



20TH LAWASIA INTERNATIONAL MOOT COURT COMPETITION 2025

ASIAN INTERNATIONAL ARBITRATION CENTRE

BETWEEN

CALYX DREAMBOT INC.....CLAIMANT

and

RIVUS MICROELECTRONICS GROUP.....RESPONDENT

MEMORIAL *for* CLAIMANT

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Armendariz v. Foundation Health Psychcare Servs Inc. 99 Cal. Rptr. 2d 745 (2000).	11
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BCI Aircraft Leasing, Inc. v. Republic of Ghana, 2006 WL 2989291 (N.D. Ill. 2006).....	3
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Children’s Ark Partnerships Limited v. Kajima Construction Europe (UK) Limited and Kajima Europe Limited [2022] EWHC 1595 (TCC).	6
Chowdhary and Others v. Greece, No. 21884/15 (2017).....	14
Cour d’appel de Grenoble, Calzados Magnanni v. SARL Shoes General International, Case No. 313, 21 October 1999.....	24
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Eldridge v. British Columbia [1997] 3 SCR 624	2
Elizabeth Bay Developments Pty Ltd v. Boral Building Services Pty Ltd, Case No. 36 NSWLR 709.....	8
Emirates Trading Agency v. Prime Mineral Exports [2014] EWHC 2104.....	10
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Empire of Iran case, 45 ILR, pp. 57, 80–1.....	1
First Inv. Corp. v. Fujian Mawei Shipbuilding, Ltd., 858 F. Supp. 2d 658 (E.D. La. 2012).	3
Gen. Star National Insurance Company v. Asigurariilor de Stat, Carom, S.A., 713 F. Supp. 2d 267 (S.D.N.Y. 2010)	3
Heizer v. Kaiser Franz-Joseph-Bahn A.G. (1885) {Gesetz und Verordnungsblatt für das Konigreich Bayern (Munich), vol. I (1885).....	1
I ° Congreso del Partido [1983] 1 AC 244	1
Jurisdictional Immunities of the State, Germany v. Italy, Judgment, ICGJ 434 (ICJ 2012).....	2
KJ International v. MV Oscar Jupiter [131 ILR 529] 720	2
KMC Brahmaputra Infrastructure Limited v. The Chief Engineer, Roads & Bridges Department, Government of Sikkim, 2022 SCC OnLine Sikk 130.....	21
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Lucent Technology v. ICICI Bank 2009 SCC OnLine Del 3213.....	11
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McKesson Corp. v. Islamic Republic 52 F.3d 346 (D.C. Cir. 1995)	2
NML Capital, Ltd. v. Republic of Argentina, 2011 U.S. Dist. Lexis 14795 (S.D.N.Y. 2011) ...	2
Non-resident Petitioner v. Central Bank of Nigeria 16 ILM, 1977.	1
NWA v. NVF [2021] EWHC 2666 (Comm).....	5
Planmount Ltd v. Republic of Zaire [1981] 1 All ER 1110.	1
Republic of Argentina v. Weltover Inc 119 L Ed 2d 394 (1992).	2
Republic of Argentina v. Weltover, 504 U.S.C. 607 (1992)	1
Republic of Sierra Leone v. SL Mining Ltd. [2021] EWHC 286	4
Saudi Arabia v. Nelson 123 L Ed 2d 47 (1993).	1
Saudi Arabia v. Nelson 507 U.S. 349 (1993).....	1
Seijas v. Republic of Argentina & Banco De La Nacion Argentina, 2011 U.S. Dist. Lexis 31946 (S.D.N.Y. 2011).....	2
Siemens Limited v. Jindal India Thermal Power Limited, Case No. 4378/2017.....	8
Smeaton Hanscombe v. Sassoon I. Setty (No. 1), [1953] 1 W.L.R. 1468.....	21
Societe Transshipping v. Federation of Pakistan (1966) (ILR (London), vol. 47 (1974)	1
Sulamérica Cia Nacional De Seguros v. Enesa Engenhari, [2012] EWCA Civ 638	6
Telefónica SA v. Argentine Republic ICSID Case No. ARB/03/20.....	5
The Permanent Court of Justice in the <i>Diversion of Water from the Meuse Case</i> , P.C.I.J. (Ser. A/B) No. 70.....	24
The State Of Rajasthan v. Mst. Vidhyawati 1962 AIR 933	1
Transamerica Leasing, Inc. v. La Republica De Venezuela and Fondo De Inversiones De Venezuela, 200 F.3d 843 (D.C. Cir. 2000);	3
Trendtex Trading Corporation Ltd v. Central Bank of Nigeria [1977] 2 WLR 356 64 ILR.....	1
U.S. Fid. & Guar. Co. v. Braspetro Oil Servs. Co., 1999 WL 307666, (S.D.N.Y. 1999).	3
United States v. Consigli Constr. Co. 873 F. Supp. 2d 409 (D. Me. 2012).....	11

Van der Musselle v. Belgium, No. 8919/90 (1983).....	14
Wah (a.k.a. Alan Tang) & Anor v. Grant Thornton International Ltd & Ors. [2013] 1 All ER 1226.....	6
X v. Banque Privee Edmond de Rothschild Europe (Societe) [2013] I.L.Pr. 12	11

LEGISLATIVE MATERIALS

Art 7.1.1, UNIDROIT Principles of International Commercial Contracts, 2016.....	20
Art 7.3.1., UNIDROIT Principles on International Commercial Contracts, 2016.	24
Art. 1(3), Protocol of 2014 to the Forced Labour Convention, 1930, adopted 11 June 2014 .	13
Art. 1(b), Abolition of Forced Labour Convention, 1957 (No. 105)	12
Art. 2(1), Forced Labour Convention, 1930 (No. 29).....	12
Art. 25, Forced Labour Convention, 1930 (No. 29)	16
Article 7.3.1(2)(a), UNIDROIT Principles of International Commercial Contracts, 2016.	22
Foreign State Immunities Act, 1976 28 U.S.C. 97, Section 1603(b).....	2
Foreign State Immunities Act, 1985, Section 3 (Australia).....	2
International Labour Organization, <i>Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement, Special Action Programme to Combat Forced Labour</i> , March 2005.....	18
UN Convention on Jurisdictional Immunities of the State and their Properties (2004), Article 2(1)(b)(iii)	1
UN Convention on Jurisdictional Immunities of the State and their Properties (2004), Article 2(2).....	1
UN Convention on Jurisdictional Immunities of the State and their Properties (2004), Article 5	2
UNCITRAL Model Law on International Commercial Arbitration, 1985, Article 18.	11

MISCELLANEOUS

American Law Institute, Restatement (Second) of Contracts §237, 1979.....	21, 23
Anti-Slavery International, What is Modern Slavery?.....	15
Australian Government, ‘Resources’, Modern Slavery Register, Attorney-General’s Department.....	17
Australian Human Rights Institute, What is Modern Slavery?, UNSW Sydney.....	16
Benjamin Whitaker, Special Rapporteur, Report on Slavery, U.N. Doc. E/CN.4/Sub.2/1982/20/Rev. 1.....	18
Chapter 1, The Concept of Forced Labour: Emerging Issues, from the Cost of Coercion, Global Report on Forced Labour, INTERNATIONAL LABOUR OFFICE	13
Eduardo Grebler, Fundamental Breach of Contract under the CISG: A controversial Rule, Proceedings of the Annual Meeting (American Society of International Law), 101, 407-413.	20
International Labour Organisation, Questions and Answers on Forced Labour,.....	15
International Labour Organization (ILO), Report of the Committee set up to examine the Article 24 representation concerning Portugal (1985), para. 97	14
Measurement of Forced Labour: A Statistical Manual for Survey Design and Data Collection, INTERNATIONAL LABOUR ORGANISATION, 2013.....	12
Mini Action Guide on Forced Labour, INTERNATIONAL TRADE UNION CONFEDERATION	15
OECD et al., <i>Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains</i> , OECD Publishing, Paris, 2019	18
The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons, UNITED NATIONS OFFICE ON DRUGS AND CRIME,.....	19
U.N. Salesianum No. E.84/XIV. 1, (U.K.).....	18

ARTICLES, JOURNALS AND ESSAYS

A. Y. Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, Penn State International Law Review, 23, 809 17

Andrew Babiak, *Defining “Fundamental Breach” Under the United Nations Convention on Contracts for the International Sale of Goods*, Temple International and Comparative Law Journal, 6, 122.....23

Bruno Lamas, *Modern Slavery in the Global Economy*, SPRINGER NATURE LINK 17

Dyalá J. Figueres, *Multi-Tiered Dispute Resolution Clauses*, ICC ARBITRATION BULLETIN Volume 14, Number 1 20036

Gary B. Born, *Maria Šćekić, Pre-Arbitration Procedural Requirements: ‘A Dismal Swamp’*, in PRACTISING VIRTUE: INSIDE INTERNATIONAL ARBITRATION (OXFORD UNIVERSITY PRESS, 2015).6

