

20TH LAWASIA
INTERNATIONAL MOOT 2025

MEMORANDUM FOR CLAIMANT

ON BEHALF OF:

CALYX DREAMBOT INC
37 Everoak Lane
Lysoria, Veridia, 71504
(CLAIMANT)

AGAINST:

RIVUS MICROELECTRONICS
GROUP
Hall 12, Great Aurion Avenue,
Aurion, Central Administrative
Region, Capital of Aurion, 48210
(RESPONDENT)

INDEX OF AUTHORITIES	IV
STATEMENT OF JURISDICTION	1
QUESTIONS PRESENTED	2
STATEMENT OF FACTS	3
SUMMARY OF PLEADINGS	5
PLEADINGS	7
I. THE RESPONDENT IS NOT ENTITLED TO INVOKE STATE IMMUNITY.....	7
A. The Respondent is not protected by sovereign immunity.....	7
1. The Respondent cannot claim sovereign immunity under the United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 (“UNCSP”)	7
<i>i. The Respondent is not a “State”</i>	<i>7</i>
<i>ii. The JVA is a “commercial transaction”</i>	<i>8</i>
2. The Respondent is estopped from relying on the doctrine of state immunity	8
<i>i. There are clear and unequivocal representations that the Respondent is a commercially autonomous vehicle</i>	<i>9</i>
<i>ii. In the alternative, Aurion is obliged to uphold fair and equitable treatment to the Claimant under the BIT</i>	<i>9</i>
B. In any case, the Respondent has waived its right to state immunity.....	9
1. There is an explicit waiver of state immunity as the Respondent entered into the JVA.....	10
C. In the alternative, the Respondent has submitted to the jurisdiction of the Tribunal	10
1. The Tribunal has the authority to determine its own jurisdiction	11
2. There is a clear and unambiguous arbitration agreement in the JVA.....	11
3. The present disputes fall squarely within the arbitration agreement in the JVA	11
II. THE TRIBUNAL HAS JURISDICTION TO OVERHEAR THE CASE.....	12
A. There are no preconditions that need to be met.....	12
1. Parties never agreed that there were Clause 10 JVA was a precondition to arbitration	12
<i>i. Clause 10 JVA, including the requirement to negotiate, should not be read with Clause 11 JVA.....</i>	<i>12</i>
<i>ii. It is unclear from the contract whether negotiation was a precondition to arbitration.....</i>	<i>12</i>
2. The negotiation requirement under Clause 10 JVA is unenforceable	13
3. Alternatively, the negotiation clause is non-mandatory	13
B. In any event, the Claimant has satisfied Clause 10 JVA.....	14
1. The Claimant has honoured the 14 day cooling off period	14
2. The Claimant has complied with the negotiation requirement	14
3. Alternatively, further negotiations would have been futile	15
C. Alternatively, even if the Tribunal were to hold that mandatory preconditions were not met, this would not affect the jurisdiction of the court	16

1.	The modern approach treats such provisions as procedural.....	16
2.	Procedural defects do not extinguish the jurisdiction of the Tribunal.....	16
III.	THE RESPONDENT BREACHED THE JVA IN RELATION TO THE LABOUR PRACTICES.....	16
A.	The labour practices breached Clause 4.2 and 6.1 JVA	16
1.	There was a breach of Clause 4.2 JVA as the suspension of ASI's operating license was due to the contravention of local labour laws	17
B.	There was a breach of Clause 6.1 JVA as there was a contravention of Article 2(1) of the Forced Labour Convention	18
C.	The labour practices were brought about due to the Respondent's actions.....	20
1.	The Respondent had full autonomy of ASI's workers and had significant influence over BWS' operations.....	20
D.	The Respondent breached Article 1.8 PICC by causing the Claimant to engage BWS.....	20
E.	There was no interference by the Claimant under Article 7.1.2 PICC	21
IV.	THE CLAIMANT'S TERMINATION OF THE JVA WAS LAWFUL	22
A.	The Respondent's failure to ensure compliance with local laws and ethical labour standards was a fundamental non-performance of the JVA.....	22
1.	The Respondent breached its obligation under the JVA to ensure ASI's full compliance with all applicable labour and employment laws	22
2.	The Respondent's breach of the JVA was a fundamental non-performance that entitled the Claimant to terminate the JVA.	23
<i>i.</i>	<i>Substantial deprivation</i>	24
<i>ii.</i>	<i>Intentional or reckless</i>	24
<i>iii.</i>	<i>Cannot rely on future performance</i>	25
<i>iv.</i>	<i>Disproportionate loss</i>	25
B.	In the alternative, the suspension of ASI's operating license was a Force Majeure event that entitled the Claimant to terminate the JVA under Clause 8.3 JVA	26
1.	The suspension of ASI's operating license was a Force Majeure event.....	26
2.	The suspension of ASI's operating license altered the nature of performance of the contract, such that the Claimant was entitled to terminate the JVA	26
V.	PRAYER FOR RELIEF	27

