish his role in actively managing
4 Mineralogy ... abandon his social and political
5 connections in Australia, and then acquire permanent
6 residential accommodation offshore, establish new bank
7 accounts, real estate ..."

8 It was quite a list of things you would have needed
9 to do.

10 A. Well, do you want me to comment on it or ...?

11 Q. Yes.

12 A. Well, I don't know whether that's true or not. That's
13 the first thing, right? I imagine some of it is true.
14 But from my thinking in 2018, if I was talking about,
15 say, saving \$1 billion or having \$1 billion, I was happy
16 to -- it may be something I would have personally
17 contemplated doing, right? Especially at my advanced
18 age. I'm now 70, but I was 64 then, I think.

19 But of course, you know, there's a critical line
20 there, I think it is correct, on the third line, where
21 it says, "[and] take his family with him to Singapore",
22 right? So my wife wouldn't go and live in Singapore;
23 she wouldn't (sic) stop our children going. So it would
24 have meant -- when this happened -- I wasn't aware of
25 that at the time of this -- but it would have meant

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11:40 1 June 2018 I was thinking about retirement.
2 Q. Meaning actively stepping back from Mineralogy --
3 A. Yes.
4 Q. -- Zeph, all of those companies; is that what you're
5 saying?
6 A. We have a limited lifespan, I think, so I wasn't fooled
7 by that. So I was thinking -- I was looking -- at the
8 time I was thinking about Rupert Murdoch, who said he
9 would live to 140. I thought that was highly unlikely,
10 so it would be a good time to retire.
11 Q. And when did you first raise this plan with your wife?
12 A. About ... I think probably about two and a half years
13 after that or something like that, I said -- I raised
14 that plan with her.
15 Q. So you'd done the restructure, and a couple of years
16 later you raised the possibility with --
17 A. Yes, "Do you think this would be a good idea?"
18 Q. And she said, "No"?
19 A. She said, "No".
20 Q. Is there any particular reason you didn't raise it at
21 the time that you were making a decision based upon,
22 "This is one of the two dominant reasons for the
23 restructure"?
24 A. Well, yes: because I didn't think I wanted to go to
25 Singapore at that particular time. I was quite open to

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11:39 1 I had to divorce my wife, which I wouldn't do.
2 So, you know, that was the end of it.
3 Q. Really my question is: you wouldn't say that you were
4 planning, at the time you did the restructure, to do all
5 of the things that are there in that summary? You just
6 say, "Maybe I would have, down the track". Is that
7 fair?
8 A. Well, I made the decision I thought the possibility
9 appealed to me personally. I thought I would be more
10 successful in convincing my wife than I eventually was.
11 Q. The possibility of doing all of that, including
12 relinquishing --
13 A. No, no. Sorry, sorry. The possibility of going to
14 Singapore, right?
15 Q. Yes.
16 A. I realised that if I went to Singapore at the time
17 I made the decision, I would have to, you know, do some
18 of those things. I didn't realise all of those things.
19 Q. Did you realise you'd need to relinquish your role in
20 managing Mineralogy?
21 A. Well, I relinquished my role in managing Mineralogy in
22 October -- initially I retired in -- when I was 64.
23 I think it was October 2018 was my retirement, right?
24 I only came back to Mineralogy when I was appointed by
25 the Claimant in February 2019. So certainly in

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11:41 1 be going later, when I first raised it with her. But
2 there's no point having a fight if you don't need to
3 have one; it's better if it's hypothetical.
4 When it became a possibility for me, I was getting
5 a bit tired one day, I thought this might be a good
6 thing to do, and I came home and suggested it to her.
7 She said, "Well, I'm not going, the two kids are not
8 going, they're all in school". I don't know how old the
9 kids were then, but they would have been like 8 or 12 or
10 something like that. And she didn't want to leave the
11 country.
12 Q. Can I show you part of your fifth witness statement.
13 This is C1/17/23. When it comes up, it will be
14 paragraph 62 of your fifth statement. (Pause) You see
15 that?
16 Now, this paragraph is dealing with the same topic
17 that we've been discussing. Can I ask you to look down
18 about halfway, or maybe five or six lines, and there's
19 a sentence that says:
20 "Considering the amount of my top marginal tax rate
21 (around 47%) and the matters confirmed by BDO in their
22 letter of 4 March 2024 ..."
23 A. Yes.
24 Q. And these are the words that I want you to focus on:
25 "... if I were to restructure and become

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11:42 1 [a] resident in Singapore, I could be relieved of the
2 requirement to pay around US\$90,000,000 tax in
3 Australia."
4 A. Mm-hm.
5 Q. "At this time, this was an important and persuasive
6 reason for me to consider [the] restructure."
7 My question is this: are you suggesting there that
8 to obtain the tax benefits that were motivating you, it
9 was necessary both for you to restructure and to become
10 a resident of Singapore?
11 A. I understand your question, and I think I know what
12 you're asking -- what the answer [is].
13 Q. Yes.
14 A. Well, first of all, I had to become a resident of
15 Singapore, and that was part of the plan. So I then
16 thought: well, how do you become a resident of
17 Singapore? And I made some general enquiries about
18 that.
19 Q. Now, when did you make those?
20 A. That would have been -- I can't remember when I made the
21 enquiries, to be honest with you.
22 Q. Okay.
23 A. But I made the enquiries, anyway.
24 Q. You refer in that paragraph to some advice received in
25 March 2024. There are two letters on the record in

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11:44 1 Q. This is the 2024?
2 A. 2024 -- which he said he could, and that my
3 understandings were correct of them. And he put it in
4 the letter, which is Exhibit -- I think is it C-496?
5 But that's the background to that.
6 Q. Thank you.
7 Now, in the expert reports of both Professor Cooper,
8 dealing with Australian law principles, and Associate
9 Professor Phua, they both say that the insertion of MIL
10 and Zeph into the group was not necessary to gain any
11 tax advantage.
12 It sounds like, from the evidence you just gave, you
13 agree with that. The restructure wasn't part of getting
14 the tax advantage: it was just related to whether you
15 could get residence or not. Is that right?
16 A. Well, having a Singapore company was related to whether
17 I could get residency, and that was something
18 I considered at the time.
19 You know, it's very hard to know, when you look back
20 six years, what particular thing took you over the top
21 to make a decision, you know? All I can say is that
22 these things were before me.
23 I think the coal thing was more a decision. And
24 then I said: well, if I do that, is there an opportunity
25 for me to get a better tax position? And I looked at it

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11:43 1 March 2024. Is that what you're referring to?
2 A. Is this the Louis Lim letter?
3 Q. One of them is Louis Lim and the other is BDO, I think.
4 A. Yes, okay.
5 No, I actually did some sort of research on the
6 internet myself and I found that there were a couple of
7 schemes operating in Singapore, immigration schemes to
8 get residency, how you got residency. And one of the
9 schemes was that if you owned a company in Singapore,
10 right, and you worked for the company, you were the
11 chairman or you were the director, you could obtain
12 residency through that scheme, right?
13 So in having a Singapore company, it was a --
14 it sort of helped also guarantee that I could get
15 residency when I wanted it. Otherwise I couldn't be
16 sure I could get residency in Singapore.
17 Q. And that was based on your own research, you say?
18 A. I think it's on the internet. I think you can look it
19 up today, those schemes. Yes, I think it was on the
20 internet I got it, right?
21 And then later on, in March '24, when all this came
22 before arbitration, or we were going to arbitration,
23 I got on to Louis Lim & Partners and I asked him about
24 those schemes. And I asked him if he could confirm
25 those details, which --

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11:46 1 and I saw that it was. And then I made the decision:
2 there doesn't seem to be any other reason not to do it.
3 The other --
4 Q. Can I just --
5 A. Sorry.
6 Q. -- finish off on this topic --
7 A. Sure.
8 Q. -- by showing you Associate Professor Phua's evidence,
9 which is at D2/4/14, paragraph 45. (Pause) Could we
10 allow you to see 44 as well.
11 Associate Professor Phua, in 44, is recognising that
12 the dividends from the various companies in your group
13 "would be treated as foreign-source" --
14 A. Income.
15 Q. Yes:
16 "... as long as [you did] not acquire tax residence
17 in Singapore and remain[ed] a tax resident of Australia,
18 [you] would be exempt from tax in Singapore even if the
19 dividends ... [were] received in Singapore."
20 But then he explains in 45 that:
21 "... the tax treatment described ... applies to any
22 non-resident individual who receives foreign-source
23 dividends in Singapore from a non-resident ... even
24 without the restructuring, [the] dividends ... would
25 have been exempt anyway since Singapore would treat them

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11:47 1 as foreign-source ... In this regard, the insertion of
 2 Zeph into the Mineralogy corporate structure was wholly
 3 unnecessary for Palmer to obtain any personal tax
 4 advantage in respect of dividends received by him."
 5 Now, you engaged an expert, Ms Mitchell, to comment
 6 on that report. Did you know that? Or the Claimant
 7 engaged an expert.
 8 A. The Claimant.
 9 Q. Yes, the Claimant did. Did you know that?
 10 A. Yes.
 11 Q. Have you --
 12 A. Can I respond to what you've said?
 13 Q. Of course, okay.
 14 A. So I don't dispute any of that, okay? I just want to
 15 make it clear that the reason was purely in respect of
 16 having a Singapore company meant under the scheme
 17 I could get residency, right? And residency was
 18 an important aspect. So this assumes you can just get
 19 residency, permanent residency, going to Singapore.
 20 And I was -- I telephoned somebody in Singapore at
 21 immigration. They said, "No, you can come under one of
 22 our schemes. You don't automatically get residency
 23 here".
 24 So the tax aspect of it, the Singapore fits in in
 25 that in my mind at the time, it was guaranteeing that

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11:49 1 the transaction, and he didn't raise that as an issue.
 2 Q. Alright. Can I take you back to Professor Cooper, this
 3 time D2/6/11. (Pause)
 4 There's a heading, "Inserting two
 5 foreign-incorporated companies at the head of the
 6 Mineralogy groups threatened significant potential tax
 7 detriments". Do you see that heading?
 8 A. Yes.
 9 Q. And then Professor Cooper says in 18:
 10 "It is not surprising that no Australian tax
 11 advantages are identified since, rather than delivering
 12 Australian tax advantages ..."
 13 Which I know you haven't said you were seeking:
 14 "... the Insertions threatened immediate and ongoing
 15 Australian (and possibly foreign) income tax detriments
 16 for Mr Palmer and the Mineralogy group."
 17 Which he then goes on to describe.
 18 And if we can go on to the next page, at
 19 paragraph 21 he identifies some of the potential
 20 problems: "trigger[ing] income tax".
 21 A. (Laughs)
 22 Q. "... passing Australian-source income through companies
 23 incorporated in two foreign countries --
 24 "i. potentially exposes the income to corporate tax
 25 and ... withholding tax in each of those countries ...

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11:48 1 I could get residency in Singapore when I needed it,
 2 because I could decide who the chairman would be,
 3 whether I'd be a director, whether I'd be an employee,
 4 whatever, but from a Singapore company to get there.
 5 Does that help, or --
 6 Q. Yes, it does. Thank you.
 7 You said just a couple of minutes ago -- you
 8 described the advantage, and then you said, "there
 9 doesn't seem to be any ... reason not to". Do you
 10 remember saying that --
 11 A. Yes.
 12 Q. -- just a moment ago? There might have been a reason
 13 not to: if there had been adverse consequences for the
 14 Mineralogy Group in Australia. Do you accept that?
 15 A. Well, I wasn't aware of any. And I had other people who
 16 were looking after the company's position, and who
 17 recommended we should just -- there's no problem.
 18 Q. So other people who were looking after the company's
 19 position, specifically in the context of saying,
 20 "Mr Palmer wants to do this restructure; let's make sure
 21 it's not going to hurt the company's position"? Is that
 22 what you're saying?
 23 A. Well, you showed me earlier a letter from
 24 Graham Sorensen, for example. And he had all the
 25 ongoing nuts and bolts, if you want to call it that, of

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11:51 1 "ii. might enliven foreign tax rules triggered when
 2 their locally incorporated entities own investments
 3 abroad ...
 4 "iii. would enliven Australian tax rules triggered
 5 when Australian entities are owned from abroad (in this
 6 case, Singapore and New Zealand), and
 7 "c. bringing the income back into Australia creates
 8 a third layer of income tax problems ...
 9 "None of these potential problems would have arisen
 10 if the Australian-sourced income of the Mineralogy
 11 corporate group had not been routed through two
 12 foreign-incorporated companies before being brought back
 13 to Australia."
 14 You'd agree, wouldn't you, that those are issues
 15 that need to be seriously looked at?
 16 A. Well, none of that's happened. We have done the
 17 restructure, and none of these hypothetical things which
 18 this fellow is on about has happened. I mean, surely
 19 the Tax Department in Australia would action some of
 20 these things if they were real. I mean, they know --
 21 there's a little group in the Tax Department that just
 22 looks at our stuff full time. They haven't started any
 23 actions.
 24 Q. To be fair to you, Mr Palmer, given that you said you
 25 haven't read the report, Professor Cooper doesn't say

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11:52 1 they have happened. Professor Cooper says active care
 2 was necessary in the management of the restructure to
 3 make sure they didn't happen. That's his position.
 4 A. I see. Well, that's a great accolade to the people that
 5 work for us.
 6 Q. But one of the things that he says is that what was
 7 critical to make sure those things didn't happen is that
 8 both Zeph and MIL were Australian tax residents managed
 9 from Australia.
 10 A. It's much like -- could I comment on that?
 11 Q. Yes, please do.
 12 A. It's much like, if we look at Google or Alphabet or
 13 anyone like that, they pay their tax world income
 14 through Ireland, but they're American companies.
 15 Everyone knows they're American companies: they're
 16 listed on the New York Stock Exchange, they carry out
 17 business on the New York Stock Exchange.
 18 It's quite common for all companies that are of any
 19 substance working internationally to put a tax residency
 20 which will most advantage them in any international
 21 location, which may be totally different from where
 22 their operations are or where they are. That's how tax
 23 advice seems to work these days. So this was nothing
 24 out of the ordinary for me.
 25 Q. "This" being making sure that the new --

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11:54 1 So I was 64; I'm now 70. I thought this could be
 2 something which I could just cash out in and spend on
 3 something, (Laughs) I don't know what! But that's how
 4 I thought at the time. It was no more than a thought
 5 like that.
 6 Q. I think, Mr Palmer, can we show you D2/6/15.
 7 A. Certainly.
 8 Q. This is Professor Cooper at paragraph 29. So you can
 9 see, reading from the start:
 10 "One particular problem which will need ongoing
 11 management is to prevent the deconsolidation of the MIL
 12 tax consolidated group ... I mention this issue
 13 specifically since, if Mr Palmer is to avoid the
 14 deconsolidation of the MIL TCG [tax consolidated group],
 15 it is essential the 'management and control' of Zeph
 16 never be allowed to happen in Singapore."
 17 Is that advice that you recall having received?
 18 A. No.
 19 Q. But you would agree that Zeph seems to have been managed
 20 in a way to ensure that it is managed from Australia?
 21 Would you agree that?
 22 A. No, I don't think so. I mean, the Australian directors
 23 of Zeph are not directors of Mineralogy, I don't think.
 24 I am, of course. But there's Mr Sheridan,
 25 Emily Palmer ... I'm trying to think. Declan

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11:53 1 A. I didn't really get any of this advice. But I'm saying:
 2 if I was given that advice, it wouldn't have been
 3 a surprise to me because that's how most international
 4 business is done.
 5 Q. But this is international business being done in
 6 a context where what you're saying is: you were doing
 7 this restructuring in part to get access to personal tax
 8 benefits, which didn't depend on the restructure. The
 9 restructure creates tax risks that needed to be managed?
 10 A. Well, they did depend on the restructuring in respect of
 11 dealing with dividends: that I needed to be able to go
 12 to a place where I could get residency, and that that
 13 residency allowed for dividends to be paid tax-free. So
 14 it did depend on that.
 15 Q. I understand. It depended on you becoming able to
 16 become resident in Singapore?
 17 A. Singapore, that's right.
 18 Q. I agree with that, yes.
 19 A. So that's what I'm trying to explain.
 20 Q. Yes. So where Professor --
 21 A. The next point I should say is that I was -- I'm
 22 interested, at my age now, in getting large payments.
 23 I'm not so interested in standing annuities that go on
 24 for 30 or 40 years, because I may not be here on the
 25 planet, right?

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11:55 1 Sheridan -- sorry, Declan Sheridan, Emily Palmer, they
 2 were not directors of Mineralogy, but they -- and
 3 Bernard Wong, who is not a director of even Mineralogy,
 4 but he's a director of the Claimant. And they are up in
 5 Singapore all the time running the operations.
 6 Mr Wong is responsible for the group accounting. He
 7 is the CFO of both Zeph and Mineralogy, and he has to
 8 put together the accounts, and regularly review them
 9 every two or three months. He's got an accounting team
 10 in Singapore that report to him. He's the chief -- what
 11 else does he do? So he's carrying out all those things:
 12 profit and loss statements.
 13 Q. I think in fairness to you, Mr Palmer, I should make
 14 sure you pause and appreciate the significance of this.
 15 A. Yes.
 16 Q. Is it your evidence -- because obviously you can't say
 17 something different to this Tribunal and the Australian
 18 tax authorities on the different hat.
 19 A. Yes, sure.
 20 Q. Is it your evidence that Zeph -- I'm not talking about
 21 Mineralogy, but Zeph -- is managed and controlled from
 22 Singapore?
 23 A. No, as I said in my evidence, which is written evidence,
 24 that people carry dual functions and dual roles. And
 25 with current technology, meetings, day-to-day

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11:56 1 communications all happen over the internet. And Zoom
 2 meetings regularly take place between the people.
 3 Q. The people who are in Australia, based in Australia?
 4 A. And people who are in Singapore too.
 5 Q. So I ask you again: is it your evidence that Zeph is
 6 managed or controlled from Singapore?
 7 A. No.
 8 Q. No. Is it managed or controlled from Australia?
 9 A. It depends on how you're looking at it. I'd have to
 10 consider. I am the CEO of the company. I am a resident
 11 of Australia. I make final decisions, normally on the
 12 payments of things, in Australia for Mineralogy.
 13 Q. But I'm asking you about Zeph at the moment, Mr Palmer.
 14 And you'll appreciate that one of the issues before the
 15 Tribunal is about whether Zeph has substantial business
 16 activity in Singapore.
 17 A. Mm.
 18 Q. I'm asking you if you're claiming that part of that
 19 substantial business activity in Singapore is whether
 20 the management of that company is happening in Singapore
 21 or when the management and control of that company is
 22 happening in Australia.
 23 A. Well, as I say, I haven't put an expert report on that
 24 regard. I'd say it is what it is. The evidence is on
 25 there: where the directors are, where they're based,

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11:58 1 where they're residents of and where they pay tax. So
 2 it's not an area that I could go into.
 3 Q. You'll see in paragraph 30, the next paragraph,
 4 Professor Cooper says:
 5 "The possible deconsolidation of the MIL [tax
 6 consolidated group] creates an obvious tension for the
 7 purposes of these proceedings. On the one hand,
 8 Mr Palmer asserts that Zeph is managed and controlled by
 9 its directors and the impression is conveyed that the
 10 management of Zeph occurs in Singapore: ..."
 11 And there's a quote from your report. And then
 12 under the quote:
 13 "But for Australian tax purposes ... the activities
 14 occurring in Singapore can never be allowed to be so
 15 important that the 'management and control' of Zeph is
 16 occurring in Singapore."
 17 And thus he suggests you have to walk a tightrope.
 18 Are you just saying this isn't something you're
 19 conscious of at all?
 20 A. Well, I mean, we've put evidence on to say that the two
 21 resident directors of Singapore have bank authorities
 22 for the accounts in Singapore, that they control all the
 23 operations in Singapore, and that they're actively doing
 24 that.
 25 Q. Now, they're the two people who --

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11:59 1 A. Who reside in Singapore.
 2 Q. -- who reside in Singapore --
 3 A. Yes.
 4 Q. -- and they're the two people who were the two managers
 5 of Kleenmatic?
 6 A. I think they were the owners, previous owners, I think.
 7 Q. Owners, and now they run the Kleenmatic business in --
 8 A. They run the joint venture that we have up there.
 9 Q. Alright. But you don't, I think, suggest that those two
 10 individuals have a role in relation to the management of
 11 Zeph, other than Kleenmatic, do you?
 12 A. Well, all the directors of the company have a personal
 13 liability to act in the best interests of the company in
 14 respect of all the decisions the company makes.
 15 Q. Well, that's a legal proposition.
 16 A. Well --
 17 Q. But in terms of what they actually do, do they actually
 18 do anything other than run a simple cleaning --
 19 A. Yes. Well, they've been down here, for example, in
 20 Australia. They were here in December, running through
 21 their business plans, what we were doing, both in
 22 Australia and elsewhere. And they regularly fly down
 23 here. They're on Zoom. Our people that are resident in
 24 Australia, the people I mentioned before, regularly
 25 visit Singapore. And there's a good -- you could

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12:00 1 probably feel the camaraderie in the Chinese New Year
 2 party.
 3 Q. Alright. Thank you, Mr Palmer. Can we move on.
 4 The third and fourth reasons that you identified at
 5 the start of the morning for the restructure were
 6 widening investment opportunities and diversification.
 7 Do you recall that?
 8 A. Yes, I do, yes.
 9 Q. Would you agree that neither of those reasons provides
 10 any explanation for the urgency of the incorporation?
 11 A. No. Can I explain why?
 12 Q. Well, you've said already it was urgent to acquire
 13 Visco.
 14 A. Yes.
 15 Q. Is that how you say diversification --
 16 A. No, no, there's some other aspects which --
 17 Q. Alright. Well, then please do explain.
 18 A. I think it would be helpful to the Tribunal to run
 19 through it, right?
 20 Firstly, in the case of New Zealand, we were --
 21 well, firstly, looking at my case, I was in a situation
 22 where I had all of my assets held in one basket, in
 23 Mineralogy, right? I was 64 years of age and I was
 24 worried about risk. I was worried about risk because
 25 I was involved in Mineralogy, who was involved in major

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12:01 1 litigation with the Chinese Government at the particular
2 times and others, and I was worried what happens if
3 Mineralogy goes into liquidation or gets wiped out.
4 This is my thinking back in 2017/2018. So I thought it
5 would be good to have a company that I own shares in,
6 and that they own Mineralogy, so if anything happened to
7 Mineralogy, we could have some assets in that company.
8 Now, we were developing the concept of exploring for
9 lithium in New Zealand and also we looked at investing.
10 So from about May 2018, I went over to New Zealand, met
11 with Minters and also met with real estate agents and we
12 started looking at properties that we could invest in
13 New Zealand and also how we could develop the lithium
14 business. That involved, say, up to November, you know,
15 putting ads in the paper for a manager for that area,
16 and also looking at a large industrial park.
17 And I think it's Exhibit 101, right -- I could be
18 wrong, because I haven't got a note --
19 Q. Mr Palmer, my question was about urgency.
20 A. Yes. Well, I'm just trying --
21 Q. How is this answer explaining the urgency?
22 A. I'm just going to come to that.
23 So we were offered that property, and we had other
24 people going for that property. And when -- so we had
25 to incorporate the company to buy the property. And we

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12:04 1 MIL to do that. It may have been December we decided
2 that; it may have been sometime after Christmas.
3 Anyway, we decided we'd do that.
4 MIL then acquired -- did a takeover of Mineralogy,
5 and in doing so, it had to comply with the requirements
6 of the Australian Taxation Office and the Australian
7 Land Tax Offices in the two states as to what
8 shareholding it had and what was regarded as
9 a restructure allowed under the Act for tax purposes.
10 And one of those things was there would be a \$1
11 share issued in the company and that they would -- there
12 would be a share swap. And then there would be the
13 other company on top of the other, with the same number
14 of shares, so there'd be, in effect, the same value
15 within the group, so there would be no taxable event.
16 So that was a requirement of the legislation.
17 Q. Mr Palmer, we've gone a very long way from the question
18 that I asked you.
19 A. I'm sorry.
20 Q. A very long way.
21 So I asked you about the urgency of the restructure.
22 You said: acquiring a property in New Zealand for
23 \$11 million.
24 A. \$11.5 million.
25 Q. Okay. Are you suggesting that the acquisition -- this

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12:02 1 incorporated MIL, I think, on 12 or 14 December, from
2 memory, right? And you'll see in that Exhibit 101 the
3 property was settled -- no, 12 December, that was
4 settled in January. And I think the settlement was
5 a 30-day settlement, which is standard for real estate
6 contracts.
7 So the contract, from memory, was signed on
8 18 December, that's the date of the settlement, and the
9 title search is the exhibit, so you've got the right
10 date of settlement. I haven't got that.
11 Q. So your evidence, Mr Palmer, is that the incorporation
12 of MIL was urgent because you needed to acquire
13 a particular property?
14 A. Yes, and the details of the property are in my
15 statement, in the exhibit. And we paid \$11.5 million
16 for that property, and that's -- so it's a substantial
17 property. And that fulfilled a role for me that it was
18 a company that I owned that wasn't in Mineralogy.
19 And at the same time, we were developing the concept
20 of: will we have a Singapore company just owned by me or
21 will we go with the Martino strategy? I had to make
22 a decision. I went on holidays for Christmas in 2018,
23 and I came back in January, about the 7th or 10th,
24 sometime around there, and I decided we'd go the Martino
25 structure, right? We'd do that through the -- by using

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12:05 1 is a property in a city, isn't it, from memory?
2 A. It's in Christchurch.
3 Q. It's in Christchurch. So it's not a mining property,
4 it's --
5 A. No, no. It's an industrial park.
6 Q. So acquiring a property in an industrial park in
7 Christchurch for \$11 million, are you suggesting that
8 that provided meaningful diversification of the
9 Mineralogy Group?
10 A. Yes, well, it did for me personally, because I own that
11 company that bought it, right? And, you know,
12 subsequently there's the restructure and then Mineralogy
13 is in there.
14 So it is also a diversification of jurisdiction.
15 I wasn't a very popular person to some people in
16 Australia at that time, and who knows what the
17 Government can do? We can see the Amend[ment] Act, what
18 the Government can do to you, right? So --
19 Q. So your evidence is that there was an urgent need to
20 restructure to acquire this industrial park property in
21 Christchurch; is that what you're saying?
22 A. Yes, yes. They gave us a deadline to buy it, to do
23 something or hop off the pot.
24 Q. And again, that's urgent enough so that even though
25 you've decided to defer the restructure until you get

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12:06 1 the royalties appeal judgment, you change your mind and
2 don't wait till the following May?
3 A. Yes. We don't think it's -- we just thought the course
4 we'd already decided, that that was a good thing to do
5 at the time, and use that structure that Domenic had
6 suggested. There was no downside.
7 Q. You said in your first witness statement that the
8 prudent course was to wait. The royalties judgment is
9 a judgment about hundreds of millions of dollars; it's
10 not about an \$11 million property, it's a big-ticket
11 item, isn't it?
12 A. Well, allow me to correct you: it's probably about
13 billions of dollars, in reality, right?
14 Q. Okay.
15 A. So it's a significant thing.
16 Q. Well, that makes the point really.
17 A. Yes.
18 Q. An \$11 million property is small beans in comparison to
19 what you were talking about?
20 A. Well, it's personal, it's not corporate.
21 And secondly, I think you've got to understand that
22 the restructure, doing it at that time in no way impeded
23 us when we applied -- when we approached the banks. We
24 still maintained the proposition that we would approach
25 the banks as soon as we could once the judgment became

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12:09 1 response and ... behaviour ... Three thousand Australian
2 jobs are at risk and the ongoing investment of hundreds
3 of millions ... is in limbo. I urge Mr Palmer to
4 resolve these issues with CITIC ..."
5 And then over the page, near the top of the page,
6 the Premier said:
7 "State agreements are an important instrument. They
8 are a privileged instrument for the companies that are
9 a party to them ... there is a responsibility on the
10 beneficiary, Mineralogy, to do the right thing. I noted
11 the recent comments of the opposition leader and his
12 offer to help the government to do all he can to sustain
13 the project including altering the state agreement.
14 I thank the opposition leader for this commitment.
15 It appears we are as one on this issue, which is good to
16 know. I am pleased we both agree that this issue needs
17 to be resolved. Clive Palmer and Mineralogy are now on
18 notice."
19 And my question is this: I suggest that -- quite
20 reasonably, I comment -- you understood that speech as
21 indicating the Premier, with the apparent support of the
22 opposition, as threatening that if you did not reach
23 an agreement with CITIC, the Parliament may unilaterally
24 alter the State Agreement to your detriment.
25 A. Well, I understood that that's what he was saying from

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12:07 1 certain through the courts, which --
2 Q. Why do you say it was personal, not corporate,
3 Mr Palmer?
4 A. Because I would own MIL, the New Zealand company, and
5 it would own Mineralogy. That was the basic structure
6 we were looking at, right? Sorry -- yes, initially it
7 would own Mineralogy. That was personal because if
8 Mineralogy went broke, we lost everything, I would still
9 personally have the assets which was in MIL, because the
10 legal actions and everything were against Mineralogy.
11 Do you follow that?
12 Q. I do follow that.
13 Can I take you then to some of what happens
14 happening in Australia at the relevant time, and to ask
15 that you be shown [E2]/133/2.
16 This is, I'm sure, a familiar document to you: it's
17 the speech that Premier McGowan gave in Parliament.
18 It's Exhibit R-133 for the Tribunal. Mr McGowan -- or
19 Premier McGowan, as he then was, said ...
20 It hasn't come up actually. (Pause)
21 So this is part of the proceedings in the Western
22 Australian Parliament. And near the bottom of the page,
23 you can see the Premier is critical of you, in the last
24 few lines:
25 "I am very disappointed in Mr Palmer's unreasonable

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12:10 1 reading this, but I didn't believe it. And the reason
2 I didn't believe it I think is set out in Exhibit 25,
3 which is a paper written by the Premier of Western
4 Australia to the Australian Mining Law Conference, which
5 I referred to yesterday in my opening.
6 Q. A mid-1990s paper?
7 A. '93, I think it was, yes.
8 Q. So long before this?
9 A. Yes. But of course he was the previous Premier to this
10 Premier, right?
11 And secondly, there had never been a state agreement
12 altered for 70 years, and in that paper and in the State
13 Agreement itself, it says they can only be altered by
14 consent.
15 So I foreshadowed this as an early round trying to
16 soften me up to get me to do a -- agree a consent
17 amendment of the State Agreement.
18 Q. So your evidence to this Tribunal now is: even though
19 you've got the Premier and the opposition leader
20 agreeing you're on notice, "Clive Palmer and Mineralogy
21 are ... on notice" that they could alter the State
22 Agreement, you didn't think that was a serious threat?
23 A. I thought that was rubbish. Because in business or in
24 high-level discussions like this, people bluff all the
25 time. And I wanted to call this guy's bluff and see if

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12:12 1 he'd do it. And I did call his bluff and he didn't do
 2 it: he backed down. And the matter, or the dispute,
 3 went to the Supreme Court of Western Australia, where
 4 we won.
 5 So this is --
 6 Q. You won a dispute with CITIC. But I'm asking you about
 7 a dispute with the WA Government.
 8 A. Mm.
 9 Q. You --
 10 A. I had no dispute with the WA Government. They were
 11 talking about CITIC here, not about any dispute with us.
 12 Firstly, I had written to them, which I'm sure
 13 you'll show me in a minute.
 14 Q. You wrote to them immediately, within a day or two of
 15 this statement being made --
 16 A. Yes. Well, anyway, I wrote to them and I did ask them
 17 to say what changes they wanted to the State Agreement.
 18 And I thought -- we had not rejected any changes to the
 19 State Agreement. And I genuinely thought the government
 20 would put changes to us before they acted on them.
 21 Q. Right. So can we show you: it's Exhibit R-134. It's
 22 E2/134/1. It's actually the next day.
 23 A. Yes.
 24 Q. "Re: Proposed meeting to discuss the [State] Agreement":
 25 "In the media ... there have been reports ..."