Gerhard Lubbe, *Fundamental breach under the CISG: A source of fundamentally divergent results*, The Rabel Journal of Comparative and International Private Law, 444 – 472.23

Getgen Kestenbaum, Jocelyn, *Prohibiting Slavery & the Slave Trade*, Virginia Journal of International Law, 63, 1 – 46. 17

Jan Paulsson, *Jurisdiction and Admissibility*, in *Global Reflections on International Law, COMMERCE AND DISPUTE RESOLUTION*, ICC PUBLISHING (2005).....4

Jolles Alexander, *Consequences of Multi-tier Arbitration Clauses: Issues of Enforcement*, ARBITRATION: THE INTERNATIONAL JOURNAL OF ARBITRATION, MEDIATION AND DISPUTE MANAGEMENT, Vol. 72 (2006), Issue 4.....6

Justine Nolan, *Modern Slavery in Global Supply Chains*, Encyclopaedia of Business and Professional Ethics. Springer, Cham, 22 – 24..... 18

Kahan Onur Arslan, *Perspective Chapter: Legal Definition of Modern Slavery, 2024*..... 16

Maxi Scherer and Sophia Lange ‘The French Rothschild Case: A Threat for Unilateral Dispute Resolution Clauses?’ Kluwer Arbitration Blog, 2013.....	11
Michael Bridge, Avoidance for fundamental breach of contract under the UN Convention on the International Sale of Goods, <i>International & Comparative Law Quarterly</i> , 59, 911 – 940.	22
Renee Colette Redman, The League of Nations and the Right to Be Free from Enslavement: The First Human Right to Be Recognized as Customary International Law, <i>Chicago-Kent Law Review</i> , 70, 759 – 804	14
Roger Plant, Modern Slavery: The Concepts and Their Practical Implications, <i>International Labour Office Working Paper</i> , 3 – 19	16
T Naud and G Lubbe, Cancellation for “Material” or “Fundamental” Breach, A Comparative Analysis of South African Law, the UN Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles, <i>Stellenbosch Law Review</i> , 12, 371.	22

BOOKS AND COMMENTARIES

Bales K, Trodd Z, Williamson AK. <i>Modern Slavery: The Secret World of 27 million People</i> . Oxford; 2009. p. 31.....	16
Gary B. Born <i>International Commercial Arbitration 3rd Edition</i> Kluwer Law International (2021).....	4
H. M. Holtzmann and J. E. Neuhaus, <i>A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary</i> , KLUWER LAW INTERNATIONAL (1989).	11
J Crawford and S Olleson, The Exception of Non-Performance: Links between the Law of Treaties and the Law of State Responsibility, <i>Australian Year Book of International Law</i> , 21, 55.....	21
Jesse Sage, <i>Enslaved: True Stories of Modern Day Slavery</i> , ST. MARTIN’S GRIFFIN.....	15

ICC AWARDS

ICC Award 4229.....5

ICC Case No. 2583, 197620

ICC Case No. 26290.8

ICC Case No. 6276 (2003).....6

ICC Case No. 9978,199923

STATEMENT OF JURISDICTION

The CLAIMANT (RMG) has submitted the dispute to the Asian International Arbitration Centre (“AIAC”), pursuant to Clause 11 of the Joint Venture Agreement in accordance with the Rule 1.1(a) of Arbitration Rules, 2023 of the AIAC which states:

“1.1. Where the Parties have agreed in writing, by an arbitration agreement or otherwise, to refer their dispute to arbitration in accordance with the AIAC Arbitration Rules, then: (a) such dispute shall be settled or resolved by arbitration in accordance with the AIAC Arbitration Rules.”

The tribunal has the jurisdiction to hear the present matter, all of which is urged in detail in the written submission and is submitted most respectfully.

QUESTIONS PRESENTED

[ISSUE -1]

WHETHER RMG IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY?

[ISSUE -2]

WHETHER CDI'S INITIATION OF ARBITRATION WAS PREMATURE?

[ISSUE -3]

WHETHER RMG BREACHED THE JVA IN RELATION TO THE ALLEGED LABOUR PARTIES?

[ISSUE -4]

WHETHER CDI'S TERMINATION OF THE JVA WAS LAWFUL?

STATEMENT OF FACTS

PARTIES

1. Calyx DreamBot Inc. (hereinafter “CDI” and **CLAIMANT**), a semiconductor company incorporated in Veridia, and Rivus Microelectronics Group (hereinafter “RMG” and **RESPONDENT**), an Aurion-incorporated entity are parties to this arbitration. Aurion is a rapidly developing Southeast Asian nation that has sought to position itself as a regional hub for semiconductor manufacturing.

THE AURION-VERIDIA BILATERAL INVESTMENT TREATY (“AV-BIT”) AND THE JOINT VENTURE AGREEMENT (“JVA”)

2. In 2022, President Davul Ho of Aurion sought to transform the nation into a semiconductor hub by courting Veridian technology firms. Through closed-door meetings with executives, he assured investors that RMG was a commercially autonomous vehicle. Subsequently, Aurion and Veridia signed the AV-BIT in October 2022, to boost the semiconductor sector. The BIT was hailed as a milestone in Aurion’s economic diplomacy, paving the way for high-profile investment.
3. Soon after, CDI and RMG entered into a JVA on 20 December 2022. Pursuant to the JVA, a special purpose vehicle, Aurion Semiconductor Inc. (hereinafter “ASI”), was incorporated on 3 January 2023, with CDI holding 51% and RMG holding 49%. The project aimed to establish a semiconductor manufacturing facility in Northern Aurion.

ENSUING EVENTS

4. The JVA required RMG to ensure full compliance with applicable labour and employment laws and for both parties to uphold fair labour practices. In 2023, CDI pressed for accelerated construction and cost control. Following budget overruns, CDI urged RMG

to engage a labour agency. RMG recommended Beta Workforce Solutions (hereinafter “BWS”), which CDI approved. On 2 October 2023, ASI entered into a Service Agreement with BWS for 1,200 workers.

5. By September 2024, reports emerged alleging exploitative practices at the ASI facility, including excessive working hours, poor living conditions, wage withholding, recruitment fees, and debt bondage. Seratious threatened an import ban unless Aurion investigated. Aurion established an Independent Investigative Committee (“IIC”), which found issues such as overcrowded dormitories, some coercion linked to overtime, passport withholding, and inaccurate workforce audits, though it did not conclusively find modern slavery.
6. On 2 October 2024, Aurion’s Ministry of Trade and Industry suspended ASI’s license until a revised audit was submitted. The license was restored on 23 October 2024, but the Ministry later uncovered underreporting of overtime hours and imposed a USD 500 million fine on ASI on 16 December 2024.

DISPUTE BETWEEN THE PARTIES

7. CDI claimed that RMG breached the JVA by failing to ensure compliance with labour laws and international standards. CDI further discovered that BWS was owned by a relative of President Ho’s son-in-law, a connection not disclosed by RMG. CDI subsequently terminated the JVA on account of fundamental breach and has initiated arbitration against RMG. CDI demanded that RMG bear responsibility for the USD 742.5 million fine comprising of direct financial losses, reputational harm, and long-term contractual penalties.
8. RMG asserted that as an entity controlled by the State of Aurion, it was entitled to sovereign immunity and had not waived such immunity nor consented to arbitration. Its

claim is based on the fact that reports indicated that its capital requirements were funded by Aurion's Government Treasury and its board of directors comprised Aurion Cabinet Ministers. Further, its decision-making often mirrored policies of the Ministry of Economy. Nevertheless, in his discussions with CDI, President Ho of Aurion represented RMG as a commercially autonomous vehicle.

9. Further, RMG objected to the jurisdiction of the tribunal on the basis that the arbitration is premature. Clause 10.1 of the JVA requires the parties to resolve the dispute by negotiations. Clause 10.2 of the JVA required that no proceedings be commenced before obtaining the consent of the Aurion Minister in charge of economic policy, foreign investments, and trade. CDI issued a Notice of Arbitration dated 6 January 2025 against RMG without first obtaining such ministerial consent. RMG objected that the arbitration was premature. On the other hand, CDI maintains that the tribunal is properly seized of jurisdiction.
10. The AIAC will address these issues and determine whether CDI is entitled to relief.

SUMMARY OF PLEADINGS

I. RMG IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY.

RMG is not entitled to invoke sovereign immunity because it did not engage in sovereign functions. Sovereign act has to be determined with reference to the nature of the transaction rather than its purpose, implying that RMG's functions under the JVA were purely commercial in nature which a private entity can perform. Secondly, RMG does not qualify as an agency or instrumentality of Aurion because Aurion does not exercise day-to-day control over RMG.

