

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC(I) 3

Originating Application No 15 of 2025

Between

Hyatt Terminal and Industrial
Corporation

... Claimant

And

Filipinas Third Millenium
Realty Corporation

... Defendant

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside —
Jurisdiction — Whether proper party to arbitration agreement]

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Hyatt Terminal and Industrial Corp
v
Filipinas Third Millenium Realty Corp

[2026] SGHC(I) 3

Singapore International Commercial Court — Originating Application No 15 of 2025

Philip Jeyaretnam J, Sir Henry Bernard Eder JJ, Douglas Samuel Jones AO JJ
9 December 2025

26 March 2026

Judgment reserved.

Philip Jeyaretnam J (delivering the judgment of the court):

1 This is an application by Hyatt Terminal and Industrial Corporation (“HTIC”) to set aside an arbitral award (“Award”) granted in favour of Filipinas Third Millenium Realty Corporation (“FTMRC”) in a Singapore-seated arbitration, on the jurisdictional ground that FTMRC was not a party to the arbitration agreement.¹ The application turns on whether a lease entered into between HTIC as lessor and Total Petroleum Philippines Corporation (later renamed Total (Philippines) Corporation (“TPC”)) as lessee was validly transferred by a deed of assignment executed by TPC in favour of FTMRC.

¹ Claimant’s Bundle of Documents for SIC/OA 15/2025 dated 1 December 2025 (“CBOD”) at p 192, para 13; Claimant’s Written Submissions for SIC/OA 15/2025 dated 1 December 2025 (“CWS”) at paras 29, 44.

2 The lease was in respect of 8.8726 hectares of land in Bataan, Philippines. It was signed on 29 December 2000 (“Lease Contract”). On 5 July 2021, TPC purportedly assigned the Lease Contract to FTMRC through the execution of a deed of assignment (“Deed of Assignment”). The tribunal, by a 2:1 majority, found that “TPC had validly assigned the Lease Contract to FTMRC”.²

3 HTIC contends that the Award should be set aside as FTMRC is not a proper party to the arbitration agreement found in the Lease Contract: Art 34(2)(a)(i) of the UNCITRAL Model Law on International Commercial Arbitration (“Model Law”), which is given the force of law in Singapore by s 3(1) of the International Arbitration Act 1994 (2020 Rev Ed) (“IAA”). Having considered the parties’ submissions, we allow the application. These are our reasons.

Facts

Circumstances surrounding the Lease Contract

4 HTIC was incorporated in the Philippines in 1994 for the purposes of owning and operating an oil and gas terminal.³ An oil terminal (“Terminal”) was constructed over an 8.8726-hectare portion of land owned by HTIC (“Land”).

5 On 3 February 1997, HTIC entered into a joint venture contract (“JV Contract”) with Total Raffinage (renamed Total Marketing Services, and subsequently TotalEnergies Marketing Services (“TEMS”)) for the oil and

² CBOD at p 284, No. 3(C)(a).

³ Jhoanna Lee-See’s Witness Statement filed 4 August 2025 (“Lee-See-1”) at p 616, question 3.

petroleum operations of the Terminal.⁴ The JV Contract provided for, *inter alia*, the establishment of a joint venture company,⁵ the joint venture company to be granted “the exclusive right to use the land plot on which the Terminal facilities are located”,⁶ and the joint venture company to “enter into a Lease Contract” when “legally feasible”.⁷ On 14 August 1997, TPC was incorporated as the joint venture company, with HTIC contributing 40% of the subscribed capital of TPC.⁸ As soon as it was incorporated, TPC began occupying and operating the Terminal, but ownership over the Land remained with HTIC.⁹

6 Prior to April 1999, HTIC divested from TPC and all of HTIC’s shares in TPC were bought by Total Raffinage.¹⁰ However, TPC remained in control of the Terminal even after the divestment.¹¹

7 On 29 December 2000, HTIC and TPC entered into the Lease Contract. The material terms of the Lease Contract that are relevant to this dispute are:¹²

...

TOTAL PETROLEUM PHILIPPINES CORPORATION ...

-Hereinafter referred to as “the Company” or “the Lessee”, which expression shall include affiliated companies, successors and assigns.

...

⁴ Lee-See-1 at p 616, question 3.

⁵ CBOD at p 121, Recital C.

⁶ CBOD at p 131, Art 14.2.

⁷ CBOD at p 131, Art 14.2.

⁸ Lee-See-1 at p 617, question 5.

⁹ Lee-See-1 at p 6149 line 11–p 6150 line 12.

¹⁰ Lee-See-1 at pp 617–618, questions 5 and 6.

¹¹ Lee-See-1 at p 620, question 10.

¹² CBOD at pp 165–167, 169, 175.

ARTICLE 3 – Term of the Lease Agreement

This Lease Agreement shall commence on the date of coming into force as provided in article 21 hereafter and shall be effective until October 22, 2022, renewable for twenty five (25) years thereafter under the same terms and conditions as herein provided. The duration of the Lease Agreement shall never be affected by any change in the capital of the Company or of HTIC.

...

ARTICLE 7 – Sublease

The Company shall not sublease the Land to a third party or cause it to become subject to any lien without the prior consent of HTIC, provided that:

...