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12:14 1 So as -- and we'd had a discussion with his deputy
 2 director general, Geoffrey Wedgewood, on 6 June, and
 3 we talked about the Chinese company not doing --
 4 Q. 6 June?
 5 A. Yes, 6 June 2018.
 6 Q. Six months earlier?
 7 A. Yes, we had discussions about what the dispute with
 8 CITIC was about, right?
 9 If you go to the next page, can you?
 10 Q. What I'm suggesting to you, Mr Palmer, is that -- so
 11 you've got the Premier, with the opposition leader,
 12 threatening unilateral amendment on the 29th; you've got
 13 Mineralogy responding the next day; and two weeks later,
 14 MIL is incorporated.
 15 A. Yes.
 16 Q. And you seem to be suggesting to the Tribunal that that
 17 was because of the opportunity to buy property in
 18 an industrial park in Christchurch, rather than what was
 19 happening with the threats being made against you in
 20 Australia. Is that what you're saying?
 21 A. Well, yes, of course it was. And the company was
 22 purchased and does operate; was purchased, and we had
 23 pressure to do it.
 24 Q. Yes. And --
 25 A. No one would ever believe a state government would pass

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12:13 1 This is a letter to the Premier.
 2 A. Yes.
 3 Q. "... there have been reports that you may be considering
 4 altering the IOPAA ..."
 5 That's the State Agreement:
 6 "... to allow ... CITIC more tailing space ..."
 7 And you say:
 8 "Mineralogy have grave concerns with the demand ...
 9 by CITIC ... carte blanche ... [will] sterilise the
 10 prime tailing[s] location for the remaining Balmoral
 11 North Project and greatly diminish its value ..."
 12 So Mineralogy is writing that it's got "grave
 13 concerns", but it didn't really?
 14 A. Well, first of all, if you have a look at the first
 15 paragraph of the letter at the end, it's got:
 16 "... this may appear to be a reasonable option."
 17 So firstly, we wanted to explain to the Premier
 18 that:
 19 "It must be remembered that the ... area ... is
 20 conceived of as a Multi User Project by Mineralogy."
 21 I'm reading from the third paragraph.
 22 "CITIC have access to only 3 of the 12 magnetite ore
 23 bearing mining leases ... the remaining 9 ... leases
 24 [are held by these other companies]."
 25 And we've got "grave concerns" about that.

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12:15 1 such legislation. You only have to have a look at the
 2 state agreements: they are guaranteed to be inviolable.
 3 If you look at the paper by the Premier before this, he
 4 guarantees that state agreements won't be changed.
 5 So no one could take McGowan seriously.
 6 Q. Well, he writes an academic --
 7 A. He's just a Labour hack.
 8 Q. You're not suggesting, though, that the State Parliament
 9 didn't have the power to pass legislation that would
 10 amend the State Agreement? You know that it did have
 11 that power?
 12 A. Well, I don't know that it had the power. And at the
 13 time I didn't know that it had the power, and I --
 14 Q. You do now, because you litigated it in the High Court
 15 and you were told.
 16 A. Yes, okay. But you're asking me what our position was
 17 at the time of this letter. And what I said: that it
 18 was well known within the industry that state agreements
 19 were inviolable and no government or opposition would
 20 ever change them, because the Agreement itself said it
 21 could only be changed by consent, and that Agreement had
 22 been ratified by the State Parliament.
 23 So I didn't think any threat they made -- people
 24 often make threats to you in business and they never
 25 carry them out.

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12:16 1 Q. So --
 2 A. And this was never carried out: the State Agreement was
 3 never altered for CITIC.
 4 Q. You've said that, Mr Palmer.
 5 So MIL was incorporated in mid-December. You've
 6 said, I think, you then went away on holiday and you
 7 came back around 7 January, something like that. Is
 8 that correct?
 9 A. Sometime. But I could have been in touch while I was
 10 away with what was happening.
 11 Q. But then at some point not too long after your return --
 12 can we show Mr Palmer E2/44/2 (R-44).
 13 This is a letter that we showed the Tribunal
 14 yesterday in our opening, a letter dated 18 January sent
 15 to Premier McGowan. And can I just invite your
 16 attention to the first paragraph.
 17 This is a letter, I should say -- actually, no, can
 18 we go to the very first page. Sorry, I said 2, but
 19 let's go to /1.
 20 So again, this is an email sent to the Premier by
 21 your EA; you agree with that?
 22 A. Yes.
 23 Q. And then over the page, you can see the letter of
 24 18 January.
 25 So you refer to MIL as the owner of Mineralogy?

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12:19 1 "Conclusion" section, near the bottom of the second-last
 2 paragraph.
 3 A. We're on page 5 at the moment.
 4 Q. So if we could go to the next page, page 6 of 7. Thank
 5 you, that page, blowing up the "Conclusion".
 6 In the last paragraph, it says:
 7 "We urge you to meet with us so ... you can properly
 8 understand why Mineralogy has not consented to the Sino
 9 and Korean proposals to date. If your Government
 10 proceeds with amending legislation, MIL will immediately
 11 make a claim for \$45Bn against the Commonwealth."
 12 So you'd accept, wouldn't you, that that is, in
 13 terms, a threat to commence an investor-state
 14 proceeding?
 15 A. This letter, a seven-page letter of which you've cited
 16 selectively two paragraphs, threatened the government
 17 with every possible remedy under the sun, right?
 18 Because this letter was written for a prime purpose of
 19 calling out the Premier from stopping accusing me of
 20 things, creating a public problem to me and my company.
 21 If he wanted to have a fight, this was to tell him,
 22 "Okay, we'll have a fight with you". That's what it was
 23 about.
 24 And of course the Premier got this letter. He never
 25 did anything at all. What he threatened to do, he

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12:17 1 A. Yes.
 2 Q. You assert that:
 3 "... [it] engages in substantive business operations
 4 in New Zealand and has an active and continuous link
 5 with that country's economy."
 6 A. Yes.
 7 Q. So you were happy to assert that it had such a link
 8 after it existed for a few weeks?
 9 A. Sure.
 10 Q. Sure. That wasn't true, was it?
 11 A. How do you mean?
 12 Q. Well, how could it possibly have had an "active and
 13 continuous link" with the country when it had only just
 14 been formed?
 15 A. Well, if you go to the exhibit I referred you to before,
 16 it's purchased the property since it's been
 17 incorporated, it's set up an office, it's established
 18 people, and it's had the authority to do that.
 19 Q. And it's "entitled to the protections offered to
 20 investors under [AANZFTA]", you assert.
 21 A. Mm.
 22 Q. Now, going on in that letter to page 7.
 23 Oh, sorry. I apologise, I've given the wrong
 24 reference. It's the bottom of page 6. It's on the
 25 screen, sorry. That's correct. It's in the

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12:20 1 backed down 100%. And CITIC then went with their case
 2 to the Supreme Court in Western Australia, which was the
 3 proper venue to do it, and they got beaten.
 4 Now, at no time did anyone take this as being
 5 a serious threat from the Premier. I never did.
 6 Q. Well, how could you possibly know that? In the first
 7 paragraph of the letter, it threatens proceedings under
 8 AANZFTA.
 9 A. Of course it does.
 10 Q. In the last paragraph of the letter, it threatens
 11 a \$45 billion claim.
 12 A. And all through the letter, it threatens other action:
 13 breach of contract, contacting sellers. Let's go back
 14 and look at pages 3, 4, 5 where all the threats are.
 15 This was two people chucking threats at each other
 16 at a high level. And the Western Australian Government
 17 showed the courage that they've got, and they backed
 18 down, and we won in the Western Australia courts.
 19 Q. Now, you copied this to --
 20 A. So to be vindicated at court is something reasonable.
 21 Q. -- the Commonwealth Government?
 22 A. Sorry?
 23 Q. You copied this letter to the Commonwealth Government?
 24 A. Yes. If the Commonwealth Government could put pressure
 25 on McGowan, all the better.

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12:21 1 Q. Yes. And you made the same threat in the letter to the
2 Commonwealth Government?
3 A. Sure, we'd threaten anybody. I mean, many people get
4 threatened with a whole lot of things that never happen
5 to them, and threats are a thing that was being
6 threatened against me.
7 Q. Yes. Now, you use the words "substantive business
8 operations in New Zealand". Were you receiving legal
9 advice about the content of these things?
10 A. No. To deal with that matter, I've known about
11 invest[or]-state arbitration or investor-state treaties
12 since about 2004. And around 2014, 2015, 2016, I was
13 a member of the House of Representatives Trade --
14 I forget what it's called now -- Trade Committee, and we
15 discussed investor-state agreements on that committee.
16 I think that there's a report out in one of your
17 exhibits which has got my name to it.
18 Q. So you're saying you remember the test off the top of
19 your head?
20 A. Yes, of course I do. I was familiar with all those
21 things. I've lectured as part of my things at
22 university. I didn't need to get advice from anybody.
23 But this was -- I would have put anything in there.
24 I would have said, "We'll sell your wife, we'll sell up
25 your house", whatever, because it was written to him

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12:23 1 Q. You were personally involved in drafting these
2 threatening letters --
3 A. Let me say, I never would have written this if
4 I seriously was thinking about state investment treaty
5 at that stage; I never would have written something like
6 that. I was smart enough to know not to do that, if
7 that's what I was thinking. I never would have written
8 something like that.
9 Q. Well ...
10 A. Because it never happened: he never did anything.
11 Q. Can we show you, please, E2/802/1 (R-802).
12 A. Yes.
13 Q. This is a draft of the letter that MIL sent on
14 4 February. And the Tribunal saw that letter yesterday:
15 it's Exhibit R-141. But this is the draft of it.
16 Perhaps before focusing on the content of that
17 letter, can I show you E2/801/1 (R-801), which is the
18 covering email. And again I won't use the name, but you
19 can see you write to Mr Wong. Sorry --
20 A. I authorised this.
21 Q. -- you sent it to Sarah Mole, in fact.
22 A. Yes, I asked her to print it and send it on.
23 Q. "See me about this draft", you say, "print".
24 A. Yes.
25 Q. So you were personally involved in the draft?

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12:22 1 with the express purpose of stopping him from attacking
2 my company and our livelihood of our workers. And it
3 did: he backed down completely, did nothing.
4 Q. Perhaps to circumvent things a little bit, you would say
5 the same thing, would you, about the letter that was
6 sent on 4 February, after Zeph was incorporated, again
7 threatening these proceedings if --
8 A. Well, these things were happening at the same time. So
9 anything that was sent threatening the Western
10 Australian Government was in that angle. And it was all
11 based on the security and the knowledge of the paper by
12 the former Premier, Colin Barnett, who said that state
13 agreements could not be changed by the Parliament. As
14 simple as that.
15 Q. Mr Palmer, you can't seriously be suggesting that you
16 think, and that former Premier Barnett said, that
17 a State Parliament couldn't alter a state law? He
18 wasn't saying they shouldn't, because state agreements
19 are sacrosanct. He wasn't saying they couldn't.
20 A. We'll have to go and look at the paper, because you'll
21 appreciate I can't remember, but I think he was saying
22 they couldn't alter it. And I invite the Tribunal to
23 read that paper to be fully up to date with what the
24 state of the knowledge was and the expectation of the
25 community was at that time.

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12:24 1 A. Yes, I think -- I don't know whether I've signed the
2 letter or not. I think it was Mr Wong that signed it,
3 wasn't it?
4 Q. No, you didn't sign it. But my question to you was: you
5 were personally involved in it? You said, "See me about
6 this draft".
7 A. I was aware of the letter. It was part of our campaign
8 against the Government.
9 Q. And it's a letter in which this draft -- going back to
10 R-802, which is E2/802/1.
11 A. Mm-hm.
12 Q. It's dated 24 January. So this is before Zeph becomes
13 part of the group?
14 A. No, I think they already are part of the group,
15 21 January. Oh, no, sorry, part of the group --
16 Q. The company existed --
17 A. They existed, yes.
18 Q. -- but it wasn't yet part of the group.
19 A. Yes, that was a genuine misunderstanding. Sorry about
20 that.
21 Q. And the author of the draft seems to be unable to
22 remember the name of the company: you can see the square
23 brackets in the second paragraph? It's "[Mineralogy
24 Singapore Pte Ltd[?]]" But that is, we can agree, Zeph.
25 Do you agree with that?

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12:25 1 A. No --
 2 Q. You can see it's described in the next paragraph as:
 3 "... a Singapore registered company, which engages
 4 in substantive business operations in Singapore ..."
 5 A. Well, the letter is from the New Zealand company, right?
 6 Q. It's from the New Zealand company --
 7 A. Yes.
 8 Q. -- which is recognising that it now holds its interest
 9 in Mineralogy via the Singaporean company. It's
 10 contemplating a share swap that hasn't happened yet.
 11 A. I can't -- my recollection was the share swap happened
 12 later.
 13 Q. It did, a few days later.
 14 A. Yes, so this letter doesn't add up with that.
 15 Q. Well, this letter is the draft of a letter that was
 16 sent, in final form, after the share swap.
 17 A. Well, let's see that letter. That's more relevant than
 18 looking at drafts.
 19 Q. Alright, I will show you that letter in a moment.
 20 But what I'm suggesting to you is that you were
 21 involved in the drafting of a letter threatening
 22 investor-state proceedings by Zeph before Zeph was even
 23 in the group. That's what I'm putting to you.
 24 A. Oh, that's not true. But I was aware that -- of this
 25 strategy with the Western Australian Government, and

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12:27 1 And as I said, we went to court and won. And it
 2 should have been decided in court. And the Premier
 3 backed down. That gave us every expectation that he was
 4 weak, and that we could -- any time he tried to do
 5 anything against us, we just had to hit him in the press
 6 and he would crumble. And he did.
 7 Q. Just to finish this off, I'll show you the final form of
 8 the letter. It's Exhibit R-141. It's E2/141/1.
 9 This letter actually was sent. And if you look in
 10 the second paragraph ...
 11 A. Who signed it?
 12 Q. The then chair, Mr Mashayanyika. But you can see in the
 13 second paragraph it's clearly talking about Zeph, then
 14 called "MIPL". (Pause)
 15 A. Well, it is in that letter, I think that's right.
 16 Q. I don't know if the Opus operator is able to put the two
 17 pages side by side so we can see the final letter.
 18 A. No, I think I concede that that's the case. But that's
 19 okay.
 20 Q. Yes. So this is the letter where, a couple of days
 21 after Zeph is included in the group, it said, "We've got
 22 substantive business operations in Singapore, we're
 23 entitled to protection under the Singapore-Australia
 24 free trade agreement, and if you interfere with our
 25 rights under the State Agreement, we're going to bring

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12:26 1 I endorsed it.
 2 Q. When you say, "that's not true", if we go to the second
 3 page, the last part of the letter, it says:
 4 "Any interference in the rights of Mineralogy under
 5 the State Agreement will cause loss and damage and
 6 Mineralogy and investors ([including Zeph] and MIL) will
 7 both strenuously pursue ... their rights ... under
 8 domestic law and under the SAFTA ..."
 9 So it does threaten proceedings.
 10 A. Sorry, it doesn't say "including Zeph and MIL". Where
 11 does it say that?
 12 Q. Well, "MSPL" is defined as what the person thinks in
 13 square brackets is the name of the new Singaporean
 14 company, which is Zeph.
 15 A. Well, I can't say.
 16 THE PRESIDENT: Maybe you show the initial paragraph again.
 17 DR DONAGHUE: I will show the --
 18 A. I don't know, but I'm not denying these sort of letters
 19 were sent to the Western Australian Government. I was
 20 aware of them. I didn't write all of the letters.
 21 I looked at some of them; I may have printed some of
 22 them. But we're not backing down from that: we did do
 23 that. And we did it to force them to give up their
 24 campaign which they did against us in respect of the
 25 CITIC matter.

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12:29 1 proceedings against you under SAFTA". That's the final
 2 paragraph, you can see.
 3 A. The final paragraph is:
 4 "We once again urge you to meet with Mineralogy
 5 representatives to discuss [the] matter."
 6 Q. So is it fair to say that you are saying to the
 7 Tribunal: all of these letters threatening
 8 investor-state proceedings were just bluff and bluster
 9 and should be ignored? They tell you nothing about the
 10 purpose of --
 11 A. Well, I don't think that they should be ignored. We're
 12 certainly not hiding them. But we're just pointing out
 13 that we won that fight with the Premier: he didn't
 14 produce --
 15 Q. Can you please try to focus on the question. You seem
 16 to be saying they don't tell you anything about the
 17 purpose of the incorporation of the two companies?
 18 A. Well, I don't think they do.
 19 Q. Nothing at all?
 20 A. Nothing at all.
 21 Q. So you're asking the Tribunal to look at the
 22 contemporaneous documents and to say: ignore them in
 23 favour of explanations that are completely unsupported
 24 by any documents?
 25 A. Well, all I can say is: at that time, no one thought

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12:30 1 anyone could change a state agreement, or that
 2 Parliament had the power to do so.
 3 Q. Well, you've given that evidence, so --
 4 A. Well, that's all I can say.
 5 Q. So you're saying: ignore the contemporaneous document in
 6 favour of coal and personal tax, neither of which
 7 explains the urgency?
 8 A. Sorry, I've explained the urgency to you separately.
 9 Q. All we've got for the urgency is this diversification
 10 objective.
 11 A. Well, it mightn't be important to you, but it is to me,
 12 to have \$11.5 million of assets --
 13 Q. Okay.
 14 A. -- that I can access personally.
 15 Q. So it's not about investor protection: it's all about
 16 Visco and a property in Christchurch worth \$11 million.
 17 Is that really what you're saying?
 18 A. This is all about the CITIC dispute, with CITIC.
 19 Q. No, no. The restructure: are you saying it's all about,
 20 at the end of the day, Visco and an \$11.5 million
 21 property in an industrial park in Christchurch? Is that
 22 really what you're --
 23 A. Yes, they were the first steps in what we were planning
 24 to do, yes.
 25 Q. The restructure happened for those two reasons,

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12:32 1 anything to hang, draw and quarter him. And that
 2 stopped him, and he never --
 3 THE PRESIDENT: Sorry, I would just like to ask
 4 a clarification while we're on this document, so we
 5 don't have to come back.
 6 A. Of course.
 7 THE PRESIDENT: I understand you to say that at this time
 8 no one envisaged that the Parliament could change
 9 a state agreement?
 10 A. That's correct, yes.
 11 THE PRESIDENT: That's right.
 12 Then under "Final", on the second page of this
 13 letter, R-141, Michael writes, under your authority,
 14 that:
 15 "Any interference in the rights of Mineralogy under
 16 the State Agreement will cause loss and damage ..."
 17 A. Yes.
 18 THE PRESIDENT: So here you do envisage a change of the
 19 State Agreement, whatever it is: whether it is the
 20 Amendment Act or something else is a different question.
 21 But you do consider that maybe this is something that
 22 could be done?
 23 A. Well, I think it's true that the Premier threatened to
 24 do it, let's say. Without going through all the
 25 letters, he threatened to do it. So when he made the

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12:31 1 urgently --
 2 A. No --
 3 Q. -- in December and January?
 4 A. -- I didn't say that. I've given evidence of why we
 5 thought the restructure happened, and I've explained the
 6 sequence, and I've explained the urgency to you in
 7 respect of two different commercial companies.
 8 It may look different, but things happen every day
 9 in all of my companies, right? And they've got cash
 10 flows and commercial goals they've got to meet. They
 11 employ a lot of people.
 12 Q. But just to be clear, you're not denying that these --
 13 you said it was part of your campaign: that this letter,
 14 for example, on 4 February, was sent with your
 15 authority; you would accept that?
 16 A. Oh, yes, I said to staff members, "Yes, we've got to
 17 smash the Western Australia Premier as hard as we can
 18 because he is smashing us. And let's think of any
 19 possible reason that we can" -- I can't say how I can
 20 say it in the court, but that, "We can put pressure on
 21 him".
 22 And they came up with all sorts of things. And if
 23 you go back to that other letter, which was seven pages,
 24 you'll see we threatened to sue him, we threatened to
 25 get a Senate enquiry going on him, we threatened to do

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12:33 1 threat to us, we didn't think he could do it. But we
 2 came back and said, "Well, if you do do it, this is what
 3 could happen to you".
 4 Then we release this letter -- I don't know if it's
 5 this letter, but similar letters were released to the
 6 press. And this fight was going on between us in the
 7 press, it was a very public dispute, and we wanted to
 8 get our commercial business away from it. And so then
 9 it was dropped by the Premier.
 10 THE PRESIDENT: So that is part of what you described before
 11 as two people throwing threats at each other at a high
 12 level?
 13 A. At a high level, yes.
 14 THE PRESIDENT: And that is part of it?
 15 A. And that's part of it, yes.
 16 THE PRESIDENT: Thank you.
 17 A. But that's just the honest explanation.
 18 DR DONAGHUE: Mr Palmer, you made the point yesterday
 19 several times in your opening that the subject matter of
 20 this arbitration is the Amendment Act. Do you recall
 21 saying that?
 22 A. Yes.
 23 Q. And you pointed out, I think, that, amongst other
 24 things, one of the things that the Amendment Act did was
 25 it terminated the pending arbitration before

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12:34 1 Mr McHugh AC, in which Mineralogy was claiming damages
2 against Western Australia; is that right?
3 A. I think I said it terminated the arbitration agreement,
4 which was signed three weeks before the Act --
5 Q. So that one was pending. But it also terminated the
6 effect of two prior awards made by Mr McHugh where
7 Mineralogy had succeeded. Do you agree with that?
8 A. I agree with that, yes.
9 Q. In the first of those prior awards, which was back in
10 2014, Mr McHugh had found that the BSIOP proposal was
11 a valid proposal under the State Agreement; that's
12 right, isn't it?
13 A. Yes.
14 Q. And in the second of those awards, the question was:
15 was the State liable to pay damages to Mineralogy as
16 a result of its failure to give a decision on that
17 proposal within the right time limit? That's right,
18 isn't it?
19 A. Yes, the second award was an award to say that the State
20 was liable to us for damages, basically.
21 Q. But were not quantified?
22 A. Were not quantified, that's right.
23 Q. Yes.
24 Can we show you, please, E2/120/2 (R-120). (Pause)
25 If we go to the previous page.

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12:37 1 (Mineralogy ...) Agreement Act 2002, as amended [in
2 2008] ..."
3 A. Yes.
4 Q. "... as a result of the Minister's failure to give
5 a decision within 2 months ... of the project proposal
6 for the Balmoral South Iron Ore ..."
7 And you say you:
8 "... consider that the dispute has been referred to
9 arbitration for resolution pursuant to the notice of
10 arbitration set out in [your earlier] letter ..."
11 So this is the document, I suggest, that initiated
12 the second McHugh arbitration that led to the second
13 award. Would you agree with that?
14 A. Well, this -- the only question I've got is that you're
15 saying that Raymond A Finkelstein --
16 Q. Yes.
17 A. -- would be the arbitrator. In actual fact, it --
18 Q. Ended up being Mr McHugh again.
19 A. -- was Mr McHugh.
20 Q. Yes.
21 A. So I can confirm there was a second arbitration. But
22 the arbitrator wasn't Finkelstein, it was McHugh.
23 Q. Yes.
24 A. And they delivered their -- or McHugh delivered his
25 award, I think it was on 11 October.

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12:36 1 A. The first page?
2 Q. The first page, yes.
3 So you can see that this is a document sent by
4 Mineralogy to the Premier?
5 A. Yes.
6 Q. And you can see the subject line at the bottom:
7 "- Iron Ore ... (Mineralogy ...) Agreement ... 2002
8 "- Notice of Arbitration"
9 A. Yes.
10 Q. And then can we go to the second page.
11 A. Yes.
12 Q. So this is a letter signed by you?
13 A. Yes, that's true: twice. Signed by me twice.
14 Q. Twice, indeed. I think if we scroll up a little, we can
15 see you were wearing two different hats. I think you
16 were wearing your hats both as Mineralogy --
17 A. Mineralogy.
18 Q. -- and International Minerals?
19 A. International Minerals.
20 Q. That's right. And looking at the top, you write in your
21 capacity as director of both of those companies, and you
22 confirm that:
23 "... Mineralogy and International Minerals are in
24 dispute with Western Australia ... under or in
25 connection with the agreement in the Iron Ore Processing

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12:38 1 Q. Yes, 2019.
2 A. 2019. So that's true.
3 Q. So you asked them to agree to Mr Finkelstein, and
4 we don't know --
5 A. And they didn't agree.
6 Q. They didn't agree, but it ended up --
7 A. And they came back with McHugh and we agreed. That's
8 what happened, I think.
9 Q. So we can see from this letter then that at least by
10 August 2018, the process that ultimately led to the
11 second McHugh award on, as you say, 11 October 2019, had
12 kicked off. It was underway, but the award didn't
13 happen until eight months into the following year.
14 A. So all the parties -- ourselves and the State -- didn't
15 know whether we could claim damages or not, basically.
16 So it went to -- McHugh had already said, "Yes, they're
17 in breach". The State said, "Well, you can't claim
18 damages", et cetera. We said, "We think we can". We
19 said, "Let's have another arbitration on that".
20 We ended that arbitration in August. That went
21 through to 11 October 2019, where we were given
22 an award, and the award then said that we can claim
23 damages. So that was the first time that I knew that we
24 could claim damages from that domestic dispute.
25 Q. And the argument about whether you could claim damages

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12:39 1 or not is an argument that existed as a matter of
 2 dispute between you and Mineralogy and the State --
 3 A. That's correct.
 4 Q. -- during the period at least from August through to
 5 October?
 6 A. That's correct, yes.
 7 Q. Then in October 2019, Mr McHugh gave the award. I don't
 8 think I need to show it to you. It's Exhibit C-443.
 9 A. Yes.
 10 Q. And it held that you were entitled to seek damages?
 11 A. That's correct, yes.
 12 Q. Can I now show you just one of the provisions of the
 13 Amendment Act, which is Exhibit C-1. If we could bring
 14 up E1/1/23.
 15 So this is Section 10 of the Amendment Act, and can
 16 I invite your attention first to subsection (1):
 17 "Any relevant arbitration that is in progress, or
 18 [has not been] completed, immediately before [the]
 19 commencement is terminated."
 20 So that's the one that was on foot that you
 21 referred to?
 22 A. No, no, that's not the -- that's not the second
 23 arbitration.
 24 Q. No, no, that's the arbitration that was actually --
 25 A. The arbitration agreement is terminated, yes.