INDEX OF AUTHORITIES

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<i>I Congreso del Partido</i> [1983] 1 AC 244	[5]
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ICC Case No. 7365 (1994)	[78]
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<i>State Development Corporation v. Ukraine</i> (SCC V2019/088)	[39]
<i>Sulamérica v. Enesa Engenbaria</i> [2012] EWHC 42	[30]
<i>Teinver SA v. Argentina</i> (ICSID Case No. ARB/09/1)	[39]
<i>Van der Musselle v Belgium</i> (App. no. 8919/80) [1983] ECHR 8919/80	[52]
<i>Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd</i> [2008] 3 SLR(R) 1029	[26]

Treaties, Conventions and Rules

Citation	Cited at Paragraphs
28 US Code	[18]
Canadian State Immunity Act	[18]
European Convention on State Immunity	[17]
Forced Labour Convention, 1930 (No. 29)	[50], [57]
Singapore International Arbitration Centre Rules	[42]
UK State Immunity Act	[18]
UNIDROIT Principles of International Commercial Contracts 2016	[10], [45], [61]-[65], [69], [73]-[74], [81]-[82], [85], [89]
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STATEMENT OF JURISDICTION

The Claimant submits the following facts and arguments before the Arbitral Tribunal constituted at the Asian International Arbitration Centre pursuant to Clause 11 of the Joint Venture Agreement and as requested at the preliminary meeting attended by the Parties.

QUESTIONS PRESENTED

The Arbitral Panel constituted at the Asian International Arbitration Centre pursuant to Clause 11 JVA requested for the parties to attend a preliminary meeting. At the said preliminary meeting, the parties agreed for a full hearing to be conducted where parties will be presenting arguments on the following issues:

- (i) Whether RMG is entitled to invoke sovereign immunity;
- (ii) Whether CDI's initiation of arbitration was premature;
- (iii) Whether RMG breached the JVA in relation to the alleged labour practices;
- (iv) Whether CDI's termination of the JVA was lawful.

STATEMENT OF FACTS

1. The Claimant is Veridian's largest semiconductor firm. The Respondent is an Aurion-based entity. Aurion and Veridia signed a Bilateral Investment Treaty ("**BIT**") in October 2022, intended to ensure fair treatment and regulatory stability for Veridian investors. This was particularly lauded by Aurion's government-controlled media. However, concerns arose regarding potential exploitation of Aurion's workforce due to weak labour protections.
2. The Claimant and Respondent signed a Joint Venture Agreement ("**JVA**") resulting in the creation of Aurion Semiconductor Inc ("**ASI**"). President Ho played a role in facilitating this partnership through his long-standing connection with Mr Suvan, Aurion's economic envoy in Veridia, who introduced the Claimant's CEO to President Ho and the Respondent's executives. Despite assurances of autonomy, the Respondent was closely tied to the Aurion government.
3. ASI established a semiconductor manufacturing facility in Northern Aurion, pushing for an accelerated 15-month completion schedule. This 15-month target became the de facto deadline under the supervision of the Joint Project Management Team ("**JPMT**"), which comprises representatives from both the Claimant and the Respondent. To meet this timeline and manage budget overruns, ASI, through the Respondent's recommendation, engaged Beta Workforce Solutions ("**BWS**") as a labour agency.
4. In September 2024, an investigative report surfaced alleging exploitative labour practices at ASI. This prompted a formal warning from Seratious, a major export market for Aurion, threatening an import ban. The Aurion government responded by forming an Independent Investigative Committee ("**IIC**"). The IIC's findings, published on 30th September 2024, confirmed issues such as overcrowded dormitories, excessive working hours, and withholding of passports.
5. Despite the IIC's findings, ASI's operating license was suspended for three weeks in October 2024 due to discrepancies in its workforce audit report. This suspension significantly impacted ASI's operations and reputation. The Claimant conducted its own internal investigation, revealing undisclosed close ties between BWS and the Respondent, creating a perceived conflict of interest.
6. On 11th October 2024, the Claimant's CEO issued stern warnings to the Respondent's CEO and Mr Suvan via WhatsApp, with no reply. ASI's operating license was lifted on 23rd October 2024 after the company submitted a revised workforce audit report.

