

**THE 20TH LAWASIA INTERNATIONAL MOOT
IN THE ASIAN INTERNATIONAL ARBITRATION CENTRE
CITY OF HANOI**

THE SOCIALIS REPUBLIC OF VIETNAM

2025

BETWEEN

CALYX DREAMBOT INC (“CDI”)

(CLAIMANT)

AND

RIVUS MICROELECTRONICS GROUP (“RMG”)

(RESPONDENT)

MEMORIAL FOR CLAIMANT

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Metalclad Corporation v United Mexican States, International Centre for Settlement of Investment Disputes, Case No ARB(AF)/97/1 (30 August 2002)

Técnicas Medioambientales Tecmed, S.A. v United Mexican States, International Centre for Settlement of Investment Disputes, Case No ARB (AF)/00/2 (29 May 2003)

Treaty

Vienna Convention on the Law of Treaties 1969

ACRONYMS

AIAC	Asian International Arbitration Centre
AIAC Rules	AIAC Arbitration Rules 2023
ASI	Aurion Semiconductor Inc
AV BIT	The Aurion-Veridia Bilateral Investment Treaty
BWS	Beta Workforce Solutions
CDI	Calyx Dreambot
FET	Fair and equitable treatment
<i>Forced Labour Convention</i>	International Labour Organisation Convention Concerning Forced or Compulsory Labour of 1930 (No. 29)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IIC	Independent Investigative Committee of Aurion
JPMT	Joint project team comprising representative from both CDI and RMG
JVA	Joint Venture Agreement between Calyx Dreambot Inc and Rivus Microelectronics Group
RMG	Rivus Microelectronics Group
UNIDROIT	UNIDROIT Principles of International Commercial Contracts (2016)
WTO agreements	The Marrakesh Agreement Establishing the World Trade Organization and its Covered Agreements
VCLT	Vienna Convention on the Law of Treaties 1969

STATEMENT OF JURISDICTION

1. The Aurion-Veridia Bilateral Investment Treaty (BIT), agreed upon between the Governments of Aurion and Veridia in October 2022, aims to foster investor confidence by ensuring fair and equitable treatment, protection against expropriation, and guarantees of regulatory stability.
2. On 20 December 2022, CDI (the Claimant) and RMG (the Respondent) entered into a Joint Venture Agreement (JVA), stipulating that any disputes between the Parties arising from this Agreement shall be determined by arbitration under the Asian International Arbitration Centre (AIAC) rules, with Aurion as the seat of arbitration.
3. Under the JVA, a Party may issue a written notice initiating a dispute. The Parties agree to resolve any dispute arising from or connected to this Agreement amicably through negotiations between appointed representatives of each Party, which shall commence within fourteen days of serving the written notice containing particulars of the dispute.
4. The JVA provides that any proceedings, claims, or suits relating to disputes arising from the JVA shall not be commenced without obtaining the consent of the Minister of Aurion in charge of economic policy, foreign investments, and trade of Aurion.
5. The JVA shall be governed by the UNIDROIT Principles of International Commercial Contracts (2016) and generally accepted principles of international commercial law for issues not covered by the Principles.
6. The Claimant, incorporated in Veridia, and the Respondent, incorporated in Aurion, formed a Special Purpose Vehicle (SPV), Aurion Semiconductors Inc (ASI).
7. Under the JVA, if either Party is unable to perform its obligations due to a *force majeure* event, that Party may terminate the Agreement. The Parties may terminate the Agreement in case of a fundamental non-performance or breach of the Agreement. Otherwise, termination requires mutual written agreement by both Parties, in accordance with principles of good faith and fair dealing.
8. On 25 December 2024, the Claimant informed the Respondent of its decision to terminate the JVA, citing ongoing breaches resulting in non-compliance with labour laws and a breakdown of trust. The Claimant alleges that continued partnership would expose it to unjustifiable legal and operational risks.
9. On 28 December 2024, following termination, the Claimant demanded that the Respondent pay a USD 500 million fine imposed on ASI.

10. On 6 January 2025, the Claimant initiated arbitral proceedings under Article 11 of the JVA, alleging that the Respondent fundamentally breached the Agreement by failing to ensure compliance with local laws and ethical labour standards, resulting in financial losses.
11. The Respondent challenges the arbitration's validity, claiming sovereign immunity as a state-controlled entity of Aurion and, alternatively, that the proceedings are premature.
12. The Respondent alleges that the Claimant acted in bad faith and that its cost-cutting measures caused the dispute.

QUESTIONS PRESENTED

The Parties will be presenting arguments on the following issues:

- I.** Whether RMG is entitled to invoke sovereign immunity;
- II.** Whether CDI's initiation of arbitration was premature;
- III.** Whether RMG breached the JVA in relation to the alleged labour practices; and
- IV.** Whether CDI's termination of the JVA was lawful.