II. CDI'S INITIATION OF ARBITRATION WAS NOT PREMATURE.

CDI's initiation of arbitration is not premature because firstly, Clause 10.1 is not a jurisdictional issue, and in any case, it does not qualify as a condition precedent. The claim is admissible because the negotiations are futile in the present case. Secondly, Clause 10.2 is not a jurisdiction issue and in any case, not a condition precedent to arbitration. In arguendo, Clause 10.2 is not an asymmetrical clause and hence invalid.

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

RMG did not comply to the international labour standards and the domestic labour laws. Their actions constituted forced labour because the workers had to work overtime, with threats of wage cut. Workers were also exploited and their passports were confiscated. These acts also constitute modern slavery. Therefore, RMG breached Clause 4 of the JVA in relation to the labour practices.

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

CDI had to terminate the JVA because of the actions of RMG. Since RMG did not comply with the labour standards, the company's license was suspended and a fine was imposed. This led to substantial losses for CDI causing a fundamental breach of the JVA. Therefore, in line with Clause 8 of the JVA, CDI terminated the JVA. Hence, the termination of the JVA was lawful.

PLEADINGS

I. RMG IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY.

1. CLAIMANT and RESPONDENT entered into a JVA to establish a semiconductor manufacturing facility in Aurion. However, due to RESPONDENT'S failure to comply with local laws and ethical labour standards, CLAIMANT submitted a notice of arbitration. RESPONDENT is not entitled to invoke sovereign immunity because *first*, RMG is not engaged in sovereign functions [A] and *second*, RMG does not qualify as an agency or instrumentality of Aurion[B].

A. RMG DID NOT PERFORM SOVEREIGN FUNCTIONS.

2. Sovereign immunity extends only to sovereign acts performed by the State.¹ The courts in United States², United Kingdom³ and Germany⁴ have held that the ultimate test of what constitutes a sovereign act has to be determined with reference to the nature of the transaction rather than its purpose.⁵
3. In this regard, the test of a sovereign act involves whether the act of its own character is a governmental act, as opposed to an act which any private citizen can perform.⁶ On the

¹ UN Convention on Jurisdictional Immunities of the State and their Properties (2004), Article 2(1)(b)(iii) ; Alfred Dunhill v. Republic of Cuba 425 US 682 (1976); Republic of Argentina v. Weltover, 504 U.S.C. 607 (1992); Saudi Arabia v. Nelson 507 U.S. 349 (1993); Department of the Army of the United States of America v. Gori Savellini ILR, 1956 (Milan); Heizer v. Kaiser Franz-Joseph-Bahn A.G. (1885) {Gesetz und Verordnungsblatt fiir das Konigreich Bayern (Munich), vol. I (1885); Societe Transshipping v. Federation of Pakistan (1966) (ILR (London), vol. 47 (1974); The State Of Rajasthan v. Mst. Vidhyawati 1962 AIR 933; Balma y Bessolino v. Gobierno del Paraguay (1916) (Buenos Aires), Decision No. 123; Dollfus Mieg et Cie S.A. v. Bank of England (1950), London digest, vol. 16 (1955), case No. 36.

² Empire of Iran case, 45 ILR, pp. 57, 80–1; Trendtex Trading Corporation Ltd v. Central Bank of Nigeria [1977] 2 WLR 356 64 ILR; Saudi Arabia v. Nelson 123 L Ed 2d 47 (1993).

³ Planmount Ltd v. Republic of Zaire [1981] 1 All ER 1110.

⁴ Non-resident Petitioner v. Central Bank of Nigeria 16 ILM, 1977.

⁵ UN Convention on Jurisdictional Immunities of the State and their Properties (2004), Article 2(2).

⁶ Kuwait Airways Corporation v. Iraqi Airways Co. (No.6) [2002] UKHL 19; I ° Congreso del Partido [1983] 1 AC 244.

contrary, a non-sovereign act involves actions which a private party engages in “trade or traffic or commerce”.⁷

4. In the current context, the joint venture with CDI was aimed at establishing a semiconductor manufacturing facility to meet global market demand. The RESPONDENT may contend that the functions of RMG under the JVA such as procuring land, obtaining regulatory approvals, constructing the facility, and liaising with government bodies to secure investment incentives are sovereign in nature.⁸ However, there is no evidence that the acts in question were incapable of being performed by a private entity. On the contrary, these are activities routinely undertaken by private corporations in cross-border joint ventures. Therefore, RMG is not entitled to invoke sovereign immunity as it did not perform sovereign functions.

B. IN ANY CASE, RMG DOES NOT QUALIFY AS AN AGENCY OR INSTRUMENTALITY OF AURION.

5. The entity claiming sovereign immunity has to form an apparatus of the State.⁹ State is defined to include agencies or instrumentalities of the state.¹⁰ However, mere performance of sovereign functions is not sufficient to establish an entity as an agency or instrumentality of the State as involvement of the State in the day-to-day affairs of the entity is necessary.¹¹

⁷ KJ International v. MV Oscar Jupiter [131 ILR 529] 720; Republic of Argentina v. Weltover Inc 119 L Ed 2d 394 (1992).

⁸ Moot Problem, Exhibit 4, Page 4, Clause 4.2.

⁹ UN Convention on Jurisdictional Immunities of the State and their Properties (2004), Article 5; Trendtex Trading Corporation Ltd v. Central Bank of Nigeria.

¹⁰ Jurisdictional Immunities of the State, Germany v Italy, Judgment, ICGJ 434 (ICJ 2012); UN Convention on Jurisdictional Immunities of the State and their Properties (2004), Article 2(1)(b)(iii); Krajina v. Tass Agency [1949] 2 All Eng. L. R. 274; Foreign State Immunities Act, 1985, Section 3 (Australia); Foreign State Immunities Act, 1976 28 U.S.C. 97, Section 1603(b).

¹¹ Eldridge v. British Columbia [1997] 3 SCR 624; McKesson Corp. v. Islamic Republic 52 F.3d 346 (D.C. Cir. 1995); Seijas v. Republic of Argentina & Banco De La Nacion Argentina, 2011 U.S. Dist. Lexis 31946 (S.D.N.Y. 2011); NML Capital, Ltd. v. Republic of Argentina, 2011 U.S. Dist. Lexis 14795 (S.D.N.Y. 2011); Czarnikow Ltd. v. Rolimpex [1979] AC 351.

6. Additionally, the appointment of directors by the state does not render an entity to qualify as an agency or instrumentality unless the State exercises day to day control over the entity.¹² Further, a state injecting capital into an entity without the day-to-day control is also not viewed as a part of the State because these actions are consistent with a majority shareholder of a private company.¹³
7. In the present case, the RESPONDENT may contend that its capital requirements were provided using the funds from Aurion's treasury¹⁴ and further, that the directors of the Board of RMG comprises of Cabinet Ministers.¹⁵ However, this is not sufficient because there is no evidence to the fact that the State of Aurion directed or supervised RMG's day-to-day commercial decision-making. Therefore, RMG is not entitled to invoke sovereign immunity as Aurion does not exercise day-to-day control over RMG.

II. CDI'S INITIATION OF ARBITRATION IS NOT PREMATURE.

1. The RESPONDENT objects to the jurisdiction of this Tribunal based on the alleged non-compliance with the pre-arbitral steps under Clause 10 of the JVA. The CLAIMANT requests the Tribunal not to reject the claim based *first*, the negotiation requirement under Clause 10.1 is not a bar to the present proceedings [A] and *second*, the consent requirement under Clause 10.2 is not a bar to the present proceedings [B].

¹² Gen. Star National Insurance Company v. Asigurariilor de Stat, Carom, S.A., 713 F. Supp. 2d 267 (S.D.N.Y. 2010); BCI Aircraft Leasing, Inc. v. Republic of Ghana, 2006 W.L. 2989291 (N.D. Ill. 2006); First Inv. Corp. v. Fujian Mawei Shipbuilding, Ltd., 858 F. Supp. 2d 658 (E.D. La. 2012).

¹³ Transamerica Leasing, Inc. v. La Republica De Venezuela and Fondo De Inversiones De Venezuela, 200 F.3d 843 (D.C. Cir. 2000); BCI Aircraft Leasing, Inc. v. Republic of Ghana, 2006 WL 2989291 (N.D. Ill. 2006); U.S. Fid. & Guar. Co. v. Braspetro Oil Servs. Co., 1999 WL 307666, (S.D.N.Y. 1999).

¹⁴ Moot Problem, Page 7, ¶27.

¹⁵ Moot Problem, Page 7, ¶28.

A. THE NEGOTIATION REQUIREMENT UNDER CLAUSE 10.1 IS NOT A BAR TO THE PRESENT PROCEEDINGS.

2. Clause 10.1 of the JVA states that “*Parties agree to regulate their own affairs and resolve any dispute arising from or connected to this agreement amicably through negotiations which shall commence within 14 days*” from the serving of the notice of the dispute. Respondent asserts that non-compliance with Clause 10.1 results in a premature arbitration affecting the jurisdiction of this Tribunal. However, it is submitted that *first*, the tribunal should not dismiss this claim on the basis of jurisdiction [i] and *second*, the tribunal should not dismiss this claim on the basis of admissibility [ii].

i. The Tribunal should not dismiss the claim on the basis of jurisdiction.

