

20TH LAWASIA INTERNATIONAL MOOT COMPETITION

10 OCTOBER TO 13 OCTOBER 2025

ASIAN INTERNATIONAL ARBITRATION CENTER

MEMORANDUM FOR RESPONDENT

CLAIMANT

RESPONDENT

Calyx DreamBot Inc (“CDI”)

Rivus Microelectronics Group (“RMG”)

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INDEX OF ABBREVIATION

Abbreviation	Citation
para. (paras.)	Paragraph (Paragraphs)
Art./Arts.	Article/ Articles
Exh.	Exhibit
i.e.	id est (that is)
JVA	Join Venture Agreement
ML	Model Law
p. (pp.)	Page (Pages)
v.	versus

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ARSIWA	International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts	25
State Immunity Act	State Immunity Act 1978	27
UNSCI	United Nations Convention on Jurisdictional Immunities of States and Their Property	21, 22, 24, 27
UPICC	UNIDROIT Principles Of International Commercial Contracts 2016	32, 44, 46, 48, 49
VCLT	Vienna Convention on the Law of Treaties	22

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STATEMENT OF JURISDICTION

The Parties, Calyx DreamBot Inc (“CLAIMANT”) and Rivus Microelectronics Group (“RESPONDENT”) have agreed to the following. First, the law governing the procedure of the arbitration shall be Aurion law, considering the *lex arbitri* is Aurion. Second, the governing framework for the arbitration should be the Asian International Arbitration Centre (AIAC) Rules 2023. Third, the place of arbitration shall be Kuala Lumpur, Malaysia.

QUESTIONS PRESENTED

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

STATEMENT OF FACTS

1. Calyx DreamBot Inc (CLAIMANT), the largest semiconductor firm in Veridia, and previously, the main supplier to Seratious (hereinafter “CLAIMANT”) and Rivus Microelectronics Group (RESPONDENT), a state-linked entity incorporated in Aurion (hereinafter “RESPONDENT”) are the ‘PARTIES’ to this arbitration.
2. In October 2022, the Aurion-Veridia Bilateral Investment Treaty (“BIT”) was signed.
3. In December 2022, CLAIMANT and RESPONDENT entered a Joint Venture Agreement (JVA) with the incorporation of Aurion Semiconductor Inc. (“ASI”) as the special purpose vehicle of the JVA.
4. To meet supply commitments, CLAIMANT requested that RESPONDENT expedite ASI’s construction to 15 months. The construction was supervised by a joint project management team (“JPMT”) comprising representatives from both CLAIMANT and RESPONDENT.
5. As construction progressed, ASI began to incur costs beyond initial projections and even before operations started running.
6. On 20 September 2023, CLAIMANT once again emailed the JPMT, warning that further delays were untenable, urging prompt staff mobilisation, and directing RESPONDENT to hire a third-party labour agency to speed recruitment while “minimising labour costs wherever feasible.
7. Response to CLAIMANT’s requests, RESPONDENT chose “Beta Workforce Solutions (“BWS”) with CLAIMANT’s approval.
8. In October 2023, ASI entered into a service agreement with BWS for the supply and management of an initial workforce.

9. In May 2024, production had begun within the targeted 15-month timeframe requested by CLAIMANT.
10. On 13 September 2024, a report alleged labour abuses at ASI at a newly established Veridian-linked facility in Aurion.
11. On 17 September 2024, despite the report's questionable origin and lack of concrete evidence, Seratious issued a formal warning to Aurion, threatening an import ban on Aurion.
12. On 23 September 2024, Aurion formed an Independent Investigative Committee ("IIC"), which was vested with full prerogative to conduct unannounced inspections, interview workers, and review employment records and workforce audit reports.
13. On 30 September 2024, IIC published the investigation report, which found excessive working hours beyond the legal limit, substandard living conditions, recruitment fee charging, and misreporting of workforce audit.
14. On 2 October 2024, ASI's operating license was suspended in response to public concerns regarding the findings of IIC.
15. On 16 October 2024, after conducting a further review, the Ministry imposed a fine of USD 500 million on ASI for ASI's failure to meet labour compliance standards.
16. On 23 October 2024, the suspension on ASI was lifted.
17. On 24 December 2024, CLAIMANT terminated the JVA and demanded that RESPONDENT bear the fine.

SUMMARY OF PLEADINGS

ISSUE I: RESPONDENT IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY

18. RESPONDENT is entitled to invoke sovereign immunity as an entity controlled by the State of Aurion for two grounds. First, RESPONDENT constitutes a part of the State of Aurion (a State-owned enterprise) and was acting in the exercise of sovereign authority in executing the JVA. Second, RESPONDENT has not waived its right to invoke sovereign immunity.

ISSUE II: CLAIMANT'S INITIATION OF ARBITRATION WAS PREMATURE, RESULTING IN THE TRIBUNAL'S LACK OF JURISDICTION

19. The negotiation and the ministerial consent under Clause 10 JVA are conditions precedent for the commencement of arbitration. First, the wording of the clause together with a precise mechanism with determined time limits reflects the Parties' intent to make negotiation a mandatory step before arbitration. Second, the ministerial consent clause is a valid and enforceable clause, which has a clear and unequivocal language showing its mandatory nature. Therefore, as the negotiation and the ministerial consent are mandatory pre-arbitral steps, non-compliance with these requirements leads to a lack of jurisdiction for the Tribunal to hear the case.

ISSUE III: RESPONDENT DID NOT BREACH THE JVA IN RELATION TO THE ALLEGED LABOUR PRACTICES

20. RESPONDENT has not breached the JVA in relation to the alleged labour practices. First, the allegations raised do not amount to forced labour, which is the central concern under the JVA's labour obligations. Second, even if such practices were found, the Respondent has duly fulfilled its contractual obligations under Clause 4.2(e) and Clause 4.2(f) of the JVA by

ensuring workforce recruitment and compliance with applicable labour laws and managing the recruitment and allocation of local and migrant workforce.

ISSUE IV: CLAIMANT'S TERMINATION OF THE JVA WAS UNLAWFUL

21. Assuming, arguendo, that RESPONDENT has breached Clause 4.2(e) and 4.2(f) of the JVA due to its failure to ensure full compliance with all applicable labour and employment laws, such breach does not entitle CLAIMANT to terminate the JVA as it does not constitute a fundamental breach as required under Clause 8 of the JVA. Even if such breach amounts to a fundamental breach, CLAIMANT is estopped from relying on RESPONDENT's breach to terminate the JVA.

PLEADINGS

I. RESPONDENT IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY

22. Respondent is entitled to invoke sovereign immunity as an entity controlled by the State of Aurion. Sovereign immunity is a fundamental rule of international law that prevents a sovereign state from being sued or being subject to enforcement action in regards to its property in foreign courts.¹ Once the principle is applied, a legal action can only be brought against the State where its consent has been obtained.²
23. Art. 5 of the UNCSI, to which Aurion is a signatory³ stipulates that a State enjoys immunity from the jurisdiction of foreign courts and from measures against its property, except as limited by the provisions of this Convention.⁴
24. In light of these criteria, it is contended that RESPONDENT can invoke sovereign immunity since **(A)** RESPONDENT constitutes a part of the State of Aurion and was acting in the exercise of sovereign authority in executing the JVA and **(B)** RESPONDENT has not waived its right to invoke sovereign immunity.

