IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 13

Originating Application No 1 of 2024 (Summons Nos 8 and 10 of 2024)

In the matter of Section 8 of the International Arbitration Act 1994

And

In the matter of Articles 6 and 34 of the UNCITRAL Model Law on International Commercial Arbitration as set out and modified in the First Schedule to the International Arbitration Act 1994

And

In the matter of Order 23 of the Singapore International Commercial Court Rules 2021

Between

Pertamina International Marketing & Distribution Pte Ltd

… *Claimant*

And

P-H-O-E-N-I-X Petroleum Philippines, Inc (a.k.a. Phoenix Petroleum Philippines, Inc)

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Agreement — Breach]
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[Civil Procedure — Service]

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v
P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc)

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Singapore International Commercial Court — Originating Application No 1 of 2024 (Summons Nos 8 and 10 of 2024)
Sir Henry Bernard Eder IJ
19 April 2024

26 April 2024

Sir Henry Bernard Eder IJ:

Introduction

1 These proceedings concern an arbitration brought under the auspices of the Singapore International Arbitration Centre ("SIAC") in SIAC Case No. ARB No. 084 of 2022 ("ARB 84") and a Final Award signed and dated 28 November 2023 ("Award") whereby it was determined that the defendant, P-H-O-E-N-I-X Petroleum Philippines, Inc (a.k.a. Phoenix Petroleum Philippines, Inc) ("Phoenix"), and another third party guarantor, Udenna Corporation ("Udenna"), were jointly and severally liable to the claimant, Pertamina International Marketing & Distribution Pte Ltd ("PIMD"), in the aggregate amounts of (a) US$142,932,694.04 (including interest and legal and other costs), and (b) S$218,948.60, plus interest from 29 November 2023 (save for interest on the legal and other costs, which would commence beginning

12 December 2023). Both Phoenix and Udenna are incorporated and based in the Philippines.

2 It is common ground that the claims advanced in the arbitration related to certain contracts formed by an exchange of emails between PIMD and Phoenix for the supply of petroleum products during the months May and June 2021 (the "Sale Contracts").

3 However, it was and remains Phoenix's position that there was never any binding arbitration agreement between the parties and that therefore the arbitral tribunal in ARB 84 (the "Tribunal") had no jurisdiction to hear the disputes. At a very early stage of the arbitral proceedings, Phoenix informed the Tribunal of its jurisdictional objection and thereafter took no part in the arbitral proceedings.

4 Despite Phoenix's jurisdictional objections, the Tribunal proceeded to hear the dispute without its participation and subsequently made the Award as referred to above.

5 On 30 November 2023, SIAC registered and issued the Award in PIMD's favour. On the same day, Phoenix received, via email, the Award from SIAC. The Award remains unpaid.

6 Thereafter, various proceedings and applications have been commenced in both Singapore and the Philippines. It is unnecessary to set out the full details of these proceedings. For present purposes, it is sufficient to highlight the following.

7 On 2 December 2023, Phoenix commenced proceedings in the Republic of the Philippines in the Regional Trial Court, 11th Judicial Region, Davao City (the "Philippines Court") by filing a Complaint against PIMD and Udenna under Civil Case No. R-DVO-23-6338-SC (the "Philippines Action") seeking a declaration that ARB 84 and the Award are void and the issuance of a permanent injunction enjoining PIMD and Udenna from enforcing or undertaking to enforce the Award against Phoenix. Phoenix also sought, as a matter of "extreme urgency", the issuance of a Temporary Restraining Order ("TRO") and Writ of Preliminary Injunction ("WPI") pending the determination of the Philippines Action enjoining PIMD and Udenna from enforcing or undertaking any step to enforce the Award against Phoenix.

8 On 12 December 2023, PIMD filed an originating application without notice in SIC/OA 23/2023 ("OA 23") to register and enforce the Award in the same manner as a judgment of the General Division of the High Court. OA 23 was granted by way of SIC/ORC 69/2023 ("ORC 69") dated 18 December 2023.

9 On 27 December 2023, pursuant to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Convention") (to which both Singapore and the Philippines are signatories), PIMD filed the requisite Model Forms for service of OA 23 and ORC 69 out of Singapore pursuant to the Hague Convention.

10 On 10 January 2024, the Philippines Court denied the TRO and directed the Branch Clerk of Court to issue the Summons in the Philippines Action (the "Summons") to PIMD together with a copy of the Complaint and supporting documents. The Philippines Court authorised Phoenix to serve by way of email.

11 On 11 January 2024, the Philippines Court issued the Summons requiring PIMD to file an Answer to the Complaint within 30 days after service of the Summons on PIMD.

12 On 12 January 2024, the Philippines Court fixed a hearing for the WPI on 31 January 2024, 2pm. On the same day, Phoenix purported to serve the Complaint (and annexes), the Summons, and the Orders in the Philippines Action on PIMD by email.

13 Also on 12 January 2024, PIMD filed SIC/OA 1/2024 ("OA 1") in this court against Phoenix for, *inter alia*, orders that:

(a) Phoenix withdraw the Philippines Action;

(b) Phoenix be restrained from pursuing or continuing to pursue the Philippines Action so long as the Award is not set aside; and

(c) Save for any application to set aside the Award to be taken in the Singapore Courts, and so long as the Award is not set aside, Phoenix be restrained from pursuing or continuing to pursue any further and/or other proceedings of any nature in the Philippines or anywhere else in the world against PIMD, in relation to the setting aside of or challenge to the Award.