- (ii) The Company may, without consent, pledge, charge or assign its rights under this Lease Agreement to its assignees ...

ARTICLE 14 – Disputes

- 14.1 All disputes arising in connection with the present Lease Agreement and which cannot be amicably settled shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (“ICC”) by three (3) arbitrators appointed in accordance with the said rules.

The arbitration shall be held in Singapore and the decision and award of the arbitrators shall be final and binding upon the Parties hereto.

Arbitration proceedings shall be in English.

Laws of the Philippines shall be the law of the present Agreement provided that the arbitrators shall determine the rules governing the proceedings in accordance with ICC Rules.

...

ARTICLE 20 – Miscellaneous

- 20.1 The Lease Agreement shall be binding upon the Parties and their successors and permitted assigns.
- 20.2 Subject to article 7 of this Lease Agreement, assignment of rights and obligations hereunder to any third party may not be made without the prior written consent of the other party to this Lease Agreement.

...

[emphasis in original]

8 It is undisputed that the law governing both the Lease Contract and the arbitration agreement is Philippine law.¹³

Involvement of the Filoil Group and FTMRC

9 On 24 September 2015, the Total Group and the Filoil Group entered into a joint venture arrangement for the operation of a network of petroleum stations and associated logistical support in the Philippines.¹⁴ This led to a reorganisation of the ownership structure within the two groups,¹⁵ which resulted in the following ownership structure:¹⁶

¹³ List of Issues dated 23 September 2025 (“List of Issues”) at p 6.

¹⁴ Maria Rosette Geraldine Oquias’s Witness Statement filed 11 September 2025 (“MRGO-1”) at paras 17–18; Lee-See-1 at p 1603.

¹⁵ MRGO-1 at paras 18–20.

¹⁶ Lee-See-1 at p 1607; MRGO-1 at para 21.

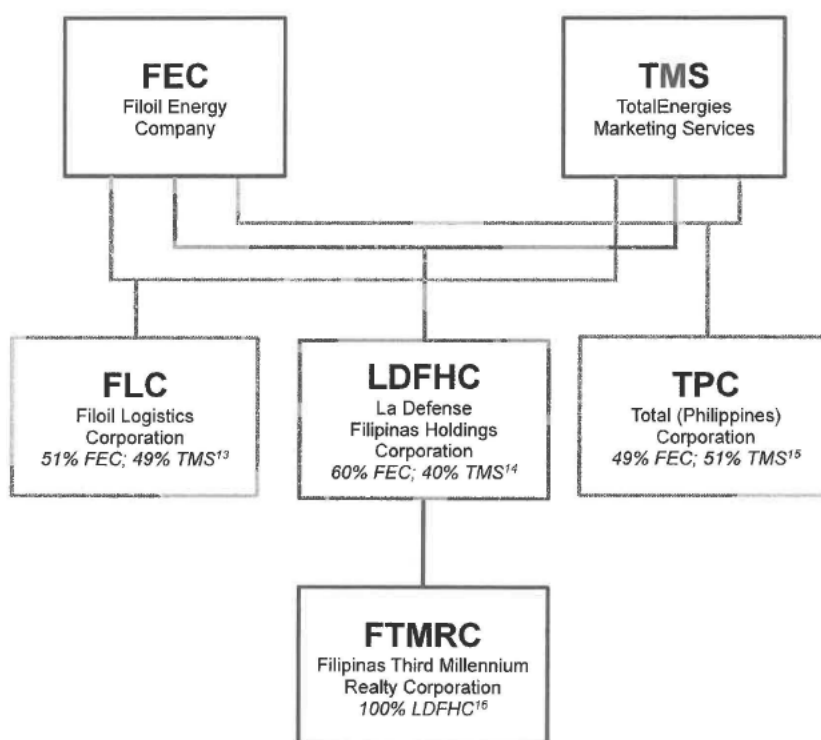


Diagram 1: Ownership structure of the Filoil and Total Groups as of 5 July 2021

10 On 22 June 2016, through a letter and a draft deed of assignment (“2016 Draft Deed”), TPC requested HTIC’s consent for the assignment, transfer and conveyance of all its “rights, obligations, title and interests in and to the Lease Agreement” to Filoil Logistics Corporation, one of the companies under the Filoil-Total joint venture.¹⁷

11 HTIC did not provide consent. Instead, on 27 July 2016, HTIC replied seeking clarification regarding some of the terms in the 2016 Draft Deed and “request[ing] that the parties convene in a spirit of mutual understanding and equity with a view to discuss and agree upon necessary amendments or revisions

¹⁷ Lee-See-1 at para 12; CBOD at pp 379–380 (Lee-See-1 at pp 3215–3216).

to the Contract’’.¹⁸ However, TPC did not reply to HTIC’s letter and did not pursue the 2016 Draft Deed any further.¹⁹

12 Between 2018 and 2020, the Filoil Group (through various entities within the Group) made various offers to HTIC for acquisition of the Land and the surrounding property.²⁰ HTIC rejected all offers.²¹

13 On 7 December 2020, the Filoil Group (through Filoil Energy Company (“FEC”)) sought an extension of the Lease Contract for another 25 years.²² On 4 January 2021, HTIC sought “a few points of clarification”, including questions about the Filoil Group’s understanding of the role of lessees and proof of the relationship between the Filoil Group and TPC, in order “to continue [their] discussions in good faith”.²³ While the Filoil Group eventually replied on 18 January 2021 indicating that they would “secure a confirmation letter”,²⁴ no such confirmation letter was ever provided to HTIC and HTIC took this to mean that it never entered into any negotiations for sale or lease of the Land.²⁵

¹⁸ CBOD at pp 384–385 (Lee-See-1 at pp 3219–3220).

