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**20TH LAWASIA INTERNATIONAL MOOT COMPETITION: 2025  
IN THE ASIAN INTERNATIONAL ARBITRATION CENTRE  
KUALA LUMPUR, MALAYSIA**

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**MEMORIAL FOR CLAIMANT**

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**A CASE BETWEEN**

**Calyx DreamBot Inc (CDI)**

**...CLAIMANT**

**AND**

**Rivus Microelectronics Group (RMG)**

**...RESPONDENT**

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**LIST OF ABBREVIATIONS**

AIAC	Asian International Arbitration Centre
Art	Article
ASI	Aurion Semiconductor Inc.
BWS	Beta Workforce Solutions
CDI	Calyx DreamBot Inc
CEO	Chief Executive Officer
cl	Clause
ICSID	International Centre for Settlement of Investment Disputes
ILO	International Labour Office
JPMT	Joint Project Management Team
JVA	Joint Venture Agreement
para	paragraph
PCA	Permanent Court of Arbitration
RMG	Rivus Microelectronics Group
UNCITRAL	United Nations Commission On International Trade Law

UNCSI	United Nations Convention on Jurisdictional Immunities of States and Their Property
UNIDROIT	UNIDROIT Principles 2016
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**STATEMENT OF JURISDICTION**

The parties, Calyx DreamBot Inc (“**CDI**”), the CLAIMANT and Rivus Microelectronics Group (“**RMG**”), the RESPONDENT have agreed that the governing framework for the arbitration should be the Asian International Arbitration Centre (“**AIAC**”) Rules 2023.

**QUESTIONS PRESENTED**

- (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;
- (iv) Whether CDI's termination of the JVA was lawful.

## STATEMENT OF FACTS

1. CDI - Veridia's largest semiconductor firm and RMG - Aurion's commercially autonomous vehicle under President Ho's influence (collectively, the "**Parties**") are parties to this arbitration under their Joint Venture Agreement ("**JVA**") dated 20 December 2022 to establish Aurion Semiconductor Inc ("**ASI**") as their project vehicle. Under the JVA, CDI would hold 51% and RMG 49%; ASI was to be managed as an independent, commercially driven entity with neither party exercising undue influence, and with an equal board while CDI's CEO chaired the board. The JVA assigned CDI capital, technology, and training commitments, and assigned RMG responsibility for, among other things, procuring land and permits, managing recruitment and allocation of the workforce, and ensuring full compliance with applicable labour and employment laws.

2. Following execution, ASI was incorporated on 3 January 2023. With RMG's facilitation, land and regulatory approvals were expedited and construction began within weeks on a 40-hectare facility. To meet urgent supply commitments, CDI drove an accelerated build and commissioning plan - 15 months instead of the industry-standard 24-36 months, formalised through a Project Acceleration Memo on 26 February 2023 and managed by a joint project management team ("**JPMT**"). While construction continued, RMG launched recruitment campaigns and retained control over compliance with local labour laws.

3. RMG proposed several agencies and recommended Beta Workforce Solutions ("**BWS**"); CDI approved without recorded objections. ASI and BWS then executed a Service Agreement on 2 October 2023 under which BWS would handle recruitment, deployment, lodging and transport, and regulatory compliance during a transitional period while collaborating with ASI on workforce audits and compliance reporting. By 20 November 2023, BWS had supplied

1,200 workers for training, and ASI achieved first production on 20 May 2024, within the 15-month target, stabilising supply to key buyers.

4. From September 2024, media allegations of labour abuses at an Aurion facility triggered government scrutiny. On 17 September 2024, Seratious warned of an import ban; on 18 September, Aurion's Ministries of Foreign Affairs and of Trade and Industry announced an Independent Investigative Committee ("IIC") to inspect ASI and review records. The IIC's 30 September 2024 report traced the initiating publication to a Seratious IP address (without linking it to any government), noted congested temporary dormitories, and recorded mixed worker accounts about overtime: some references to threats contrasted with statements that overtime was voluntary to meet targets and earn bonuses. The IIC found no evidence of debt bondage, acknowledged some passport retention by BWS with an administrative justification, and identified discrepancies in ASI's workforce audits (for which ASI apologised and attributed the oversight to BWS). Crucially, the IIC concluded there was no definitive evidence of "modern slavery" and recommended closer monitoring and improved audit transparency.

5. Notwithstanding the IIC's non-definitive findings, on 2 October 2024 the Ministry of Trade and Industry suspended ASI's operating licence pending a revised workforce audit; the suspension was lifted on 23 October 2024 after submission of the revised report. During the suspension, CDI's internal review, completed on 10 October 2024, discovered undisclosed ties between BWS and the uncle of President Ho's son-in-law. CDI regarded the non-disclosure as a serious conflict of interest in the agency's selection. CDI's subsequent warnings to RMG's leadership went unanswered.

6. After the revised audit was lodged, the Ministry reported obtaining "*actual*" timesheets from an undisclosed ASI employee; citing underreported overtime by about 10,000 hours, on 16 December 2024 it imposed a USD 500 million fine on ASI. ASI sought disclosure of the source

documents amid rumours of foreign influence, but the Ministry refused on grounds of confidentiality, safety, and national interest; the Ministry later provided the revised audit package to Seratiou for “*transparency*”.

7. On 24 December 2024, CDI notified RMG of the termination of the JVA and requested that RMG bear the fine; on 28 December 2024, CDI repeated the demand. CDI then initiated arbitration on 6 January 2025. RMG denied liability and raised preliminary objections, stating that it is entitled to invoke sovereign immunity.