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12:41 1 first McHugh, the second McHugh award and the pending
 2 arbitration, and it interfered with all of them?
 3 A. Yes. Well, we also would say it terminated the
 4 arbitration agreement, which was entered into about
 5 three weeks before the Act.
 6 Q. Yes, lending to -- yes.
 7 A. Okay.
 8 Q. Now, as you explained yesterday, your argument is that
 9 it wasn't foreseeable that the State would interfere
 10 with the effects of the State Agreement. That's
 11 something that you said on a number of occasions
 12 yesterday; is that right?
 13 A. That's true, yes.
 14 Q. Can I show you now Exhibit R-145, which is E2/145/1.
 15 This, you can see, is a letter -- take it from me; I'll
 16 get to the second page soon -- but it's signed by you.
 17 A. Yes, sure.
 18 Q. Dated 15 October 2019.
 19 A. Yes.
 20 Q. So this is four days after the second McHugh award; do
 21 you agree with that?
 22 A. Yes.
 23 Q. And you'll see the subject line: "Re: Award delivered by
 24 the Hon. Michael McHugh AC QC on Friday 11th October".
 25 A. That's right, yes.

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12:41 1 Q. Yes, at the time that the Act was passed.
 2 A. Yes.
 3 Q. And then if we go down to subsection (4):
 4 "The arbitral award made in [an] arbitration ...
 5 dated 20 May 2014 is of no effect and is taken never to
 6 have had any effect."
 7 That's the first McHugh award; do you agree with
 8 that?
 9 A. Yes, I think that's right, yes.
 10 Q. And then if we go down to subsection (6):
 11 "The arbitral award made" --
 12 A. I can't see (6).
 13 Q. I'm sorry, I'm going too fast. We can see it in
 14 a minute. Thanks for pointing that out, Mr Palmer.
 15 So now you can see (6):
 16 "The arbitral award made in a relevant arbitration
 17 and dated 11 October 2019 is of no effect and is taken
 18 never to have had any effect."
 19 A. Yes, that means --
 20 Q. So that's the second --
 21 A. That's the award that said that we could claim damages.
 22 Q. Yes, yes.
 23 A. Yes, that's correct.
 24 Q. So you can see between 10(1), 10(4) and 10(6) that one
 25 of the things that the Amendment Act did is it took the

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12:43 1 Q. So it's --
 2 A. So this is a letter written -- the second award was
 3 made, saying that we had the right to claim damages,
 4 right?
 5 Q. Yes.
 6 A. And after that, I wrote this letter to Quigley to make
 7 sure that the State stayed on the straight and narrow
 8 with the arbitration, which they did.
 9 Q. Indeed. So the McHugh second award is on Friday, and
 10 we have a weekend --
 11 A. Yes.
 12 Q. -- and early the following week, you write this letter?
 13 A. About SAFTA, yes.
 14 Q. And you wrote it to the then Attorney-General; I think
 15 you copied -- there was a version of it also sent to the
 16 Western Australian Solicitor-General at the time. Does
 17 that sound right?
 18 A. I can't remember that, to be honest with you. But it
 19 was certainly sent to Attorney-General.
 20 Q. Now, can I invite your attention to the first paragraph:
 21 "... I'm writing to advise you that both Mineralogy
 22 ... and International Minerals ... are 100% subsidiary
 23 companies of [MIPL]. MIPL is [the] direct owner of 100%
 24 of the shares of Mineralogy. Both MIPL and Mineralogy
 25 and IM are concerned that the State does not act in any

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12:44 1 way which would affect their rights to pursue their
 2 claim for damages as set out in the Award ... their
 3 position [is] that the State is unable to do so because
 4 of ... the Singapore-Australia Free Trade Agreement ..."
 5 A. Mm-hm.
 6 Q. And then:
 7 "MIPL ..."
 8 Which is Zeph:
 9 "... is a Singaporean registered company, which
 10 engages in substantive business operations in
 11 Singapore ..."
 12 A. Mm-hm.
 13 Q. I want to suggest to you -- and we can bring up the
 14 letters side by side if we need to -- that other than
 15 the first paragraph, the text of this letter is almost
 16 exactly the same as the 4 February letter that we were
 17 discussing earlier.
 18 A. Yes.
 19 Q. Would you agree with that?
 20 A. It's similar, without going to it, but ...
 21 Q. It looks like one was probably copied from the other as
 22 the template, and then you modified it?
 23 A. Well, maybe I'll be helpful to you and say it was --
 24 yes, once the award was given to us and we knew we could
 25 claim damages, we wanted to make sure we kept McGowan in

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12:46 1 And we wrote -- this was a matter-of-form letter:
 2 that basically we should hit McGowan as hard as we did
 3 last time, when he backed down, and keep him in his box.
 4 That's how we interpreted it then. But it's not so
 5 relevant for the legal argument we put out saying that
 6 this is still ten months after restructure this letter
 7 is written.
 8 Q. But what it shows, Mr Palmer, is that --
 9 A. I don't see where you're going.
 10 Q. What it shows is that in October 2019, you were
 11 contemplating the possibility that there might be
 12 a legislative interference with the awards made by
 13 Michael McHugh?
 14 A. I was contemplating that the Premier had said in
 15 Parliament that he planned to do this -- interfere with
 16 the Agreement -- back in 2018, that we had written to
 17 him intensively at that time --
 18 Q. Sorry, can I just clarify: "to do this" being to
 19 unilaterally amend the State Agreement?
 20 A. To repeal unilaterally the State Agreement.
 21 Q. That's what you meant, yes.
 22 A. I mean, you showed me earlier a draft between the
 23 Parliament -- there was the Premier, I think, and the
 24 leader of the opposition, and we said they were trying
 25 to bluff us and have a go to at us, right? And he made

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12:45 1 his box, and we wrote this letter. This letter is
 2 written nine/ten months after the restructure.
 3 Q. I understand that. But this letter is written
 4 nine/ten months after the restructure in --
 5 A. I think so.
 6 Q. -- terms -- if we can go to the second page. So if you
 7 look at the second-last paragraph:
 8 "Any interference in the rights of Mineralogy and IM
 9 under the State Agreement will cause loss and damage to
 10 Mineralogy and the investors ... ([including] MIPL) [and
 11 they] will strenuously pursue all their rights including
 12 under domestic law and [including] under the SAFTA ..."
 13 A. Sure.
 14 Q. So that's exactly the same language as appears in the
 15 4 February letter --
 16 A. And it was written for the same reasons.
 17 Q. Yes. So it contemplates the possibility that there
 18 might be a unilateral interference by Western Australia
 19 with your rights under the State Agreement?
 20 A. Well, there were a lot of threats made to us at that
 21 time by different people, including commercial threats
 22 by our competitors in iron ore, BHP and Rio and their
 23 offices, right? And we believed that we were all in
 24 cahoots with the Premier trying to put us out of
 25 business, as simple as that.

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12:47 1 those threats back in 2018 and we dealt with that by
 2 a series of letters, which ultimately he backed down,
 3 didn't interfere with that. We now have got this award
 4 saying we can claim damages.
 5 But there's also one additional point, and I'm not
 6 sure -- which is irrelevant to what you're saying, is
 7 that I think that there was an appeal lodged by the
 8 State to the State Supreme Court in respect of the
 9 second award, right? And in that appeal there was
 10 an expert evidence from the State saying that the damage
 11 we had suffered were \$27 billion; that was the State's
 12 expert.
 13 So once we saw that, we realised that this is very
 14 large amounts of money that's at stake here, that we
 15 should do everything we can to protect our position.
 16 Q. Is that document you're referring to in the record in
 17 this proceeding?
 18 A. Well, I think it is, actually. If I could consult --
 19 I'm sure I know where it is if you want me to get it.
 20 Q. We might check that over.
 21 A. It's the State of -- as I said, I'm not sure of the
 22 exact timing, but I know it was after the award, and the
 23 independent expert was William Preston.
 24 Q. Okay. You're not, I think --
 25 A. I'm just explaining why we wrote the letter.

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12:49 1 Q. No, I understand. I don't think you've said, Mr Palmer,
2 that Premier McGowan, after Mr McHugh delivered this
3 second award, made another threat to unilaterally amend
4 the State Agreement though? You've said he made the
5 threat back in November.
6 A. He did. And our relationship at that time was not one
7 of trust, right? He'd sort of attacked me many times
8 politically because he was worried our party would stand
9 at the state election, which we never did.
10 Q. And you regarded that threat that he made back then as
11 a -- when you wrote this letter, you were concerned that
12 that threat might extend to interfering with the victory
13 you had just had in the second McHugh award; that's
14 right, isn't it?
15 A. Yes. But I think -- under the State Agreement there was
16 a requirement that we consult with the Premier and he
17 consults with us. We'd endeavoured to consult with him
18 for nine months and he wouldn't meet with us. So it
19 indicated to us that we were still at war.
20 Q. Indeed. But I'm just seeking to clarify that when you
21 wrote this letter, just after you got the award, you
22 thought, "Well, I've had a win before McHugh in the
23 second award" --
24 A. I had two wins.
25 Q. Indeed. But having won the second award, your concern

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12:51 1 Q. -- where you seem to be concerned about them making
2 a unilateral amendment, but you're saying to the
3 Tribunal, "I wasn't actually concerned about the thing
4 that I was writing". Is that what you're saying?
5 A. Well, I didn't imagine they would do that, and I don't
6 think anyone did.
7 Q. Well, it looks like you did imagine that they would do
8 it, and you threatened to take action if they did it.
9 A. Well, I'm trying to -- I've sworn an oath to give you
10 honest answers, and I have to do that. Even if they're
11 unpalatable, illogical or whatever, I have to answer you
12 honestly. And I personally never thought McGowan would
13 do such a thing. I don't think anyone that looks at,
14 say, the Amendment Act --
15 THE PRESIDENT: I think you said that already. We got it.
16 Dr Donaghue, do you mind if I ask a question while
17 we are on this letter?
18 DR DONAGHUE: Not at all.
19 THE PRESIDENT: I understood your case to be that the
20 Amendment Act that was taken in August 2020 was not
21 foreseeable.
22 A. Yes.
23 THE PRESIDENT: Now, this letter is from October 2019, and
24 I get your statement that it is after the restructure.
25 A. Yes.

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12:50 1 was the threat that McGowan had made back in November
2 might mean that he would unilaterally interfere with
3 your win. And you were doing here is you were saying,
4 "You can't do that because I have investor-state
5 protection"?
6 A. What we were concerned about was publicity. We got bad
7 publicity over three or four months being dragged
8 through the media, and when this happened, we didn't
9 want to get further bad publicity. So this sort of
10 letter was effective in stopping it last time, and we
11 thought: it's better to stop it before the publicity
12 starts.
13 Q. Alright. So you're now saying you were concerned about
14 publicity; you weren't concerned about unilateral
15 amendment with your rights under the McHugh award?
16 A. That was our prime concern. Because we never were of
17 the view even then, which is ten months after the
18 restructuring, we were never of the view that they could
19 change the State Agreement, and we were still relying on
20 the 70 years where this had never happened to anybody.
21 The Government had never changed anything ever, for
22 70 years, and no one would imagine that they would do
23 that.
24 Q. So this is another letter, you say --
25 A. It's Australia, after all --

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12:52 1 THE PRESIDENT: However, in this letter, my reading of it --
2 and if you disagree, you have to tell me why --
3 A. Yes.
4 THE PRESIDENT: -- is that you foresaw a dispute in respect
5 of the arbitrations well before the Amendment Act,
6 a number of months before the Amendment Act.
7 Am I mistaken?
8 A. Yes, you are. And can I explain why?
9 THE PRESIDENT: Yes, please.
10 A. Because you asked me to explain why.
11 If we look at the whole timeline of everything,
12 you'll notice that we were negotiating with the State to
13 enter into the arbitration agreement and the mediation
14 agreement. And I must say, the State Solicitor and
15 their office had been very active and very proper in
16 those negotiations, and it wasn't until three weeks
17 before we signed the -- sorry, I think it was about
18 three weeks before the Amendment Act that we signed the
19 arbitration agreement. Then we signed an agreement for
20 mediation with the Chief -- former Chief Justice of
21 Western Australia to mediate these things. And we think
22 that must have been done in good faith.
23 And from the time you signed the arbitration
24 agreement and the mediation agreement, whatever your
25 disputes were previously, they're all washed up: the

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12:53 1 parties have agreed to settle that by arbitration.
 2 So we had very promising negotiations with the
 3 State, through the State Solicitor's Office, to do the
 4 arbitration agreement. We were getting good feedback
 5 there. So we're sort of saying, "Well, politicians are
 6 politicians, life goes on with the bureaucracy,
 7 especially with lawyers". And then we signed those
 8 agreements.
 9 And then three weeks later, they brought in the
 10 Amendment Act.
 11 THE PRESIDENT: Thank you.
 12 DR DONAGHUE: Following on from that, though, Mr Palmer,
 13 what I seek to put to you is that you've seen that in
 14 August 2018, before the restructure, you initiated the
 15 arbitration that led to the second McHugh award, saying
 16 there's a dispute between Mineralogy and WA about
 17 whether they have to pay you damages about
 18 Balmoral South.
 19 A. Yes.
 20 Q. And then four days after the award is made, you say,
 21 "You can't interfere with the damages that I just got as
 22 a result of that ongoing arbitration because Zeph means
 23 I'm protected by the Singapore Free Trade Agreement".
 24 A. Well, all I can say is that it was a 50/50 call, based
 25 on the case -- I just say 50/50, the case at the time --

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12:56 1 that's on the screen. That's right, too, isn't it?
 2 A. Yes, that's right, viewed very narrowly. If you look at
 3 the Amendment Act, though, it does a lot more than
 4 that --
 5 Q. I appreciate it does other things. But in terms of what
 6 Section 10 does ...
 7 A. Well, it's not something that we thought about, to be
 8 honest. We just wanted to say, "Hey, hey, we've won",
 9 and stick it up McGowan, which we did.
 10 Q. Before lunch, can we conclude in this way: I want to put
 11 it to you that ... I'll go back one step.
 12 Are you aware that in your Rejoinder on Preliminary
 13 Objections at paragraph 383 -- this is B/4/177 -- Zeph
 14 conceded for the first time that investment treaty
 15 coverage was one of the purposes for the restructure?
 16 It say it was an ancillary purpose. Are you aware of
 17 that?
 18 A. Can I read it?
 19 Q. Yes.
 20 A. What number is it?
 21 Q. It will come up in a minute. It's paragraph 383 of your
 22 Rejoinder:
 23 "As Messrs Palmer, Martino and Harris explain, these
 24 commercial rationales were the primary reasons for the
 25 Restructuring. Investment treaty coverage was

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12:54 1 through that second arbitration, whether we were
 2 responsible for any sort of damages. And we never
 3 imagined the damages would be up around \$27 billion per
 4 project, which was quite high, even higher than we've
 5 claimed. And the State produced their expert,
 6 William Preston, at some stage.
 7 Q. You've given that evidence. But I'm inviting your
 8 attention to focus on the chronology, which is that you
 9 are invoking investor-state protection via Zeph in the
 10 specific context of the resolution of a debate about
 11 an entitlement to damages that started no later than
 12 August 2018. That's the first proposition I am putting
 13 to you.
 14 That's true, isn't it? It's true on the face of the
 15 letter.
 16 A. Yes.
 17 Q. And that in doing so, you are expressly recognising and
 18 trying to head off a legislative amendment to interfere
 19 with the award that you just got?
 20 A. Well, my evidence is I'm not. That wasn't my intention.
 21 My intention was to stop McGowan publicly humiliating us
 22 in the press, which he had done previously.
 23 Q. And the interference that ultimately happened, via
 24 Section 10 of the Amendment Act, is the very kind of
 25 interference you referred to in the October letter

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12:57 1 ancillary."
 2 So that's a recognition that investment treaty
 3 coverage was part of the purpose. You accept that's
 4 true, don't you, Mr Palmer?
 5 A. Well, prima facie it does. But I wasn't aware -- to
 6 answer your question -- of that, and I hadn't read that
 7 prior to it being filed. But yes, that's a truthful
 8 answer.
 9 Q. Alright. So it wasn't, in the correspondence, just
 10 bluff and bluster. It was -- at least on that statement
 11 in the Rejoinder -- an ancillary purpose, wasn't it?
 12 A. It wasn't, but --
 13 Q. It wasn't?
 14 A. No, I'm saying to you: it wasn't in my mind at all. But
 15 I'm saying: I'm not denying that that's what the
 16 document says. And it was drafted by one of our legal
 17 team, so we have to take responsibility for our
 18 admissions, just as we expect the Commonwealth to take
 19 responsibility for their admissions.
 20 Q. We do, Mr Palmer.
 21 A. Yes.
 22 Q. Now, what I want to put to you is that in fact it wasn't
 23 just an ancillary purpose. The dominant or principal
 24 reason for the incorporation of MIL was the very reason
 25 referred to in the contemporaneous letters, including

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12:58 1 the 18 January letter: to obtain investment treaty
2 protection. Do you agree with that?
3 A. No.
4 Q. I suggest to you that you became aware at some point in
5 mid-January 2019 that MIL, the New Zealand company,
6 could not bring an investor-state claim against
7 Australia because of a side-exchange of notes between
8 Australia and New Zealand. Did you know that?
9 A. No.
10 Q. You didn't know that?
11 A. No.
12 Q. I suggest that somebody within Mineralogy becoming aware
13 of the fact that an investment treaty claim could not be
14 brought from New Zealand was the reason it became
15 urgently necessary to incorporate Zeph in January 2019:
16 to get the treaty protection you had tried to acquire
17 from MIL. Do you accept that?
18 A. No.
19 Q. Alright.
20 Really to cover all of that off then, I suggest to
21 you that whatever discussions you may have had with
22 Mr Martino in the middle of 2018, contrary to your
23 suggestion that you made a final decision to restructure
24 in June 2018, you did not in fact decide to implement
25 a restructure involving either MIL or Zeph until after

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13:01 1 from The Australian at all at that time.
2 What I think the explanation is: that they had some
3 of the letters that you've referred to, and they may be
4 quoting things from the letters as being our position.
5 But certainly they go further than that.
6 But it's not unusual for The Australian to do that
7 with me. I had a particular bad relationship with
8 Rupert Murdoch during the period from 2016 to 2019, when
9 we wouldn't support various legislation in the
10 Australian Parliament.
11 Q. There are various statements: for example, the first
12 statement in that paragraph and two statements in the
13 next paragraph are in inverted commas. Not the one
14 I read to you about the move offshore.
15 But you're saying you didn't talk to them at all?
16 So they are attributing direct quotes to you that never
17 happened?
18 A. Yes. I didn't really talk to anyone from
19 The Australian, I'm certain of that. Because at that
20 stage I wouldn't talk to people from The Australian
21 because of the -- a fight I had with Rupert Murdoch when
22 I disclosed his wife was a spy for the Chinese
23 Government on national television.
24 Q. Alright. I'm not going to take that particular bait,
25 Mr Palmer.

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13:00 1 Premier McGowan's statements in Parliament in
2 November 2018. Do you accept that?
3 A. No.
4 DR DONAGHUE: If the Tribunal will indulge me for a couple
5 more minutes?
6 THE PRESIDENT: Yes, that's fine.
7 DR DONAGHUE: Can we show Mr Palmer E2/46/1.
8 A. Can I just read that?
9 Q. Yes, please do. (Pause)
10 I'm particularly directing your attention to the
11 fourth paragraph down, the second sentence, where you
12 are reported in The Australian as saying:
13 "Mr Palmer said the move offshore meant Mineralogy
14 would be able to claim compensation from the Australian
15 government under the investor protection provisions of
16 the Australia-[New Zealand] free-trade agreement. He
17 vowed to launch a damages claim if West Australian
18 Premier ... McGowan carries through with his threat to
19 legislate in favour of ... CITIC's interests in the
20 \$US10bn Sino Iron project ..."
21 So you haven't denied in any of your witness
22 statements that you did say what The Australian reports
23 you were saying there. Do you accept that you did say
24 that?
25 A. No, I didn't say that. I had no interviews with anyone

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13:02 1 But you haven't said anything in any of your witness
2 statements about this article?
3 A. No, I haven't, but I am now. But I'm saying that I note
4 that some of the things in the article are consistent
5 with some of the letters that you produced earlier, and
6 all I can assume was the journalist had those letters
7 and plagiarised them.
8 DR DONAGHUE: Alright.
9 Is that a convenient time for the Tribunal to break
10 for lunch?
11 THE PRESIDENT: Absolutely. It is now 1.03, so we will
12 resume at 2.00.
13 Mr Palmer, you know that you are still under --
14 I'm sure they will find a place for you where you can
15 have lunch.
16 MR PALMER: That's fine.
17 THE PRESIDENT: But it will be just on your own.
18 MR PALMER: No worries. All the best.
19 THE PRESIDENT: Have a good lunch, everyone.
20 MR PALMER: Thank you.
21 (1.04 pm)
22 (Adjourned until 2.00 pm)
23 (2.00 pm)
24 THE PRESIDENT: It is 2 o'clock and we are ready to
25 continue.

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14:00 1 Mr Palmer, you are ready and your mic is on?
 2 MR PALMER: Yes.
 3 THE PRESIDENT: Good.
 4 Dr Donaghue, you have the floor.
 5 DR DONAGHUE: Thank you, Madam President.
 6 Can Mr Palmer please be shown C2/2/14. This is
 7 an extract -- when it comes up, Mr Palmer -- of the
 8 witness statement of Mr Vickers. Mr Vickers is of
 9 JS Held in Singapore, an investigation company.
 10 Have you read Mr Vickers's witness statement?
 11 A. No.
 12 Q. When you see it, can you have a look at paragraphs 82
 13 and 83. In 82, Mr Vickers explains that:
 14 "On 12 October 2020, liquidator BDO LLP was
 15 appointed to the Engineering Companies."
 16 And that they were dissolved by a creditors'
 17 resolution two years later.
 18 So the liquidator was in from October 2020. Do you
 19 agree with that?
 20 A. You're talking about 82, right? Yes, that's right --
 21 Q. So you agree that all three engineering companies had
 22 liquidators appointed in October 2020?
 23 A. That's correct, 26 October.
 24 Q. Okay. The 26th and not the 12th?
 25 A. Oh, sorry, the 12th, yes. 26th ...

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14:02 1 got this here, is that I'm not sure -- the liquidator
 2 was appointed, but I still think business operations
 3 continued for a month or two after that.
 4 Q. Under the control of the liquidator?
 5 A. Under the control of the liquidator. I'd have to go
 6 back to the detailed records, but when you put a company
 7 in liquidation, there's still things you have to do with
 8 creditors and ...
 9 Q. But as to 83(b), this is another occasion where you
 10 don't agree with something that's in a witness
 11 statement, but you haven't filed any witness evidence to
 12 the contrary and you haven't cross-examined on our
 13 evidence?
 14 A. Yes. We don't accept it, though.
 15 Q. Can I take you to the accounts questions and ask you to
 16 be shown D2/3/94. This is in the first report of
 17 Professor Lys.
 18 Actually, can I change that page reference: can we
 19 go D2/3/102. We'll start with Visco Engineering.
 20 Your evidence was, this morning, that
 21 Visco Engineering was the business opportunity that
 22 required urgent incorporation of Zeph.
 23 A. Well, the whole three companies were one group. I may
 24 have misled --
 25 Q. Oh, you weren't distinguishing between them?

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14:02 1 Q. And then in paragraph 83 of the statement, Mr Vickers
 2 concludes that:
 3 "a. the Engineering Companies did not have any
 4 business operations in Singapore after 12 October 2020;
 5 "b. it is probable that the Engineering Companies
 6 did not have significant business operations after
 7 2018."
 8 You would agree that if that last statement, in (b),
 9 is correct, then that means that they would not have had
 10 any significant business operations at the time that
 11 Zeph purchased them?
 12 A. That's just not a true statement.
 13 Q. You're saying ...
 14 A. It's rubbish.
 15 Q. You're saying it's not true?
 16 A. Absolutely.
 17 Q. Alright.
 18 A. There were accounts for the companies filed on ACRA that
 19 could have been obtained by this fellow; he never did.
 20 Q. I'm going to show you the accounts in a minute.
 21 The Claimant chose not to cross-examine Mr Vickers
 22 on that conclusion.
 23 A. Yes. Well, it's just not credible. It's contrary to
 24 all evidence.
 25 The other aspect I should comment on, while you've

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14:04 1 A. No, I was thinking of the group. I'm sorry about that,
 2 if I wasn't clear. But we were considering that the
 3 three companies were the holding company and I think two
 4 subsidiaries.
 5 Q. Alright. Okay. So if you're grouping them together,
 6 perhaps then I'll go back to the one I started with, so
 7 D2/3/94. Thank you.
 8 A. Sorry about that. (Pause)
 9 Q. Professor Lys analyses the companies one by one, and
 10 he's starting here with GCS Engineering. You can see
 11 there's an extract in figure 43 from the balance sheet
 12 of GCS Engineering. And at 270, can you see there
 13 Professor Lys says:
 14 "Only [one] month prior to being acquired by Zeph,
 15 GCS Engineering had assets of SGD \$1,248,466 and net
 16 assets (book value of equity) of just SGD \$83,087."
 17 You don't have any basis to disagree with that,
 18 do you?
 19 A. Well, I don't have any basis to agree with it, though.
 20 Q. My question is: do you have a basis to disagree with it?
 21 A. I think we've put accounts in for this already, which
 22 I'd have to refer to. I think there's accounts on
 23 an evidence of the position of Visco -- sorry, of --
 24 Q. GCS.
 25 A. -- the Engineering balance sheet.

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14:05 1 Q. So you're not accepting that Professor Lys, when he says
2 he's analysing their balance sheet, that that's what
3 he's doing?
4 A. No, no, we're not doing that, no.
5 Q. And on what possible basis are you contesting that he's
6 describing the balance sheets, as he says he is?
7 A. I'm sure the companies had a higher value at that stage.
8 Q. You're sure?
9 A. Absolutely, yes.
10 Q. Well, can you tell us where in the materials there's any
11 evidence of that?
12 A. I haven't got access to the list of exhibits. If I can
13 consult my legal team, I can find out where it is.
14 DR KIRK: I wonder if I could help. There is a reference at
15 the bottom of that table to R-436 and R-63. I don't
16 know if we could bring those up.
17 DR DONAGHUE: If it pleases to the Tribunal, I'll have my
18 team have a look at those, rather than delay us now.
19 A. Okay.
20 DR DONAGHUE: And we'll come back if they --
21 THE PRESIDENT: You can do this on re-direct, if needed.
22 A. Yes, okay. So maybe move ahead.
23 DR DONAGHUE: Alright. So you said you don't have a basis
24 to dispute, but you don't have a basis to agree with
25 what Professor Lys says there. But he says net assets

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14:08 1 A. I'm talking about the 2019 accounts, the first '19 --
2 Q. I thought you said the 2017 accounts were misleading.
3 A. No, sorry, the 2019 accounts. If you look down the
4 column, you will see "Debt [forgiveness by] [director]",
5 \$795,604. And you asked me -- I think the question was
6 about the \$50,000 profit and loss at the end of the
7 column.
8 Q. I actually asked you a question about -- I read from
9 Professor Lys, and he was talking about the 2018
10 accounts.
11 A. Well, we had no interest in the company at that stage.
12 Q. You bought it just after --
13 A. After that.
14 Q. After that. So you bought a company which had gone from
15 reporting revenue of just under \$800,000 in 2017 to
16 a loss of \$210,000 in 2018, and that's part of the
17 business opportunity that you're asking the Tribunal to
18 accept?
19 A. As I say, I've got no means of verifying these accounts.
20 But we bought the company -- which my earlier testimony
21 said -- because we wanted to get into the industry.
22 They had about 60 employees and a whole range of clients
23 we wanted to talk to about future opportunities. That's
24 why --
25 Q. In the abstract, that may be true.