14 Again, on the same day, *ie*, 12 January 2024, PIMD also filed SIC/SUM 2/2024 ("SUM 2") in this court against Phoenix for an interim anti-suit injunction ("ASI"). SUM 2 was heard on 18 January 2024 by me on an *ex parte* basis. Although not formally served, Phoenix was given informal notice of such hearing earlier that same day; and the hearing was attended by Phoenix's

representative, *viz*, Phoenix's Vice President for Corporate Legal and Corporate Secretary, Ms Pinky Cabreros ("Ms Pinky"). At that hearing, Ms Pinky addressed the Court briefly. In particular, Ms Pinky sought an adjournment in order to engage Singapore counsel and made certain submissions as to why the relief sought by PIMD should be refused. In the event, I refused the adjournment and, subject to certain undertakings by PIMD, made *inter alia* the following orders for an ASI by way of SIC/ORC 5/2024 ("ORC 5"):

> 1. Pending the hearing and final determination of the Singapore courts on the Claimant's application for a permanent anti-suit injunction and declaratory relief in the main action, and until further order:
>
> > a. The Defendant be restrained forthwith from pursuing, or continuing to pursue, the case which it appears to have filed in the Republic of the Philippines in the Regional Trial Court, 11th Judicial Region, Davao City under Civil Case No. R-DVO-23-6338-SC in its entirety (including the urgent injunction application referred to in the Order dated 9 January 2024 issued in the Republic of Philippines by the Regional Trial Court, 11th Judicial Region, Branch 54, Davao City); and
> >
> > b. The Defendant be restrained forthwith from pursuing, or continuing to pursue, any further and/or other proceedings of any nature in the Republic of the Philippines or anywhere else in the world other than in the Courts of Singapore against the Claimant, in relation to the setting aside of or challenge to the Final Award dated 28 November 2023 (Singapore International Arbitration Centre Award No. 145 of 2023)...
>
> 2. That there be liberty to apply.
>
> 3. For the avoidance of doubt, nothing in this order prevents the Defendant from taking the necessary steps to resist any recognition or enforcement of the Final Award.
>
> 4. Costs reserved.

Copies of the court papers in OA 1 – in particular, the papers relating to the injunction granted in ORC 5 – were forthwith sent to Phoenix, putting it on notice of the terms of ORC 5.

15 Notwithstanding, Phoenix took no steps to suspend the Philippines Action. As referred to below, it is PIMD's case that Phoenix's conduct thereafter amounted to a flagrant breach of ORC 5 and a contempt of court. So far as relevant, I deal with that below.

16 On 30 January 2024, PIMD filed a Motion to Dismiss the Complaint in the Philippines Action. It is PIMD's case that this was necessary to meet the deadline set by the Philippines Court which required PIMD to file its Answer to the Complaint within 30 days, *ie*, by 11 February 2024, or face the prospect of a default judgment.

17 On 31 January 2024, Phoenix (but not PIMD) through its counsel attended a hearing before the Philippines Court. Phoenix informed the Philippines Court that it had received the Motion to Dismiss the day before and claimed that PIMD had thereby "voluntarily submitted itself to its jurisdiction". This is disputed by PIMD. So far as relevant, I deal with this later in this judgment. At that hearing, the Philippines Court also directed that PIMD and Udenna should file their memoranda within five days from 31 January 2024, with comments on Phoenix's application for injunctive relief in the Complaint; and Phoenix should file its comments on PIMD's Motion to Dismiss.

18 On 5 February 2024, Phoenix filed an Opposition to the Motion to Dismiss ("Opposition") asserting that the Motion to Dismiss should be denied and that the Philippines Court had subject matter jurisdiction over the

Complaint. It is PIMD's case that in so doing, Phoenix acted in breach of ORC 5 and was thus in contempt of this court. So far as relevant, I deal with this below. PIMD did not file any memoranda or comment.

19 On 14 February 2024, the Philippines Court directed the parties to file their respective memoranda on the application for the WPI and Motion to Dismiss within 10 days.

20 On 17 February 2024, Phoenix filed SIC/SUM 8/2024 ("SUM 8") in this court seeking, *inter alia*, the following orders:

(a) A declaration that these proceedings have not been validly served on Phoenix;

(b) That the court decline to exercise jurisdiction to hear OA 1 and accordingly dismiss OA 1 pursuant to O 2 r 3(5)(b) of the Singapore International Commercial Court Rules 2021 (the "SICC Rules");

(c) In the alternative to (b) above, that all proceedings in OA 1 be stayed, pending the final determination of the Philippines Action; and

(d) That the injunction granted to PIMD against Phoenix pursuant to SUM 2, *vide* ORC 5, be set aside.

21 On 1 March 2024, Phoenix filed a Memorandum in the Philippines Action on PIMD's Motion to Dismiss and its own WPI application (the "Defendant's Memorandum") in which it asserted that the Philippines Court had jurisdiction to determine the Philippines Action, sought to advance the Philippines Action, and reiterated its arguments that there was allegedly no

arbitration agreement contained in the Sale Contracts. Phoenix also proffered that it was "ready, willing, and able to post a bond, should this court require it, in relation to the issuance of a writ of preliminary injunction".

