

20TH LAWASIA INTERNATIONAL MOOT COMPETITION 2025
IN THE ASIAN INTERNATIONAL ARBITRATION CENTRE

MEMORIAL FOR CLAIMANT

THE CASE CONCERNING:

THE JOINT VENTURE BETWEEN CALYX DREAMBOT INC AND RIVUS

MICROELECTRONICS GROUP

BETWEEN

CALYX DREAMBOT INCORPORATED

... CLAIMANT

AND

RIVUS MICROELECTRONICS GROUP

... RESPONDENT

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STATEMENT OF JURISDICTION

The parties, Calyx Dreambot Inc (“**CDI**” or “**CLAIMANT**”), and Rivus Microelectronics Group (“**RMG**” or “**RESPONDENT**”), have agreed that disputes arising from or connected with the Joint Venture Agreement dated 22.12.2022 (“**JVA**”) shall be resolved by arbitration under the AIAC Rules 2023, with Aurion as the seat of arbitration and Kuala Lumpur, Malaysia as the place of arbitration..

QUESTIONS PRESENTED

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

STATEMENT OF FACTS

CLAIMANT and RESPONDENT are the “**PARTIES**” to this arbitration.

CLAIMANT is a corporation incorporated in Veridia, a technologically advanced nation. Veridia is recognised globally for its innovation-driven economy, skilled workforce, and leadership in the semiconductor industry.

RESPONDENT, is a corporation incorporated in Aurion, situated in a geopolitically strategic region, boasts a robust workforce, tax incentives, and trade friendly policies. The RESPONDENT operates as a separate entity from the Aurion government and is a commercially autonomous vehicle.

April - June 2022

The President of Aurion, President Davul Ho (“**President Ho**”), initiated a series of high-level discussions with executives from major Veridian companies to court foreign investment into Aurion’s semiconductor sector.

April 2022

President Ho held a private, closed-door meeting with the CEO of CDI, Ms Al Emret (“**Ms AE**”). In this meeting, President Ho outlined Aurion’s readiness to partner with Veridian corporations and highlighted that prospective local partners would be commercially autonomous from the state. He gave assurances that there is no better partner than the

RESPONDENT and there would be no interference in and the CLAIMANT would have full autonomy over their operations.

May 2022

President Ho conducted a second closed-door meeting, this time directly with CDI's executives.

October 2022

The Governments of Aurion and Veridia executed the Aurion-Veridia Bilateral Investment Treaty ("BIT"), which guaranteed protections including fair and equitable treatment, full protection and security, and safeguards against arbitrary measures.

December 2022

CDI and RMG formalised their commercial cooperation, agreeing that CDI would provide the majority capital, technological expertise, and international market access, while RMG would secure regulatory approvals, obtain permits, and ensure full compliance with all applicable labour and employment laws. The PARTIES formalised the JVA with the purpose of establishing a joint venture ("JV") which was envisioned as a ground-breaking semiconductor manufacturing hub in Aurion's northern region.

3 January 2023

Aurion Semiconductor Inc. ("ASI") was incorporated as the operational vehicle for CDI's investment.

26 February 2023

CDI had requested for RMG to expedite construction through a Project Acceleration Memo to align with supply agreements with key buyers CDI had secured for ASI and to achieve operational milestones. CDI also recommended engaging third-party labour agencies to supplement hiring efforts and accelerate the recruitment process, citing cost effectiveness as a key consideration to mitigate budget constraints.

2 October 2023

After RMG's recommendation of Beta Workforce Solutions ("BWS"), ASI entered into a service agreement with BWS to supply and manage an initial workforce of 1200 workers. The agreement included workforce management, recruitment, deployment, onboarding, lodging and transport, and regulatory compliance.

September 2024

ASI successfully positioned itself as a competitive player in the global semiconductor supply chain. Industry analysts began touting ASI as one of the fastest-growing semiconductor manufacturers in the region

30 September 2024

Following weeks of circulating rumours regarding alleged labour violations at ASI, a preliminary report by the Independent Investigative Committee ("IIC") was published. The report, found among others, excessive working hours, poor

living conditions, retention of identity documents and a substantial misreporting of workforce audits.

2 October 2024

The Ministry of Trade and Industry of Aurion suspended ASI's operating licence for a period of three (3) weeks. The suspension had a drastic impact on ASI which halted production for three (3) weeks, disrupted supply contracts with major Seratious clients, and led to contractual penalties and heightened scrutiny over ASI's operations. The suspension was lifted on 23 October 2024 after ASI submitted a revised workforce audit report.

16 December 2024

The Ministry of Trade and Industry of Aurion imposed a fine of USD 500 million on ASI, purportedly based on undisclosed actual timesheets indicating excessive overtime. CDI had even challenged the authenticity of these reports but was denied due to security reasons.

24 December 2024

Following RESPONDENT's persistent refusal to engage constructively in resolving the crisis, CDI exercised its contractual rights under the JVA to terminate the JV. The termination was based on RESPONDENT's fundamental breach and non compliance exposing CDI to severe financial and reputational harm. CDI also demanded that

RESPONDENT bear full responsibility for the USD 500 million fine imposed on ASI.

28 December 2024

The PARTIES exchanged their final WhatsApp communications. RESPONDENT had refused to engage constructively with CDI.