A. RESPONDENT constitutes a part of the State of Aurion and was acting in the exercise of sovereign authority in executing the JVA

25. Under Art. 2.1(b)(iii) of the UNSCI, “*agencies or instrumentalities of the state or other entities*” are treated as a State if they are both entitled to perform and are actually performing sovereign acts.⁵

¹ James Crawford (1981), p. 487.

² Crawford (2012), p. 820.

³ Clarification, p. 1, para. 1.

⁴ UNSCI, Art. 5.

⁵ UNSCI, Art. 2.1(b)(iii).

26. Preparatory work of the treaty may be used to supplement its interpretation.⁶ The drafters of the UNSCI retained the term “*agencies or instrumentalities of the state or other entities*”⁷ to theoretically include both state enterprises established by the state for commercial purposes, and private entities not established by the State but endowed with governmental authority.⁸
27. Sovereign immunity extends to state enterprises, agencies, and other entities representing sovereign authority, as long as such an entity is entitled to and actually performs acts in the exercise of a State’s sovereign powers, regardless of its formal legal status.⁹ The UNSCI largely reflects the restrictive theory of immunity, which grants immunity only for transactions involving the exercise of governmental authority (*acta jure imperii*) as distinct from commercial activities (*acta jure gestionis*).¹⁰
28. In this regard, while it is not strictly necessary to prove a direct connection between the entity and the State where the exercise of sovereign authority is established, demonstrating such a connection reinforces the entity’s status as an extension of the State and thereby strengthens the claim for sovereign immunity.
29. In applying these requirements, it is established that RESPONDENT qualifies as part of the State of Aurion as **(1)** RESPONDENT is a state-owned enterprise, and **(2)** RESPONDENT was performing sovereign acts in undertaking the investment activities.

1. RESPONDENT is a state-owned enterprise

30. RESPONDENT operates as a state-owned enterprise of the State of Aurion, qualifying as an entity of the State.

⁶ VCLT, Art. 32.

⁷ UNSCI, Art. 2.1(b)(iii).

⁸ UNSCI Draft Articles, p. 17, para. 15; UNSCI Commentary, p. 99.

⁹ Hazel Fox (2013), para. 29-30; Maniruzzaman (2005), pp. 1-8.

¹⁰ James Crawford (1981), p. 490; Martin Dixon (2013), pp. 187-188.

31. While there is no universal definition of a state-owned enterprise, it can be generally defined as an entity that, while potentially having a separate legal personality under national law, is predominantly owned or controlled by a state or state institutions.¹¹
32. Control refers to the holding of sufficient voting shares, whether through direct or indirect ownership to influence key decisions in a company's operations or structures.¹² This may arise even for a minority shareholder through provisions in the articles of incorporation, shareholders or other instruments.¹³ The tribunal may also assess the extent to which the state directs or influences an entity's investment decisions or activities, indicating through the composition of the board of directors¹⁴, particularly where appointments depend on governmental agencies or ministerial approval, the overlap of key personnel between the state and the entity¹⁵, shareholding or other reasonable considerations¹⁶.
33. In the present dispute, the State of Aurion has always maintained its ownership and exercised control over RESPONDENT's operation. First, RESPONDENT's board of directors is composed of Aurion's Cabinet Ministers, and RESPONDENT's leadership and decision-making processes are heavily influenced by and typically mirror the internal policies laid down by the Ministry of Economy, which indicates direct governmental control at the highest level.¹⁷ There were reports which were never rebutted by RESPONDENT or the Aurion Government, indicating that RESPONDENT's capital requirements were provided using public funds from the Government Treasury.¹⁸ This direct financial backing suggests a lack of financial independence from the state.

¹¹ Muchlinski (2021), p. 11; Paulsson (1985), pp. 195 - 200; Maffezini v. Spain.

¹² Thunderbird v. The UMS.

¹³ Schreuer (2009), para. 851; Aguas v. Republic of Bolivia.

¹⁴ Helnan v. Egypt; RFCC v. Maroc.

¹⁵ Thunderbird v. The UMS.; Salini v. Morocco.

¹⁶ Vacuum v. Ghana.

¹⁷ Moot problem, p. 7, para. 28.

¹⁸ Moot problem, p. 7. para. 27.

34. While RESPONDENT was incorporated under the corporation laws of Aurion, it was widely known in Aurion as President Ho's pet project. As President Ho publicly stated, RESPONDENT is Aurion's nation's pride¹⁹ and operating under his influence²⁰, further underscoring its political significance. Furthermore, RESPONDENT's affiliations with the government facilitated aggressive fast-tracking of approvals and infrastructure works,²¹ leveraging its status as a state-linked entity. These facts illustrate that Aurion always intended to directly or indirectly own and control RESPONDENT.
35. In conclusion, RESPONDENT operates under the substantial ownership and control of the Aurion Government, therefore qualifying as a state-owned enterprise.

2. RESPONDENT performed a sovereign act in undertaking the investment activities

36. In order to distinguish between sovereign acts and commercial acts, two grounds upon which the tribunals could rely are the nature of the act and the purpose of the act.²² While the nature of the dispute is central in deciding whether the contract is commercial, its purpose should also be taken into account if it is relevant to determining the nature of the contract, to provide protection for developing countries, especially in their endeavours to promote national economic development.²³ Even if the contract was commercial in nature, as long as the context in which it operated is sovereign, the entity can still have sovereign immunity as it may well affect what that nature actually is.²⁴
37. RESPONDENT, while undertaking activities relating to the JVA between RESPONDENT and CLAIMANT, was discharging essential sovereign acts, considering the (i) public nature

¹⁹ Moot problem, p. 7, para. 25.

²⁰ Moot problem, p. 5, para. 10.

²¹ Moot problem, p. 8, para. 30.

²² Martin Dixon (2013), pp. 188-189.

²³ UNSCI, Art. 2(2); UNSCI Draft Articles, p. 20, para. 26; Reid v. Republic of Nauru.

²⁴ United States v. The Public Service Alliance of Canada.

of activities undertaken by RESPONDENT and **(ii)** purpose of the activities to further public policy considerations of Aurion.

(i) Public nature of activities undertaken by RESPONDENT

38. In determining the existence of essential sovereign authority exercised by the entity, reference could be made to Art. 5 of the ARISWA, which is an echo of this element.²⁵ An act is of sovereign nature if the State ordinarily reserves such conduct for itself, or which by their nature are not usually undertaken by private businesses or individuals.²⁶ Furthermore, the “governmental” nature may depend on the history and traditions of the particular country.²⁷
39. In *Toto v. Lebanon*, the tribunal held that an entity was exercising sovereign authority where it developed and implemented projects assigned by its government, using funds allocated from the state budget.²⁸
40. In recent years, Aurion has pursued sweeping economic reforms to become a high-tech industrial economy, positioning itself as a global semiconductor hub to boost companies like RESPONDENT.²⁹ The leadership has positioned Aurion as a global powerhouse of technological advancement by leveraging the semiconductor industry to propel companies like RESPONDENT into the global stage.³⁰ With semiconductor supply chains now vital to national security and economic stability, Aurion’s active involvement reflects a calculated policy in line with the global trend of treating this sector as a matter of strategic national interest.