22 On 4 March 2024, Phoenix filed SIC/SUM 10/2024 ("SUM 10") in this court seeking, *inter alia*, the following orders:

> a. A declaration that the attempts at service by the Claimant's counsel, ProLegis LLC, on 17 February 2024 (by E-Litigation) and 21 February 2024 (by hand) on the Defendant's counsel, Rev Law LLC, do not constitute valid service of these proceedings on the Defendant and should be set aside;
>
> b. The costs of and occasioned by this application be paid by the Claimant to the Defendant; and
>
> c. Such further or other orders as this Honourable Court deems fit .

23 On 14 March 2024, the Philippines Court issued an order *inter alia* (a) confirming its jurisdiction and denying the Motion to Dismiss by PIMD, (b) granting Phoenix the WPI, subject to payment of the required bond of PHP 30m, enjoining PIMD and Udenna from enforcing or undertaking any step to enforce the Award against Phoenix during the pendency of the Philippines proceedings (the "Philippines Injunction Order"), and (c) directing PIMD to file its Answer to the Complaint within 30 days of receipt of the Philippines Injunction Order, *ie*, by 19 April 2024. The Philippines Injunction Order was received by PIMD on 20 March 2024.

24 On 12 April 2024, PIMD filed a *Petition for Certiorari* in the Court of Appeals of the Philippines applying for an urgent issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction to restrain *inter alia* Phoenix and Udenna from proceeding with the Philippines Action and

implementing the Philippines Injunction Order. In the petition, PIMD appealed against the decision to deny PIMD's Motion to Dismiss and maintained its objections to the jurisdiction of the Philippines Court.

The present applications

25 It is against that background that Phoenix applied to this court for the orders sought in SUM 8 and SUM 10 as set out above. The court heard oral submissions by counsel on behalf of the parties at a hearing on Friday 19 April 2024. At the end of the hearing, I informed the parties that I declined to make any order as to whether OA 1 had been validly served and that I dismissed the other orders sought by Phoenix. An order to that effect was subsequently drawn up and issued by the court. This judgment sets out my reasons for those orders.

SUM 10

26 I can deal briefly with SUM 10 since it is (at least now) common ground between the parties that although PIMD has made and continues to make efforts to serve Phoenix through the appropriate diplomatic channels, there has, as yet, been no valid formal service of OA 1 on Phoenix. In these circumstances, it is in my view unnecessary to make any specific order as sought by Phoenix. The only other issue relating to SUM 10 concerns costs. In short, there is no doubt that when PIMD's lawyers, Prolegis LLC, sent OA 1 and certain related documents by hand to Phoenix's lawyers, Rev Law LLC, the covering letter dated 21 February 2024 stated that the attached documents were enclosed "*by way of service on [Phoenix]*.." and also referred to PD 8.5.4 of the Council of the Law Society of Singapore's Practice Directions and Guidance Notes 2018/2019. On 22 February 2024 Rev Law LLC wrote to Prolegis LLC to state – correctly - that such attempts at service were invalid and did not comply with

O 5 r 1(1) of SICC Rules as Phoenix has not agreed for service of the originating process of OA 1 to be effected by service on Rev Law LLC. It was stated that "PD 8.5.4 of the Council of the Law Society of Singapore's Practice Directions & Guidance Notes 2018/2019 does not override or take precedence over the provisions of the SICC Rules 2021." However, there was no response to this letter. In these circumstances, it seems to me that it was entirely reasonable for Phoenix to issue SUM 10 and that, although PIMD has belatedly accepted that there has been no valid service, this should be reflected in an order for costs in Phoenix's favour which I summarily assess in the sum of S$1000, excluding disbursements.

SUM 8

27 As for SUM 8, the position is more complicated. In support of the various orders sought, Phoenix makes a number of specific points which I deal with below. However, it is necessary to deal first with a threshold issue raised by PIMD.

Whether Phoenix is in contempt of court?

28 In summary, PIMD submits that Phoenix is in contempt of court and that, in the exercise of its discretion, this court should refuse to hear Phoenix without first purging its contempt.

29 That the court has a discretion to refuse to hear a party in contempt under what is known as the *Hadkinson* principle originating from *Hadkinson v Hadkinson* [1952] P 285 is clear: *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [9] to [13].

30 Further, as to the facts, PIMD submitted that there is clear evidence that Phoenix has acted in contempt for the following reasons:

(a) Phoenix, through its authorised representative, Ms Pinky, was present at the hearing on 18 January 2024 and was fully aware of the terms of ORC 5. Additionally, the terms of ORC 5 were communicated via email to Phoenix's authorised representatives including Ms Pinky shortly after the hearing on 19 January 2024. The soft copy of ORC 5 was delivered via email to Phoenix's authorised representatives including Ms Pinky on 25 January 2024. Both the soft and hard copies of ORC 5 were also delivered to Mr Raouf Kizilbash ("Mr Kizilbash"), who was at that time listed on Phoenix's website as a director based in Singapore, on 30 January 2024. Mr Kizilbash acknowledged receipt of ORC 5 although it appears that he resigned as a director of Phoenix with effect from 1 February 2024. The hard copy of ORC 5 with the relevant court papers in OA 1 were subsequently also delivered to Phoenix by hand on 6 February 2024.