3. The tribunal should not dismiss this claim because *first*, non-compliance with Clause 10.1 is not a jurisdictional issue [a], and *second*, even if the question is of a jurisdictional nature, it would not deprive the Tribunal of its jurisdiction [b].

a. Non-compliance with Clause 10.1 is not jurisdictional issue.

4. Jurisdiction means “the power of the tribunal to hear a case”, while admissibility refers to “whether it is appropriate for the tribunal to hear a case”.¹⁶ According to the ‘Tribunal v. Claims’ test, to determine the nature of a dispute, it must be asked whether the objection pertains to a jurisdiction of a particular forum, or to the inherent admissibility of the claim.¹⁷

¹⁶ BBA v. BAZ [2020] SGCA 53; Republic of Sierra Leone v. SL Mining Ltd. [2021] EWHC 286; Gary B. Born International Commercial Arbitration 3rd Edition Kluwer Law International (2021).

¹⁷ Jan Paulsson, *Jurisdiction and Admissibility*, in Global Reflections on International Law, COMMERCE AND DISPUTE RESOLUTION, ICC PUBLISHING (2005).

There is an established international consensus of characterizing claims of non-compliance with pre-arbitration requirements as questions of admissibility and not of jurisdiction.¹⁸

5. In this vein, in *SL Mining* it was held that “*the weight of the international authorities is plainly overwhelmingly in support of a case that... [i.e., lack of compliance with pre-arbitral dispute resolution process] does not go to jurisdiction*”.¹⁹ Further, if non-compliance with the negotiation requirement is treated as a jurisdictional issue, it would be contrary to ‘business common sense,’ as parties could simply refuse to mediate and deprive the Tribunal of its jurisdiction.²⁰
6. In the present case, if non-compliance with the negotiation requirement was treated as a jurisdictional issue, one party could just refuse to negotiate and block arbitration forever especially because Clause 10.1 does not have any completion mechanism. This could indefinitely prevent the Tribunal from acquiring jurisdiction, undermining the arbitration process entirely. Hence, non-compliance with Clause 10.1 of the JVA should not be considered a jurisdictional issue.

b. In any case, non-compliance with Clause 10.1 does not deprive the Tribunal of its jurisdiction because it is not a condition precedent to arbitration.

7. Pre-arbitration requirements only constitute a condition precedent when the clause contains explicit and mandatory language as well as procedural specifications and consequences for non-compliance.²¹ For instance, tribunals have held that such clauses must contain

¹⁸ Republic of Sierra Leone v. SL Mining Ltd. [2021] EWHC 286; C v. D [2007] ArbLR 10; ICC Award 4229; ABB Ag v. Hochtief Airport GmbH & Anr. 2006 EWHC 388; Telefónica SA v. Argentine Republic ICSID Case No. ARB/03/20.

¹⁹ Republic of Sierra Leone v. SL Mining Ltd. [2021] EWHC 286.

²⁰ NWA v. NVF [2021] EWHC 2666 (Comm).

²¹ Dyalá J. Figueres, *Multi-Tiered Dispute Resolution Clauses*, ICC ARBITRATION BULLETIN Volume 14, Number 1 2003; Gary B. Born, *Maria Šćekić, Pre-Arbitration Procedural Requirements: ‘A Dismal Swamp’*, in PRACTISING VIRTUE: INSIDE INTERNATIONAL ARBITRATION (OXFORD UNIVERSITY PRESS, 2015).

mandatory language with the usage of “shall” for resolving disputes by negotiation²², a specific time frame for negotiations, and a clear chronological sequence to arbitration.²³

The lack of an agreed time limit within which the negotiation process must be completed is a strong indication that a pre-arbitral step is non-mandatory.²⁴

8. Even in the presence of specific timelines for negotiation, courts have held a high threshold for the degree of detail required in such a clause.²⁵ For example, in *CZQ*, the dispute resolution clause stated that the parties “shall” meet to amicably resolve the dispute with a timeline of meeting within 7 days of the notice of dispute.²⁶ However, this was not a condition precedent since there was no explicit language on when the right to commence arbitration would arise.
9. In the present case, Clause 10.1 only specifies that “*the parties agree to regulate their own affairs[...]*amicably through negotiations*”.²⁷ This is a mere statement acknowledging negotiations as a preferable option for resolving the dispute as opposed to a mandatory requirement. There is no indication of the number of sessions/time period within which such negotiations shall be concluded. Further, a bare perusal of the arbitration clause under Clause 11 yields that “*Parties agree that any dispute relating to any matter arising out of and connected with this Agreement shall be determined by arbitration*”.²⁸ Clause 10.1 appears to run in parallel to Clause 11, where the latter is contained in mandatory language. Therefore, despite the provision of commencing negotiations within 14 days of notice of*

²² Wah (a.k.a. Alan Tang) & Anor v. Grant Thornton International Ltd & Ors. [2013] 1 All ER 1226.

²³ Children’s Ark Partnerships Limited v. Kajima Construction Europe (UK) Limited and Kajima Europe Limited [2022] EWHC 1595 (TCC).

²⁴ Jolles Alexander, *Consequences of Multi-tier Arbitration Clauses: Issues of Enforcement*, ARBITRATION: THE INTERNATIONAL JOURNAL OF ARBITRATION, MEDIATION AND DISPUTE MANAGEMENT, Vol. 72 (2006), Issue 4; ICC Case No. 6276 (2003).

²⁵ *Sulamérica Cia Nacional De Seguros v. Enesa Engenhari*, [2012] EWCA Civ 638; C v. D [2007] ArbLR 10

²⁶ *CZQ v. CZS* [2024] 3 SLR 111.

²⁷ Moot Problem, Exhibit 4, Page 7, Clause 10.1.

²⁸ Moot Problem, Exhibit 4, Page 7, Clause 11.

dispute, there is an absence of chronological sequence to arbitration. Hence, since Clause 10.1 is not contained in explicit and clear language, it is not a condition precedent to the jurisdiction of the tribunal.

ii. **The Tribunal should not dismiss the claim on the basis of admissibility.**

10. In the present case, the claim is admissible since, first, Clause 10.1 does not impose a condition precedent upon parties [a] and second, parties can circumvent the pre-arbitration requirements since any negotiations would be futile [b].

a. Clause 10.1 does not amount to a condition precedent to the admissibility of the claim.

11. The pre-arbitral requirement, under Clause 10.1 of the JVA, does not impose a condition precedent upon parties since it cannot be deduced from its language that the negotiation requirement was mandatory.²⁹ As established, Clause 10.1 is a mere statement acknowledging negotiations as a preferable option for resolving the dispute as opposed to a mandatory requirement. Therefore, it does not amount to a condition precedent to the admissibility of the claim.

b. Parties can circumvent the pre-arbitration requirements since any negotiations would be futile.

12. In the context of multi-tier arbitration clauses, a claim should be considered inadmissible only where mediation offers a genuine prospect of resolving the dispute without recourse to arbitration³⁰. However, if a party has clearly indicated in advance that it will not

²⁹ Supra, II(A)(i)(b).

³⁰ Siemens Limited v. Jindal India Thermal Power Limited, Case No. 4378/2017; Lufthansa Systems Asia Pacific v. International Research Corporation and Datamat, Case No. ARB 61 of 2010; Elizabeth Bay Developments Pty Ltd v. Boral Building Services Pty Ltd, Case No. 36 NSWLR 709.

reconsider its position, mediation becomes futile.³¹ In such cases, insisting on mediation would incur unnecessary expenses and delays, with no realistic prospect of achieving a settlement.³²

13. In the present case, the CLAIMANT indicated their intention to terminate the JVA which was met with the RESPONDENT’S cavalier attitude and refusal to engage constructively.³³ Further, even when the CLAIMANT inquired about the concerns with the JVA and demonstrated its intention to continue the JVA³⁴, it ignored by the RESPONDENT. This ultimately led to a ‘heated conversation’ between the parties following the issuance of the notice of arbitration.³⁵ These circumstances clearly indicate that there was no realistic prospect of achieving a resolution by negotiation. Therefore, the present claim is admissible because the negotiations under Clause 10.1 would be futile.

B. THE CONSENT OF THE MINISTER UNDER CLAUSE 10.2 IS NOT A BAR TO THE PRESENT PROCEEDINGS.

14. Clause 10.2 of the JVA provides that “*any proceedings, claims or suits[...] shall NOT be commenced before first obtaining the consent of the Minister in charge of economic policy, foreign investments and trade of Aurion*”.³⁶ The present clause does not pose a challenge to the arbitration because it does not affect the jurisdiction of the tribunal [i]. *In arguendo*, Clause 10.2 is not enforceable as it is an asymmetrical clause [ii].

