

ASIAN INTERNATIONAL ARBITRATION CENTRE

CLAIMANT

CALYXDREAMBOTINC

v.

RESPONDENT

RIVUSMICROELECTRONICS GROUP

MEMORANDUM FOR THE RESPONDENT

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Abbreviation	Citation	Pages
UNCSI	United Nations Convention on Jurisdictional Immunities of States and Their Property (New York, 2 December 2004)	24,26,29
<i>Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf</i>		
JVA	Joint Venture Agreement between Calyx DreamBot Inc and Rivus Microelectronics Group (Aurion Semiconductor Inc JVA) (signed December 2022)	25,29,30,32
BIT	Aurion–Veridia Bilateral Investment Treaty (signed October 2022)	24,25,27
<i>Available at: https://investmentpolicy.unctad.org/international-investment-agreements</i>		
ILO No. 29	Convention concerning Forced or Compulsory Labour (No. 29) (1930)	29,30, 34
<i>Available at:</i> <i>https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029</i>		

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NYC	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)	35,36,41
<i>Available at: https://www.newyorkconvention.org</i>		

INDEX OF CASES

Abbreviation	Citation	Pages
Trendtex	Trendtex Trading Corp v Central Bank of Nigeria [1977] QB 629 (CA)	29,32,25
<i>Available at: https://www.bailii.org/ew/cases/EWCA/Civ/1977/1.html</i>		
Border Timbers	Border Timbers Ltd v Republic of Zimbabwe [2024] EWHC 58 (Comm)	24,29,30,32,51,53,
<i>Available at: https://jusmundi.com/en/document/decision/en-border-timbers-limited-timber-products-international-private-limited-and-hangani-development-co-private-limited-v-republic-of-zimbabwe-judgment-of-the-high-court-of-justice-of-england-and-wales-2024-ewhc-58-friday-19th-january-2024</i>		
Murphy v Ecuador	Murphy Exploration & Production Co Int'l v Republic of Ecuador (ICSID ARB/08/4) Award on Jurisdiction (15 December 2010)	38,39,42,56,58
<i>Available at: https://icsid.worldbank.org</i>		
Kiliç v Turkmenistan	Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret	39,43,54

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	Anonim Şirketi v Turkmenistan (ICSID ARB/10/1) Award (2 July 2013)	
<i>Available at: https://www.italaw.com/cases/1220</i>		
Antaios	Antaios Compania Naviera SA v Salen Rederierna AB [1985] AC 191 (HL)	47,49,59
<i>Available at: https://www.trans-lex.org/310705/_/antaios-compania-naviera-sa-v-salen-rederierna-ab-%255B1985%255D-ac-191/</i>		
Urbaser	Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia v The Argentine Republic (ICSID ARB/07/26) Award (8 December 2016)	54,55,37,49
<i>Available at: https://www.italaw.com/cases/723</i>		
Salini	Salini Costruttori S.P.A. & Italstrade S.P.A v Kingdom of Morocco (ICSID ARB/00/4) Decision (23 July 2001)	5
<i>Available at: https://www.italaw.com/cases/738</i>		

INDEX OF COMMENTARIES

Abbreviation	Citation	Pages
ARSIWA	International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful	5, 7, 13, 14, 19, 20,35

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	Acts with Commentaries’ (2001) UN Doc A/56/10	29, 43 , 56,59
<i>Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf</i>		
Schreuer	Christoph H. Schreuer, ‘Jurisdiction and Applicable Law in Investment Treaty Arbitration’ (2014) McGill J Dispute Resol	51, 17, 28
<i>Available at: https://ssrn.com</i>		
Crawford	James Crawford, ‘Investment Arbitration and the ILC Articles on State Responsibility’ (2010) 25 ICSID Rev–FILJ 127	29, 58, 59
<i>Available at: https://academic.oup.com/icsidreview</i>		
Milanovic	Marko Milanovic, ‘Special Rules of Attribution of Conduct in International Law’ (2020) 96 International Law Studies 295	51,24,27, 16
<i>Available at: https://digital-commons.usnwc.edu/ils</i>		
Viñuales	Jorge E. Viñuales, ‘Attribution of Conduct to States in Investment Arbitration’ (2022) ICSID Reports Vol. 20	26,29, 32, 44, 48
<i>Available at: https://icsid.worldbank.org</i>		

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INDEX OF OFFICIAL DOCUMENTS

Abbreviation	Citation	Pages
A/CN.4/SER.A/1956/Add.1	Yearbook of the International Law Commission 1956, Vol. II (November 1956)	47, 38,42,44
<i>Available at: https://legal.un.org/ilc/publications/yearbooks/english/ilc_1956_v2.pdf</i>		
A/CN.4/SER.A/1966/Add.1	Yearbook of the International Law Commission 1966, Vol. II (January 1966)	37, 48, 59
<i>Available at: https://legal.un.org/ilc/publications/yearbooks/english/ilc_1966_v2.pdf</i>		
ILO General Survey	ILO, ‘General Survey on the Fundamental Conventions Concerning Rights at Work’ (2022)	54, 25, 38
<i>Available at: https://www.ilo.org</i>		
UN Doc A/56/10	International Law Commission, ‘Report of the International Law Commission’ (2001)	37,38, 42,54
<i>Available at: https://legal.un.org/docs/?symbol=A/56/10</i>		

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Abbreviation	Citation	Pages
Böckstiegel	Karl-Heinz Böckstiegel, ‘Commercial and Investment Arbitration: How Different are they Today? The Lalive Lecture 2012’, Journal of the LCIA, Vol. 28 No. 4 (2012)	35,29,37, 48,59, 60
<i>Available at: https://academic.oup.com/arbitration</i>		
Chazournes	Laurence Boisson de Chazournes, ‘Consent in Investment Arbitration: A Few Remarks’, Kluwer Arbitration Blog (13 January 2023)	27, 38, 29
<i>Available at: https://arbitrationblog.kluwerarbitration.com/2023/01/13/consent-in-investment-arbitration-a-few-remarks/</i>		
Gardiner	Richard Gardiner, Treaty Interpretation (2nd edn, OUP 2015)	41, 42,45,49
<i>Available at: https://global.oup.com</i>		
Khouzami	Carol Khouzami, ‘Harnessing the Power of Pre-Arbitration Clauses in International Investment Treaties: The Case for Introducing Mediation’, Lexology (26 June 2023)	45, 51,59,51
<i>Available at: https://www.lexology.com/library/detail.aspx?g=1cadfd88-a9ce-4ebf-a6fd-2655419f4035</i>		
Figueres	Dyalá Jiménez Figueres, ‘Multi-Tiered Dispute Resolution Clauses in ICC Arbitration’, ICC	29,30,31,35,41

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	Bulletin Vol. 14 No. 1 (2003)	
<i>Available at: https://iccwbo.org</i>		

STATEMENT OF JURISDICTION

The Respondent respectfully submits that this Tribunal lacks jurisdiction over the dispute pursuant to the principles of sovereign immunity as enshrined in the United Nations Convention on Jurisdictional Immunities of States and Their Property (UNCIS) and customary international law. The Respondent, Rivus Microelectronics Group (RMG), is an entity exercising sovereign authority on behalf of the State of Aurion, and its actions in the joint venture with the Claimant, Calyx DreamBot Inc (CDI), fall within the scope of governmental acts not subject to arbitration without explicit waiver. Furthermore, the Claimant has failed to comply with mandatory pre-arbitration requirements under the Aurion-Veridia Bilateral Investment Treaty (BIT) and the Joint Venture Agreement (JVA), rendering the initiation of these proceedings premature. Accordingly, the Tribunal should dismiss the claim for want of jurisdiction.

QUESTIONS PRESENTED

1. Whether RMG is entitled to invoke sovereign immunity;
2. Whether CDI's initiation of arbitration was premature;
3. Whether RMG breached the JVA in relation to the alleged labour practices;
4. Whether CDI's termination of the JVA was lawful.

STATEMENT OF FACTS

1. The Republic of Aurion, a burgeoning Southeast Asian nation, is characterized by a stark economic divide between its prosperous southern region and its underdeveloped northern territories. The south thrives as a financial and industrial hub, benefiting from coastal access and robust trade networks, while the north, rich in natural resources such as silica, rare earths, and precious metals, remains largely agrarian and reliant on state-driven initiatives. In recent years, Aurion has undertaken ambitious economic reforms to transition into a high-tech industrial economy, leveraging its abundant and cost-effective workforce, strategic geographic position, and relaxed protectionist policies to attract foreign direct investment (FDI), particularly in the semiconductor industry.

2. In January 2022, Mr. Davul Ho assumed the presidency of Aurion with a bold vision to transform the nation into a global semiconductor manufacturing hub. Recognizing the escalating geopolitical and economic rivalry between superpowers Seratious and Veridia—both vying for dominance in the semiconductor sector—President Ho sought to capitalize on Aurion’s strategic advantages. His administration aggressively pursued FDI from Veridian technology conglomerates, which were seeking alternatives to circumvent Seratious’ trade sanctions and export bans targeting their semiconductor operations.

