

**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 RESPONDENT**

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### Cases

*Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, International Court of Justice, Judgment of 3 February 2012

*Loewen Group, Inc. and Raymond L. Loewen v United States of America*, International Centre for Settlement of Investment Disputes, Case No ARB(AF)/98/3 (26 June 2003)

*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)
UN Convention on State Immunities	United Nations Convention on Jurisdictional Immunities of the States and their Property
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 can claim state immunity.
2. The Respondent is a state instrumentality.
3. Semiconductor is vital to national security.

### II

1. The arbitration proceeding is premature.
2. The procedures under the JVA has not been honoured by the Claimant.

### III

1. The Respondent has not breached the terms of the JVA, which has been varied by mutual consent.
2. The Respondent has acted in compliance with all applicable labour and employment laws.

### IV

1. The Respondent and the State of Aurion are the same entity.
3. The Respondent has not fundamentally breached the UNDROIT.
4. The Claimant is not entitled to terminate the JVA.

## PLEADINGS

### PREAMBLE

1. The JVA is entered between the Claimant and the Respondent.<sup>1</sup>
2. The PK-BIT stipulates that the seat of arbitration shall be Aurion and the place of arbitration shall be Kuala Lumpur, Malaysia.<sup>2</sup> Additionally, the agreement stipulates that the arbitration proceedings shall be conducted in the English language.<sup>3</sup> Accordingly, the applicable arbitration law is the law of Malaysia and the AIAC rules.<sup>4</sup>
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.<sup>5</sup>
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.<sup>6</sup>
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.<sup>7</sup>
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.<sup>8</sup> 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.<sup>9</sup>
7. The State of Aurion has ratified the *Forced Labour Convention*.<sup>10</sup>
8. Both Aurion and Veridia are contracting states of the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*.<sup>11</sup>

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<sup>1</sup> Joint Venture Agreement, JVA-2022-DEC-5197.

<sup>2</sup> Clauses 11(a), (d), and (c), *ibid*.

<sup>3</sup> Clause 6.1, *ibid*.

<sup>4</sup> Clause 11(a), *ibid*.

<sup>5</sup> Clause 6.1, *ibid*.

<sup>6</sup> Clause 6.2, *ibid*.

<sup>7</sup> Clause 12, *ibid*.

<sup>8</sup> Exhibit 2, Moot Court Problem 2025.

<sup>9</sup> Articles 31 and 32, VCTL.

<sup>10</sup> Exhibit 9, Moot Court Problems.

<sup>11</sup> Paragraph 2, Additional Clarifications.

## I. THE RESPONDENT IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY

The Respondent claims 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 normally only applies to public actions (*jure imperii*) and not to commercial activities (*jure gestionis*). However, the JVA is inseparable from sovereign functions because semiconductor industry is a national security matter.

Although, the Respondent is a corporation incorporated in Aurion, 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.<sup>12</sup> The Respondent is an independent legal entity under the law of Aurion.<sup>13</sup>
2. There are reports that the capital requirements of the Respondent were provided from the public funds of Aurion.<sup>14</sup> These claims, however, have not been formally rebutted by the Respondent or the Aurion government.<sup>15</sup>
3. The board of directors of the Respondent includes cabinet ministers of Aurion in accordance to data lodged at the Aurion Companies Commission.<sup>16</sup> The leadership structure and decision-making within the Respondent were heavily influenced and usually mirrors the internal policies laid down by the Ministry of Economy.<sup>17</sup>
4. The Claimant holds 51 percent of the shares in ASI and provided the full initial paid-up capital of USD 1.2 billion, while the board of directors comprises an equal number of representatives from both the Claimant and the Respondent.<sup>18</sup>
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.<sup>19</sup>

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<sup>12</sup> Paragraph 10, Moot Court Problem 2005.

<sup>13</sup> JVA.

<sup>14</sup> Paragraph 27, Moot Court Problem 2025.

