



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

MEMORIAL FOR RESPONDENT

A CASE BETWEEN

Calyx DreamBot Inc (CDI)

...CLAIMANT

AND

Rivus Microelectronics Group (RMG)

...RESPONDENT

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LIST OF ABBREVIATIONS

Art	Article
ASI	Aurion Semiconductor Inc.
BWS	Beta Workforce Solutions
CDI	Calyx DreamBot Inc
cl	Clause
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
JPMT	Joint Project Management Team
JVA	Joint Venture Agreement
para	paragraph
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 enterprise 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 holds 51% and RMG 49%; ASI is to be managed as an independent, commercially driven entity with an equal board and CDI's CEO as chair.
2. Upon taking office in January 2022, President Davul Ho prioritised building a semiconductor hub in Aurion by courting Veridian FDI and positioning local partners as stable and independent; in closed-door meetings he assured Veridian executives that RMG was "*a commercially autonomous vehicle under his influence*". To bolster investor confidence, Aurion and Veridia concluded the Aurion-Veridia Bilateral Investment Treaty ("**BIT**") in October 2022, framed by Aurion's Ministry of Trade and Industry as a cornerstone of the country's strategy to integrate into global semiconductor supply chains.
3. CDI and RMG executed the JVA and incorporated ASI on 3 January 2023 as the special purpose vehicle for the project. Leveraging RMG's standing, land alienation and regulatory/planning approvals were expedited; a government-linked contractor began work promptly on a 40-hectare facility in Northern Aurion.
4. CDI pushed for a 15-month completion, formalised in CDI's "*Project Acceleration Memo*" of 26 February 2023. The memorandum maintained strict cost controls, and recommended engaging third-party labour agencies, with cost-effectiveness as a key selection criterion. The 15-month target was thereafter supervised by a joint project management team ("**JPMT**"). As the compressed schedule progressed, ASI incurred a 25% surge in construction expenses.
5. On 20 September 2023, CDI's CEO wrote that further delays were "*commercially untenable*", urged engaging a third-party labour agency, and expressly instructed RMG and

the JPMT to “*minimise labour costs wherever feasible*”. RMG promptly proposed a shortlist of local agencies, and CDI approved Beta Workforce Solutions (“**BWS**”) without recorded objections. BWS would handle recruitment, deployment, onboarding, lodging and transport, and regulatory compliance; and ASI would assume full workforce management within 12 months. ASI-BWS collaboration is required on audits and periodic compliance reporting.

6. By 20 November 2023, BWS supplied 1,200 workers for ASI’s training; with approvals and works fast-tracked, production commenced on 20 May 2024, meeting the 15-month target.

7. From September 2024, media allegations of labour abuses at an Aurion facility triggered government scrutiny. Aurion’s Ministries of Foreign Affairs and of Trade and Industry announced the formation of an Independent Investigative Committee (“**IIC**”) on 18 September 2024 to examine the allegations. The IIC traced the initial report to a Seratious IP address without confirming any government link and issued its report on 30 September 2024. It recorded mixed overtime accounts (some voluntary to earn bonuses), found no debt bondage, noted BWS’s passport retention with a visa/work-permit justification, and identified discrepancies in ASI’s workforce audits (for which ASI apologised while attributing the oversight to BWS). The IIC did not find definitive evidence of “*modern slavery*” and recommended close monitoring and improved documentation.

8. However, the Ministry of Trade and Industry suspended ASI’s operating licence on 2 October 2024 pending a revised workforce audit and lifted the suspension on 23 October 2024 after ASI’s submission.

9. Following review of ASI’s revised audit, the Ministry obtained “*actual*” timesheets from an undisclosed ASI employee showing approximately 10,000 more overtime hours than reported. On 16 December 2024, the Ministry imposed a USD 500 million fine on **ASI** for failure to meet labour compliance standards, and declined to disclose the source of the timesheets on grounds of confidentiality, safety, and national interest.

10. During the suspension, CDI conducted an internal review which concluded on 10 October 2024 and discovered that BWS is owned by the uncle of President Ho's son-in-law; RMG had not disclosed this connection.

11. On 24 December 2024, CDI purported to terminate the JVA and demanded that RMG bear the fine and reiterated this on 28 December 2024. CDI then initiated arbitration on 6 January 2025.

12. RMG raises preliminary objections that it is entitled to sovereign immunity, has not waived that immunity or consented to arbitration, and that CDI's claim is premature because contractual preconditions were not met; RMG further asserts that CDI drove cost-cutting, pressed for and approved the engagement of BWS, and CDI's termination of the JVA was in bad faith - an attempt to avoid responsibilities.

SUMMARY OF PLEADINGS

I. RMG IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY

RMG is entitled to sovereign immunity pursuant to the United Nations Convention on Jurisdictional Immunities of States and Their Property (“UNCSI”), State-owned entities benefit from immunity where their activities are linked to sovereign authority. Structurally, RMG is State-established and State-funded, evidencing continuous governmental ownership and control. Functionally, its role was performed under sovereign objectives, not purely commercial, serving as the Government’s vehicle for semiconductor sector development; execution and performance were subject to ministerial oversight and approvals. The Tribunal therefore lacks jurisdiction over RMG.

II. CDI’S INITIATION OF ARBITRATION WAS PREMATURE

Clause 10.1 is a mandatory condition precedent requiring amicable negotiations. CDI’s 24 December 2024 letter did not initiate negotiations; it unilaterally announced termination and demanded compensation, and no genuine settlement effort followed. Clause 10.2 imposes a further precondition that proceedings “*shall NOT be commenced*” before first obtaining the Minister’s consent; Claimant neither sought nor obtained consent, nor requested Respondent’s assistance. The clause is a binding administrative safeguard, not a gross disparity. Claimant failed to take reasonable steps to comply with its procedural obligations, the arbitration was commenced prematurely.