²⁵ ARISWA, Art. 5; De Stefano (2020), pp. 96-177.

²⁶ Dolzer/Schreuer/Kriebaum (2022), p. 323; UNSCI Commentary, p. 115; Maffezini v. Spain

²⁷ Crawford (2012), p. 101, para. 6.

²⁸ *Toto v. Lebanon*.

²⁹ Moot problem, p. 4, para. 9.

³⁰ Moot problem, p. 5, para. 13-14.

41. Furthermore, Aurion has a tradition of direct state involvement in sectors critical to national development.³¹ In the underdeveloped yet resource-rich northern region, sectors like semiconductor manufacturing have been driven by “state-driven industrial initiatives”, which explains the location of the semiconductor facility there.
42. RESPONDENT’s core activities, including facilitating land alienation, granting access to state-controlled natural resource deposits, and expediting regulatory approvals, are functions that only the state can lawfully perform. RESPONDENT’s establishment as part of President Ho’s flagship semiconductor initiative,³² its funding from the Government Treasury,³³ and close supervision from the government established the practice of executing national economic policy through publicly controlled entities, underscoring the governmental nature of its acts.
43. In conclusion, RESPONDENT was essentially undertaking the investment activity to perform its public function of developing Aurion’s semiconductor industry.

(ii) Purpose of the activities to further public policy considerations of Aurion

44. States that regularly utilise state-owned enterprises as instruments for implementing public policy in a domestic context may carry this practice into the international sphere when engaging in investment activities.³⁴ Such enterprises often pursue political and economic aims alongside commercial ones, and may thus perform governmental and commercial functions simultaneously. Where their primary objective is to advance public policy rather than generate profit, they may be characterised as sovereign in nature despite their commercial form.³⁵

³¹ Moot problem, p. 4, para. 8-9.

³² Moot problem, p. 7, para. 21.

³³ Moot problem, p. 7, para. 27.

³⁴ McLaughlin (2019), pp. 595-625.

³⁵ Mohtashami (2016), p. 379.

45. In this dispute, even if some of RESPONDENT's participation in the JVA with CLAIMANT appears commercial on the surface, its activities were not undertaken to compete as a private enterprise, but to implement President Ho's flagship initiative to establish Aurion as a global semiconductor hub. RESPONDENT's activities were guided by its governmental mandates, including securing strategic supply chains, promoting national industrial capacity, generating job opportunities for Aurion's workforce, and attracting foreign capital following the conclusion of the BIT.
46. In conclusion, RESPONDENT's conducts constitute the exercise of sovereign authority in furtherance of Aurion's public policy objectives.

B. RESPONDENT has not waived its right to invoke sovereign immunity

47. Sovereign immunity can only be waived by the state concerned expressly or by conduct granted by the State itself or an authorized state agent.³⁶ In this sense, sovereign immunity has not been waived as there is no express or implied waiver of immunity by RESPONDENT.
48. Pursuant to the State Immunity Act, which broadly reflects the UNSCI³⁷, a state will be deemed to have waived its immunity from jurisdiction by submission to the jurisdiction after the dispute has arisen; or by prior written agreement; or by the institution of proceedings; or by intervening or taking a step in the proceedings.
49. While arbitration agreements are generally regarded as waivers of state immunity under some national laws, it is crucial to include express sovereign immunity waivers in contracts with foreign states and their nationals.³⁸ A state immunity can only be waived through an express

³⁶ James Crawford (1981), p. 501.

³⁷ James Crawford (1981), p. 501; UNSCI, Arts. 7-8.

³⁸ Born (2006), p. 101.

undertaking or consent given directly to the court at the time it is asked to exercise jurisdiction, not merely through a private contractual agreement.

50. In the present dispute, there is clearly no express waiver of immunity provision in the JVA. In addition, RESPONDENT has raised several preliminary objections, including that RESPONDENT is entitled to sovereign immunity, which directly counters any argument of implied waiver. RESPONDENT's participation in the arbitration proceedings was solely to invoke sovereign immunity and protect its rights.
51. In conclusion, RESPONDENT has not waived its sovereign immunity, as there is no express waiver in the JVA, and no conduct amounting to implied waiver, and no authorization from the State empowering RESPONDENT to do so.

II. CLAIMANT'S INITIATION OF ARBITRATION WAS PREMATURE, RESULTING IN THE TRIBUNAL'S LACK OF JURISDICTION

52. RESPONDENT challenges the Tribunal's jurisdiction on the two grounds: **(A)** CLAIMANT failed to comply with the mandatory pre-arbitral negotiation requirement under Clause 10.1 JVA; **(B)** CLAIMANT failed to comply with the ministerial consent requirement under Clause 10.2 JVA. **(C)** As the conditions precedent to arbitration have not been fulfilled, the Tribunal lacks jurisdiction to hear the case.

A. CLAIMANT failed to comply with the mandatory pre-arbitral negotiation requirement under Clause 10.1 JVA

53. CLAIMANT may argue that the mediation clause under Art. 10.1 JVA is unenforceable or non-mandatory; thus, the non-compliance with the mediation requirement cannot render the initiation of arbitration premature. However, this argument is misplaced because **(1)**

Negotiation is a condition precedent to arbitration; **(2)** CLAIMANT failed to comply with the negotiation requirement.

1. Negotiation is a condition precedent to arbitration

54. In order to be considered a mandatory condition precedent, the provision must express such intention through a “clear and unequivocal” language.³⁹ In this case, the express language in the clause shows that negotiation is a mandatory precondition to arbitration because the dispute resolution clause contains: (i) The wording of the multi-tiered clause leading to arbitration; (ii) A precise mechanism with determined time limits.⁴⁰
55. First, in terms of mandatory language, the use of the imperative term “*shall*” in the negotiation clause establishes a mandatory prerequisite to arbitration, while the word “*may*” indicates a non-mandatory attempt to resolve the dispute.⁴¹
56. In ICC case no. 9977, in which the clause states that “*Any controversy that may arise among the Parties...shall be submitted to senior management representatives of the parties...*”, the Tribunal held that the use of the word “*shall*” clearly meant the pre-arbitral steps were contracted as “*a prior mandatory process of communication between the parties in conflict*”.⁴²
57. In this case, the term “*shall commence within 14 days*” indicates a binding obligation to act within a definitive timeframe; Meanwhile, the formulation “*Parties agreed to regulate their own affairs and resolve any dispute through negotiation*” emphasizes a clear contractual commitment to negotiate before any proceedings.

³⁹ Jolles (2006), p.336; Kayali (2010), p.569; Tang v. Grant.

⁴⁰ Rao/Shetty (2024), p. 10.

⁴¹ Prime Mineral v. Emirates Trading; Kayali (2010), p. 572.