³¹ ICC Case No. 26290.

³²Delhivery Limited v. Kare Enterprise Private Limited, Case No. 121/2024; Demerara Distilleries Pvt. Ltd. v. Demerara Distilleries Ltd, Case No. 11/2013.

³³ Moot Problem, Page 14, ¶60.

³⁴ Moot Problem, Exhibit 11, Page 1.

³⁵ Moot Problem, Page 14, ¶60.

³⁶ Moot Problem, Exhibit 4, Page 7, Clause 10.2.

i. **Clause 10.2 does not affect the jurisdiction of the tribunal.**

15. Clause 10.2 does not vitiate the jurisdiction of this Tribunal because *first*, it is not a jurisdictional issue [a] and *second*, in any case it is not a condition precedent to the arbitration [b].

a. *Non-compliance with Clause 10.2 of the JVA is not a jurisdictional issue.*

16. Applying the Tribunal v. Claims test, it has to be adjudged whether the objection pertains to a jurisdiction of a particular forum, or to the inherent admissibility of the claim.³⁷ In the recent *C v. D* case, the Hong Kong Court of Appeal explicitly confirmed that “*non-compliance with procedural pre-arbitration conditions [...] goes to admissibility of the claim rather than the tribunal’s jurisdiction*”.³⁸ It is further important to note that an issue of admissibility can be cured, whereas an objection to jurisdiction completely eliminates the claim from the arbitral process.³⁹

17. In the present case, clause 10.2 is external to the arbitration agreement under Clause 11. It is a requirement involving a third party’s consent (the Minister), not part of the tribunal’s grant of authority. It is simply a procedural requirement that if treated as jurisdictional, the RESPONDENT’S state could *permanently* prevent arbitration by refusing consent. In fact, this requirement is curable, as it remains possible to obtain such consent subsequently and thereby regularise the proceedings. Therefore, non-compliance with Clause 10.2 of the JVA is not a jurisdictional issue.

³⁷ Supra, II(A)(i)(a).

³⁸ *C v. D* [2007] ArbLR 10.

³⁹ Gary B. Born, Maria Šćekić, *Pre-Arbitration Procedural Requirements: ‘A Dismal Swamp’*, PRACTISING VIRTUE: INSIDE INTERNATIONAL ARBITRATION (OXFORD UNIVERSITY PRESS, 2015).

b. In any case, Clause 10.2 is not a condition precedent to arbitration.

- 18.** Regardless of whether this Tribunal holds that the pre-arbitral condition is an issue of admissibility or jurisdiction, non-compliance with Clause 10.2 would not bar the present proceedings. As established, pre-pre-arbitral steps only constitute condition precedents when the arbitration agreement contains explicit language establishing both specific procedural requirements and defined consequences for non-compliance with the pre-arbitration requirements.⁴⁰
- 19.** The mere usage of the word “shall” does not render a pre-arbitral condition a condition precedent.⁴¹ The existence of a definite time frame⁴² is crucial to determine whether the condition is precedent to the arbitration.
- 20.** In the present case, Clause 10.2 contains that proceedings “shall NOT” commence before obtaining the consent of the Minister of economic policy, foreign investments and trade of Aurion, it is not sufficiently clear as to the time frame within which such consent has to be provided. Further, the consequence of not obtaining the consent is not provided. Therefore, clause 10.2 is not a mandatory precondition to arbitration and should not bar the present proceedings.

⁴⁰ Supra, II(A)(i)(b).

⁴¹ Wah (a.k.a. Alan Tang) & Anor v. Grant Thornton International Ltd & Ors. [2013] 1 All ER 1226; Children’s Ark Partnerships Limited v. Kajima Construction Europe (UK) Limited and Kajima Europe Limited [2022] EWHC 1595 (TCC); C v. D [2007] ArbLR 10.

⁴² Emirates Trading Agency v. Prime Mineral Exports [2014] EWHC 2104.

ii. **In arguendo, Clause 10.2 is not valid since it is an asymmetrical clause.**

21. There is established consensus that in international arbitration the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.⁴³ This principle also extends to the drafting of the arbitral procedure.⁴⁴ Asymmetrical clauses vesting the authority to initiate arbitration with solely one party have been held to be contrary to the principle of equal treatment.⁴⁵ Courts have invalidated asymmetric arbitration agreements for their inherent inequality⁴⁶ and unconscionable nature.⁴⁷
22. In the present case, Clause 10.2 gives the RESPONDENT'S state minister the sole power to authorise "any proceedings, claims or suits". The CLAIMANT state has no corresponding right to authorise proceedings against the Respondent. This imbalance effectively grants a veto to the Respondent vitiating the principle of equal treatment. Therefore, even if Clause 10.2 were to be considered a precondition to arbitration, its one-sided nature makes it invalid and incapable of barring the present proceedings.

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

23. It is the submission of the CLAIMANT that the RESPONDENT has breached the JVA because *first*, there is evidence of forced labour [A]; *second*, the actions of the RESPONDENT amount to modern slavery [B]; and *third*, RESPONDENT did not file the proper workforce audits [C].

⁴³ UNCITRAL Model Law on International Commercial Arbitration, 1985, Article 18.

⁴⁴ H. M. Holtzmann and J. E. Neuhaus, *A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary*, KLUWER LAW INTERNATIONAL (1989).

⁴⁵ *Emmons International Ltd. v. Metal Distributors (UK)* and Anr. 2005 (1) CTLJ 39 Del; *Lucent Technology v. ICICI Bank* 2009 SCC OnLine Del 3213.

⁴⁶ *X v. Banque Privee Edmond de Rothschild Europe (Societe)* [2013] I.L.Pr. 12; *Maxi Scherer and Sophia Lange 'The French Rothschild Case: A Threat for Unilateral Dispute Resolution Clauses?'* Kluwer Arbitration Blog, 2013; Bulgaria No. 1193/2010.

⁴⁷ *United States v. Consigli Constr. Co.* 873 F. Supp. 2d 409 (D. Me. 2012); *Armendariz v. Foundation Health Psychcare Servs Inc.* 99 Cal. Rptr. 2d 745 (2000).

A. THERE IS EVIDENCE OF FORCED LABOUR.

24. The CLAIMANT submits that the RESPONDENT has breached the JVA because there is evidence of forced labour. By employing labour and not adhering to the laws that required compliance, the constituents of forced labour stand fulfilled [i]; the labourers have not voluntarily consented to work [ii]; there is a threat of ‘menace of penalty’ [iii]; *and in arguendo*, the state cannot mandate its citizens to engage in forced labour [iv].

i. There are indicators of forced labour in the present case.

25. Art. 2(1) of the Forced Labour Convention, 1930 (No. 29) [“FLC”] defines forced labour as the work or service that is being exacted from any person for which the said person has not offered himself voluntarily and under a ‘menace of any penalty’.⁴⁸ This definition comprises of three main elements: some form of work or service is provided; the work is undertaken involuntarily, and the work being performed by the individual is under a threat of physical, psychological or financial penalty.⁴⁹ The Abolition of Forced Labour Convention, 1957 (No. 105) calls for a complete abolition for using forced labour as a method of mobilising and using labour for the purposes of economic development.⁵⁰

26. The International Labour Organisation [“ILO”] provides eleven indicators that prove the work or service rendered to be forced labour.⁵¹ These indicators include imposing restrictions on the workers’ freedom of movement, denying them wages or withholding their identity documents, threats and intimidation or fraudulent debt from which workers cannot escape can amount to forced labour, and ultimately modern slavery.⁵²

⁴⁸ Art. 2(1), Forced Labour Convention, 1930 (No. 29), adopted 28 June 1930, entered into force 1 May 1932.

⁴⁹ *Id.*

⁵⁰ Art. 1(b), Abolition of Forced Labour Convention, 1957 (No. 105), adopted 25 June 1957, entered into force 17 January 1959.

⁵¹ Measurement of Forced Labour: A Statistical Manual for Survey Design and Data Collection, INTERNATIONAL LABOUR ORGANISATION, 2013.

⁵² *Id.*

27. *In casu*, the Independent Investigative Committee [“IIC”] findings reported that the workers were working beyond the regular hours due to threats of wages being cut.⁵³ Moreover, workers also mentioned that they had to skip breaks or meals to meet the deadlines.⁵⁴ The living conditions were also subpar⁵⁵ and the workers had to pay a recruitment fees of 500 USD.⁵⁶ Further, the passports of the workers were withheld,⁵⁷ and no passport was ever returned to any workers, despite multiple requests.⁵⁸ These instances are systematic violations of Clause 4.2(f) of the JVA which required the RESPONDENT to ensure legal compliance to the labour laws.⁵⁹ Therefore, there has been a breach of the JVA.

ii. There is involuntariness by the labourers.