## **SUMMARY OF PLEADINGS**

### **I. RMG IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY**

RMG cannot invoke sovereign immunity because it is not a “*State*” entity within UNCSI Article 2(1)(b)(iii): it neither showed any authorization to exercise sovereign authority nor actually exercised such authority in the conduct at issue. The obligations it undertook under the JVA: securing land and permits, facilitating incentives, recruiting and allocating labour, coordinating compliance/audits, and advising on commercial strategy are *acta jure gestionis* and fall squarely within the UNCSI commercial-activity rule. Furthermore, RMG waived jurisdictional immunity by signing the JVA and consenting to arbitration, further confirmed by its participation in the proceedings. Any reliance on internal approvals or pre-arbitration steps goes, at most, to admissibility, not to the existence of consent or the Tribunal’s jurisdiction.

### **II. CDI’S INITIATION OF ARBITRATION WAS NOT PREMATURE**

CDI fulfilled Clause 10.1 of the JVA by issuing a written notice on 24 December 2024 containing particulars of the dispute and then seeking to regulate the dispute amicably; RMG’s cavalier attitude and refusal to engage constructively rendered further waiting purposeless. CDI is not subject to Clause 10.2 of the JVA: the clause is ambiguous and, interpreted equitably and reasonably in light of negotiations, established practices, and the contract’s nature and purpose, the responsibility to obtain ministerial consent rests with the local partner; reading it otherwise would be unfair, create a serious imbalance, and undermine Clause 11. CDI initiated arbitration to fulfill its duty to mitigate the loss under Article 7.4.8 of the UNIDROIT, as prompt proceedings were necessary to prevent escalating harm and preserve critical evidence. The prematurity objection should be dismissed.

### **III. RMG BREACHED THE JVA IN RELATION TO THE ALLEGED LABOUR PRACTICES**

Respondent breached the JVA by failing to perform its workforce and compliance obligations under Clause 4.2(e-f). The unlawful practices - passport retention, wage withholding, and excessive overtime - occurred under RMG's control, and delegation to BWS did not discharge its duties. Resolution No. 4/2020 caps overtime at 300 hours/year; "*actual timesheets*" reflecting ~10,000 unreported hours and the resulting USD 500 million fine confirm non-compliance and audit omissions. The Ministry identified indicators of forced labour. RMG further bears responsibility for recommending a high-risk, politically connected BWS without disclosure, contrary to good faith and implied duties of disclosure and fairness.

#### **IV. CDI'S TERMINATION OF THE JVA WAS LAWFUL**

CDI's termination was lawful under Clause 8.1 of the JVA and UNIDROIT Article 7.3.1 because RMG's breaches constituted fundamental non-performance including non-disclosure of its affiliation with BWS and failure to ensure compliance with applicable labour laws under Clause 4.2(e-f). These failures (a) substantially deprived CDI of its contractual expectations; (b) concerned obligations whose strict compliance was of the essence; (c) were at least reckless given the undisclosed high-risk link; and (d) gave CDI reason to conclude it could not rely on RMG's future performance. Termination did not cause disproportionate loss to RMG; any detriment stems from its own breaches. Accordingly, the termination was lawful.

## PLEADINGS

### ISSUE 1: RMG IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY

1. Claimant respectfully submits that (1) Respondent cannot invoke sovereign immunity because it is not considered a State-owned entity and it engaged in *acta jure gestionis* and (2) even if RMG is considered to be entitled to invoke sovereign immunity, it has waived jurisdictional immunity by signing the JVA and consenting to the dispute resolution clause.

#### 1. RESPONDENT CANNOT INVOKE SOVEREIGN IMMUNITY BECAUSE IT IS NOT CONSIDERED A “STATE-OWNED ENTITY” AND IT ENGAGED IN ACTA JURE GESTIONIS

2. According to Article 2(1)(b)(iii) of the United Nations Convention on Jurisdictional Immunities of States and Their Property (“UNCSI”), a “State” includes:
 

*“agencies or instrumentalities of the State and other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State”*.<sup>1</sup>
3. Accordingly, an entity can only invoke jurisdictional immunity if it has both been authorized to exercise sovereign authority and is in fact exercising such authority through the acts in question. RMG not only fails to prove that it has any official authorization from the State to exercise sovereign acts, but it also fails to meet the second condition - *“actually performing acts in the exercise of sovereign authority of the State”*,<sup>2</sup> which disqualifies it from invoking jurisdictional immunity. This

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<sup>1</sup> *United Nations Convention on Jurisdictional Immunities of States and Their Property* (adopted 2 December 2004, not yet in force) UN Doc A/RES/59/38, art 2(1)(b)(iii).