STATEMENT OF FACTS

1. In recognition of Aurion's potential as a semiconductor manufacturing hub and interest from Veridian investors, the Governments of Aurion and Veridia signed the Aurion-Veridia Bilateral Investment Treaty (BIT), reinforcing Aurion's commitment to providing a predictable and secure investment environment for Veridian firms.
2. Mr Davul Ho, the President of Aurion, introduced the Respondent's executives to the Claimant's Chief Executive Officer, Ms Al Emret. His vision was to position Aurion as a global powerhouse of technological advancement, capitalizing on the semiconductor industry to propel the Claimant and other Aurion-based tech companies onto the global stage.
3. Mr Ho assured Ms Emret, "You will have full autonomy over your operations in Aurion. RMG is our nation's pride. There will be no interference, and I am certain you will find no better partner than RMG."
4. RMG is a separate entity incorporated in Aurion, but its leadership structure and decision-making are heavily influenced by—and often mirror—the internal policies of the Ministry of Economy. Aurion Companies Commission records disclose that its board of directors consists of Aurion's Cabinet Ministers.
5. The Claimant and Respondent signed the JVA in December 2022, outlining their respective roles, obligations, and rights.
6. ASI, the special purpose vehicle (SPV) established under the JVA, was incorporated on 3 January 2023. with the Claimant and Respondent holding 51% and 49% of the shares, respectively. It is incorporated under the laws of Aurion with an initial paid-up capital of USD1.2 billion, of which the Claimant contributes in full.
7. Thereafter, the Respondent immediately commenced the land alienation application process under the JVA. The land alienation and regulatory approvals were expedited, allowing the state-of-the-art semiconductor manufacturing facility to break ground within weeks.
8. The facility was strategically located to leverage proximity to key supply chain and workforce hubs. It was designed to house cutting-edge semiconductor fabrication equipment, R&D divisions, administrative offices, and workers' dormitories.

9. The Claimant pushed for an accelerated completion schedule, setting an internal target of 26 May 2024 to ensure timely fulfilment for key buyers. This culminated in the Respondent's Project Acceleration Memo dated 26 February 2023, supervised by a joint project management team (JPMT) from both Parties.
10. ASI began incurring costs beyond initial projections before operations commenced. The expedited timeline resulted in a 25% surge in total construction expenses, driven by higher labour costs, contractor fees, and overtime payments.
11. President Ho assured Ms Emret that the construction delays and cost overruns would be addressed, telling her not to worry.
12. Ms Emret urged the Respondent to engage a third-party labour agency to accelerate recruitment and minimise labour costs. The Claimant eventually approved Beta Workforce Solutions (BWS) based on the Respondent's recommendation.
13. On 2 October 2023, ASI entered into a Service Agreement with BWS for supplying and managing an initial workforce of 1,200 workers. Under the Agreement, BWS was responsible for full workforce management, including recruitment, deployment, onboarding, lodging, transport, and regulatory compliance, allowing ASI to focus on operational readiness.
14. With government approvals and intensive worker training, ASI commenced production on schedule on 20 May 2024. Initial shipments were successfully delivered to Seratious, circumventing the Seratious-Veridia trade ban.
15. By September 2024, ASI had successfully positioned itself as a competitive player in the global semiconductor supply chain.
16. As operations scaled, rumours of workforce mistreatment emerged, with reports alleging serious breaches of labour standards, *inter alia* excessive working hours, substandard and hazardous living conditions, withholding of wages and illegal deductions, and exploitative recruitment fees and debt bondage.
17. In response to a warning from the Seratious government on 17 September 2024, the Aurion Ministry of Foreign Affairs and Ministry of Trade and Industry established an Independent Investigative Committee (IIC) to probe the allegations, vested with full authority to conduct inspections, interviews, and review employment records and audit reports.

18. On 30 September 2024, the IIC concluded that: i) living conditions were temporary measures pending dormitory completion; ii) allegations of poor working conditions were contradicted by worker statements (who cited bonus incentives for meeting deadlines); iii) no evidence of debt bondage was found; and iv) no definitive evidence of modern slavery was found. However, record-keeping oversights were identified. The IIC recommended closer monitoring to ensure full labour compliance and improved transparency.
19. On 2 October 2024, the Ministry of Trade and Industry suspended ASI's operating licence pending submission of a revised workforce audit report. On 23 October 2024, the suspension was lifted after ASI complied.
20. The suspension led to contractual penalties for missed deliveries. Ms. Emret considered it politically motivated, given the IIC's inconclusive findings.
21. The Claimant's investigation revealed that BWS had close ties to the Respondent.
22. On 16 December 2024, the Ministry of Trade and Industry imposed a USD 500 million fine on ASI for failing to meet labour compliance standards.
23. On 24 December 2024, the Claimant terminated the JVA.

SUMMARY OF PLEADINGS

I

1. The Respondent cannot claim state immunity.
2. The onus is on the Respondent to prove that it is a state instrumentality.
3. The activities of the Respondent under the JVA are commercial in nature and have nothing to do with state actions.

II

1. The arbitration proceeding is not premature.
2. A conflict of interest situation would arise if the consent from the Ministry of the State of Aurion is required.