(b) Despite the above, Phoenix continued to pursue the Philippines Action by attending a hearing before the Philippines Court on 31 January 2024. At the hearing, Phoenix claimed that PIMD had "voluntarily submitted itself to its jurisdiction" by submitting the Motion to Dismiss. It does not seem that Phoenix did anything to inform the Philippines Court that the Philippines Action should be stayed or to bring ORC 5 to the attention of the Philippines Court. This resulted in the Philippines Court directing PIMD to submit comments on the Complaint by the stated deadline.

(c) Phoenix pressed on with its pursuit of the Philippines Action by filing the Opposition on 5 February 2024. The Opposition was not limited to responding to arguments on jurisdiction in the Motion to Dismiss. Instead, Phoenix continued to make forceful submissions that the Philippines Court should advance the Philippines Action and substantively grant Phoenix an injunction enjoining PIMD from enforcing the Award against Phoenix. In passing, it also appears that Phoenix claimed in the Philippines Action that while Ms Pinky was free to observe the hearing of SUM 2, she was refused the opportunity to participate.

(d) On 15 February 2024, Phoenix was put on notice of its contempt in continuing to pursue the Philippines Action and seemingly misleading the Philippines Court of the proceedings before this court and impugning the integrity and propriety of the Singapore court.

(e) Phoenix *still* continued to pursue the Philippines Action by filing the Defendant's Memorandum on 1 March 2024 (see above at [21]). The Defendant's Memorandum was again not limited to responding to arguments on jurisdiction in the Motion to Dismiss. Phoenix again made forceful submissions to advance the Philippines Action and even emphasised that it was "ready, willing, and able to post a bond… in relation to the issuance of a writ of preliminary injunction".

(f) To this day, Phoenix has made no apology or excuse for its contempt. It clearly was aware of its obligations in ORC 5. It clearly knew that the terms of ORC 5 had to be set aside if it wanted to continue the Philippines Action – that was why it filed SUM 8. In fact, one of the

> very bases relied upon by Phoenix in SUM 8 is that ORC 5 would prevent it from ostensibly lawfully challenging the enforcement of the Award in the Philippines.

31 As for these submissions, counsel on behalf of Phoenix accepted that the court had a discretion to refuse to hear a party in contempt but vehemently denied that there had been any contempt. In support of that latter submission, counsel on behalf of Phoenix raised two main points.

32 First, it was submitted that Phoenix's actions in the Philippines were, in effect, limited to the opposition of PIMD's Motion to Dismiss and therefore fell outside the scope of ORC 5. I do not accept that submission. It is plain from Phoenix's Opposition that Phoenix sought not merely to oppose PIMD's Motion to Dismiss but also actively sought an injunction from the Philippines Court in the terms referred to above which, in the event, was successful – success that was achieved by Phoenix itself posting a bond of PHP 30m as referred to above at [23] as required by the Philippines Court as the *quid pro quo* for granting the injunction.

33 Second, Phoenix also submitted that its actions in the Philippines Action were simply part of its attempt to resist enforcement of the Award and therefore fell within the scope of the proviso to ORC 5 which provided that "nothing in this order prevents [Phoenix] from taking the necessary steps to resist any recognition or enforcement of the Final Award" (see above at [14]). I do not accept that submission. The Philippines Action cannot properly be characterised as an attempt simply to resist enforcement for at least two main reasons. First, PIMD has not as yet commenced enforcement proceedings in the Philippines: the Philippines Action is not by way of resistance to enforcement but by way of

an attempted pre-emptive attack to obtain declarations that ARB 84 and the Award itself are void. Second, and in any event, by seeking an order that ARB 84 and the Award are void (see above at [7]), the Philippines Action actively seeks relief going beyond simple resistance of enforcement of the Award.

34 I readily acknowledge that an allegation of contempt of court is a very serious matter and, in the normal course, an application for an order seeking to find a party guilty of contempt and appropriate sanctions requires the leave of the court. There is no such application before me. Nevertheless, on the material presently before me, it seems to me that the actions taken by Phoenix in the Philippines Action as summarised above clearly constitute a breach of ORC 5 and contempt of this court.

35 Notwithstanding, I do not propose to refuse to hear Phoenix's submissions in support of the orders sought in SUM 8. As stated above, I have a discretion whether or not to take that extreme course. In light of all the circumstances, it is my conclusion that I ought to hear Phoenix's submissions which I now deal with below.

Whether there is jurisdiction to grant a permanent ASI in OA 1?

36 Phoenix submits that this court, *ie*, the SICC, has no jurisdiction to grant a permanent ASI and that, for that reason alone, OA 1 should be dismissed in its entirety and that ORC 5 should also be set aside. In support of that submission, Phoenix submits that the only plausible source of the SICC's jurisdiction to hear OA 1 is that under s 18D(2)(*a*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"). This confers on the SICC

jurisdiction to hear any "proceedings relating to international commercial arbitration" that the General Division may hear and that satisfy the conditions prescribed in the SICC Rules. There can, in my view, be no doubt that the present proceedings relate to international commercial arbitration. However, Phoenix relies upon O 23 r 3(1) of the SICC Rules which specifically provides that the SICC may hear "only proceedings relating to international commercial arbitration that the General Division may hear *under the [International Arbitration Act 1994 (2020 Rev Ed) ("IAA")]*" [emphasis added].