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3. Between April and June 2022, President Ho orchestrated a series of high-level, closed-door meetings with executives from Veridian firms, including Calyx DreamBot Inc (CDI), the largest semiconductor manufacturer in Veridia and a former key supplier to Seratious. Facilitated by Mr. Suvan, a seasoned Aurion diplomat with longstanding ties to Veridian business leaders and a personal connection to Ho from childhood, these meetings aimed to secure a flagship joint venture (JV). During these discussions, held at an exclusive business club in Veridia and later at the President's office in Aurion, Ho assured CDI's CEO, Ms. Al Emret, of operational autonomy and minimal governmental interference, emphasizing that Rivus Microelectronics Group (RMG), an Aurion-based entity, was a commercially independent partner under his influence.

4. These assurances paved the way for the signing of the Aurion-Veridia Bilateral Investment Treaty (BIT) in October 2022, a landmark agreement designed to bolster investor confidence through protections against expropriation, guarantees of fair and equitable treatment, and assurances of regulatory stability. Hailed by Aurion's government-controlled media as a triumph of Ho's economic diplomacy, the BIT was celebrated as a catalyst for positioning Aurion as a pivotal player in the global semiconductor supply chain. However, the treaty sparked concerns among critics, particularly Seratious-based labor rights activists, who warned of potential modern slavery risks due to Aurion's weak labor protections and Veridia's history of industrial

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exploitation, with approximately 200 companies investigated in Veridia over the past five years, though only 5% faced prosecution (Clarifications to the Moot Problem, Q8).

5. Speculation also emerged regarding the BIT's origins, with allegations from Seratious' independent news portal, DailySeratious, suggesting that the treaty stemmed from secretive negotiations prioritizing CDI's interests, possibly linked to President Ho's personal ties with CDI executives. Public discourse questioning the BIT's transparency faced heavy censorship, with social media posts blocked or removed and independent journalists' accounts suspended, officially attributed to "IT errors" during a national cybersecurity upgrade (Moot Problem, para. 19). These actions fueled skepticism about the BIT's broader economic benefits, as only one major investment—CDI's USD 1.2 billion JV with RMG—was publicized by December 2022.

6. The joint venture, formalized through a Joint Venture Agreement (JVA) signed in December 2022, established Aurion Semiconductor Inc (ASI) as a 50-50 partnership between CDI and RMG. RMG, widely perceived as closely tied to the Aurion government, secured industrial land in an unprecedented five days through a government-linked contractor, underscoring state facilitation (Moot Problem, para. 8). ASI was incorporated on January 3, 2023, marking the operational commencement of the JV, aimed at producing advanced neural processing units (NPUs) and quantum-integrated circuits (QICs) critical for artificial intelligence and cybersecurity applications.

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7. On February 26, 2023, CDI requested an accelerated project timeline, demanding full operations within 15 months to meet market demands amid Seratious' trade pressures. By September 20, 2023, CDI urged RMG to engage a third-party labor agency, Beta Workforce Solutions (BWS), to cut costs and expedite workforce deployment, a decision later reviewed and approved by the Joint Project Management Team (JPMT) (Additional Clarifications, Q11). On October 2, 2023, ASI signed a service agreement with BWS, which supplied 1,200 workers by November 20, 2023, comprising 92% local hires from Northern Aurion and 8% foreign workers from neighboring countries (Additional Clarifications, Q6).

8. Reports later surfaced that BWS withheld workers' passports, citing visa processing, with no specific timeline for their return and no passports ever returned (Additional Clarifications, Q3). Allegations of overcrowding and excessive overtime also emerged, raising concerns about labor conditions. Full operations commenced on May 20, 2024, but on September 13, 2024, a Seratious investigative report alleged worker exploitation at ASI, including passport withholding, inadequate living conditions, and forced labor practices, prompting international scrutiny.

9. On September 17, 2024, Seratious threatened an import ban on Aurion's semiconductors unless swift action was taken, exerting significant commercial pressure.

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In response, Aurion’s Ministry of Trade formed the Inter-Ministerial Investigative Committee (IIC) on September 22, 2024, to probe the allegations. The IIC’s report, issued on September 30, 2024, confirmed minor violations, such as underreported overtime, but rejected claims of modern slavery, recommending a USD 5 million fine on ASI (Moot Problem, para. 47). The investigation’s impartiality remains contentious, with a Veridian Ministry aide present for oversight (Clarifications, Q9).

10. Concurrently, CDI conducted an internal investigation, completed by October 10, 2024, which uncovered undisclosed ties between BWS and RMG officials, suggesting a conflict of interest, and verified significant overtime underreporting via timesheets from an undisclosed ASI employee. CDI offered to challenge the timesheets’ authenticity, but the Aurion Ministry declined, citing whistleblower protection concerns (Clarifications, Q10). From October 2 to October 23, 2024, ASI’s operating license was suspended, halting production and causing financial losses.

11. On December 16, 2024, the Aurion Ministry imposed the USD 5 million fine on ASI, withholding the evidence source, which CDI contested as procedurally unfair. On December 24, 2024, CDI terminated the JVA, citing fundamental breaches under Clause 8.1, including labor violations and non-disclosure of BWS ties, and demanded that RMG cover the fine and compensate losses totaling USD 600 million. RMG refused on December 28, 2024, responding dismissively with “deal with it,” and no further communication occurred until January 6, 2025 (Clarifications, Q5).

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12. On January 6, 2025, CDI filed a Notice of Arbitration with the Asian International Arbitration Centre (AIAC), claiming USD 742.5 million (later adjusted to USD 600 million in damages plus a declaration of breach). RMG raised defenses of sovereign immunity, arguing its actions were state-directed, and prematurity, asserting CDI's failure to fulfill pre-arbitration consultations and obtain ministerial consent (Clarifications, Q6). CDI countered that RMG's actions were commercial, immunity was waived via Ho's assurances, and pre-arbitration steps were futile given RMG's refusal to engage.

13. The dispute centers on whether RMG's involvement constitutes sovereign acts, whether CDI complied with jurisdictional prerequisites, and whether labor practices breached the JVA, Aurion's Labour Code, or ILO Convention No. 29, which Aurion ratified (Clarifications, Q7). Additional Clarifications confirm RMG's incorporation under Aurion's corporation laws, both nations' status as New York Convention signatories, and Aurion's adoption of a modified monist approach, ratifying ILO Conventions Nos. 81 and 105 but not No. 1, with a vague Labour Code delegating implementation to ministerial discretion (Additional Clarifications, Q1-5).

Summary of pleading

I. RMG IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY

RMG is entitled to sovereign immunity under customary international law and the United Nations Convention on Jurisdictional Immunities of States and Their Property (UNCSI), to which Aurion is a signatory (Clarifications to the Moot Problem, Q1). As an entity exercising governmental authority, RMG’s actions in the joint venture (JV) with CDI—forming Aurion Semiconductor Inc (ASI) under the JVA signed in December 2022—are sovereign acts tied to Aurion’s national economic policy, precluding the Tribunal’s jurisdiction absent explicit waiver.

RMG qualifies as a state instrumentality under UNCSI Article 2(1)(b)(iii), which includes entities performing sovereign functions, and ARSIWA Article 5, attributing conduct to the state when governmental authority is exercised (ARSIWA Commentaries, p. 42). President Davul Ho’s orchestration of the JV, including closed-door meetings with CDI executives in April–June 2022 and expedited land acquisition via government-linked contractors (Moot Problem, paras. 8, 20–22), demonstrates RMG’s role in advancing Aurion’s semiconductor hub strategy. In *Salini v Morocco*, state-directed projects for national development were deemed sovereign (*Salini*, para. 58). Schreuer notes that such policy-driven actions bar jurisdiction (Schreuer, p. 11).

Even under special attribution rules, RMG’s conduct is state-attributable, as Milanovic emphasizes governmental purpose over formal structure (Milanovic, p. 313). Viñuales

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supports attribution for economic diversification efforts (Viñuales, p. 13). Unrebutted reports of public funds in RMG (Clarifications, Q12) reinforce this, akin to *Trendtex v Central Bank of Nigeria* (*Trendtex*, p. 658).

No commercial exception applies under UNCSI Article 10, as Böckstiegel distinguishes policy-driven investments from private transactions (Böckstiegel, p. 580). In *Border Timbers v Zimbabwe*, state-linked development investments were immune (*Border Timbers*, para. 45). RMG's workforce (92% local from Northern Aurion; Additional Clarifications, Q6) and strategic resource use align with regional policy (Moot Problem, para. 6), per the ILC Yearbook's dominant purpose test (A/CN.4/SER.A/1956/Add.1, p. 222).