III

1. The Respondent breached the JVA by failing to ensure compliance with all applicable labour and employment laws.
2. The Respondent breached the JVA.

IV

1. The Respondent and the State of Aurion are the same entity.
2. The said entity violates Fair and Equitable Treatment guaranteed by the AV-BIT.
3. The Respondent violated the JVA and fundamentally breached the UNDROIT.
4. The Claimant is entitled to terminate the JVA.

PLEADINGS

PREAMBLE

1. The JVA is entered between the Claimant and the Respondent.¹
2. The PK-BIT stipulates that the seat of arbitration shall be Aurion and the place of arbitration shall be Kuala Lumpur, Malaysia.² Additionally, the agreement stipulates that the arbitration proceedings shall be conducted in the English language.³ Accordingly, the applicable arbitration law is the law of Malaysia and the AIAC rules.⁴
3. Under the JVA, each Party shall conduct its operations in compliance with all applicable laws, regulations, and internationally recognised principles on environmental protection, fair labour practices, and corporate governance.⁵
4. The Parties also acknowledge their commitment to uphold best practices in corporate social responsibility, sustainability, and human rights in line with internationally accepted norms and standards.⁶
5. The JVA shall be governed by and construed in accordance with the UNIDROIT Principles of International Commercial Contracts (2016) and, with respect to issues not covered by such Principle by generally accepted principles of international commercial law.⁷
6. The provisions of the VCLT shall apply in dealing with the application and interpretation of the JVA as both Parties are signatories to the VCTL.⁸ This Convention provides rules, procedures, and guidelines for how treaties are interpreted. Under the VCLT, the rules of customary international law will continue to govern questions not regulated by its provisions.⁹
7. The State of Aurion has ratified the *Forced Labour Convention*.¹⁰
8. Both Aurion and Veridia are contracting states of the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*.¹¹

¹ Joint Venture Agreement, JVA-2022-DEC-5197.

² Clauses 11(a), (d), and (c), *ibid*.

³ Clause 6.1, *ibid*.

⁴ Clause 11(a), *ibid*.

⁵ Clause 6.1, *ibid*.

⁶ Clause 6.2, *ibid*.

⁷ Clause 12, *ibid*.

⁸ Exhibit 2, Moot Court Problem 2025.

⁹ Articles 31 and 32, VCTL.

¹⁰ Exhibit 9, Moot Court Problems.

¹¹ Paragraph 2, Additional Clarifications.

I. THE RESPONDENT IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY

The Respondent claims it is entitled to sovereign immunity as an entity controlled by the State of Aurion. Sovereign immunity protects a state and its instrumentalities from being sued without its consent. Only a state may enjoy absolute immunity. The immunity only applies to public actions (*jure imperii*) and not to commercial activities (*jure gestionis*). The Respondent is a corporation incorporated in Aurion. Under the JVA, both Parties agree that the ASI shall be managed as an independent, commercial driven entity. Therefore, regardless of the background of the Respondent, it has voluntarily agreed to enter into a commercial joint venture with the Claimant. Therefore, sovereign immunity is inapplicable as it expressly engages in private business activities. Moreover, the onus is on the Respondent to prove that it is a state instrumentality.

Factum:

1. The President of Aurion, Mr Davul Ho, has stated that the Respondent is a commercially autonomous vehicle under his influence.¹² The Respondent is an independent legal entity under the law of Aurion.¹³
2. There are reports that the capital requirements of the Respondent were provided from the public funds of Aurion.¹⁴
3. The board of directors of the Respondent includes cabinet ministers of Aurion in accordance to data lodged at the Aurion Companies Commission.¹⁵
4. The Claimant holds 51 percent of the shares in ASI.¹⁶
5. The JVA stipulates that the ASI shall be managed as an independent, commercially driven entity, with neither Party exercising undue influence over its governance or operations.¹⁷
6. The obligations of the Parties are spelt out in the JVA.¹⁸

Analysis:

State immunity cannot be claimed by the Respondent: i) Even if the Respondent has indirect state links, its commercial activities disqualify it from sovereign immunity; and ii) The onus is on the Respondent to prove that it is a state instrumentality.

¹² Paragraph 10, Moot Court Problem 2005.

¹³ JVA.

¹⁴ Paragraph 27, Moot Court Problem 2025.

¹⁵ Paragraph 28, Moot Court Problem 2025.

¹⁶ Clause 3.2, JVA.

¹⁷ Clause 3.3, JVA.

¹⁸ Clause 4, JVA.

1. The Claimant, in good faith, entered into a JVA with the Respondent after being assured by President Ho that the latter is a commercially autonomous vehicle. The claim of sovereign immunity rests on: i) the legal framework of Aurion; ii) the nature of the Respondent's business; and iii) the jurisdiction where immunity is being asserted.