⁴² Dyala (2003), p. 84 - 85.

58. Second, courts and tribunals often look at the precision of the mechanism stipulated in the multi-tiered clause and the stipulated time limits as basic elements to decide whether the pre-arbitral steps shall be enforced.⁴³
59. In this case, the structure and sequencing of Clause 10 and Clause 11 indicate that the negotiation clause (Clause 10.1) constitutes a foundational tier of the dispute resolution framework. Together with Clause 11 on Arbitration, it reflects the Parties' express agreement to a multi-state dispute resolution mechanism, including two stages: amicable negotiation and then arbitration.
60. Besides, Clause 10.1 also sets out a specific and precise time limit of 14 days for negotiation, indicating a mandatory and unequivocally certain nature of this obligation before the commencement of arbitration.
61. Therefore, the intention to mandatorily negotiate before arbitration was already established by the wording and structure of the multi-tier clause. Thus, negotiation is a condition precedent to arbitration.

2. Claimant failed to comply with the negotiation requirement

62. In this case, Clause 10.1 JVA sets out two obligations on a party wishing to initiate arbitration: (1) To serve a written notice containing particulars of the dispute; (2) To commence negotiations within 14 days from the date that notice is sent. However, CLAIMANT only fulfilled the former, failing to comply with the latter, rendering the initiation of arbitration premature.
63. More specifically, CLAIMANT served a written notice on 24 December 2024, informing Respondent of its decision to terminate the JVA and demanding that Respondent bear the

⁴³ Jolles (2006), p.330; Hooper v. Natcon; IRC v. Lufthansa.

USD 500 million fine.⁴⁴ Merely four days later, Claimant escalated the dispute by sending an informal WhatsApp message, reiterating the demand and adding, in a dismissive tone: “*That’s the least you can do!*” - a statement that clearly reflects bad faith and confrontational intent, rather than a willingness to negotiate.⁴⁵ Since then, Claimant has never shown any attempt to initiate negotiations, and never mentioned the contractual obligation to negotiate under Clause 10.1 in any communications with RESPONDENT.⁴⁶

64. Even if CLAIMANT had no genuine intention to negotiate, it was still contractually bound to wait until the expiry of the 14-day negotiation period before commencing arbitration. From the date the written notice was served on 24 December 2024 to the filing of the Notice of Arbitration on 6 January 2025, only 13 days had passed. Therefore, the negotiation period was not exhausted, and Claimant’s initiation of arbitration was premature.
65. Besides, CLAIMANT has never expressed its intention of bringing the dispute to arbitration, being silent on this issue, and unilaterally bringing the case to arbitration. This demonstrates CLAIMANT’s breach of the duty of good faith and fair dealing, as recognised in Art. 1.7 UNIDROIT Principles and general principles of international contract law.
66. Therefore, CLAIMANT not only failed to comply with the negotiation requirement but also showed its bad faith in communication with RESPONDENT.

B. CLAIMANT failed to comply with the ministerial consent precondition under Clause 10.2 JVA

67. In this case, RESPONDENT submitted that CLAIMANT failed to comply with the ministerial consent precondition under Clause 10.2 JVA because: (1) Ministerial consent clause is a valid and enforceable clause to arbitration; (2) Ministerial consent is a mandatory

⁴⁴ Moot problem, p. 14, para. 58.

⁴⁵ Moot problem, p. 14, para. 60; Ex.11.

⁴⁶ Clarification, p. 1, para. 5.

condition precedent to arbitration; (3) CLAIMANT did not comply with the ministerial consent requirement.

1. Ministerial consent clause is a valid and enforceable clause to arbitration

68. In this case, Clause 10.2 is valid and enforceable because: **(i)** The clause was voluntarily agreed upon by both Parties; **(ii)** The clause is not unconscionable because the Parties were not in unequal bargaining powers; **(iii)** The clause does not violate CLAIMANT's access to justice; **(iv)** The clause reflects Aurion's legitimate public policy given that RESPONDENT is a state entity.

i. The clause was voluntarily agreed upon by both Parties

69. The principle of party autonomy is the cornerstone of international trade. Besides, under the UPICC, the governing law of the contract⁴⁷ describes the principle of freedom of contract as "of paramount importance".⁴⁸ Besides, a Party is entitled to withdraw from forming a contract, provided that both have engaged in negotiations in good faith with the intent to reach an agreement.⁴⁹ Therefore, the Tribunal should recognize and reaffirm the party's autonomy to decide whether to enter into a business agreement.

70. In this case, the JVA was mutually negotiated and voluntarily signed by both CLAIMANT and RESPONDENT in December 2022.⁵⁰ There is no evidence showing that during the negotiation and drafting process, CLAIMANT objects to Clause 10.2. In fact, CLAIMANT expressly accepted the requirement to obtain the ministerial consent.

71. As Clause 10.2 is a product of mutual agreement and is binding on both Parties, it shall not be invalidated by the Tribunal for unfairness reasons as stated by CLAIMANT. Therefore, the

⁴⁷ Ex.4, Clause 12.

⁴⁸ UPICC, Art. 1.

⁴⁹ UPICC, Art. 2.1.15(1).

⁵⁰ Moot problem, p. 8, para. 29.

Tribunal should give effect to this clause in accordance with the Parties' intent and the foundational principle of contractual freedom.

ii. The clause is not unconscionable because the Parties were not in unequal bargaining powers

72. CLAIMANT may argue that Clause 10.2 should be invalidated because it is unconscionable and a product of unequal bargaining power, given that RESPONDENT is a state-linked entity, while CLAIMANT is a foreign investor.
73. A violation of the principle of equal treatment can also occur if one party has superior negotiating power, which forces the other party to accept an advantageous agreement. Under Art. 3.2.7 PICC, a party may avoid the contract, or a specific term thereof, if at the time of its conclusion, such contract or term unjustifiably gives the other party an excessive advantage.
74. In this case, the arbitration agreement is not unconscionable because the Parties were in equal bargaining powers. CLAIMANT, the largest semiconductor firm in Verdia, has been the main supplier to Seratious for a long period, or in other words, a highly experienced multinational investor rather than a vulnerable party.⁵¹ It could not be dragged into the JVA blindly or unwillingly without any knowledge/notice about the Aurion ministerial consent requirement clause. In fact, CLAIMANT was fully aware of both the advantages of operating in Aurion - such as low costs and minimal regulatory barriers - and the potential risks arising from RESPONDENT's governmental ties.⁵²
75. Besides, being a SOE or having a close tie with the State does not mean RESPONDENT holds greater bargaining power in negotiating and drafting the contract. In fact, SOEs are often subject to public interest safeguards and stricter regulation, which place limitations on

⁵¹ Moot problem, p. 5, para. 14.

⁵² Moot problem, p. 7, para. 24.

their autonomy. Therefore, both parties brought distinct but equivalent advantages to the table - CLAIMANT with capital and global expertise, and RESPONDENT with domestic support and strategic control from Aurion.