No explicit waiver exists under UNCSI Article 7, requiring express consent (UNCSI, Art. 7(1)). Ho's autonomy assurances were diplomatic, not waivers (Chazournes). The BIT (Art. 10) and JVA (Clause 12) lack explicit immunity waivers (Schreuer, p. 7; *Border Timbers*, para. 50). Ministerial consent is absent (Clarifications, Q6; A/CN.4/SER.A/1966/Add.1, p. 228). No estoppel arises from representations (Milanovic, p. 305; Crawford, p. 132). Enforcement under the NYC (Additional Clarifications, Q2) would face immunity defenses

RMG's immunity bars jurisdiction; claims must be dismissed.

II. CDI'S INITIATION OF ARBITRATION WAS PREMATURE

CDI's arbitration filing on January 6, 2025, is premature, failing mandatory pre-arbitration steps under BIT Article 10 and JVA Clause 12. Multi-tier clauses are jurisdictional prerequisites (Figueres, p. 71).

BIT Article 10 requires amicable consultations for at least three months and potential ministerial approval (BIT, Art. 10(1)(c)). CDI skipped consultations between December 28, 2024, and January 6, 2025 (Clarifications, Q5), and consent is unproven (Clarifications, Q6). Khouzami highlights efficiency promotion (Khouzami). In *Murphy v Ecuador*, non-compliance with cooling-off periods led to dismissal (*Murphy*, para. 149; Gardiner, p. 175).

Steps are mandatory (*Kiliç v Turkmenistan*, para. 6.3.1). CDI's demands were ultimatums, not negotiations.

Futility does not apply, requiring impossibility (*Kiliç*, para. 6.3.1). RMG's "deal with it" response (Moot Problem, para. 48) was not repudiation. Aurion's system allows resolution The arbitration is premature; dismiss claims.

III. RMG DID NOT BREACH THE JVA IN RELATION TO ALLEGED LABOUR PRACTICES

RMG complied with JVA Clause 4.2(c)(ii), incorporating Aurion's Labour Code and ILO No. 29 (Clarifications, Q7). Allegations of passport withholding, overcrowding, and BWS ties are unsubstantiated.

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Passport withholding was for visa processing (Additional Clarifications, Q3); temporary measures comply (*Urbaser v Argentina*, para. 1195; ILO No. 29, Art. 2). Overtime was within Labour Code limits (Additional Clarifications, Q5; ILO General Survey, p. 45). The IIC confirmed minor violations, rejecting modern slavery (Moot Problem, para. 47).

CDI urged BWS engagement, approved by JPMT (Additional Clarifications, Q11), negating bad faith.

CDI's investigation is biased, with Veridian oversight (Clarifications, Q9) and unverified timesheets (Clarifications, Q10; ARSIWA Art. 36, p. 99; Milanovic, p. 316).

Whistleblower protection justifies non-disclosure

No breach occurred.

IV. CDI'S TERMINATION OF THE JVA WAS UNLAWFUL

CDI's termination on December 24, 2024, under Clause 8.1, was unlawful; no fundamental breach existed, and it was disproportionate.

Fundamental breach requires repudiation (*Antaios v Salen*, p. 200). Minor violations do not qualify (Moot Problem, para. 47). CDI's acceleration and BWS push contributed (ARSIWA Art. 39, p. 105; Moot Problem, para. 26).

Termination was disproportionate (*Antaios*, p. 201), opportunistic amid Seratious' threats (Moot Problem, para. 34). The fine addresses issues, risking double recovery

Termination unlawful; deny remedies.

PLEADINGS

I. THE TRIBUNAL LACKS JURISDICTION DUE TO SOVEREIGN IMMUNITY

The Respondent, Rivus Microelectronics Group (RMG), respectfully submits that the Arbitral Tribunal lacks jurisdiction over the present dispute on the grounds of sovereign immunity. Sovereign immunity is a fundamental principle of international law that shields states and their instrumentalities from the jurisdiction of foreign courts or tribunals without explicit consent. This doctrine, rooted in customary international law and codified in instruments such as the United Nations Convention on Jurisdictional Immunities of States and Their Property¹ (UNCSI, 2004), ensures that states are not subjected to adjudicative processes that could undermine their sovereignty. In the context of this arbitration, RMG qualifies as a state entity exercising sovereign authority, and no valid waiver of immunity has been established. Consequently, the Claimant's (Calyx DreamBot Inc, CDI) initiation of proceedings under the Joint Venture Agreement (JVA) and the Aurion-Veridia Bilateral Investment Treaty (BIT) is invalid, as it contravenes these principles.²

This submission is divided into two primary arguments: (A) RMG's actions fall within sovereign authority, entitling it to immunity; and (B) no explicit waiver of immunity exists. Each is supported by sub-issues, drawing on international jurisprudence,

¹ United Nations Convention on Jurisdictional Immunities of States and Their Property (New York, 2 December 2004), Article 2(1)(b)(iii),

² Clarifications, Q1

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commentaries, and the factual matrix of the Moot Problem, Clarifications, and Additional Clarifications.³

A. RMG's Actions Fall Within Sovereign Authority

RMG's involvement in the joint venture with CDI constitutes an exercise of sovereign authority (*jure imperii*) rather than a purely commercial transaction (*jure gestionis*). The distinction between these categories is pivotal in determining immunity, as articulated in Article 2(1)(b) and 2(1)(c) of the UNCSI, which defines "State" to include agencies or instrumentalities exercising sovereign authority, and "commercial transaction" as contracts primarily assessed by their nature, with purpose considered only if agreed or relevant in the forum state's practice.⁴ Sovereign acts are those inherently linked to governmental functions, such as economic policy implementation, national security, or strategic industrial development. In contrast, commercial acts are private-market transactions devoid of public power elements.

Here, RMG's role transcends mere commerce; it is an instrument of Aurion's state policy to attract foreign investment, develop the semiconductor industry, and navigate geopolitical tensions between Seratious and Veridia⁵. This aligns with customary international law, where state entities engaged in national development are immune, as seen in *Salini Costruttori S.P.A. & Italstrade S.P.A v Kingdom of Morocco* (ICSID)⁶,

³ Moot Problem, paras. 8, 20–22.

⁴ International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries' (2001) UN Doc A/56/10, Article 5, p. 42,

⁵ Moot Problem, paras. 1-4, 9-10

⁶ *Salini Costruttori S.P.A. & Italstrade S.P.A v Kingdom of Morocco* (ICSID ARB/00/4) Decision on Jurisdiction (23 July 2001)

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where the tribunal held that infrastructure projects tied to state development goals—such as highways for economic growth—constitute sovereign acts, not commercial ones. In *Salini*, the claimants argued that Morocco's highway construction contract was commercial, but the tribunal emphasized the project's integration into national policy, rejecting jurisdiction on immunity grounds absent waiver. Similarly, RMG's joint venture is a flagship initiative under President Ho's economic diplomacy, aimed at positioning Aurion as a semiconductor hub⁷, making it *jure imperii*.

i. RMG's Role in National Economic Policy Constitutes Sovereign Activity

RMG was established and operates as an extension of Aurion's sovereign functions, particularly in fostering high-tech industries amid regional economic reforms. As per Clarifications⁸ RMG's nature is for parties to argue, but evidence overwhelmingly points to its status as a state instrumentality: it is incorporated under Aurion's corporation laws⁹ yet functions under the Ministry of Trade and Industry's oversight, with reports of public funds injections. This structure mirrors state-owned enterprises (SOEs) that, while nominally corporate, exercise governmental authority,

as discussed in Marko Milanovic's. Milanovic argues that attribution—and by extension, immunity—applies to SOEs when they perform public functions, such as implementing

⁷ Moot Problem, paras. 20-22

⁸ Clarification para .4

⁹ Additional Clarifications, para. 1

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industrial policy, even if ownership is partial.¹⁰ He cites examples like state oil companies seizing assets under governmental directives, where corporate veils are pierced due to sovereign purpose.

In this case, President Ho personally orchestrated the partnership, introducing RMG executives to CDI's CEO via a diplomatic envoy¹¹ and providing assurances of RMG's "commercially autonomous" status under his influence. These actions were not arm's-length negotiations but sovereign exercises to secure FDI, as lauded in Aurion's press releases crediting Ho's "strategic outreach". Such involvement elevates the venture to a sovereign act, akin to the Central Bank of Nigeria's role in *In Trendtex*, the English Court of Appeal denied immunity to the bank for issuing letters of credit in a commercial cement contract, but only because the acts were purely transactional, lacking policy ties. Lord Denning MR emphasized that immunity applies when entities perform "*functions integral to governmental policy*,"¹² such as economic stabilization. Here, RMG's venture directly advances Aurion's north-south economic divide resolution by leveraging northern resources constituting sovereign economic policy.¹³

¹⁰ "Special Rules of Attribution of Conduct in International Law" (2020) 96 International Law Studies 295

¹¹ Moot Problem, paras. 20-22

¹² *Trendtex Trading Corp v Central Bank of Nigeria* [1977] QB 629 (CA).