¹⁹ CBOD at p 208, para 118 (Lee-See-1 at p 62).

²⁰ CBOD at pp 387–388, 390, 392, 394, 396, 398, 400 (Lee-See-1 at pp 3521–3522, 3553, 3555, 3557, 3561, 3563, 3565).

²¹ CBOD at pp 339–341, Questions 3–4 (Lee-See-1 at pp 823–825).

²² CBOD at p 402 (Lee-See-1 at p 3567).

²³ CBOD at pp 404–405 (Lee-See-1 at pp 3569–3570); Lee-See-1 at p 511 para 1.19.

²⁴ CBOD at p 407 (Lee-See-1 at p 3571).

²⁵ Lee-See-1 at p 511 paras 1.20, 1.21.

Circumstances surrounding purported assignment of Lease Contract to FTMRC

14 On 5 July 2021, TPC purportedly “assigned the Lease Contract to FTMRC” by way of a deed of assignment (“Deed of Assignment”).²⁶ The material terms of the Deed of Assignment that are relevant to this dispute are:²⁷

WHEREAS, the Parties have agreed to execute this Assignment for TPC to transfer its rights and obligations as Lessee in the Lease Contract to FTMRC;

...

1. TPC unconditionally **ASSIGNS, TRANSFERS and CONVEYS** to FTMRC, its assigns and successors, all the rights, obligations, title and interests as Lessee in and to the Lease Contract constituted over the 8.8726 hectares portion of the Leased Premises;

...

4. The parties acknowledge that consent of HTIC as the Lessor in the Lease Contract with TPC is not required per Article 7 (ii) of the Lease Contract; thereby this document in itself fully effectuates the assignment from TPC to FTMRC and **RELEASES** TPC from the Lease Contract and from performing it and TPC shall be released and discharged from all claims, demands, liabilities, duties and obligations whatsoever under or in connection with the Lease Contract arising on or after the Effective Date.

...

[emphasis in original]

15 On 4 August 2021, 4 February 2022 and 23 February 2022, FTMRC served notices of renewal for the Lease Contract on HTIC.²⁸ According to FTMRC, TPC had “done and executed [an assignment of the Lease Contract] with FTMRC on July 5, 2021” and as such, “under Article 3 of the lease, the

²⁶ MRGO-1 at para 22.

²⁷ CBOD at p 181 (Lee-See-1 at p 1075).

²⁸ CBOD at pp 409, 411, 413 (Lee-See-1 at pp 1197, 1199, 1201).

renewal [was to] be effective immediately ... upon receipt of a Notice of Renewal from the Lessee – no further acts [were] necessary to effect renewal” [emphasis in original omitted].²⁹ HTIC did not recognise these notices of renewal sent by FTMRC as FTMRC was not a party to the Lease Contract.³⁰

16 On 21 April 2022, TPC informed HTIC that TPC had “assigned the Lease Contract to a sister company ... FTMRC”.³¹ On 22 September 2022, HTIC replied stating that it was “not bound to recognize ... FTMRC ... as assignee”.³² TPC disagreed, asserting in a reply letter dated 7 October 2022 that TPC had exercised its rights legally under Art 7(ii) of the Lease Contract to assign its leasehold rights under the Lease Contract, without prior consent from HTIC, to its assignee.³³

17 On 20 October 2022, HTIC sought to terminate the Lease Contract on the basis that TPC had “deliberately breached” the Lease Contract by “illegally assign[ing], without HTIC’s written consent, its leasehold rights to ... FTMRC”.³⁴

The arbitration

18 On 2 December 2022, FTMRC filed its request for arbitration with the ICC. On 14 May 2025, the tribunal issued its Award dated 6 May 2025, in which the majority found in favour of FTMRC. In particular, the majority found:

²⁹ CBOD at pp 409, 411, 413 (Lee-See-1 at pp 1197, 1199, 1201).

³⁰ Lee-See-1 at para 15.

³¹ CBOD at p 415 (Lee-See-1 at p 1203).

³² CBOD at p 420 (Lee-See-1 at p 2307).

³³ CBOD at p 425 (Lee-See-1 at p 2312).

³⁴ CBOD at pp 429–430 (Lee-See-1 at pp 2315–2316).