28. The second element that causes forced labour is the involuntariness to work by the labourers.⁶⁰ A voluntary offer to work includes an explicit consent to work, without any external constraints and indirect coercion.⁶¹ If the workers find themselves in a position where they cannot revoke their consent to work subsequently, owing to legal physical or psychological coercion, then such consent is not free.⁶²

29. Forced labour is defined by the nature of the work relationship between the employee and employer.⁶³ Art. 1(3) of the ILO Protocol of 2014 to FLC provides that involuntariness is a situation when a worker would leave if given the choice to say ‘no’.⁶⁴ Therefore, this

⁵³ Moot Problem, ¶47 (c).

⁵⁴ Moot Problem, Exhibit 10, Page 2, ¶3.4.

⁵⁵ Moot Problem, Exhibit 10, Page 3, ¶3.5.

⁵⁶ Moot Problem, Exhibit 10, Page 3, ¶3.6.

⁵⁷ *Id.*

⁵⁸ Clarifications to the Moot Problem, ¶3.

⁵⁹ Moot Problem, Exhibit 4, Page 4, Clause 4.2 (f).

⁶⁰ *Ibid.*

⁶¹ C.N. and V. v. France, No. 67724/09 (2012).

⁶² Chapter 1, The Concept of Forced Labour: Emerging Issues, from the Cost of Coercion, Global Report on Forced Labour, INTERNATIONAL LABOUR OFFICE, <https://www.ilo.org/publications/cost-coercion-global-report-forced-labour-2009>, 12 May, 2009.

⁶³ *Id.*, ¶26.

⁶⁴ Art. 1(3), Protocol of 2014 to the Forced Labour Convention, 1930, adopted 11 June 2014.

element comprises of two parts: whether the consent to work was in fact freely given, and whether the worker retains the ability to revoke his or her consent.⁶⁵

30. In the present case, the workers did not have the freedom to leave the work because their identity documents were confiscated by the RESPONDENT.⁶⁶ Despite multiple requests, the same were not returned citing vague reasons.⁶⁷ Moreover, the workers had to work overtime in order to gain bonuses, which were not provided in the normal course of employment.⁶⁸ Therefore, the workers had been forced to continue their employment with a lack of free will, thereby construing forced labour. Hence, the RESPONDENT has breached the JVA.

iii. There is a ‘menace of penalty’.

31. For the third element, there must be a menace of penalty for the labourers.⁶⁹ The penalty can be penal sanctions, loss of rights, or even privileges. As per the *Case of Chowdhary v. Greece*, penalties can include physical violence, restraint, threats, financial penalties, and the confiscation of the identity documents like visa or passport.⁷⁰

32. ILO supervisory bodies have recognised that psychological coercion also amounts to the menace of a penalty.⁷¹ In the case of *Bandhua Mukti Morcha*, this term was interpreted to mean economic compulsion.⁷² If the work is extracted under a threat of penalty, then there is a presence of menace of penalty.⁷³

33. In the present case, 54% of the workers reported that overtime was imposed in order to meet the KPIs, and the failure to comply with it resulting in deduction of wages.⁷⁴ Further,

⁶⁵ Renee Colette Redman, *The League of Nations and the Right to Be Free from Enslavement: The First Human Right to Be Recognized as Customary International Law*, *Chicago-Kent Law Review*, 70, 759 – 804.

⁶⁶ Moot Problem, Exhibit 10, Page 3, ¶3.6.

⁶⁷ Clarifications to the Moot Problem, ¶3.

⁶⁸ Moot Problem, Exhibit 10, Page 2, ¶3.4.

⁶⁹ Art. 2(1), *Forced Labour Convention*, 1930 (No. 29), adopted 28 June 1930, entered into force 1 May 1932.

⁷⁰ *Chowdhary and Others v. Greece*, No. 21884/15 (2017).

⁷¹ International Labour Organization (ILO), *Report of the Committee set up to examine the Article 24 representation concerning Portugal* (1985), para. 97,

⁷² *Bandhua Mukti Morcha v. Union of India*, 1984 SCC (3) 161.

⁷³ *Van der Mussele v. Belgium*, No. 8919/90 (1983).

⁷⁴ Moot Problem, Exhibit 10, Page 2, ¶3.4.

workers would regularly skip meals and breaks to meet their targets.⁷⁵ Furthermore, their identity documents were confiscated to ensure mandatory attendance at work and monitoring.⁷⁶ Thus, the workers had been working in the fear of penalisation, which constitutes forced labour by the RESPONDENT. Therefore, there is a breach of the JVA.

iv. **In arguendo, the state cannot mandate its citizens to undertake compulsory labour in the name of development.**

34. Forced labour includes the work that is forced upon the citizens by the state authorities.⁷⁷

The FLC imposes a specific obligation upon the States to never impose forced labour as a means of mobilising labour for economic development.⁷⁸

35. In the present case, even assuming that RESPONDENT indirectly mandated such practices via political pressures, it remains impermissible. The RESPONDENT has an even greater obligation to avoid infringing these standards. Its failure to uphold this duty and exercising forced labour through the use of a connected entity and the withholding of passports is a violation of international labour laws. Hence, the obligations of the JVA are breached.

B. **NEVERTHELESS, THERE IS MODERN SLAVERY OF THE LABOURERS.**

36. Modern slavery is defined as “when an individual is exploited by others, for personal or commercial gain, and is tricked, coerced, or forced, thereby losing their freedom. This includes but is not limited to human trafficking, forced labour and debt bondage.”⁷⁹ It is an umbrella concept which involves the deprivation of basic human freedom.⁸⁰ Modern slavery is when the labourers are exploited [i]; coerced [ii]; under the control of the

⁷⁵ *Id.*

⁷⁶ Moot Problem, Exhibit 10, Page 2, ¶3.4.

⁷⁷ Mini Action Guide on Forced Labour, INTERNATIONAL TRADE UNION CONFEDERATION, https://www.ituc-csi.org/IMG/pdf/guide_forced_labour_EN.pdf, May 2008.

⁷⁸ International Labour Organisation, Questions and Answers on Forced Labour, <https://www.ilo.org/resource/article/questions-and-answers-forced-labour#:~:text=Various%20indicators%20can%20be%20used,from%20which%20workers%20cannot%20escape,2008>.

⁷⁹ Anti-Slavery International, What is Modern Slavery?, <https://www.antislavery.org/slavery-today/modern-slavery/>

⁸⁰ Jesse Sage, *Enslaved: True Stories of Modern Day Slavery*, ST. MARTIN'S GRIFFIN (27 MAY, 2008).

employers [iii] and their personal vulnerabilities are misused [iv]. Lastly, all these must be in continuum [v].

i. There is exploitation of the labourers.

37. The first element of modern slavery is exploitation.⁸¹ Exploitation is when an individual produces output and is not compensated in proportion to the value of that output.⁸² Illegal exaction of labour in the fear of exploitation is punishable as a penal offence.⁸³ Exploitation in the work place can be identified by different factors, like abusive recruitment practices,⁸⁴ slavery, forced marriage, and forced labour.⁸⁵

38. In the present case, the workers in the IIC Report mentioned that if overtime work did not meet the stipulated KPIs, then wages were deducted.⁸⁶ Moreover, they had been provided with congested dormitories, where 4 to 6 people lived in a single 185-square-foot room.⁸⁷ These actions are evidences of exploitation practiced upon the labourers, proving the exercise of modern slavery.

ii. There is coercion exerted upon the workers.

39. Coercion exerted can be of two types individual and systematic.⁸⁸ Such coercion can comprise of both physical and psychological coercion.⁸⁹ Moreover, the Palermo Protocol emphasises that coercion of employees includes tying a worker's visa and work permit to

⁸¹ Kahan Onur Arslan, Perspective Chapter: Legal Definition of Modern Slavery, 2024.

⁸² Bales K, Trodd Z, Williamson AK., MODERN SLAVERY: THE SECRET WORLD OF 27 MILLION PEOPLE (OXFORD 2009).

⁸³ Art. 25, Forced Labour Convention, 1930 (No. 29), adopted 28 June 1930, entered into force 1 May 1932.

⁸⁴ Chapter 1, The Concept of Forced Labour: Emerging Issues, from the Cost of Coercion, Global Report on Forced Labour, INTERNATIONAL LABOUR OFFICE, <https://www.ilo.org/publications/cost-coercion-global-report-forced-labour-2009>, 12 May, 2009.

⁸⁵ Australian Human Rights Institute, What is Modern Slavery?, UNSW Sydney, <https://www.humanrights.unsw.edu.au/research/modern-slavery>.

⁸⁶ Moot Problem, Exhibit 10, Page 2, ¶3.4.

⁸⁷ Moot Problem, Exhibit 10, Page 2, ¶3.5.

⁸⁸ Roger Plant, Modern Slavery: The Concepts and Their Practical Implications, International Labour Office Working Paper, 3 – 19.