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14:06 1 of SGD 83[,087].
2 Then if we go over the page to 273, you'll see
3 there's an extract, as Professor Lys puts it, from "GCS
4 Engineering's Income Statement". And under that table,
5 he identifies at paragraph 273:
6 "... for the year 2018, just before the Zeph
7 acquisition of GCS Engineering in January 2019 ...
8 reported only SGD \$4,854 in revenue from services
9 rendered, down from SGD \$795,438 in the previous year
10 ... It recorded a loss of SGD \$210,133 in 2018 and was
11 on a similarly negative loss trajectory for the first
12 six months of 2019."
13 Do you have any basis to dispute that evidence?
14 A. I think it's misleading. I don't think they are audited
15 accounts. The \$795,000, as I understand it, was when
16 their business was taken over: debt was forgiven, which
17 came out of that year's revenue. That's all I can
18 remember.
19 So in that instance, that would be -- the debt was
20 forgiven. You can see "Debt [forgiveness to]
21 ex-director" of 795,604. And that was taken out of
22 current operational profits, causing it to go into loss
23 of -- it may have been 50,000, but something like that.
24 That was part of the acquisition.
25 Q. The acquisition didn't happen until 2019.

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14:09 1 A. We didn't buy it based on the balance sheet.
2 Q. But certainly, unless you have some basis ultimately to
3 attack the analysis of Professor Lys, he says at the end
4 of paragraph 273:
5 "... it is fair to say ... from a purely operational
6 perspective and/or as a going concern, GCS Engineering
7 was hardly a desirable acquisition target."
8 Based on his analysis of the accounts.
9 A. Well, that's fine. But it's my money, I can spend it as
10 I want. If it was 10 million, I could have spent it and
11 not worried about the financial result, to be honest
12 with you.
13 Q. Well --
14 A. If it was an area I wanted to get into or be involved
15 with, we'd build it up as a business.
16 Q. Well, that's actually what happened, isn't it? You
17 didn't do the due diligence or looking at these
18 accounts. You just -- it was an area -- you wanted to
19 buy these companies, and so you said, "I can afford
20 them, therefore I'll buy them"? That's what happened,
21 wasn't it?
22 A. I normally buy things I can afford, yes.
23 Q. Well, of course. But here, you didn't care whether they
24 were loss-making or not; you just -- you saw them there,
25 two days after Zeph was acquired, and you bought them,

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14:10 1 in an attempt to acquire a business presence in
2 Singapore; that's what happened?
3 A. No, my earlier evidence showed you that we bought them
4 ten days after Zeph was incorporated, right?
5 Q. And two days after the share swap?
6 A. Yes, two days after the share swap. We also showed you
7 that this was one of the reasons we bought them, was
8 because we wanted to enter into the field of shipping.
9 We'd been in shipping before. It was an area we wanted
10 to be involved in in Singapore.
11 Q. Well, you did say that, Mr Palmer. But what I'm showing
12 you is accounts that show companies that were already in
13 an advanced state of collapse at the time you bought
14 them.
15 A. Well, these are not audited accounts of the company;
16 they're an analysis done by a third party who may never
17 have visited Singapore.
18 Q. Mr Palmer, do you need to have visited Singapore to
19 analyse corporate accounts? You're talking about a very
20 eminent expert in --
21 A. Let's say they were worth nothing: it would make no
22 difference to me. I wanted to get into that field of
23 endeavour. There were 60 employees there. They had
24 facilities in Singapore, they had long-term leases over
25 labour import areas and they had Singapore licences,

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14:12 1 [3].5 million is insignificant to you in Singapore when
2 you're losing it?
3 A. Because one set of assets is tied up in Mineralogy, in
4 the company, which I explained: all the eggs were in one
5 basket. The other set of assets is assets that I can
6 access regardless of what was going to happen with the
7 major disputes we were in at the time.
8 Q. But these aren't personal assets of yours, Mr Palmer;
9 these were still corporate assets. Mineralogy
10 International Limited buying the -- as you say, the
11 \$23 billion, both SGD [3].5 million and
12 NZD 11.5 million, none of that seems significant in the
13 context of your overall assets.
14 A. Well, the \$11.5 million in New Zealand were assets that
15 were directly controllable by me outside the Mineralogy
16 Group. The assets that you're talking about were all
17 Mineralogy --
18 Q. Sorry, Mr Palmer, can I stop you. You've said that
19 again: "outside the Mineralogy Group".
20 A. Yes.
21 Q. Didn't you say that that property was acquired by MIL?
22 A. It was acquired by MIL. But --
23 Q. So it's inside the Mineralogy Group?
24 A. No. MIL is a New Zealand company.
25 Q. Yes.

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14:11 1 which were very valuable.
2 Q. So the disagreement is not as to whether these accounts
3 are accurate; it's that you're saying you didn't care?
4 A. Well, I'm a very cavalier person. If you've got
5 \$23 billion of assets, you tend to be not too worried
6 about the odd million or two.
7 Q. Okay, so you were happy. You spent, including loans to
8 this -- I think \$3.5 million you spent to acquire them
9 and then you loaned another \$1/1.5 million, I think. Is
10 that right?
11 A. I can't recall, to be honest.
12 Q. Professor --
13 A. I can recall it was \$3.5 million, the acquisition.
14 Q. The purchase, yes.
15 A. I can't recall the loans.
16 Q. Okay. And ultimately, you lost about 91% of that
17 investment; do you agree with that?
18 A. I think it would be in that order.
19 Q. But you've said: if you've got \$23 billion, you don't
20 worry too much about spending \$3.5 million?
21 A. That's right.
22 Q. Can we contrast that answer with your evidence before
23 lunch that you got significant comfort from spending
24 11.5 million with Mineralogy in -- why is it that
25 11.5 million is significant to you in New Zealand and

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14:13 1 A. Mineralogy is an Australian company, right? So they're
2 different.
3 Q. MIL is the holding company of Mineralogy.
4 A. Yes, and I own MIL.
5 Q. I appreciate that.
6 A. So that's --
7 Q. And all of them are inside the Mineralogy Group?
8 A. Hold on. No, that's not true. If Mineralogy goes into
9 liquidation, at that time I'd still own MIL and I'd
10 still own the park in New Zealand. That was important
11 to me, because I had all my assets tied up in one
12 company.
13 Q. All the \$23 billion?
14 A. Basically, yes.
15 Q. Okay.
16 Now, we'll do this same exercise more quickly for
17 the other two engineering companies. Can Mr Palmer be
18 shown D2/3/102, which is paragraph 297. This is the
19 same analysis by Professor Lys of Visco Engineering.
20 You can see figure [47], the extract from the
21 balance sheet. And then in the paragraph below, 297:
22 "... Visco Engineering had assets of
23 SGD [\$1.6 million or thereabouts] and net assets
24 (book value of equity) of SGD \$73,831."
25 Do you have any basis to dispute that?

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14:14 1 A. No.
 2 Q. Then over the page at 300, you can see there's
 3 an extract from the income statement for
 4 Visco Engineering. And at 300, it says:
 5 "... just before the ... acquisition of Visco ... in
 6 January 2019, for the year 2018 Visco ... reported only
 7 SGD \$39,500 in revenue from services rendered, down from
 8 SGD [\$1.26 million] in the previous year ... It recorded
 9 a loss of SGD \$112,336 in 2018. Combined with the fact
 10 it also had negative ... earnings, Visco ... was hardly
 11 a desirable acquisition target ..."
 12 Do you have any basis to disagree with those
 13 figures?
 14 A. Well, I think it was a desirable acquisition target
 15 because of the licences it had to operate in Singapore
 16 and the facilities it had control over.
 17 Q. Going on to 324, which is D2/3/110. This is
 18 Visco Offshore Engineering. Same table you can see at
 19 [figure] 50 extracting the balance sheet. And then in
 20 the paragraph below:
 21 "Before being acquired by Zeph, Visco Offshore
 22 Engineering had assets of SGD [\$1.3 million or
 23 thereabouts] and net assets (book value ...) of
 24 SGD \$80,952."
 25 Do you have any basis to dispute that?

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14:17 1 Q. He doesn't say "proper", he says "elaborate".
 2 A. Well, he doesn't have anything at all. We bought these
 3 companies because they had substantial concessions from
 4 the Singapore Government and they conducted a number of
 5 facilities which were available at ports, which were not
 6 easy to come by.
 7 Q. Okay. So that's another example of evidence that you're
 8 now giving that appears in none of your seven witness
 9 statements, Mr Palmer.
 10 A. I'm just answering a question.
 11 Q. Well --
 12 A. I can sit here, if you like, and parse you over sections
 13 of my witness statement, or I can give you an answer.
 14 Q. Well --
 15 A. You'd prefer an answer, wouldn't you?
 16 Q. I would prefer an answer.
 17 A. That's what I've given you.
 18 Q. But you're giving explanations for the acquisition of
 19 these companies of a kind that --
 20 A. That you're asking me for. You're asking me what's
 21 the -- and I'm giving you the answer.
 22 Q. So is your evidence now that you accept that they were
 23 loss-making but there were other good reasons to
 24 purchase them, or you thought that they were profitable,
 25 or you didn't know?

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14:16 1 A. Well, as I said, these are not the audited accounts of
 2 the company.
 3 Q. And at 327, having extracted the income statement,
 4 Professor Lys notes that there was a small profit made
 5 by Visco, but he says:
 6 "... the business slowdown began at least ten ..."
 7 I'm reading the last line on the page:
 8 "... began at least ten months before Covid started
 9 affecting the business environment in Singapore, with
 10 the first lockdown ... on April 7, 2020."
 11 Do you have any basis to dispute that?
 12 A. No.
 13 Q. Now, can I show you paragraph 343, which is D2/3/116,
 14 where Professor Lys says:
 15 "In summary, while the record does not provide
 16 sufficient evidence to perform an elaborate valuation of
 17 these three engineering [companies], my review of their
 18 financial statements indicates that their value was
 19 substantially less than SGD \$3.5 million, which is
 20 incidentally is almost 15 times the book value of their
 21 combined equity shortly before the purchase."
 22 Do you have any basis to dispute that?
 23 A. Well, he's correct: he doesn't have any basis to do
 24 a proper analysis of the companies or the assets of
 25 the -- of the licences --

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14:18 1 A. Our evidence has always been that we purchased those
 2 companies because we wanted to get into the marine
 3 sector, and that they had significant licences and
 4 facilities in Singapore which we thought we could invest
 5 in and expand. That's our evidence.
 6 Q. And this was sufficiently urgent so you did it
 7 immediately, as the first thing Zeph did?
 8 A. Yes, it was pretty hard to get government licences and
 9 concessions. So when it became available,
 10 Michael Mashayanyika thought we should move quickly, and
 11 I accepted his recommendation and did it.
 12 Q. Okay. So you moved quickly, you acquired all three
 13 businesses. What did you do with them? What did you do
 14 with these licences and facilities and advantages?
 15 A. Well, the first thing we did was to look at the
 16 conditions of the Indian workers that were brought in to
 17 be contract labourers on ships, and we thought that they
 18 weren't up to a proper human rights standard. And then
 19 we increased those facilities and tried to make sure
 20 there was additional concessions. In Singapore, the
 21 human -- the health and safety regulations for immigrant
 22 workers are less than they should be, and not the same
 23 as Singaporean workers. So that was our first concern.
 24 Q. So that's good: you looked after your workers.
 25 But from a business point of view, what did you do?

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14:19 1 If you were buying these to get concessions and
2 facilities, did you use the concessions and facilities?
3 A. Yes, we had them modernised. We went into some
4 additional contracts to provide -- from memory, it was
5 additional food, cleaning and stuff like that. We --
6 Q. Food and cleaning of the facilities?
7 A. Food, so that people can eat. They had to have three
8 meals a day instead of one, for example. These sort of
9 things became a priority when I realised that this was
10 more like a labour hire company getting cheap labour
11 from India, and for that reason they had good
12 concessions where they could work cheap on ships.
13 My first concern was for the wellbeing of the
14 workforce. And so we did invest a lot more additional
15 money to make sure we could deal with those things. And
16 there was a lot of family complications, which I didn't
17 deal with but other people did, that we wanted to make
18 sure were correct.
19 Q. All right. But --
20 A. So we corrected the situation. And then in -- was it
21 2020, I think, as you say, October, it was decided we
22 should liquidate those companies and we should return
23 those people to India with their families with a cash
24 payout, which is what we did.
25 Q. You make it sound like you acquired these companies as

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14:22 1 substantive business operations in Singapore from
2 immediately after the incorporation of Zeph, so as to
3 attempt to resist a denial of benefits clause; that's
4 what was really going on?
5 A. No, I don't agree with that. That's not true.
6 Q. And supportive of the idea that that is true, you never
7 did anything with the business opportunities that you
8 suggest so urgently required the change in the plans
9 that you had previously made?
10 A. That's not true either.
11 Q. Alright.
12 Can I ask you now about the Kleenmatic joint
13 venture.
14 A. Sure.
15 Q. You entered into that joint venture on 24 January 2020?
16 A. Yes.
17 Q. That was about a year after Zeph acquired the
18 engineering companies?
19 A. Roughly.
20 Q. Roughly. You were introduced -- you found out about the
21 Kleenmatic companies via a Mr Vincent Lim; is that
22 correct?
23 A. I don't know. I was dealing with Michael Mashayanyika
24 in our organisation. I don't know who he discussed it
25 with.

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14:21 1 a humanitarian endeavour.
2 You say it was a great business opportunity that
3 justified bringing forward a restructure that was
4 waiting for the royalties judgment for months and months
5 and months. I'm asking you, from a business opportunity
6 point of view, whether you ever did anything with the
7 business opportunity that urgently required the
8 restructuring. And you've answered now twice about how
9 well you treated the workers. Can you answer the
10 question about what you did, if anything, with the
11 business opportunity that was so urgent that it changed
12 all your plans?
13 A. Well, we made a decision that it wasn't worth operating
14 under those sort of conditions in Singapore. And if you
15 look at the opportunities that were there, they -- our
16 competitors were operating on that sort of level and
17 we thought we wouldn't continue to do it.
18 Q. Mr Palmer, can I suggest to you you're just making this
19 up.
20 A. Well --
21 Q. You're making this up as you sit there.
22 A. Well, don't ask me the question if you don't want the
23 answer, okay?
24 Q. I suggest to you that the sole reason that you acquired
25 those companies urgently was to create the appearance of

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14:23 1 Q. Can Mr Palmer be shown E2/416/2, which is Exhibit R-416.
2 (Pause) Yes, E2/416/2.
3 A. Yes.
4 Q. Mr Palmer, I'll come back to you, but I'm told we've
5 found in the record the audited accounts and they're
6 exactly the same as the figures that Professor Lys
7 records in his statement. Does that change your
8 evidence in any respect?
9 A. Well, no, it could be. I wasn't looking at that aspect
10 of the business.
11 Q. You were critical of Professor Lys in part on the basis
12 that you said the figures he was using weren't --
13 A. I don't think he's looked at the company, he hasn't
14 visited Singapore and inspected their assets. We saw
15 them, we wanted to buy them. Anyway ...
16 Q. For the record, the exhibit is C-543, but I won't take
17 time to go back to it.
18 A. Okay. Is this what you want me to talk about?
19 Q. I want you to look at the document in front of you.
20 A. Yes.
21 Q. You can see there an advertisement for a "Profitable
22 Cleaning Services Company"; do you see that?
23 A. Mm-hm.
24 Q. And the advertisement says, scrolling down the page,
25 it cleans a variety of places: offices, condominiums,

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14:24 1 retail locations, commercial, industrial buildings.
 2 "The Company has currently 200 staff (including
 3 cleaners) with estimated yearly revenue ranging from
 4 \$4.5 mil to \$5 mil.
 5 Gross Margin [is] estimated [at] 15% to 20%
 6 Estimated yearly ... profit[s] [of] \$450k to \$500k"
 7 A. Mm-hm.
 8 Q. Would you agree that that is the advertisement for
 9 Kleenmatic that brought the company to Zeph's attention?
 10 A. I don't know. Michael Mash brought it to my attention
 11 when he returned from Singapore. So I don't know if he
 12 saw this advertisement or what happened.
 13 But I do know from looking at the advertisement
 14 it falls within the parameters -- we were getting,
 15 I think about 2% or 3% for the funds we had on term
 16 deposit, or on deposit generally with banks, and this is
 17 showing a yield close to 10%. So it would have been
 18 something that Michael would have known we could have
 19 purchased.
 20 Q. On the one hand, though, Mr Palmer, you say, "I could
 21 splash SGD 3.5 million without thinking about it because
 22 I earn that in two days", and then this is a business
 23 that makes in a year \$0.5 million. It's tiny in the
 24 comparison of your business operations?
 25 A. All I can say is this was the business. Michael saw it,

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14:27 1 Q. Now, can I show you part of the Claimant's pleadings in
 2 this proceeding. It's B/2/177, should be paragraph 450.
 3 Thank you. You can see the heading there "Date of
 4 Assessment". So this is in the Claimant's SODPO, and
 5 you can see in the last sentence of 450:
 6 "The Claimant's position is that the date [for the
 7 assessment of substantive business activities in
 8 Singapore] is 13 August 2020, the date of the
 9 Amendment Act."
 10 A. Yes.
 11 Q. Do you see that?
 12 A. I can see that, yes.
 13 Q. So that's saying that the question that the Tribunal
 14 needs to answer is whether Zeph had substantive
 15 operations on or before 13 August 2020. You understand
 16 that?
 17 A. No. If I can read it, I can perhaps deal with it.
 18 (Pause)
 19 So it's saying that 14 October is the date by which
 20 you must issue your ...
 21 Q. No, it's saying the Respondent contends that the
 22 conditions must be satisfied by no later than
 23 14 October, when the dispute arose. And Zeph says the
 24 date is 13 August 2020, the date of the Amendment Act.
 25 A. That's right. And the admissions that I pointed out

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14:26 1 we approved it and went ahead and bought it, and we have
 2 built it up since that day to today: it's got
 3 \$173 million in assets and \$12 million as revenue.
 4 Q. The cleaning company has \$173 million in assets?
 5 A. That's correct, and it's on the record. You only have
 6 to read the evidence.
 7 Q. Well, the evidence you flashed up when you made that
 8 claim in your opening yesterday looked like the
 9 consolidated Zeph accounts. Are you drawing
 10 a distinction -- are you suggesting that the Kleenmatic
 11 part of the business, as opposed to Zeph, including
 12 its ...
 13 A. I think if you look at the evidence and have a look at
 14 the accounts, I'm sure that Zeph has got tens of
 15 millions of dollars in Singapore at the moment.
 16 Q. That Zeph does have.
 17 A. Sorry, that the Claimant does, yes.
 18 Q. Okay. So you claim --
 19 A. I think its profits were in the order of \$12 million.
 20 Q. \$12 million.
 21 A. That's the profits of the business, yes, of the whole
 22 operations of Zeph in Singapore. I think I put that --
 23 that was put up yesterday. That's over a five-year
 24 period. So there's been a lot of active involvement and
 25 the business has developed substantially.

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14:29 1 yesterday were four admissions saying that the common
 2 ground now was 13 August 2020.
 3 Q. Okay. So what I'm putting to you is that you understand
 4 that what that means is that the factual question is
 5 whether Zeph had substantive business operations on or
 6 before 13 August 2020?
 7 A. Yes.
 8 Q. Yes. Now, you showed the Tribunal a reasonably lengthy
 9 video yesterday of what was described as Zeph's annual
 10 Chinese New Year party?
 11 A. That's right.
 12 Q. That being a party that was held this year, in 2024;
 13 that's right, isn't it?
 14 A. It would have been held sometime in February, I think.
 15 Q. Yes, in 2024?
 16 A. 2024.
 17 Q. So years after the date that the Claimant accepts is the
 18 date relevant to the assessment?
 19 A. Yes, that's right.
 20 Q. My question to you, Mr Palmer: if it's an annual
 21 Christmas party, where is the video of the 2020 party?
 22 A. We have all of those, and we can certainly show them.
 23 Q. Oh, so you have them?
 24 A. Yes.
 25 Q. So you chose to submit evidence about 2024 instead of

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14:30 1 about 2020?
 2 A. Well, we chose the most recent things to show the
 3 ongoing commitment we have with Singapore.
 4 Q. The ongoing doesn't matter, though. You must
 5 appreciate, based on your own pleadings, that what
 6 matters is what happened as at the date in the past.
 7 Are you seriously suggesting that you had that evidence
 8 and you chose not to provide it?
 9 A. We're very sorry we didn't provide it. But there's
 10 probably a lot of evidence we haven't provided, but
 11 we don't think it's necessary for our case. We are
 12 concerned with winning our case.
 13 Q. Well ...
 14 A. I'm sorry, but we didn't want to assist the Commonwealth
 15 with its case.
 16 Q. Well, notwithstanding your protestations about trying to
 17 assist the Tribunal to dispose of things efficiently,
 18 what you seem to be saying is that you deliberately
 19 provided evidence of a situation several years after the
 20 date that you agree is the relevant date for the
 21 Tribunal's fact-finding purposes. Is that what you're
 22 saying?
 23 A. Well, we're saying that we believe that video shows the
 24 development of the business, how it was now, and its
 25 connection with Singapore.

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14:32 1 referred to by number later.
 2 So in 3.1:
 3 "The joint Parties propose:
 4 (a) To operate all the businesses of the Second
 5 Party and the Third Party ..."
 6 That's the two Kleenmatic companies:
 7 "... existing prior to the execution of this
 8 agreement which have on execution ... become [the]
 9 Joint Venture Property."
 10 So you agree there that the focus of this joint
 11 venture is on the pre-existing businesses of the
 12 two Singaporean companies; yes?
 13 A. Well, it's not limited to that. That's what it's
 14 establishing at the moment.
 15 Q. Well, "To operate [those] businesses", that's what it
 16 says?
 17 A. Yes.
 18 Q. And then in [3].2(a):
 19 "The Parties acknowledge that with effect from the
 20 Commencement Date, [they] have been associated as
 21 a joint venture for the following purposes:
 22 (a) To carry out all businesses previously carried
 23 out before the date hereof by the Second Party and the
 24 Third Party ..."
 25 A. Yes.

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14:31 1 Q. None of which is relevant to whether Zeph had
 2 substantive business activities on 13 [August] 2020.
 3 A. Well, our position is that anything you are doing this
 4 morning in my cross-examination is not relevant to
 5 foreseeability, which is what -- you've admitted the
 6 Amend[ment] Act wasn't foreseeable.
 7 Q. Let's try to focus --
 8 A. So I think what you're doing is crazy.
 9 Q. -- on the questions you are being asked, Mr Palmer.
 10 Can we show Mr Palmer E1/461/1, which is
 11 Exhibit C-469. Sorry, E1/469/1. That's not what
 12 I said, sorry.
 13 You recognise this is the joint venture between Zeph
 14 and the two Kleenmatic companies?
 15 A. I do, yes.
 16 Q. I'm going to ask a few questions about this agreement.
 17 Can we start with clause 3.1, which is three pages in.
 18 A. Will you put that up there?
 19 Q. It will come up in a moment. (Pause)
 20 "Overview of the purpose of the joint venture
 21 "3.1 The joint Parties propose:
 22 (a) To operate all the businesses ..."
 23 I should perhaps have shown you -- sorry -- the
 24 first party is Zeph, the second party is One Kleenmatic
 25 and the third is Kleen Venture. So you will see them

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14:33 1 Q. So it's again to carry out the pre-existing business of
 2 the two Singaporean companies; you agree with that?
 3 A. That's correct, yes.
 4 Q. Now if we could go on to clause 10, "Meaning of Joint
 5 Venture Property", which will come up in a moment:
 6 "In this Agreement, Joint Venture Property means all
 7 property and assets from time to time of the Joint
 8 Venture including:
 9 (a) the property of the Second Party and the Third
 10 Party and their business owned prior to the execution of
 11 this agreement ..."
 12 So it's the property and assets of the two
 13 Singaporean companies; do you agree with that?
 14 A. Existing prior to this agreement.
 15 Q. Yes, the pre-existing property of the two Singaporean
 16 companies.
 17 A. And:
 18 "Any other property or [joint venture] of ...
 19 description, whether real or personal, acquired with
 20 funds of the Joint Venture."
 21 Q. Indeed, yes.
 22 A. Okay.
 23 Q. At this point, Zeph is not contributing property or
 24 anything: it's just taking the property of the two
 25 existing Singaporean businesses and saying, "That's the

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14:34 1 joint venture property"?

2 A. I think we contributed about \$700,000.

3 Q. You made a payment to acquire the joint venture --

4 A. \$700,000, that's what we contributed. They were short

5 of cash.

6 Q. In clause 11 -- sorry, I should note 10.4 before we get

7 to 11. It's on the same page. "Initial Joint Venture

8 Property" is:

9 "... all ... the assets of the Second and Third

10 Party ... prior to ... [the] Agreement."

11 So all of the existing assets of the two Singaporean

12 companies are the initial joint venture property. You

13 see that?

14 A. Yes, that's right.

15 Q. The "Joint Venture Bank Accounts" in clause 11:

16 "The Bank accounts of the Second ... and Third Party

17 [are] deemed [to be] Joint Venture Bank Accounts."

18 So the existing bank accounts of the two Singaporean

19 parties are to be thereafter treated as the joint

20 venture bank accounts. Do you agree with that?

21 A. That's what it says.

22 Q. Yes. And in 11.2, all of the costs and expenses of the

23 joint venture are paid from the joint venture bank

24 account --

25 A. That's true.

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14:36 1 a couple of years later, when you actually acquired the

2 businesses. But that wasn't until 2022, was it?

3 A. That's not true. We acquired the business, as this

4 document evinces, the joint venture -- they were joint

5 venture property at that time, which means we had a 90%

6 interest in them at that time. That's the legal

7 position.

8 Q. When I said you "acquired" them, you purchased the

9 companies, they became subsidiary companies in 2022?

10 A. The companies became subsidiary companies later.

11 We acquired the last 10% of the joint venture in the

12 companies later, and we continued to trade under the

13 name of Kleenmatic because that had been the name that

14 was known in the market.

15 Q. Yes.

16 Can we please keep the joint venture document

17 available -- I'm going to come back to it -- but can

18 Mr Palmer be shown E2/615/1, Exhibit R-615. This is

19 an email from Vincent Wong to Bernard Wong.

20 Do you agree that Vincent Wong is Zeph's auditor?

21 A. Yes, I think that's right. He's not the auditor: he's

22 working for the company, the audit company.

23 Q. Sorry, he works for the audit company?

24 A. He works for the audit company. He's not the actual

25 auditor.

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14:35 1 Q. -- and all revenue is deposited into the joint

2 venture --

3 A. Yes.

4 Q. So reading 11 as a whole, the bank accounts of the two

5 Singaporean businesses stay the same, all the costs and

6 expenses come out of those bank accounts, all the

7 revenues goes into those bank accounts, but we just call

8 those bank accounts now the joint venture bank accounts?

9 A. No, there's a change in ownership of the property.

10 They're now accounts on behalf of the joint venture,

11 which is subject to this agreement, and they weren't

12 previously.

13 Q. Well, this agreement sits over the top. But what's

14 actually there is the same companies with the same bank

15 accounts doing the same business?

16 A. Well, we are buying a business, we're going into a joint

17 venture together, and they've agreed to do that

18 structure.

19 Q. You've agreed to give them \$700,000; they've agreed to

20 keep doing exactly what they were doing before?

21 A. Yes, and we'll know -- yes, at this date. But

22 additional things have happened since we've become

23 involved and we've expanded the business. But you're

24 not asking me that question.

25 Q. No. Well, additional things happened particularly

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14:37 1 Q. No. He works for the audit company.

2 Bernard Wong is one of Zeph's directors and the

3 chief investment officer?

4 A. He's responsible for all the accounting functions of

5 Zeph, as well as Mineralogy and everyone.

6 Q. Alright.

7 Looking at this email, can you see that in the

8 second paragraph under "Background":

9 "Under the JOA ..."

10 Which is the joint operation arrangement.

11 A. Yes.

12 Q. "... the joint operation encompasses all the existing

13 businesses of OK [One Kleenmatic] and KV [Kleen Venture]

14 prior to the joint arrangement ..."

15 A. That's true.

16 Q. "... the participating interests of the Company, OK and

17 KV being 90%, 5% and 5% respectively."

18 A. The "Company" is Zeph, right?

19 Q. Yes.

20 A. Being 90%.

21 Q. Yes.

22 A. And then 5% interest in the joint venture for each of

23 the other two Kleenmatic [companies].