(a) Pursuant to Art 20.2, HTIC’s prior consent is only required for assignment of rights and obligations to “any third party”, which the majority interpreted as referring to “any entity or individual who does not fall within the categories of those expressly referred to in the Lease Contract”.³⁵ Since TPC’s “affiliated companies, successors and assigns” are expressly included in the primary definition of the term “the Lessee” under the Lease Contract,³⁶ HTIC’s prior consent is not required for assignments to parties falling within such categories.³⁷

(b) FTMRC is an “affiliate” or “affiliated company” to TPC which the majority of the tribunal interpreted broadly as “encompass[ing] not only control, shareholding, or a parent-subsidiary relationship or common ownership, but also professional relationships such as officers, directors, partners, copartners, employees, or advisers connected to the corporation”.³⁸ In arriving at this finding, the majority considered TPC’s shareholding in FTMRC in the years 1999, 2000, 2014, 2016, how FTMRC’s grandparent companies are TPC’s parent companies even in 2021 and 2022, and how FTMRC became the repository of the assets of the Filoil-Total joint venture.³⁹ Therefore, TPC’s assignment of the Lease Contract to FTMRC, though without the prior consent of HTIC, is valid.⁴⁰

³⁵ CBOD at pp 223–224, paras 199–202 (Lee-See-1 at pp 77–78).

³⁶ CBOD at p 165 (Lee-See-1 at p 1077); CBOD at p 222, para 195 (Lee-See-1 at p 76).

³⁷ CBOD at p 223, para 201 (Lee-See-1 at p 77).

³⁸ CBOD at p 229, para 225 (Lee-See-1 at p 83).

³⁹ CBOD at p 238, para 241 (Lee-See-1 at p 92).

⁴⁰ CBOD at p 238, para 241 (Lee-See-1 at p 92).

(c) As a permitted assign, FTMRC assumes the entirety of the Lease Contract, including the arbitration agreement, and the arbitral tribunal has jurisdiction to determine the dispute.⁴¹

19 On 4 August 2025, HTIC filed its originating application in SIC/OA 15/2025 (“OA 15”), seeking to set aside the Award.⁴²

Issues to be determined

20 HTIC raises three arguments for why the Award should be set aside, all of which are premised on how there is no valid arbitration agreement between HTIC and FTMRC as FTMRC is not a proper party to the arbitration agreement found in the Lease Contract: Art 34(2)(a)(i) of Model Law, read with s 3(1) of the IAA. For convenience, HTIC’s three arguments and FTMRC’s counter arguments are set out in the following table:

S/N	HTIC’s Arguments	FTMRC’s Counterarguments
1	The purported assignment is invalid or unenforceable as HTIC’s consent is required for the assignment of TPC’s rights and obligations under the Lease Contract but was not obtained.	Only an assignment to a third party requires consent, and FTMRC was not a third party but an affiliated company.
2	Even if HTIC’s consent is not required for the assignment of TPC’s rights under the Lease Contract, HTIC’s consent is still required for the assignment of	(a) HTIC is precluded from running this argument because it did not raise it in the arbitration or in the supporting witness statement for the application.

⁴¹ CBOD at p 247, paras 278–279 (Lee-See-1 at p 101).

⁴² SIC/OA 15/2025 Originating Application at prayer 1.

	TPC's <i>obligations</i> under the Lease Contract but was not obtained.	(b) Philippine law does not require consent for the transfer of obligations.
3	The Deed of Assignment is unenforceable against HTIC as the mandatory formal requirements under Philippine law were not satisfied – the Deed of Assignment was not recorded in the Registry of Property, nor did it appear in a public document.	(a) HTIC is precluded from running this argument because it was not raised in the supporting witness statement for the application. (b) The articles of the Philippine Civil Code relied on are not exhaustive or dispositive.

21 For proceedings under the IAA, the start of the claimant's witness statement must include a summary of the claimant's reasons why grounds in support of the application are established: para 3.2.3 of the SICC Procedural Guide. The summary of reasons requires more than just reference to the grounds for setting aside under the Model Law. It requires a brief outline of how the Model Law grounds connect to the facts of the case. The summary is important because it sets the framework for the application and informs the respondent's defence of the application. HTIC's witness statement did not set out such reasons and only stated:⁴³

In summary, HTIC's position in this Application is that the Award should be set aside under Article 34(2)(a)(i) and/or Article 34(2)(a)(iii) of the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**") because FTMRC is not a proper party to the arbitration agreement and there was hence no valid arbitration agreement between the Parties (see **Section IV** below).

22 The question then arises concerning the consequences for HTIC of not complying with para 3.2.3 of the SICC Procedural Guide. The court has a

⁴³ Lee-See-1 at para 6.

discretion in relation to the imposition of consequences, which may range from costs consequences to preclusion of the omitted argument. At this stage, our concern is whether to impose the consequence of preclusion. In order to answer this question, it is necessary to examine what Section IV of the witness statement contained. It certainly set out the first argument in detail.⁴⁴ FTMRC would have fully understood that it had to meet that first argument. When it came to the second argument, it was not fully spelt out and the word “novation” was not used. However, the distinction was drawn between “rights” and “obligations”. In particular, Art 20.1 prohibited assignment of rights and obligations without consent while Art 7(ii) only permitted assignment of rights but did not mention “obligations”.⁴⁵ This would not have been sufficient on its own. However, HTIC subsequently applied for and on 30 September 2025 were granted leave to address the court on two issues of Philippine law, namely:⁴⁶

(a) Can the parties to a lease contract validly agree to a stipulation that allows a party to assign its obligations to a non-party without the consent of the other party?

(b) Assuming that a lease contract allows a party to assign its rights but not its obligations thereunder to a non-party, and that party subsequently executes a deed of assignment in which it purports to assign both its rights and obligations under the lease contract to a non-party, what is the legal status and/or effect of that deed of assignment under Philippine law?