7. Further review by the Aurion Ministry of Trade and Industry uncovered significantly underreported overtime hours, leading to a USD 500 million fine imposed on ASI on 16th December 2024.
8. Citing breaches of the JVA, including failure to ensure labour law compliance and erosion of trust, the Claimant terminated the joint venture agreement with the Respondent on 24th December 2024 and demanded that the Respondent bear the fine. On 28th December 2024, the Claimant again demands the Respondent pay the fine; the Respondent's CEO dismisses the claim, leading to an intervention by Mr Suvan.
9. The Respondent refused, leading the Claimant to initiate arbitration proceedings on 6th January 2025, alleging fundamental breach of the JVA and claiming financial losses of USD 742.5 million.

SUMMARY OF PLEADINGS

I. THE RESPONDENT IS NOT ENTITLED TO INVOKE STATE IMMUNITY

The Respondent cannot rely on sovereign immunity as it is not a “state” under the United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 (“**UNCSI**”); and the JVA is plainly a commercial transaction. Having represented itself as a commercially autonomous entity and induced the Claimant’s reliance, the Respondent is estopped from asserting immunity. Further, Aurion’s BIT obligations to ensure fair and equitable treatment further protect the Claimant’s legitimate expectations. In any event, the Respondent waived immunity by expressly agreeing to arbitration by signing the JVA and through its conduct, submitting to the Tribunal’s jurisdiction, empowered to decide on its own authority. Additionally, allowing the Respondent to retreat behind sovereign immunity would undermine contractual certainty, good faith, and the arbitral process.

II. THE COURT HAS JURISDICTION TO HEAR THE PRESENT CASE

Clause 10 JVA should be read as an alternative, rather than a precondition, to arbitration proceedings. Additionally, Clause 10 JVA is neither mandatory nor enforceable as a condition precedent to arbitration. It is aspirational in nature and, in any event, the Claimant complied with its terms by providing notice and an opportunity to negotiate. Further discussions would have been futile given the Respondent’s entrenched refusal to resolve the dispute. Finally, any non-compliance would go to admissibility, not jurisdiction, and is for the Tribunal to address within the arbitral process. The Respondent’s objection must therefore be dismissed.

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

The Respondent’s labour practices amounted to a breach under the JVA, which adopts the UNIDROIT Principles of International Commercial Contracts (“**PICC**”). The Respondent breached Clause 4.2(e) JVA by failing to ensure compliance with Aurion’s labour laws. These actions also contravened Clause 6.1 JVA, which requires adherence to international labour standards, particularly the Forced Labour Convention (“**FLC**”). The Respondent bears responsibility as it controlled ASI’s workforce, directed recruitment campaigns, and influenced BWS’s operations. It caused the Claimant to engage BWS, creating an understanding of pre-approval under Article 1.8 PICC, then acted inconsistently by shifting blame. Accordingly, the Respondent is liable for the breaches of the JVA.

IV. THE CLAIMANT'S TERMINATION JVA WAS LAWFUL

The Claimant lawfully terminated the JVA due to the Respondent's fundamental non-performance. Under Clause 4.2(f), the Respondent was obliged to ensure ASI's compliance with labour laws. BWS's underreporting of overtime hours led to a fine, depriving the Claimant of the regulatory stability central to the JVA. This breach was material and intentional, further evidenced by undisclosed conflicts of interest and the Respondent's failure to respond to concerns, thereby undermining trust in future performance. Termination was consistent with Clause 8.1 JVA and Article 7.3.1 PICC. Alternatively, ASI's three-week license suspension constituted a Force Majeure event under Clause 8.3 JVA and Article 7.1.7 PICC, as governmental action caused lasting operational, financial, and reputational harm, frustrating the contract's purpose and justifying termination.

PLEADINGS

I. THE RESPONDENT IS NOT ENTITLED TO INVOKE STATE IMMUNITY

A. The Respondent is not protected by sovereign immunity

1. The Respondent cannot claim sovereign immunity under the United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 (“UNCSI”)

1. Per the UNCSI, the Respondent must: (i) qualify as a “*State*” under Article 2; and (ii) be engaged in a non-commercial transaction to rely on immunity. The Respondent satisfies neither requirement.

i. The Respondent is not a “State”

2. Article 2 of the UNCSI defines “*State*” to include its organs, political subdivisions, and agencies or instrumentalities performing acts in the exercise of sovereign authority. The Respondent fails this test as:

a. It was not established by legislation nor expressly vested with sovereign authority;

b. It existed prior to the BIT and was not created as a state organ; and

c. Its primary activities were commercial in nature, not governmental.