<sup>15</sup> Paragraph 12, Clarifications to the Moot Problem 2025.

<sup>16</sup> Paragraph 28, Moot Court Problem 2025.

<sup>17</sup> Ibid.

<sup>18</sup> Clauses 3.1, 3.2, and 3.4, JVA.

<sup>19</sup> Clause 3.3, JVA.

6. The obligations of the Parties are spelt out in the JVA.<sup>20</sup> Aurion is a signatory to the *United Nations Convention on Jurisdictional Immunities of the States and their Property*.<sup>21</sup>

Analysis:

The Respondent claims state immunity because: (i) it is performing state function; and (ii) such function is non-commercial.

1. Article 5 of UN Convention of State Immunities provides that “[a] State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.”
  - 1.1. The Respondent claims state immunity because it is controlled by Aurion, as its leadership structure and decision-making are heavily influenced by, and often mirror, the internal policies established by Aurion’s Ministry of Economy.
  - 1.2. The Respondent is an arm of Aurion engaged in sovereign (national security) activity.
2. The activities of the Respondent are non-commercial. Article 2(2) of the Convention states that “[in] determining whether a contract or transaction is a ‘commercial transaction’ ..., reference should be made primarily to the nature of the contract or transaction....”
  - 2.1. It has become standard international practice for Europe and the United States to treat semiconductors as strategic assets rather than mere commercial products, as evidenced by *the European Chips Act* and the USA’s *CHIPS and Science Act*.<sup>22</sup> The Claimant is well aware that defence application has become increasingly dependent on high-performance chips, control over semiconductor chains has evolved into a strategic imperative, triggering a geopolitical struggle.<sup>23</sup>
  - 2.2. Veridia, under pressure from economic restrictions imposed by Seratious, has actively encouraged the migration of its technology sector, including the Claimant, to Aurion through financial incentives and diplomatic agreements, ensuring its continued foothold in the semiconductor industry.<sup>24</sup> This is evidenced from the JVA, which the Claimant agreed to contribute the initial paid-up capital of USD 1.2 billion full.<sup>25</sup>
  - 2.3. Given that the semiconductor industry is a matter of national security, its operations should be deemed a sovereign act, falling under the exception

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<sup>20</sup> Clause 4, JVA.

<sup>21</sup> Paragraph 1, Clarifications to the Moot Problem 2025.

<sup>22</sup> European Union <[https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-chips-act\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-chips-act_en)>; United States of America <<https://www.congress.gov/bill/117th-congress/house-bill/4346>>

<sup>23</sup> Paragraph 1, Moot Court Problem 2025.

<sup>24</sup> Paragraph 3, Moot Court Problem 2025.

<sup>25</sup> Clause 3.1, JVA.

to the *jure gestionis* rule. Semiconductors are critical to advanced weapons systems, artificial intelligence, surveillance, and cybersecurity.

- 2.4. Furthermore, the Claimant depends on the Respondent's unique position in Aurion, given that the Claimant funded the entire share capital yet granted the Respondent equal board representation. This can hardly be a commercial arrangement.
- 2.5. Under Clause 4.2 of the JVA, the Respondent's duties (e.g., securing permits and approvals and ensuring full compliance with the laws) are administrative, not commercial. The Claimant should recognize that accessing Aurion's semiconductor-critical mineral resources, a JVA-mandated task for the Respondent, exceeds what any typical commercial entity could achieve.

Therefore, state immunity is applicable in this dispute.

## II. THE CLAIMANT'S INITIATION OF ARBITRATION IS PREMATURE

The Claimant should follow the JVA in seeking dispute resolution.

### 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.<sup>26</sup>
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.