23 Both parties duly addressed us on these issues through Philippine

⁴⁴ See Lee-See-1 at paras 66–76.

⁴⁵ Lee-See-1 at paras 75, 81, 82.

⁴⁶ Correspondence from Courts dated 30 September 2025.

counsel. Accordingly, we will deal with this second argument in this judgment.

24 Turning to the third argument of unenforceability due to failure to comply with certain mandatory formal requirements of Philippine law, this argument was not included in the required summary nor mentioned in the first supporting affidavit. Counsel for HTIC sought permission to nonetheless argue this third point, on the basis that it was raised in the arbitration and had been articulated by the time when the list of issues for this application was discussed between counsel.⁴⁷ We decline to permit HTIC to run this third argument because it was not included in the first supporting affidavit and HTIC did not seek permission for Philippine counsel to submit on it or otherwise bring it properly into play.

Preliminary issue: Alvarez Affidavit

25 Before considering into the two remaining arguments raised by HTIC, we first address the preliminary issue of whether the court can consider in these proceedings an affidavit by Mr Daniel Emilio Gallard Alvarez dated 7 February 2024 (“Alvarez Affidavit”), which was filed in separate proceedings in the Philippines and which the tribunal had refused to admit.⁴⁸

Parties’ cases

26 HTIC contends that the court can and should consider the Alvarez Affidavit when determining HTIC’s jurisdictional objection.⁴⁹ HTIC highlights that the Alvarez Affidavit is not “new evidence” as it had applied to admit the

⁴⁷ 9 December 2025 Transcript (“Transcript”) at p 6 lines 6–10.

⁴⁸ Lee-See-1 at paras 41(a), 44.

⁴⁹ CWS at para 32.

Alvarez Affidavit in the arbitration – an application that was “unjustifiably refused” by the tribunal.⁵⁰ HTIC claims that it had only received the Alvarez Affidavit on 14 February 2024, after the deadline for the submission of additional or responsive documents had already lapsed on 2 October 2023 and this deadline was retroactively extended at a later date.⁵¹

27 HTIC submits that even if the Alvarez Affidavit were new evidence, there would be no bar to the introduction of new evidence in an application to set aside an award on jurisdictional grounds, which is to be heard *de novo*, save where the evidence (a) has no “conceivable relevance”, (b) would delay the hearing of the substantive application or (c) would cause the other party prejudice which could not be compensated by costs: *AQZ v ARA* [2015] 2 SLR 972 at [59]; *COT v COU* [2023] SGHC 69 at [58].⁵² However, HTIC contends that none of the three factors are present in this case. First, the Alvarez Affidavit “clearly has some relevance to HTIC’s jurisdictional objection” by confirming that FTMRC is not an affiliated company of TPC.⁵³ Second, admitting Alvarez’s Affidavit would not delay the hearing of OA 15 as HTIC had already adduced it as evidence at the earliest opportunity (*ie*, when filing OA 15).⁵⁴ Third, FTMRC has not alleged any prejudice nor will any prejudice be caused to FTMRC.⁵⁵

⁵⁰ CWS at para 37.

⁵¹ CWS at para 37.

⁵² CWS at paras 33–35, 39.

⁵³ CWS at para 40.

⁵⁴ CWS at paras 40, 42.

⁵⁵ CWS at paras 40, 42.

28 FTMRC contends that the Alvarez Affidavit is inadmissible in this application as HTIC “had not diligently adduced it during the Arbitration”.⁵⁶ On the law, FTMRC submits that in determining whether new evidence should be admitted when the court is conducting a *de novo* review of jurisdictional rulings, the court should apply the modified *Ladd v Marshall* test: *Government of the Lao People’s Democratic Republic v Sanum Investments Ltd* [2015] 2 SLR 322 (“*Sanum (HC)*”) at [43]–[56]; *Sanum Investments Ltd v Government of the Lao People’s Democratic Republic* [2016] 5 SLR 53 at [103]. Under this test, fresh evidence may be admitted if the party seeking to admit the evidence demonstrates:

- (a) sufficiently strong reasons why the evidence was not adduced at the arbitration hearing;
- (b) that the evidence if admitted would probably have an important influence on the result of the case though it need not be decisive; and
- (c) that the evidence is apparently credible though it need not be incontrovertible (*Sanum (HC)* at [44]).⁵⁷

29 Applying the modified *Ladd v Marshall* test, FTMRC submits that all three conditions would not be made out as:

- (a) HTIC has not shown sufficiently strong reasons why the evidence was not adduced at the arbitration hearing as it had obtained the Alvarez Affidavit by 14 February 2024, more than two months

⁵⁶ Defendant’s Written Submissions dated 1 December 2025 (“DWS”) at para 62.

⁵⁷ DWS at paras 63–68.

before the tribunal's extended deadline on 24 April 2024 for the submission of additional or responsive documents;⁵⁸ and

(b) further, the Alvarez Affidavit would not have an important influence on the outcome of the application as the court would still find FTMRC to be TPC's affiliate notwithstanding the contents of the Alvarez Affidavit.⁵⁹

Our decision on admission of the Alvarez Affidavit

30 We accept that on an application to set aside an arbitration award on jurisdictional grounds, the hearing is *de novo* and consequently, evidence not having been considered by the tribunal may in principle be admitted in court. This is so even where the tribunal had declined permission for the evidence to be adduced before it. However, we decline to admit the Alvarez Affidavit into evidence for the simple reason that it appears to be of limited relevance and cogency in the absence of a full inquiry into the circumstances in which it was made. Hence, it would be a difficult exercise to determine the weight that should be attributed to what might at most amount to an admission against interest or a prior inconsistent statement by FTMRC on the factual question of affiliation.