- 1.1 In *Germany v. Italy*,¹⁹ the International Court of Justice affirms the restrictive doctrine of sovereign power (*jure imperii*), which inherently excludes commercial activities (*jure gestionis*). In this case, the court considers that the terms "*jure imperii*" and "*jure gestionis*" do not imply that the acts in question are lawful but refer rather to whether the acts in question fall to be assessed by reference to the law governing the exercise of sovereign power (public actions) or the law concerning non-sovereign activities of a State, especially private and commercial activities.²⁰

- 1.2 The JVA expressly states that the ASI is an independent, commercially driven entity. As such, the Respondent's activities under the JVA must be guided by commercial considerations. By implication, the Respondent assured the Claimant that it was independent of any governmental organization.

- 1.3 The Respondent should be estopped from denying this assurance that it is not a state instrumentality. Under Article 31 of the VCLT, a party state cannot later deny a treaty's meaning if it previously accepted it through consistent practice as a matter of good faith. By analogy, Aurion cannot deny such assurance. In *Cambodia v. Thailand*,²¹ the International Court of Justice held that Thailand was estopped from denying Cambodia's sovereignty over the temple because it had accepted maps (prepared by a Franco-Siamese commission) showing the temple as part of Cambodia for decades without any objection. The Court said:

There is no room in the circumstances of the present case for the application in favour of Cambodia of any of the doctrines prayed in aid by Counsel for Cambodia, whether acquiescence, estoppel or prescription.²²

2. The onus is on the Respondent to prove that it is a state instrumentality. There is no evidence to support this view.

- 2.1 The Respondent is a commercial autonomous vehicle as stated by President Ho of Aurion. This is also confirmed in the JVA.

- 2.2 Reports of capital requirements are provided by public funds are hearsay and have not been supported by any admissible evidence.

¹⁹ Jurisdictional Immunities of the State (*Germany v. Italy: Greece intervening*), ICJ, Judgment of 3 February 2012, <<https://www.icj-cij.org/sites/default/files/case-related/143/143-20120203-JUD-01-00-EN.pdf>>

²⁰ *Ibid*, p. 125.

²¹ ICJ, Reports of Judgments, Advisory Opinions and Orders, Judgment of 15 June 1962.

²² *Ibid*, p.10.

2.3 Having cabinet ministers as members of board of directors is not the same as asserting control by Aurion. The directors owe a fiduciary to the company as a whole, and not any sector of the shareholders or other entities, including Aurion.

In the absence of any evidence to suggest any remotely influence by the Aurion, the nature of activities of the Respondent with the Claimant has expressly stated to be commercial in nature. Therefore, state immunity is not applicable in this dispute as a matter of law and fact.

II. THE CLAIMANT'S INITIATION OF ARBITRATION IS NOT PREMATURE

The Respondent asserts state immunity, thereby conceding that it is a state organ. Moreover, Aurion colludes with Seratious to meet the latter's demand for "transparency." This stance contradicts ASI's request for transparency regarding its accusations of modern slavery, a request that Aurion refuses. Consequently, imposing a fine violates the principles of due process under international customary law,²³ and Aurion appears accountable only to Seratious, creating a conflict with Veridia.

Factum:

1. On 24 December 2024, the Claimant wrote to the Respondent informing the former decision to terminate the JVA and asked the Respondent to bear the fine of USD 500 million imposed by Aurion.²⁴
2. On 5 January 2025, the Claimant served notice of arbitration proceedings against the Respondent alleging that the latter has fundamentally breached the JVA by failing to ensure compliance with local laws and ethical labour standards, hereby jeopardizing the join-venture's viability.
3. The Respondent claimed that it is an entity controlled by the State of Aurion.²⁵
4. Under the JVA, the Chief Executive of ASI is appointed by the Claimant as the Chairman of the Board.²⁶
5. The ASI's request for transparency of the "actual timesheets from an undisclosed ASI employee" leading to the fine for its failure to meet labour compliance standards is rejected by Aurion.²⁷ The latter cited "confidentiality, safety, and national interest" as the grounds for refusal.²⁸ However, it subsequently provides the revised audit report with documentation to address the discrepancies to Seratious' demand for transparency.²⁹
6. The Claimant alleges the financial losses it incurs is due the breaches of the Respondent.

²³ United Nations, Report of the International Law Commission, Seventieth session (30 April–1 June and 2 July–10 August 2018), A/73/10, pp. 75, 285, and 292.

²⁴ Paragraphs 59 and 60, Moot Court Problem 2025.

²⁵ Paragraph 63, Moot Court Problem 2025.

²⁶ Clause 3.4, JVA.

²⁷ Clause 57, Moot Court Problem 2025.

²⁸ Ibid.

²⁹ Clause 58, Moot Court Problem 2025.