<sup>2</sup> *Ibid*, art 2(1)(b)(iii).

conclusion is consistent with how international jurisprudence assesses the nature of the conduct in determining immunity.<sup>3</sup>

4. In this regard, Article 10(1) of the UNCSI further clarifies that immunity does not apply where a State or its entity “*engages in commercial transactions with a foreign natural or juridical person*”,<sup>4</sup> which is defined in Article 2(1)(c) of the UNCSI as: “*any commercial contract or transaction for the sale of goods or supply of services,*” or any act “*of a commercial, industrial, trading or professional nature*”.<sup>5</sup>
5. These provisions collectively establish a well-recognized commercial activity exception to sovereign immunity. In this case, RMG’s conduct under Clause 4.2 of the JVA fits squarely within this exception. RMG undertook obligations including securing land and permits for ASI’s facility, facilitating access to investment incentives, and advising on market strategy to expand ASI’s commercial footprint in the regional semiconductor industry,...<sup>6</sup>
6. These responsibilities are commercial in nature, akin to the commercial functions underlined by the Tribunal in *Hamester v. Ghana*.<sup>7</sup> Hence, RMG is not entitled to invoke jurisdictional immunity.
7. RMG’s conduct under the JVA is indistinguishable from that of a private Joint Venture partner engaged in project implementation. While these activities may happen to align with Aurion’s national semiconductor strategy, such coincidence does not, in itself, transform them into sovereign acts.<sup>8</sup> Importantly, the determinative inquiry is the nature

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<sup>3</sup> *Ceskoslovenska Obchodni Banka AS v Slovak Republic*, ICSID Case No ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction (24 May 1999) para 20; *Emilio Agustín Maffezini v Kingdom of Spain*, ICSID Case No ARB/97/7, Decision on Jurisdiction (25 January 2000) para 79; *Beijing Urban Construction Group Co Ltd v Republic of Yemen*, ICSID Case No ARB/14/30, Decision on Jurisdiction (31 May 2017) para 35.

<sup>4</sup> UNCSI, art 10(1).

<sup>5</sup> *Ibid*, art 2(1)(c).

<sup>6</sup> 20th LAWASIA International Moot Problem (12 March 2025) Exhibit 4, cl 4.2.

<sup>7</sup> *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) para 189.

<sup>8</sup> *Mr. Kristian Almås and Mr. Geir Almås v. The Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) para 210.

of the acts, rather than the purpose or policy objectives those acts are intended to advance.<sup>9</sup>

8. In conclusion, RMG is not entitled to jurisdictional immunity. Although linked to the State of Aurion, it operated as a commercial actor under the Joint Venture, performing non-sovereign functions typical of private enterprise. Allowing immunity in this context would weaken legal certainty for foreign investors. The Tribunal should therefore assert jurisdiction and hear the case on its merits.

## **2. EVEN IF RMG IS CONSIDERED TO BE ENTITLED TO INVOKE SOVEREIGN IMMUNITY, IT HAS WAIVED JURISDICTIONAL IMMUNITY BY SIGNING THE JVA AND CONSENTING TO THE DISPUTE RESOLUTION CLAUSE**

9. By entering into the JVA and agreeing to resolve disputes through arbitration, RMG has forfeited any entitlement to invoke jurisdictional immunity.
10. It is widely observed in arbitral practice that jurisdictional immunity can be waived by States or State-owned entities, including through conduct such as agreeing to arbitration. One of the most widely accepted forms of implicit waiver is consenting to international arbitration, as confirmed by arbitral jurisprudence<sup>10</sup> and scholarly authorities.<sup>11</sup> By entering into the JVA with CDI and explicitly agreeing to an arbitration clause, RMG has effectively waived its right to invoke immunity.
11. Clause 11 of the JVA provides that any dispute “*relating to any matter arising out of and connected with this Agreement*” shall be resolved by arbitration under the AIAC Rules, seated in Kuala Lumpur and conducted in English.<sup>12</sup> This provision is

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<sup>9</sup> *Ceskoslovenska Obchodni Banka AS* (n 3) para 20.

<sup>10</sup> *S.P.P. (Middle East) Limited v. Egypt and EGOTH*, ICC Case No. YD/AS No. 3493, Award (11 March 1983).

<sup>11</sup> Carlo De Stefano, ‘Arbitration Agreements as Waivers to Sovereign Immunity’ (2014) 30(1) *Arbitration International* 59, 62.

<sup>12</sup> *Moot Problem*, Exhibit 4, cl 11.

comprehensive and binding. The express reference to institutional rules and a neutral seat reinforces the parties' clear intention to submit to international arbitration.

12. This interpretation aligns with the prevailing view in legal scholarship. As noted:  
*“The agreement to submit disputes to arbitration between a foreign State or a foreign State entity and a private individual or company is normally construed as consent by the State to waive its own immunity”*.<sup>13</sup>
13. In the present case, RMG not only signed Clause 11 of the JVA but also proceeded to act on it. It participated in the preliminary meeting convened by the Tribunal at the AIAC and agreed to proceed to full hearings.<sup>14</sup> The Tribunal is therefore entitled to view RMG's conduct, alongside its contractual commitment, as a confirmation of waiver and an implied consent to arbitration.<sup>15</sup>
14. This legal understanding is supported by the arbitral award in the case *S.P.P. (Middle East) Limited v. Egypt and EGOTH*, where the Tribunal concluded that: *“An agreement to arbitrate constitutes an implicit waiver [of sovereign immunity]”*.<sup>16</sup>
15. The reasoning in *S.P.P. (Middle East) Limited v. Egypt and EGOTH* is applicable in this case. Even if RMG were to argue that its conduct was sovereign in nature, this claim cannot override a valid arbitration agreement. Once consent to arbitration is given, the nature of the acts in dispute becomes immaterial. Likewise, any reliance on internal procedures such as Clause 10.2 of the JVA is legally irrelevant and cannot negate the binding effect of Clause 11.
16. Accordingly, both the text of Clause 11 of the JVA and RMG's conduct confirm an implicit waiver of jurisdictional immunity. The Tribunal therefore has full authority to

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<sup>13</sup> Carlo De Stefano (n 10) 62.