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

RMG bears no responsibility for the alleged labour practices. Clause 3.3 states that ASI is an independent, commercially driven entity; Clause 4.2(e) limits RMG to coordinating

recruitment/allocation; Clause 4.1(c)(ii) and 6.1 of the JVA assigns compliance to each Party within its own operations. The JVA contains no requirement that a labour agency be “*unrelated*”, Clause 4.3 does not cover labour outsourcing, CDI requested third-party agencies and cost minimisation and approved BWS, and the Service Agreement vested workforce management/compliance in BWS with ASI, so Clause 4.2(f) is at most a best-efforts duty that was met. Alternatively, even if ASI/BWS conduct were attributed to RMG, no breach is proved: the IIC found no conclusive evidence of modern slavery, and the “*actual timesheets*” are anonymous and untested, lacking worker-level proof of statutory excess; non-performance and causation are not established.

IV. CDI’S TERMINATION OF THE JVA WAS UNLAWFUL

CDI’s termination was unlawful. The alleged ASI/BWS misconduct is not contractually attributable to RMG: Clause 3.3 makes ASI independent; Clause 4.2(e) limits RMG to coordinating recruitment; Clauses 4.1(c)(ii), 6.1 of the JVA impose parallel compliance duties on CDI. The threshold of fundamental non-performance is not met: CDI was not substantially deprived; labour compliance is not “*of the essence*”; no intentional/reckless conduct by RMG; no basis to doubt future performance; and termination caused disproportionate loss to RMG. UNIDROIT Art 7.1.2 also bars reliance on non-performance CDI helped cause (acceleration, cost-minimisation, approval of BWS). Finally, CDI had no unilateral right to terminate: Clause 8.1 contemplates termination by the Parties, Clause 8.2 records mutual termination, and only Clause 8.3 allows unilateral termination for Force Majeure, which CDI did not invoke.

PLEADINGS

ISSUE 1: RMG IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY

1. Respondent respectfully submits that it is entitled to invoke sovereign immunity as it qualifies as a State-owned entity for (1) its structural characteristics demonstrate the core characteristics of a State-owned entity, and (2) its functions under the JVA were performed under sovereign objectives rather than for purely commercial purposes.
2. The UNCSI recognizes that not only sovereign States themselves, but also State-owned entities,¹ may benefit from immunity when their activities are sufficiently linked to the sovereign authority of the State.² RMG meets this threshold under both the structural test and functional test.³

1. RMG QUALIFIES AS A STATE-OWNED ENTITY FOR ITS STRUCTURAL CHARACTERISTICS

3. The structural test for determining whether an entity should be treated as a State-owned entity revolves around two main factors: (a) State creation and (b) capital ownership.⁴
 - (a) *RMG is established under the authority of the Aurion*
4. State creation considers whether the entity was established through a legislative, ministerial, or administrative act attributable to the government or a public authority.

¹ *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)(iii): “agencies or instrumentalities of the State or 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;

² *Ibid*, art 5: “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.”

³ *Emilio Agustín Maffezini v Kingdom of Spain*, ICSID Case No ARB/97/7, Decision on Jurisdiction (25 January 2000).

⁴ *Ibid*, para 89.

RMG satisfies each of these factors. RMG was incorporated under the corporation laws of Aurion⁵ as a corporate entity whose board of directors includes Ministers from the Aurion Cabinet.⁶ Hence, RMG's origin reflects that its institutional structure confirms continuous State involvement.

(b) RMG's capital is contributed by the State

5. Capital ownership assesses the extent of the entity's capital held by the State or public bodies.⁷ RMG's capital requirements were funded directly from the Aurion Government Treasury.⁸ These facts demonstrate that RMG cannot be regarded as an ordinary private corporation. Rather, it is a State-owned entity with strong financial ties to Aurion's Government.

2. RMG QUALIFIES AS A STATE-OWNED ENTITY FOR ITS FUNCTIONAL CHARACTERISTICS

6. The functional test, focused on whether the nature of the entity's functions could be characterised as governmental in nature.⁹ Although international law and jurisprudence do not prescribe a certain set of criteria for the functional test, it may be inferred from cases such as *Maffezini v. Spain*, *BUCG v. Yemen*, and *CSOB v. Slovakia* that Tribunals generally assess (a) the purpose and objectives for which the entity was established, and (b) the character of the actions it undertakes in practice.¹⁰

⁵ *Correction & Additional Clarifications to the Moot Problem (2025)* Clarification 1.

⁶ *20th LAWASIA International Moot Problem* (12 March 2025) Agreed Facts 28.

⁷ *Emilio Agustín Maffezini* (n 3) para 83.

⁸ *Moot Problem*, Agreed Facts 27.

⁹ *Emilio Agustín Maffezini* (n 3) para 80; *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.

¹⁰ *Ibid*, para 76.

(a) RMG served as the government's vehicle for semiconductor sector development

7. In applying the functional test, it is relevant to consider whether an entity was created to serve public objectives.¹¹ When an entity is established with the intent to act as an instrument of government policy, its structural features indicate that it operates as part of the institutional framework of the State.
8. RMG clearly operates within such a framework. President Ho's strategic vision of transforming Aurion into a global technological powerhouse placed the semiconductor sector at the core of the State's industrial policy. In order to fulfil this vision, RMG was deliberately positioned as the State's lead vehicle to project Aurion's technological capabilities onto the global stage.¹² These elements demonstrate that RMG's involvement in the JVA was not purely commercial but part of a broader sovereign initiative to industrialize the Northern region and secure Aurion's position in the global semiconductor supply chain.
9. To apply in this case, RMG's functions under Clause 4.2 of the JVA remain under the strict control of the government, and their execution is directed by public officials, given the presence of Cabinet Ministers on RMG's board of directors.¹³ Moreover, RMG's operations were consistently facilitated and accelerated due to its status as a State-linked entity¹⁴ which indicates that RMG is not a typical private enterprise.