### Analysis:

Under the JVA, the "Parties agree to regulate their own affairs and resolve any dispute arising from or connected to this Agreement amicably through negotiations between an appointed representative of each of the Party which shall commence within fourteen (14) days from the date on which either Party has served written notice on the other containing particulars of the dispute in question."<sup>27</sup> The Claimant has made no attempt to resolve the dispute through negotiations. Nor has it sought the consent of Aurion's Minister responsible for economic policy, foreign investments, and trade, a prerequisite under the JVA for commencing arbitration proceedings.<sup>28</sup>

Aurion is committed to upholding the rule of law.<sup>29</sup> The Minister is obligated to provide reasons for their decision, and the Claimant is entitled to due process, including the right to seek judicial review in Aurion's courts for procedural irregularities. By signing the JVA, the Claimant has submitted to Aurion's jurisdiction. As the semiconductor industry pertains to national security, the JVA explicitly grants Aurion the authority to determine whether arbitration would serve the national interest. The Claimant was well aware of this when it signed the JVA. However, the Claimant has failed to comply with these requirements.

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<sup>26</sup> Paragraphs 59 and 60, Moot Court Problem 2025.

<sup>27</sup> Clause 10.1, JVA.

<sup>28</sup> Clause 1-0.2, JVA.

<sup>29</sup> Exhibit 9, Moot Court Problem 2025.

### III. THE RESPONDENT HAS NOT BREACHED THE JVA IN RELATION TO THE ALLEGED LABOUR PRACTICES

The Respondent has not breached the terms of the JVA in relation to the alleged labour practices.

Factum:

1. Under the JVC, the Chief Executor of the Claimant shall be appointed as the Chairman of the Boar do ASI.<sup>30</sup> The JPMT comprises representatives from the Claimant and the Respondent.<sup>31</sup>
2. 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.<sup>32</sup>
3. On 30 September 2024, the ICC published the findings of the alleged breach of labour practices.<sup>33</sup> 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.

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<sup>30</sup> Clause 3.4, JVA.

<sup>31</sup> Paragraph 32, Moot Court Problem 2025.

<sup>32</sup> Paragraph 37, Moot Court Problem 2025.

<sup>33</sup> Paragraph 47, Moot Court Problem 2025.

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.<sup>34</sup> The suspension led to contractual penalties for missed deliveries. Ms Emret considered it politically motivated, given the IIC's inconclusive findings.<sup>35</sup>
4. On 10 October 2024, the Claimant's investigation revealed that BWS had close ties to the Respondent.<sup>36</sup> 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.<sup>37</sup>
5. The Ministry of Trade and Industry conducted further review based on a revised workforce audit report.<sup>38</sup> 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.<sup>39</sup>
6. According to the Ministry of Trade and Industry, the timesheets are concrete evidence of modern slavery.<sup>40</sup>
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.<sup>41</sup>

#### Analysis:

The JVA stipulates that 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. It is at the request of the Claimant that the Respondent agreed and recommended a third-party agency tasking with recruitment. The Claimant is solely responsible for breach of the JVA. (i) The Claimant approved the employment of the labour agency.; ii) The Claimant intended to minimise labour costs wherever feasible; and iii) The ASI, which is under the management and control of the Claimant, entered into the service agreement with BWS.

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<sup>34</sup> Paragraph 50, Moot Court Problem 2025.

<sup>35</sup> Paragraph 51, Moot Court Problem 2025.

<sup>36</sup> Paragraph 54, Moot Court Problem 2025.

<sup>37</sup> Paragraph 9, Clarifications to the Moot Court Problem 2025.

<sup>38</sup> Paragraph 56, Moot Court Problem 2025.

<sup>39</sup> Paragraph 56, Moot Court Problem 2025.

<sup>40</sup> Paragraph 57, Moot Court Problem 2025.

<sup>41</sup> Paragraph 64, Moot Court Problem 2025.