76. To conclude, both Parties are in equal bargaining powers, and CLAIMANT did enter the agreement knowingly, willingly, and with legal sophistication. Thus, Clause 10.2 is valid and binding on both Parties.

iii. The clause does not violate CLAIMANT's access to justice

77. An arbitration agreement is invalid if it denies a party the right to access justice.⁵³ However, this right is preserved as long as the party still has the chance to present its case before a judicial body.⁵⁴

78. In this case, the mere possibility of delay does not constitute a denial of justice. In fact, CLAIMANT unilaterally commenced arbitration without first communicating with RESPONDENT or providing any evidence that the Minister would refuse consent. CLAIMANT could have requested such consent and, if refused, then brought the case to arbitration.

79. Given that Clause 10.2 is not a denial of the right to justice and CLAIMANT has never tried to obtain the Minister's consent, the Tribunal should not invalidate Clause 10.2.

iv. The clause reflects Aurion's legitimate public policy given that RESPONDENT is a state entity

80. The ministerial consent requirement clause is not intended to deprive CLAIMANT's access to justice but rather to safeguard Aurion's legitimate public policy interests. This clause serves a function analogous to the exhaustion of local remedies often seen in investor-state

⁵³ *Ruszkaya v. Sony Ericsson*.

⁵⁴ Kudrna (2013), p. 4.

arbitration, where Parties are required to first bring claims to domestic courts before resorting to international arbitration.⁵⁵ Both mechanisms' purpose is to give local authorities the opportunity to consider and address complaints of wrongful conduct.

81. In this case, RESPONDENT is a State entity whose policies deeply mirror the policy of Aurion.⁵⁶ Besides, The JVA is not a mere private commercial arrangement; it represents a flagship national initiative Aurion's economic transformation in line with President Ho's vision to leverage the semiconductor industry.⁵⁷ Therefore, Clause 10.2 JVA is not aimed at avoiding arbitration in general, but at ensuring that the State retains the ability to supervise the conduct of its SOEs in transactions of public importance. This safeguard strikes a legitimate balance between respecting party autonomy and protecting the sovereign's regulatory prerogatives.
82. Therefore, the Tribunal should not invalidate Clause 10.2 as it reflects Aurion's legitimate public policy.

2. Ministerial consent is a mandatory condition precedent to arbitration

83. In international practice, the mandatory nature of pre-arbitration steps in multi-tiered clauses can be conveyed through wording such as "*shall be submitted*", "*only if [a mechanism] is employed*", or phrases that prohibit arbitration "*until*" certain steps are taken.⁵⁸
84. In this case, Clause 10.2 unquestionably reflects the characteristics of a binding precondition to arbitration. By stating that proceedings "*shall NOT be commenced*" without ministerial consent, the clause unequivocally reflects a mandatory procedural requirement.

⁵⁵ Born/Scekic (2015), p. 242-243.

⁵⁶ Moot problem, p. 7, para. 28.

⁵⁷ Moot problem, p. 7, para. 22.

⁵⁸ Jolles (2006), p.330; Lye (2024), p. 539.

85. Therefore, the Tribunal shall consider the ministerial consent requirement as a binding obligation, which the Parties were required to fulfil before initiating arbitration.

3. CLAIMANT did not comply with the ministerial consent requirement

86. Under Clause 10.2 JVA, the Minister's consent is a condition precedent before initiating any proceedings to resolve the dispute.

87. In this case, CLAIMANT commenced arbitration unilaterally without ever seeking ministerial consent. There is no indication that it contacted the competent ministry or that consent was refused. Even if CLAIMANT anticipated a refusal, it was contractually obliged to request and await a decision before proceeding.

88. Therefore, CLAIMANT's disregard of the ministerial consent requirement under Clause 10.2 constitutes a clear procedural breach, rendering its commencement of arbitration invalid and premature.

C. Therefore, the Tribunal lacks jurisdiction to hear the case

89. In international arbitration practice, an arbitrator's jurisdiction stems from an agreement between parties to submit their dispute to arbitration. Therefore, if a precondition to the arbitration agreement is not completed, there is no agreement to arbitrate, which leads to a lack of jurisdiction for the tribunal to do any arbitration proceedings.⁵⁹

90. Pursuant to Rule 2(1)(b) of AIAC Rules 2023, to commence the arbitration proceedings, the Party shall file a notice of arbitration accompanied by the "*confirmation that all existing pre-conditions to arbitration*".

91. In the current case, as parties agreed the Arbitration Agreement shall be governed by AIAC rules, failing to fulfil the mandatory preconditions, including ministerial approval and

⁵⁹ Born/Scekic (2015), p.247; Enron v. Argentina; Prime Mineral v. Emirates Trading; IRC v. Lufthansa.

negotiation, will render the arbitration agreement ineffective. There is the initiation of arbitration

92. In conclusion, non-fulfilment of negotiation and ministerial consent requirements leads to the Tribunal's lack of jurisdiction to hear the case, rendering the initiation of arbitration premature.

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

93. CLAIMANT alleges that RESPONDENT has breached the JVA concerning the labour practices by failing to fulfil its contractual obligations under Clause 4.2(e) and 4.2(f). To the contrary, RESPONDENT did not breach the JVA as **(A)** The alleged labour practices do not amount to labour violations and, **(B)** RESPONDENT has fulfilled its contractual obligations.

A. The alleged labour practices do not amount to labour violations

94. CLAIMANT may contend that RESPONDENT breached the JVA by violating general labour practices. However, in this case, **(1)** labour practices under the JVA refer primarily to forced labour practices and the ongoing allegations concern forced labour directly, and **(2)** no forced labour practice has been established.

1. Labour practices under the JVA refer primarily to forced labour practices and the ongoing allegations concern forced labour directly.

95. Clause 6.1 of the JVA requires contractual parties' adherence to "international recognized principles [...] on fair labour practices".⁶⁰ In context, this obligation refers primarily to the prohibition of forced labour. Aurion has ratified the FLC (No. 29), thereby imposing stringent obligations on itself and entities operating within its jurisdiction to prohibit forced labour and

⁶⁰ Exh. 1, Clause 6.1.

protect workers' rights. Seratiou's statement likewise condemned "forced and exploitative labour", underscoring that the parties understood labour practices in the JVA to focus on forced labour standards.

96. International labour law supports this interpretation. The ILO Declaration on Fundamental Principles and Rights at Work identifies the elimination of all forms of forced or compulsory labour as a fundamental right.⁶¹ The FLC and The Abolition of Forced Labour Convention ratified by Aurion are among the ILO's eight fundamental conventions. While other conventions address broader issues, the record shows that compliance under the JVA was framed around forced labour.
97. The IIC, established by the Aurion Ministries, was tasked with assessing compliance specifically with the FLC⁶² and concluded there was "no conclusive evidence" of forced labour⁶³. It could be inferred that the alleged practices are specifically directed towards forced labour concern.
98. In conclusion, the labour obligations under the JVA must be read primarily with reference to forced labour, not general labour concerns.

2. No forced labour practice has been established

99. Pursuant to Art. 2(1) of the FLC (No. 29), "forced or compulsory labour" is defined as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.⁶⁴ This definition requires both elements, involuntariness and coercion to be presented simultaneously in order to constitute forced labour.⁶⁵

⁶¹ ILO (1998), p. 7. para. 2(b).