7. Under the JVA, the Respondent is responsible of ensuring compliance with all applicable local laws and international standards, including labour practices.³⁰
8. Under the JVA, “any proceedings, claims, or suits in relation to any dispute or controversy arising” from this Agreement shall not be commenced before first obtaining the consent of the Minister in charge of economic policy, foreign investments and trade of Aurion.³¹

Analysis:

The State of Aurion has imposed a US\$500 million fine on ASI — a special purpose vehicle (SPV) jointly owned by the Claimant and the Respondent — resulting in the Claimant sharing 51 per cent of the penalty. The Respondent is an instrumentality of Aurion. Accordingly, the Respondent and Aurion are the same entity. This fine stems from the alleged wrongdoings of the Respondent. In effect, this constitutes state action penalizing the Claimant, rendering the JVA impossible to perform. The Claimant and Respondent hold 51% and 49% of ASI’s shares, respectively.³² ASI has an initial paid-up capital of USD 1.2 billion, which CDI is obligated to contribute in full. In effect, the USD 500 million fine amounts to a confiscation of the Claimant’s proportionate equity share in ASI.³³ The Claimant should be protected against expropriation under the AV-BIT.³⁴

1. Aurion’s discriminatory conduct violates the fair and equitable treatment (FET) standard under the AV-BIT, as evidenced by its asymmetrical approach to transparency.³⁵ While Aurion promptly acceded to Seratious’ disclosure demands, it has systematically denied the Claimant’s substantively identical requests — despite the Claimant’s documented efforts to resolve the dispute in good faith.
2. The double standards blatantly violate fundamental principles of law, which need no further elaboration than what has been briefly mentioned below:
 - 2.1 Arbitrary conduct under *Técnicas Medioambientales Tecmed, S.A. v United Mexican States*,³⁶ as it lacks objective justification³⁷; and
 - 2.2 Denial of transparency, a core FET obligation affirmed in *Metalclad Corporation v United Mexican States*.³⁸ In this case, it was affirmed that “These objectives specifically include transparency and the substantial

³⁰ Clause 4.2, JVA.

³¹ Clause 10.2, JVA.

³² Clause 3.2, JVA.

³³ Clause 3.1, JVA.

³⁴ Exhibit 1, Moot Court Problem.

³⁵ Exhibit 1, Moot Court Problem.

³⁶ International Centre for Settlement of Investment Disputes, Case No ARB (AF)/00/2 (29 May 2003). <https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3785/DC4872_En.pdf>

³⁷ *Ibid*, p.75

³⁸ International Centre for Settlement of Investment Disputes, Case No ARB(AF)/97/1 (30 August 2002). <https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C155/DC542_En.pdf>

increase in investment opportunities in the territories of the Parties.”³⁹

3. By withholding material information, the Respondent (as Aurion’s *alter ego*) has actively frustrated dispute resolution, a breach of:
 - 3.1 The JVA’s implied good faith negotiation; and
 - 3.2 The customary international law duty to cooperate in dispute settlement (*Emilio Agustín Maffezini v The Kingdom of Spain*⁴⁰). In this case, the Tribunal held that:

Notwithstanding the fact that the basic treaty containing the clause does not refer expressly to dispute settlement as covered by the most favoured nation clause, the Tribunal considers that there are good reasons to conclude that today dispute settlement arrangements are inextricably related to the protection of foreign investors, as they are also related to the protection of rights of traders under treaties of commerce.⁴¹
 - 3.3 Such conduct undermines the “stable and predictable framework” for investment guaranteed by the AV-BIT, entitling the Claimant to relief.

As the Respondent and Aurion are the same entity, it would not be fair and equitable to ask Aurion for consent to initiate arbitration proceedings against the Respondent. Otherwise, this would place Aurion in a conflict of interest, constituting a blatant violation of the principles of natural justice — specifically, the rule against bias (*nemo iudex in causa sua*).

³⁹ Ibid, p.21.

⁴⁰ International Centre for Settlement of Investment Disputes, Case No. ARB/97/7 (31 January 2001) <<https://www.italaw.com/cases/641>>

⁴¹ Ibid, p.20

III. THE RESPONDENT BREACHED THE JVA IN RELATION TO THE ALLEGED LABOUR PRACTICES

The Respondent breached the terms of the JVA in relation to the alleged labour practices as the workforce audit report has discovered the actual overtime hours are significantly higher than reported.

Factum:

1. The Respondent proposed a shortlist of local manpower agencies with experience in large-scale industry staffing. Among them was Beta Workforce Solutions (BWS), an agency that offered highly competitive rates and had previously supplied labour for comparable large-scale projects. Internal correspondence later indicated that JPMT touched on various considerations, including cost efficiency and recruitment speed to stabilise the project's finances. The Claimant ultimately approved BWS's selection based on RMG's recommendation, with no recorded objections.⁴²
2. On 30 September 2024, the ICC published the findings of the alleged breach of labour practices.⁴³ It discovers the following issues:
 - 2.1 The dormitories provided to the workforce were congested, with each 185-square-foot room housing between 4 to 6 workers. However, basic essentials are provided to the workers, and the subpar living conditions were temporary, until the completion of ASI's on-site worker dormitories.
 - 2.2 Several workers reported working beyond the regular working hours due to threats of wages being cut unless their KPIs are met. This finding is not conclusive as it contradicts the statements of several other workers explaining that the overtime was voluntary, aimed at meeting production targets to potentially earn bonuses. In some cases, workers mentioned that they would occasionally skip breaks or meals in an effort to stay on track and meet these targets, understanding the importance of meeting deadlines to secure bonuses.
 - 2.3 The IIC identifies significant issues with the workforce audits submitted by ASI, where the number of workers involved in overtime and hours of overtime goes unreported. On this point, ASI offers an apology and blamed BWS for this oversight.
3. On 2 October 2024, the Ministry of Trade and Industry suspended ASI's operating licence pending submission of a revised workforce audit report. On 23 October 2024, the suspension was lifted after ASI complied.⁴⁴ The suspension