<sup>14</sup> *Moot Problem*, Agreed Facts 65.

<sup>15</sup> Alan Redfern, Martin Hunter, Nigel Blackaby and Constantine Partasides, *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015) para 2.21, p 77.

<sup>16</sup> *S.P.P (Middle East) Limited* (n 9) para 54, citing Luzzatto.

adjudicate the present dispute. In light of the foregoing, RMG, by voluntarily submitting to international arbitration through Clause 11 of the JVA, has relinquished any right to assert jurisdictional immunity before this Tribunal.

17. To conclude, Respondent cannot invoke sovereign immunity as its activities under the JVA were purely commercial. In any event, its consent to the arbitration agreement of the JVA and subsequent participation in the arbitral proceedings constitute an implicit waiver of any jurisdictional immunity. Therefore, the Tribunal should proceed to hear the dispute on its merits.

## ISSUE 2: CDI'S INITIATION OF ARBITRATION WAS NOT PREMATURE

18. Claimant respectfully submits that its initiation of arbitration was NOT premature because: (1) Claimant fulfilled the obligations set out in Clause 10.1 of the JVA and (2) Claimant is not subject to the obligation set out in Clause 10.2 of the JVA, and (3) Claimant initiated the arbitration to fulfill its duty to mitigate the loss under Article 7.4.8 UNIDROIT.

### 1. CLAIMANT FULFILLED THE OBLIGATIONS SET OUT IN CLAUSE 10.1 OF THE JVA

19. Claimant fulfilled all procedural requirements under Clause 10.1 of the JVA, including (a) issuing a written notice containing particulars of the dispute, and (b) regulating the dispute amicably through negotiations.<sup>17</sup> Fulfilment of pre-arbitral procedural obligations is a necessary condition for initiating arbitration, as expressly required under Rule 2(1)(c) of the AIAC Arbitration Rules, which mandates that parties must comply with any agreed pre-conditions to arbitration.<sup>18</sup>

*(a) Claimant issued a written notice to RMG containing the particulars of the dispute*

20. On 24 December 2024, CDI wrote to RMG a notice of dispute, which clearly identified the main issues of the dispute and the provisions of the JVA that RMG breached.<sup>19</sup> Pursuant to Article 1.10 of the UNIDROIT, CDI's notice of dispute meets all legal requirements for a valid notice.<sup>20</sup> Firstly, Article 1.10(1) explicitly provides that no specific form is required for a notice to be valid, as long as it is made by appropriate means.<sup>21</sup> CDI's notice was submitted in writing and clearly articulated the existence of a dispute concerning RMG's failure to comply with its obligations under the JVA.<sup>22</sup>

<sup>17</sup> *Moot Problem*, Exhibit 4, cl 10.1.

<sup>18</sup> *Asian International Arbitration Centre Arbitration Rules (2023)* art 2(1)(c).

<sup>19</sup> *Moot Problem*, Agreed Facts 59.

<sup>20</sup> UNIDROIT, *UNIDROIT Principles of International Commercial Contracts* (2016) art 1.10.

<sup>21</sup> *Ibid*, art 1.10(1).

<sup>22</sup> *Moot Problem*, Agreed Facts 59.

Secondly, a notice becomes effective once it reaches the addressee.<sup>23</sup> CDI's Chief Executive Officer ("CEO") notified the notice to RMG's representatives, including its CEO, which was received and read.<sup>24</sup> Finally, a notice may include a declaration of intention.<sup>25</sup> The inclusion of CDI's intention to terminate the JVA<sup>26</sup> within the same communication does not negate its character as a notice of dispute.

*(b) Claimant attempted to resolve the dispute through negotiation, but Respondent refused to participate constructively*

21. Previously, CDI made genuine efforts to resolve the dispute in order to resume operations. Following the suspension of ASI's license and the emergence of serious labour violations, Ms. Emret reached out directly to RMG's CEO and to Mr. Suvan on 11 October 2024, issuing urgent warnings and calling for immediate engagement.<sup>27</sup> These communications, sent via WhatsApp, were received and marked as read ("*blue-ticked*"), yet no response was provided by RMG.<sup>28</sup> The complete lack of reply, despite the gravity of the issues raised, reflected RMG's unwillingness to address the dispute and to engage in meaningful dialogue.
22. Following the issuance of this notice, CDI sought to engage RMG in discussions aimed at resolving the matter through many attempts to initiate dialogue. However, not only did RMG consistently demonstrate a "*cavalier attitude and a refusal to engage constructively*",<sup>29</sup> but it also demonstrated a defiant attitude toward CDI regarding the prospect of bringing the dispute before the court,<sup>30</sup> thereby frustrating any attempt at

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<sup>23</sup> *UNIDROIT Principles*, art 1.10(2)-(3).

<sup>24</sup> *Moot Problem*, Exhibit 11.

<sup>25</sup> *UNIDROIT Principles*, art 1.10(4).

<sup>26</sup> *Moot Problem*, Agreed Facts 59.

<sup>27</sup> *Ibid*, Agreed Facts 55; Exhibit 11.

<sup>28</sup> *Ibid*, Agreed Facts 55; Exhibit 11.

<sup>29</sup> *Ibid*, Agreed Facts 60.