Whether HTIC's consent is required for assignment to TPC's affiliates

31 Having addressed the preliminary issue, we now start with the first issue of whether HTIC's consent is required for the assignment of TPC's rights and obligations under the Lease Contract. This is a matter of contractual interpretation.

⁵⁸ DWS at paras 69–72.

⁵⁹ DWS at para 73.

32 It is undisputed that the relevant principles of contractual interpretation under Philippine law are contained in Arts 1370 to 1379 of the Philippine Civil Code.⁶⁰ In summary, under Philippine law:⁶¹

(a) the court will give primacy to the literal meaning of the terms of a contract where the terms are clear and leave no doubt upon the intention of the contracting parties. If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former: Art 1370 of the Philippine Civil Code.

(b) in order to judge the intention of the contracting parties, parties' contemporaneous and subsequent acts shall be principally considered. This is particularly where the contractual terms are ambiguous: Arts 1370, 1371 of the Philippine Civil Code; *Benguet Corp v Cabildo* 585 Phil 23 (2008).⁶²

(c) where a term of a contract *admits of several meanings*, it shall be understood as bearing that import which is most adequate to render it effectual: Art 1373 of the Philippine Civil Code.

(d) the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly: Art 1374 of the Philippine Civil Code.

⁶⁰ List of Issues at p 6.

⁶¹ CWS at para 30; DWS at paras 15–16.

⁶² DWS at para 15(b).

HTIC’s consent is required even for TPC’s affiliates

33 HTIC contends that its consent is required for any assignment of the Lease Contract to FTMRC both under the Lease Contract and under Philippine law.

(a) Under Philippine law, Art 1649 of the Philippine Civil Code provides that “the lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary”. This point of law is undisputed between the parties.⁶³ HTIC submits that FTMRC has failed to show any “stipulation to the contrary” in the Lease Contract and as such, TPC cannot assign the Lease Contract without HTIC’s consent.⁶⁴

(b) Under the Lease Contract, Art 20.2 provides that “assignment of rights and obligations hereunder to any *third party* may not be made without the prior written consent of [HTIC]” [emphasis added].⁶⁵ HTIC contends that the term “third party” under the Lease Contract takes the literal meaning of “any party who is not a party to the Lease Contract”.⁶⁶ Since it is undisputed that FTMRC was not a party to the Lease Contract, regardless of whether FTMRC is an “affiliated compan[y]” or “successor” of TPC, HTIC contends that FTMRC is a “third party” within the meaning of Art 20.2 of the Lease Contract such that assignment to FTMRC requires HTIC’s prior written consent.⁶⁷

⁶³ List of Issues at p 9, para 3(h), read with CBOD at p 108, para 8.

⁶⁴ CWS at paras 45–46.

⁶⁵ CBOD at p 175 (Lee-See-1 at p 1087).

⁶⁶ CWS at para 51.

⁶⁷ CWS at paras 51–52.

(c) Art 7(ii) of the Lease Contract also does not support FTMRC’s interpretation that HTIC’s consent is not necessary for the assignment of rights and obligations under the Lease Contract to FTMRC. HTIC contends that Art 7(ii) refers only to entities that were existing “assignees” at the time when TPC sought to exercise its right under Art 7(ii).⁶⁸ This would be in line with parties’ intentions as, hypothetically, HTIC’s consent would have already been obtained at the time TPC was seeking to assign its rights and obligations to a third party under Art 20.2 of the Lease Contract, prior to TPC’s assignment of its right to sublet under Art 7(ii) to the same third party (which, at that point, would already be an existing assignee).⁶⁹

34 FTMRC rejects HTIC’s interpretation of Arts 20.2 and 7(ii) of the Lease Contract, instead contending that the Lease Contract permits TPC to assign its rights and obligations to its “affiliated companies” without HTIC’s consent because “affiliated companies” do not come within the meaning of “third party”. FTMRC contends that its interpretation is clear from the plain and unambiguous meaning of Arts 20.2 and 7(ii) of the Lease Contract, and is also supported by the application of Philippine law.⁷⁰

(a) Under the Lease Contract, the plain and unambiguous meaning of Arts 20.2 and 7(ii) is that TPC can assign its rights and obligations under the Lease Contract *without* HTIC’s consent to any entity that is not a “third party”.⁷¹ A “third party” cannot mean all non-signatories to

⁶⁸ CWS at paras 66, 67(a), 69.

⁶⁹ CWS at para 70.

⁷⁰ DWS at paras 20–22.