6 January 2025

The CLAIMANT issued a Notice of Arbitration dated 6 January 2025 under the AIAC Rules 2023 to the RESPONDENT.

SUMMARY OF PLEADINGS

ISSUE 1: THE RESPONDENT IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY

The RESPONDENT, as an independent corporate entity, is not entitled to invoke sovereign immunity as a bar to arbitration proceedings. The JVA, the very foundation of this dispute, is a commercial endeavour, born of commerce and not a sovereign decree. Its obligations and undertaking lie squarely within the realm of private enterprise, and thus fall beyond the protective reach of restrictive sovereign immunity. Even if the RESPONDENT could, in theory, invoke sovereign immunity, it has voluntarily laid it aside by entering the arbitration agreement in Clause 11 of the JVA, submitting itself to the Tribunal's jurisdiction and the due course of justice and has effectively waived its sovereign immunity.

ISSUE 2: THE CLAIMANT'S INITIATION OF ARBITRATION IS NOT PREMATURE

The tiered dispute resolution mechanisms of Clause 10 were never intended to stand as an absolute gateway to arbitration under Clause 11. Their non-fulfilment cannot, and does not, bar the CLAIMANT from seeking redress before this Tribunal. Moreover, even if Clause 10 were construed as a necessary precursor, its path was obstructed by uncertainty and by the RESPONDENT's intransigence, a refusal to negotiate or engage in meaningful dialogue. In such circumstances, the CLAIMANT's invocation of arbitration was not merely proper, it was inevitable.

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

The RESPONDENT bore the specific, continuing, and non-transferable duty to ensure full compliance with all applicable labour laws. The suspension of ASI's licence and the imposition of a USD 500 million penalty flowed inevitably from the RESPONDENT's failure to uphold this duty. The RESPONDENT's silence and inaction preclude any assertion that the CLAIMANT's participation hindered performance. At all material times, the CLAIMANT acted with unwavering good faith, guided solely by the best interests of ASI.

ISSUE 4: THE CLAIMANT'S TERMINATION OF THE JVA WAS LAWFUL

The CLAIMANT's termination of the JVA was both lawful and just. The RESPONDENT's fundamental breach went to the root of the JVA, depriving the CLAIMANT of the benefits it was rightfully entitled to receive. The CLAIMANT could no longer place confidence in the RESPONDENT's future performance. The termination, executed in good faith pursuant to Clause 8.1 of the JVA, was a measured response to a fundamental breach that undermined the commercial purpose of the JV, and a step necessary to protect legitimate expectations of the CLAIMANT.

PLEADINGS

I. THE RESPONDENT IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY.

1. According to the facts of the case, RESPONDENT asserts that it is entitled to sovereign immunity as an entity controlled by the State of Aurion, and that it has neither waived its immunity nor consented to these arbitration proceedings.¹

2. CLAIMANT respectfully submits that RESPONDENT's claim is without merit for three (3) reasons: (A) RESPONDENT is an independent corporate entity; (B) RESPONDENT's participation in the JVA is a commercial transaction rather than a sovereign act; and (C) in any event, any immunity is waived by the RESPONDENT's agreement to arbitrate.

A. THE RESPONDENT IS AN INDEPENDENT CORPORATE ENTITY.

3. As established in *Trendtex Trading Corporation v Central Bank of Nigeria*,² the burden lies on the party invoking sovereign immunity, namely the RESPONDENT, to prove that it performs sovereign functions and is sufficiently controlled by the Aurion State. It was held that a corporation that was “*created as a separate legal entity with no clear expression of intent that it should have governmental status was not an emanation, arm, alter ego or department of the State [...] and was therefore not entitled to invoke sovereign immunity*”.³

¹ Moot Problem at Page 15, Para 63.

² [1977] QB 529, pg 548 and 560.

³ *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] QB 529, Pg 529.

4. Here, RESPONDENT was established under ordinary corporation laws of Aurion and possesses a distinct legal personality from the Aurion State.⁴ No formal declaration, legislative enactment, or authoritative act conferring governmental status on RMG exists. On the contrary, President Ho has repeatedly affirmed RESPONDENT's commercial autonomy.⁵ In the absence of clear intent to the contrary, the presumption of separate corporate personality must be upheld.⁶
5. It is submitted that the fact that RESPONDENT's capital originated from public funds is immaterial. There is no evidence that the Aurion government retained ownership or financial control over RESPONDENT. On the contrary, RESPONDENT successfully attracted substantial private investment, including CLAIMANT's \$1.2 billion portfolio contribution to the JV.⁷
6. Mere alignment with the State's economic policies does not, absent positive evidence of compulsion to follow governmental directives, establish control.
7. Even the mere presence of government officials on the board does not definitively prove governmental control unless those ministers are shown to act solely for the State rather than in the best interest of the company.⁸ Here, there is no evidence that those directors were acting in their sovereign capacity. Due to the lack of positive evidence

⁴ Correction & Additional Clarification to the Moot Problem at Page 1, Additional Clarification 1.

⁵ Moot Problem at Page 4, Para 10 & Page 7, Para 25.

⁶ *La Générale des Carrières et des Mines v FG Hemisphere Associates LLC* [2013] 1 All ER 409, pg 422.