3. Courts have stressed the distinction between an “*organ*” of the state and a separate legal entity engaged in commercial acts. In *Rabimtoola v Nizam of Hyderabad* [1958] AC 379 at [417], Lord Denning held that only an organ or alter ego of the state could avoid being impleaded; a separate legal entity engaged in commerce could not. Similarly, in *Gécamines v FG Hemisphere Associates LLC* [2012] UKPC 27, Lord Mance recognized that separate state-created trading entities do not enjoy blanket immunity but only a functional immunity for acts *jure imperii*.

4. On the facts, there was a clear representation that the Respondent was an “*autonomous vehicle*”¹ and that the state would not interfere with the dealings of the Respondent². The fact that it was not established through legislation also clearly points to the fact that it is not to be treated as a state for the purposes of sovereign immunity. Rather, it is clear that for the purposes of the claim in sovereign immunity, the Respondent should be treated as a separate legal entity. Therefore, the Respondent should not be accorded with the same presumption of sovereign immunity which states might enjoy under the UNCSI.

¹ Facts at [10]

² Facts at [25]

ii. The JVA is a “commercial transaction”

5. Per Article 10 of the UNCSI, states cannot rely on sovereign immunity in commercial transactions. The restrictive theory of immunity, affirmed in *I Congreso del Partido* [1983] 1 AC 244, distinguishes between sovereign acts (*jure imperii*) and commercial acts (*jure gestionis*).
6. Under the United Nations Commission on International Trade Law Model Law’s (“UNCITRAL”) interpretation of “commercial”, the term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Examples of commercial transactions listed under the footnote include investment, insurance, concessions as well as “joint ventures and other forms of industrial or business cooperation”⁴.
7. On the facts, the JVA falls squarely within the description of a commercial transaction. The JVA involved joint investment in facilities, research and development, mutual profit-making objectives and exchange of technology and resources⁵. In fact, the purpose of the JVA itself was to make a profit from the production of microchips⁶. Therefore, the purpose of the JVA was a commercial one, preventing the Respondent from relying on the doctrine of sovereign immunity.
8. Furthermore, as noted in *Kuwait Airways v Iraqi Airways* [1995] 1 WLR 1147, a governmental motive does not transform a commercial act into a sovereign one. It is the nature of the transaction that courts would consider. While governmental motives related to economic development may have been intertwined, they do not alter the fundamentally commercial nature of the transaction. Hence, although it is true that there were government motives involved in running the Respondent company, this in no way suggests that the nature of the JVA was a government related one that lent itself to sovereign immunity.

2. The Respondent is estopped from relying on the doctrine of state immunity

9. Having enjoyed the benefits from the JVA, the Respondent should not be allowed to assert sovereign immunity in bad faith after having agreed to arbitration and induced reliance on its consent.

³ UNCITRAL footnote 2

⁴ UNCITRAL footnote 2

⁵ Clause 4.1-4.2 JVA

⁶ Facts at [30]

i. There are clear and unequivocal representations that the Respondent is a commercially autonomous vehicle

10. Pursuant to the UNIDROIT Principles of International Commercial Contracts 2016 (“PICC”) Article 1.8, “a party cannot act inconsistently with an earlier conduct upon which the other party has reasonably relied to that party’s detriment”. Prior to entering the JVA, there was an assurance by the President that the Respondent was a “commercially autonomous vehicle”⁷. It was only by reliance on this assurance that the Claimant was induced to enter into a contractual relationship with the Respondent⁸. To claim sovereign immunity after making such a statement would be to operate in bad faith. The Respondent should not be allowed to renege on the representations that it had made – that the Respondent was not protected by state immunity.

ii. In the alternative, Aurion is obliged to uphold fair and equitable treatment to the Claimant under the BIT

11. Even if the Respondent could assert immunity in principle, Aurion is bound by its BIT obligations to accord fair and equitable treatment to the Claimant. Legitimate expectations created by the Respondent’s assurances must be protected.

12. President Ho had made a number of assurances that the local investment partners, especially the Respondent, were stable and independent from the local government⁹. These representations were made with the knowledge that the Claimant was concerned with “rigid state control”¹⁰. Therefore, it is clear that these representations were made with the intention and purpose of leading the Claimant to the reasonable conclusion that the Respondent would not be protected by the state. It was therefore a legitimate expectation that the Respondent could not invoke state immunity.

13. Under the BIT which requires that Aurion accord fair and equitable treatment to the Claimant, Aurion is bound to honour the representations that were made to the Claimant during the formation of the contract which induced the Claimant to enter into the contract.