⁶² Exh. 10, Clause 2.2(d).

⁶³ Exh. 10, Clause 5.1.

⁶⁴ FLC, Art. 2(1).

⁶⁵ Hard to see, harder to count, p. 7.

100. Forced labour cannot be equated with mere non-compliance of labour standards, such as low wages, poor working conditions or even economic necessity when a worker feels unable to leave due to limited employment alternatives.⁶⁶ Rather, it refers to more serious conduct beyond ordinary labour law violations.

101. In this regard, RESPONDENT submits that the alleged labour practices at ASI semiconductor facility do not constitute forced labour under applicable laws since neither **(i)** evidence of involuntariness nor **(ii)** evidence of coercion attributable to RESPONDENT were found.

i. There is no evidence of involuntariness

102. Involuntary work refers to any work undertaken without the free and informed consent of the worker.⁶⁷ It requires proof that consent was neither freely nor meaningfully given, and that the worker cannot withdraw it.⁶⁸ This is a factual determination that must be assessed in light of all relevant circumstances on a case-by-case basis.

103. Indicators of involuntariness, inter alia, may include onerous working hours or schedules so excessive that workers could not reasonably have been freely agreed to, such as excessive overtime with little or no rest or recovery time, or work without breaks, or endure weeks or months of continuous labour without days off, leaving them physically and mentally exhausted.⁶⁹ In *Roe v. Bridgestone*, it was held that if workers fear losing their job because they cannot meet KPIs or refuse overtime, that fear itself indicates the work is not forced, but rather a choice, albeit an unpleasant one.⁷⁰

⁶⁶ ILO (2005), 2005, para. 13.

⁶⁷ ILO (2024), p. 9.

⁶⁸ ILO (2024), p. 9; Krnojelac Trial Judgement.

⁶⁹ Hard to see, Harder to count, p. 11.

⁷⁰ *Roe v. Bridgestone*.

104. Similarly, degrading work-related living conditions suggest involuntariness where workers are compelled to reside in unsafe, unhygienic, overcrowded, or otherwise intolerable housing imposed by the employer.⁷¹
105. In the present dispute, the presence of overtime hours or skipped breaks is not dispositive. While the IIC's findings reflect that 54% of workers stated that overtime was tied to performance targets and possible wage deductions, other workers confirmed that overtime was voluntary, motivated by the opportunity for bonus and higher productivity. This indicates that employees retained freedom in choosing whether to work additional hours. Likewise, the fact that some workers occasionally skipped breaks or meals to meet deadlines arose from their personal choice rather than obligation, and these instances were occasional, not systemic or continuous without rest days.
106. Regarding work-related living conditions, while 4-6 workers sharing a 185-square-foot room provides only approximately 3-4.3 m² per person⁷², this aligns with accepted minimum standards in similar regional contexts, such as Singapore and Malaysia, where 3m² per worker is common in migrant housing and Singapore mandates at least 4.2 to 4.5 m² per worker in new dormitories, which is broadly consistent with international and local benchmarks for worker dormitories.⁷³ Apart from that, the workers were still provided with basic essentials and their living conditions were temporary until the completion of ASI's on-site worker dormitories.⁷⁴ Moreover, the record does not suggest that the housing posed health or safety risks, nor that workers were compelled to remain in employer-provided accommodation against their will.
107. In conclusion, involuntariness could not be found in this case.

⁷¹ Hard to see, Harder to count, p. 11.

⁷² Exh. 11, Clause 3.5.

⁷³ Workers' Accommodation: Processes and Standards.

⁷⁴ Exh. 11, Clause 3.5.

ii. There is no indication of coercion attributable to RESPONDENT

108. Coercion or “menace of penalty” describes any means by which a worker is compelled to remain in employment without free and informed consent. It operates as the force preventing a worker from leaving or refusing a job and may be applied directly to the worker or indirectly through threats to co-workers, family members, or close associates.⁷⁵
109. Retention of identity documents, such as passports, is a common indicator of coercion, as it restricts workers’ freedom of movement and places them in a state of legal or economic dependency.⁷⁶ However, forced labour may arise not only from the inability to access these documents but also from the perceived risk of losing them if employment is terminated.⁷⁷ Similarly, the deliberate withholding of wages is used to compel workers to remain by depriving them of the means to seek alternative employment. However, such practices require proof of both systematic application for months or years, and intent to deny workers free choice before they can amount to forced labour.
110. In the present dispute, RESPONDENT did not engage in practices restricting workers’ access to identity documents. As clarified by BWS, passport retention was conducted in accordance with Aurion visa and work permit regulations for migrant workers.⁷⁸ There is also no evidence that workers were barred from retrieving their passports upon request, nor that they were threatened with document loss should they choose to resign.
111. Moreover, while the IIC’s findings reflect that 54% of workers stated that overtime was tied to performance targets and possible wage deductions, this reflects performance-related measures rather than coercive practices as there is no indication of long-term, deliberate, and

⁷⁵ Hard to see, harder to count, p. 5.

⁷⁶ Hard to see, harder to count, p. 17.

⁷⁷ Hunter/Labour (2008), p. 19.

⁷⁸ Exh. 11, Clause 3.6.

systematic withholding of basic wages. Rather, any wage deductions appeared to be related to non-attainment of performance-based bonuses or overtime pay, not deprivation of base pay.

112. In conclusion, the allegations do not establish forced labour as neither involuntariness nor menace of penalty has been proven.

B. Even if the tribunal were to find that forced labour practices occurred, RESPONDENT has fulfilled its obligation in relation to labour practices under the JVA

113. Even if forced labour practices were found, RESPONDENT has fulfilled its obligations in relation to labour practices as **(1)** RESPONDENT has fulfilled its obligation under Clause 4.2(e) of the JVA and **(2)** RESPONDENT has fulfilled its obligation under Clause 4.2(f) of the JVA.

1. RESPONDENT has fulfilled its obligation under Clause 4.2(e) of the JVA

114. Clause 4.2(e) of the JVA required RESPONDENT to manage the recruitment and allocation of local and migrant workers, commencing at least six (6) months before production and maintaining this on an ongoing basis.

115. The JVA was formalized by the parties by the end of December 2022, and ASI was incorporated on January 3, 2023.⁷⁹ While industry norms suggested a 24-36 months construction period, CLAIMANT actively pushed for an accelerated 15-month completion schedule, setting a de facto deadline of May 26, 2024 for the facility to be operational.⁸⁰ To meet this timeline, RESPONDENT has swiftly launched recruitment campaigns while construction is still ongoing. Furthermore, RESPONDENT formally engaged BWS for workforce supply and management by a Service Agreement signed on 2nd October 2023.⁸¹

⁷⁹ Moot problem, p. 8, para. 30.

⁸⁰ Moot problem, p. 9, para. 32.

⁸¹ Moot problem, p. 9, para. 38.

October 2023 is indeed more than six months prior to May 2024, which effectively meant commencement of recruitment efforts well in advance of the accelerated production deadline, thereby satisfying the requirement of “at least six months before production”.