(b) RMG's actions discharge governmental functions in the fact-specific context

10. RMG acted on behalf of the State and discharged governmental functions in the fact-specific context of executing the JVA.¹⁵ In the execution of the JVA with CDI, RMG's role was not that of an autonomous commercial actor but of an agent acting on behalf

¹¹ *Ibid*, para 86.

¹² *Moot Problem*, Agreed Facts 22.

¹³ *Ibid*, Agreed Facts 28.

¹⁴ *Ibid*, Agreed Facts 30.

¹⁵ *Beijing Urban Construction Group Co Ltd v Republic of Yemen*, ICSID Case No ARB/14/30, Decision on Jurisdiction (31 May 2017) para 39.

of the Aurion Government. The cooperation with CDI was a direct outcome of the Aurion Government's strategic direction.¹⁶ Furthermore, RMG's authority to enter and perform under the JVA was subject to oversight by its board of directors: "*CDI and RMG have obtained all necessary approvals of their respective boards of directors for the execution of this Agreement*",¹⁷ which includes the Minister of Cabinet.

11. The execution of the JVA itself served the express policy goal of accelerating Aurion's capacity in semiconductor development - a priority area in the Government's national industrial strategy.¹⁸ In performing these acts, RMG was not merely engaging in commercial activity, but was discharging governmental functions in service of a sovereign agenda. Importantly, the structural and functional tests do not need to be applied cumulatively or rigidly. A strong showing under one test may suffice.¹⁹ In RMG's case, while the specific tasks performed by RMG may resemble those of a private enterprise, its origin, control, and public purpose, both the legal structure and the context of State control and policy implementation support that RMG acts as a State-owned entity.
12. In conclusion, Respondent respectfully submits that it is not subject to the jurisdiction of this Tribunal since RMG qualifies as a State-owned entity under the structural and functional test, which is entitled to sovereign immunity recognized under international law.

¹⁶ *Moot Problem*, Agreed Facts 20.

¹⁷ *Ibid*, Exhibit 4.

¹⁸ *Moot Problem*, Agreed Facts 22.

¹⁹ *Emilio Agustín Maffezini* (n 3) para 81.

ISSUE 2: CDI'S INITIATION OF ARBITRATION WAS PREMATURE

13. Respondent respectfully submits that Claimant's initiation of arbitration was premature because (1) Claimant violated Clause 10.1 of the Joint Venture Agreement, (2) Claimant violated Clause 10.2 of the Joint Venture Agreement, and (3) Claimant failed to take reasonable steps to comply with its procedural obligations.

1. CLAIMANT VIOLATED CLAUSE 10.1 OF THE JOINT VENTURE AGREEMENT

14. Respondent respectfully submits that Claimant did not comply with the precondition set in Clause 10.1 of the JVA. This provision requires that any dispute "*arising from or connected to*" JVA "*shall*" first be addressed through negotiations.²⁰ Accordingly, Clause 10.1 JVA must be interpreted as a mandatory jurisdictional precondition rather than a mere procedural clause. In international arbitration, non-compliance with a condition precedent, such as a negotiation requirement, may render the claims inadmissible, which has been confirmed in several cases.²¹
15. On 24 December 2024, Claimant addressed Respondent with a written communication purporting to serve as a "*notice*".²² Even if that notice was considered a "*notice of dispute*" under Clause 10.1 of the JVA, there was no attempt recorded from Claimant to commence the negotiating obligation required. Rather than inviting discussions or demonstrating a willingness to resolve the dispute amicably, it only demanded absurd compensation from Respondent.²³ This situation closely mirrors *Murphy Exploration v. Ecuador*.²⁴ In that case, the claimant sent a letter that simply announced that it had a

²⁰ *Moot Problem*, Exhibit 4.

²¹ *Murphy Exploration and Production Company International v Republic of Ecuador*, ICSID Case No ARB/08/4, Award on Jurisdiction (15 December 2010) para 156; *Nasib Hasanov v Georgia*, ICSID Case No ARB/20/44, Decision on Inter-State Negotiation Objection (19 April 2022) para 98.

²² *Moot Problem*, Agreed Facts 59.

²³ *Ibid*, Exhibit 11.

²⁴ *Murphy Exploration and Production Company International* (n 21).

claim against the respondent, without leaving any room for dialogue.²⁵ The Tribunal made it clear that such communication could not be seen as the start of amicable negotiations, since it closed the door to any meaningful settlement.²⁶ Likewise, Claimant's letter of 24 December does not reflect any intent to cooperate or to resolve the dispute constructively. It is, instead, a one-sided declaration of termination, and thus cannot qualify as a proper step towards the amicable settlement process stipulated in Clause 10.1.

16. Therefore, by failing to engage in the mandatory negotiation process prior to initiating arbitration, Claimant has breached a clear jurisdictional requirement of the JVA. In light of the foregoing, Claimant's non-compliance with Clause 10.1 renders the present arbitration premature and inadmissible.

2. CLAIMANT VIOLATED CLAUSE 10.2 OF THE JOINT VENTURE AGREEMENT

17. Claimant's violation of Clause 10.2 of the JVA is an abuse of process because (a) Clause 10.2 of the JVA constitutes a binding and enforceable obligation and (b) Clause 10.2 of the JVA does not constitute a "*gross disparity*".

(a) Clause 10.2 JVA constitutes a binding and enforceable obligation

18. Clause 10.2 of the JVA imposes a clear condition precedent.²⁷ This clause must be interpreted in light of Article 1.3 of the UNIDROIT, which affirms that "*a contract validly entered into is binding upon the parties*"²⁸ Accordingly, Clause 10.2 shall create a binding and enforceable contractual obligation.
19. Respondent did not know Claimant's intent to initiate arbitration before 6 January 2025.²⁹ Hence, Claimant, as the party initiating arbitration, shall bear the responsibility

²⁵ *Ibid*, para 135.