1. Ms Emret, the CEO of the Claimant urged the Respondent to engage a third-party labour agency to accelerate recruitment. The Respondent provided a shortlist of local manpower agencies for the Claimant to consider. The Claimant ultimately approved the employment of BWS selection based on the Respondent's recommendation without any recorded objections.
  - 1.1. The ASI entered into a service agreement with the BWS following the approval of the Claimant. Under the terms of the Service Agreement, the BWS was tasked with the full scope of workforce management, including recruitment, deployment, onboarding, lodging and transport, and regulatory compliance, ensuring that ASI could focus on operational readiness.<sup>42</sup>
  - 1.2. Accordingly, it was mutually agreed between the Claimant and the Respondent that the recruitment and allocation of labour force and compliance with labour and employment laws under the JVA were to contract out to the BSW.<sup>43</sup>
  - 1.3. This is a variation of the JVA in accordance to UNIDROIT. Article 3.1.2 of the UNIDROIT provides that "[a] contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirement."<sup>44</sup> Therefore, the Respondent is discharged of its obligations under 1.1 above.
2. According to the Claimant's memo, maintaining stringent cost controls to mitigate budget overruns was one key acceleration measure it dictated.<sup>45</sup> The same memo directed the Respondent to "double manpower allocations where feasible" and to "implement extended work shifts and overtime as necessary." However, the Claimant must not undermine the Respondent's reasonable expectations of good faith and fair dealing.
  - 2.1 Accordingly, the BWS must operate within this framework. Cost-cutting measures could pressure it to breach labour laws, for example, by forcing unpaid work. The Claimant bears responsibility for balancing financial pressures with legal compliance to avoid costly penalties and employee disputes.
  - 2.2 Rather than reducing working hours to cut costs, the Claimant exacerbates the problem by accelerating the project through increased overtime. Cost-cutting measures combined with accelerated timelines and excessive overtime inevitably raise concerns. Common sense suggests this approach often severely undermines both morale and work quality.

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<sup>42</sup> Paragraph 36, Moot Court Problem 2025.

<sup>43</sup> Paragraphs 4.2(e) and (f), Moot Court Problem 2025.

<sup>44</sup> Article 1.3 of the UNIDROIT provides that: "A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles."

<sup>45</sup> Paragraph 3.7, Official Memo, Exhibit 5.

- 2.3 Article 1.7 of the UNIDROIT provides that: “(1) Each party must act in accordance with good faith and fair dealing in international trade. (2) The parties may not exclude or limit this duty.”
- 2.4 Article 4.8 of the UNIDROIT further provides that: “ (1) Where the parties to a contract have not agreed with respect to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be supplied. (2) In determining what is an appropriate term regard shall be had, among other factors, to (a) the intention of the parties; (b) the nature and purpose of the contract; (c) good faith and fair dealing; (d) reasonableness.”
- 2.5 The Claimant has a duty of care to act reasonably, ensuring good faith and fair dealing so that its cost-cutting measures do not violate applicable laws. The issue is whether a reasonable person would foresee such consequences. Any prudent executive, particularly the Claimant’s CEO, should have anticipated that cost-cutting amid accelerated timelines would create unreasonably dangerous conditions (e.g., critical understaffing).
- 2.6 The Claimant’s cost-cutting measures obstruct proper performance of the JVA.
3. The final decision to engage BWS rested with the Claimant after evaluating all recommendations. The Claimant should have conducted due diligence to ensure that BWS was a trustworthy partner in managing the labour workforce. The Claimant’s CEO, Ms. Emret, stated that growing financial strain from budget overruns necessitated urgently engaging a third-party labour agency to supplement recruitment efforts and accelerate the process.<sup>46</sup> She pressured the JPTM to take all necessary measures to minimize labour costs wherever feasible.<sup>47</sup>

ASI, which is under the Claimant’s management and control, entered into the service agreement with BWS. BWS was selected after evaluating cost-effectiveness, recruitment speed, and project stability among shortlisted agencies. It is evident that the Claimant prioritized cost-cutting over project quality, as it never emphasized compliance with labour conventions as a top priority. As stated in Paragraph 1, the JVA was varied to task ASI with ensuring BWS’s compliance with labour conventions. It was beyond the Respondent’s scope to interfere with BWS’s operations.