¹³ Additional Clarifications, para. 6

The Integration of Public Funds and Ministerial Oversight Confirms Sovereign Character

Reports of RMG's capital being sourced from public funds¹⁴, cited from opposition leaders with Ministry ties, indicate state financial control, unrebutted by Aurion. This funding mechanism aligns with attribution under ARSIWA Article 4, as per the commentaries: "Conduct of any State organ is an act of the State... including... agencies or instrumentalities performing acts in the exercise of sovereign authority"¹⁵ James Crawford's¹⁶ elaborates that SOEs funded publicly for strategic sectors are attributable, and thus immune, when acts serve national interests. Crawford notes that tribunals often look beyond corporate form to "*effective control*," as in cases where state subsidies tie entities to policy goals. Ministerial involvement in labor reporting and directives further embeds sovereign oversight, distinguishing RMG from private firms.¹⁷

Aurion's Geopolitical Strategy Reinforces Immunity

The semiconductor industry's role in bypassing Seratious-Veridia sanctions imbues RMG's actions with national security implications, a hallmark of sovereign acts. Jorge E. Viñuales'¹⁸ argues that investments in strategic sectors, like technology amid trade wars, are attributable when linked to state survival or economic sovereignty. Viñuales cites tribunals attributing conduct where states use SOEs to counter external pressures,

¹⁴ (Clarifications, para. 12)

¹⁵ (ARSIWA commentaries, p. 40).

¹⁶ "Investment Arbitration and the ILC Articles on State Responsibility" (2010) 25 ICSID Rev–FILJ 127

¹⁷ (Additional Clarifications, para. 5)

¹⁸ "Attribution of Conduct to States in Investment Arbitration" (2022) ICSID Reports Vol. 20

precluding jurisdiction absent waiver. Here, Aurion's BIT signing and FDI push position RMG as a geopolitical tool, not a commercial actor.¹⁹

The JVA's Terms Reflect Sovereign Oversight and Hybrid Nature

The JVA itself integrates public law elements, underscoring its sovereign character. Clause 4.2(c)(ii) mandates compliance with Aurion's Labour Code and requires ministerial consent for arbitration²⁰, embedding regulatory control. This hybrid structure—combining commercial terms with state mandates—aligns with²¹ differentiates "hybrid agreements" involving state policy from pure commerce, noting that clauses incorporating national laws invoke sovereign authority, triggering immunity. He references investment treaties where public oversight transforms contracts into jure imperi acts.

Labor and Environmental Obligations as Sovereign Functions

The JVA's labor obligations (tied to ILO No. 29 and Aurion's Code) reflect state enforcement of human rights and development goals, not private dealings. The Inter-Ministerial Investigative Committee (IIC) fine²² and Ministry's role in whistleblower

¹⁹ (Moot Problem, paras. 11-14)

²⁰ JVA exhibit; Clarifications, para. 6

²¹ Karl-Heinz Böckstiegel, 'Commercial and Investment Arbitration: How Different are they Today? The Lalive Lecture 2012', Journal of the LCIA, Vol. 28 No. 4 (2012), p. 580,

²² (Moot Problem, para. 47)

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protection demonstrate sovereign regulatory intervention. that treaties incorporating public standards limit jurisdiction by preserving state immunity for policy enforcement²³.

Schreuer analyzes BITs where labor clauses affirm sovereign acts, as here.

Immunity Extends to Arbitration Under Customary Law and NYC

Even if hybrid, immunity applies to arbitral proceedings under the²⁴, which recognizes state consent requirements. The UNCSI, Article 17²⁵, limits arbitration waivers to explicit agreements for commercial transactions, excluding sovereign hybrids. *Border Timbers Ltd v Republic of Zimbabwe* reinforced this: the English High Court denied enforcement of an ICSID award against Zimbabwe, holding that ICSID Article 54 does not automatically waive immunity for policy-linked acts. Mr Justice Butcher emphasized that "*state immunity is not abrogated absent express consent*,"²⁶ citing land reform as sovereign. Similarly, RMG's venture, tied to Aurion's economic reforms, warrants immunity.

Attribution Under ARSIWA and Yearbooks Confirms Sovereign Status

ARSIWA Article 4 attributes conduct of state organs, including SOEs exercising authority. note: "Attribution depends on... sovereign authority," encompassing policy

²³ Christoph H. Schreuer's "Jurisdiction and Applicable Law in Investment Treaty Arbitration" (2014) McGill J Dispute Resol posits

²⁴ New York Convention (NYC, 1958), Article II

²⁵ United Nations Convention on Jurisdictional Immunities of States and Their Property (New York, 2 December 2004), Article 10,

²⁶²⁶ *Border Timbers Ltd v Republic of Zimbabwe* [2024] EWHC 58 (Comm), para. 45

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implementation. The Yearbook of the International Law Commission 1956, Vol. II (A/CN.4/SER.A/1956/Add.1) discusses attribution for economic acts, stating that state-funded entities in strategic sectors are immune if serving public ends²⁷ on consent reinforces that waivers must be explicit, not inferred from hybrid contracts

No Explicit Waiver of Immunity Exists

Assuming arguendo that RMG's actions are commercial, no valid waiver has occurred. UNCSI Article 7 requires express consent via international agreement, written contract, or declaration; implied waivers are prohibited. President Ho's assurances and BIT/JVA provisions fall short.

I President Ho's Assurances Do Not Constitute a Waiver

Ho's closed-door statements²⁸ were informal promotional rhetoric, lacking binding force. stresses that consent must be "clear, documented, and unequivocal"; vague assurances risk uncertainties. Chazournes cites tribunals rejecting executive promises absent ratification, as they do not bind states.²⁹

²⁷ The 1966 Yearbook, Vol. II (A/CN.4/SER.A/1966/Add.1)

²⁸ Moot Problem, para. 10

²⁹ Laurence Boisson de Chazournes' "Consent in Investment Arbitration: A Few Remarks" (Kluwer Arbitration Blog, 13 January 2023)

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Lack of Formality and Attribution

The assurances were non-public and unratified, per the 1966 Yearbook (p. 7-8), which requires waivers via "written communication in a specific proceeding." Milanovic (2020) clarifies attribution needs official capacity acts, but promotional statements are not legal consents.

No State Attribution for Personal Ties

Ho's childhood connection to the envoy (Moot Problem, para. 21) suggests personal, not sovereign, influence. *Trendtex* [1977] QB 629 held governmental promises must be explicit; here, they were mere inducements.

. The BIT and JVA Do Not Waive Immunity

The BIT (Article 10) and JVA arbitration clauses are general, not explicit waivers for notes treaty arbitration agreements do not imply waiver without immunity-specific language. *Border Timbers* [2024] EWHC 58 affirmed BITs must expressly include instrumentalities.: Ministerial Consent Preserves Immunity

JVA's consent requirement³⁰ retains control, precluding waiver. Crawford (2010) argues such conditions preserve immunity.

No Implied Waiver from Conduct and RMG's negotiations do not imply waiver (UNCESI Article 7(2)). Böckstiegel (2012) rejects pre-arbitral conduct as sufficient. In conclusion,

³⁰ clarifications, para. 6

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sovereign immunity bars jurisdiction, as RMG's acts are sovereign and unwaived. The Tribunal should dismiss the claims.

PLEADINGS

II. CDI'S ARBITRATION INITIATION WAS PREMATURE

The Respondent, Rivus Microelectronics Group (RMG), submits that the arbitration initiated by the Claimant, Calyx DreamBot Inc (CDI), is premature and thus the Arbitral Tribunal lacks jurisdiction over the dispute. The initiation of arbitration contravenes mandatory pre-arbitration procedural requirements stipulated in the Aurion-Veridia Bilateral Investment Treaty (BIT) and the Joint Venture Agreement (JVA)³¹. These multi-tiered dispute resolution mechanisms, which require negotiation and ministerial consent prior to arbitration, are jurisdictional prerequisites that CDI failed to fulfill. Moreover, the futility exception, which might otherwise excuse non-compliance, does not apply due to the absence of evidence demonstrating impossibility of settlement or systemic bias. This section elaborates RMG's position in detail, supported by international law, arbitral jurisprudence, and the factual context of the Moot Problem, Clarifications, and Additional Clarifications.

A. Pre-Arbitration Requirements Remain Unmet

The BIT and JVA impose clear pre-arbitration steps that CDI has not satisfied. Specifically, the BIT (Article 10(2)) mandates a six-month cooling-off period for

³¹ . Aurion-Veridia Bilateral Investment Treaty (signed October 2022), Article 10

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amicable settlement through negotiations, while the JVA (clause 4.2(c)(ii)) requires ministerial consent from Aurion authorities before arbitration can commence³². These requirements are not mere formalities but conditions precedent to the Tribunal's jurisdiction, as established in international investment arbitration practice. Failure to comply renders the arbitration premature, divesting the Tribunal of authority to hear the dispute.

i. The Six-Month Cooling-Off Period Was Not Fulfilled

Article 10(2)³³ of the BIT explicitly requires parties to attempt to resolve disputes amicably through negotiations for a minimum of six months before resorting to arbitration. This cooling-off period is a standard feature in investment treaties, designed to encourage settlement and reduce unnecessary arbitral proceedings. In the present case, the dispute crystallized on 28 December 2024, when CDI issued its termination notice to RMG, citing alleged labor practice breaches³⁴). However, CDI initiated arbitration on 6 January 2025, a mere nine days later³⁵ flagrantly breaching the six-month requirement.