<sup>30</sup> *Ibid*, Exhibit 11.

genuine negotiation. Consequently, RMG's refusal to participate in any negotiations effectively barred it from invoking CDI's alleged failure to negotiate.<sup>31</sup>

23. This pattern of silence gave CDI reasonable grounds to conclude that further negotiation attempts would be futile, and that RMG had no intention of constructively resolving the matter. Where attempts to negotiate have proven to be futile due to the other party's unwillingness to engage in good faith, compliance with the full waiting period becomes unnecessary.<sup>32</sup> The purpose of a cooling-off period is to allow parties to resolve their dispute amicably. However, when one party obstructs the process through persistent non-cooperation, requiring the other party to wait for the passage of time serves no practical function and only delays access to justice.<sup>33</sup> In conclusion, Claimant fulfilled all procedural requirements under Clause 10.1 of the JVA.

## **2. CLAIMANT IS NOT SUBJECT TO THE OBLIGATION SET OUT IN CLAUSE 10.2 OF THE JVA**

24. Claimant respectfully submits that it does not bear the obligation to obtain ministerial consent because: (a) The JVA does not allocate to Claimant the responsibility to secure such consent; and (b) Even if CDI were deemed to have that duty, such an interpretation would be unfair, create a serious imbalance between the Parties, and undermine the effectiveness of Clause 11.

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<sup>31</sup> *UNIDROIT Principles*, art 5.3.3(1): "If fulfilment of a condition is prevented by a party, contrary to the duty of good faith and fair dealing or the duty of co-operation, that party may not rely on the non-fulfilment of the condition."; art 7.1.2: "A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event for which the first party bears the risk."

<sup>32</sup> *Occidental Petroleum Corporation and Occidental Exploration and Production Company v Republic of Ecuador*, ICSID Case No ARB/06/11, Award (5 October 2012) para 94; *Ethyl Corporation v. The Government of Canada*, UNCITRAL, Award on Jurisdiction (24 June 1998) para 84; *Ronald S. Lauder v. The Czech Republic*, UNCITRAL, Final Award (3 September 2001) para 187.

<sup>33</sup> *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction (6 August 2003) para 184; *Louis Dreyfus Armateurs SAS v. Republic of India*, PCA Case No. 2014-26, Decision on Jurisdiction (22 December 2015) para 99.

*(a) Claimant shall not bear the responsibility to perform the obligation of obtaining ministerial consent*

25. Claimant respectfully submits that it is not subject to the obligation set out in Clause 10.2 as the responsibility of obtaining ministerial consent shall rest with Respondent.
26. Clause 10.2 of the JVA is ambiguous, as it does not explicitly identify which party must obtain ministerial consent.<sup>34</sup> Article 4.1 of the UNIDROIT states that if the parties' common intention is unclear, the contract should be interpreted equitably and reasonably for both parties.<sup>35</sup> Given this ambiguity, interpreting the obligation as resting with RMG, a local entity closely connected to Aurion's government,<sup>36</sup> provides the most equitable outcome for both parties.
27. Article 4.3 of the UNIDROIT requires considering relevant circumstances. Firstly, preliminary negotiations<sup>37</sup> indicate that CDI, as a foreign entity, never suggested or agreed that it would independently secure governmental consent. Conversely, RMG, being state-established and controlled,<sup>38</sup> is logically positioned to fulfill this administrative requirement.
28. Secondly, established practices between the parties<sup>39</sup> demonstrate RMG consistently handled domestic administrative responsibilities such as obtaining tax incentives and land acquisitions, whereas CDI's role involved financial and technological contributions.<sup>40</sup>
29. Thirdly, the subsequent conduct of RMG<sup>41</sup> after receiving CDI's notice of dispute on 24 December 2024<sup>42</sup> shows neither an attempt by RMG to secure ministerial consent

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<sup>34</sup> *Moot Problem*, Exhibit 4, cl 10.2.

<sup>35</sup> *UNIDROIT Principles*, art 4.1.

<sup>36</sup> *Moot Problem*, Agreed Facts 27, 28.

<sup>37</sup> *UNIDROIT Principles*, art 4.3(a).

<sup>38</sup> *Moot Problem*, Agreed Facts 27, 28.

<sup>39</sup> *UNIDROIT Principles*, art 4.3(b).

<sup>40</sup> *Moot Problem*, Exhibit 4, cl 4.1, 4.2.

<sup>41</sup> *UNIDROIT Principles*, art 4.3(c).

<sup>42</sup> *Moot Problem*, Agreed Facts 60.

nor any support provided to CDI for this matter. Instead, RMG openly refused negotiations.<sup>43</sup> Such conduct violates the duty of cooperation as outlined in Article 5.1.3 of the UNIDROIT.<sup>44</sup>

30. Fourthly, regarding the contract's nature and purpose,<sup>45</sup> the JVA aims to leverage each party's strengths collaboratively. Expecting CDI to navigate local governmental processes independently would contradict this collaborative spirit.
31. Lastly, it is widely recognized in international commercial practice<sup>46</sup> that domestic entities typically manage local administrative requirements due to their inherent familiarity with local laws, regulations, and procedural nuances. This understanding aligns naturally with RMG's capabilities and responsibilities under the JVA.
32. Therefore, a reasonable and commercially sound interpretation of Clause 10.2 of the JVA is that RMG, rather than CDI, bears the obligation to obtain the necessary ministerial consent. Accordingly, given the ambiguity of Clause 10.2, it is reasonable to conclude that CDI is not the party responsible for securing such consent.