⁷¹ DWS at para 20.

the Lease Contract as Arts 20.1, 20.2 and 7(ii) indicate that the parties contemplated a category of “assignees” or “permitted assigns”, who are “obviously not signatories to the Lease Contract”, to whom TPC could assign the Lease Contract in the future without HTIC’s consent.⁷² FTMRC submits that this category of non-signatories, who are not third-parties, is defined in the primary definition of Total Petroleum Philippines Corporation in the Lease Contract to include Total Petroleum Philippines Corporation’s (and now, TPC’s) “affiliated companies” and “successors”.⁷³ Thus, it can be “read out of Art 20.2” that TPC is granted “advance consent” to assign rights and obligations under the Lease Contract to its “affiliated companies”.⁷⁴

Our decision on whether HTIC’s consent is required

35 It is helpful to set out the relevant statutory and contractual provisions.

(a) The starting point is Art 1649 of the Philippine Civil Code, which prohibits the lessee from assigning “the lease without the consent of the lessor, unless there is a stipulation to the contrary”.

(b) Art 20.2 of the Lease Contract in fact prohibits assignment of rights and obligations to any third party without consent, but does so subject to Art 7.

(c) Art 7 is headed “Sublease” and prohibits a sublease to a third party without consent. Art 7(ii) makes an exception for the lessee to

⁷² DWS at paras 22(a), 22(b).

⁷³ DWS at para 22(c).

⁷⁴ Transcript at p 48 lines 6–14.

“without consent, pledge, charge or assign its rights under this Lease Agreement to its assignees.”

36 Once the provisions are set out in sequence in this way, it can be seen that there is a general prohibition under law against TPC as lessee assigning the lease without the consent of HTIC. This prohibition applies generally, both to affiliates and non-affiliates. Art 20.2 must be understood against the background of this prohibition at general law.

37 Two points about Art 20.2 may be made.

(a) Unlike Art 1649 of the Philippine Civil Code which applies only to the lessee, Art 20.2 applies to both the lessor and the lessee. It can thus be seen as giving TPC protection against assignments without consent that TPC, unlike HTIC, did not have under the general law.

(b) The use of the term “third party” in Art 20.2, even if it means non-affiliates, does not create a positive exception for affiliates to the general prohibition on assignments without consent.

38 This second point is a simple matter of logic. To illustrate this point with an analogy, if there is a sign at a military base that says no unauthorised persons may enter, the presence of a second sign that says no person with a camera may enter could not be understood as derogating from the general prohibition in the first sign, such that unauthorised persons without a camera may now enter the base. In a similar vein, the general rule prohibiting assignment by a lessee without the consent of the lessor is not to be read as no longer applying to assignments by the lessee to its affiliates simply because the lease in question has added an express stipulation prohibiting assignments without consent to non-affiliates.

39 The majority of the tribunal did not refer to Art 1649 of the Philippine Civil Code. They concluded that the phrase “third party” only referred to non-affiliates because the lessee was defined to include “affiliated companies, successors and assigns”.⁷⁵ However, the majority did not go on to consider whether and how Art 20.2’s contractual prohibition on assignments to third parties would amount to a contrary stipulation for the purpose of Art 1649, let alone one that permitted assignments to a category not mentioned in that sub-article.

40 By contrast, the dissenting minority considered that this description of TPC “simply echoes the already established legal truism that a contract takes effect between the parties and their assigns and heirs”⁷⁶ but also referred to an opinion of the Philippine Supreme Court which noted that a contractual prohibition on assignment by the lessee was merely a reiteration of Art 1649.⁷⁷ The dissenting minority did so in the context of buttressing his interpretation of Art 7 as dealing with subleases and Art 20 as dealing with assignments. As noted in that discussion, subleases are governed by a different provision of the Philippine Civil Code, namely Art 1650, by which subleases may be created without the consent of the lessor, unless the lease contains an express prohibition. In short, the position for subleases is the reverse of that for assignments by the lessee.

41 Even if the prohibition under general law is left aside, and the inquiry focuses on the meaning to be attributed to the phrase “third party”, the literal meaning of “third party” is “third party to the Lease Agreement” in distinction

⁷⁵ CBOD at p 223 (Lee-See-1 at p 77, para 201).

⁷⁶ CBOD at p 295 (Lee-See-1 at p 149, para 17).

⁷⁷ CBOD at pp 305–306 (Lee-See-1 at pp 159–160, para 47).

to the phrase “party to this Lease Agreement” used in the same sub-article, namely Art 20.2. The qualifier “any” emphasises this meaning. There were two parties to the Lease Contract and any other entity would be a third party. This is a clear and straightforward interpretation that matches the language used. By contrast, the reading of “third party” as “an entity not affiliated to the assignor” is strained. It also suffers from the deficiency of indeterminacy, as illustrated by the two competing conceptions of “affiliate” contended for in this case. There is no basis in the language of the sub-article to determine precisely what is the category of entities to whom assignment without consent of the other party is permitted, if one embarks on the course of reading “third party” to mean something other than “third party to the Lease Agreement”. Turning to Art 7(ii), we consider that this created a limited exception to the prohibition on creating subleases and more pertinently subjecting the Land to any lien without consent of HTIC, by permitting TPC to pledge, charge or assign its rights under the Lease Contract to existing assignees of TPC. Thus, Art 7(ii) does not assist FTMRC’s case.