116. The JVA also stipulated a transitional structure where ASI was to assume full responsibility within 12 months, with a collaboration clause mandating ASI to collaborate with BWS.⁸² This implies that RESPONDENT, through its involvement in the joint venture and JPMT, maintained its management role on an ongoing basis.
117. In conclusion, RESPONDENT has fulfilled its obligation under Clause 4.2(e) of the JVA on workforce recruitment and allocation.

2. RESPONDENT has fulfilled its obligation under Clause 4.2(f) of the JVA

118. Clause 4.2(f) of the JVA requires RESPONDENT to ensure full compliance with all applicable labour and employment laws. Applicable laws, under Clause 6 of the JVA, include Aurion’s domestic law and internationally recognized labour standards, particularly the ILO’s FLC ratified by Aurion and incorporated into its legal system in a monist approach.⁸³
119. RESPONDENT has complied with this obligation by establishing due diligence in selecting BWS, which had specialised expertise in migrant workforce management, and ensured both CLAIMANT⁸⁴ and the JPMT’s approval⁸⁵ of recruitment frameworks. Where the IIC flagged under-reporting of overtime, these amounted to administrative lapses in ASI’s records rather than systemic coercion. This is consistent with Aurion’s practice, where downstream administrative fines were imposed on ASI as the local operator, underscoring that primary responsibility for day-to-day compliance rests with the employer of record.

⁸² Moot problem, p. 9, para. 38.

⁸³ Exh. 4, Clause 6; Correction & Additional Clarification to the Moot problem, p. 1, para. 4.

⁸⁴ Moot problem, p. 9, para. 37.

⁸⁵ Clarification, p. 2, para. 11.

120. Regarding the passport withholding allegations and underreported overtime, it was an action taken by BWS, the third-labour agency tasked with full scope of management.⁸⁶ While it has proved above that no forced labour practice has been established, these actions were represented as an administrative function by its contractor, not a deliberate breach attributable to RESPONDENT's intent to violate labour laws.

121. In conclusion, RESPONDENT has discharged its duty under Clause 4.2(f) by ensuring compliance with applicable labour laws, with any irregularities arising from ASI or BWS rather than from RESPONDENT itself.

IV. CLAIMANT'S TERMINATION OF THE JVA WAS UNLAWFUL

122. Even if the Tribunal found that RESPONDENT had breached Clause 4.2(e) and 4.2(f) regarding labour practices, such breach does not entitle CLAIMANT to terminate the JVA as it does not constitute a fundamental breach.

123. Pursuant to Clause 8 of the JVA, the Parties may terminate the JVA due to a fundamental non performance or breach.⁸⁷ In order to determine whether a breach is deemed fundamental, the factors mentioned in Art. 7.3.1(2) UPICC has to be taken into account. **(A)** However, in this case, the breach does not constitute a fundamental breach under the UPICC. **(B)** Even if there is a fundamental breach, CLAIMANT cannot rely on such breach to terminate the JVA.

A. The breach of the JVA is non fundamental

124. There are two relevant circumstances in which a breach of contract by one party may entitle the other to terminate. Firstly, the obligation which has not been performed requires strict performance. Otherwise, there must be substantial deprivation caused by such a breach.⁸⁸

⁸⁶ Moot problem, p. 9, para. 38.

⁸⁷ Exh. 4, p. 8, Clause 8.1.

⁸⁸ UPICC, Art. 7.3.1(2)(a), Art. 7.3.1(2)(b) ; *Koompahtoo Local Aboriginal Land Council v. Sanpine Pty Limited*.

125. In this regard, RESPONDENT's breach of its obligations under Clause 4.2(e) and 4.2(f) does not amount to a fundamental breach as **(1)** strict compliance with the obligations which have not been performed is not of essence under the contract, and **(2)** the breach does not substantially deprive CLAIMANT of its benefit under the JVA.

1. Strict compliance with the obligations which have not been performed is not of essence under the JVA

126. The essentiality of the terms can be expressly provided, or implicitly provided through common intention of the parties, expressed in the language of their contract, understood in the context of the relationship established by that contract and the commercial purpose it served.⁸⁹

127. The parties in this case did not explicitly classify the obligations regarding labour practices provided in Clause 4.2(e) and 4.2(f) to be of essence under the JVA. Against Claimant's view, it cannot be understood from the parties' intention that these obligations are of essence under the JVA.

128. The JVA governs a sophisticated joint venture formed to develop and operate a semiconductor production facility. Within this broader commercial context, the obligation to ensure compliance with labour provision serves an ancillary obligation, as the main focus of the agreement is on capital investment, technology transfer, and production output. Thus, these obligations can be breached in a trivial manner that would not frustrate the contract.

129. The non essentiality of these obligations is also evidenced by the fact that even after the breach has already occurred, the commercial purpose of the JVA remained intact. The ASI was still successfully established, allowing RESPONDENT to contract with Seratious clients

⁸⁹ Vogenauer (2015), p.929, para. 41-42; Tramways Advertising Pty Ltd v. Luna Park (NSW) Ltd.

and made initial shipments to Seratious. Furthermore, the JVA has also allowed ASI to gain its position in the global semiconductor sector.⁹⁰

130. Therefore, regardless of RESPONDENT's breach of its obligations stipulated in Clause 4.2(e) and 4.2(f), ASI remained operational, making this obligation of minor importance under the contract.

2. RESPONDENT's breach of the obligations under Clause 4.2(e) and 4.2(f) does not substantially deprive CLAIMANT of its benefit under the JVA

131. Art. 7.3.1(2)(a) UPICC permits the termination of contract if the breach 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. However in this current case, **(i)** the breach of Clause 4.2 (e) and 4.2(f) has not substantially deprived CLAIMANT of what it was entitled to expect under the JVA. **(ii)** Even if the breach substantially deprives CLAIMANT of its benefits, RESPONDENT did not foresee and could not reasonably have foreseen such result.

i. The breach has not substantially deprived CLAIMANT of what it was entitled to expect under the JVA

132. There are two factors that are to be taken into consideration in determining whether there is substantial deprivation: first, the legitimate expectation of the aggrieved party at the time of the conclusion of the contract and secondly, the seriousness of the consequence of the breach. In several cases, the court held that the breach would substantially deprive the party not in default of what it was entitled to expect under the JVA if it undermined the aggrieved party's purpose when entering the contract.⁹¹

⁹⁰ Moot problem, p. 10, para. 41-42.

⁹¹ Koompaahtoo Local Aboriginal Land Council v. Sanpine Pty Limited; Valilas v. Januzaj; Shevill v. Builders Licensing Board.

133. In this case, the Claimant asserts that RESPONDENT's breach of the JVA has substantially deprived CLAIMANT of its benefits as evidenced by the damages incurred by ASI.⁹² Against the Claimant's assertion, the damage does not substantially deprive CLAIMANT of its benefit as it does not undermine the purpose contemplated at the time of the conclusion of the JVA.