*(b) Even if CDI was required to obtain consent, such an interpretation would be unfair, create a serious imbalance between the Parties, and undermine the effectiveness of Clause 11*

33. Claimant respectfully submits that Clause 10.2 of the JVA is invalid under the UNIDROIT. First, Article 3.2.7 of the UNIDROIT provides that a contractual term may be avoided where it reflects a "*gross disparity*" resulting from one party taking unfair advantage.<sup>47</sup> Under Chapter 3 (Validity) of the UNIDROIT, "*gross disparity*" is a ground of avoidance: a clause caught by Article 3.2.7 is voidable at the aggrieved party's option and thus not enforceable if avoidance is invoked; alternatively, the

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<sup>43</sup> *Ibid.*

<sup>44</sup> *UNIDROIT Principles*, art 5.1.3.

<sup>45</sup> *Ibid.*, art 4.3(d).

<sup>46</sup> *Ibid.*, art 4.3(e), (f).

<sup>47</sup> *Ibid.*, art 3.2.7.

Tribunal may adapt the clause to remove the excessive advantage. Clause 10.2 of the JVA falls within this rule because it gives the Aurion side a unilateral gatekeeping power over access to dispute resolution.<sup>48</sup> Second, Article 7.1.6 of the UNIDROIT prohibits a party from invoking an exemption or limitation clause if doing so would be grossly unfair.<sup>49</sup> Finally, Article 4.5 of the UNIDROIT requires the contract to be interpreted to give effect to all terms rather than deprive any term of effect.<sup>50</sup>

34. Clause 10.2 of the JVA permits the initiation of legal proceedings only with the consent of the Minister of Aurion, without any corresponding consent from Veridia. This asymmetry engages Article 3.2.7 of the UNIDROIT. As such, the right to initiate a claim rests entirely with Aurion, granting RMG an excessive advantage by enabling it to deny CDI's ability to bring a claim whenever it perceives the claim to be unfavorable. Therefore, Article 7.1.6 of the UNIDROIT precludes Respondent from relying on this Clause. Moreover, strictly enforcing Clause 10.2 would deprive Clause 11 of the JVA of effect, contrary to Article 4.5 of the UNIDROIT. The parties explicitly agreed to resolve disputes through a neutral arbitral forum. Allowing Clause 10.2 to override that agreement would render the arbitration clause meaningless. To conclude, Claimant respectfully submits that Clause 10.2 of the JVA is unenforceable under the UNIDROIT.

### **3. CLAIMANT FULFILLED ITS DUTY TO MITIGATE THE LOSS UNDER ARTICLE 7.4.8 UNIDROIT**

35. Claimant has fully complied with its duty to mitigate the loss as required under Article 7.4.8 of the UNIDROIT. Accordingly, the aggrieved party must take reasonable steps

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<sup>48</sup> *Ibid*, art 3.2.7(1), (2).

<sup>49</sup> *Ibid*, art 7.1.6.

<sup>50</sup> *Ibid*, art 4.5.

to mitigate harm resulting from the non-performance of the other party according to Article 7.4.8(2) of the UNIDROIT.<sup>51</sup> This duty is recognized even in the absence of an express provision in the contract, as affirmed by the Tribunal in *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*.<sup>52</sup>

36. In light of RMG's obstructive conduct, it was both reasonable and necessary for Claimant to take decisive action to mitigate foreseeable losses. Respondent refused to engage in any constructive negotiations.<sup>53</sup> Under these circumstances, continuing to wait would only allow damages to escalate unchecked and expose CDI to further reputational deterioration with key stakeholders such as Seratious. Promptly initiating arbitration proceedings was therefore a measured and appropriate step to protect Claimant's interests, to prevent continued breaches, and to preserve critical evidence from being lost or destroyed.
37. Furthermore, the burden rests on Respondent to establish that Claimant failed to mitigate its damages, as the Tribunal noted in *Middle East Cement*.<sup>54</sup> Respondent has not provided any concrete evidence demonstrating that alternative, reasonable steps were available to Claimant which could have mitigated the harm more effectively than the course of action taken. In the absence of such proof, the allegation that Claimant acted prematurely must fail. Accordingly, Claimant respectfully submits that it has fulfilled its duty to mitigate damages under Article 7.4.8(2) of the UNIDROIT.
38. In conclusion, Claimant respectfully submits that its initiation of arbitration was not premature because it complied with Clause 10.1's pre-arbitration steps, is not bound by Clause 10.2's ministerial-consent requirement (or, in any event, that clause is

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<sup>51</sup> *Ibid*, art 7.4.8(2).

<sup>52</sup> *Middle East Cement Shipping and Handling Co v Arab Republic of Egypt*, ICSID Case No ARB/99/6, Award (12 April 2002) para 167.

<sup>53</sup> *Moot Problem*, Agreed Facts 55.

<sup>54</sup> *Middle East Cement Shipping and Handling Co* (n 51) para 170.

unenforceable under the UNIDROIT Principles), and commenced proceedings as a reasonable mitigation measure under UNIDROIT Article 7.4.8; accordingly, the prematurity objection should be dismissed.