²⁶ *Ibid*.

²⁷ *Moot Problem*, Exhibit 4.

²⁸ UNIDROIT, *UNIDROIT Principles of International Commercial Contracts* (2016) art 1.3.

²⁹ *Moot Problem*, Agreed Facts 59-62.

to comply with Clause 10.2. However, the record provides no evidence that Claimant ever obtained, or even attempted to obtain, the required ministerial consent before filing the Notice of Arbitration on 6 January 2025.³⁰ Nor did Claimant approach Respondent for assistance or coordination in this process.³¹ This non-performance also means Respondent cannot be expected to have sought ministerial consent for Claimant. For the reasons stated above, Claimant's failure to even attempt compliance amounts to a breach of contract and renders its claim procedurally defective.

(b) Clause 10.2 of the JVA does not constitute a "gross disparity"

20. Respondent respectfully submits that no "*gross disparity*" exists according to Article 3.2.7 of the UNIDROIT.
21. That provision allows avoidance of a term that "*unjustifiably gave the other party an excessive advantage*".³² Here, Clause 10.2 does not confer any undue benefit on RMG. Rather, it is a standard administrative safeguard designed to ensure governmental oversight over sensitive international disputes, given the State-owned status of RMG.³³
22. On the contrary, multiple provisions of the JVA, including the 51-49 ownership split,³⁴ demonstrate that CDI itself enjoyed significant contractual advantages, undermining any suggestion that it suffered from a gross imbalance. Moreover, CDI has provided no evidence that it lacked the bargaining power stipulated in Article 3.2.7 UNIDROIT³⁵ when negotiating JVA.
23. Therefore, Claimant's disregard of Clause 10.2 is not only a violation of a binding contractual obligation but also an abuse of the arbitral process. As a result, the Tribunal

³⁰ *Ibid*, Agreed Facts 62; Clarifications to the Moot Problem (2025) Clarification 6.

³¹ *Clarifications*, Clarification 5.

³² *UNIDROIT Principles*, art 3.2.7.

³³ *Moot Problem*, Agreed Facts 27-28.

³⁴ *Ibid*, Exhibit 4, cl 3.2.

³⁵ *UNIDROIT Principles*, art 3.2.7.

should find that the arbitration was prematurely initiated and declare the claims inadmissible.

3. CLAIMANT FAILED TO TAKE REASONABLE STEPS TO COMPLY WITH ITS PROCEDURAL OBLIGATIONS

24. Claimant did not take reasonable steps to adhere to the required procedural obligations. Article 7.4.8 of the UNIDROIT requires an aggrieved party to take reasonable steps to mitigate loss, and a party that fails to do so cannot recover for avoidable losses.³⁶
25. Clause 10.1 of the JVA obliges both parties to seek to resolve disputes amicably through negotiation before initiating arbitration.³⁷ In the present case, Claimant did not issue any formal written notice to begin negotiations, nor did it provide credible evidence of substantive efforts to communicate with Respondent. The only record of communication is informal WhatsApp messages,³⁸ which do not satisfy the JVA's pre-arbitration preconditions - namely, the amicable-negotiation requirement in Clause 10.1³⁹ and, separately, the ministerial-consent precondition in Clause 10.2.⁴⁰
26. Further, Clause 10.2 of the JVA stipulates that no arbitral proceedings may be commenced "*before first obtaining the consent of the Minister in charge of economic policy, foreign investments and trade of Aurion*".⁴¹ Clearly, on the available record, there is no indication that Claimant sought ministerial consent⁴² or contacted Respondent to discuss or request support for the consent process before commencing

³⁶ *UNIDROIT Principles*, art 7.4.8.

³⁷ *Moot Problem*, Exhibit 4, cl 10.1.

³⁸ *Ibid*, Agreed Facts 55.

³⁹ *Ibid*, Exhibit 4, cl 10.1.

⁴⁰ *Ibid*, Exhibit 4, cl 10.2.

⁴¹ *Ibid*, Exhibit 4, cl 10.2.

⁴² *Clarifications*, Clarification 6.

arbitration.⁴³ There also exists no proof that Claimant took any action - directly or indirectly - regarding this procedural prerequisite.⁴⁴

27. Moreover, international arbitral jurisprudence confirms that parties must actively fulfill procedural preconditions and demonstrate real attempts to mitigate loss, as affirmed in *ICC Case No. 8817* (1997).⁴⁵ In this case, the Tribunal found against Claimant for failing to prove any attempt to address its obligations:

*“The arbitrator notes that Claimant neither provides proof that these difficulties lasted for a year nor indicates what efforts it made and what difficulties it encountered during the stage of adapting to different conditions and products.”*⁴⁶

*“In the absence of indications as to the efforts and attempts made by Claimant during the alleged year of inactivity, the arbitrator considers that this commercial inactivity was caused in part by Claimant’s inertia”.*⁴⁷

28. Similarly, in this case, Claimant made no meaningful attempt to fulfill the pre-arbitration procedures under Clause 10.1 and 10.2 of the JVA. By neither engaging in the pre-arbitration negotiation process under Clause 10.1 nor seeking the Minister’s consent under Clause 10.2 before commencing arbitration, Claimant failed to take reasonable steps as required by Article 7.4.8 of the UNIDROIT. Therefore, Claimant did not meet the mandatory procedural requirements in Clauses 10.1 and 10.2, and its initiation of arbitration was premature.
29. For these reasons, Respondent respectfully submits that Claimant’s initiation of arbitration was premature. By failing to comply with Clauses 10.1 and 10.2 of the JVA

⁴³ *Ibid*, Clarification 5.

⁴⁴ *Ibid*, Clarification 6; *Moot Problem*, Exhibit 4, cl 10.2.

⁴⁵ *ICC Case No 8817* (Final Award, 1997) <<https://www.unilex.info/cisg/case/398>> accessed 3 August 2025.