⁸⁹ *Id.*

a single employer, withholding wages or monetary penalties.⁹⁰ Further examples can be working excessive overtime, beyond legal or code of conduct limits, charging illegal recruitment fees, underpayment of wages and confiscating documents and passports.⁹¹

40. In the present case, it is revealed that the workers had been subjected to extreme coercion by being forced to work overtime for potential bonuses.⁹² Further, the overtime had been underreported by almost 10,000 hours.⁹³ Furthermore, the workers were not free to revoke their consent to work because they did not have access to their identity documents.⁹⁴ Hence, the workers were subjected to coercion, constituting the practice of modern slavery.

iii. The workers are under the control of the RESPONDENT.

41. The second element of modern slavery is the control exerted by the employer.⁹⁵ A relationship of domination arises from the lack of free will of the labourer, leading to curtailment of their freedom.⁹⁶ Such control is not supported by law and constitutes a crime.⁹⁷ Further, the tools of maintaining this control are violence and manipulation, threats, and psychological coercion.⁹⁸

42. In the present case, control was exerted through coercive practices such as the threat of wage cuts for failure to meet production KPIs, as identified in the IIC report.⁹⁹ Workers' inability to freely reject overtime and their willingness to forgo breaks reflect a pattern of indirect compulsion.¹⁰⁰ This "de facto" control is indicative of modern slavery.

⁹⁰ Australian Government, 'Resources', Modern Slavery Register, Attorney-General's Department, <https://modernslaveryregister.gov.au/resources/>.

⁹¹ *Id.*

⁹² Moot Problem, Exhibit 10, Page 2, ¶3.4.

⁹³ Moot Problem, ¶56.

⁹⁴ Moot Problem, ¶47 (e).

⁹⁵ Bruno Lamas, Modern Slavery in the Global Economy, SPRINGER NATURE LINK (15 June, 2023).

⁹⁶ Getgen Kestenbaum, Jocelyn, Prohibiting Slavery & the Slave Trade, Virginia Journal of International Law, 63, 1 – 46.

⁹⁷ A. Y. Rassam, International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach, Penn State International Law Review, 23, 809.

⁹⁸ *Id.*

⁹⁹ Moot Problem, Exhibit 10, Page 2.

¹⁰⁰ Moot Problem, ¶47 (c).

iv. **The personal vulnerability of the labourers is misused.**

43. Personal vulnerability is when the person being exploited does not choose to free themselves, despite knowing that they are being exploited.¹⁰¹ Some of the basic qualities that modern slave owners have been on a look out for in their slaves is their conditions: weak, poor, and deprived, such that they can be deceived easily.¹⁰²

44. Personal vulnerability is when a person's free will is weakened by deception or coercion.¹⁰³ Employers exert their monetary influence, and economically exploited the workers.¹⁰⁴

45. In the present case, the workers were from economically disadvantaged backgrounds, recruited through BWS under promises of competitive salaries and stable employment.¹⁰⁵ Moreover, predominantly, 92% of the workers were from Northern Aurion, which is an underdeveloped region.¹⁰⁶ However, they faced exploitative recruitment fees, congested housing, and financial penalties.¹⁰⁷ These workers' socio-economic vulnerabilities were knowingly leveraged, thereby construing modern slavery.

v. **The workers are subjected to modern slavery in continuum.**

46. Modern slavery is best understood as existing on a continuum of exploitation, coercion, dominance and misuse.¹⁰⁸ Practices that create the risks of modern slavery can occur at any time in the labour cycle, including recruitment, employment and exit.¹⁰⁹

¹⁰¹ Benjamin Whitaker, Special Rapporteur, Report on Slavery, U.N. Doc. E/CN.4/Sub.2/1982/20/Rev. 1, U.N. Salesianum No. E.84/XIV. 1, (U.K.).

¹⁰² *Id.*

¹⁰³ International Labour Organization, *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement, Special Action Programme to Combat Forced Labour*, March 2005.

¹⁰⁴ OECD et al., *Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains*, OECD Publishing, Paris, 2019, <https://doi.org/10.1787/e3b4ea29-en>.

¹⁰⁵ Moot Problem, ¶38.

¹⁰⁶ Additional Clarifications, Moot Problem, Question 6.

¹⁰⁷ Moot Problem, Exhibit 10, Page 2.

¹⁰⁸ Justine Nolan, Modern Slavery in Global Supply Chains, *Encyclopaedia of Business and Professional Ethics*, Springer, Cham, 22 – 24.

¹⁰⁹ *Id.*

47. In the present case, with the growing demand and success of the project, the workers had to continue working for longer hours, as seen from the underreported overtime report.¹¹⁰ Such workers were constantly subjected to wage cut threats if the deadlines were not met.¹¹¹ Moreover, with no specific timelines for returning the identify documents,¹¹² the RESPONDENT knowingly engaged in the practice of modern slavery, thereby breaching the JVA.

C. THE FAILURE OF FILING PROPER WORKFORCE AUDITS IS A BREACH OF THE JVA.

48. The labour brokers and recruitment agencies also bear equal responsibility for coercion and exploitation of contracted workers.¹¹³ When these agents treat vulnerable people with force or deception, such activities are considered as modern slavery.¹¹⁴ There is a particular focus on recruitment and recruitment agencies as organised crime syndicates due to their means, process and purpose of employing poor workers for exploitation.¹¹⁵ As per Art. 2 of the 2014 Protocol to the FLC, labour inspection, due diligence and recruitment processes must be strengthened such that the labourers are not exploited.¹¹⁶

49. In the present case, the IIC flagged significant issues with the workforce audits submitted by ASI with respect to number of workers involved in overtime.¹¹⁷ Moreover, it was subsequently found that the actual overtime hours were underreported by almost 10,000 hours.¹¹⁸ As per the collaboration clause of the Service Agreement, the timely submission of these workforce audits, compliance reporting and concerns related to employment

¹¹⁰ Moot Problem, ¶56.

¹¹¹ Moot Problem, Exhibit 10, Page 2, ¶3.4.

¹¹² Additional Clarifications, Moot Problem, Question 3.

¹¹³ Roger Plant, Modern Slavery: The Concepts and Their Practical Implications, International Labour Office Working Paper, 3 – 19.

¹¹⁴ Justine Nolan, Modern Slavery in Global Supply Chains, Encyclopaedia of Business and Professional Ethics. Springer, Cham, 22 – 24.

¹¹⁵ The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons, UNITED NATIONS OFFICE ON DRUGS AND CRIME, https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf, 2015.

¹¹⁶ Art. 2(1), Forced Labour Convention, 1930 (No. 29), adopted 28 June 1930, entered into force 1 May 1932.

¹¹⁷ Moot Problem, ¶47 (f).

¹¹⁸ Moot Problem, ¶56.

conditions was a joint responsibility of the BWS and RESPONDENT.¹¹⁹ Therefore, the failure to submit proper workforce audits constitutes a violation of Clause 4.2 (b) of the JVA.¹²⁰

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

50. The CLAIMANT submits that the termination of the JVA is lawful because the RESPONDENT has failed to maintain a proper labour standard that constitutes a fundamental breach of the JVA [A]; and owing to the fundamental breach, the contract has to be terminated [B].

A. FAILURE TO MAINTAIN A PROPER LABOUR STANDARD CONSTITUTES A FUNDAMENTAL BREACH OF THE JVA.

51. Art 7.1.1 of the UNIDROIT principles ("UPICC") define 'non-performance' as the failure by a party to perform any of its obligations under the contract, inclusive of defective or delayed performance.¹²¹ The JVA has to be terminated because there is a breach of the contract [i] which has resulted in detriment for the CLAIMANT [ii] that was reasonably expected to be derive out of the contract [iii].

i. There was a breach of the contract.

52. The primary element establishing a fundamental breach is the presence of a contractual breach. The non-performance of a contractual obligation or the failure to comply with certain specified obligations can constitute a breach of the contract.¹²² A fundamental breach is a qualificator condition, where the innocent party may terminate the contract without referring to the facts or the circumstances.¹²³

¹¹⁹ Moot Problem, ¶39.

¹²⁰ Moot Problem, Exhibit 4, Page 4, Clause 4.2 (b).

¹²¹ Art 7.1.1, UNIDROIT Principles of International Commercial Contracts, 2016.

¹²² ICC Case No. 2583, 1976.

¹²³ Eduardo Grebler, Fundamental Breach of Contract under the CISG: A controversial Rule, Proceedings of the Annual Meeting (American Society of International Law), 101, 407-413.