37 Further, Phoenix submits that an application for a permanent ASI is not one made "under the IAA" and therefore necessarily falls outside the jurisdiction of this court. In support of that particular submission, Phoenix relies upon what it submits is well-established that the power of the Singapore courts to grant a permanent ASI, even when it is granted to restrain a breach of an arbitration agreement, is *not* found in or derived from the IAA as was recognised in *R1 International Pte Ltd v Lonstroff AG* [2014] 3 SLR 166, where the High Court (at [40]) unequivocally rejected the notion that the "power to grant permanent anti-suit injunctions to assist arbitration can be derived from s 12A of the IAA". To be clear, although Phoenix submits that this court does not have jurisdiction to grant a permanent ASI, it accepts that this court does, at the very least, have jurisdiction to grant an interim ASI – an injunction which was granted by way of ORC 5.

38 In the event, it is unnecessary for me to decide this issue because, at this stage, PIMD does not seek a permanent injunction and Phoenix's prayers in SUM 8 do not require determination as to whether the SICC has the jurisdiction to grant such relief. Accordingly, I say no more about this issue save to note, for

the sake of good order, that Phoenix reserved its position to argue in due course that the SICC has no jurisdiction to grant a permanent ASI as claimed in OA 1.

Whether there is valid service of the proceedings on Phoenix?

39 Counsel on behalf of Phoenix initially advanced a submission that in the absence of valid service of these present proceedings, the SICC cannot exercise *in personam* jurisdiction over Phoenix and that, since there has – as is common ground – been no such formal valid service, various consequences follow, including that OA 1 should be dismissed and that ORC 5 cannot stand and must be set aside.

40 In my view, that submission is untenable for at least two reasons.

41 First, the relief sought in SUM 8 is not limited to the declaration in sub-paragraph (a) that this court lacks jurisdiction but also includes a claim in sub-paragraph (b) that it should, in the exercise of its discretion, *decline* jurisdiction. As set out above at [20], Phoenix seeks the following prayers in SUM 8:

> (a) A declaration that these proceedings have not been validly served on Phoenix;
>
> (b) That this court decline to exercise jurisdiction to hear OA 1 and accordingly dismiss OA 1 pursuant to O 2 r 3(5)(b) of the SICC Rules;
>
> (c) In the alternative to (b) above, that all proceedings in OA 1 be stayed, pending the final determination of the Philippines Action; and
>
> (d) That the injunction granted to PIMD against Phoenix pursuant to SUM 2, *vide* ORC 5, be set aside.

42 In my view, Phoenix has submitted to the jurisdiction of this court by the issuance of SUM 8 and seeking the relief sought therein, in particular by inviting the court by way of a *primary* prayer to exercise its discretion to decline jurisdiction to hear OA 1 and accordingly dismiss OA 1. As formulated and unlike the prayer in sub-paragraph (c), the relief sought in sub-paragraph (b) is not merely a prayer in the alternative as counsel for Phoenix sought to impress upon me at the hearing. I note further that Phoenix had engaged in the merits as to why, according to Phoenix, there is no arbitration agreement (as to which see below).

43 Second, even if that is wrong, as to whether OA 1 should be dismissed, as I have stated above at [38], I reserve my decision on whether the SICC has the jurisdiction to grant a permanent ASI to a later stage of the proceedings. As to whether ORC 5 should be set aside, counsel on behalf of Phoenix fairly conceded in the course of his oral submissions during the hearing that (a) steps are being actively pursued through diplomatic channels under the Hague Convention to effect service on Phoenix and it is expected that formal service will be effected shortly; and (b) there is no suggestion here that such service will not be valid or effective. The lack of service of the originating process is not fatal to the grant of ORC 5. The court regularly issues interim orders before formal service of the originating process in an appropriate case. The court's jurisdiction to do so is well established: see, for example, *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] 4 SLR 1420 at [66].

Whether there is an arbitration agreement?

44 Phoenix submitted that this court should decline to exercise jurisdiction over OA 1 because there was no arbitration agreement between PIMD and

Phoenix in relation to the matters in dispute in ARB 84, which is why Phoenix did not participate in the arbitration beyond informing the SIAC and the Tribunal of this fact. In the course of its submissions, Phoenix sought to explain in detail why as a matter of fact and law, there was no arbitration agreement between PIMD and Phoenix and why therefore, the conclusion by the arbitrator was incorrect and the Award should be set aside. Whatever the underlying substantive merits of such an argument may be, there is, in my view, a simple answer to this point.

45 In short, in its Award, the Tribunal has made express findings and determined (a) the existence of the arbitration agreement applicable to the dispute between PIMD and Phoenix; (b) the applicability of the interplay between the Memorandum of Understanding dated 20 November 2019 and the Sale Contracts; and (c) the determination of how much Phoenix thereby owes PIMD under the Sale Contracts. These rulings are final and binding under Singapore law: s 19B(1) of the IAA. Under the IAA, the final and binding nature of those rulings is only subject to the party's right to challenge the award in accordance with the IAA and the UNCITRAL Model Law on International Commercial Arbitration as set out and modified in the First Schedule to the IAA (the "Model Law"): s 19B(4) of the IAA.