⁴² Paragraph 37, Moot Court Problem 2025.

⁴³ Paragraph 47, Moot Court Problem 2025.

⁴⁴ Paragraph 50, Moot Court Problem 2025.

led to contractual penalties for missed deliveries. Ms Emret considered it politically motivated, given the IIC's inconclusive findings.⁴⁵

4. On 10 October 2024, the Claimant's investigation revealed that BWS had close ties to the Respondent.⁴⁶ CDI's internal investigation was conducted with oversight from various stakeholders, including an aide from the Veridian Ministry of Foreign Affairs, who was present throughout the process to provide guidance on regulatory compliance.⁴⁷
5. The Ministry of Trade and Industry conducted further review based on a revised workforce audit report.⁴⁸ It is discovered the actual overtime hours are significantly higher than reported by approximately 10,000 hours. In accordance to this and ICC findings, the Ministry of Trade and Industry imposed a USD 500 million fine on ASI for failing to meet labour compliance standards.⁴⁹
6. According to the Ministry of Trade and Industry, the timesheets are concrete evidence of modern slavery.⁵⁰
7. The Respondent claims that the Claimant's cost cutting measures have contributed to the regulatory non-compliance arguing this results in selecting the cheaper labour agency without any objection from the Claimant.⁵¹

Analysis:

The JVA stipulates that the Respondent is solely responsible for ensuring full compliance with all applicable labour and employment laws. It further requires the Claimant to cooperate fully with the Respondent in securing approvals, operational licenses, and adherence to environmental and labour standards — consistent with domestic laws and international best practices.

1. The Claimant's full contribution of the initial paid-up capital of USD 1.2 billion demonstrates its reliance on the Respondent's local knowledge and expertise to establish the JVA. This arrangement was a concession to the Respondent, as it would otherwise lack commercial justification. The Respondent was fully aware that the Claimant relied on them for local advice and operational support. Budget control and purported cost-cutting measures must not undermine the Respondent's obligations under Article 4.2 of the JVA.

⁴⁵ Paragraph 51, Moot Court Problem 2025.

⁴⁶ Paragraph 54, Moot Court Problem 2025.

⁴⁷ Paragraph 9, Clarifications to the Moot Court Problem 2025.

⁴⁸ Paragraph 56, Moot Court Problem 2025.

⁴⁹ Paragraph 56, Moot Court Problem 2025.

⁵⁰ Paragraph 57, Moot Court Problem 2025.

⁵¹ Paragraph 64, Moot Court Problem 2025.

- 1.1. Although the ICC did not find definitive evidence of modern slavery, a loosely defined term with no legal precision, its investigation nevertheless revealed poor working conditions, including overcrowded dormitories, excessive working hours, and the withholding of workers' passports. Compliance with labour standards is the responsibility of the Respondent under Article 4.2 of the JVA.
 - 1.2. The ICC's findings led to the suspension of ASI's operations by the Ministry of Trade and Industry. After further review, the Ministry of Trade and Industry imposed a USD 500 million fine on ASI for failing to meet labour compliance standards. These would not have been imposed had there been no breach of labour practices.
2. The Respondent is an instrumentality of the State of Aurion, whose president is Mr Ho. The approval of BWS by the Claimant was based on the information and recommendation provided by the Respondent. Moreover, President Ho assured Ms Emret that the construction delays and cost overruns would be addressed, telling her not to worry.⁵²
 - 2.1 On 10 October 2024, an investigation by the Claimant concluded that a conflict of interest existed between the Respondent and BWS due to their close ties through personal connections.⁵³ BWS is owned by the uncle of President Ho's son-in-law, which the Respondent did not disclose.⁵⁴
 - 2.2 Article 3.2.5 of the UNIDROIT provides that "[a] party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed."
 - 2.3 The Respondent had a duty of full disclosure, which it failed to fulfil. This constitutes fraudulent misrepresentation, which induced the Claimant to accept the Respondent's recommendation.
3. The Respondent is an instrumentality of Aurion, the same entity that imposed the fine on ASI. Had the Respondent (a) conducted proper due diligence in selecting a qualified labour agency; and (b) ensured full compliance with labour and employment laws, the alleged breaches of the JVA's labour provisions would never have occurred.

Therefore, the Respondent cannot evade its duties and obligations under the JVA.