### ISSUE 3: RMG BREACHED THE JVA IN RELATION TO THE ALLEGED LABOUR PRACTICES

39. Claimant respectfully submits that Respondent breached the JVA in relation to the alleged labour practices as it breached its obligations relating to labour practices under Clause 4.2(e-f).
40. It is evident that RMG has fundamentally breached the JVA by failing to ensure compliance with applicable labour laws and international standards, thereby allowing unlawful labour practices at ASI. The violated labour practices include: retention of identity documents, withholding of wages, and excessive time.<sup>55</sup>
41. First, the JVA establishes clear contractual obligations regarding workforce management and legal compliance. By retaining control over recruitment under Clause 4.2(e) of the JVA, coupled with the compliance obligation in Clause 4.2(f) of the JVA, RMG was required to guarantee that the entire workforce, whether engaged directly or through an agency, was employed in accordance with applicable laws. Furthermore, Article 5.1.3 of the UNIDROIT affirms RMG's obligation to cooperate, a core contractual duty integral to safeguarding CDI's rights under the JVA.<sup>56</sup> In application, RMG's delegation of workforce management to BWS did not discharge its contractual duties.
42. Second, RMG's conduct contravened Aurion's domestic labour standards. Resolution No. 4/2020 permits the employer to assign a maximum of 300 overtime hours per year.<sup>57</sup> The Aurion Labour Code 1994, in alignment with International Labour Office ("ILO") standards, empowers the Ministry to issue binding directives on labour reporting,

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<sup>55</sup> ILO, *Indicators of Forced Labour* (International Labour Organization, October 2012) <[https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed\\_norm/%40declaration/documents/publication/wcms\\_203832.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40declaration/documents/publication/wcms_203832.pdf)> accessed 8 August 2025.

<sup>56</sup> UNIDROIT *Principles*, art 5.1.3.

<sup>57</sup> *Correction & Additional Clarifications to the Moot Problem* (2025) Clarification 5.

minimum wages, working hours, and holidays.<sup>58</sup> In application, the 10,000 hours of overtime recorded in an ASI employee's timesheet<sup>59</sup> exceed the statutory limit. While the Ministry declined CDI's request to verify the timesheet's authenticity,<sup>60</sup> it nonetheless utilised this document to impose a USD 500 million fine,<sup>61</sup> underscoring both its authenticity and the seriousness of the violation. Moreover, the omission of these hours from ASI's official workforce audit reports disregards mandatory reporting obligations under Aurion law, thereby violating RMG's compliance duty under Clause 4.2(f) of the JVA.

43. Third, RMG failed to uphold Aurion's binding international labour laws. RMG's inadequate supervision and failure to report violations allowed contravention of the ILO Forced Labour Conventions (No. 29<sup>62</sup> and No. 105<sup>63</sup>). The IIC's findings and the Ministry's further investigation reveal clear indicators of forced labour: passport retention, KPI-linked wage deductions, excessive overtime, and overcrowded living conditions.<sup>64</sup>
44. Moreover, RMG shall bear responsibility for labour violations arising from its selection of an unreliable third-party. By subcontracting BWS, an entity with ties to Aurion's President,<sup>65</sup> without informing CDI, RMG compromised the transparency of the Joint Venture and introduced a conflict of interest that CDI was never given the opportunity to assess. The ICC Guidelines on Third Party Due Diligence require enhanced scrutiny and disclosure where a third party is "*a relative or close associate of a present or former official*" or where such an individual holds a position of ownership or control. These

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<sup>58</sup> *Ibid*, Clarification 5.

<sup>59</sup> *Moot Problem*, Agreed Facts 56.

<sup>60</sup> *Clarifications to the Moot Problem (2025)* Clarification 10.

<sup>61</sup> *Moot Problem*, Agreed Facts 56.

<sup>62</sup> ILO, *Forced Labour Convention, 1930 (No. 29)*, art 2(1).

<sup>63</sup> ILO, *Abolition of Forced Labour Convention, 1957 (No 105)*, art 1(b).

<sup>64</sup> *Moot Problem*, Agreed Facts 56; Exhibit 10.

<sup>65</sup> *Ibid*, Agreed Facts 54.

categories are recognised as high-risk<sup>66</sup> and demand heightened transparency prior to retention. Moreover, under Article 1.7 of the UNIDROIT, all parties must act in good faith and fair dealing,<sup>67</sup> a duty which is mandatory.

45. Additional implied duties of disclosure and fairness arise under Articles 5.1.1 and 5.1.2, which establish that contractual obligations may be implied from (a) the nature and purpose of the contract, (c) good faith and fair dealing, and (d) reasonableness.<sup>68</sup> These provisions recognise that parties are expected to adhere not only to what is expressly stated, but also to what is self-evidently required by the nature of the contract. When selecting a third-party service provider, ensuring the transparency and integrity of that third party is a necessary implied obligation to obtain the best possible result without harm. Despite this, RMG appointed BWS - an entity that qualifies as “*high-risk*” under the ICC Guidelines, given its known personal association with President Ho, an official of Aurion. In such circumstances, RMG was at the very least expected to disclose this relationship to CDI, particularly as it could materially affect CDI’s assessment of BWS’s independence and suitability. The resulting labour violations cannot be seen as isolated acts of a subcontractor; they are the foreseeable consequence of RMG’s own failure to exercise reasonable care in the selection and oversight of its agents.
46. To conclude, RMG breached the JVA by failing to comply with its obligations on labour standards, transparency, and oversight of third parties. Its undisclosed affiliation with BWS directly contributed to serious labour violations, thereby rendering it responsible for the alleged breaches under the JVA.

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<sup>66</sup> International Chamber of Commerce, *ICC Guidelines on Agents, Intermediaries and Other Third Parties* (2010) 6.

<sup>67</sup> *UNIDROIT Principles*, art 1.7.

<sup>68</sup> *Ibid*, arts 5.1.1-5.1.2.