46 Article 34(1) of the Model Law provides that "[r]ecourse to a court against an arbitral award may only be made by an application for setting aside in accordance with paragraphs (2) and (3) of this Article". This is exhaustive: *Swissbourgh Diamond Mines (Pty) Ltd and others v Kingdom of Lesotho* [2019] 1 SLR 263 at [65]. This is reflected in the *travaux préparatoires* of the Model Law as set out in UNCITRAL Working Group, Seventh Secretariat Note,

Analytical Commentary on Draft Text, A/CN/9/264 dated 25 March 1985 which states: "[t]he application for setting aside constitutes the exclusive recourse to a court against the award in the sense that it is the only means for actively attacking the award, i.e. initiating proceedings for judicial review". There is a strict three-month limit in Art 34(2) of the Model Law for a party to set aside an award. This is absolute even in cases of fraud; the court has no power to extend this time limit: *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 1 SLR 1045 at [76]–[97].

47 The Award was dated 28 November 2023 and issued by the SIAC on 30 November 2023. Thus, the time for Phoenix to apply to set aside the Award has now passed. Phoenix did *not* make such an application to the Singapore court. The Award is therefore no longer liable to be set aside under Art 34 of the Model Law and the validity of the Award – including the findings therein as to the existence of the arbitration agreement – can no longer be challenged in the Singapore court.

48 Thus, as submitted by PIMD, Phoenix's constant refrain that there was no arbitration agreement in the Sale Contract is irrelevant. That issue has already been decided by the Tribunal. Singapore law recognises that the findings in the Award are final and binding *unless* set aside: see *AJU v AJT* [2011] 4 SLR 739 at [65]–[66]. Phoenix did not set aside the Award's findings on those points. Phoenix cannot now, in SUM 8 (which is, in any event, not a challenge procedure under the Model Law or the IAA), seek to convince this court that the Tribunal was wrong.

Whether this court should exercise its discretion not to restrain Phoenix from pursuing the Philippines Action?

49 In broad terms, Phoenix submitted that the Philippines Action has now progressed, that PIMD has, in effect, submitted to the jurisdiction of the Philippines Court and that therefore, in the exercise of its discretion, this court should set aside ORC 5 and, in effect, allow Phoenix to continue to pursue the Philippines Action. As to these submissions, my observations and conclusions are as follows.

50 First, the starting point is that the seat of ARB 84 is Singapore. The Singapore court is the supervisory court. As such, given that no application has been made to set aside the Award in accordance with the Model Law or the IAA and that the Award can no longer be challenged, it is the function of this court to protect the integrity of the Award. Any steps taken abroad to seek to render ARB 84 and/or the Award void and/or otherwise to attack the Award save by way of resistance of enforcement on the basis of one or more of the grounds set out in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958), 330 UNTS 38 (entered into force 7 June 1959, accession by Singapore 21 August 1986) (the "New York Convention") is, as a matter of Singapore law, illegitimate. It is well established that this court can and generally will grant appropriate injunctive relief to protect an award to restrain breaches of an arbitration agreement: see *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*") at [67]–[68]. As there stated (at [68]), anti-suit relief would "*ordinarily be granted*" where breach of an arbitration agreement is shown, "*unless there are strong reasons not to*":

> 68 In cases involving an arbitration agreement or an exclusive jurisdiction clause, it would suffice to show that there has been a breach of such an agreement, and anti-suit relief would ordinarily be granted unless there are strong reasons not to: *Donohue v Armco Inc* [2002] 1 All ER 749 ("*Donohue*"), per Lord Bingham at [24]; *Morgan Stanley Asia (Singapore) Pte v Hong Leong Finance Ltd* [2013] 3 SLR 409 ("*Morgan Stanley*") at [29]. There will be no need to adduce additional evidence of unconscionable conduct in such cases. Crucially, however, this approach is subject to an important caveat: there is no requirement for the court to feel any diffidence in granting an anti-suit injunction, "*provided that it is sought promptly and before the foreign proceedings are too far advanced*" …
>
> [emphasis in original]

51 This applies with equal force even where arbitration proceedings have ended and an award has been rendered (*Sun Travels* at [88]):

> 88 … At the outset, we should state that it is common ground between the parties that anti-suit relief may be granted on the basis of a breach of an arbitration agreement notwithstanding that arbitration proceedings have ended and an award has been rendered. In post-award situations, anti-suit injunctions have been granted to enjoin parties from challenging the award outside the seat (*C v D* [2008] Bus LR 843, *Roger Shashoua v Mukesh Sharma* [2009] 2 All ER (Comm) 477 and *Terna Bahrain Holding Company WLL v Al Shamsi* [2013] 1 Lloyd's Rep 86) or from bringing court proceedings in respect of claims that have already been determined in arbitration (*Michael Wilson & Partners Ltd v Emmott* [2018] EWCA Civ 51).

52 The High Court has also recognised in *Hilton International Manage (Maldives) Pvt Ltd v Sun Travels & Tours Pvt Ltd* [2018] SGHC 56 at [53] "at least two implied negative obligations arising from an agreement to arbitrate" which may be breached. This includes: (a) a negative obligation not to commence court proceedings stemming from an agreement to resolve any disputes by reference to arbitration; and (b) a negative obligation not to set aside or

otherwise attack an arbitral award in jurisdictions other than the seat of the arbitration.

53 Second, although I bear well in mind that that the Philippines Action has progressed to some extent and that this is potentially a relevant consideration, this is only because of the active steps taken by Phoenix in pursuing the Philippines Action in breach of its obligations as referred to above and in breach of ORC 5. Therefore, I do not consider this factor carries any weight in the present circumstances.