⁷ Exhibit 4, Page 3. Clause 4.1(a).

⁸ *Foremost-McKesson v. Iran*, US, 905 F.2d 438, 448 (D.C.Cir. 1990).

proving governmental control over RMG, the strong presumption of separate corporate cannot be rebutted and this Tribunal must militate against the view that RESPONDENT enjoys governmental status.⁹

8. In fact, available evidence demonstrates that RESPONDENT enjoys corporate autonomy. In the official directive memo between the PARTIES concerning the accelerated construction of the semiconductor manufacturing facility, the Aurion government is entirely absent from the decision-making chain. Had the State truly exercised control over RESPONDENT, governmental approval or participation would necessarily have been sought in a consequential decision involving RESPONDENT's most significant business venture, the JV.
9. Even looking at RMG's functions within the JVA, it is to procure regulatory approvals, permits and land alienation from the Aurion government. If RESPONDENT genuinely possessed governmental functions, it could have granted such approvals in its own right. Instead, RESPONDENT was required to apply for approvals as an ordinary company. This evidences that RESPONDENT interacts with the State as an independent commercial entity, rather than operating as its emanation or alter ego.
10. To conclude, there is a lack of positive evidence definitively proving that RESPONDENT is indeed an emanation, alter ego or arm of the Aurion State. At best,

⁹ *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] QB 529, pg 574.

the facts are inconclusive and disputeable. Such equivocal circumstances cannot rebut the strong presumption of RESPONDENT's separate corporate personality.

B. THE RESPONDENT'S ENTRY INTO THE JOINT VENTURE WAS A COMMERCIAL TRANSACTION AND NOT A SOVEREIGN ACT.

11. Article 10 of the UNCJISP expressly provides that sovereign immunity does not apply to disputes arising from commercial transactions. Therefore, even if RESPONDENT is a governmental entity, it would still not be entitled to sovereign immunity as the present dispute arises from the JV, a commercial transaction.

12. Article 2(1)(c)(iii) of the UNCJISP defines "commercial transactions" to include contracts of a commercial or industrial nature. Article 2(2) of the UNCJISP provides that the determination of whether a contract is commercial should be made primarily by reference to its nature. The House of Lords in the *Kuwait Airways v Iraqi Airways*¹⁰ case laid down that an act is of a sovereign nature only if it is one that can be performed exclusively by a government rather than acts any private citizen can perform.

13. Here, the JVA is an industrial contract for the establishment of a semiconductor manufacturing hub,¹¹ entered into between private corporate entities.¹² Clause 3.3 of the JVA expressly stipulates that the PARTIES intended for ASI, the special purpose

¹⁰ [1995] 1 WLR 1147, pg 1160.

¹¹ Moot Problem at Page 8, Para 29.

¹² Exhibit 4, Page 1, Preamble. .

vehicle under the JV, to be an independent and commercially driven entity.¹³ This contractual intent reflects the commercial nature of the JVA. Accordingly, it is a commercial transaction that is not protected by sovereign immunity.

14. It cannot be maintained that the JV is a sovereign act because of its purpose. The mere fact that the JV aligns with Aurion's economic policy of developing its semiconductor industry¹⁴ does not negate this commercial nature. As affirmed in *La Generales v FG Hemisphere*,¹⁵ commercial activities do not become governmental merely because they have an ancillary or supplementary benefit of supporting governmental policies.
15. To confer sovereign immunity upon RESPONDENT on the basis that the JVA incidentally supports Aurion's economic policy would defeat the commercial transaction exception and provides state-linked entities an unwarranted shield against private parties.

C. ANY SOVEREIGN IMMUNITY IS WAIVED BY THE RESPONDENT'S AGREEMENT TO ARBITRATE.

16. Clause 11 of the JVA contains the agreement between the PARTIES to submit their disputes to an arbitration tribunal.

¹³ Exhibit 4, Page 3, Clause 3.3.

¹⁴ Moot Problem at Page 8, Para 29.

¹⁵ *La Générale des Carrières et des Mines v FG Hemisphere Associates LLC* [2013] 1 All ER 409, para 48.

17. It is an established principle of international law that once a state agrees to submit disputes to a tribunal, it has waived its jurisdictional immunity in relation to the arbitral process.

18. This principle is recognised by the *International Law Commission's Special Rapporteur in its Sixth Report on Jurisdictional Immunities*¹⁶ which provides that that once a State agrees in a written instrument to submit disputes to a tribunal, there is an “irresistible implication, if not almost irrebuttable presumption, it has waived its jurisdictional immunity in relation to the entire arbitral process from its initiation and enforcement of arbitral award”.

19. The law on this matter is clear. RESPONDENT therefore, by accepting the arbitration agreement contained in Clause 11 of the JVA has effectively waived its sovereign immunity, if any, with respect to the entire arbitral process. RESPONDENT has not objected to the validity of the arbitration agreement in Clause 11 and thus, cannot assert that it never waived its immunity or agreed to participate in arbitration proceedings. In short, RESPONDENT cannot agree to arbitrate its disputes and then turn around and refuse to submit to the jurisdiction of this Tribunal.

¹⁶ International Law Commission. (1984). *Sixth report on jurisdictional immunities of States and their property* (A/CN.4/376, pp. 57–58, para. 255). United Nations.