⁴⁶ *Ibid*.

⁴⁷ *Ibid*.

and neglecting its duty under Article 7.4.8 UNIDROIT, Claimant did not meet the contractual and legal preconditions to arbitration.

ISSUE 3: RMG DID NOT BREACH THE JVA IN RELATION TO THE ALLEGED LABOUR PRACTICE

30. Respondent respectfully submits that (1) RMG bears no responsibility for the alleged labour practices; and (2) Alternatively, even if the conduct of ASI/BWS were attributed to RMG, no breach of the JVA is proved.

1. RMG BEARS NO RESPONSIBILITY UNDER THE JVA FOR THE ALLEGED LABOUR PRACTICES

31. RMG has no responsibility for the alleged labour practices under the JVA because (a) those matters sit outside RMG’s contractual scope, and (b) even if they were within scope, Clause 4.2(f) creates only a best-efforts duty that RMG satisfied.⁴⁸ A contract must be read as a whole and in a way that gives effect to all of its terms.⁴⁹ Under Clause 3.3, ASI is an independent, commercially driven entity that neither Party may control in its day-to-day operations.⁵⁰ Under Clause 4.2(e), RMG’s role is to coordinate recruitment and allocation to meet production needs, not to run ASI’s internal compliance systems.⁵¹ Clause 6.1 places compliance duties on each Party within its own operations,⁵² and Clause 4.1(c)(ii) gives CDI a matching duty regarding labour standards.⁵³ Read together with the UNIDROIT rules of interpretation,⁵⁴ Clause 4.2(f)’s wording (“*ensuring full compliance*”) cannot be a strict guarantee of what an independent joint venture company (ASI) or its contractor (BWS) will do;⁵⁵ it is, at

⁴⁸ *UNIDROIT Principles*, arts 7.1.1, 5.1.4, 5.1.5.

⁴⁹ *Ibid*, arts 4.4, 4.5.

⁵⁰ *Moot Problem*, Exhibit 4, cl 3.3.

⁵¹ *Ibid*, Exhibit 4, cl 4.2(e).

⁵² *Ibid*, Exhibit 4, cl 6.1.

⁵³ *Ibid*, Exhibit 4, cl 4.1(c)(ii).

⁵⁴ *UNIDROIT Principles*, arts 4.4, 4.5.

⁵⁵ *Moot Problem*, Exhibit 4, cl 4.2(f).

most, a best-efforts duty within RMG’s area of control.⁵⁶ A breach also requires a failure to perform a contractual obligation.⁵⁷

(a) The alleged labour practices fall outside RMG’s contractual scope under the JVA

32. The JVA has no rule that a labour agency must be “*unrelated*”, and Clause 4.3 (written for construction contractors) does not cover labour outsourcing.⁵⁸ CDI itself asked that third-party labour agencies be used and pressed to minimise labour costs,⁵⁹ and CDI approved BWS with no recorded objection.⁶⁰ The Service Agreement then gave BWS the full scope of workforce management, including regulatory compliance.⁶¹ ASI was set to take full responsibility within 12 months and had to collaborate on audits and compliance reporting.⁶² The JVA contains no clause requiring RMG to investigate or disclose any alleged “*links*” of a labour agency.⁶³ In short, ASI and BWS held the operational controls tied to the alleged practices, while CDI carried a matching labour-standards duty under Clause 4.1(c)(ii).⁶⁴ Any problem, if proven, would therefore be at least shared and cannot be placed solely on RMG.⁶⁵

(b) Clause 4.2(f) sets a best-efforts obligation that RMG satisfied on the record

33. First, read together with Clauses 3.3, 4.2(e), 6.1 and 4.1(c)(ii) of the JVA⁶⁶ and the UNIDROIT rules of interpretation,⁶⁷ the phrase “*ensuring full compliance*” means putting in place and running reasonable compliance measures within RMG’s role rather than promising a guaranteed outcome;⁶⁸ this aligns with the IIC’s on-site findings,

⁵⁶ *UNIDROIT Principles*, arts 5.1.4, 5.1.5.

⁵⁷ *Ibid*, art 7.1.1

⁵⁸ *Moot Problem*, Exhibit 4, cl 4.3.

⁵⁹ *Ibid*, Agreed Facts 36; *Moot Problem*, Exhibit 6.

⁶⁰ *Ibid*, Agreed Facts 37.

⁶¹ *Ibid*, Agreed Facts 38.

⁶² *Ibid*, Agreed Facts 39.

⁶³ *Ibid*, Exhibit 4, cl 4.3.

⁶⁴ *Ibid*, Exhibit 4, cl 4.1(c)(ii).

⁶⁵ *Ibid*, Exhibit 4, cl 4.1(c)(ii), 6.1.

⁶⁶ *Ibid*, Exhibit 4, cl 3.3, 4.2(e), 6.1, 4.1(c)(ii).

⁶⁷ *UNIDROIT Principles*, arts 4.4, 4.5.

⁶⁸ *Ibid*, art 5.1.5(a); *Moot Problem*, Exhibit 10, cl 5.1.4, cl 3.3, 4.2(e), 6.1, 4.1(c)(ii).

which did not establish modern slavery and recorded mixed accounts on overtime,⁶⁹ while recommending stronger monitoring and transparency.⁷⁰ Second, the JVA's other terms show a long-term joint venture with shared compliance roles; putting a one-sided results promise on RMG would not fit that scheme.⁷¹ Third, the risk of "*achieving the expected result*" was high because ASI outsourced the whole workforce function - including compliance - to BWS, so key levers were outside RMG's hands.⁷² Fourth, performance was driven by ASI/BWS: they handled recruitment execution, housing, transport, audits and reporting, and ASI would assume full responsibility within 12 months.⁷³ These four points confirm a best-efforts duty, not a results duty, on RMG. The independent IIC also found no conclusive evidence of modern slavery or forced labour and instead recommended tighter monitoring and transparency.⁷⁴ That finding is consistent with RMG meeting a best-efforts standard (and with day-to-day compliance sitting with ASI/BWS). Finally, UNIDROIT Art 7.1.2 prevents a party from relying on non-performance it caused or took the risk of.⁷⁵ Here, CDI accelerated timelines,⁷⁶ prioritised cost minimisation,⁷⁷ directed the agency approach,⁷⁸ and *approved* BWS;⁷⁹ it cannot now recast the predictable consequences of that model as RMG's breach.