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<sup>46</sup> Exhibit 6, Moot Court Problem 2025.

<sup>47</sup> Ibid.

#### IV. THE CLAIMANT'S TERMINATION OF THE JVA IS UNLAWFUL

The facts are summarized in the preceding Part III.

##### Analysis:

The Claimant should have been aware that there were no changes in circumstances rendering the JVA impossible to continue. The termination of the JVA demonstrated bad faith on the part of the Claimant. Such termination would only be permissible if the minimum wage and overtime rules were still not complied with.

1. The question of whether a fundamental breach has occurred is solely within judicial purview, given that the Arbitration Tribunal possesses no jurisdiction to mandate the Ministry of Trade and Industry's disclosure of documents concerning breaches of labour laws or international conventions underlying the imposed USD 500 million fine. The available domestic remedies for addressing this grievance remain unexhausted at present.
2. The Respondent cannot be held accountable for breaching the labour conventions, as the labour service agency, approved by the Claimant, was responsible for the fine imposed on ASI. The Respondent, holding a 49% share in ASI, is likewise a victim of this breach. The CEO of the Claimant is the Chairman of the Board of ASI.<sup>48</sup> As discussed in Section 3 above, the Parties have agreed to modify the terms governing labour services under the JVA, granting the labour service agency, BWS, authority to deal with the full scope of workforce management, including recruitment, deployment, onboarding, lodging, and transport, and regulatory compliance, ensuring that ASI could focus on operational readiness.<sup>49</sup>
3. *A fortiori*, the findings of the IIC, an independent body, do not establish any breach of labour laws by ASI.<sup>50</sup> The report merely recommends enhancing the transparency of worker audits (particularly concerning overtime and working hours) and continuing to monitor ASI's practices to ensure full compliance with labour laws and international standards. Notably, the IIC explicitly stated that there is no conclusive evidence to classify ASI's labour practices as modern slavery or forced labour.<sup>51</sup>
4. The Claimant has stated that "it defeats all common sense that ASI is suspended when the IIC found no conclusive evidence of modern slavery. This suspension is politically driven to safeguard Aurion's interests and is unfair to CDI as

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<sup>48</sup> Clause 3.4, JVA.

<sup>49</sup> Paragraph 38, Moot Court Problem 2025.

<sup>50</sup> Exhibit 10, Moot Court Problem 2025.

<sup>51</sup> Paragraph 5.1, *ibid*.

Aurion's trade partner".<sup>52</sup> The Claimant cannot maintain the logically incompatible positions that: (i) the Respondent is contractually liable for fines resulting from alleged labour law violations; whilst (ii) acknowledging these fines stem from Aurion's independent political determinations. This fundamental inconsistency vitiates the Claimant's demand for payment and termination of the JVA.

5. As an independent entity, the Respondent is also affected by the above fine imposed on ASI by the Ministry of Trade and Industry for alleged non-compliance with labour standards. The Ministry has failed to provide any justification for its conclusion that modern slavery exists, a finding that directly contradicts the IIC's independent assessment.
6. If the Claimant, as ASI's majority shareholder, with its CEO serving as Chairman of the Board, feels aggrieved by the fine, it should seek judicial review. Under the well-established 'proper plaintiff' rule, the Respondent lacks *locus standi* to seek judicial remedy, including on the issue of fair and equitable treatment. This burden properly rests with the Claimant.

Without a judicial review of the fine, any determination of whether ASI breached labour laws or international standards would be premature. The damage suffered by both Parties is not irreparable, as new measures can be implemented to rectify the defaults. Notably, ASI's suspension was lifted on 23 October 2024 following the submission of a revised workforce audit report. Once full operations resume and delivery schedules return to normalcy, this episode should conclude, rendering the damage reparable.

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<sup>52</sup> Paragraph 52, Moot Court Problem 2025.

## **PRAYER FOR RELIEF**

The Claimant respectfully requests the Arbitral Tribunal to determine that:

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