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

20. RESPONDENT may assert that arbitration is premature due to CLAIMANT’s non-fulfillment of Clause 10 of the JVA. However, CLAIMANT respectfully submits that such non-fulfilment of Clause 10 does not affect the jurisdiction of this Tribunal and proceedings are not premature for two (2) reasons: (A) Clause 10 is not a pre-arbitration requirement as it is uncertain (B) Even if Clause 10 is mandatory, compliance therewith would be futile.

A. CLAUSE 10 IS NOT A PRE-ARBITRATION REQUIREMENT AS IT IS UNCERTAIN.

21. Clause 10 of the JVA stipulates the dispute resolution mechanism in the event of a dispute arising out of the agreement.¹⁷ This clause is further divided into two (2) subclauses which outline three (3) steps to be taken by the PARTIES in the settlement of any dispute arising out of the JVA.

22. Clause 10.1 provides that for a dispute to arise, either party must first serve a written notice on the other containing the particulars of the dispute in question. This is the first step. Next, the PARTIES must then commence negotiations between an appointed representative of each party within fourteen (14) days of the service of such notice. Third, Clause 10.2 provides that the consent of the Minister in charge of economic

¹⁷ Exhibit 4, pg 7.

policy, foreign investments and trade of Aurion must be obtained before any proceedings in relation to the dispute can be commenced.

23. Justice Andre Maniam in the Singaporean High Court in *CZQ & Anor v CZS*¹⁸ has affirmed that, as a general principle, “clear words are necessary to create a condition precedent to the commencement of arbitration”. On this basis, the court had affirmed the tribunal’s jurisdiction and held that the amicable settlement procedure was not a condition precedent to the commencement of arbitration.
24. It is submitted that the non-compliance of the Pre-Arbitration Steps does not affect the jurisdiction of this Tribunal as Clause 10 is insufficiently certain to create a condition precedent to the commencement of arbitration. As Clauses 10.1 and 10.2 are both unclear albeit for different reasons, Clauses 10.1 and 10.2 shall be addressed in turn.
25. Clause 10 is unclear for three (3) reasons. (1) Firstly, there is no clear sequencing of the relevant tiers in Clause 10.1; (2) Secondly, Clause 10.1 does not prescribe a limited timeframe for negotiations to be exhausted; and (3) Lastly, Clause 10.1 is insufficiently clear as to its process.

¹⁸ *CZQ & Anor v CZS* [2023] SGHC 16.

(i) Lack of Sequencing in Clause 10.1.

26. First, concerning the lack of sequencing. A properly sequenced pre-arbitration clause can be seen in *Ohpen Operations UK Ltd v Invesco Fund Managers Ltd*¹⁹ which stipulated that the parties should “first” seek to resolve disputes in accordance with a stated procedure, before resorting to arbitration.
27. Comparatively, Clause 10.1 merely provides that the PARTIES “agree to resolve any dispute [...] amicably through negotiations between an appointed representative of each of the Party which shall commence within fourteen (14) days from the date on which either Party has served written notice”.
28. Clause 10.1 does not explicitly state that arbitration can only commence after negotiations have failed. It is also pertinent to note that Clause 10 and Clause 11 do not specifically make any cross-reference to the other. In short, there is no indicative language that mentions arbitration is contingent on the completion of negotiations under Clause 10.1. The sequencing is ambiguous and open to interpretation, which mirrors the drafting issue in *CZQ v CZS*.

(ii) Lack of prescribed time limit in Clause 10.1.

29. Second, concerning the lack of prescribed time limit. In *Emirates Trading Agency LLC v Prime Mineral Exports Private Ltd*,²⁰ a time limited and sequenced obligation to

¹⁹ *Ohpen Operations UK Ltd v Invesco Fund Managers Ltd* [2019] EWHC 2246.

²⁰ *Emirates Trading Agency LLC v Prime Mineral Exports Private Ltd* [2014] EWHC 2104.

negotiate was held sufficiently certain to be enforceable. In this precedent case, the negotiations were to be held within a limited timeframe of four (4) weeks and only if no solution is arrived at the end of the 4 weeks could the parties refer the dispute to arbitration.

30. Comparatively, while Clause 10.1 prescribes negotiation must commence within 14 days, there is no limited duration of negotiation nor a specified number of negotiation sessions whereby upon failure of the parties to resolve the issue then they may move to arbitration. Because Clause 10.1 does not prescribe a limited timeframe negotiations may drag indefinitely. This uncertainty in Clause 10.1 is critical because it could frustrate access to arbitration.

(iii) Clause 10.2 is insufficiently certain as to its process.

31. As affirmed in *Kajima Construction Europe (UK) Limited v Children's Ark Partnerships Ltd*²¹ to determine the enforceability of a dispute resolution clause, the likelihood of success must be considered. In *Kajima*, Lord Justice Coulson held a dispute resolution which lacked a meaningful description of the process to be followed, was insufficiently certain and was therefore unenforceable.²²
32. Here, it is respectfully submitted that Clause 10.2 is similarly defective. Clause 10.2 merely provides that “any proceedings [...] shall NOT be commenced before first

²¹ *Kajima Construction Europe (UK) Limited v Children's Ark Partnerships Ltd* [2023] EWCA Civ 292.