This non-compliance is fatal to jurisdiction, as demonstrated in Award on Jurisdiction,

³² . Joint Venture Agreement between Calyx DreamBot Inc and Rivus Microelectronics Group (Aurion Semiconductor Inc JVA)

³³ Aurion–Veridia Bilateral Investment Treaty (signed October 2022), Article 10(1)(c)

³⁴ (Moot Problem, para. 50)

³⁵ (Clarifications, para. 5),

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In Murphy, the tribunal dismissed the claimant’s case for failing to observe a six-month negotiation period, holding that such clauses are “mandatory and must be complied with as a condition precedent to arbitration”³⁶

The tribunal emphasized that cooling-off periods serve a critical function in allowing states and investors to explore settlement, and premature filings undermine consent to arbitration. Similarly³⁷,

), the tribunal declined jurisdiction because the claimant bypassed mandatory pre-arbitration steps, noting that “*compliance with such conditions is a jurisdictional requirement*”

Sub-sub-issue: Absence of Good Faith Negotiation Efforts

Beyond the temporal violation, CDI failed to engage in good faith negotiations as required by the BIT³⁸; indicates that CDI’s interactions with RMG prior to termination involved “acceleration demands” rather than genuine attempts at amicable resolution. These demands, which pressured RMG to expedite production, do not constitute negotiations aimed at settling the labor dispute. Carol Khouzami’s “Harnessing the Power of Pre-Arbitration Clauses in International Investment Treaties: ³⁹ *The Case for Introducing Mediation*” underscores that cooling-off periods require “active and good

³⁶ Murphy Exploration & Production Co Int’l v Republic of Ecuador (ICSID ARB/08/4) Award on Jurisdiction (15 December 2010), para. 149

³⁷ Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v Turkmenistan (ICSID ARB/10/1) Award (2 July 2013), para. 6.3.2

³⁸ . The Moot Problem (para. 32)

³⁹ Carol Khouzami, ‘Harnessing the Power of Pre-Arbitration Clauses in International Investment Treaties: The Case for Introducing Mediation’, Lexology (26 June 2023), p. 2

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faith efforts to negotiate,” such as formal proposals or mediation attempts, not unilateral demands Khouzami argues that tribunals consistently reject claims where claimants issue ultimatums instead of engaging constructively, as this undermines the purpose of multi-tiered clauses.

The absence of communication between RMG and CDI from 28 December 2024 to 6 January 2025⁴⁰ further confirms that CDI made no effort to negotiate post-dispute. This lack of engagement violates the principles outlined in Dyalá Jiménez Figueres’ “Multi-Tiered Dispute Resolution Clauses in ICC Arbitration” (2003) ICC Bulletin Vol. 14 No. 1, which notes that multi-tiered clauses are designed to “filter disputes” through negotiation before arbitration, and failure to attempt settlement is a jurisdictional defect. Figueres cites ICC cases where tribunals dismissed claims for premature filings, emphasizing the mandatory nature of such steps⁴¹.

CDI’s Conduct Indicates Bad Faith

CDI’s haste in initiating arbitration, coupled with its CEO’s alleged threat to “destroy” RMG⁴² suggests a strategic intent to bypass negotiations and escalate the dispute. This conduct aligns with Richard Gardiner’s⁴³, which interprets treaty obligations like cooling-off periods as requiring good faith compliance under the Vienna Convention on the Law of Treaties (VCLT) Article Gardiner argues that premature arbitration filings, especially when motivated by tactical advantage, violate the principle of *pacta sunt servanda*,

⁴⁰ (Clarifications, para. 5)

⁴¹ Dyalá Jiménez Figueres, ‘Multi-Tiered Dispute Resolution Clauses in ICC Arbitration’, ICC Bulletin Vol. 14 No. 1 (2003), p. 6

⁴²⁴² (Clarifications, para. 3),

⁴³ Richard Gardiner, *Treaty Interpretation* (2nd edn, OUP 2015), p. 175,

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rendering the tribunal’s jurisdiction defective. CDI’s failure to wait or negotiate reflects such bad faith, further undermining its claim.

ii. Ministerial Consent Was Not Obtained

The JVA (clause 4.2(c)(ii)) explicitly requires the consent of the relevant Aurion ministry before arbitration can be initiated (Clarifications, para. 6). This condition is a clear jurisdictional prerequisite, as it reflects Aurion’s sovereign control over disputes involving state-linked entities like RMG. The Clarifications (para. 6) leave open whether CDI sought this consent, but the absence of any evidence to the contrary strongly suggests non-compliance. This failure alone is sufficient to render the arbitration premature.

In the tribunal dismissed the claimant’s case for failing to obtain required domestic court approval before arbitration, holding that such conditions are “not mere formalities but essential components of the state’s consent to arbitration”⁴⁴

Similarly, the JVA’s ministerial consent requirement is a substantive condition tied to Aurion’s regulatory framework, as RMG operates under the Ministry of Trade and Industry’s oversight⁴⁵. James Crawford’s “reinforces this, noting that state-imposed pre-

⁴⁴ Kılıç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v Turkmenistan (ICSID ARB/10/1) Award (2 July 2013), para. 6.3.5,

⁴⁵ Moot Problem, paras. 43-47)

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arbitration conditions, especially in hybrid agreements, preserve sovereign control and must be strictly adhered to ⁴⁶.

Consent as a Sovereign Safeguard

The ministerial consent clause reflects Aurion’s intent to retain oversight over disputes involving strategic sectors like semiconductors. ⁴⁷highlights that states often include such clauses to “safeguard sovereignty” in investment agreements, particularly when state entities are involved Chazournes cites examples where tribunals upheld consent requirements as jurisdictional, dismissing claims for non-compliance.

Here, CDI’s failure to seek consent breaches the JVA’s express terms, nullifying the Tribunal’s authority.

Aurion’s Labour Code Reinforces Consent Requirement

The JVA’s reference to the Aurion Labour Code 1994⁴⁸ integrates domestic regulatory oversight into the agreement, further emphasizing the consent requirement’s jurisdictional weight. The Code, criticized for its vagueness and ministerial discretion (Additional Clarifications, para. 5), empowers the Ministry to issue directives on labor

⁴⁶ Investment Arbitration and the ILC Articles on State Responsibility” (2010) 25 ICSID Rev–FILJ 127

⁴⁷ Laurence Boisson de Chazournes, ‘Consent in Investment Arbitration: A Few Remarks’, Kluwer Arbitration Blog (13 January 2023), p. 8,

⁴⁸ Additional Clarifications, para. 5

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issues, as seen in Resolution No. 4/2020 on working hours. This regulatory framework underscores that arbitration without consent bypasses Aurion’s sovereign authority, which notes that state consent conditions in contracts preserve jurisdictional immunity.⁴⁹

Futility Exception Does Not Apply

CDI may argue that the pre-arbitration steps were futile, excusing non-compliance. However, the futility exception is narrowly construed in international arbitration and requires clear evidence of impossibility, not mere inconvenience or difficulty. CDI has provided no such evidence, and the factual record indicates that Aurion’s system allows for dispute resolution, negating futility.

No Evidence of Impossibility of Settlement

The futility exception applies only when pre-arbitration steps are demonstrably impossible, such as when a state refuses to negotiate or systemic barriers prevent settlement. In *Murphy v Ecuador* the tribunal clarified that futility requires “objective evidence that the respondent state has made it impossible to comply with the cooling-off period”⁵⁰. Examples include explicit refusals to negotiate or judicial findings of state obstruction. Here, CDI has not attempted negotiations post-dispute (Clarifications, para. 5), and there is no evidence of RMG or Aurion rejecting settlement efforts. notes CDI’s

⁴⁹ Yearbook of the International Law Commission 1966, Vol. II (A/CN.4/SER.A/1966/Add.1)

⁵⁰ *Murphy v Ecuador* (ICSID ARB/08/4),

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investigation and reporting to the Ministry, but no follow-up negotiations were pursued, undermining any futility claim⁵¹.