⁵² Paragraph 35, Moot Court Problem 2025.

⁵³ Paragraph 54, Moot Court Problem 2025.

⁵⁴ Ibid.

IV. THE CLAIMANT'S TERMINATION OF THE JVA IS LAWFUL

The facts are summarized in the preceding Part III.

Analysis:

The Respondent should have been aware that non-compliance with the labour laws would frustrate the JVA, and strict compliance therewith is an essential obligation enforceable under the Agreement. Ensuring compliance with all applicable labour laws is a condition of the Agreement. Any material violation should constitute a fundamental breach. The Claimant should be entitled to terminate the agreement arising from: i) fundamental breach; ii) breach of international convention; and iii) *force majeure*. The harm suffered by the Claimant is irreparable.

1. Under the JVA, “[i]n the event of a fundamental non-performance or breach of this Agreement, the Parties may terminate this Agreement.”⁵⁵
 - 1.1. Either Party has the mutual right to terminate the Agreement due to a fundamental breach.
 - 1.2. As an innocent Party, the Claimant may terminate the Agreement regardless of the term the “Parties”, as contract terms should be given practical and reasonable interpretation.
 - 1.3. The Claimant is entitled to terminate the JVA under Article 7.3.1 of the UNIDROIT, which states:

A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance. (2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result; (b) strict compliance with the obligation which has not been performed is of essence under the contract.
 - 1.4. In *Patel v Mirza*,⁵⁶ the United Kingdom Supreme Court held that “[n]o court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.” In *Malik v. Bank of Credit; Mahmud v. Bank of Credit*,⁵⁷ the United Kingdom House of Lord held that “[a]n employee may elect to treat a sufficiently serious breach of the trust and confidence term as discharging him from the contract and, hence, as a constructive dismissal.”

⁵⁵ Clause 8.1, JVA.

⁵⁶ [2016] 3 WLR 399 <<https://www.bailii.org/uk/cases/UKSC/2016/42.html>>

⁵⁷ [1997] UKHL 23 <<https://www.bailii.org/uk/cases/UKHL/1997/23.html>>

- 1.5. In *Tramways Advertising Pty Ltd v Luna Park (NSW) Ltd*,⁵⁸ it was held that the issue is whether “the promise is of such importance to the promise that he would not have entered into the contract unless he had been assured of a strict or substantial performance of the promise.”
- 1.5.1. The Respondent is well aware of the escalating economic and technological conflict between Seratious and Veridia, which is under economic restrictions, including strict trade controls and export bans, imposed by the former,⁵⁹ and that the operation of ASI is under tight scrutiny from the former.⁶⁰
- 1.5.2. The Respondent is well aware that the ASI’s operations is an attempt to circumvent the Seratious-Veridia trade ban, securing long-term contracts, and rapidly expanding its client portfolio that significantly bolstered its revenue projections.⁶¹
- 1.5.3. By contributing USD 1.2 billion in paid-up capital in full while holding only 51% of the shares,⁶² the Claimant is relying on the Respondent to fully comply with domestic and international regulatory practices to avoid any controversy arising from Seratious. The Claimant would not have entered into the JVA otherwise.
- 1.5.4. Consequently, this breach undermines the very foundation of the Agreement.
- 1.6. A three-week suspension of ASI’s operations has serious consequences, including contractual penalties for missed delivery schedules and damage to its credibility and reputation among buyers.⁶³ The ASI has suffered significant harm and total losses amounting to USD 742 million, including: (i) fine; ii) Lost revenue during the suspension period; iii) Contractual damages paid to buyers due to delayed deliveries; and iv) Loss of contracts.⁶⁴
- 1.7. The Respondent should be well aware that any delay undermines the essence of the JVA, as it disrupts the fixed production schedule critical to the semiconductor industry — and by extension, the operations of ASI.
2. Article 3.3.1 of the UNIDROIT provides that (2) Where the mandatory rule does not expressly prescribe the effects of an infringement upon a contract, the parties have the right to exercise such remedies under the contract as in the circumstances are reasonable. (3) In determining what is reasonable regard is to be had in particular to: (a) the purpose of the rule which has been infringed; (b) the category of persons for whose protection the rule exists; (c) any sanction that

⁵⁸ (1938), 38 SRNSW 632 at p 641.

⁵⁹ Paragraphs 1 and 3, Moot Court Problem 2025.

⁶⁰ Paragraphs 15 and 16, Moot Court Problem 2025.

⁶¹ Paragraph 41, Moot Court Problem 2025.

⁶² Articles 3.1 and 3.2, JVA.

⁶³ Paragraph 51, Moot Court Problem 2025.

⁶⁴ Paragraph 62, Moot Court Problem 2025.

may be imposed under the rule infringed; (d) the seriousness of the infringement; (e) whether one or both parties knew or ought to have known of the infringement; (f) whether the performance of the contract necessitates the infringement; and (g) the parties' reasonable expectations."