²² Moot Problem at Page 10, Para 45 & Page 13, Para 54

obtaining the consent of the Minister in charge of economic policy, foreign investments and trade of Aurion”.

33. While Clause 10.2 employs mandatory language, it fails to prescribe any meaningful process to be followed in obtaining the minister’s consent. It does not specify the process on how such consent may be sought, within what timeframe consent must be given, or impose any obligation on the minister to respond at all.

34. Due to this uncertainty, consent may be indefinitely delayed or arbitrarily denied, leaving CLAIMANT without any recourse. The realistic prospect of fulfilling Clause 10.2 is therefore highly unlikely. For RESPONDENT to insist on strict compliance Clause 10.2 would unjustly frustrate access arbitration in order to protect the interest of the Aurion Government, a third party who is not even privy to the JVA.

35. Accordingly, Clause 10.2 is unenforceable as it is insufficiently certain.

B. EVEN IF CLAUSE 10 IS MANDATORY, COMPLIANCE THEREWITH WOULD BE FUTILE.

36. It is trite that where compliance with pre-arbitration steps would be futile and would not lead to a resolution, a party would be excused from fulfilling them before initiating arbitration. Similarly in *Visa International Ltd v Continental Resources (USA) Ltd*²³ it

²³ *Visa International Ltd v Continental Resources (USA) Ltd* AIR 2009 Supreme Court 1366.

was held that where both parties had taken a rigid stand and there is no hope of success of negotiations, such pre-arbitration requirements of negotiations was not mandatory.

37. CLAIMANT respectfully submits that RESPONDENT's conduct and communications with CLAIMANT demonstrate that there is no realistic prospect of successful negotiations.

38. On 11.10.2024, Ms AE issued stern warnings²⁴ and raised concerns regarding the labour law investigation and the suppression of information in a WhatsApp group chat between the CEOs of CDI and RMG. However, these messages were disregarded by RESPONDENT for over two (2) and a half months.

39. Subsequently, on 28.12.2024, the Ms AE notified RESPONDENT of the termination of the JVA and requested that RESPONDENT bear the \$500 USD fine imposed on ASI. RESPONDENT's reply was dismissive and used inflammatory language. RESPONDENT rejected CLAIMANT's request outright, telling Ms AE to "piss off" and characterising the CLAIMANT's request as "nonsense".²⁵ RESPONDENT further refused to engage, telling CLAIMANT to challenge the fine in court and proceeded to insult Ms AE personally, telling her to "fly kites and go back to your country".²⁶

²⁴ Moot Problem at Page 13, Para 55.

²⁵ Exhibit 11, Page 2.

²⁶ Exhibit 11, Page 2..

40. This exchange makes it clear that RESPONDENT was unwilling to engage in meaningful discussion. This is further evidenced by the absence of any further communication between the PARTIES after the messages on 28.12.2024 until the issuance of Notice of Arbitration on 06.10.2025.²⁷

41. The aforementioned conduct demonstrates that the RESPONDENT adopted a rigid stand on the substance of the dispute, rendering negotiations futile. Therefore, even if Clause 10 constitutes a mandatory precondition to arbitration, its requirements can be bypassed. This is on the basis of the business efficacy interpretation of the clause and the inherent futility of the negotiation attempt.²⁸

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

42. CLAIMANT respectfully submits that RESPONDENT has breached the JVA and thus must assume full responsibility for damages incurred in consequence of such breach.

A. THE RESPONDENT BREACHED CLAUSE 4.2(f) OF THE JVA RELATING TO ENSURING COMPLIANCE WITH ALL APPLICABLE LABOUR LAWS.

43. A cardinal rule in interpreting commercial agreements is that parties are definitively bound by terms they have agreed to. Clause 4.2(f) of the JVA stipulates that RESPONDENT shall be responsible to ensure full compliance with all applicable

²⁷ Clarification to the Moot Problem, Page 1, Clarification 5.

²⁸ *NWA v NVF* [2021] EWHC 2666, Para 27.

labour and employment laws.²⁹ This provision mandates a result-based obligation on RESPONDENT wherein any failure to ensure the specific result imposes liability on RESPONDENT as being the party responsible under the JVA.³⁰

44. The labour laws in reference include the Aurion Labour Code 1994, a domestic law in Aurion which has incorporated the Forced Labour Convention without modification.³¹ Besides this, the Abolition of Forced Labour Convention 1957 and the Labour Inspection Convention 1947 which have been ratified by the monistic state of Aurion.
45. A corollary of state sovereignty and domestic enforcement of international laws is the exclusive authority of state organs to determine violations of such laws within its territory. The International Labour Organisation has affirmed in Article 4(1) of the Labour Inspection Convention 1947 that “labour inspection shall be placed under the supervision and control of a central authority”.³²
46. Therefore, CLAIMANT submits, the findings of the Aurion Ministry of Trade and Industry, a competent executive organ of the Aurion state that there was concrete evidence of modern slavery and the subsequent imposition of a USD500 million fine on ASI citing failures to meet labour compliance standards³³ is itself sufficient to show

²⁹ Exhibit 4, pg 4.