53. Further, in case a party has failed to perform its obligations, the other party may withhold their part of obligations.¹²⁴ Performances are to be exchanged under an exchange of promises.¹²⁵ Furthermore, the breach must be of more than ‘slight importance’, therefore justifying the subsequent termination of the contract.¹²⁶

54. In the present case, as per Clause 4.2 of the JVA 2, the RESPONDENT was to be responsible for securing all the regulatory approvals, operational permits, and compliance certifications that were required for the establishment and operations of ASI.¹²⁷ Further, they were tasked with ensuring full compliance with all the applicable labour and employment laws.¹²⁸ The findings by the IIC Report found that several workers were working beyond the regular working hours due to the threats of wages being cut.¹²⁹ Furthermore, the passports of some workers were also being withheld.¹³⁰ Even the number of workers involved in the overtime and the hours of overtime went unreported,¹³¹ owing to which, ASI’s operating license was suspended,¹³² and a fine of USD 500 million was imposed.¹³³ The failure of the RESPONDENT to comply with the international standards is a violation of Clause 4.2, and 6, thereby causing a breach of the contract.

ii. The breach constituted a substantial deprivation from the contract.

55. As held in the case of *Smeaton Hanscombe v. Sassoon I. Setty (No. 1)*, fundamental breach of a contract is something that goes to the very root of the contract.¹³⁴ Further, as per the

¹²⁴ J Crawford and S Olleson, The Exception of Non-Performance: Links between the Law of Treaties and the Law of State Responsibility, Australian Year Book of International Law, 21, 55.

¹²⁵ American Law Institute, Restatement (Second) of Contracts §237, 1979.

¹²⁶ KMC Brahmaputra Infrastructure Limited v. The Chief Engineer, Roads & Bridges Department, Government of Sikkim, 2022 SCC OnLine Sikk 130.

¹²⁷ Moot Problem, Clause 4.2 (b), page 4.

¹²⁸ Moot Problem clause 4.2 (f) page 4.

¹²⁹ Moot Problem, ¶47 (c).

¹³⁰ Moot Problem, ¶47 (e).

¹³¹ Moot Problem, ¶47 (f).

¹³² Moot Problem, ¶50.

¹³³ Moot Problem, ¶56.

¹³⁴ *Smeaton Hanscombe v. Sassoon I. Setty (No. 1)*, [1953] 1 W.L.R. 1468.

case of *Caspiana*, such a breach must have caused substantial detriment to the other party.¹³⁵ Hence, the primary rational is whether the breach substantially deprived the innocent party of the benefit that they otherwise would have anticipated to receive from the contract.¹³⁶

56. Detriment is defined as any current or forthcoming unfavourable result that is arising due to the contractual breach.¹³⁷ Examples of detriment include intangible or semi-intangible interests like reputation, inconvenience and disappointment.¹³⁸ The emphasis is posed on the interplay between the contractual delineation of the interests of the promisee and the consequences of breach of contract.¹³⁹

57. In the present case, the CLAIMANT had invested USD 1.2 billion in the JVA that would drive technological advancement and economic growth.¹⁴⁰ The aim was to position ASI as the leading manufacturing facility for semiconductors, and generate profits.¹⁴¹ However, with the conduct of RESPONDENT, the operating license of ASI was suspended, resulting in a three-week lag in fulfilling the orders of major international clients.¹⁴² This led to contractual penalties and downgraded projections for ASI, along with key reputational damages.¹⁴³ The USD 500 million penalty accorded by the government of Aurion further intensified the losses faced by the CLAIMANT, thereby depriving them of the original benefit that they would have attained from the JVA. Therefore, there has been a substantial

¹³⁵ *Caspiana (G. H. Renton), Ltd. v. Palmyra Trading Corporation of Pana*, [1956] 2 W.L.R. 232.

¹³⁶ *Id.*

¹³⁷ Article 7.3.1(2)(a), UNIDROIT Principles of International Commercial Contracts, 2016.

¹³⁸ Michael Bridge, Avoidance for fundamental breach of contract under the UN Convention on the International Sale of Goods, *International & Comparative Law Quarterly*, 59, 911 – 940.

¹³⁹ T Naud and G Lubbe, Cancellation for “Material” or “Fundamental” Breach, A Comparative Analysis of South African Law, the UN Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles, *Stellenbosch Law Review*, 12, 371.

¹⁴⁰ Moot Problem, ¶29.

¹⁴¹ *Id.*

¹⁴² Moot Problem, ¶51.

¹⁴³ *Id.*

deprivation from the benefits that the CLAIMANT had been entitled to incur at the time of conclusion of the contract.

iii. The breach was not unforeseeable.

- 58.** The notion of fundamental breach further depends on the notion of foreseeability of the result.¹⁴⁴ If the detriment experienced by the party was foreseeable, the contract will be terminated owing to the breach. In the scenario where it is evident that the party will not be complying with the contract, or where it becomes apparent because of any subjective circumstances, the same shall render the contract being terminated.¹⁴⁵
- 59.** Foreseeability of a breach is determined by the test of a reasonable man.¹⁴⁶ Foreseeability of a breach is seen from the perspective of a person of the same kind, doing the same business, within the same function, and in the same circumstances.¹⁴⁷
- 60.** In the present case, at the time of initial negotiations of the JVA, President Ho, on behalf of the RESPONDENT, had made several representations in closed-door discussions of the stability and the independence of the local investment partners.¹⁴⁸ Further, as per Clause 4.2 (f), the RESPONDENT was responsible for ensuring full compliances with all applicable labour and employment laws.¹⁴⁹ Therefore, by the report of IIC, the deviance from the labour standards, that led to the suspension of the license and the subsequent contractual penalty, was within the scope of RESPONDENT'S obligations. The failure to fulfil their obligations has caused a foreseeable breach of the contract.

¹⁴⁴ Gerhard Lubbe, Fundamental breach under the CISG: A source of fundamentally divergent results, *The Rabel Journal of Comparative and International Private Law*, 444 – 472.

¹⁴⁵ ICC Case No. 9978, 1999.

¹⁴⁶ Andrew Babiak, Defining “Fundamental Breach” Under the United Nations Convention on Contracts for the International Sale of Goods, *Temple International and Comparative Law Journal*, 6, 122.

¹⁴⁷ M Mustill, *The New Lex Mercatoria: The First Twenty-Five Years*, *Arbitration International*, 4, 86 – 113.

¹⁴⁸ Moot Problem, ¶10.

¹⁴⁹ Moot Problem, Exhibit 4, Page 4, Clause 4.2 (f).

B. OWING TO A FUNDAMENTAL BREACH, THE CONTRACT HAD TO BE TERMINATED.

61. As per the principle of *inadimplenti non est adimplendum*, a party that is not performing their part of an agreement is not entitled to demand performance from the other party.¹⁵⁰ Art 7.3.1 (1) of the UPICC states that the party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.¹⁵¹
62. As per the ICC Award No. 2321, a serious breach gives rise to a right of termination.¹⁵² The conduct of the party that runs against the terms of contract affords the aggrieved party grounds for termination of the contract.¹⁵³ Moreover, the tribunal, in the ICC Case No. 4629 of 1999, held that when the Respondents had breached their obligations, they could not reasonably expect or insist the Claimants to dispense their obligations in the contract. Further, the breach of obligations entitled the Claimants a fortiori to terminate the contract.¹⁵⁴
63. In the present case, Clause 8.1 of the JVA specifically mentions that in the event of a fundamental non-performance or a breach of the agreement, the parties may terminate the contract.¹⁵⁵ The failure to maintain compliance with the labour standards, as corroborated within Clause 4.2 and 6.2 cause a breach of obligations of the RESPONDENT, thereby giving the CLAIMANT the right to relieve itself of the liability of the JVA. Further, as per Clause 8.5, the termination does not prejudice the CLAIMANT'S right to claim damages or seek compensation.¹⁵⁶ Therefore, the JVA was terminated by CDI owing to fundamental breach.

¹⁵⁰ The Permanent Court of Justice in the *Diversion of Water from the Meuse Case*, P.C.I.J. (Ser. A/B) No. 70.

¹⁵¹ Art 7.3.1, UNIDROIT Principles on International Commercial Contracts, 2016.

¹⁵² M Mustill, *The New Lex Mercatoria: The First Twenty-Five Years*, *Arbitration International*, 4, 86 – 113.

¹⁵³ Cour d'appel de Grenoble, *Calzados Magnanni v. SARL Shoes General International*, Case No. 313, 21 October 1999.

¹⁵⁴ *Id.*

¹⁵⁵ Moot Problem, Exhibit 4, Page 6, Clause 8.1.

¹⁵⁶ Moot Problem, Exhibit 4, Page 6, Clause 8.5.

PRAYER FOR RELIEF

In light of the submissions above, the CLAIMANT respectfully requests the Tribunal to declare that:

- I. The RESPONDENT is not entitled to invoke sovereign immunity in this arbitration.
- II. This arbitration is not premature and can commence even if the pre-arbitration steps are not complied with.
- III. The RESPONDENT has breached the JVA in relation to the labour practices.
- IV. The termination of the JVA by the CLAIMANT is lawful.
- V. The CLAIMANT is entitled to direct financial losses and reputational harm & long term-impact amounting to USD 742.5 million.

Respectfully submitted,
Counsels for Claimant