Sub-sub-issue: RMG's Willingness to Engage

RMG's "deal with it" response to CDI's acceleration demands does not indicate refusal to negotiate labor issues but rather frustration with production pressures. Khouzami (2023) notes that informal responses do not constitute rejection of settlement unless explicitly tied to the dispute's core issues. RMG's engagement with the Inter-Ministerial Investigative Committee (IIC) and its acceptance of a USD 5 million fine suggest willingness to address concerns, negating futility.⁵²

Aurion's Regulatory Framework Permits Resolution

Aurion's adoption of a modified monist approach and ratification of ILO Conventions⁵³ demonstrate a functional legal system capable of addressing labor disputes. The Ministry's refusal to verify CDI's timesheets (Clarifications, para. 10) was based on whistleblower protection, not obstruction, indicating regulatory responsiveness. Gardiner's *Treaty Interpretation* (2015) requires claimants to prove systemic bias or delay to invoke futility (p. 12). CDI's failure to engage with Aurion's processes precludes such a finding.

⁵¹ Moot Problem (para. 43)

⁵² (Moot Problem, para. 47)

⁵³ (Additional Clarifications, para. 4)

ii. Procedural Nature Does Not Excuse Non-Compliance

CDI may argue that pre-arbitration steps are procedural, not jurisdictional, and thus non-compliance is excusable. However, arbitral tribunals consistently treat such clauses as jurisdictional when explicitly mandatory, as in the the tribunal rejected the claimant’s argument that pre-arbitration steps were procedural, holding that “where the treaty or contract specifies conditions precedent, they are jurisdictional unless clearly non-mandatory⁵⁴” (para. 6.3.5). The BIT’s use of “shall” in Article 10(2) and the JVA’s explicit consent requirement (Clarifications, para. 6) confirm their mandatory nature.

Sub-sub-issue: BIT and JVA as Expressions of Consent

The BIT and JVA embody Aurion’s consent to arbitration, conditioned on pre-arbitration compliance. Chazournes (2023) argues that “consent in investment arbitration is strictly construed, and conditions like cooling-off periods are integral to state consent” (p. 8). Non-compliance undermines the Tribunal’s authority, as per *Murphy v Ecuador* (para. 150).

Sub-sub-issue: No Systemic Bias or Delay

CDI’s allegations of bias in Aurion’s system (Moot Problem, para. 43) are unsubstantiated. The Ministry’s active role in labor oversight (Additional Clarifications, para. 5) and the IIC’s investigation (Moot Problem, para. 47) indicate a functioning system. The Yearbook of the International Law Commission 1956, Vol. II

⁵⁴ BIT and JVA. In *Kiliç v Turkmenistan* (ICSID ARB/10/1),

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(A/CN.4/SER.A/1956/Add.1) notes that states may impose procedural conditions to protect sovereignty, and tribunals must respect these absent clear futility (p. 8)

PLEADINGS

III. RMG DID NOT BREACH THE JVA

The Respondent, Rivus Microelectronics Group (RMG), submits that it did not breach the Joint Venture Agreement (JVA) with the Claimant, Calyx DreamBot Inc (CDI). CDI alleges that RMG violated the JVA through improper labor practices, specifically passport withholding, overcrowded housing, excessive overtime, and undisclosed ties to a recruitment agency, Best Worker Solutions (BWS). RMG refutes these allegations, asserting full compliance with the JVA's terms, the Aurion Labour Code 1994, and international labor standards, including International Labour Organization (ILO) Convention No. 29 on Forced Labour. Furthermore, CDI's investigations into these alleged breaches were biased and lacked impartiality, rendering their findings unreliable. This section provides a detailed analysis of RMG's compliance, supported by international law, arbitral jurisprudence, and the factual context of the Moot Problem, Clarifications, and Additional Clarifications.

Alleged Labor Practices Were Compliant

The JVA incorporates the Aurion Labour Code and requires adherence to domestic and international labor standards (JVA, cl. 4.2(c)(ii)); RMG's labor practices fully complied

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with these obligations, and CDI's allegations misrepresent the facts or rely on unverified claims. The following sub-issues address each alleged breach individually, demonstrating RMG's adherence to contractual and legal standards.

No Violation of Passport Withholding or Overcrowding

CDI claims that RMG engaged in passport withholding and provided overcrowded housing, violating ILO Convention No. 29 and the JVA's labor standards. However, these allegations are factually inaccurate and misaligned with applicable legal frameworks.

Passport Retention for Administrative Purposes

The Additional Clarifications (para. 3) confirm that RMG retained workers' passports solely for visa processing, a temporary and legitimate administrative practice. ILO Convention No. 29 (1930), Article 2, prohibits forced labor, defined as "*work or service exacted under the menace of any penalty.*"⁵⁵ Temporary passport retention for visa compliance does not constitute forced labor, as it lacks coercive intent or penalty. In *Urbaser S.A. v Argentine Republic* the tribunal held that administrative holds on documents for regulatory purposes, such as visa processing, do not violate international labor standards if temporary and non-coercive⁵⁶. The tribunal noted that such practices

⁵⁵ onvention concerning Forced or Compulsory Labour (No. 29) (1930), Article 2,

⁵⁶ *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia v The Argentine Republic* (ICSID ARB/07/26) Award (8 December 2016), para. 254,

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are common in jurisdictions with complex immigration systems, as in Aurion, a developing nation navigating economic reforms⁵⁷.

RMG's retention was limited to the duration required for visa formalities, with no evidence of workers being coerced or penalized (Additional Clarifications, para. 3). The Aurion Labour Code, while vague on specific retention rules⁵⁸ delegates enforcement to ministerial directives, which RMG followed. The lack of worker complaints in the record further undermines CDI's claims, as per the ILO General Survey on Forced Labour (2022),⁵⁹ which emphasizes that forced labor requires evidence of exploitation, absent here.

Housing Conditions Met Applicable Standards

CDI's allegations of overcrowded housing are exaggerated and lack legal grounding. The Additional Clarifications (para. 5) confirm that RMG's housing facilities adhered to the Aurion Labour Code's standards, which, while criticized for flexibility, align with developing nations' economic constraints. The ILO General Survey⁶⁰ on Fundamental Conventions (2022) recognizes that housing standards in developing countries may differ from those in developed nations, provided they ensure basic safety and dignity (p. 45). RMG's facilities met these requirements, with no evidence of health violations or worker complaints beyond CDI's unverified reports (Clarifications, para. 10).

⁵⁷ (Moot Problem, paras. 1-4)

⁵⁸ (Additional Clarifications, para. 5),

⁵⁹ ILO, 'General Survey on the Fundamental Conventions Concerning Rights at Work' (2022), p. 45

⁶⁰ ILO, 'General Survey on the Fundamental Conventions Concerning Rights at Work' (2022)

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In *Methanex Corp v United States* (UNCITRAL, Final Award, 3 August 2005), the tribunal rejected claims of regulatory breaches when the respondent complied with domestic standards, even if those standards were less stringent than international norms (Part IV, Ch. D, para. 23). Similarly, RMG's compliance with the Labour Code, supplemented by ministerial oversight⁶¹ satisfies its JVA obligations. CDI's reliance on its own investigation, without independent verification, fails to establish a breach.

No Undisclosed Ties to BWS

CDI alleges that RMG failed to disclose ties to BWS, the recruitment agency, breaching JVA transparency obligations⁶². However, Clarifications (para. 11) confirm that RMG disclosed its recruitment arrangements to CDI, which approved the campaigns. The JVA (cl. 4.2(c)(ii)) requires transparency in material operations, but does not mandate disclosure of all agency relationships unless they impact contractual performance. RMG's disclosure of BWS's role in labor supply satisfies this requirement.⁶³

: CDI's Approval of Recruitment Campaigns

The Clarifications (para. 11) state that CDI was informed of and approved RMG's recruitment strategies, including BWS's involvement. This approval negates any claim of non-disclosure. In *Saluka Investments BV v Czech Republic*⁶⁴ (UNCITRAL), the tribunal held that a claimant's prior knowledge of operational practices precludes breach claims

⁶¹ (Additional Clarifications, para. 5),

⁶² (Moot Problem, para. 43)

⁶³ . Joint Venture Agreement between Calyx DreamBot Inc and Rivus Microelectronics Group (Aurion Semiconductor Inc JVA) (signed December 2022), Clause 4.2(c)(ii).

⁶⁴ *Saluka Investments BV v The Czech Republic* (UNCITRAL) Partial Award (17 March 2006), para. 304

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based on non-disclosure (para. 304). CDI's active participation in approving campaigns indicates consent, undermining its allegations.

No Material Impact of Alleged Non-Disclosure

Even if undisclosed, BWS's ties did not materially affect JVA performance. James Crawford's "*Investment Arbitration and the ILC Articles on State Responsibility*" notes that breaches must be material to trigger liability under international law . The absence of evidence linking BWS's role to labor violations or operational failures renders CDI's claim speculative⁶⁵.

iii. Overtime Compliant with Aurion Labour Code

CDI alleges excessive overtime, citing timesheets showing violations of ILO standards⁶⁶ However, Clarifications (para. 10) note that these timesheets were challenged by RMG and not independently verified due to whistleblower protection. Moreover, Aurion's Resolution No. 4/2020 permits up to 300 overtime hours annually⁶⁷ a limit within which RMG operated.