³⁰ *Cophorne Hotel (Newcastle) Ltd v Arup Associates and others* [1997] All ER (D) 28

³¹ Additional Clarification 5.

³² Article 4(1) of the Labour Inspection Convention, 1947 (No.81).

³³ Moot Problem at Page 13, Para 56 & Para 57.

a breach by RESPONDENT as being the party within ASI responsible for ensuring compliance of labour laws.

(i) The RESPONDENT is the party solely responsible for ensuring compliance of labour laws under Clause 4 of the JVA.

47. The JVA is clear and unambiguous as to the intended separate responsibilities of both PARTIES according to their respective expertise and resources.³⁴
48. Article 4.1 of the UNIDROIT Principles provides that in interpreting a contract, preference is to be given to the common intention of the parties. Alternatively, it may be interpreted according to the meaning reasonable persons would attach to it provided that such understanding was common to the parties at the time of contract.³⁵
49. Here, several matters are of significant importance. First, the PARTIES have intended to separate responsibilities, and therefore liabilities, by the distinct placement of Clause 4.1 and Clause 4.2 of the JVA. Clause 4.1 are CLAIMANT's obligations³⁶ whereas Clause 4.2 are RESPONDENT's obligations. The responsibility to ensure compliance was specifically placed within the ambit of RESPONDENT's obligations under Clause 4.2(f) of the JVA with the word "shall" connoting further emphasis.³⁷

³⁴ Exhibit 4, pg 4, Clause 4 of the JVA.

³⁵ UNIDROIT. (2016). *UNIDROIT principles of international commercial contracts 2016* (Official Comment 1 to Article 4.1). Rome: International Institute for the Unification of Private Law.

³⁶ Exhibit 4, pg 3 & 4, Clause 4.1 of JVA.

³⁷ Exhibit 4, pg 4, Clause 4.2 of JVA.

50. This common intention is further elucidated in Clause 4.1(c)(ii) of the JVA where the PARTIES have intended CLAIMANT only be obligated to provide “full cooperation to RMG in ensuring [...]”.³⁸ The duty to give cooperation should not be interpreted to be equivalent to the express duty to ensure full compliance. Thus, the absence of this obligation to ensure compliance on part of CLAIMANT in Clause 4.1 of the JVA thereby operates as an implied indemnity intended by the common intention of the PARTIES.

51. The obligation to ensure full compliance of labour laws being that of RESPONDENT, the damages and fine incurred by the breach of such obligation shall therefore be borne solely by RESPONDENT. This is without prejudice to the fact that the fine of USD500 million was imposed on the JV company, ASI³⁹ as the JVA, being the contract which governs the parties to ASI is clear and therefore, liability within ASI may still be traced solely to RESPONDENT on a contractual basis.

(ii) The RESPONDENT’s obligations were continuing and not substituted by a third party.

52. RESPONDENT has asserted that the problematic agency, BWS ultimately led to the labour violations.⁴⁰ However, the CLAIMANT respectfully submits that the obligation to ensure full compliance of labour laws was at all times continuing and was not substituted by BWS.

³⁸ Exhibit 4, pg 4, Clause 4.1(c)(ii).

³⁹ Moot Problem at Page 13, Para 56.

⁴⁰ Moot Problem at Page 15, Para 64.

a. There was no waiver or consent to transfer the RESPONDENT's obligations.

53. The requirement for a valid transfer of obligations to a third party is consent by the other party.⁴¹ In any case, it is trite law that any amendment or departure from the original wording in a contract requires mutual consent and agreement between contracting parties. However, no consent was manifested by CLAIMANT.
54. CLAIMANT's instruction to hire a third-party recruitment agency and the subsequent approval of BWS was only intended to "supplement" ASI's hiring efforts⁴² due to the delays in recruiting operational staff that could jeopardise production timelines and contractual commitments.⁴³ There was never an intention to fully and unequivocally substitute this obligation. There was also no novation or amendment of the JVA in this regard.
55. Therefore, there was no intention nor consent to waive or transfer RESPONDENT's obligations. The obligations under Clause 4.2(e) and (f) relating to workforce management and ensuring compliance with labour laws thus remained with the RESPONDENT under the JVA and its failure amounts to breach by RESPONDENT.

⁴¹ Article 9.2 of the UNIDROIT Principles.

⁴² Exhibit 5, Pg 2, Para 4.1 & Exhibit 6.

⁴³ Moot Problem at Page 9, Para 35.

b. Even if there was a temporary transfer of obligations, the RESPONDENT's obligation was continuing.

56. Further, the Service Agreement executed between BWS and ASI was also a transitional structure whereunder BWS was only intended to assume responsibility for workforce management for 12 months after which such responsibility reverts to RESPONDENT.⁴⁴ Even so, during the 12 months, RESPONDENT was still obligated to oversee workforce management including the submission of workforce audits and periodic compliance reporting⁴⁵ and the obligation of RESPONDENT to ensure compliance of labour laws under Clause 4.2(f) was never relinquished.
57. In any case, where the primary obligation vests with RESPONDENT as the original obligor, the obligation is not discharged unless with express consent by CLAIMANT as original obligee,⁴⁶ which does not exist in the present facts.
58. Thus, the findings of the Independent Investigative Committee (“IIC”) that there was misreporting of workforce audits⁴⁷ that caused the three-week suspension on ASI's license incurring severe financial and reputational damage⁴⁸ and the subsequent USD500 million fine due to substantial underreporting in the revised audit reports⁴⁹ resulted from RESPONDENT's failure to ensure compliance.