54 Third, I do not accept that Phoenix is assisted by its submission that PIMD has submitted to the jurisdiction of the Philippines Court by virtue of PIMD's Motion to Dismiss for the following reasons. The starting point is the terms of PIMD's Motion to Dismiss. For present purposes, it is sufficient to note that as stated at the beginning of the document, it was, in effect, based on what PIMD submitted was the "Court's lack of jurisdiction over [PIMD's] person as well as subject matter jurisdiction." On its face, it is difficult to understand how a submission that the court lacked either *in personam* jurisdiction or subject-matter jurisdiction could possibly amount to a *voluntary* submission to the court's jurisdiction.

55 However, Phoenix relied upon Rule 14, Section 23 of the 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. No. 19-10-20-SC) (the "Philippines Rules of Court") which provides in material part:

> Section 23. *Voluntary appearance.* – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

56 In essence the Motion to Dismiss was, as submitted by PIMD, an application to dispute jurisdiction without filing a defence on the merits, *ie*, without taking any substantive step in the Philippines Action. It was not filed as an Answer which is akin to a defence in common law countries. In effect, it was an application to set aside the Complaint on the basis that *inter alia* the Philippines Court had no jurisdiction or that the service on PIMD (a Singapore company) by email was defective given the Hague Convention reservations of Singapore.

57 As submitted by PIMD, the Motion to Dismiss also brought the existence of ORC 5 to the attention of the Philippines Court in the Philippines Action and sought to correct some of the misimpressions advanced by Phoenix about how it was denied due process by the court. I also bear in mind PIMD's submission that a failure to file the Motion to Dismiss would have resulted in default judgment potentially being issued by the Philippines Court in the Philippines Action.

58 The above matters are confirmed by the legal opinion of ACCRALAW, PIMD's Philippines lawyers. Phoenix has not filed any Philippines legal opinion to challenge the same. ACCRALAW opined that the Motion to Dismiss does not amount to a submission to jurisdiction under Philippines law.

59 In particular, ACCRALAW's legal opinion notes that Rule 14, Section 23 of the Philippines Rules of Court *"pertains to the acquisition of personal jurisdiction and not subject-matter jurisdiction"*. ACCRALAW further explains that this is because "*[s]ubject-matter jurisdiction is conferred by law and, consequently, cannot be (1) granted by the agreement of the parties, (2)*

acquired, waived, enlarged, or diminished by any act or omission of the parties; or (3) conferred by the acquiescence of the courts".

60 In the 3rd Witness Statement of Socorro Ermac Cabreros filed on 19 March 2024, *after* PIMD had produced ACCRALAW's opinion mentioned above, Phoenix continued to rely on the same Rule 14, Section 23 of the Philippines Rules of Court to assert that PIMD's filing of the Motion to Dismiss constitutes voluntary submission to the jurisdiction of the Philippines Court, without addressing ACCRALAW's legal opinion that this provision does not apply to the question of subject-matter jurisdiction (*ie*, the merits of the claim). ACCRALAW's opinion that this provision does not apply to the question of subject-matter jurisdiction under Philippines law therefore remains unchallenged by any evidence on the part of Phoenix.

61 Second**,** the filing of the Motion to Dismiss would not be considered as submission to *in personam* jurisdiction even if Singapore law (as opposed to Philippines law) was utilised. There was no unequivocal or clear conduct amounting to submission to the Philippines jurisdiction. Most obviously, the Motion to Dismiss did not engage with Phoenix's substantive arguments on the existence of an arbitration agreement as between PIMD and Phoenix in the Complaint.

62 As submitted by PIMD, a purely defensive measure to "parry a blow" would not be deemed to be a step in the proceeding which could be construed as a submission to jurisdiction. Here, the Motion to Dismiss is defensive in nature and only meant to "parry a blow" by asserting that the Philippines Court has no jurisdiction over PIMD in the Philippines Action. This was exactly the position taken by the Singapore High Court in the case of *WSG Nimbus Pte Ltd*

v Board of Control for Cricket in Sri Lanka [2002] 1 SLR(R) 1088. The defendants argued that the plaintiffs had submitted to the jurisdiction of the Colombo High Court by (a) filing a notice of motion to object to the jurisdiction of the Colombo High Court; (b) attending before the Colombo High Court to argue that it had no jurisdiction over the subject matter of the dispute; (c) filing written submissions without prejudice to their position that the defendants were precluded under the anti-suit injunction from proceeding in the action in the Colombo High Court; and (d) applying for leave to appeal against the order of the Colombo High Court on the question of jurisdiction (at [35]). However, the plaintiffs' participation in the action in the Colombo High Court was limited to objecting to jurisdiction and the plaintiffs had taken no steps to defend the merits of the action (at [34]).

63 The Singapore High Court held that the true question is whether, in raising the objection before the Colombo High Court that it had no jurisdiction over the matter, the plaintiffs had taken a step in the proceedings which necessarily involved waiving their objection to the jurisdiction. The determination was "*the answer is obviously in the negative"* (at [54]).

64 In this context, Phoenix relies principally on the conclusion of the Philippines Court in its order dated 14 March 2024 where the court had purportedly "clearly taken the view that it has both subject-matter and *in personam* jurisdiction over the Philippines Action, and that it should and will proceed to hear the Philippines Action on the merits."