24 Q. Indeed.

25 A. That's at that point in time, right?

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14:38 1 Q. And then in the next paragraph, you see Mr Vincent Wong
2 wrote:
3 "Important point: Since the Joint Venture's
4 operations are entirely sourced from the business
5 activities of OK and KV ..."
6 The two Singaporean companies:
7 "... and both entities keep separate financial
8 records, there is no separate bookkeeping maintained for
9 the Joint Venture itself. This means there is no
10 general ledger available ..."
11 So the important point is that, in addition to
12 having their own bank accounts, and paying all the
13 expenses in and out and revenue going in and out, there
14 is also no joint venture bookkeeping. It's just the
15 existing books of the two Singaporean companies?
16 A. Can I answer that for you?
17 Q. Yes, please.
18 A. No, that's not right. Each of the parties keeps
19 separate books.
20 Under Singapore law, which is different to
21 Australian law, if you're in a joint venture and someone
22 has got a minority interest -- I'm not sure what it is;
23 I think it's less than 10% -- they're shown as
24 subsidiaries of the company with the major interest,
25 like we had 90%. So even though these companies were

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14:40 1 100% owned by us.
2 Q. Can we go back to the joint venture, which is E1/469/11,
3 Exhibit C-469.
4 I invite you to have a look at clause 24,
5 "Employment of joint venture parties". So here the
6 agreement was:
7 "The Second Party ..."
8 Kleenmatic, I think:
9 "... shall transfer, as directed ... its employees
10 to the First Party [Zeph] for their employment to be by
11 the First Party within 29 business days, as part of
12 [the] Joint Venture ..."
13 So the employees have to be transferred to Zeph
14 within a quite short timeframe, but still paid out of
15 the joint venture account. So the employees are
16 transferred to Zeph, but they are still paid out of the
17 bank account of Kleenmatic?
18 A. Well, Zeph was the --
19 Q. That's the deal?
20 A. That's okay, as it's paid out of the joint venture
21 account. But it becomes the joint venture account on
22 execution of this agreement. So the employees are being
23 paid out of the joint venture account. But under
24 Singapore law, they have to have a nominal employer,
25 an entity that's responsible for their superannuation,

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14:39 1 independently owned, they're still shown as our
2 subsidiaries because we've got control of the business,
3 and that's why it's all accommodated under Singapore
4 accounting.
5 That's the explanation I was given.
6 Q. But the important point, as identified by
7 Mr Vincent Wong in this email, is that the financial
8 records are kept not by Zeph but by the OK and KV
9 entities. Both entities keep separate financial
10 records; there is no separate bookkeeping for the joint
11 venture.
12 A. Well, this is -- there is separate bookkeeping for the
13 joint venture in Zeph's accounts, as far as I am aware.
14 Q. So you're saying that what Mr Wong, who works for the
15 auditor, says to Mr Bernard Wong is just wrong?
16 A. All I'm saying: the legal position is that we own 90% of
17 the assets. At this stage, we owned 100% of the assets.
18 This is at 31 May 2024 this year.
19 Q. I'm not asking you about that. I'm asking you about the
20 bookkeeping. And what Mr Wong seems to say: quite
21 clearly he says the operations are entirely sourced in
22 the business activities of OK, and that those entities
23 keep separate financial records. Is he wrong?
24 A. He's wrong, yes. It's under a joint venture. And this
25 year, as you say, we bought the other companies; they're

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14:42 1 their wages and things like that, and because Zeph was
2 the major joint venture holder, it became Zeph. There's
3 nothing unusual about that.
4 Q. Are you saying: as a matter of Singaporean law, the
5 employees had to be transferred from Kleenmatic to Zeph?
6 A. There had to be one person that was responsible, and it
7 was decided that because Zeph had 90% shareholding, they
8 were the obvious party -- sorry, 90% joint venture
9 participating interest.
10 Q. But this clause doesn't say, "All the employees must be
11 immediately transferred"; it says "as directed by [the]
12 Manager". So Zeph got to choose who was transferred
13 over?
14 A. Yes, we got to check if there was anyone we wanted to
15 sack. But it all had to happen within 29 business days,
16 that they had to be free of that obligation and of that
17 burden.
18 Q. Well, that was the case for the second party,
19 Kleenmatic. But if you read on in the clause, over the
20 page:
21 "The Third Party shall transfer, as directed by
22 [the] Manager, its employees to a party that the Manager
23 may nominate within 29 Business days of such
24 nomination ..."
25 A. Yes.

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14:43 1 Q. So with respect to the employees of Kleen Venture, they
 2 could stay with Kleen Venture unless you decided at some
 3 subsequent point that you wanted them transferred to
 4 Zeph. That's right, isn't it?
 5 A. Yes. That was subject to review by the managers. There
 6 were different sections of the business which were doing
 7 different jobs, and that particular company had a whole
 8 range of jobs that they were doing: they had business --
 9 it was decided that it may disrupt them. But we said
 10 we wanted to have the authority over them --
 11 Q. But it's quite inconsistent with the idea that there was
 12 some obligation under Singaporean law that required them
 13 all to be moved across, as the explanation?
 14 A. No, I didn't -- that wasn't the explanation. The
 15 explanation was that under Singapore law, you have to do
 16 certain things and certain obligations. And it was felt
 17 by the owners of those companies that, seeing they only
 18 had a 5% interest, that the majority ownership be the
 19 person that's responsible for those activities. Such as
 20 you can be fined if you don't pay your CF, et cetera, if
 21 you don't do certain things for health and safety. So
 22 we've accepted those obligations.
 23 Q. When you say it was "felt by the owner[]", you mean by
 24 you?
 25 A. No, the owners of Kleenmatic. You're talking about when

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14:44 1 the joint venture was signed. At that stage, it wasn't
 2 100% us; it was a joint venture. So they decided: if
 3 you're getting 90% of the revenue, you can take 90% of
 4 the risk and you can look after those things; we don't
 5 want to be responsible.
 6 Q. What I want to suggest to you, Mr Palmer, is that a fair
 7 reading of this agreement is that by paying your
 8 \$700,000, the agreement that was reached was that the
 9 joint venture would carry on exactly the same business
 10 as had been carried on before -- it said the existing
 11 business previously carried out by the same workers --
 12 paid out of the same bank account, with revenue going
 13 into the same bank account and expenses being paid out
 14 of the same bank account. And the only thing that
 15 changed, the one thing that changed was that you
 16 required, in clause 24 -- or Zeph required -- the right
 17 to require employees that were going to do the cleaning
 18 to be moved from their existing employer to Zeph.
 19 That was what you bought?
 20 A. Well, that's just not true. It's a joint venture that
 21 requires the profit be split 90% to us and 10% to him.
 22 And that's a big change, because previously 100% of the
 23 profit would have gone to them; now 90% is going to us.
 24 And as you said earlier, their after-tax profit --
 25 if we do accept that that's the advertisement for it --

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14:45 1 is \$500,000 a year. Now, it's not a bad investment to
 2 stick in 700 grand and get 500 out in the first year,
 3 is it?
 4 So you've been criticising us for not having good
 5 business acumen; you shouldn't criticise --
 6 Q. I accept the force of the fact that you did purchase the
 7 right to 90% of the profit, such that it is.
 8 A. And the assets, which were valued at \$650,000 on the
 9 slide you put up.
 10 Q. What I am suggesting to you is that the truly valuable
 11 thing you acquired was the capacity to say: Zeph has
 12 140 employees.
 13 A. Well, it does, and it did have, and it's got more now.
 14 Q. 140 employees who are still carrying out exactly the
 15 same cleaning business that they were carrying out --
 16 A. Well, that's just not true. They're all doing different
 17 duties. We've got a whole new division of tea ladies
 18 which go out with all the major companies in Singapore,
 19 and we hire them out to deliver tea and to do other
 20 activities. There's all -- the business has grown
 21 substantially from this time.
 22 Q. And your evidence is that that business growth is
 23 a sufficient rationale for why a large and powerful
 24 Australian mining company has gone into a kind of
 25 business activity that it had never done before and

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14:47 1 doesn't do anywhere else in the world?
 2 A. No, we wanted to establish an identity in Singapore and
 3 to be ready to raise funds for our coal project, which
 4 we still do.
 5 Q. But you can't be seriously suggesting that clause 24,
 6 requiring the transfer of cleaners to you within
 7 a month, had anything to do with your coal financing
 8 rationale?
 9 A. Under these arrangements, we gained a property in
 10 Singapore as a headquarters in real estate, and we
 11 gained two corporate lawyers, and also contacts with
 12 a whole range of companies in Singapore, which has
 13 grown. And it's been a very happy experience.
 14 Q. So you are saying you acquired --
 15 A. I'm mean, the business --
 16 Q. You're helping [raise] coal [financing] from this joint
 17 venture; is that what you're saying?
 18 A. The reason I'm in business is to make money for myself
 19 and to have a good time. And I've quite enjoyed giving
 20 those people a good opportunity in the twilight phase of
 21 my life. I don't see why I should just husband my
 22 money, sit in a room and continue to mine rocks all my
 23 life.
 24 Q. Mr Palmer, I suggest a far more plausible analysis is
 25 the one reflected in the letters that you wrote at the

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14:48 1 time, which was, "We want to bring an investment claim
2 if you take unilateral action against us under the State
3 Agreement, and we claim to have started business
4 activities in Singapore".
5 A. I just reject that. These things were all happening
6 independently of each other and, you know --
7 Q. It was all just a coincidence?
8 A. Well, the Commonwealth has admitted in these proceedings
9 that the Amendment Act was not foreseeable. So why are
10 you arguing a position which is contrary to your side's
11 admissions? Otherwise we'd have brought all of the
12 information up about your ministers, how they acted
13 illegally and against the law, criminally and civilly.
14 Q. Ultimately, Mr Palmer, it will be a matter for
15 submissions about what admissions have and haven't been
16 made, so I'm not going to debate that question with you.
17 It will be for the Tribunal to decide.
18 A. Certainly.
19 DR DONAGHUE: Can we turn to a different topic -- sorry, one
20 moment, please. (Pause)
21 Really for the record, for the Tribunal, you will
22 recall there was debate about Professor Lys and the
23 audited accounts or not. I gave the Tribunal one
24 reference, which was C-542: that was for one of the
25 three engineering companies. The other two references

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14:51 1 agreed to be taken by the initial member of the
2 Company ..."
3 A. Sure.
4 Q. My question is: you would agree that immediately prior
5 [to] -- I'm talking about immediately prior, not
6 after -- the share swap, MIL could not and did not
7 contribute anything of value because it had \$1 asset?
8 A. It's not -- I just can't agree with that. You need to
9 see the whole thing in context. And the context is that
10 the Australian Government, by legislation in their tax
11 legislation, and by their legislation by the various
12 states for land tax, requires: if you're doing
13 a corporate structure such as a share swap and you want
14 to get a rollover relief so the transaction is not
15 taxable, you must start off with that company having one
16 share only, and the share swap must be for the same
17 amount of total shares.
18 That's required if we want to avail ourself of the
19 restructuring requirements, which is set out in
20 the Australian Taxation Office and which is set out in
21 the land tax legislation, I think, in both
22 Western Australia and Queensland.
23 Q. That may explain why you structured the share swap as
24 you did. But you signed a resolution that said MIL has
25 no assets and liabilities other than one fully paid up

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14:49 1 are C-543 and C-544. They are the audited accounts for
2 all three companies and they all align with
3 Professor Lys's chart.
4 THE PRESIDENT: So they correspond to what we've seen --
5 DR DONAGHUE: To what you've seen in --
6 THE PRESIDENT: -- in the different figures in the Lys
7 report I?
8 DR DONAGHUE: That is correct.
9 THE PRESIDENT: Thank you.
10 DR DONAGHUE: Can Mr Palmer be shown part of Exhibit C-[63],
11 which is a very large exhibit. It's E1/63.1/86.
12 Hopefully you can see on the screen here, this is
13 a record of a resolution of the sole director -- being
14 you -- of Mineralogy International Limited.
15 A. Mm-hm.
16 Q. This precedes the share swap by which MIL acquired its
17 shares in Mineralogy.
18 A. Mm-hm.
19 Q. You can see:
20 "The director [of] the Company [has] been registered
21 on 14 December 2018 and that:
22 (i) The Company ..."
23 So that's MIL:
24 "... has no assets and liabilities other than share
25 capital of 1 fully paid redeemable share of NZD \$1

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14:52 1 share at the time?
2 A. At the time. We needed to do that --
3 Q. That was true when you resolved it?
4 A. Yes, sure.
5 Q. Okay. And you similarly -- and this is E1/[63].1/158,
6 the equivalent resolution for Zeph.
7 A. This was a different date though, wasn't it?
8 Q. Yes.
9 A. There had already -- in between here, there had already
10 been the share swap for MIL; is that right?
11 Q. That's correct.
12 A. So this is a different date.
13 Q. So this is a resolution about Zeph, not about MIL?
14 A. I'm just trying to put it in context, so we don't think
15 it's all being swapped --
16 Q. No, no, of course not. It's a different date.
17 Can we just see the top of that document, please.
18 It's E1/63.1/158.
19 So you can see this is "Mineralogy International
20 Pte Ltd", so that's Zeph; you agree?
21 A. I'll just have a quick look. Yes, that's right.
22 Q. And it's, as you say, later: it's 29 January 2019?
23 A. Yes.
24 Q. And you can see the equivalent resolution:
25 "The directors noted the Company had been registered

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14:53 1 on 21 January ... and that:
 2 (i) The Company has no assets and liabilities other
 3 than share capital of 1 fully paid ordinary share of
 4 SGD \$1 held by the initial member ..."
 5 So there were no assets in the company, in Zeph,
 6 immediately prior to the share swap; you agree with
 7 that?
 8 A. Yes. But it was following a plan which was laid down by
 9 the Australian Government, which recognised the value of
 10 the assets being swapped and how they would transfer to
 11 the two companies, and there'd be no gain. That's why
 12 it was set up: to comply with the legislation.
 13 Q. Now, you said yesterday -- I'll give the reference for
 14 the transcript: it was transcript page 196. It was at
 15 4.01 pm. It's G/1/53.
 16 You said Zeph paid \$6,002,896 for the shares of
 17 Mineralogy, "the same amount as the face value of
 18 Mineralogy shares". Do you recall saying that?
 19 A. Australian dollars.
 20 Q. Australian dollars, yes.
 21 A. Yes, which was -- I think from memory it was
 22 5.9 million-something Singaporean dollar equivalent,
 23 right?
 24 Q. That number, 6,002,896, equates to the number of shares
 25 in Mineralogy Propriety Limited, the Australian company;

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14:56 1 A. I'll have to go back to check how it was done. But I'm
 2 just trying -- I haven't got the agreement in front of
 3 me; I don't want to say the wrong thing.
 4 Q. Alright.
 5 A. But the concept was: it's the same value at settlement,
 6 it's changed over. And if you only have one share,
 7 you've complied with the Taxation Act and you've
 8 complied with the Land Duty Act, which otherwise could
 9 have deemed it a land company and required stamp duty to
 10 be paid on the value of the land and property contained
 11 within Mineralogy.
 12 Q. When you say "value", Mr Palmer, can we distinguish
 13 between the face value of the share and the actual value
 14 of the share. You would agree they're a different
 15 concept?
 16 So perhaps to let me develop that, Mineralogy has
 17 just over 6 million shares, but you would agree that
 18 it is worth much more than \$6 million?
 19 A. Yes.
 20 Q. So there's a difference between having 6 million shares
 21 worth \$1 face value and what the underlying company is
 22 worth?
 23 A. Yes, I think what I tried to concede was that the
 24 context of the share swap as set up in the legislation
 25 was that there'd be equivalent value on both sides, so

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14:55 1 is that right?
 2 A. That's correct, yes.
 3 Q. And when you say that Zeph paid -- are you happy for me
 4 to say "just over 6 million", to stop continuing to
 5 say --
 6 A. It was an equivalent value, as I understand it, right?
 7 And that was required by the legislation. So whatever
 8 value you put on the share transfer to get the rollover,
 9 the same value had to go on the new issued shares.
 10 Q. But in that answer you're equating, aren't you, the face
 11 value of the share of \$1 with paying \$1?
 12 A. Well, the commercial aspect of the transaction was it
 13 was inherently the full value of each company that was
 14 being transferred. Whether it was one share, two shares
 15 or ten shares, that's what was happening. And that's
 16 what the legislation required to do the rollover. And
 17 it's a technique that's used in most share swaps around
 18 the world in corporate restructuring.
 19 Q. But you would agree --
 20 A. So on the share purchase agreement, it said: at
 21 settlement, this is what will happen. And all of this
 22 is done in preparation for the settlement, pursuant to
 23 the documents.
 24 Q. Well, it said the same number and value. But let's talk
 25 about the face value of the shares.

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14:57 1 that when the swap took place the value would -- you
 2 know, you'd have one company on top, say, with 6 million
 3 shares, you'd have a company underneath which would have
 4 6 million shares and you'd have an asset, and those
 5 shares would be worth the value of that asset underneath
 6 if they were sold.
 7 Q. What I'm putting to you, Mr Palmer, is that the value
 8 that has to be equivalent is the face value of the
 9 share, not the actual value of the share.
 10 A. It's a technical matter which I'm not qualified to
 11 answer. It would be helpful if I could be. And
 12 I certainly can't answer it without looking at the
 13 agreement and looking at the legislation.
 14 Q. Well, what I'm suggesting to you -- which must be true,
 15 I suggest, given that you've made a resolution just
 16 before the share swap that Zeph, for example, had no
 17 assets, as you can see on the screen, other than one
 18 fully paid share -- is that immediately before the share
 19 swap, Zeph had no assets; immediately after the share
 20 swap, Zeph owned a company worth many, many, many
 21 millions of dollars, and it did so having issued
 22 one-to-one shares which matched in the face value with
 23 the shares that it acquired, but that had completely
 24 different actual value.
 25 A. Okay, so --

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14:58 1 Q. That's what I'm putting to you.
 2 A. -- I can understand your point now, sorry.
 3 So I disagree with you, because you can say Zeph,
 4 being the number 2 company in the chain, had 6 million
 5 shares, but it had the full value of that, right? So
 6 the company above it had 100% of Zeph. So it also had
 7 the full value, if you wanted to sell that company or
 8 buy that company. That was the inherent basis of the
 9 share swap, so that the value was still with the
 10 company.
 11 Company 1, if you like, starts out owning the asset,
 12 let's say it's worth 6 million, and it's transferred to
 13 Zeph for 100% of its shares. 100% of its shares is what
 14 matters, right? And it therefore owns 100% of shares in
 15 that asset.
 16 Now, by doing a share swap, shares and the issuing
 17 of shares have their own intrinsic value because they
 18 give you rights and certain obligations which are
 19 different, right? So there's an assessment to be made
 20 by anyone doing a share swap of this nature between two
 21 international companies dealing with an Australian
 22 asset: they may be getting different rights and
 23 different obligations, depending on the constitution of
 24 that company.
 25 So you still have a value, even with just shares

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15:01 1 equivalence of the two companies and of the exchange.
 2 But if you look at it not from a tax or technical
 3 perspective, but you look at it from your businessman's
 4 perspective, do I understand it correctly that it is
 5 actually Mineralogy that does add value to Zeph, and not
 6 the contrary, because the shares of Mineralogy are much
 7 more valuable than the shares of Zeph?
 8 A. No, the shares of Zeph will have the same value, right?
 9 THE PRESIDENT: No, they have -- by convention, they have
 10 the same value. But if you look at their intrinsic
 11 value -- you're used to valuing companies, I assume?
 12 A. Yes. Well, the intrinsic value, you'd have to look in
 13 further depth at what rights and obligations are being
 14 brought.
 15 THE PRESIDENT: Absolutely.
 16 A. To me, it's a bit of a stalemate until you look at those
 17 things and obligations, and see whether --
 18 THE PRESIDENT: But you probably know how much Mineralogy is
 19 worth, approximately. And we know that Zeph had no
 20 assets and liabilities, so we also know what
 21 approximately the value of no assets is.
 22 A. So what we know --
 23 THE PRESIDENT: So who gives something to the other? That's
 24 the simple question.
 25 A. Yes. So what we know is that Singapore is a much more

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15:00 1 being transferred for nothing. You still have rights
 2 and obligations that are being transferred, and they're
 3 set out in the constitution.
 4 Q. Can I perhaps come at it from a different direction.
 5 Let's assume hypothetically that instead of having
 6 6 million shares, Mineralogy had 10 million shares. Can
 7 you just go with me and assume that as starting point?
 8 A. Yes.
 9 Q. You could have done exactly the same share swap
 10 transaction involving Zeph and Mineralogy, but you would
 11 have needed Zeph to issue 10 million \$1 shares so that
 12 they matched one-to-one with Mineralogy; do you agree
 13 with that?
 14 A. I think the -- I don't really know, to be honest with
 15 you. I'd have to get technical advice about it, how
 16 that would work.
 17 Q. Well, haven't you said just a moment ago that the
 18 critical thing is that the number of shares matches?
 19 A. I was trying to demonstrate the value point. But as
 20 I said, I can't get into technical accounting, which
 21 I'm not qualified for.
 22 Q. I'm not asking --
 23 THE PRESIDENT: Can I just ask for a clarification.
 24 A. Yes.
 25 THE PRESIDENT: I understand what you're saying about the

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15:02 1 effective tax regime and much better to trade in than it
 2 is in Australia. So a purchaser coming along and
 3 saying, "Well, I want to buy Mineralogy", the asset --
 4 I'm saying "the asset" -- or, "I want to buy the
 5 company": in the company it's going to get a different
 6 jurisdiction with a different tax regime and a different
 7 regime, as we said, for dividends.
 8 So there's a substantial advantage, I would say, if
 9 you're a resident of Singapore, buying Zeph rather than
 10 buying Mineralogy: there's a big difference in cost.
 11 So, you know, that could bring it -- and it could work
 12 the other way too.
 13 But I'm not qualified to give you that sort of
 14 advice.
 15 THE PRESIDENT: No, but I'm not asking for that sort of
 16 advice at all. I ask a very simple question: is this
 17 transaction --
 18 A. The other side of the ledger --
 19 THE PRESIDENT: Who gives something to whom in this
 20 transaction? You seem to say it is neutral because both
 21 are the same value. But that's formal.
 22 A. It starts off --
 23 THE PRESIDENT: If you look substantively --
 24 A. It starts off neutral, and the difference comes between
 25 jurisdiction, market, tax regime, accessibility of

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15:03 1 capital, accessibility of markets, and assessment of
2 those things and what they do.
3 If you take, for example, that Mineralogy has a coal
4 project that it wants to fund in Singapore, it probably
5 gets substantial value by having a holding company in
6 Singapore which it can deal with, right? And it
7 enhances further development and further investment --
8 THE PRESIDENT: You're pleading; you're not answering my
9 question.
10 A. Well, that's what would happen. You know, the money
11 would be invested in the Commonwealth if it was raised
12 through a Singapore jurisdiction. It would then go from
13 Singapore into, say, Waratah Coal, which is a subsidiary
14 of Mineralogy. And that was the purpose of it.
15 THE PRESIDENT: Thank you. I will appreciate this later.
16 DR DONAGHUE: Can Mr Palmer please be shown D2/7/11.
17 So this is another extract from Professor Lys's
18 report, this time his second or supplementary report.
19 Do I take it you haven't read this report either?
20 A. No.
21 Q. Well, can I direct your attention to paragraph 34 and
22 following. So Professor Lys is talking about the share
23 exchange between MIL and Zeph, and says:
24 "... MIL contributed the Mineralogy shares it owned,
25 and Zeph contributed the newly issued Zeph

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15:06 1 Q. He's talking about the share swap by which Zeph became
2 the immediate owner of Mineralogy.
3 A. Yes, and that's when Zeph sold their shares to --
4 Q. That's the second one, the January transaction.
5 A. Okay, so I just want to get that clear.
6 Well, firstly, it's not a question of Mineralogy.
7 This is an international asset, the shares in
8 Mineralogy, which is owned by a New Zealand company,
9 right? And the New Zealand company is doing the share
10 swap with Zeph. That's what's happening here. It's
11 nothing to do with Mineralogy. Okay?
12 So MIL has already bought Mineralogy previously, and
13 now what's happening is that -- and this is what
14 involved Zeph -- is that Zeph and MIL are doing
15 a commercial transaction by way of a share swap to sell
16 an asset -- an Australian asset to a Singapore company.
17 It's got nothing at all to do with Mineralogy.
18 Mineralogy's shares are an asset of MIL.
19 Q. Zeph becomes the owner of Mineralogy. You can't say
20 it's got nothing to do with it. Zeph becomes the owner
21 of the company.
22 A. It's a sale between two international companies of
23 an asset.
24 Q. The asset being Mineralogy?
25 A. That's right. That's between those two commercial

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15:05 1 'Consideration Shares'.
2 (35) While not publicly traded, the Mineralogy
3 shares clearly had intrinsic value. For example, the
4 2018 Mineralogy financial statement indicates that
5 Mineralogy had AUD \$579 million in total assets,
6 AUD \$461 million in equity, and AUD \$363 million in net
7 income after tax."
8 So those are some of the kinds of figures that the
9 learned President was just referring to.
10 "(36) In contrast, the newly issued Zeph
11 Consideration shares had no intrinsic value, as
12 confirmed, for example, in the ... board meeting [that
13 you've just seen] ...
14 (37) Because the Consideration Shares represent
15 ownership of an enterprise with no assets and no
16 intrinsic value immediately prior to the restructuring
17 transaction, they have zero value outside [the] share
18 exchange."
19 That's Professor Lys's expert opinion. Again, you
20 haven't chosen to cross-examine the professor on that
21 opinion.
22 A. Can I just read it a bit slower?
23 Q. Of course.
24 A. I'm not trying to avoid; just trying to understand it.
25 So he's talking about the share swap, right?

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15:07 1 companies; it's not between Mineralogy. Mineralogy is
2 just -- you know, MIL just owns those shares, and they
3 commercially decide to sell their shares to Zeph.
4 Mineralogy can't do anything about it.
5 Q. Really my point, Mr Palmer, is that there is a very
6 eminent economist who is expressing the opinions that
7 I've just read to you, who you haven't challenged and
8 you haven't contradicted --
9 A. Well, I think they're just rubbish, because they're not
10 based on the transaction I just talked about. And
11 that's the transaction [that] happened: it was a share
12 swap between MIL in New Zealand to sell an asset for
13 shares in the Singapore company. It's between those
14 two companies.
15 Q. Alright. In light of the time, Mr Palmer, we need to
16 move on.
17 A. Okay. You asked me the question.
18 Q. I did, and you've given an answer.
19 A. Good.
20 Q. Can Mr Palmer be shown C1/17/16, which is part of your
21 fifth witness statement at paragraph 42.
22 This is under the heading "Decision to Retain
23 Dividends". You say:
24 "[You were] the sole director of Mineralogy and
25 a director of the Claimant in the financial years ending

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15:08 1 30 June 2019 and ... 2020 ... In my capacity as
2 a director of Mineralogy, I approved the annual accounts
3 of Mineralogy for submission to the shareholders
4 meeting ..."
5 So you're recognising there that, while you hold
6 various different offices, sometimes you act in one
7 capacity and sometimes you act in another capacity,
8 which must be a very familiar concept for an experienced
9 company director such as yourself.
10 A. What I'm saying is: the Corporations Act requires that
11 the accounts are approved by the directors of
12 Mineralogy --
13 Q. Indeed. So sometimes --
14 A. -- and that's what I did.
15 Q. Exactly. Sometimes the Corporations Act will say
16 something is the responsibility of the directors,
17 sometimes it will say it's the responsibility of the
18 shareholders, and the capacity in which you act depends
19 upon, amongst other things, what the legislation
20 requires. That's true, isn't it?
21 A. Yes, so in that way it's true. But I always would act
22 in the best interests of the Claimant, which was
23 a whole --
24 Q. Mr Palmer, can you just focus on my questions. I'm not
25 asking about best interests; I'm asking about capacity,

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15:10 1 unless you change the rules of incorporation of the
2 company, you have to comply with the constitution of the
3 company?
4 A. Well, we do.
5 Q. You can't just ignore it because you own the whole
6 thing, and just say, "It therefore doesn't matter
7 whether I do something as a shareholder or a director,
8 even if the constitution of the corporation says
9 something different"?
10 A. I've already given your answer.
11 Q. Sorry, what is your answer?
12 A. I said we do comply with all laws.
13 Q. Okay, good. So that if the constitution of Mineralogy
14 says something is a responsibility of the directors,
15 then you would agree that you can only do that thing as
16 the director of the company?
17 A. It would depend what it was.
18 Q. Well, why? If you comply with all laws, and the
19 constitution says only the directors can do it, why does
20 it depend?
21 A. Well, I guess that in most instances, the constitution
22 would say the shareholders can, by general resolution in
23 a general meeting, override the directors' decision.
24 Q. But they have to do it?
25 A. That's right.