⁴⁴ Moot Problem at Page 9 & 10, Para 39.

⁴⁵ Moot Problem at Page 10, Para 39.

⁴⁶ Vogenauer, S. (Ed.). (2015). *Commentary on the UNIDROIT principles of international commercial contracts (PICC)* (p. 1026). Oxford University Press.

⁴⁷ Exhibit 10, Pg 3, Para 3.7.

⁴⁸ Moot Problem at Page 12 & 13, Para 50 & 51.

⁴⁹ Moot Problem at Page 13, Para 56.

B. THE CLAIMANT DID NOT INTERFERE IN THE PERFORMANCE OF THE RESPONDENT’S OBLIGATIONS.

59. RESPONDENT also asserted that CLAIMANT’s actions in pushing for cost-cutting measures contributed to the regulatory non-compliance.⁵⁰ CLAIMANT respectfully submits that there was no interference in RESPONDENT’s performance.

60. The accelerated construction timeline⁵¹ instructed by CLAIMANT was a decision made in the best interest of ASI to ensure timely fulfilment of supply agreements with key buyers⁵². This measure proved effective when timely supply was ensured⁵³ and ASI successfully positioned itself as a competitive player in the global semiconductor supply chain with orders surpassing initial forecasts by 35%,⁵⁴ among others.

61. However, RESPONDENT’s delays in recruiting operational staff posed a threat of jeopardising production timeline⁵⁵ which led CLAIMANT to suggest engaging a third-party labour agency. In doing so, CLAIMANT instructed RESPONDENT to “minimise labour costs wherever feasible”⁵⁶ due to the unexpected budget overruns. CLAIMANT’s approval of BWS was made on reliance of RESPONDENT’s recommendation.⁵⁷

⁵⁰ Moot Problem at Page 15, Para 64.

⁵¹ Exhibit 5.

⁵² Moot Problem at Page 8, Para 32.

⁵³ Moot Problem at Page 10, Para 40.

⁵⁴ Moot Problem at Page 10, Para 42.

⁵⁵ Moot Problem at Page 9, Para 35.

⁵⁶ Moot Problem at Page 9, Para 36 ; Exhibit 5 ; Exhibit 6.

⁵⁷ Moot Problem at Page 9, Para 37.

62. The fiduciary nature of all joint ventures and partnerships entitles CLAIMANT to place reliance and trust on RESPONDENT's performance as partners to the JV. Besides between partners, no stronger case of fiduciary relations exists, it is because of mutual trust that both are partners and it is because of continued trust to each other that business continues.⁵⁸
63. Lindley LJ in *Betjemann v Betjemann*⁵⁹ emphasised in passing, "What right has a partner to say to his co-partner : 'You ought not to have trusted me. You are bound to look at the books and see that I am not cheating you'. Such a doctrine is unfounded". Similarly, CLAIMANT was entitled to rely on RESPONDENT's performance of its obligations.
64. Therefore, the instructions for acceleration and cost-efficiency was a strategic priority necessary for ASI's success⁶⁰ and a reasonable request. It was not a waiver of RESPONDENT's contractual obligations to conduct workforce recruitment and management and ensure full compliance of labour laws, of which CLAIMANT was entitled to expect. Further, RESPONDENT had at all times the opportunity to raise objections or inform CLAIMANT of any inability of fulfilling its obligations. RESPONDENT's failure to do so prevents its claim of contributory conduct on part of CLAIMANT.

⁵⁸ Lindley, N., & Banks, R. C. (2002). *Lindley & Banks on partnership* (18th ed., p. 472, para. 16-03). London: Sweet & Maxwell.

⁵⁹ [1895] 2 Ch 474

⁶⁰ Exhibit 5, Page 2, Para 6.1.

IV. THE CLAIMANT’S TERMINATION OF THE JVA WAS LAWFUL.

65. CLAIMANT respectfully submits that RESPONDENT’s breach allows CLAIMANT to terminate the JVA.

A. THE TERMINATION WAS DONE IN ACCORDANCE WITH CLAUSE 8 OF THE JVA.

66. The JVA provides for circumstances surrounding events of termination. Clause 8.1 of the JVA entitles a party to terminate in the event of a fundamental non-performance or breach of the JVA. Article 7.3.1 of the UNIDROIT Principles elucidates further with five (5) circumstances that amount to fundamental non-performance.

67. In the *Award of the Arbitration Centre of Mexico (CAM) of 30 November 2006*, Article 7.3.1 was invoked to establish a fundamental breach where the defendant had failed to deliver goods contracted and breached the exclusivity clause in the contract. The termination was held valid as, the claimant was deprived of the goods entitled to expect under the contract, the breach was intentional and, such circumstances of failure to perform show the claimant could not rely on future performances.⁶¹

68. On the present facts, CLAIMANT invokes two circumstances in Article 7.3.1; (1) the breach substantially deprived CLAIMANT of what it was entitled to expect⁶², and (2)

⁶¹ *Centro de Arbitraje de Mexico (CAM)*, Award, 30 November 2006.