34. Therefore, since the alleged practices fall outside RMG's scope and, in any event, Clause 4.2(f) imposes only a best-efforts duty that RMG met, there is no basis to find a breach of the JVA by RMG.

⁶⁹ *Moot Problem*, Exhibit 10, cl 3.4.

⁷⁰ *Ibid*, Exhibit 10, cl 5.1.

⁷¹ *UNIDROIT Principles*, art 5.1.5(b).

⁷² *UNIDROIT Principles*, art 5.1.5(c); *Moot Problem*, Agreed Facts 38.

⁷³ *UNIDROIT Principles*, art 5.1.5(d); *Moot Problem*, Agreed Facts 39.

⁷⁴ *Moot Problem*, Agreed Facts 46-48; Exhibit 10.

⁷⁵ *UNIDROIT Principles*, art 7.1.2.

⁷⁶ *Moot Problem*, Agreed Facts 32.

⁷⁷ *Ibid*, Agreed Facts 36; Exhibit 6.

⁷⁸ *Ibid*, Agreed Facts 36.

⁷⁹ *Ibid*, Agreed Facts 37.

2. ALTERNATIVELY, EVEN IF THE CONDUCT OF ASI/BWS WERE ATTRIBUTED TO RMG, NO BREACH OF THE JVA IS PROVED

35. Even on attribution, Claimant has not proved a breach of the JVA because (a) no contractual non-performance by RMG is identified with the required certainty, and (b) the “*actual timesheets*” are not reliable, concrete evidence of any violation attributable to RMG.⁸⁰

36. In arbitration, each party must prove the facts it relies on.⁸¹ Under the UNIDROIT, “*non-performance*” means a failure to perform a contractual duty,⁸² and remedies require that the breach and its consequences be shown with a reasonable degree of certainty.⁸³ Where the allegation is an omission, Tribunals look for a real causal link (“*but-for*” and proximate cause) between the supposed failure and the loss.⁸⁴ Domestic law then supplies the working-hours benchmark in Aurion: 8 hours/day or 48 hours/week, with agreed overtime up to 300 hours/year;⁸⁵ Aurion has not ratified the ILO Hours of Work Convention.⁸⁶

(a) No contractual non-performance is proved with the required certainty

37. The IIC was formed by Aurion with the power to conduct unannounced inspections, interview workers and management, and review documents and audits at the plant and worker housing.⁸⁷ After on-site work, the IIC asked for better transparency and monitoring but found no conclusive evidence of modern slavery or forced labour.⁸⁸ With the only neutral, on-the-ground inquiry stopping short of finding a breach,

⁸⁰ *UNCITRAL Arbitration Rules* (2010) art 27(1); *UNIDROIT Principles*, art 7.1.1, 7.4.1, 7.4.3.

⁸¹ *UNCITRAL Arbitration Rules* (2010) art 27(1).

⁸² *UNIDROIT Principles*, art 7.1.1.

⁸³ *Ibid*, art 7.4.1, 7.4.3.

⁸⁴ *Biwater Gauff (Tanzania) Ltd v United Republic of Tanzania*, ICSID Case No ARB/05/22, Award (24 July 2008) para 779, 785, 787.

⁸⁵ *Correction & Additional Clarifications*, Clarification 5.

⁸⁶ *Ibid*, Clarification 4.

⁸⁷ *Moot Problem*, Agreed Facts 46; Exhibit 10, cl 2.2.

⁸⁸ *Ibid*, Agreed Facts 48; Exhibit 10, cl 5.1.

Claimant has not identified a specific contractual failure by RMG to the certainty UNIDROIT requires.⁸⁹

(b) The “actual timesheets” lack reliability and do not prove a violation

38. The Ministry said it received “*actual timesheets*” from an undisclosed ASI employee and claimed about 10,000 hours of under-reported overtime; it then announced a USD 500 million penalty on ASI on 16 December 2024.⁹⁰ When ASI sought disclosure so the material could be tested, the Ministry refused on confidentiality and safety grounds, yet still called the material “*concrete evidence*”.⁹¹ CDI also asked to explain and challenge authenticity, but the Ministry declined for whistleblower-identity concerns.⁹² Anonymous origin, no chain of custody, and no adversarial testing mean the spreadsheets do not meet the reasonable-certainty standard under the UNIDROIT.⁹³
39. Even on working hours, the record lacks individualised data showing which worker, in which week, exceeded 48 hours or went beyond the 300-hour annual cap. The global “*~10,000 hours*” total cannot prove a statutory breach person-by-person.⁹⁴ The IIC also recorded mixed testimony - some KPI pressure, but many workers saying overtime was voluntary for bonuses - and found no debt bondage, a key sign of coercion.⁹⁵ In any event, Aurion law permits consensual overtime within the annual cap; without worker-level proof of excess, there is no violation to attribute to RMG.⁹⁶
40. Therefore, Claimant has not carried its burden. The IIC’s neutral findings do not establish any contractual non-performance by RMG, and the undisclosed spreadsheets do not reach the reasonable-certainty threshold. Domestic law permits agreed overtime

⁸⁹ *UNIDROIT Principles*, art 7.1.1, 7.4.3.

⁹⁰ *Moot Problem*, Agreed Facts 56.

⁹¹ *Ibid*, Agreed Facts 57.

⁹² *Clarifications*, Clarification 10.