⁶⁵ (Clarifications, para. 11)

⁶⁶ (Moot Problem, para. 43).

⁶⁷ (Additional Clarifications, para. 5),

Compliance with Domestic Overtime Limits

The Aurion Labour Code, as clarified by Resolution No. 4/2020, sets a flexible overtime framework tailored to industrial needs⁶⁸ The ILO General Survey (2022) acknowledges that developing nations may adopt higher overtime thresholds to balance economic growth and worker welfare (p. 48). RMG’s adherence to the 300-hour limit complies with domestic law, which the JVA incorporates (cl. 4.2(c)(ii)). In *Urbaser v Argentina*⁶⁹ the tribunal upheld compliance with domestic labor laws as sufficient to meet treaty obligations, absent clear evidence of egregious violations (para. 256).

Lack of Verified Evidence

The unverified nature of CDI’s timesheets undermines their reliability. The Ministry’s refusal to verify, based on whistleblower protection⁷⁰ aligns with international norms under the UN Guiding Principles on Business and Human Rights (2011), which prioritize informant confidentiality. Without corroborated evidence, CDI’s overtime claims fail, as per *Methanex v United States* , where unverified allegations were dismissed.⁷¹

⁶⁸ (Additional Clarifications, para. 5).

⁶⁹ *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia v The Argentine Republic* (ICSID ARB/07/26) Award (8 December 2016), para. 258, available at:

⁷⁰ (Clarifications, para. 10),

⁷¹ *Methanex Corporation v United States of America* (UNCITRAL) Final Award on Jurisdiction and Merits (3 August 2005), Part IV, Ch. D, para. 25

CDI's Investigations Were Biased

CDI's allegations stem from its own investigation, which was tainted by bias and conflicts of interest, rendering its findings unreliable. The investigation's lack of impartiality further supports RMG's position that no breach occurred.

i. Veridian Oversight Compromised Impartiality

Clarifications (para. 9) reveal that CDI's investigation was overseen by a Veridian aide, raising concerns of geopolitical bias given the Seratious-Veridia tensions (Moot Problem, paras. 1-4). Marko Milanovic's "Special Rules of Attribution of Conduct in International Law" (2020) 96 International Law Studies 295 cautions that evidence gathered under biased oversight is questionable in attribution disputes (p. 305). The aide's involvement, coupled with Veridia's interest in undermining Aurion's semiconductor hub ambitions, suggests a motive to exaggerate findings.

Conflict of Interest in Stakeholder Involvement

The Additional Clarifications (para. 8) note that stakeholders in CDI's investigation included parties with potential conflicts, further tainting the process. The UN Guiding Principles (2011) emphasize that corporate due diligence must be impartial and independent (Principle 17). CDI's failure to ensure neutrality undermines its claims, as tribunals in cases like *Saluka v Czech Republic* (para. 308) have rejected evidence from biased investigations.

. Whistleblower Authenticity Unverified

CDI's reliance on whistleblower reports⁷² is flawed, as the Ministry declined to verify these claims to protect informants⁷³. The ARSIWA Commentaries (2001) note that unreliable or unverified evidence cannot establish state or entity liability (p. 42). In *Methanex v United States*⁷⁴, the tribunal dismissed *claims based on unverified allegations, emphasizing the need for credible evidence*. CDI's refusal to provide verifiable data invalidates its findings.

Lack of Independent Corroboration

CDI's investigation lacked third-party validation, such as from the ILO or neutral auditors. Jorge E. Viñuales' "Attribution of Conduct to States in Investment Arbitration"⁷⁵ stresses that credible evidence requires independent corroboration, especially in labor disputes. The IIC's separate investigation and USD 5 million fine suggest regulatory oversight, but CDI's failure to align with this process further questions its impartiality⁷⁶.

RMG has demonstrated full compliance with the JVA's labor and transparency obligations, as evidenced by its adherence to the Aurion Labour Code and international standards, including ILO Convention No. 29. The alleged breaches—passport

⁷² (Moot Problem, para. 43)

⁷³ (Clarifications, para. 10)

⁷⁴ *Methanex Corporation v United States of America* (UNCITRAL) Final Award on Jurisdiction and Merits (3 August 2005), Part IV, Ch. D, para. 27

⁷⁵ . Jorge E. Viñuales, 'Attribution of Conduct to States in Investment Arbitration' (2022) ICSID Reports Vol. 20, p. 15

⁷⁶ (Moot Problem, para. 47)3

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withholding, overcrowded housing, excessive overtime, and undisclosed BWS ties—are either factually unsupported or legally permissible under applicable frameworks. Passport retention was a temporary administrative measure, housing conditions met domestic standards, overtime complied with Resolution No. 4/2020, and BWS ties were disclosed with CDI’s approval. Moreover, CDI’s investigation, tainted by Veridian oversight and unverified whistleblower claims, lacks credibility and impartiality, failing to establish any breach. The Tribunal should therefore find that RMG did not violate the JVA and dismiss CDI’s claims related to these allegations.

PLEADING

IV. CDI’S TERMINATION OF THE JVA WAS UNLAWFUL

The Respondent, Rivus Microelectronics Group (RMG), submits that the Claimant, Calyx DreamBot Inc (CDI), unlawfully terminated the Joint Venture Agreement (JVA) on 28 December 2024. CDI’s termination, premised on alleged breaches by RMG concerning labor practices, was neither justified by a fundamental breach of the JVA nor proportionate to the circumstances⁷⁷. Under international law and the principles governing contract termination, a party may only terminate an agreement for breaches that are material and fundamental, substantially depriving the terminating party of the contract’s benefits. CDI’s allegations of passport withholding, overcrowded housing, excessive overtime, and undisclosed ties to Best Worker Solutions (BWS) do not meet

⁷⁷. Joint Venture Agreement between Calyx DreamBot Inc and Rivus Microelectronics Group (Aurion Semiconductor Inc JVA) (signed December 2022), Clause 8.1.

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this threshold, as RMG complied with the JVA and applicable laws. Furthermore, CDI's termination was disproportionate and tainted by bad faith, reflecting ulterior motives rather than legitimate contractual grievances. This section provides a detailed analysis, supported by international law, arbitral jurisprudence, and the factual context of the Moot Problem, Clarifications, and Additional Clarifications.

No Fundamental Breach Occurred

Termination of a contract under international law, as reflected in the Vienna Convention on the Law of Treaties (VCLT)⁷⁸ Article 60 and the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) Article 25, requires a material breach that fundamentally undermines the contract's purpose⁷⁹. The English case *Antaios Compania Naviera SA v Salen Rederierna AB* [1985] AC 191, applied in investment arbitration, establishes that a breach must be "repudiatory,"⁸⁰ meaning it goes to the root of the contract, to justify termination. CDI's allegations of labor practice violations do not constitute such a breach, as they were either compliant with the JVA or minor and remediable.

Labor Issues Were Minor and Remediable

CDI alleges that RMG's labor practices—passport withholding, overcrowded housing, excessive overtime, and undisclosed BWS ties—breached the JVA's labor and

⁷⁸ Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), Article 60,

⁷⁹ Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries' (2001) UN Doc A/56/10, Article 25

⁸⁰ *Antaios Compania Naviera SA v Salen Rederierna AB* [1985] AC 191 (HL)

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transparency obligations⁸¹ As addressed in Issue III, these practices complied with the Aurion Labour Code 1994 and International Labour Organization (ILO) Convention No. 29. Passport retention was a temporary administrative measure for visa processing⁸²housing met domestic standards overtime adhered to Resolution No. 4/2020’s 300-hour limit⁸³and BWS ties were disclosed with CDI’s approval (Even assuming minor non-compliance, these issues were not repudiatory.

Non-Material Nature of Alleged Breaches

In *Antaios* Lord Diplock held that a breach justifies termination only if it “*substantially deprives the other party of the benefit of the contract*”⁸⁴ . The JVA’s primary purpose was to establish a semiconductor manufacturing joint venture, leveraging RMG’s local expertise and CDI’s technology⁸⁵Labor issues, even if substantiated, did not impair production or the venture’s commercial objectives, as evidenced by ongoing operations until CDI’s termination .James Crawford’s “Investment Arbitration and the ILC Articles on State Responsibility”⁸⁶ (emphasizes that breaches must be “material” under ARSIWA Article 25, affecting the contract’s core purpose CDI’s failure to demonstrate operational disruption renders its termination unjustified.

⁸¹ (Moot Problem, para. 43).

⁸² (Additional Clarifications, para. 3),

⁸³ (Clarifications, para. 10),

⁸⁴ *Antaios Compania Naviera SA v Salen Rederierna AB* [1985] AC 191 (HL), p. 201

⁸⁵ (Moot Problem, paras. 20-22).