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15:09 1 which hat you're wearing when you make particular
2 different decisions.
3 And just like the Corporations Act might give
4 different powers to people in different capacities, the
5 constitution of a company might say sometimes the
6 director can do something; sometimes the company in
7 general meeting can do it, the shareholders can do it.
8 Again, you're familiar with that differentiation of
9 responsibility depending upon what the constitution
10 says, aren't you?
11 A. As a private company, I find that the reality how it
12 operates is that whatever I say goes, as the
13 shareholder.
14 Q. Alright. Well, that's really where I'm coming with
15 this.
16 Are you suggesting that as private company, you
17 don't have to worry about what capacity you're acting
18 in, even though the constitution of the company or the
19 Corporations Law might say different? Is that what
20 you're suggesting?
21 A. I'm saying at any time I can change the articles of
22 association, change the board, appoint new directors,
23 with different things to achieve my commercial
24 objectives and --
25 Q. That may all be so. But unless you do those things,

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15:11 1 Q. There should be a resolution that says, "Here we are
2 overriding or changing the" --
3 A. Well, obviously if the directors don't do what the
4 shareholders want, they will do that.
5 Q. Having the capacity to change the rules or having the
6 capacity to change the directors is different from
7 having the capacity to do the thing that only the
8 existing directors have the power to do. Do you
9 understand the distinction?
10 A. Well, not really. Because the consideration would be,
11 of the director, not to act contrary to his
12 shareholders' wishes, I would have thought, in a private
13 company; before he makes the decision, whatever it may
14 be.
15 Q. At one point in your opening yesterday, you seemed to be
16 suggesting that simply inaction, that leaving money in
17 Mineralogy, was properly to be treated as a contribution
18 by Zeph, because Zeph could have done things to take out
19 the money if it wanted to. Is that your position in
20 this arbitration?
21 A. Well, you're now arguing a case against me.
22 Q. No --
23 A. I'm just saying that I'm not here to deal with legal
24 matters so much as to answer your questions.
25 Q. Alright. Well --

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15:13 1 A. So I can go back and get the material to read it to be
2 able to answer that, if you want me [to]. But I've only
3 got my witness statement here, which you're
4 cross-examining me on --
5 Q. I'm just asking you --
6 A. -- and you're putting propositions to me which will
7 require me to get legal assistance.
8 Q. I'm asking you the question whether you suggest that
9 because you ...
10 A. When did I suggest this?
11 Q. In your opening yesterday, at transcript [pages] 197
12 to 198, at 4.04 pm, you said:
13 "... retained profits may be left in a subsidiary
14 company by the parent and used by the subsidiary company
15 to further its activities."
16 And you were suggesting, I think, that that was a --
17 you were talking about returns, the investment of
18 returns, and you were saying that counts as
19 an investment, just leaving ...
20 A. Well, that's a legal submission, a submission for the
21 Tribunal for me in my capacity as a representative. I'm
22 not being cross-examined in that capacity, I didn't
23 think.
24 Q. Well, you're being -- we'll move on.
25 Can I show you the Mineralogy constitution from

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15:15 1 a recommendation of a dividend by the directors in any
2 given year, the shareholders have no role in deciding
3 whether or not to declare a dividend? Because the "if,
4 and only if" says the directors have to make the
5 recommendation first.
6 A. Well, firstly, the directors have to make a decision on
7 whether they're going to recommend a dividend or they're
8 not going to recommend a dividend. And in that case,
9 the case you're referring to, I made a decision not to
10 recommend a dividend. And the reason for my decision
11 was that I can act -- and I think it's 32, the other
12 section here, I can act on behalf of ... do you want to
13 put that up?
14 Q. It's 22.3 you're talking about.
15 A. You know the one I mean.
16 Q. It's E1/563/27.
17 A. Just to explain.
18 Q. I understand what you're saying.
19 A. So you can see that -- this is 22.3:
20 "Where [a] Company is a wholly owned subsidiary and
21 the Directors are also the Directors of the holding
22 company ..."
23 Which was the case: I was the director of the
24 Claimant:
25 "... the Directors may act in the best interests of

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15:14 1 2014. It's E1/563/1, it's Exhibit C-563. Can we go to
2 clause 31.1, which is E1/563/33.
3 You can see a heading "Dividends and Reserves" in
4 the middle of page 31. And then 31.1, "Declaration of
5 Dividend":
6 "The Company in general meeting may declare
7 a dividend if, and only if the directors have
8 recommended a dividend and such dividend shall not
9 exceed the amount recommended by the directors."
10 So I want to break that down for you. We've got
11 a few different concepts.
12 We've got "The Company in general meeting". That's
13 the shareholders, do you agree?
14 A. That is the shareholders, yes.
15 Q. Yes. And the shareholders "may declare a dividend if,
16 and only if, the directors [have made a recommendation,]
17 have recommended a dividend".
18 So I suggest to you there's a two-part
19 decision-making structure: the directors have to make
20 a recommendation; and then, if they have, the
21 shareholders can declare a dividend up to the amount of
22 the recommendation. Do you agree that that's what the
23 clause says?
24 A. Yes, that's right.
25 Q. So it follows, doesn't it, that unless there is

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15:17 1 the holding company and in a manner which is contrary to
2 the best interests of the Company, provided that the
3 Company is not insolvent or does not become insolvent
4 because of the Director's action under this clause."
5 So the first decision for the director is: will
6 I pay a dividend or not pay a dividend? Will I make
7 a recommendation or not make a recommendation?
8 And I decided not to make a recommendation because
9 it was in the interests of both the Claimant and
10 Mineralogy that Mineralogy retains more money in its
11 businesses in Australia. And that also benefits the
12 Claimant because it increases the value of its
13 investment.
14 Q. But that decision that you made ...
15 A. Not to recommend a dividend.
16 Q. ... not to recommend a dividend -- if you did make such
17 a decision -- was a decision that you made in your
18 capacity as a director of Mineralogy.
19 A. No, that was before -- yes, the first decision I had to
20 make was: will I recommend a dividend or won't
21 I recommend a dividend?
22 Q. And what I'm putting to you is that you could only make
23 that decision in your capacity as a director of
24 Mineralogy.
25 A. Well, my consideration was the Claimant when I made that

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15:18 1 decision. And I thought I was empowered to make that
2 decision under this corporate provision. I also --
3 Q. Can you look at the words of the corporate provision?
4 It does contemplate that the director may act in the
5 best interests of the holding company.
6 A. Yes.
7 Q. But this is a provision in Mineralogy's constitution.
8 It's saying: a director of Mineralogy is entitled to act
9 in the best interests of Zeph.
10 A. That's right.
11 Q. But it's not saying that Zeph makes the decision. It's
12 saying the director of Mineralogy can act in the best
13 interests of Zeph. Do you understand the difference
14 between those things?
15 A. Well, I disagree with your interpretation, because it
16 says, in the second line, "the Directors may act in the
17 best interests".
18 "Where the Company is a wholly owned subsidiary and
19 the Directors are also the Directors of the holding
20 company ..."
21 So it's envisaging a director of both:
22 "... the Directors ..."
23 The same people:
24 "... may act in the best interests of the holding
25 company ..."

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15:20 1 A. No.
2 Q. Can I show you Mr Dunning's report. It's D1/10/6. In
3 paragraph 7, Mr Dunning says:
4 "Part 31 of the Mineralogy Constitution applies to
5 dividends and reserves. Consistent with the Act ..."
6 And he is referring there to -- you can see in the
7 footnote -- 254U of the Corporations Act:
8 "... it is the directors of Mineralogy that must
9 recommend payment of a dividend, and its amount. Only
10 then, may Mineralogy in general meeting declare
11 a dividend not exceeding the amount recommended by the
12 directors."
13 So your own expert is construing the provision in
14 exactly the way that I've put to you, Mr Palmer.
15 A. Well, I'll have to disagree because, as I explained,
16 I decided -- I made a consideration of: would I pay
17 a dividend or wouldn't I? And in making that
18 consideration, I took into account that the Claimant was
19 happy to forgo the receipt of those funds for that year.
20 If the Claimant had wanted those funds by its needs of
21 its business or for some other opportunity, I certainly
22 would have paid them out.
23 Q. That may well be so.
24 A. But that was my consideration.
25 Q. But ...

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15:19 1 So in reaching the decision not to pay a dividend,
2 I was acting in the best interest of the Claimant,
3 I believed.
4 Q. But --
5 A. The alternative was to send the money out to the
6 Claimant by dividend, not to have it in the
7 Mineralogy Group. That was the alternative.
8 Q. But either deliberately or inadvertently, you are
9 blurring two things: you are blurring who you are acting
10 in the best interest of, and the capacity in which the
11 decision is made. And I'm putting to you they're
12 different.
13 A. Well, I'm just telling you what happened.
14 Q. Well --
15 A. And I'm telling you what I thought when I did it.
16 I thought it was in the best interest of the Claimant
17 and in the best interest of Mineralogy -- both,
18 actually -- that the money [be] retained in Mineralogy,
19 because Mineralogy could do with a couple of extra
20 hundred million one year, it was 35 million another
21 year. And the Claimant would benefit by its increased
22 investment. So that's how I made the decision.
23 Q. You filed an expert report by Mr Peter Dunning KC in
24 this proceeding, about the interpretation of these
25 provisions. Have you read that report?

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15:21 1 A. And that's the consideration I took.
2 Q. So are you suggesting to the Tribunal that in that
3 decision-making process that you were just going
4 through, notwithstanding the terms of clause 31.1 -- can
5 we put that back in front of you, just so you can see
6 it -- B1/563/1.
7 A. This only talks about making a dividend, not deciding
8 to --
9 Q. "... may declare a dividend ..."
10 A. Yes. Well, I decided not to declare a dividend earlier.
11 Q. But the decision to declare it or not declare it is made
12 by the same person in the same capacity, necessarily.
13 A. Look, I just don't accept that. It's not practicable.
14 It's not how companies operate.
15 Q. So you think that the decision to decide not to declare
16 a dividend was not a decision for the directors of
17 Mineralogy?
18 A. Well, they didn't declare one, and that was the reality
19 of it.
20 Q. Well, that's really the point, Mr Palmer. So they
21 didn't declare, in either of the financial years you
22 rely upon -- financial year ending 2019 or 2020 -- they
23 did not declare anything other -- nothing in financial
24 year 2019; and in financial year 2020 --
25 A. Yes.

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15:22 1 Q. -- just over \$8 million?
 2 A. I think the view I took at the time was that the
 3 investment that the Claimant had made in the company had
 4 yielded considerable returns, over \$230 million, and
 5 that that investment had yielded that and would continue
 6 to yield that if it remained in place.
 7 Q. 230 million, yes.
 8 A. It was 200 and something like that, 235 million.
 9 Q. But --
 10 A. That was the yield from the investment. I thought that
 11 was good and should stay with Mineralogy.
 12 Q. The proposition that I am asking to you grapple with is
 13 that, absent a resolution of the directors to recommend
 14 payment of the 230 million to Zeph, Zeph had no
 15 entitlement to that money. It was a decision of
 16 Mineralogy whether or not Zeph had an entitlement to
 17 that money or not, and that decision was never made.
 18 A. I just don't agree with that.
 19 Q. So what I'm putting to you is that any decision to
 20 retain that money, the 230 million or whatever precisely
 21 it was, was a decision made by the Australian company
 22 Mineralogy in Australia. And applying Mineralogy's own
 23 constitution, it cannot possibly have been
 24 a contribution by Zeph.
 25 A. Anyway, it was made that way. It was made because

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15:24 1 in whatever capacity, was to keep the money in
 2 Mineralogy and not pay it to Zeph.
 3 And I acknowledge that it could have been paid to
 4 Zeph if I had decided to pay it -- or, sorry, if the
 5 Claimant wanted it, they could have got it.
 6 Q. You appreciate that one of the functions of directors
 7 under the Corporations Act in Australia is to approve
 8 the accounts of the company. Do you agree with that?
 9 A. Yes, it's one of the functions, yes: to recommend the
 10 accounts to shareholders.
 11 Q. And the accounts of a company are necessarily prepared
 12 after the financial year to which the accounts relate,
 13 otherwise they can't be complete; do you agree with
 14 that?
 15 A. Normally, or close to the end of the year.
 16 Q. Well, they'd always be after, wouldn't they?
 17 A. Well, we do a sort of rolling audit, so it's hopefully
 18 normally done quicker --
 19 Q. But the accounts that are going to be --
 20 A. -- in a month or so.
 21 Q. The accounts that are going to be approved will always
 22 be at least a short time after the end of the financial
 23 year?
 24 A. Oh yes, they will be, because you have to give notice to
 25 the shareholders. I think it's 21 or 28 days' notice.

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15:23 1 I thought it was the best for the Claimant and
 2 Mineralogy. And if people are affected by it, they can
 3 commence proceedings. But who am I going to sue?
 4 Myself? It's just a nonsense --
 5 Q. Okay. So that's an argument based on the economic
 6 reality: you say that these provisions are a nonsense
 7 because you're the boss --
 8 A. (Laughs)
 9 Q. -- you control it, and you can do what you want with the
 10 money. Is that the point?
 11 A. Well, you know, who is going to sue me? Who is going to
 12 take me to a court? Is my left arm going to sue my
 13 right arm?
 14 I mean, the practicalities was: I owned this
 15 company, I owned that company, we decided it was in the
 16 best interest to retain the profits in Mineralogy.
 17 That's it. I don't split my brain in half and say: who
 18 am I acting for with my private companies that I own
 19 100% of.
 20 Q. Well, Mr Palmer, can I suggest there's a lot of force in
 21 that.
 22 A. Well, that's the reality. And, you know, so be it.
 23 Q. So we can just ignore the corporate forms?
 24 A. All I'm saying is that I don't live my life on corporate
 25 forms; I make decisions. And the decision that I made,

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15:26 1 Q. Sometimes it's quite a long time after. I think in one
 2 case, for Mineralogy, it was almost 12 months later.
 3 A. Mm-hm.
 4 Q. But you agree it's after; is that right?
 5 A. That's right, yes.
 6 Q. And you also agree that one of the things that --
 7 I don't want to take you through the chapter and verse
 8 unless I need to, but one of the things that Section 295
 9 of the Corporations Act requires is a director's
 10 declaration stating that the accounts accord with the
 11 Act, and Australian accounting standards --
 12 A. Yes.
 13 Q. -- true and fair statement of the financial position,
 14 all of those things?
 15 A. Yes.
 16 Q. So when --
 17 A. And the auditors too.
 18 Q. And the auditors too. All of the above.
 19 A. Yes.
 20 Q. So that when there's a meeting of the directors of
 21 Mineralogy to approve the accounts of the company --
 22 A. Which is me.
 23 Q. Which is you, you are discharging those various duties
 24 that we've just identified?
 25 A. Mm.

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15:27 1 Q. Is that right?
 2 A. Yes.
 3 Q. Doesn't it follow, just as a matter of logic, that in
 4 approving the accounts of a company after a relevant
 5 financial year, the decision to approve the accounts
 6 can't be changing what happened retrospectively in the
 7 financial year to which the accounts relate? You would
 8 agree with that?
 9 A. Yes.
 10 Q. So that if there was no declaration declared in the past
 11 financial year, a decision to approve the accounts
 12 doesn't change that?
 13 A. There could be a declaration for a dividend, if that's
 14 what you mean, at the time the accounts are approved:
 15 there could be a new declaration.
 16 Q. Even though there was nothing in the accounts in the
 17 previous financial year because there was no declaration
 18 in the previous financial year?
 19 A. I think you make an error to think that dividends can
 20 only be approved in annual accounts.
 21 Q. No, no --
 22 A. We can approve a dividend at any time. So, for example,
 23 if, on the agenda where we approve the company's
 24 accounts, the shareholder thought there should have been
 25 a dividend, he can immediately pass a special

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15:29 1 A. This is the -- there's a minute, you've got a minute
 2 there of a directors meeting you put up before, and
 3 I think it was a few hours before that meeting.
 4 Q. So you made a decision not to declare a dividend just
 5 before the Mineralogy directors meeting; is that what
 6 you're saying?
 7 A. Yes, some time there. I can't say whether it was two
 8 hours or three hours, but it was something like that.
 9 DR DONAGHUE: If it's convenient to the Tribunal, I probably
 10 only need maybe another 10 minutes with Mr Palmer. So
 11 if the Tribunal is prepared to bear with me, we can
 12 finish Mr Palmer before the break.
 13 THE PRESIDENT: We can finish his examination at least, yes.
 14 DR DONAGHUE: Is that alright with you, Mr Palmer?
 15 MR PALMER: Sure, yes.
 16 THE PRESIDENT: Yes. I mean, I have been watching your
 17 time.
 18 DR DONAGHUE: We have been too!
 19 THE PRESIDENT: I'm sure you are too! So of course,
 20 10 minutes will be fine, and we'll take the break
 21 thereafter.
 22 DR DONAGHUE: Thank you.
 23 Subject to re-examination, if there is to be any.
 24 But 10 minutes of remaining cross.
 25 THE PRESIDENT: Yes. Anyway you are not committed, because

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15:28 1 resolution, if he's got the numbers, and have the
 2 dividend paid there and then.
 3 Q. I certainly am not making the error you suggest.
 4 A. Sorry.
 5 Q. I'm just saying that if it was to be suggested that the
 6 point at which the dividend was declared was in the
 7 approval of the accounts, that would encounter the
 8 problem that I've described, which is that the approval
 9 of the accounts can't retrospectively change what
 10 happened. Do you agree with that?
 11 A. Well, the decision, really -- if you're going back to
 12 where the decision happens, it happens whether there's
 13 a recommendation for a dividend or not, yes.
 14 Q. Yes. It has to happen that way?
 15 A. Yes. So I'm saying that I made my decisions before
 16 that. I had to decide: will I declare one or won't I?
 17 I decided I won't. And in doing that, I knew I would be
 18 leaving the money into further yield on the Claimant's
 19 investment. That's my rationale.
 20 Q. But you say you made that decision to leave it there at
 21 some unspecified point in time?
 22 A. It may have -- I'd have to look at the minute, but
 23 I think I might have considered the matter three or four
 24 hours before the meeting --
 25 Q. Which meeting?

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15:30 1 you don't know how long the answers are, but it's
 2 an indication.
 3 DR DONAGHUE: Yes.
 4 I'm moving, Mr Palmer, you'll be delighted to hear,
 5 to the last topic.
 6 A. Yes.
 7 Q. Can Mr Palmer be shown C1/18/18, which is your sixth
 8 witness statement at paragraph 53. (Pause)
 9 A. You've only got two lines there.
 10 Q. There's two lines and it goes over the page. You're
 11 talking about:
 12 "The daily contribution the Claimant's Directors
 13 make to Mineralogy ... as directors of the Claimant ...
 14 is subject to being responsible to the board of the
 15 Claimant for their commercial activities ... It is not
 16 ... the tail wagging the dog. The Claimant's Directors
 17 do not report to the board of Mineralogy. The Board ...
 18 acts at all times with the wishes of the holding
 19 company ..."
 20 A. That's true.
 21 Q. So you say that Zeph's directors make a daily
 22 contribution to Mineralogy as directors of the Claimant.
 23 And you go on in the statement, at paragraph 56 and
 24 following, to discuss the contributions of yourself,
 25 Emily Palmer, Declan Sheridan, Baljeet Singh and

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15:31 1 Bernard Wong.
 2 A. Sure.
 3 Q. In the questions I'm about to ask you, can I ask you to
 4 leave yourself aside. I'm not suggesting you're not
 5 making a contribution; I just want to ask you about the
 6 other Australian directors.
 7 A. Okay, sure, yes.
 8 Q. So do you agree that the other Australian directors of
 9 Zeph all had positions in Mineralogy, either as
 10 directors or officers or employees, before they became
 11 directors of Zeph?
 12 A. Before?
 13 Q. Yes.
 14 A. I'll just go through all of them. Yes.
 15 Q. Yes. And do you agree that all of the other Australian
 16 directors of Zeph still have positions in Mineralogy,
 17 whether as directors or officers or employees?
 18 A. You mean -- straight: no, that's not true.
 19 Q. It's not true of ...?

[REDACTED]

15:34 [REDACTED]

13 DR DONAGHUE: Thank you.
 14 Would you agree, Mr Palmer, that the Claimant hasn't
 15 produced a single document that demonstrates that any of
 16 the other Australian directors do anything for Zeph in
 17 their capacity as directors of Zeph that is different
 18 from what they do in their capacity as Mineralogy? I am
 19 asking about documents.
 20 A. Well, the video: you saw the directors at the Christmas
 21 party, and that's been produced as an exhibit, I think,
 22 here.
 23 I don't know, I'd have to look at the evidence.
 24 I think there's been ... Mineralogy's directors has been
 25 shown by the Singapore records of the company as well.

15:32 1 [REDACTED]

15:35 1 Q. But to the extent that the directors of Zeph are also --
 2 A. Sorry, there has been the minutes and things that have
 3 gone on in the restructure, and the time like that. But
 4 that was Zeph directors. I think there are some,
 5 minutes, signed minutes.
 6 Q. But you were ...
 7 A. And there's the joint venture agreement.
 8 Q. If the Claimant had wanted this Tribunal to conclude
 9 that the other Australian directors of Zeph are making
 10 a contribution to Mineralogy, so a contribution from
 11 Zeph to Mineralogy made by these individuals in their
 12 capacity as directors of Zeph, do you agree that you
 13 could have called each of those people to tell us what
 14 that contribution was?

[REDACTED]

15:37 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 Q. Can I repeat my question to you, which was that: if the

16 Claimant wanted to establish that it made an investment

17 in the form of a contribution through the work of these

18 directors, it was open to the Claimant to call them,

19 these individuals, to have them explain directly what

20 they contribute. And you didn't do that; the Claimant

21 didn't do that.

22 A. I just think that's a hypothetical question.

23 Q. Well ...

24 A. I don't really see the answer to that. I mean --

25 Q. You've given us an account in your witness statement of

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15:39 1 [REDACTED]

2 Q. So you'd like us to take it on trust that even though

3 all of these people are in the Zeph camp -- they're all

4 directors, they all work for Mineralogy, they all could

5 have given statements to explain fully what they do and

6 why they contribute so much that that contribution

7 should be treated as an investment -- but we shouldn't

8 worry that we don't have any of that because we've got

9 your summary?

10 A. Well, that's right.

11 But besides that, we don't have anything from

12 Mr McGowan or Mr Quigley, and ask them why they secretly

13 broke the law, committed criminal offences in Western

14 Australia while the Act wasn't foreseeable. You haven't

15 produced those witnesses, the Premier.

16 Q. You don't think that, in a claim against the

17 Commonwealth said to be worth \$300 billion, you should

18 produce witnesses going directly to --

19 A. Well, certainly this is not about \$300 billion; this is

20 about jurisdiction.

21 Q. Well, it's about \$300 billion if the Tribunal has no

22 jurisdiction.

23 A. Well, I'm just saying to you: we provided as much

24 information as we could in this claim. 29 boxes of

25 information was served on the arbitrators and on you.

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15:38 1 what you say that they do.

2 A. Sure, I provide that evidence.

3 Q. But by doing it that way, you deprive us of the

4 opportunity to ask them firsthand to explain what they

5 do. Do you agree with that?

6 A. Well, bearing in mind that we think this whole exercise

7 is fruitless and it doesn't assist our case, we just

8 want to proceed with the case as soon as we can. And we

9 don't see why -- there's no reason why they can't

10 provide you information; we haven't tried to stop anyone

11 from providing information. None of your people have

12 approached them and asked them would they be a witness,

13 which you could have.

14 Why didn't you contact them and ask them: could you

15 give evidence for us? You could have done that if you

16 thought it was important.

17 Q. You're not being serious, Mr Palmer.

18 A. Well, you're asking me ridiculous questions.

19 Q. Well ...

20 A. I've gone on the record, I've said what they do. I'm

21 here to answer the questions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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15:40 1 We provided countless witness statements. If you put

2 what's been provided by our side against your side,

3 I think the scales of justice will tip in our favour.

4 DR DONAGHUE: I have nothing further for Mr Palmer.

5 THE PRESIDENT: Thank you.

6 MR PALMER: Thanks very much.

7 THE PRESIDENT: We are not entirely done yet, Mr Palmer,

8 because there may be re-direct questions, and then the

9 Tribunal may have a few questions for you.

10 MR PALMER: Okay.

11 THE PRESIDENT: But we are going to take a break now because

12 we have been going for 1 hour and 40 and that's rather

13 a long stretch for everyone.

14 Just to plan the continuation, can I ask you what

15 your estimate is for your cross-examination of

16 Mr Birkett? Or if you want to discuss it within the

17 team, of course you may.

18 DR DONAGHUE: It's being reminded whether the live stream

19 should go back on. I don't know if that's already

20 happened.

21 I think our provisional estimate -- I'll look down

22 the bar table -- was about 20 minutes for Mr Birkett.

23 THE PRESIDENT: Fine. And he will have his 20-minute

24 presentation. Is that what you have in mind, Dr Kirk?

25 DR KIRK: I understand that Mr Birkett isn't going to give

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15:41 1 a presentation.
 2 THE PRESIDENT: He will not. And then the Tribunal may have
 3 some questions. Fine.
 4 The reason for asking all this is that then we'll
 5 have a break until 4.10, because the Tribunal must
 6 complete its work on the questions that it needs to ask
 7 you at the end of the day, and it would help us if we
 8 have a little bit more time. I could even be more
 9 generous and say 4.15.
 10 MR PALMER: So do I need to go to the state room?
 11 THE PRESIDENT: You are still under the same rule,
 12 Mr Palmer. It's soon over, but you have to bear with us
 13 for a little while.
 14 MR PALMER: Sure, certainly. So it's 10 minutes, is it?
 15 DR DONAGHUE: I should perhaps say, if it helps the
 16 Tribunal, we are happy for a longer break.
 17 THE PRESIDENT: No, I think we can do it.
 18 (3.42 pm)
 19 (A short break)
 20 (4.23 pm)
 21 THE PRESIDENT: Are we ready to resume? It looks like
 22 we are. I should have accepted the offer for more time.
 23 I apologise for the delay.
 24 Now I will turn to the Claimants, if you have
 25 re-direct questions for Mr Palmer?

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16:24 1 reach decisions by committee and perhaps adopt
 2 an unconventional approach?
 3 A. I think that's true. I normally make a decision in
 4 a short period of time, because I personally see time as
 5 being the enemy in life and we've got to use it as best
 6 we can. So to delay, or to make decisions for a long
 7 period, to me seems to be a cardinal sin.
 8 Q. You referred in your first witness statement at
 9 paragraph 16 to your business and mining experience.
 10 A. Mm-hm.
 11 Q. Would you like to elaborate on that a little and explain
 12 your mining experience?
 13 A. Well, I've been in mining and exploration for probably
 14 close to 40 years, and during that time I've worked on
 15 a whole range of exploration and development properties,
 16 from gold in Western Australia to iron ore; large coal
 17 deposits that we have in Queensland, probably the
 18 largest in the world; large oil and gas in Papua
 19 New Guinea, where we've done offshore exploration, where
 20 holes can cost between \$50 [million] and \$100 million at
 21 the time we were doing them.
 22 We held the world's fourth largest nickel refinery,
 23 in Townsville. We employed about 2,000 people there.
 24 I took it over from BHP and it was completely
 25 restructured. I've worked on nickel mining projects,

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16:23 1 MR BYRNE: Yes, thank you, Madam President. Just a few
 2 questions, if I may.
 3 THE PRESIDENT: Yes, please.
 4 MR BYRNE: Thank you.
 5 Re-direct examination by MR BYRNE
 6 Q. Mr Palmer, you were asked earlier today about whether
 7 you had any notes of meetings with Mr Martino.
 8 A. Mm-hm.
 9 Q. Do you usually keep notes of meetings?
 10 A. No, not normally. I normally get through a large
 11 workload by utilising the telephone or verbal
 12 communications, I've found most effective. And
 13 I normally rely on my staff or other people that have
 14 been with me for a long time to carry out my decisions.
 15 I spend most of my time working making decisions on
 16 a whole range of issues.
 17 Q. You gave evidence earlier today to the effect that you
 18 make your own decisions in business affairs; do you
 19 recall that?
 20 A. Yes, I do. And I guess I've slowly built up enough
 21 confidence to make those decision, or get to a stage
 22 where I can back my own judgment. And in the majority
 23 of cases, it's worked out successfully commercially, and
 24 for that reason I continue to do it.
 25 Q. You explained yesterday in the opening that you do not

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16:25 1 got them approved and running. We've had operation of
 2 ports: both ports at Cape Preston, Western Australia,
 3 and also the Townsville port. We were the biggest user
 4 of the Townsville port for the exportation of nickel and
 5 the largest employer in Queensland at that time.
 6 So I've had a very varied experience. We've
 7 recently embarked upon lithium exploration in
 8 New Zealand, and in South Australia we've got iron ore
 9 properties as well.
 10 So I've had a very, very interesting career with
 11 a lot of mineral properties and developments. And at my
 12 age now, I think I should let them all go at some stage:
 13 it's time to retire.
 14 Q. Now, in that context, can you just explain in a little
 15 more detail your decision-making process?
 16 A. Well, normally I -- if a decision has got to be made,
 17 I normally sit down and look at the facts and weigh the
 18 pros and cons up, and probably within a short period of
 19 30 minutes I'd make the decision, whatever it was. And
 20 then I'd revisit it the second day, see whether I still
 21 had that or it still had scrutiny.
 22 I'd then dispatch it to the person who needed to
 23 carry out the activity somewhere in our chain of
 24 command. It's been sort of represented that I make
 25 a lot of decisions, I do a lot of things, but I can't

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16:27 1 possibly do all the work of the decisions that have got
2 to be made with such a large organisation. It may be
3 a perception, but once the policy and the decision is
4 made, I've got to rely on people that I trusted to carry
5 them out.