⁹³ *UNIDROIT Principles*, art 7.4.3.

⁹⁴ *Correction & Additional Clarifications*, Clarification 5; *Moot Problem*, Agreed Facts 56.

⁹⁵ *Moot Problem*, Agreed Facts 47(c), (d); *Moot Problem*, Exhibit 10, cl 3.4, 3.6.

⁹⁶ *Correction & Additional Clarifications*, Clarification 4, 5.

up to a quantified limit, and there is no individualised proof of exceeding it. Under UNCITRAL Article 27(1) and UNIDROIT Articles 7.1.1, 7.4.1 and 7.4.3, a breach of the JVA is not made out.⁹⁷

41. In conclusion, the Tribunal should hold that RMG did not breach the JVA in relation to the alleged labour practices - those matters fall outside RMG's contractual scope and, in any event, Clause 4.2(f) imposes only a best-efforts duty that RMG satisfied; alternatively, even if ASI/BWS conduct were attributed to RMG, Claimant has not proved any contractual non-performance to the required standard and the anonymous "*timesheets*" do not meet the UNIDROIT reasonable-certainty threshold.

⁹⁷ UNCITRAL *Arbitration Rules* (2010) art 27(1); UNIDROIT *Principles*, art 7.1.1, 7.4.1, 7.4.3.

ISSUE 4: CDI'S TERMINATION OF THE JVA WAS UNLAWFUL

42. Respondent respectfully submits that (1) CDI's termination of the JVA was unlawful because it failed to satisfy the contractual and international commercial law thresholds for termination, and (2) CDI has no unilateral right to terminate under Clause 8 of the JVA.

1. CDI'S TERMINATION OF THE JVA WAS UNLAWFUL BECAUSE IT FAILED TO SATISFY THE CONTRACTUAL AND INTERNATIONAL COMMERCIAL LAW THRESHOLDS FOR TERMINATION

43. Respondent respectfully submits that Claimant's unilateral termination of the JVA was unlawful because (a) the alleged misconduct did not amount to a "*fundamental non-performance*" or a "*breach*" under Clause 8.1 JVA and Article 7.3.1 of the UNIDROIT, and (b) CDI's termination was inconsistent with the duty of good faith and cooperation.

(a) The alleged misconduct did not amount to a "fundamental non-performance" or a "breach" under Clause 8.1 JVA and Article 7.3.1 of the UNIDROIT.

44. The conduct alleged by CDI concerned purported labour violations by ASI's subcontractor BWS.⁹⁸ Moreover, Clause 3.3 of the JVA establishes ASI as an "*independent, commercially driven entity*", limiting RMG's role to recruitment coordination under Clause 4.2(e) rather than operational control over labour conditions.⁹⁹ In addition, Clause 4.1(c)(ii) and Clause 6.1 of the JVA impose parallel labour compliance obligations on CDI within its own operations.¹⁰⁰ Since ASI's and

⁹⁸ *Moot Problem*, Agreed Facts 59, 61.

⁹⁹ *Ibid*, Exhibit 4, cl 3.3.

¹⁰⁰ *Ibid*, Exhibit 4, cl 4.1, 6.1.

BWS's conduct was not contractually attributable to RMG, CDI cannot rely on them to prove a breach under Clause 8.1.

45. Clause 8.1 of the JVA entitles a party to terminate if the other party commits a breach of the agreement or a fundamental non-performance.¹⁰¹ Since the JVA does not define articulately what "*fundamental non-performance*" and "*breach*" are, it is necessary to interpret these terms in line with the provisions of the UNIDROIT. Accordingly, the term "*breach*" must be construed consistently with "*non-performance*". Specifically, the Index to the UNIDROIT directs the reader from "*breach*" to "*non-performance*",¹⁰² thereby confirming that the two expressions are functionally equivalent within the framework of the Principles. This reinforces that a "*breach*" under Clause 8.1 of the JVA should be assessed by reference to the standards of "*non-performance*" set out in Articles 7.1.1 and 7.3.1 of the UNIDROIT.
46. Under Article 7.1.1 of the UNIDROIT, "*non-performance*" encompasses any failure to perform contractual obligations,¹⁰³ but must be interpreted in light of Article 7.3.1(2), which lists different criteria to determine whether a failure to perform amounts to a fundamental non-performance.¹⁰⁴ This ensures that only serious violations justify the extreme remedy of termination.
47. Although CDI claims that RMG committed a "*fundamental non-performance*" of the JVA, the facts show that the alleged breach, if any, falls short of the strict definition under Art. 7.3.1 of the UNIDROIT. First, concerning sub-section (a), the labour compliance incident did not deprive CDI of the substantial benefit it was entitled to under the JVA. The core purpose of the agreement was to build and operate the semiconductor plant. At the time of termination, this objective remained achievable, as

¹⁰¹ *Ibid*, Exhibit 4, cl 8.1.

¹⁰² *UNIDROIT Principles*, Index.

¹⁰³ *Ibid*, art 7.1.1.

¹⁰⁴ *Ibid*, art 7.3.1.

the physical facilities had been completed and production could commence after addressing the labour concerns. The penalties and temporary suspension imposed on ASI to rectify compliance issues did not equate to CDI losing the entire benefit of the venture; long-term business gains remained attainable upon remedy of the breach.