42 Given our view that the meaning of “third party” is clear, there is no need to consider contemporaneous and subsequent acts of the parties that might shed light on that meaning. Nonetheless, were we to do so, the act of the parties that bears closest relation to the meaning of the phrase would be TPC’s conduct in 2016 in seeking consent from HTIC for an assignment to an affiliate, as described at [10] above. This subsequent conduct of the parties was referred to and relied on by the dissenting minority.⁷⁸ Thus, assuming an ambiguity, the evidence of contemporaneous and subsequent acts would resolve any such ambiguity in favour of the interpretation that third party simply means “third party to the Lease Agreement”.

⁷⁸ CBOD at p 301 (Lee-See-1 at p 155, para 34).

43 We allow the setting aside application on the basis that FTMRC is not a party to the arbitration agreement because the purported assignment to it was not valid as HTIC did not consent to it.

Whether FTMRC is TPC’s affiliate

44 Both the majority and the dissenting minority held that FTMRC is TPC’s affiliate.⁷⁹ It is not necessary for us to decide this question in view of our conclusion on the need for HTIC’s consent even for assignment to affiliates.

Transfer of obligations

45 Notwithstanding our decision to allow the setting aside application on the first argument, we deal briefly with the second argument for completeness.

46 HTIC contends that even if TPC were able to assign its *rights* without HTIC’s consent pursuant to Art 7(ii) (as an “assignee”), TPC would still not be able to assign its *obligations* without HTIC’s consent. HTIC contends that no such clause exists in the Lease Contract and even if it did, such a clause would be contrary to Philippine law and public policy as:⁸⁰

(a) it would violate the principles of consent, mutuality and obligatory force under Arts 1308, 1315 and 1356 of the Philippine Civil Code by allowing a party to escape its obligations under the contract by simply assigning its obligations to a third party; and

(b) it would be contrary to Philippine law which provides that “obligations arising from contracts have the force of law between the

⁷⁹ CBOD at pp 238, 293–294 (Lee-See-1 at p 92 para 241, pp 147–148 paras 11–14).

⁸⁰ CWS at paras 91–98.

contracting parties” and can only be extinguished by, *inter alia*, payment or performance, or novation: Arts 1159, 1231 of the Philippine Civil Code. In particular, “[n]ovation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, *but not without the consent of the creditor*” [emphasis added]: Art 1293 of the Philippine Civil Code.

47 While FTMRC accepts that Art 7(ii) does not expressly mention the assignment of obligations, it contends that Art 7(ii) must be read together with Art 20.2, which makes clear that both rights and obligations can be assigned to TPC’s “permitted assigns” since Art 20.2 does not differentiate between the rights and obligations of the parties under the Lease Contract. On that basis, obligations can also be assigned to specified “assignees” without HTIC’s consent.⁸¹

48 We accept that under Philippine law, the transfer of obligations requires the consent of the obligee. The concept of novation in the Philippine Civil Code to describe this mode of transfer appears to be the same as the concept of novation in Singapore law. Philippine law distinguishes between assignment of contractual rights and novation of contractual obligations. Rights under commercial contracts (*ie*, those without any element of personal service) may generally be assigned without the consent of the other party, subject to any

⁸¹ DWS at para 47; Transcript at p 51 lines 11–22.

prohibitions in the contract and to any specific prohibitions under general law such as Art 1649 of the Philippine Civil Code. Obligations, on the other hand, may only be transferred *via* novation, which requires the consent of the other contracting party. This distinction makes obvious commercial sense: when contracting with another party, the ability of that other party to perform payment or other obligations under the contract may be material to the decision of the first party to contract with that other party.

49 Consequently, the Deed of Assignment would not have been effective to transfer TPC’s obligations to FTMRC. Nonetheless, a failed transfer of obligations would not necessarily prevent a valid assignment of rights effected by the same document, if such assignment could be done without the consent of the other party. The void assignment of obligations under Philippine law (as is also the case under Singapore law) may be severed from the Deed of Assignment where its removal does not undermine the latter’s fundamental character.

50 In this connection, we do not accept HTIC’s contention that the Deed of Assignment, which purports to assign both rights and obligations, is invalid in its entirety.⁸² We do not agree that an assignment of rights without a novation of obligations would “fundamentally rewrite the Deed of Assignment and do violence to the manifest intention of the parties thereto”.⁸³ The only difference from parties’ intentions under the Deed of Assignment would be that HTIC would look to TPC, instead of FTMRC to perform the obligations under the Lease Contract. TPC would not be released from performance of those obligations precisely because there had not been an effective novation of them.

⁸² CWS at paras 102–104.

⁸³ CWS at para 102.

Far from being a commercially absurd outcome, it is not uncommon for the assignor to remain liable and obliged to the other contracting party after assigning its rights to a third party.

51 Thus, ultimately this second argument does not operate independently from the first argument to invalidate the assignment of rights that purportedly occurred pursuant to the Deed of Assignment.

Conclusion

52 We allow HTIC's setting aside application but only on the basis of its first argument, namely that the assignment of rights by TPC under the Lease Contract required HTIC's consent which was not given.

53 Parties are to file their submissions on the incidence and quantum of costs limited to 15 pages excluding appendices setting out actual costs and disbursements incurred, and have 21 days from the date of this judgment to do so. Thereafter, we will proceed to decide on the incidence and quantum of costs.

Philip Jeyaretnam
Judge of the High Court

Sir Henry Bernard Eder
International Judge

Douglas Samuel Jones AO
International Judge

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