6 Q. And when it came to the rationale for the incorporation
7 of Zeph, to what extent was that approach consistent
8 with your usual approach?

9 A. Well, the incorporation of Zeph -- well, we had
10 incorporated two companies earlier, in 2018; one that
11 was incorporated by Gledhills. I was quite annoyed when
12 I found it took so long to get that company
13 incorporated. I contacted another shelf company group,
14 I suppose, in Singapore: they incorporated another
15 company, because I was disappointed with what had
16 happened internally. We ended up, we had two companies
17 incorporated. And I had advice at the time that there
18 should be a different structure, which I didn't
19 necessarily agree with, but I accepted the advice from
20 Mr Martino.

21 There were developments taking place in Western
22 Australia in lithium and setting up a -- sorry, in
23 New Zealand, setting up a company manager and looking at
24 real estate and large industrial properties over there.
25 That had its own life, which had commenced probably

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16:29 1 work and also assist us in the search for a chief
2 executive in New Zealand, and also to carry out our work
3 with other real estate agents looking for investments at
4 that time.

5 Q. You were asked about the decision you made in June 2018.
6 A. Mm-hm.

7 Q. In your first witness statement, you referred to
8 undertaking your own research.

9 A. Mm-hm.

10 Q. Were any reports obtained in that research?
11 A. No. I had a general look at the -- up until the time
12 I had those three documents which I referred to, I was
13 generally sort of monitoring what things were like in
14 the coal industry, what the public perception was to
15 coal, and it seemed to me it was very negative in
16 Australia.

17 And once I got the letter from the Prime Minister
18 knocking back -- sorry, from the Premier to the Prime
19 Minister knocking back a billion dollars of coal funding
20 in Queensland, I realised that acts were being drafted
21 in the Federal Parliament; and then on top of that, our
22 bank was not going to fund any new coal projects.
23 I felt a bit hopeless. And I was very concerned that
24 we'd have to write off the \$125 million we'd spent so
25 far in the project unless I could come up with a new way

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16:28 1 about May 2018. That came to fruition: we had
2 an opportunity to buy an industrial estate there, and we
3 went ahead and bought it. That required the urgency of
4 getting MIL incorporated.

5 When I went on holiday, it was decided then to --
6 I decided to go into the three-tier structure, if you
7 like, and follow that plan. And we utilised MIL as the
8 third company in a different jurisdiction.

9 Q. And in view of your evidence regarding the
10 decision-making process, did you rely on anyone other
11 than yourself to make the decision to incorporate Zeph?
12 A. I didn't rely on anyone else to make the decisions.
13 I certainly did get other people to assist us in various
14 tasks.

15 For example, Mr Sorensen took control over the
16 actual implementation of the restructures -- drafting
17 minutes of that nature, checking the legal
18 requirements -- and he produced a set of documents and
19 presented it to us and to the various parties. I used
20 people such as him.

21 We used Allen & Gledhills for secretarial services
22 in Singapore, which they still provide to Zeph. We've
23 got two Allen & Gledhills lawyers as company
24 secretaries.

25 We used Minters in Auckland to carry out secretarial

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16:31 1 of doing it, which would involve more money, I thought,
2 at that stage.

3 But I didn't want to write the investment off. That
4 was the only decision: either you write it off or you
5 look to raise the funds internationally. And that's
6 what I -- we looked to do.

7 And Singapore seemed to be a logical conclusion.
8 Other people were saying that. And I looked at some of
9 the reports which were on the net. I was familiar with
10 the financing in Singapore: our company secretary for
11 our nickel company had previously -- we'd funded ships
12 through Singapore about five years ago: we raised about
13 \$100 million there. So I was familiar with some of the
14 operations.

15 Q. And did you engage any third-party consultants?
16 A. In Singapore?
17 Q. In Australia.
18 A. Sorry, in Australia.

19 Well, as I said, we had PwC working on the
20 restructure: that was the main person that we utilised.
21 Plus our internal people. And also we acquired -- Allen
22 & Gledhills carried out work in Singapore; I think there
23 were other accountants in Singapore that we utilised as
24 well. I think they're listed in my witness statement,
25 right?

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16:32 1 Q. You were asked about the Christchurch property and
2 whether that involved any meaningful diversification.
3 A. Yes. Well, I think it did, because it provided a base
4 which we wanted to build on in New Zealand for a steady
5 revenue.
6 It's always been profitable since we've had it:
7 I think it produces about \$1.5 million of profit a year,
8 in that sort of order. And it was a very good
9 opportunity. It's probably worth now double what we
10 paid for it. We'd probably pick up about
11 \$11.5/12 million profit if we sold it.
12 Q. You've given evidence about your 40 years of business
13 experience. Did any of that include property?
14 A. Yes, I originally started out in real estate back in
15 1972, and that led to specialist consultancy work. And
16 I went on from there to develop my own properties, large
17 tracts of land for subdivision, together with home
18 units, building and other commercial property. And from
19 there, I went into mining.
20 Q. You were asked --
21 A. Sorry, mining and some other things.
22 Q. Thank you.
23 You were asked about the award obtained in
24 October 2019 and you mentioned that you thought the
25 State had filed an appeal.

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16:35 1 Q. It was filed in the Supreme Court of Queensland, but you
2 accept it was 2013?
3 A. "In the Supreme Court of Western Australia held [in]
4 Perth", it says at the top.
5 Q. Yes.
6 A. Yes. So I was confused. This was an appeal, I think it
7 must be, from the first arbitral award, right? Or I'm
8 not sure. I think it might have been for a -- I think
9 the State went for a dismissal of the arbitration in the
10 first arbitration proceedings, right, and they filed
11 this in support of that.
12 So I apologise to Mr Donaghue for misleading him,
13 but that's the document I was considering. And I did
14 have that, of course, before 11 October 2018, as you can
15 see from the date.
16 Q. Mr Palmer, you were asked some questions about the
17 Rejoinder in this arbitration, paragraph 383. May I ask
18 that that be put up, please. (Pause)
19 I'm sorry, it's page 176 of that document.
20 DR KIRK: I think the document is at B/4, if that helps.
21 MR BYRNE: Sorry, paragraph 383, please. Thank you.
22 Mr Palmer, at approximately 12.57 pm in the
23 transcript (page 155), you were taken to this
24 paragraph --
25 A. Mm-hm.

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16:33 1 A. Yes.
2 Q. May Mr Palmer be shown E1/206 (C-206).
3 Now, if you see the second paragraph there
4 Mr Palmer, is that the matter you're referring to?
5 A. Yes, that's the matter I'm referring to.
6 I think it was in that appeal that the State
7 produced a witness, an expert witness, in respect of
8 what they thought the damages could be for the State:
9 that was Mr William Preston. He concluded that it was
10 in the order of \$27 billion.
11 And I realise that the Respondent hasn't been able
12 to locate that document, but from my recollection, it is
13 on the record under the witness statement of
14 Daniel Jacobson. I think he filed a statement putting
15 on all the arbitral and associated records, and
16 I think that's in that bundle.
17 Q. You referred to the affidavit of Mr Preston.
18 A. Yes.
19 Q. May Mr Palmer be shown E1/410 (C-410).
20 A. I think that's the affidavit that was filed in the
21 Supreme Court of Western Australia by the State, by
22 Mr Preston on behalf of the State.
23 Q. You see, Mr Palmer, at the top right-hand corner, it
24 refers to "ARB No 3 of 2013".
25 A. Ah, well --

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16:37 1 Q. -- and you were asked a question whether it refers to
2 an ancillary purpose of the incorporation of Zeph as
3 being investment protection.
4 A. Yes.
5 Q. You denied that that paragraph says "ancillary purpose".
6 Now, if I could just ask you to read that paragraph
7 again, you'll see in the third line:
8 "Investment treaty coverage was ancillary."
9 A. Yes, I didn't mean to deny that it said that. I meant
10 to deny that that wasn't the case: it was a mistake.
11 Q. Now, the words that are used there are not "ancillary
12 purpose", you would agree?
13 A. It says "ancillary", yes. So it's not "ancillary
14 purpose", it was just ... there's no "purpose" there,
15 yes.
16 Q. Since your evidence is that investment treaty protection
17 was never part of the purpose of incorporation of
18 Zeph --
19 DR DONAGHUE: Our friend shouldn't lead.
20 THE PRESIDENT: Can I maybe just ask the question myself.
21 The first sentence speaks of "the primary reasons
22 for the Restructuring". You see this, right?
23 A. Yes.
24 THE PRESIDENT: The second one speaks of "Investment treaty
25 coverage" that is "ancillary". So I read this like

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16:39 1 "ancillary" refers back to "reasons".
 2 Now, I understood you before to say that is not the
 3 case. Then what is "ancillary"?
 4 A. Well --
 5 THE PRESIDENT: To what does it refer?
 6 A. Yes, I understand your question and I sympathise with
 7 that point of view. I don't want to deny what this
 8 document says from looking at it, first of all.
 9 THE PRESIDENT: No, I --
 10 A. I accept that. I just made the comment that I hadn't
 11 seen personally, read that, before -- even though it's
 12 on our side. Because I'm required to answer questions
 13 honestly, that's what I did.
 14 THE PRESIDENT: Did you read the Rejoinder before it was
 15 filed or thereafter?
 16 A. I had the Rejoinder, and I -- it was a very large
 17 document: it's 300-odd pages.
 18 THE PRESIDENT: Yes.
 19 A. That was written mainly under distress during the
 20 Olympics in Paris, with a number of people going to the
 21 Olympics and cobbling it together. And we couldn't get
 22 an extension of time.
 23 So, you know, I have to accept what it says, right?
 24 You know, we can't complain about that. But I just
 25 said: from my perspective, that wasn't the reason at

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16:42 1 (4.42 pm)
 2 Questions from THE TRIBUNAL
 3 MR KIRTLEY: Good afternoon, Mr Palmer.
 4 Now, Madam Presiding Arbitrator has already touched
 5 on this, but can we bring up Exhibit R-134. It should
 6 be E2/134. This is the letter that you were shown
 7 earlier.
 8 A. Yes, I have it here.
 9 MR KIRTLEY: It's dated 30 November 2018, writing to
 10 Mr Mark McGowan.
 11 A. Yes.
 12 MR KIRTLEY: And you say:
 13 "In the media and there have been reports that you
 14 may be considering altering the IOPAA to allow a Chinese
 15 company CITIC more tailing space ..."
 16 Just to understand, what exactly were the threats
 17 with respect to the Iron Ore Processing Act at that
 18 time? What information were you hearing --
 19 A. Well, there was no, like -- see, the normal procedure of
 20 amending the State Agreement, which we had done before
 21 in 2008, was the State would normally put a proposal to
 22 the Crown Law, we would consider it, we would come back
 23 with our suggestions, and that would normally be agreed
 24 and that would be entered through Parliament. That had
 25 happened when we amended the Act in 2008.

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16:40 1 that time. So I was trying to accurately reflect --
 2 THE PRESIDENT: I think you've explained sufficiently,
 3 thank you.
 4 Would you wish to carry on?
 5 MR BYRNE: Thank you, Madam President. Just one final
 6 question.
 7 Can Mr Palmer please be shown D1/10/3 (expert report
 8 of Mr Dunning), please. (Pause) And just page 3 of that
 9 document, please.
 10 Mr Palmer, you were taken to some aspects of this
 11 report. But can I direct your attention to paragraph 4
 12 of that report.
 13 A. Yes, I read that. And that was my understanding at the
 14 time, concurs with that. I understand that Mr Donaghue
 15 has a different view.
 16 MR BYRNE: Thank you, that's the re-examination.
 17 THE PRESIDENT: Thank you.
 18 I don't think we have provided for
 19 re-cross-examination. But what I would suggest is that
 20 the Tribunal asks its questions now, and if there are
 21 any follow-up questions they could be asked later.
 22 Any questions for Mr Palmer on your side? Do you
 23 have any?
 24 MR KIRTLEY: Maybe just a very brief factual --
 25 THE PRESIDENT: Yes, sure. Sure.

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16:43 1 The Premier was in a different political party than
 2 myself, we were political opponents, I think, and
 3 we didn't have a high regard for each other. The
 4 Premier had said what he said in Parliament, and you saw
 5 that from Mr Donaghue: he put up a slide, I think, where
 6 the Premier had said that and the opposition leader had
 7 said he would assist them. I interpreted that at the
 8 time as being done to try to put pressure on me to agree
 9 an agreement with CITIC.
 10 Now, we had written to the Premier and we'd asked,
 11 and we never had a proposal at all from the State to
 12 amend the State Agreement. So we didn't know what we
 13 were talking about; we could only assume that from what
 14 CITIC said.
 15 Subsequent to all of this, not preceding, CITIC
 16 commenced legal proceedings against us in the Supreme
 17 Court of Western Australia, where it was very specific
 18 what land they wanted, and one of the things they wanted
 19 was land for free. And the judgment I think is on the
 20 record, I referred to it earlier, which we were
 21 successful in winning that judgment. And the comments
 22 that were made by His Justice were that they would have
 23 to pay us -- about \$750 million was a reasonable amount
 24 for what they wanted to have for free. So that was the
 25 dispute.

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16:45 1 But my activity was very -- and the Premier's
2 activity was very boisterous against each other,
3 I guess, you know: very male sort of dominated
4 boisterous two bulls hitting their heads together, and
5 that was played out in the press. The press was very
6 anti-me and close in with the Government in
7 Western Australia.
8 And our company went through a very torrid time,
9 because if you're having a public dispute, it has
10 an impact on your employees and managers: they all feel
11 their jobs are threatened, they don't know what's
12 happening. And that's why I had to call the Premier's
13 bluff and say, "Go ahead; if you want, we'll get stuck
14 into you".
15 And we agreed to -- in the critical letter, which is
16 not the ones that we've had a good look at, I think it
17 was a seven- or eight-page letter, we detailed all the
18 possible nasty things we could do to him, including
19 going to Federal Parliament dealing with -- we put
20 everything in there, and then that stopped the dispute
21 in its tracks.
22 And I can only assume the Premier must have met with
23 the Chinese and told them that he wasn't going to do
24 anything, because the Chinese then commenced a legal
25 proceeding, and then that went forward in the Supreme

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16:47 1 it could be foreseeable if you read the Act in the
2 western world. Nothing like that has ever happened
3 before.
4 MR KIRTLEY: Okay, thank you. That answers my question.
5 THE PRESIDENT: Mr Palmer, you are a successful, experienced
6 businessman. You even had, among various honours, the
7 Entrepreneur of the Decade award. I imagine that when
8 you make investments in a business, you would have
9 a strategy, you would have a business plan, you would
10 conduct due diligence.
11 And somehow, looking at your Singapore investments
12 into engineering companies that are now liquidated into
13 cleaning businesses that are far away from your very
14 successful operations otherwise, I don't see the
15 strategy, I don't see what the vision is there.
16 A. Sure. Can I explain that?
17 THE PRESIDENT: Yes, please.
18 A. In my younger days, I worked very hard, did a lot of due
19 diligence work on everything I did. But I formed the
20 view, probably 20-25 years ago, that you can only sleep
21 in one bed, eat one meal and be married to one woman if
22 you're a smart guy, and that there's no point wasting
23 your -- at that stage I might have had million of
24 dollars of assets and stuff, but I worked myself like
25 a dog.

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16:46 1 Court and that was all we ever heard of it.
2 There was never a dispute between us and the
3 Commonwealth because -- I'm sorry, us and the State of
4 Western Australia, because nothing had been done.
5 There'd been just arguments at each other.
6 So I never thought anything would be done about the
7 State Agreement because they'd been there for 70 years
8 untouched. And if you look at Premier Barnett's paper,
9 the assurances he gives international investors and
10 others, there never will be. And that was a consensus
11 view of members on all sides of Parliament, I think.
12 So when he was saying all this, I thought he was
13 just bluffing. When he didn't do anything, I thought
14 our letters was very effective: they gave us
15 an incentive at any time to rub his nose in the salt.
16 And we got the award. That was first time that we could
17 actually pay -- knew we had a shot at getting damages.
18 We were quite surprised: it was 27 billion or so that
19 the State's expert had been in -- now we know it's 2013,
20 so we had to take it very seriously. So I got stuck
21 into him again.
22 But I had no ... I could not -- I still don't
23 believe -- we had the Amend[ment] Act -- something like
24 that would ever happen. And I know that the Respondent
25 agrees that that wasn't foreseeable. And I don't think

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16:49 1 So after that, I thought I would only do business if
2 it was fun, and there was no use of having the money if
3 you couldn't really enjoy it. And as time went by,
4 I made more and more decisions on my own, which
5 I enjoyed more because I had more freedom.
6 When you tend to have a lot of things, they can
7 become burdens because you have to look after them and
8 you lose -- like John Lennon said, your life is
9 something that happens when you're doing something else.
10 So it was sort of like that. And I thought -- when
11 I was about 50, I thought, "Well, I've got to stop this
12 or I'll be dead". And I did.
13 And my work became a lot sloppier, and I probably
14 lost a lot of money that I could have otherwise made.
15 But I still had plenty of money anyway, so that wasn't
16 a shortage of money. And I was more interested in the
17 search for happiness, until we had this arbitration.
18 But I had to pull on my old self and get down to
19 looking at the evidence, because I think the rule of law
20 is important. And that's what we see: ourself and the
21 rule of law under challenge. And I've had a long career
22 in the World Leadership Alliance and other places
23 defending the rule of law in a democracy, which
24 I believe in. So I was personally motivated to get
25 actively involved in this, because I thought it's

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16:50 1 something worthwhile to defend.
 2 THE PRESIDENT: Now we'll go to things that may be less
 3 philosophical about life --
 4 A. Sorry about that!
 5 THE PRESIDENT: -- and time passing. But if I look at
 6 Professor Lys's first report, there are a few questions
 7 I've asked myself.
 8 Can someone please pull up on the screen the first
 9 report of Professor Lys. And I don't have the Opus
 10 reference, but I'm sure someone can help me.
 11 Paragraph 39. Can counsel tell the technician?
 12 Thank you. That's it.
 13 Professor Lys -- you have said you have not read his
 14 reports, so I'm --
 15 A. I can certainly look at it now.
 16 THE PRESIDENT: Yes, I can see that.
 17 A. Is it 39?
 18 THE PRESIDENT: He is insisting very much on there being
 19 kind of a reversal of the hierarchies, or a reversal,
 20 I would call it more, of the roles of the company: the
 21 one that really have the activities and the revenues and
 22 the assets being the subsidiary. So he puts it in
 23 paragraph 39 with more specifics.
 24 And I was asking myself what you thought about that,
 25 because it is true that Mineralogy is nothing to compare

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16:54 1 foreign companies, which there's no question that they
 2 weren't doing a primary investment into Australia; they
 3 were making an investment in Australia by the
 4 acquisition of an Australian asset. So that's why
 5 I don't see those two [as] relevant.
 6 It is true what Professor Lys says here about
 7 "Zeph's revenue never exceeded 1.4% of Mineralogy'[s]".
 8 That's true, I realise that. But I would say there are
 9 other ventures that we have nothing to do with that are
 10 also very similar.
 11 But I'd also say that, over the years, Zeph has
 12 given us more pleasure than maybe the 99% of revenue we
 13 get from Mineralogy.
 14 So it's just a question of how you look at it.
 15 THE PRESIDENT: And you just mentioned risk, and that was my
 16 next question.
 17 A. Sure.
 18 THE PRESIDENT: As a businessman, you are very familiar with
 19 assessing risks, I suppose. You know that any
 20 investment does carry risk?
 21 A. Sure.
 22 THE PRESIDENT: What was the risk here for Zeph through the
 23 share swap?
 24 A. Well, it's got -- well, at the time of -- I'm just
 25 trying to think. At the time of the share swap, for

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16:52 1 in terms of income and assets.
 2 A. Well, that's certainly true. But I think there is
 3 a misapprehension here, and I thank you for giving me
 4 the chance to correct it, because it can be confusing
 5 looking at all these documents and reports and things.
 6 But what actually happened was that --
 7 THE PRESIDENT: We are used to many reports and papers!
 8 A. Yes, but what actually happened was: MIL, in
 9 New Zealand, owned the shares in Mineralogy.
 10 THE PRESIDENT: Yes.
 11 A. And MIL did a takeover with the Claimant. It wasn't the
 12 other way round: that had already happened. So this is
 13 a transaction between two foreign companies -- one from
 14 New Zealand, one from Singapore -- that did the share
 15 swap.
 16 So really the question about contribution, if you
 17 like, to Australia, they had the benefit of the original
 18 contribution and the original risk that was undertaken
 19 with Mineralogy when I first incorporated it. And
 20 I think that that's been recognised in decisions of
 21 arbitral tribunals: that there's an inherent
 22 inherited contribution and risk to the home state from
 23 the sale of that investment.
 24 Why I didn't think it was relevant to this Tribunal
 25 was because it dealt with a transaction between two

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16:55 1 example, Mineralogy's main revenue had not yet been
 2 determined in the High Court of Australia. If you'll
 3 recall, there was an action in royalty B where we had
 4 a judgment; it then went to the Court of Appeal, then
 5 that knocked over. And at this particular time of
 6 restructure, all of that had been pushed up to the
 7 High Court of Australia, which decided in 2020 by not
 8 giving leave to the Chinese party.
 9 But at the time in 2019, there were considerable
 10 risks because a lot of money had been paid into
 11 Mineralogy, some of it had been spent, and there was
 12 a counterclaim against us that, if the High Court had
 13 gone the other way, a substantial risk that Mineralogy
 14 would have been wiped out, and any investment would have
 15 been lost.
 16 So that was --
 17 THE PRESIDENT: But that investment was bought by a swap,
 18 share against share. So what exactly was put --
 19 A. Well, it would have had --
 20 THE PRESIDENT: -- in jeopardy is unclear to me.
 21 A. Well, what was in jeopardy was the value of the Zeph
 22 shares if the Mineralogy investment had've been zero,
 23 which it could have been, it would have [meant] that
 24 they would have also been zero, they would have lost
 25 their assets and lost their funding. And all that Zeph

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16:57 1 left would be left with would have been the cleaning
2 business and Visco, at that stage.
3 THE PRESIDENT: But the Mineralogy shares in the share swap
4 were valued at face value, and that gives those about
5 6 million at \$1 per share. And that was, I suppose,
6 much less than the actual value of the shares. So there
7 was some margin before --
8 A. Well, there could be, but --
9 THE PRESIDENT: -- you went below the 6 million. Or do
10 I misunderstand?
11 A. Yes, well, a share swap really we think has got
12 an equivalent value. That's how we deal with it in the
13 commercial world, and that's how the Government deals
14 with it in taxation.
15 THE PRESIDENT: That's what you explained before. That's
16 clear.
17 A. That's what they say.
18 THE PRESIDENT: But the economic reality was different, was
19 it not?
20 A. No, it becomes different I think when you have
21 a different risk profile. In just buying shares even
22 for a dollar, if you want to put it that way, shares
23 come with inherent risk: risk of what they're ...
24 THE PRESIDENT: Of losing the dollar?
25 A. Of losing the dollar, but also losing -- part of it is

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16:59 1 A. Well, the reason for that was they weren't -- E&Y was
2 auditors of one of our companies called Queensland
3 Nickel, which is a separate company. And one of their
4 audit reports -- they did a revaluation on an asset for
5 an audit report, and subsequently the price of nickel
6 crashed by about 150% and that company went into
7 liquidation.
8 And I wasn't satisfied with the quality of the audit
9 report. I think the directors should have been brought
10 to their attention earlier. So we changed audit firms;
11 not just for that company, but for the whole group.
12 THE PRESIDENT: I'm looking through your statements to see
13 where else I had noted questions that have not been
14 asked.
15 A. Sure.
16 THE PRESIDENT: Because throughout the day you have been
17 asked many questions, so a good number of them are
18 answered.
19 A. Good.
20 THE PRESIDENT: If you look at your witness statement
21 number 5, paragraph 49, you have been asked quite
22 a number of questions about the timing of your decision
23 and how the decision to create a company in Singapore
24 came up.
25 Can we have witness statement number 5 of Mr Palmer.

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16:58 1 rights and obligations that you have in shares; they're
2 dealt with in the constitution of the companies. There
3 are also particular laws which can be punitive against
4 you in different jurisdictions. So to get to the proper
5 final analysis, you'd have to look at that.
6 But the inherent -- like, for example, in Singapore,
7 there's no tax payable to a Singapore resident on
8 a dividend from Mineralogy; that's a frank dividend
9 coming out from Australia. Whereas that wouldn't be the
10 case if Zeph was an Australian company: they'd be paying
11 24% dividend on that.
12 And likewise, if I was a resident, I wouldn't be
13 paying any dividend from Zeph to me, et cetera. So it
14 goes -- it's a more complex picture than just looking at
15 \$1 here and \$1 there.
16 THE PRESIDENT: That's what you already told me when I asked
17 before.
18 A. I'm sorry --
19 THE PRESIDENT: Yes, I got this one, absolutely.
20 A. I'm sorry, I apologise. I'm just answering it how I see
21 it, sort of thing.
22 THE PRESIDENT: Shortly before the restructure, you
23 terminated your long-standing auditors, E&Y, to replace
24 them with a much smaller Australian firm. And I've
25 asked myself: what was this coincidence in time?

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17:01 1 Here it is, yes.
2 So the story starts, if I understand your narrative,
3 in September 2008.
4 A. Yes.
5 THE PRESIDENT: And that is this meeting that we have
6 discussed with UBS and Macquarie and Linklaters and
7 others. And that's about an IPO in Hong Kong?
8 A. Yes, that's correct.
9 THE PRESIDENT: And then we jump ten years forward to
10 2018 --
11 A. Can I just say that that meeting in 2008, all that's
12 meant to show is that that's when I participated in
13 a discussion when it was suggested to me that we should
14 have a company in Singapore if we wanted to raise debt
15 finance. That's all that happened at that meeting
16 that's in any way relevant.
17 THE PRESIDENT: Yes, that I understand. But then nothing
18 happens until June --
19 A. Well, this wasn't for restructuring. This had nothing
20 to do with restructuring.
21 THE PRESIDENT: Yes.
22 A. So there was no decision to restructure.
23 THE PRESIDENT: It's just the idea came up then?
24 A. I had a meeting, people told us that, that's it. So we
25 weren't expecting to do anything.

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17:02 1 THE PRESIDENT: And then there's a ...
 2 A. And can I just add --
 3 THE PRESIDENT: And then you take the decision in
 4 June 2018 --
 5 A. Can I just --
 6 THE PRESIDENT: That's when you said that you made the
 7 decision yourself? Or do I understand?
 8 A. That's for the restructuring. But in between that time,
 9 about 2016, we set up three Singapore companies, which
 10 financed three separate ships in Singapore.
 11 THE PRESIDENT: That's where you said that there was
 12 a synergy with the shipping company -- I mean with the
 13 marine engineering --
 14 A. Yes. This is for our Queensland Nickel, another group.
 15 And of course it worked like a charm to raise the money
 16 with the Singapore companies there; it was very smooth.
 17 I just saw that as a confirmation of what I'd been told
 18 earlier. That's as far as I went.
 19 THE PRESIDENT: And then nothing happens for seven months?
 20 A. This is after --
 21 THE PRESIDENT: And then suddenly there seems to be a rush
 22 late 2018: first New Zealand, then Singapore. And early
 23 2019, then you incorporate.
 24 I somehow have difficulties understanding the
 25 sequence.