48. Second, in relation to sub-section (b), while adherence to labour standards is important, it is not the sole or primary object of the JVA, which also includes capital contribution, plant construction, and technology transfer. The purported breach therefore cannot be characterised as “*of essence*” under the contract.
49. Third, regarding sub-section (c), there was no evidence indicating that RMG intentionally violated labour standards. Furthermore, CDI lacked reasonable grounds to doubt RMG’s future performance, a factor required by sub-section (d). Moreover, when viewed in context, the harm to CDI was significant but did not collapse or render the project incapable of continuation. In contrast, termination inflicted disproportionate harm on RMG, which lost rights to the land, plant, and equipment invested under Clause 8.4(b) JVA.¹⁰⁵ Article 7.3.1(2)(e) of the UNIDROIT expressly recognises that such disproportionate loss to the non-performing party is a relevant factor in assessing termination rights.¹⁰⁶
50. In addition, under Article 7.1.2 of the UNIDROIT, a party cannot rely on the other’s non-performance to the extent that such non-performance was caused by its own “*act or omission*”.¹⁰⁷ CDI’s contributory role is evident from multiple instances: its constant urging to engage its prior approval of recruitment campaigns with BWS “*with no recorded approval*”;¹⁰⁸ and its failure to implement its own parallel labour compliance

¹⁰⁵ *Moot Problem*, Exhibit 4, cl 8.4.

¹⁰⁶ *UNIDROIT Principles*, art 7.3.1(2)(e).

¹⁰⁷ *Ibid*, art 7.1.2.

¹⁰⁸ *Moot Problem*, Agreed Facts 37, 64; Exhibit 5, 6.

obligations under Clauses 4.1(c)(ii) and 6.1 JVA.¹⁰⁹ Collectively, these actions and omissions demonstrate CDI's involvement in creating and aggravating the alleged violations. Accordingly, CDI cannot legitimately invoke these same circumstances to justify termination. In light of these considerations, RMG has strong grounds to argue that the alleged breach did not reach the threshold of "*fundamental*" non-performance required for CDI to terminate the JVA lawfully.

(b) CDI's termination was inconsistent with the duty of good faith and cooperation.

51. Article 1.7 of the UNIDROIT obliges parties to act in good faith and with fair dealing,¹¹⁰ a duty reflected in Article 5.1.3 of the UNIDROIT on cooperation that codifies the obligation of cooperation between contracting parties.¹¹¹ In the present case, CDI's abrupt termination, undertaken without seeking a proper measure to rectify under Clause 6.3 of the JVA, and based on alleged breaches by an independent subcontractor not contractually attributable to RMG, indicates a strategic avoidance of obligations rather than a good-faith response.¹¹²
52. In light of the foregoing reasons, RMG respectfully submits that CDI's termination of the JVA was unlawful under both the JVA and the UNIDROIT.

2. CDI HAD NO UNILATERAL RIGHT TO TERMINATE UNDER CLAUSE 8 OF THE JVA

53. Respondent submits that Clause 8 of the JVA, interpreted under the UNIDROIT,¹¹³ creates a clear, three-part structure.¹¹⁴ Clause 8.1 states when termination is permitted ("*fundamental non-performance or breach*") and grants the power to terminate to "*the*

¹⁰⁹ *Ibid*, Exhibit 4, cl 4.1, 6.1.

¹¹⁰ *UNIDROIT Principles*, art 1.7.

¹¹¹ *Ibid*, art 5.1.3.

¹¹² *Moot Problem*, Agreed Facts 59.

¹¹³ *Ibid*, Exhibit 4, cl 12.

¹¹⁴ *Ibid*, Exhibit 4, cl 8.

Parties” (plural).¹¹⁵ Clause 8.2 then sets out how the Parties record a mutual termination in writing,¹¹⁶ while Clause 8.3 provides the only unilateral right to terminate, which is only for “*the Party*” (singular) affected by force majeure.¹¹⁷ Reading together in line with UNIDROIT Articles 4.4 and 4.5 - interpretation in light of the whole contract¹¹⁸ and so as to give effect to all terms¹¹⁹ - supports the conclusion that Clause 8.1 provides for termination by agreement of both Parties, unless the specific *force-majeure* exception in Clause 8.3 applies. If Clause 8.1 were read as a unilateral right, Clause 8.2 would be meaningless and Clause 8.3 would be undermined, which is contrary to Articles 4.4-4.5.

54. In this case, on 24 December 2024, CDI wrote to RMG to inform RMG of its decision to terminate the JVA and to require RMG to bear the fine, citing “*ongoing breaches of the JVA*”, “*erosion of trust*”, and concerns that continuing the partnership would expose CDI to legal and operational risks.¹²⁰ The notice neither invoked *force majeure* nor identified a mutual instrument of termination. On its face, the communication was unilateral and therefore falls outside the termination framework of Clauses 8.1-8.3, as explained above. Moreover, Clause 8.3 allows unilateral termination only by the party affected by *force majeure*; CDI was not that party, so it had no unilateral right to terminate under Clause 8.3.
55. Hence, as already demonstrated under Claim 1 of this Issue, Respondent committed no fundamental non-performance or breach; however, even if a breach were hypothetically established, Claimant would still lack a lawful basis to terminate, given the contractual and UNIDROIT constraints discussed above.

¹¹⁵ *Ibid*, Exhibit 4, cl 8.1.

¹¹⁶ *Ibid*, Exhibit 4, cl 8.2.

¹¹⁷ *Ibid*, Exhibit 4, cl 8.3.

¹¹⁸ *UNIDROIT Principles*, art 4.4.

¹¹⁹ *Ibid*, art 4.5.

¹²⁰ *Moot Problem*, Agreed Facts 59.

56. For these reasons, through contract interpretation (Clauses 8.1-8.3 read with UNIDROIT Arts. 4.4 and 4.5), CDI's termination was unlawful.
57. In conclusion, Respondent respectfully submits that CDI's termination is invalid under the JVA and the UNIDROIT because the alleged conduct does not meet the contract's "*fundamental non-performance*" threshold and, in any event, Clause 8 grants no unilateral termination right to CDI.

PRAYERS FOR RELIEFS

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

- I. RESPONDENT is entitled to invoke sovereignty as it is a State-owned entity.
- II. CLAIMANT's initiation of arbitration was PREMATURE and therefore, could not proceed.
- III. RESPONDENT did NOT breach the JVA in relation to the alleged labour practices.
- IV. CLAIMANT's termination of the JVA was NOT lawful.