**ISSUE 4: CDI'S TERMINATION OF THE JVA WAS LAWFUL**

47. Claimant respectfully submits that CDI's termination of the JVA was lawful under Clause 8.1 of the JVA and Article 7.3.1 of the UNIDROIT.
48. Clause 8.1 of the JVA entitles a party to terminate the agreement when there exists a fundamental non-performance or a breach of the JVA.<sup>69</sup> This termination was also lawful under Article 7.3.1 of the UNIDROIT, which provides that a party may terminate the contract if the failure of the other party to perform constitutes a fundamental non-performance.<sup>70</sup>
49. RMG committed multiple acts of non-performance under the JVA. First, RMG failed to disclose its affiliation with BWS.<sup>71</sup> Second, RMG failed to uphold its obligation to ensure fair labour practices under Clause 4.2(e-f) as it bears responsibility for the actions of both ASI and BWS.<sup>72</sup> The conduct of RMG that constitutes non-performance equally amounts to a breach of the JVA which is established under Issue 3. Therefore, Claimant will focus on demonstrating that these breaches amount to fundamental non-performance within the meaning of Article 7.3.1 of the UNIDROIT as Clause 8.1 of the JVA does not define what constitutes "*fundamental non-performance*".
50. As to determine whether these acts constitute fundamental non-performance, it is necessary to look into Article 7.3.1(2) of the UNIDROIT:
- "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;*

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<sup>69</sup> *Moot Problem*, Exhibit 4, cl 8.1.

<sup>70</sup> *UNIDROIT Principles*, art 7.3.1

<sup>71</sup> *Moot Problem*, Agreed Facts 54.

<sup>72</sup> *Moot Problem*, Exhibit 4, cl 4.2.

*b. strict compliance with the obligation which has not been performed is of essence under the contract;*

*c. the non-performance is intentional or reckless;*

*d. the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;*

*e. the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.”<sup>73</sup>*

51. First, RMG’s failure to comply with its obligations concerning fair labour practices led to the regulatory suspension of ASI’s operations, during which production was entirely halted. This operational paralysis had consequences across the supply chain: key international contracts, including those with major Seratious clients, were severely disrupted.<sup>74</sup> The suspension did not only impair ASI’s performance - it had a direct and material impact on CDI. CDI was deprived not only of anticipated profits and operational continuity but also of strategic access to key supply chain relationships, which were damaged due to ASI’s inability to deliver on time.
52. Second, Clause 4.2(f) of the JVA requires that RMG must comply with fair labour practices,<sup>75</sup> reflecting the Parties’ commitment to operate within internationally accepted ethical and legal labour standards. Compliance with this obligation was especially critical given the nature of the venture: a cross-border industrial initiative designed to attract international partners, operate within global supply chains.<sup>76</sup> Labour compliance was thus a core obligation, and one which CDI reasonably relied upon as a foundation for its participation. RMG’s failure to ensure that ASI and BWS met these

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<sup>73</sup> *UNIDROIT Principles*, art 7.3.1(2).

<sup>74</sup> *Moot Problem*, Agreed Facts 51.

<sup>75</sup> *Moot Problem*, Exhibit 4, cl 4.2.

<sup>76</sup> *Moot Problem*, Agreed Facts 29.

labour standards represents a breach of an obligation for which strict adherence was expected and required.

53. Third, RMG's failure to disclose the relationship between BWS and Mr. Ho<sup>77</sup> constitutes reckless conduct within the meaning of Article 7.3.1(2)(c). Regardless of whether the omission was intentional, the failure to disclose BWS's close affiliation with Mr. Ho was reckless, as the nature of that relationship clearly qualified BWS as a high-risk third party.<sup>78</sup> RMG disregarded this foreseeable risk, which led to subsequent violations of labour standards by BWS, confirming the reckless nature of RMG's non-performance.
54. Fourth, RMG's persistent failure to disclose material risks, address labour violations, or engage in good faith negotiations raised serious concerns about its future performance. CDI expressly stated that continuing the partnership would expose it to further legal and operational risks,<sup>79</sup> reflecting a well-founded loss of trust in RMG's willingness or ability to fulfil its contractual obligations going forward. Given the pattern of non-performance and lack of remedial action, it became clear that RMG could no longer be relied upon to perform substantially in accordance with the JVA.
55. Last, a termination may be considered unwarranted if it causes the non-performing party to suffer a disproportionate loss. However, in this case, the termination of the JVA does not cause a disproportionate loss to RMG. Any adverse consequences RMG may suffer arise not from the termination itself, but from its own failure to comply with its labour obligations.
56. In conclusion, CDI was legally entitled to terminate the agreement under Clause 8.1 of the JVA and Article 7.3.1 of the UNIDROIT.

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<sup>77</sup> *Moot Problem*, Agreed Facts 54.

<sup>78</sup> International Chamber of Commerce, *ICC Guidelines on Agents, Intermediaries and Other Third Parties* (2010) 6.

<sup>79</sup> *Moot Problem*, Agreed Facts 59.

## **PRAYERS FOR RELIEFS**

In light of the submission above, counsel for the CLAIMANT respectfully invites the Tribunal to declare that:

- I. RESPONDENT is NOT entitled to invoke sovereign immunity as it was not a State-owned entity and engaged in *acta jure gestionis*.
- II. CLAIMANT's initiation of arbitration was NOT premature as it fulfilled its obligations.
- III. RESPONDENT breached the JVA in relation to the alleged labour practices.
- IV. CLAIMANT's termination of the JVA was lawful and therefore, entitled to compensation.