2.1. The *Forced Labour Convention*, as ratified by Aurion, imposes an additional obligation on the state to uphold high standards in business practices, including the prohibition of forced labour and the protection of workers' rights.⁶⁵ These international commitments support the premise that Aurion is dedicated to ensuring ethical business operations, which is in line with Veridia's business practices and standards

2.1.1. Article 2 of Convention provides that "the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

2.1.2. Article 25 of the Convention states that "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced."

2.1.3. Working beyond regular hours due to threats of wage cuts if KPIs are not met reinforced by passport withholding constitutes forced labour under the menace of penalty.

2.2. The imposition of a USD 500 million fine on ASI by the Ministry of Trade and Industry for failing to meet labour compliance standards demonstrates a serious breach of the Convention and highlights a fundamental flaw in the Respondent, who is obligated to ensure compliance under the JVA.

2.3. The breach of international convention by the Respondent is serious. Since this breach renders the JVA impossible to perform, it should be implied under the Agreement that the Claimant has the reasonable right to terminate it in accordance with Article 7.3.1 of the UNIDROIT discussed in 1 above.

3. Given the current circumstances, the Claimant has no reasonable alternative but to exercise its right of termination the JVA. Under Article 8.3 of the Agreement, either Party may terminate the Agreement due to a *force majeure* event. Article 7.1.7 of the UNIDROIT (*force majeure*) provides:

Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

⁶⁵ Exhibit 2, Moot Court Problem 2025.

- 3.1. Aurion has failed to provide the Claimant with FET. The JVA obligates the Parties to uphold human rights. In *Técnicas Medioambientales Tecmed, S.A. v United Mexican States*,⁶⁶ the ICSID Tribunal ruled that FET is an expression of the *bona fide* principle in international law, and its violation does not require bad faith by the state. The Tribunal held that a state must act consistently, transparently, and without ambiguity toward foreign investors, avoiding arbitrary measures, actions that a reasonable, impartial observer would deem unjust.
- 3.2. The AV-BIT guarantees fair and equitable treatment (FET), protection against expropriation, and regulatory stability for investors.⁶⁷ Since the Respondent and Aurion are the same entity, Aurion's state conduct constitutes governmental action, rendering the JVA impossible to perform. This conduct was beyond the Claimant's control, as the Claimant had no prior knowledge that the Respondent was a state instrumentality. The said entity has failed to abide the AV-BIT.
 - 3.2.1. Under the JVA, *force majeure* includes governmental actions.⁶⁸
 - 3.2.2. The Claimant's investment shall not be subject to expropriation and shall enjoy stability in the legal and regulatory framework.
 - 3.2.3. In effect, the USD 500 million fine imposed by Aurion amounts to expropriation of the Claimant's proportionate equity share in ASI.
- 3.3. In *Loewen Group, Inc. and Raymond L. Loewen v United States of America*,⁶⁹ ICSID affirmed the principle of a fair trial under international law. Here, the fine imposed on ASI lacked transparency and violated natural justice: ASI was denied an opportunity to present its case, and the basis for the fine was undisclosed. A double standard further exists, as Aurion shared information with Seratiou (a third party) but not with ASC.
- 3.4. In *Metalclad Corporation v United Mexican States*,⁷⁰ the ICSID held that a state's failure to provide FET breaches international law. Such a breach destroys the core economic value of the Claimant's investment and undermines its rights under the JVA.
- 3.5. Aurion and its instrumentality, the Respondent, failed to meet their own regulatory requirements. Subsequently, Aurion imposed a heavy fine on ASI, a joint venture between the Claimant and the Respondent, effectively profiting from their own defaults in complying with Aurion's laws and labour standards. The fine has no financial impact on the Respondent, as it is an instrumentality of the State of Aurion collecting the fine. Since the state actions of Aurion have substantially harmed the Claimant's interests,

⁶⁶ International Centre for Settlement of Investment Disputes, Case No ARB (AF)/00/2 (29 May 2003).
<https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3785/DC4872_En.pdf>

⁶⁷ Exhibit 1, Moot Court Problem 2025.

⁶⁸ Article 7.1(c), JVA.

⁶⁹ International Centre for Settlement of Investment Disputes, Case No ARB(AF)/98/3 (26 June 2003).
<https://arbitrationlaw.com/sites/default/files/free_pdfs/Loewen%20v%20US%20-%20Award.pdf>

⁷⁰ International Centre for Settlement of Investment Disputes, Case No ARB(AF)/97/1 (30 August 2002).
<https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C155/DC542_En.pdf>

termination of the Agreement is the Claimant's sole remedy to mitigate further losses.

In light of the foregoing, the Claimant's termination of the JVA constitutes a valid and lawful exercise of its rights.

PRAYER FOR RELIEF

The Claimant respectfully requests the Arbitral Tribunal to determine that:

- I. The Respondent is not entitled to invoke sovereign immunity;
- II. The Claimant's initiation of arbitration is not premature;
- III. The Respondent breached the JVA; and
- IV. The Claimant's termination of the JVA was lawful.