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17:05 1 own right. And that's how we used New Zealand then
 2 to -- I think they did a share swap with my companies
 3 that owned Mineralogy. And then New Zealand
 4 subsequently swapped that to Singapore.
 5 And that put all of the revenue that we got from
 6 royalty B into a Singapore company, so if we approached
 7 banks, we could tell them, "We've got 700 --
 8 \$600 million a year of cash coming to this company that
 9 we want to utilise to borrow against".
 10 So that was the general plan.
 11 THE PRESIDENT: I'm just checking, but I don't think I have
 12 any further questions that have not been asked. So that
 13 ends your examination, unless there is any follow-up
 14 questions by my colleagues or by the parties. This
 15 should be follow-up questions on the Tribunal's
 16 questions, if there are any.
 17 On the Respondent's side?
 18 DR DONAGHUE: May I ask one question?
 19 THE PRESIDENT: Yes.
 20 (5.06 pm)
 21 Further cross-examination by DR DONAGHUE
 22 Q. Can Mr Palmer be shown another part of his Rejoinder, so
 23 that's B/4. I think the relevant page is around 117,
 24 but I'm looking for paragraph 380. (Pause)
 25 Mr Palmer, you can see there -- this is in the

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17:04 1 A. Well, the New Zealand operations were totally separate,
 2 which were developing at the same time.
 3 THE PRESIDENT: That's the Christchurch industrial park,
 4 yes.
 5 A. Yes, and also lithium. And that was just happening in
 6 the company. And that came to a head because of the
 7 industrial park that we were looking at: there was
 8 another buyer and we had to move quickly on that one, to
 9 get that established.
 10 Subsequent to that, I was at the same time toying
 11 with -- we'd already incorporated two companies,
 12 I think, about November, sometime in November: two
 13 subsidiary companies in Singapore that were owned by me.
 14 And then I decided in -- I don't know if it was late
 15 December or early January, I can't remember, I decided
 16 I'd go with a three-tiered structure, and the easiest
 17 way to do that was to have it in New Zealand because
 18 that was an existing company. We had a manager there;
 19 we carried out detailed operations. In my first witness
 20 statement, I list all the mining tenements that we've
 21 got from the Government in New Zealand that we're
 22 working on. And that's in addition to the -- to that.
 23 We had a company manager in an office in Auckland
 24 that carried out operations, and Minters still stayed as
 25 our accountants. So New Zealand was operational in its

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17:07 1 Rejoinder:
 2 "If ... the specific dispute was foreseeable at the
 3 time of the corporate restructuring, there is
 4 an opportunity for the Claimant to illustrate that the
 5 restructure was not an abuse because treaty coverage to
 6 that specific dispute was an ancillary purpose of the
 7 restructuring."
 8 I think a point was being made in your re-direct
 9 examination that over the page, in 383, which was the
 10 paragraph I put to you, it had just said, "Investment
 11 treaty coverage was ancillary", without the word
 12 "purpose". But you can see in 380 that that distinction
 13 is not being drawn.
 14 So I just ask you again to confirm that the
 15 Claimant's Rejoinder does accept that --
 16 A. Well, I think I can confirm to you that the Claimant's
 17 Rejoinder does say what it says. I don't want to
 18 dispute that with you. But I still make the statement
 19 that "ancillary" wasn't something that I picked up on my
 20 read of it in Paris, when I read it, so it wasn't --
 21 I don't think it's correct.
 22 Q. Alright. You accept, of course, that you signed this
 23 Rejoinder on its last page?
 24 A. I do accept that, and I don't resile from that.
 25 DR KIRK: Could I just at this stage perhaps put a marker on

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17:08 1 the record that obviously these are legal submissions
2 that are being made here in the Rejoinder, and Mr Palmer
3 is obviously answering these questions as a factual
4 witness, and I'm not sure he can necessarily comment on
5 the legal submissions.
6 THE PRESIDENT: No, he can -- we don't understand this as
7 a legal answer, because you are here as a fact witness.
8 Let me just summarise what I understood from your
9 answers before, and I think that could close this matter
10 for now.
11 You recognise that it is written in the Rejoinder of
12 the Claimant that treaty protection was an ancillary
13 purpose of the restructuring; you recognise that you
14 have signed the Rejoinder; but you do consider that this
15 is an incorrect statement because it was not
16 an ancillary purpose, in your view.
17 A. That's right.
18 THE PRESIDENT: Is this a correct --
19 A. I recognise it was a mistake from my view. That's what
20 I ...
21 THE PRESIDENT: That I could have added as well. But was my
22 summary a correct summary of what you are saying?
23 A. It is what I'm saying, yes.
24 THE PRESIDENT: Thank you.
25 A. Is that okay?

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17:20 1 second one is 2 August 2024 as well.
2 MR BIRKETT: That is correct.
3 THE PRESIDENT: Is that right? Do you have them there?
4 MR BIRKETT: I do, thank you.
5 THE PRESIDENT: Good.
6 You are heard as an expert. As an expert, you are
7 under a duty to make only statements in accordance with
8 your sincere belief. Can I ask you to read the expert
9 declaration into the record.
10 MR BIRKETT: I solemnly declare upon my honour and
11 conscience that my statement will be in accordance with
12 my sincere belief.
13 THE PRESIDENT: Thank you.
14 So I understand that you do not have a presentation.
15 That is confirmed by counsel?
16 MR PALMER: Yes.
17 THE PRESIDENT: Yes. Are you intending to ask direct
18 questions or are we going directly into
19 cross-examination?
20 MR PALMER: I think directly into cross-examination.
21 THE PRESIDENT: Your microphone is not on, but I heard you.
22 Fine. So then I turn to Respondent for questions to
23 Mr Birkett.
24 DR HART: Madam President, thank you. I'll be asking the
25 questions of Mr Birkett today.

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17:10 1 DR DONAGHUE: Nothing further.
2 THE PRESIDENT: Nothing further. Anyone from the Claimant?
3 No.
4 Then we eventually get to the end of your
5 examination. Thank you very much for your help.
6 MR PALMER: Thank you very much. And thank you to the
7 Respondent for the examination. Thank you for that.
8 THE PRESIDENT: Thank you.
9 So now the next thing on the agenda is to hear
10 Mr Birkett. Let's just take ten minutes just to get
11 organised, and then we'll start at 5.20 with Mr Birkett.
12 (5.11 pm)
13 (A short break)
14 (5.19 pm)
15 MR SCOTT BIRKETT (called)
16 THE PRESIDENT: We can start. It's almost 20 past.
17 I'm always waiting because of the remote viewers.
18 Good afternoon, sir. You've been with us now for
19 some time. Can you please confirm to us that you are
20 Scott Birkett?
21 MR BIRKETT: That's correct.
22 THE PRESIDENT: You are a BDO corporate finance partner?
23 MR BIRKETT: That is correct.
24 THE PRESIDENT: You have provided two expert reports in this
25 arbitration: the first one was 14 February 2024, and the

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17:21 1 THE PRESIDENT: Sure.
2 (5.21 pm)
3 Cross-examination by DR HART
4 Q. Mr Birkett, good afternoon.
5 A. Good afternoon.
6 Q. I understand you have your first report in front of you.
7 Could you please turn to page 3 of that report. That's
8 bundle D1, tab 7, page 6. And I'm looking at
9 paragraph 1.11.
10 A. Yes.
11 Q. There you say:
12 "In preparing this Report, I have referred to,
13 considered, and relied upon various sources of
14 documentation. All documentation referred to has been
15 referenced in this Report."
16 In this, your first report, you refer to the
17 consolidated financial reports of Mineralogy Propriety
18 Limited for the 2019 and 2020 financial years; that's
19 right, isn't it?
20 A. That's correct.
21 Q. And that's all the documents that you refer to in this
22 first report?
23 A. I believe so; and maybe my instructions.
24 Q. Yes, that's right, those were also the only documents
25 referred to in your instructions.

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<p>17:22 1 So just to confirm, you agree that you did not refer 2 to any documents which are authored by Zeph, the 3 Claimant? 4 A. I don't believe so. 5 Q. Thank you. 6 Now, turning to your second report -- this is D1, 7 tab 8, page 6; this is page 3 of your second report -- 8 I am referring to the equivalent paragraph 1.11. Again, 9 here you state: 10 "All documentation referred to has been referenced 11 in this Supplementary Report." 12 A. I believe so. 13 Q. And in this report, you refer to the supplementary 14 report of Professor Lys? 15 A. Yes. 16 Q. And you briefly refer to the expert report of 17 George Rogers, don't you? 18 A. Yes. 19 Q. And I'll show you very quickly on the next page -- so 20 this is page 7 in the same tab on Opus -- at 21 paragraph 2.7.2.1, you refer to the financial statements 22 of Mineralogy for 2019, which was a document you'd 23 referred to in your previous report; is that right? 24 A. Yes. 25 Q. And in this supplementary report, you don't refer to any</p> <p style="text-align: center;">Page 281</p>	<p>17:24 1 A. That is correct. 2 Q. So to confirm my understanding, your view is that if 3 Zeph wanted dividends to be paid to it, it could seek to 4 achieve that either by influencing the current directors 5 of Mineralogy or by appointing new directors; is that 6 right? 7 A. That would be the ordinary course, yes. 8 Q. Thank you. 9 And I'll just take you to the expert report of 10 Mr Peter Dunning KC. This is at bundle D1, tab 10, 11 page 1. Just while it's being pulled up, this was 12 a report that was filed by the Claimant in these 13 proceedings. I'll take you to page 2 on the Opus 14 platform and I'll show you paragraph 2. 15 Mr Dunning says: 16 "I have practiced as a barrister since 1992 and was 17 appointed as Senior Counsel in 2005. From 2014-2019 18 I was the Solicitor-General for Queensland." 19 That's just to show you his legal qualifications. 20 Turning to page 6 in the same tab on Opus, please. 21 At paragraph 7 on that page, in this paragraph 22 Mr Dunning is referring to the process by which 23 a dividend may be declared by Mineralogy. As you can 24 read, he says: 25 "Part 31 of the Mineralogy Constitution applies to</p> <p style="text-align: center;">Page 283</p>
<p>17:23 1 other documents, do you? 2 A. I don't believe so. 3 Q. Once again, therefore, you agree that you do not refer 4 to any documents authored by Zeph? 5 A. I don't believe so. 6 Q. And this means that you don't rely on any such documents 7 in giving your expert opinion? 8 A. I don't believe so. 9 Q. Thank you. 10 So staying in the second report, and indeed on the 11 same page but a little higher up, looking at 12 paragraph 2.5 -- do you have that, Mr Birkett? 13 A. Sorry, can you repeat that? 14 Q. Paragraph 2.5 on -- 15 A. I do. 16 Q. -- that same page. Thank you. You say: 17 "... Zeph, as the 100% shareholder in Mineralogy, 18 has the ability to control all appointments to the board 19 of Mineralogy. On this basis, if Zeph did not want to 20 continue to keep some portion of retained earnings 21 invested in Mineralogy, it could have sought for 22 dividends to be paid through seeking that the current 23 directors of Mineralogy do so or by appointing new 24 directors to do so ..." 25 That's the wording of your report, isn't it?</p> <p style="text-align: center;">Page 282</p>	<p>17:26 1 dividends and reserves. Consistent with the Act ..." 2 That's a reference to the Australian 3 Corporations Act: 4 "... it is the directors of Mineralogy that must 5 recommend payment of a dividend, and its amount. Only 6 then, may Mineralogy in general meeting declare 7 a dividend not exceeding the amount recommended by the 8 directors." 9 I take it you don't disagree with this proposition 10 stated by Mr Dunning? 11 A. I don't disagree. 12 Q. So based on that, you presumably agree that 13 a distribution of dividends requires the agreement of 14 the Mineralogy directors? 15 A. I would agree with that. 16 Q. Thank you. 17 Now, going back to paragraph 2.5 of your report, you 18 say that Zeph could have directed the existing directors 19 not to pay or indeed to pay a dividend: it could have 20 directed the directors one way or the other. You're not 21 aware of any evidence of Zeph having given such 22 a direction, are you? 23 A. I am not. 24 Q. You say also that Zeph could have appointed new 25 directors as a means of controlling the distribution of</p> <p style="text-align: center;">Page 284</p>

17:27 1 dividends. Do you agree that you do not point to any
2 evidence that Zeph ever considered that?
3 A. I do not.
4 Q. Do you agree that your report makes no reference to any
5 evidence that Zeph turned its mind to returning or
6 forgoing dividends at all?
7 A. I do not point to any evidence.
8 Q. Thank you.
9 So looking at paragraph 2.6 of the report -- this is
10 at bundle D1, tab 8, page 7. (Pause)
11 I'll just let you read that paragraph to yourself.
12 (Pause)
13 A. Yes.
14 Q. Following on from the answers that you just gave me, you
15 agree, don't you, that you don't point to any evidence
16 of what you call a "deliberate act" by Zeph of not
17 seeking the payout of earnings that Mineralogy retained?
18 A. Well, I guess the fact that they didn't do it means that
19 they must have deliberately not done it.
20 Q. I understand the point, that you're saying they didn't
21 do it. But my question is about Zeph having turned its
22 mind to this question of dividends. And you've already
23 confirmed that you don't have any evidence of whether
24 it turned its mind to that question or not?
25 A. That's the case.

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17:30 1 A. I do.
2 Q. Your argument, as I understand it, is that for these
3 purposes, one should not be looking at the fact that
4 Mineralogy and Zeph are separate legal entities, and one
5 should instead focus on who has real control of
6 Mineralogy. Is that a fair representation of your
7 argument?
8 A. I think that is.
9 Q. Are you aware that Mineralogy International Limited --
10 this is a New Zealand incorporated company; we've been
11 referring to it as "MIL" throughout these proceedings --
12 are you aware that MIL owns all the shares in Zeph,
13 the Claimant?
14 A. I believe that to be the case, but I haven't looked at
15 MIL as part of my work.
16 Q. I accept that. Will you take it from me that that is
17 the case?
18 A. I'll take it on your word.
19 Q. Thank you. And taking me on my word at that, do you
20 agree that MIL therefore controls Zeph?
21 A. Yes.
22 Q. And are you aware that all the shares in MIL are owned
23 by Mr Palmer and two companies called Closeridge
24 Proprietary Limited and River Crescent Proprietary
25 Limited? Are you aware of that?

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17:29 1 Q. So you say that they didn't do it. But it's possible
2 that they simply didn't turn their mind to it, isn't it,
3 because you have no evidence that they did turn their
4 mind to it?
5 A. I guess that is possible.
6 Q. So turning over the page, looking at paragraph 2.9, just
7 looking at the last two lines there. I'll just let you
8 read it to yourself again, starting with the words "the
9 substance". I think if you just read the last two lines
10 to yourself.
11 A. Yes.
12 Q. You refer to a "conscious investment decision",
13 don't you?
14 A. I do.
15 Q. But it follows from the answers that you just gave me
16 that you don't have any evidence of Zeph having made
17 a "conscious investment decision", do you?
18 A. Well, I would suggest the act of not doing something
19 does not mean it's not conscious. But I don't have
20 explicit evidence.
21 Q. Thank you, Mr Birkett.
22 At paragraph 2.9, so again looking at that same
23 paragraph, you say that Mineralogy retaining its
24 earnings was, in substance, an investment by Zeph,
25 don't you?

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17:31 1 A. I'll take your word on that again.
2 Q. I appreciate that. And in turn, Mr Palmer owns those
3 two companies which I just mentioned, Closeridge and
4 River Crescent?
5 A. I'll take your word on that.
6 Q. And taking me at my word, would you agree that Mr Palmer
7 controls MIL?
8 A. It sounds like he does.
9 Q. At around 3.10 today (page 218), you were in the room
10 listening to Mr Palmer's evidence. He said -- and
11 I apologise if this isn't a direct quote, but I've done
12 my best on the transcript as we have it:
13 "As private company, I find that the reality [of]
14 how it operates is ... whatever I say goes, as
15 [a] shareholder."
16 Do you remember him saying that?
17 A. Something along those lines.
18 Q. And he said yesterday in submissions, and then again
19 today in re-examination, that he makes decisions
20 individually and not by committee. Do you remember him
21 saying that?
22 A. I do believe I recall that.
23 Q. So, Mr Birkett, if you're looking at the question of
24 substantive real control, do you agree that the only
25 conclusion you could reach is that Mr Palmer controls

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17:32 1 Mineralogy?
 2 A. I believe that would be the case.
 3 DR HART: Thank you, Mr Birkett. I have no further
 4 questions.
 5 THE PRESIDENT: Thank you.
 6 Any questions in re-direct?
 7 MR BYRNE: No questions, thank you.
 8 THE PRESIDENT: No questions.
 9 Do my colleagues have questions?
 10 (5.32 pm)
 11 Questions from THE TRIBUNAL
 12 THE PRESIDENT: Can we just go back to your expert report
 13 number 2. I understand that you have changed it
 14 considerably with respect to the dividends after reading
 15 Professor Lys's report, because he was saying that one
 16 consideration for distribution of dividends is
 17 liquidity, and if you don't have the liquidity, then in
 18 principle you will not pay out dividends. Is that
 19 right?
 20 A. Madam President, I think liquidity is a relevant
 21 consideration and that's correctly raised in the Lys
 22 report. I guess the only other thing that I would add
 23 is that if there was a conscious decision to decide to
 24 pay out retained earnings or the profits of a company,
 25 there would be other avenues open to do that, if the

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17:35 1 I'm talking about the hypothetical circumstances where
 2 you did not want the investment to be retained within
 3 the subsidiary.
 4 THE PRESIDENT: Then in 2.7.1, you say: well, the level of
 5 dividends is greater than zero; good. And then you look
 6 at the cash balance. But of course you accept that you
 7 cannot distribute the company's entire cash balance,
 8 because otherwise you will not have funds to continue to
 9 operate.
 10 I assume that you take this into account when you
 11 say that "indicate[s] that many millions of dollars
 12 could have been paid"? I mean, that's quite a vague
 13 statement for an expert, is it not?
 14 A. Well, there's probably two things that affect that
 15 statement. I haven't done enough analysis to understand
 16 what the working capital requirements of the entity are.
 17 Further to that, if you were of a mind to get
 18 profitability -- or, pardon me, to pay out retained
 19 earnings as dividends, you would probably change the
 20 amount of investment that you make in that entity,
 21 therefore leaving a higher cash balance behind for you
 22 to distribute.
 23 So again, it's hypothetical. Obviously they've
 24 chosen to leave that money -- sorry, they did not choose
 25 to pay a dividend, and Zeph did not choose to agitate,

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17:33 1 cash in the bank at the point in time was not
 2 sufficient, by using leverage or an in specie
 3 distribution.
 4 But it must be said that at a point --
 5 THE PRESIDENT: Yes, you mention in 2.7.2.1 of your second
 6 report, on page 4 -- do you have it there?
 7 A. I do.
 8 THE PRESIDENT: Yes. There you say that you could use
 9 leverage, right?
 10 A. That's correct.
 11 THE PRESIDENT: So you would incur debt to pay out
 12 dividends; is that the proposal?
 13 A. That's correct.
 14 THE PRESIDENT: Yes.
 15 I don't know whether you were here yesterday, but
 16 it appears to me that Mr Palmer said in the opening
 17 argument that one reason -- that was pages 198 to 199.
 18 I'm saying this for the transcript, not for you.
 19 A. Sure.
 20 THE PRESIDENT: He said that the reason for not distributing
 21 dividends and retaining earnings was precisely to avoid
 22 that Mineralogy had to incur debt.
 23 So that's somewhat in contradiction with your
 24 suggestion here, is it not?
 25 A. Yes, I guess the fact that the investment remains --

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17:36 1 apparently, to pay a dividend. So it's a hypothetical
 2 question as to how you would go about that if they did
 3 not choose to do that.
 4 THE PRESIDENT: It is hypothetical indeed, yes.
 5 Fine. Let me just check, but -- no, I have no
 6 further questions.
 7 So if there are no follow-up questions on the
 8 parties' part, that concludes your examination. And
 9 we are grateful to you that you made the long trip to
 10 The Hague.
 11 MR BIRKETT: Thank you.
 12 THE PRESIDENT: So that leads us to the end of the
 13 witness/expert examinations, and now it remains for us
 14 to get organised for tomorrow.
 15 (5.37 pm)
 16 Tribunal questions to the parties
 17 THE PRESIDENT: The Tribunal, as we mentioned, has a number
 18 of questions that it would like to put to you for your
 19 closing remarks. It goes without saying that we may
 20 have other questions tomorrow. (Pause)
 21 I was saying obviously there may be other questions
 22 that come up, and follow-up questions, as you present
 23 your answers tomorrow.
 24 I should also preface the questions with the usual
 25 caveat: do not over-interpret the questions. They are

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17:38 1 not reflecting any decisions/judgments that have already
2 been made. We are simply trying to cover the ground to
3 make sure that if we get to certain decisions, we have
4 the relevant material and you have had an opportunity to
5 address these points.

6 So the first question is about the timing for the
7 Tribunal to assess the requirements for denial of
8 benefits. We understand the parties' positions: the
9 Claimant says 13 August 2020; the Respondent says not
10 later than 14 October 2020, but agrees to
11 13 August 2020.

12 The Tribunal is tasked with applying a treaty
13 provision, and therefore we think we have to make our
14 own assessment of what the correct date is; obviously
15 considering the parties' submissions, but still.

16 There are four dates, in our understanding, that
17 could come into play. One is, of course,
18 13 August 2020: that's the enactment of the Amendment
19 Act. The second one is 14 October 2020, which is the
20 request for consultation under the treaty. The third
21 one is 22 December, when the Respondent announces it is
22 considering denying benefits; that's Exhibit C-153. And
23 the fourth and last one is 14 June 2021, which is
24 Exhibit C-155, which is the actual denial letter.

25 So we would be assisted if you could comment on

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17:43 1 (1) Assume a corporation restructures to gain treaty
2 protection with a specific disagreement in mind. If it
3 has it in mind, it means it is foreseeable.

4 (2) Assume further that disagreement does not lead
5 to the invocation of treaty protection.

6 (3) Assume, finally, that another disagreement
7 arises, as such not foreseeable.

8 And the question is: is the invocation of treaty
9 protection for that other disagreement abusive or not?

10 And then there is an add-on question: would the
11 answer change if instead of saying "disagreement", which
12 we chose as a neutral term, we would use the term
13 "dispute" or we would use the term "measure"?

14 The fourth question is again an assumption. Assume
15 an investor has established substantive operations in
16 the home jurisdiction of the investor, but the investor
17 is owned and controlled by a national of the host
18 country, yet these operations were set up to avoid
19 denial of benefits by the host country. Does the
20 motivation or the reason for setting up the operations
21 matter; and if so, what is the effect?

22 That is a question that goes a little along the
23 lines of a type of abuse of the denial of benefits.

24 However, it is not a typical abuse situation because
25 when you abuse something, you abuse a right; here you

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17:41 1 these dates and say which ones may be relevant, not
2 relevant, for what reason. So this is the first
3 question.

4 The second question is asking you to make
5 an assumption. And again, these are really working
6 assumptions and nothing but that.

7 Assume the Tribunal views the facts in the record as
8 showing two streams of events: one stream linked to the
9 disagreement -- and I'm on purpose using the word
10 "disagreement" -- with the CITIC parties; and one stream
11 related to the disagreement about the BSIOP proposal.
12 Under this assumption, what are the connecting factors,
13 if there are any, between the two streams?

14 We have seen, for instance, the exhibits -- and now
15 I'm quoting from memory: I think it's R-141 and R-145 --
16 which the Respondent asked questions about, trying to
17 show the links. Are there other such connecting
18 factors? And conversely, are there disconnecting
19 factors, if I can call them like that: that means
20 elements that show a disconnection between the
21 two streams?

22 That was the second question.

23 Now, the third question is again an assumption, and
24 that is an assumption in three parts, followed by
25 a question.

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17:46 1 abuse the denial of a right, or you could arguably be in
2 a position of seeking to abuse the possibility of not
3 being denied benefits. I hope that's clear.

4 The fifth question is the following. You may
5 remember that in October 2023, the Tribunal raised the
6 question of Article 27(2) of the treaty, which is the
7 article about joint interpretations by contracting
8 states. It says specifically -- I'm just quoting the
9 first sentence:

10 "The tribunal shall, on its own account or at the
11 request of a disputing party, request a joint
12 interpretation of any provision of this Agreement that
13 is in issue in a dispute."

14 And then it goes on about how to do it.

15 Both parties answered then that, in their current
16 understanding of the issues in dispute, they did not
17 propose to seek a joint interpretation. And the
18 Tribunal then concluded by saying that it reserved its
19 decision on the necessity of a joint interpretation
20 until it would be more fully briefed on the issues.

21 The question to the parties now is: what is your
22 present position on this issue? And we of course still
23 reserve the decision.

24 These are all the questions.

25 For purposes of your presentations tomorrow,

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17:48 1 we would like to say that we have no -- it's not that
2 we have no interest, but we do not particularly wish to
3 hear further about estoppel, acquiescence. This is
4 a topic on which we have what we need if we have to
5 apply it. And we would also like to say that the main
6 focus for our purposes is denial of benefits,
7 essentially the question that I have asked before; not
8 exclusively, but especially.

9 With respect to objection 4, abuse is the
10 foreseeability, and that also goes in a major part to
11 the question asked before about the links between the
12 two streams.

13 Let me turn to my colleagues to see whether I forgot
14 something. (Confers)

15 When I say "main focus", it's not to say that this
16 is the main focus of our thinking; it's to say that
17 these are matters on which we would like to have more
18 information and submissions from you.

19 So the idea tomorrow is for you to answer these
20 questions, but obviously you may address any other
21 topics that you think are appropriate in furtherance of
22 your case at the close of this hearing. That goes
23 without saying.

24 We should see how we manage in terms of time. We do
25 have time, because we are now very much in line with our

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17:52 1 MR PALMER: Yes, sure.
2 THE PRESIDENT: We could start at 2.00. Is that fine?
3 MR PALMER: Yes, and finish at 4.00.
4 THE PRESIDENT: Then you have until 4.00, and that will
5 a little bit more: that's 4.15. And then we have
6 a procedural discussion, that should be fairly quick,
7 and then at 5.00 we should be done.
8 Does that make sense in terms of --
9 MR PALMER: Yes.
10 THE PRESIDENT: I mean, this is just indicative, of course,
11 so we all know how to get organised.
12 DR DONAGHUE: It certainly makes sense to us, thank you.
13 And thank you to the Claimant for that indication.
14 MR PALMER: It makes sense to us too, Madam President.
15 THE PRESIDENT: Good. Excellent.
16 Were the questions clear? Because I should have
17 asked that before. Or is there any clarification
18 needed? (Pause)
19 DR DONAGHUE: No, thank you.
20 THE PRESIDENT: Fine.
21 Is it the same on your side?
22 MR PALMER: It is, Madam Chairman.
23 THE PRESIDENT: Good.
24 MR PALMER: As I understand it, we'll be addressing the
25 questions, then any other issues which we --

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17:50 1 schedule. We could start tomorrow a little later than
2 9.30: that would give you a little more time.
3 I don't know exactly how much time each party has
4 left. We had said that the closing should not be over
5 two hours, and if you both agree with that, then we
6 could stay with this rule. Obviously the Respondent may
7 have a little less left by now. But it would help the
8 Tribunal to have your views without your being
9 restricted tomorrow in what presentations you wish to
10 make on both sides.

11 Yes, Mr Palmer.

12 MR PALMER: May I suggest that both sides be given
13 two hours, rather than restrict the Respondent, even if
14 the Respondent's time is down a bit.

15 THE PRESIDENT: Yes, that's appreciated. I think that is --

16 MR PALMER: I think that's a fair way to approach it.
17 I'd also suggest that we have a later starting time,
18 maybe 10.30 or something, so we have got more time to
19 adequately answer these questions, because they're
20 obviously important and the Tribunal wants a considered
21 opinion from both sides.

22 THE PRESIDENT: We could start at 10.30, go on till 12.30;
23 maybe with a break and some other questions, it will be
24 12.45. Then we could take a somewhat longer lunch, if
25 you wish, because you're kind of responding.

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17:53 1 THE PRESIDENT: If you wish to summarise the result of the
2 hearing or present your main points about your case,
3 you're welcome to do this, as long as you answer the
4 questions, because that would help us, plus you stick to
5 the two hours.
6 MR PALMER: Yes, that's fine. That's fine.
7 THE PRESIDENT: Nothing further from anyone? Good.
8 DR KIRK: Could I just -- sorry -- raise one minor point.
9 It's just come to the attention of the Claimant
10 today that a number of still shots of the hearing today
11 are being published in the Australian media. I don't
12 know what the Tribunal had in mind regarding recording,
13 but I think it might be helpful just to record in the
14 transcript here once again that recording of the
15 live stream is prohibited.
16 THE PRESIDENT: I think that's what the order says,
17 doesn't it?
18 DR KIRK: It does indeed, yes.
19 THE PRESIDENT: Let me just check. I think it's in PO5, or
20 is it in PO3? (Pause) It is PO5. Yes, exactly. Okay,
21 I have it here. Thank you.
22 So 31, yes:
23 "... there shall be a public webcast of the Hearing.
24 Viewers shall register online to access the Hearing and
25 shall commit not to use the webcast feed for any

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17:55 1 improper purpose, including not to record the webcast,
2 not to make it available online or otherwise."
3 So this is restated on the record.
4 DR KIRK: Thank you very much.
5 THE PRESIDENT: Fine. If there is nothing further, then
6 I wish you a good evening. That may be a little ironic;
7 I didn't mean it ironically. Have all a good evening.
8 See you tomorrow at 10.30.
9 (5.56 pm)
10 (The hearing adjourned until 10.30 am the following day)
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