B. In any case, the Respondent has waived its right to state immunity

14. By agreeing to arbitrate in writing and behaving in a manner wholly consistent with submission to arbitration, the Respondent has:

- a. Explicitly waived immunity for arbitration-related proceedings; and

⁷ Facts at [10]

⁸ Facts at [24]-[25]

⁹ Facts at [10]

¹⁰ Facts at [10]

- b. Implicitly waived it through conduct and is thereby estopped from relying on state immunity.

1. There is an explicit waiver of state immunity as the Respondent entered into the JVA

- 15. Per the court in *Deutsche Telekom AG and The Republic of India* [2023] SGHC (I) 7, the doctrine of sovereign immunity is not absolute and can be waived by the state through actions such as entering into agreements that submit disputes to arbitration. This decision reflects the general position that many courts around the world have affirmed. Most national courts have concluded that a state’s agreement to arbitrate constitutes a waiver of jurisdictional immunity, at least with respect to proceedings before the arbitration tribunal¹¹. The simple rationale for this position is that parties to an agreement should not be allowed to renege on a signed written agreement.
- 16. Under Clause 11 JVA, “*parties agree that any dispute relating to any matter arising out of and connected with this Agreement shall be determined by arbitration*”. This is clearly a written agreement to submit any disputes to arbitration. By entering into the agreement to arbitrate, the Respondent has explicitly waived its right to sovereign immunity during arbitration proceedings. Hence, the Respondent should no longer be allowed to rely on the doctrine of sovereign immunity.

C. In the alternative, the Respondent has submitted to the jurisdiction of the Tribunal

- 17. It is generally well established that where there is an arbitration agreement in the contract, parties lose the right to immunity as they have subjected themselves to the jurisdiction of the court. For example, pursuant to Article 12 of the European Convention on State Immunity, where a Contracting State has agreed in writing to submit a dispute arising out of a commercial or civil matter to arbitration, that State may not claim immunity from the jurisdiction of a court of another Contracting State on the territory or according to the law of which the arbitration has taken or will take place in respect of any proceedings relating to:
 - a. The validity or interpretation of the arbitration agreement;
 - b. The arbitration procedure; or
 - c. The setting aside of the award, unless the arbitration agreement otherwise provides.

¹¹ Gary B. Born, *International Commercial Arbitration* (3rd ed, Kluwer Law International, 2021) (“**Born**”) at Section 6.02[B][2][a]

18. This general position is similarly supported by numerous jurisdictions including the Canadian State Immunity Act s 4, the UK State Immunity Act Article 9(1) and the 28 US Code 1605(a)(6).

1. The Tribunal has the authority to determine its own jurisdiction

19. Under the principle of Kompetenz-Kompetenz, enshrined in Article 16 of the UNCITRAL and widely recognised in international arbitration practice, an arbitral tribunal has the authority to rule on its own jurisdiction, including objections with respect to the existence or validity of the arbitration agreement.

20. Sovereign immunity is a jurisdictional objection. Once the parties have entered into an arbitration agreement — as in Clause 11 JVA — the tribunal is empowered to determine whether that agreement is valid and whether it extends to the present dispute. This principle has been affirmed in numerous jurisdictions, ensuring that preliminary objections such as immunity are not used to derail the arbitral process at the outset.

21. Accordingly, even if the Respondent asserts sovereign immunity, the tribunal retains the mandate to examine and decide this question in the first instance, in line with international best practice.

2. There is a clear and unambiguous arbitration agreement in the JVA

22. Under the JVA, there was a clear agreement between the Respondent and the Claimant as explained above that disputes were to be settled through arbitration. The seat and place of arbitration were also clearly stated in the contract. Therefore, the Respondent has clearly agreed to be subject to the jurisdiction of the Tribunal with the seat of arbitration in Aurion. The Respondent can no longer claim immunity from the validity of the arbitration agreement nor the arbitration procedure.

3. The present disputes fall squarely within the arbitration agreement in the JVA

23. Under Clause 11 JVA, *“parties agree that any dispute relating to any matter arising out of and connected with this Agreement shall be determined by arbitration”*. The Respondent might argue that the dispute does not fall within the arbitration agreement as it is not connected to nor arising from the joint venture agreement. However, this is unlikely to be true.

24. In this dispute, the Claimant is claiming against the Respondent for the fine that was imposed as well as losses that were incurred from failing to align to local labour requirements. Under Clause 4.2(e) and (f) JVA, the Respondent is responsible for managing the recruitment of the

workforce as well as ensuring “*full compliance with all applicable labour and employment laws*”, respectively. The Respondent’s breach of this very obligation directly resulted in the losses, thereby giving rise to the dispute. Therefore, it can be said that the dispute falls squarely within the ambit of the arbitration agreement as the dispute is closely connected with the obligations arising from the Agreement.