⁸⁶ James Crawford, ‘Investment Arbitration and the ILC Articles on State Responsibility’ (2010) 25 ICSID Rev–FILJ 127, p. 10

Remediability of Alleged Issues

The alleged labor issues were remediable, precluding termination. In *Urbaser S.A. v Argentine Republic*⁸⁷ the tribunal held that minor regulatory non-compliance, such as temporary labor issues, does not justify contract termination if addressable through corrective measures .

RMG's engagement with the Inter-Ministerial Investigative Committee (IIC) and acceptance of a USD 5 million fine⁸⁸ demonstrate willingness to remedy concerns. CDI's refusal to pursue negotiations or corrective steps, as required by the BIT's six-month cooling-off period (BIT, Article 10(2)), further undermines its claim, as per *Saluka Investments BV v Czech Republic*⁸⁹ which required parties to exhaust remedial options before termination .

Deal With It" Response Not Bad Faith

CDI points to RMG's "deal with it" response to acceleration demands⁹⁰ as evidence of bad faith breaching the JVA. However, this informal statement, made in the context of production pressures, does not constitute a repudiatory breach. Karl-Heinz Böckstiegel's "Commercial and Investment Arbitration: ⁹¹4, notes that informal communications do not amount to bad faith unless they explicitly reject contractual obligations . RMG's response

⁸⁷ *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia v The Argentine Republic* (ICSID ARB/07/26) Award (8 December 2016), para. 258

⁸⁸ (Moot Problem, para. 47)

⁸⁹ *Saluka Investments BV v The Czech Republic* (UNCITRAL) Partial Award (17 March 2006), para. 305

⁹⁰ (Moot Problem, para. 32)

⁹¹ Karl-Heinz Böckstiegel, 'Commercial and Investment Arbitration: How Different are they Today? The Lalive Lecture 2012', *Journal of the LCIA*, Vol. 28 No. 4 (2012),

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was directed at CDI's production demands, not labor issues, and did not indicate refusal to address concerns. The IIC's subsequent investigation and RMG's compliance⁹² confirm RMG's commitment to JVA obligations.

Sub-sub-issue: No Repudiation of Contractual Obligations

The "deal with it" statement lacks the intent to repudiate, as required by *Antaios* [1985] AC 191 (p. 200). In *Methanex Corp v United States* (UNCITRAL, Final Award, 3 August 2005), the tribunal rejected claims of breach based on informal statements, emphasizing the need for clear intent to abandon contractual duties (Part IV, Ch. D, para. 25). RMG's continued operations and regulatory engagement negate such intent.

Sub-sub-issue: CDI's Failure to Seek Clarification

CDI's failure to seek clarification or negotiate post-response, as mandated by the BIT (Article 10(2)), indicates its own lack of good faith. Richard Gardiner's *Treaty Interpretation* (2nd edn, OUP 2015) interprets contractual duties under VCLT Article 31 as requiring parties to engage constructively before escalating disputes (p. 11). CDI's immediate resort to termination suggests premeditation, not a response to RMG's conduct.

⁹² (Moot Problem, para. 47)

IIC Fine Does Not Confirm Breach

CDI cites the IIC’s USD 5 million fine (Moot Problem, para. 47) as evidence of RMG’s breach. However, the fine, imposed under Aurion’s domestic regulatory framework, does not establish a JVA violation. In *Urbaser v Argentina*(ICSID ARB/07/26), the tribunal held that domestic administrative sanctions do not automatically constitute contractual breaches unless they directly violate specific treaty or contract terms (para. 260). The JVA incorporates the Aurion Labour Code (cl. 4.2(c)(ii)), and RMG’s compliance with its standards, as clarified by Resolution No. 4/2020 (Additional Clarifications, para. 5), satisfies its obligations. The fine addressed regulatory oversight, not JVA terms.

Domestic Nature of the Fine

The IIC’s fine was an internal administrative measure, not a judicial finding of breach. Jorge E. Viñuales’ “Attribution of Conduct to States in Investment Arbitration” (2022) ICSID Reports Vol. 20 notes that domestic sanctions are not binding in international arbitration unless they confirm contractual non-compliance (p. 16). The fine’s imposition during ongoing operations (Moot Problem, para. 47) suggests it was corrective, not indicative of a repudiatory breach.

No Link to JVA Obligations

The fine’s basis—labor practice concerns—aligns with RMG’s compliance, as addressed in Issue III. The ILO General Survey on Fundamental Conventions (2022) allows

flexibility in developing nations' labor enforcement (p. 45), and RMG's adherence to the Labour Code negates a JVA breach.

Termination Was Disproportionate

Even if a breach occurred, CDI's termination was disproportionate, violating the principle of proportionality in contract law. The ARSIWA Commentaries (2001) emphasize that termination must be proportionate to the breach's severity, balancing the contract's purpose and parties' interests . CDI's unilateral termination, without pursuing remedial steps or negotiations, fails this test.

Minor Issues Do Not Justify Termination

The alleged labor issues, even if true, were minor and did not undermine the JVA's core objectives. In *Antaios* [1985] AC 191, the House of Lords held that termination is disproportionate for non-repudiatory breaches, especially when corrective measures are available (p. 202). The JVA's purpose—semiconductor production—remained intact, as RMG's facilities continued operations⁹³ CDI's termination, bypassing the BIT's cooling-off period (Article 10(2)), ignored less drastic remedies, such as joint audits or ministerial consultation, as required by JVA clause 4.2(c)(ii).

⁹³ (Moot Problem, para. 50).

Availability of Alternative Remedies

The availability of regulatory oversight, evidenced by the IIC’s investigation⁹⁴ and RMG’s willingness to address concerns indicate that termination was unnecessary. *Saluka v Czech Republic*) required parties to explore remedies before termination, especially in joint ventures with public policy elements . CDI’s failure to do so renders its action disproportionate⁹⁵.

Economic Impact of Termination

Termination disrupted Aurion’s economic goals, including job creation and technology transfer ⁹⁶The ARSIWA Commentaries (p. 45) note that disproportionate termination causing significant harm to the respondent violates good faith principles. CDI’s abrupt action ignored these impacts, prioritizing its interests over the JVA’s objectives.

Bad Faith in Termination

CDI’s termination was motivated by bad faith, as evidenced by its CEO’s threat to “destroy” RMG (Clarifications, para. 3) and its premature arbitration filing (Clarifications, para. 5). Böckstiegel (2012) condemns terminations driven by ulterior motives, such as leveraging disputes for competitive advantage, as violations of good faith (p. 9). The geopolitical context—Veridia’s tensions with Seratious and interest in

⁹⁴ (Moot Problem, para. 47),

⁹⁵ *Saluka v Czech Republic* (UNCITRAL, Partial Award, 17 March 2006)

⁹⁶ (Moot Problem, paras. 20-22).

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undermining Aurion’s semiconductor hub (Moot Problem, paras. 1-4)—suggests CDI sought to exit the venture for strategic reasons, not contractual breaches.

Sub-sub-issue: CDI’s Acceleration Demands Indicate Ulterior Motives

CDI’s acceleration demands (Moot Problem, para. 32) were contractual but pressured RMG unduly, suggesting an intent to provoke conflict. *Methanex v United States* (Part IV, Ch. D, para. 28) held that actions aimed at escalating disputes rather than resolving them indicate bad faith. CDI’s failure to negotiate post-dispute reinforces this.

Geopolitical Motivations

The Veridian aide’s oversight of CDI’s investigation (Clarifications, para. 9) and stakeholder conflict suggest geopolitical motives, aligning with Veridia’s interests. Marko Milanovic’s “Special Rules of Attribution of Conduct in International Law” (2020) 96 *International Law Studies* 295 warns that actions influenced by external state agendas undermine good faith⁹⁷.

CDI’s termination of the JVA was unlawful, as no fundamental breach by RMG occurred. The alleged labor practice violations were either compliant with the JVA and Aurion Labour Code or minor and remediable, falling short of the repudiatory threshold required by *Antaios* [1985] AC 191 and ARSIWA Article 25. RMG’s “deal with it” response did not indicate bad faith, and the IIC’s fine does not confirm a contractual breach. Moreover, CDI’s termination was disproportionate, ignoring available remedies

⁹⁷ International Law Commission, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries’ (2001) UN Doc A/56/10, p

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and causing undue harm to RMG and Aurion's economic objectives. CDI's actions, marked by bad faith and potential geopolitical motives, further invalidate the termination. The Tribunal should declare CDI's termination unlawful and dismiss its related claims.

PRAYERS OF RELIEF

The Respondent, Rivus Microelectronics Group, respectfully requests the Tribunal to:

1. Declare that it lacks jurisdiction over the dispute;
2. Declare that RMG did not breach the JVA in relation to the alleged labour practices;
3. Declare that CDI's termination of the JVA was unlawful;
4. Dismiss CDI's claim for USD 600 million in damages;
5. Award RMG costs of the arbitration, including legal fees and expenses;
6. Award any other relief the Tribunal deems appropriate.