134. At the entry of the JVA, CLAIMANT aimed to maintain its position in the global semiconductor industry and particularly in Seratious's market.⁹³ After the suspension of the project following the detection of RESPONDENT's breach, much as there are damages suffered by CLAIMANT, these consequences do not frustrate the objective of the contract. There is no termination of contract, ASI remains operational, and no trade ban was imposed on its output. Therefore, the breach did not deprive CLAIMANT of its access to the global supply chain. Irrespective of the breach, CLAIMANT retains its access to Seratious and other international markets, and continues to operate as long as ASI adheres to local laws after corrective measures are to be implemented.

135. In conclusion, RESPONDENT's breach does not undermine the purpose of the contract, and thus does not substantially deprive CLAIMANT of the benefits it was entitled to expect under the JVA. As a result, the recovery of damages is the sufficient remedy and CLAIMANT is not entitled to terminate the contract.

ii. Even if the breach substantially deprives CLAIMANT of its benefits, RESPONDENT did not foresee and could not reasonably have foreseen such result.

136. RESPONDENT did not foresee and could not reasonably foresee that its breach would lead to such consequences.

⁹² Moot problem, p. 12, para. 51, 62.

⁹³ Moot problem, p.3, para. 2.

137. Pursuant to Art. 7.3.1(2)(a) of the UPICC, if the party in the breach could not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result, the breach is not regarded as fundamental. Thus, the non-performing party can only be ‘excused’ if the party in default does not have knowledge of the result and such ignorance should not be due to his negligence.⁹⁴ The relevant time for determining the foreseeability issue is the conclusion of the contract.
138. As proven above, the obligations under Clause 4.2(e) and 4.2(f) were of minor importance under the JVA, and thus RESPONDENT could not foresee the seriousness of the consequence of such a breach.⁹⁵ Therefore, the controversy exists on whether a reasonable person could foresee such a consequence.
139. At the time of the conclusion of the contract, there was a gradual relaxation of Aurion’s protectionist legislation and no consistent pattern of strict enforcement of labour laws in Aurion,⁹⁶ which provides RESPONDENT with no reasonable basis to anticipate that its breach of the JVA would be punished by Aurion’s government, especially when RESPONDENT is a state linked entity and its acts are heavily directed by the government’s policy. Alternatively, the consequences of the breach were primarily triggered by geopolitical and political factors, which are unforeseeable by the person of the same kind under the same situation. the same person RESPONDENT’s control or reasonable contemplation.
140. In light of the unpredictable intervention by Seratious, followed by Aurion’s reluctant actions to secure their relationships, the result of the breach is unforeseeable to RESPONDENT or any third party under the same circumstance. Hence, irrespective of the alleged substantial deprivation, the breach cannot be considered to be fundamental.

⁹⁴ Vogenauer (2015), p. 928.

⁹⁵ Memo, para. 5-10.

⁹⁶ Moot problem, p.4, para. 7.

B. Even if there is a fundamental breach, CLAIMANT cannot rely on such breach to terminate the JVA

141. In accordance with Art. 7.1.2 UPICC, a party may not rely on the non-performance of the other party if 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.⁹⁷

142. Respondent submits that CLAIMANT cannot resort to the termination of the contract as RESPONDENT's fundamental breach was caused by CLAIMANT's conduct. Accordingly, **(1)** CLAIMANT has failed to cooperate under the JVA and **(2)** such failure has resulted in RESPONDENT's breach of the JVA.

1. CLAIMANT has not at the first place complied with the obligation to cooperate under Clause 4.1(c)(ii) of the JVA

143. Under the sense of Art. 7.1.2 UPICC, if one party lacks cooperation, that party cannot rely on the resulting failure of the other to perform to terminate the contract.⁹⁸

144. In the case at hand, CLAIMANT is under the obligation to provide full cooperation to RESPONDENT in ensuring adherence to labour standards in accordance with applicable domestic laws and international best practices.⁹⁹ However, by its consistent pressure for an accelerated project timeline and the requirement to minimise labour cost at the same time, CLAIMANT has ignored its obligation to cooperate.

145. CLAIMANT's unilateral insistence on completing the project within an accelerated 15-month timeline significantly shorter than the industry standard of 24 to 36 months and under a limited expenditure, has created operational and financial strain on RESPONDENT.¹⁰⁰ This

⁹⁷ UPICC, Art. 7.1.2, Art. 1.7.

⁹⁸ H. Schelhaas in Vogenauer (2015), pp. 228-229; UPICC, Art. 5.1.3.

⁹⁹ Exh. 4, p.4, Clause 4.1(c)(ii).

¹⁰⁰ Moot problem, p. 8, para. 32, 36.

approach disregarded the complexity of large scale semiconductor manufacturing and placed unrealistic expectations on its partner. These conducts reflect a lack of genuine collaboration as enshrined under the JVA, which implies mutual support, shared decision-making, and reasonable coordination.

146. Furthermore, CLAIMANT has failed to raise objections towards the engagement of BWS. CLAIMANT, as the party who recommended engaging a third party labour agency in the joint ventures,¹⁰¹ has the duty to cooperate with RESPONDENT to identify potential risk in the selected labour agency to mitigate future violations.

147. Consequently, CLAIMANT's unreasonable expectation to significantly expedite the project, with a limited budget, and its failure to act, demonstrate its unwillingness to cooperate with RESPONDENT.

2. CLAIMANT's non compliance resulted in RESPONDENT's breach of the JVA

148. CLAIMANT's non compliance with the duty to cooperate by insisting on cost cutting measures and its failure to raise objection towards the engagement of CLAIMANT has resulted in RESPONDENT selecting a cheap labour supplier that cannot meet up with labour standards.

149. The requirement to keep low cost and speed up production time exerting strong pressures on BWS. Operating under the financial pressure, BWS was unable to maintain its business, as well as provide standard living conditions for the workers. Hence, in order to secure ongoing operation, BWS has to resort to other means, i.e illegal charging of recruitment fee.¹⁰² Furthermore, the financial constraints, coupled with the low expenditure of the project, has pressured BWS to engage the workers in working beyond legal overtime limits, instead of

¹⁰¹ Moot problem , p. 9, para. 36.

¹⁰² Exh.10, Clause 3.

hiring additional labour. To meet up with CLAIMANT's requirement, BWS engaged in these conducts, which have constituted BWS's violations of labour regulations and ultimately led to RESPONDENT's breach of its obligations.

150. CLAIMANT's conduct therefore created an environment in which compliance with applicable labour standards became increasingly difficult and impractical. To the extent CLAIMANT's actions undermined RESPONDENT's ability to perform its obligations, CLAIMANT has failed to cooperate under Clause 4.1(c)(ii) of the JVA. Therefore, CLAIMANT is estopped from relying on RESPONDENT's breach to justify its termination.

PRAYERS FOR RELIEFS

In light of the above, RESPONDENT hereby submits the following requests:

- 1) Declare that RESPONDENT is entitled to invoke sovereign immunity.
- 2) Hold that CLAIMANT's initiation of arbitration was premature.
- 3) Hold that RESPONDENT has not breached the JVA in relation to the alleged labour practices.
- 4) Hold that CLAIMANT's termination of the JVA was unlawful.