II. THE TRIBUNAL HAS JURISDICTION TO OVERHEAR THE CASE

A. There are no preconditions that need to be met

1. Parties never agreed that there were Clause 10 JVA was a precondition to arbitration

i. Clause 10 JVA, including the requirement to negotiate, should not be read with Clause 11 JVA

25. Clause 10 JVA merely states that the parties “*agree to resolve any disputes ... amicably through negotiation*”. This is a separate clause from Clause 11 which states that “*parties agree that any disputes... shall be determined by arbitration*”. Both Clause 10 and Clause 11 are triggered by the same event – when disputes arise from the contract. These are separate and distinct clauses with no language linking Clause 10 to Clause 11.

26. It is a settled principle that courts should construe contracts based on the ordinary meaning of the language used in the agreement¹². Since there is no indication that Clause 10 is to be read with Clause 11 JVA, the two clauses should not be read together.

ii. It is unclear from the contract whether negotiation was a precondition to arbitration

27. In *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd* [2013] 1 SLR 973, the contract provided for dispute resolution through either litigation or arbitration. The court noted that if dispute resolution clauses provide two inconsistent paths, the interpretation is that one or the other applies, not both.

28. Given the ambiguity in the contract as to which method of dispute resolution takes precedence as both Clause 10 and Clause 11 JVA are triggered by the same contingency, the textual structure suggests that negotiations and arbitration can be taken as alternatives to each other, rather than as consecutive steps with jurisdictional consequences. On this reading, the Claimant was entitled either to pursue negotiations under Clause 10 or to proceed directly to arbitration under Clause 11, without first fulfilling the preconditions set out in Clause 10.

¹² *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029

2. The negotiation requirement under Clause 10 JVA is unenforceable

29. Alternatively, even if the parties intended Clause 10 JVA to impose an obligation, it is void for uncertainty. The Tribunal ought not to uphold the negotiation clause, given that its ambiguity creates uncertainty in its implementation. The provision sets no clear parameters for the negotiation process, leaving essential matters — such as the number of meetings, method of communication and definition of a successful negotiation — undefined. Without such specificity, there is no objective yardstick against which to measure compliance.
30. This principle is well established. In *Sulamérica v. Enesa Engenharia* [2012] EWHC 42, the EWHC found that a multi-tier dispute resolution clause was unenforceable where it lacked an agreed process for mediation. Further, in *Itex Shipping PTE Ltd v. China Ocean Shipping Co.* [1989] 2 Lloyd's Rep. 522, the court held that a clause requiring the parties to “*seek to settle disputes amicably*” was too uncertain to operate as a condition precedent to arbitration. Born similarly observes that most courts uphold the validity of agreements to negotiate only where there is a reasonably clear set of substantive and procedural requirements against which a party's negotiating efforts can be meaningfully measured¹³.
31. In the present case, there are no details within the contract as to what result must be reached for the negotiation phase to be considered complete. Neither are there sufficient details as to the procedures involved in the negotiation. Without procedural detail, there is no way to assess whether the parties have met their obligations. This uncertainty confirms that Clause 10 JVA cannot operate as a binding condition precedent.

3. Alternatively, the negotiation clause is non-mandatory

32. Although there is an agreement to negotiate, these agreements are generally held by courts to be non-mandatory and would not bar the Tribunal from having jurisdiction over the case. Per Born at [5.08][A][1][b]), where an agreement simply requires parties to resolve their disputes amicably or to “*mediate*” prior to submitting disputes to arbitration, these provisions should generally be regarded as aspirational rather than mandatory, and insufficiently certain or definite to be enforceable. In the words of one Tribunal, clauses requiring efforts to reach an amicable settlement, before commencing arbitration are “*primarily expressions of intention*” and

¹³ Born at [5.08][A][1.0][a]

*“should not be applied to oblige the parties to engage in negotiations or delay an orderly resolution of the dispute”*¹⁴.

33. Therefore, in this case, the Tribunal should find that the negotiation clause in Clause 10 of the contract is non-mandatory. This is especially so in this case since there were no imperative terms used in the contract. This suggests that the parties did not intend for the negotiation clause to be mandatory, as affirmed in Born at [5.08][A][1][b].