⁶² Article 7.3.1(2)(a) of the UNIDROIT Principles

circumstances show CLAIMANT cannot rely on RESPONDENT's future performance.⁶³

(i) The RESPONDENT's breach substantially deprives the CLAIMANT of what it is entitled to expect under the JVA.

69. In contractual relations, one party is entitled to expect the other's proper performance of obligations. Here, this includes RESPONDENT's performance of Clause 4.2(f) of the JVA relating to ensuring full compliance of labour laws. Besides this, Clause 4.2(g) and (h) on assisting ASI in establishing a robust supply chain and representing ASI's interests with the government, respectively.

70. The consistent failure of RESPONDENT to ensure compliance, overseeing BWS, determining potential non-compliance and mitigating legal implications by submitting timely and accurate revised audit reports have caused financial and reputational damages from the three-week suspension and USD 500 million fine.

71. In *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Limited*⁶⁴, the High Court of Australia, invoking Article 7.3.1 of the UNIDROIT Principles, held that a contracting party is entitled to terminate where the breach is of an essential term causing substantial loss to the other party. Such term refers to the common intention of the commercial purpose of the contract.⁶⁵

⁶³ Article 7.3.1(2)(d) of the UNIDROIT Principles

⁶⁴ (2007) 233 CLR 115.

⁶⁵ *Tramways Advertising Pty Ltd v Luna Park (NSW) Ltd* (1938) 38 SR (NSW) 632.

72. The substantial financial loss incurred by ASI⁶⁶ deprives CLAIMANT of what it is entitled to expect. Further, this breach has substantially affected the commercial purpose of the JVA which was to build a ground-breaking semiconductor hub in Aurion⁶⁷ as the findings of concrete evidence of modern slavery⁶⁸ affects the domestic and international supply chain of ASI. This substantial deprivation entitles CLAIMANT to terminate the JVA.

(ii) The CLAIMANT cannot rely on the RESPONDENT's future performance.

73. Further, regard must be had to the fact that reliance was primarily vested with RESPONDENT as the local partner of the JV. RESPONDENT's continued failure to ensure compliance of its local labour laws demonstrates potential future legal implications.

74. RESPONDENT's silence in not challenging the possibilities of political pressures from Seratious⁶⁹ is also a failure to represent ASI's interests with the Aurion Government, as required under Clause 4.2(h) of the JVA. It was at all times ASI or CLAIMANT that requested transparency or challenged the Ministry's findings.

⁶⁶ Moot Problem at Page 15, Para 62, See Table.

⁶⁷ Moot Problem at Page 8, Para 29.

⁶⁸ Moot Problem at Page 13, Para 57.

⁶⁹ Moot Problem at Page 13, Para 57 & Clarification No. 10.

75. The financial and reputational damage incurred, and RESPONDENT's consistent failures to perform solidifies CLAIMANT's inability to continue trusting and relying on the RESPONDENT's role as the local partner in the JV. This undermines the continued viability of the ASI project. CLAIMANT's inability to rely on RESPONDENT's future performance allows for termination of the JVA⁷⁰.

B. THE TERMINATION WAS DONE IN GOOD FAITH.

76. RESPONDENT's position in this current proceedings is that the termination was not exercised in good faith, but rather as a calculated manoeuvre by CLAIMANT to evade liabilities arising under the JVA⁷¹. CLAIMANT inherently denies this contention.

77. The timing of termination demonstrates CLAIMANT's good faith termination as it demonstrates a deliberate, reasoned and honest act⁷² of waiting for a competent authority, the Aurion Government to confirm the findings of modern slavery with concrete evidence. Only then was the future viability of the JV confirmed as futile thus CLAIMANT resorted to termination.

78. There was also sufficient time for RESPONDENT to cure its breach. This refers to the three (3) months between the time the IIC Report was published on 30.09.2024 until the findings of non-compliance and concrete evidence of modern slavery by the Aurion Ministry on 16.12.2024. During this time no effort was made by RESPONDENT.

⁷⁰ Article 7.3.1(2)(d) of the UNIDROIT Principles

⁷¹ Moot Problem at Page 15, Para 64.

⁷² *Yam Seng Pte Ltd v International Trade Corporation Ltd* (2013) EWHC 111 (QB).

79. Further, CLAIMANT had informed RESPONDENT of its dissatisfaction but the silence and lack of good faith communication by RESPONDENT cements the futility of providing further time to cure its breach which would be detrimental to both ASI and CLAIMANT's company, CDI.
80. The duty of good faith should not be at the expense of acting against the best interest of CLAIMANT's own company. The financial and reputational downfall caused by RESPONDENT's breach and findings of modern slavery will only jeopardize the viability of the CLAIMANT's standing as a global leading semiconductor manufacturing firm. Therefore, termination was not only lawful but was justified and necessary.

PRAYERS FOR RELIEF

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

- I. The RESPONDENT as an independent corporate entity is not entitled to invoke sovereign immunity as a procedural bar to arbitration;
- II. The initiation of arbitration is not premature;
- III. The RESPONDENT breached the JVA in relation to the labour practices; and
- IV. The termination of the JVA by the CLAIMANT is lawful as it was done in accordance with Clause 8.1 and in good faith.