65 It appears from the Philippines Court's ruling that the court did make the finding that it possesses subject matter jurisdiction over the Complaint and

that the court had acquired jurisdiction over PIMD as the summons was properly served by electronic means:

> **On Lack of Subject Matter Jurisdiction:**
>
> Plaintiff Phoenix is invoking its right under the ordinary Rules of Court of Declaratory Relief, by alleging that the SIAC Final Award is void and has no force and effect against it, because it has no contract to arbitrate with Defendant Pertamina.
>
> Perusing over the Complaint, the Court sees that Plaintiff Phoenix raised the principle of relativity of contract under the Civil Code, praying that it should be relieved from the Final Award of the SIAC against the corporation.
>
> Relativity of Contract is explained in ***International Exchange Bank v. Labos, G.R. NO. 206327, July 6, 2022***, to quote:
>
> *"The basic principle of relativity contract is can only bind parties who entered into it, and cannot favor or prejudice a third person, even if he or she is aware of such contract and has acted with knowledge thereof. Where there is no privity of contract, there is likewise no obligation or liability to speak about. This principle is embodied in Art. 1311 of the Civil Code, which states that "contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation, or by provision of law."*
>
> Thus, based on the allegations of Complaint, this Court (as a regular court) has jurisdiction over the subject matter of the instant case.
>
> **On Jurisdiction over the person of the Defendant.**
>
> Defendant Pertamina takes the firm stand that the Court did not acquire jurisdiction over them, raising improper Service of Summons because the Summons was not served to them under the Hague Convention as enunciated in ***Administrative Order No. 251-2020*** of the Supreme Court.
>
> ...
>
> Upon careful review of the Complaint, the Court finds that the cause of action of the Plaintiff against the defendants, is not among those mentioned in Section 17 (above-quoted).

> Thus, service of summons contemplated in ***Administrative Order No. 251-2020*** is not applicable in the instant case.
>
> …
>
> Defendant Pertamina further argues that the mode of service of summons availed of by the Plaintiff under the letter (d) of the second paragraph of Section 14, Rule 14 of the Revised Rules of Court, to quote:
>
> > *"xxx.*
> >
> > *If the foreign private juridical entity is not registered in the Philippines, or has no resident agent but has transacted or is doing business in it as defined by law, such service may, with leave of court, be effected outside of the Philippines through any of the following means:*
> >
> > *(a) By personal service coursed through the appropriate court in the foreign country with the assistance of the [D]epartment of [F]oreign [A]ffairs:*
> >
> > *(b) By publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the defendant;*
> >
> > *(c) By facsimile:*
> >
> > *(d)* ***By electronic means with the prescribed proof of service****: or*
> >
> > *(e) By such other means as the court. in its discretion, may direct."*
>
> will **not** apply to them, allegedly because Defendant Pertamina is not doing business in the Philippines.
>
> Defendant Pertamina fails to persuade …
>
> Thus, Plaintiff's availment of Service of Summons under letter (d), second paragraph of Section 14, Rule 14, is justified.
>
> …
>
> [emphasis in original]

66 On the basis of the material currently available, I accept that the Philippines Court appears to have come to the conclusion that it has jurisdiction

in respect of the Philippines Action – although this is, of course, subject to the determination of the Petition for Certiorari recently issued by PIMD. Needless to say, I bear well in mind the importance of comity and take proper note of the conclusions reached by the Philippines Court. However, I remain unpersuaded that PIMD is properly to be regarded as having *voluntarily* submitted to the jurisdiction of the Philippines Court in any relevant sense. In any event, it seems to me that it is ultimately a matter for this court to decide whether, having regard to all the circumstances, the order in ORC5 should stand.

67 For the avoidance of doubt, I should emphasise that nothing I have said in this judgment should in any way prevent Phoenix in due course from resisting recognition or enforcement of the Award in the Philippines or elsewhere on any of the grounds set forth in the New York Convention. If and when PIMD commence enforcement proceedings in the Philippines, Phoenix will be able to take such defensive steps as may be appropriate. To that extent, it would seem likely that the issues raised in this judgment may then become largely academic.

Conclusion

68 For all these reasons, I made the following orders in SUMs 8 and 10, respectively.

69 In relation to SUM 8 (see above at [20]), I made no order with respect to prayer 1(a) and dismissed prayers 1(b) to 1(d) with the consequence that the orders as set out in ORC 5 are to stand. It follows that Phoenix is to pay PIMD

the costs of and incidental to SUM 8. The quantum of costs is to be assessed if not agreed between the parties.

70 In relation to SUM 10 (see above at [22]), I made no order as to prayer 1(a) and ordered that PIMD shall pay Phoenix costs of and incidental to the application as follows:

(a) S$1,000; and

(b) The costs of filing and service of SUM 10 and filing and service of the 2nd Witness Statement of Socorro Ermac Cabreros filed on 4 March 2024, as per the statement of accounts to be rendered by the Singapore International Commercial Court Registry.

(c) The costs of and incidental to the application shall be set off against the costs of and incidental to the application in SUM 8 that have been ordered in favour of PIMD.

Sir Henry Bernard Eder
International Judge

Daniel Chia Hsiung Wen, Ker Yanguang (Ke Yanguang), Charlene Wee Swee Ting and Chan Kit Munn Claudia (Prolegis LLC) for the claimant;
Liew Yik Wee and Wong Wan Chee (Rev Law LLC) for the defendant.