B. In any event, the Claimant has satisfied Clause 10 JVA

1. The Claimant has honoured the 14 day cooling off period

34. Even though it is argued that Clause 10 JVA is not construed as a precondition to arbitration, the Claimant nevertheless acted in good faith by providing written details of the dispute on two separate occasions. In its first letter to the Respondent, dated 24 December 2024, the Claimant expressly stated its intention to terminate the JVA, required the Respondent to bear the fine incurred, and cited reasons such as the erosion of trust. This decision and its underlying reasons were clearly communicated to the Respondent on that date. Arbitration proceedings were then commenced only 14 days later, on 16 January 2025, thereby satisfying the cooling-off period, even though the Claimant was under no contractual obligation to observe it.

2. The Claimant has complied with the negotiation requirement

35. The Claimant made efforts to reach out to the management of the Respondent on multiple occasions. Although there was no success, these attempts should be held to be sufficient to meet the negotiation requirement if such a requirement were to exist. The obligation to negotiate, even when binding, requires only that the parties make a genuine attempt to discuss their dispute; it does not oblige them to reach agreement. As *Hillas & Co. Ltd v. Arcos Ltd* [1932] All ER 494 illustrates, the law recognises that negotiations may legitimately fail without fault. Arbitral tribunals adopt the same pragmatic approach. For example, in ICC Case No. 10256, even minimal efforts to initiate discussions were held sufficient to satisfy a negotiation clause.

36. Therefore, as reasoned by Born at [5.08][A][3], even if the agreement to negotiate is *“both valid and mandatory”*, the obligations are usually *“very limited”*. There is also no requirement that the parties negotiate successfully nor reach any sort of agreement.

¹⁴ ICC Case No. 10256, as cited in Figueres, *Multi-Tiered Dispute Resolution Clauses in ICC Arbitration*, 14(1) ICC Ct. Bull. 82, 87 (2003)

37. The Claimant also made attempts to negotiate through online communications. This is evidenced by multiple WhatsApp messages sent to the ASI group chat, as shown in Exhibit 11. The content of the messages on 11 October 2024 indicates that there had already been prior correspondence between the Claimant and the Respondent's management concerning disputes over labour regulations, well before the written notice of 24 December 2024. However, these efforts were disregarded by the Respondent. Only after the Claimant's attempts to engage the Respondent via the group chat went unanswered did it proceed to initiate arbitration.
38. Accordingly, the Tribunal should find that the Claimant made genuine negotiation attempts prior to commencing arbitration, thereby fulfilling the requirements of Clause 10.1 JVA.

3. Alternatively, further negotiations would have been futile

39. Even if more extensive negotiations were contemplated, they would have been futile. The doctrine of futility excuses compliance with pre-arbitration procedural steps where it is evident that they would not resolve the dispute. In *Teinver SA v. Argentina* (ICSID Case No. ARB/09/1), the tribunal excused the claimant's failure to engage in prolonged negotiations because the respondent's position was firmly entrenched. Similarly, in *State Development Corporation v. Ukraine* (SCC V2019/088), further discussions were deemed pointless given the respondent's fixed stance.
40. In this case, the Respondent had categorically refused to pay the fine in question, as evidenced by the WhatsApp correspondence of 28 December 2024 in Exhibit 11. The CEO of the Respondent made it clear that the demand for payment would not be entertained and showed no willingness to alter this stance. There was therefore no realistic prospect that further discussions would have changed the outcome. This is reinforced by the "*cavalier attitude*"¹⁵ displayed by the Respondent's CEO during the same online correspondence, indicating that any negotiations would not have been treated with the necessary seriousness. Requiring further negotiations would thus have been a hollow formality, serving only to delay the resolution of the dispute.

¹⁵ Facts at [60]

C. Alternatively, even if the Tribunal were to hold that mandatory preconditions were not met, this would not affect the jurisdiction of the court

1. The modern approach treats such provisions as procedural

41. Even if there was a failure to comply fully with Clause 10 JVA, this would not strip the Tribunal of jurisdiction. The prevailing view, confirmed by the United States Supreme Court in *BG Group v. Argentina* (572 U.S. 25, 2014), is that pre-arbitration procedural requirements, such as negotiation or mediation clauses, go to admissibility rather than jurisdiction. In other words, they concern the procedural readiness of a claim, not the tribunal's fundamental authority to decide it.
42. This distinction is critical because admissibility objections are for the tribunal to decide under the competence-competence principle, which is recognised in Article 16 of the UNCITRAL and reflected in Singapore International Arbitration Centre Rules at Rule 28.2. The tribunal, not a national court, has the final say on whether such procedural steps have been satisfied or excused.

2. Procedural defects do not extinguish the jurisdiction of the Tribunal

43. Where a party has not complied with a pre-arbitration requirement, the usual remedy is a procedural order to allow compliance, not dismissal for lack of jurisdiction. This approach balances respect for contractual obligations with the need for efficiency and finality in arbitration. In *Himpurna California Energy Ltd v. PT PLN* (XXV YB Comm. Arb. 11), the tribunal noted that procedural defects can be cured within the arbitration itself without extinguishing the tribunal's jurisdiction.
44. Accordingly, even if the Tribunal were to find some procedural shortfall in the Claimant's conduct, it could direct the parties to engage in the required discussions within the arbitral process, rather than declining jurisdiction altogether.

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

A. The labour practices breached Clause 4.2 and 6.1 JVA

45. The Respondent's labour malpractices resulted in the breach or non-performance of Clauses 4.2 and 6.1 JVA. The terms "*breach of contract*" and "*non-performance*" are functionally equivalent. To elaborate, Clause 12 JVA stipulates that the governing law of the agreement is the PICC. Under the Article 7.1.1 of the PICC, non-performance refers to "*the failure by a party to perform any of its obligations under the contract, including defective performance or late performance*". The PICC uses

the neutral term “*non-performance*” rather than “*breach of contract*” to reflect the terminology used in civil law jurisdictions¹⁶.

1. There was a breach of Clause 4.2 JVA as the suspension of ASI’s operating license was due to the contravention of local labour laws

46. The Respondent is liable for non-performance of Clause 4.2(e) JVA, which expressly stipulates the Respondent’s contractual responsibility to “[*ensure*] full compliance with all applicable labour and employment laws”, evinced from:
- a. The Ministry of Trade and Industry of Aurion (“**the Ministry**”) suspending ASI’s operating license after obtaining the actual timesheets following IIC’s report¹⁷;
 - b. The substantial underreporting of overtime¹⁸; and
 - c. The withholding of workers’ passports¹⁹.
47. The Aurion Labour Code 1994 declares the application of the provisions of the Forced Labour Convention without modification. However, the law has long been criticised for being vague, leaving much of its implementation to the discretion of the Ministry to issue directives on mandatory labour reporting, minimum wages, working hours and holidays.
48. The IIC, “*comprising of senior government officials and representatives from Aurion’s National Human Rights Commission*” and “*vested with full prerogative to conduct unannounced inspections, interview workers and review employment records and workforce audit reports*”²⁰, carried out investigations regarding the alleged labour malpractice at ASI. The IIC report, while revealing “*concerning practices related to worker conditions, including overcrowded dormitories, excessive working hours, and withholding of passports*”²¹, lacked “*conclusive evidence to categorize these practices as modern slavery or forced labor*”²². However, the report’s credibility is impugned by the Respondent’s status as a state-linked entity, which raises concerns of bias as the investigation “*could have been shaped by political considerations*”²³.
49. The Ministry’s suspension was grounded by the following factors: (1) verified discrepancies between reported and actual working conditions; (2) the withholding of workers’ passports;

¹⁶ Schelhaas, Harriet, in Stefan Vogenauer (ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)*, 2nd Edition (2015; online edn, Oxford Law Pro), at Chapter Article 7.1.1 paragraph 6

¹⁷ Facts at [50]

¹⁸ Facts at [56]

¹⁹ Facts at [47]

²⁰ Facts at [46]

²¹ Facts at [48]

²² Exhibit 10 paragraph 5.1

²³ Facts at [49]

and (3) coercive overtime practices²⁴. Hence, by clear and objective standards, the suspension issued by the Ministry was legitimate and evinces the Respondent's breach of Clause 4.2(e) JVA.

B. There was a breach of Clause 6.1 JVA as there was a contravention of Article 2(1) of the Forced Labour Convention

50. Clause 6.1 JVA mandates compliance with internationally recognised labour principles, including the Forced Labour Convention, 1930 (No. 29) (“**FLC**”), which Aurion has ratified²⁵. The labour practices contravened Article 1(1) FLC, which prohibits work exacted under penalty or without voluntary consent, defining “*forced or compulsory labour*” as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”²⁶.
51. The ILO indicators of forced labour are the: (1) abuse of vulnerability, (2) deception, (3) restriction of movement, (4) isolation, (5) physical and sexual violence, (6) intimidation and threats, (7) retention of identity documents, (8) withholding of wages, (9) debt bondage, (10) abusive working and living conditions, and (11) excessive overtime. It has been suggested that the presence of a single indicator in a given situation may, in some cases, imply the existence of forced labour but that in other situations it may require the combination of several indicators which point towards the existence of forced labour practices²⁷. On the established facts, ASI's conduct engaged Indicator 7, where “*some workers had their passports withheld by BWS*”, as well as Indicator 6 and 8, where there were “*threats of wages being cut unless their KPIs are met*”²⁸. Taken in totality, the cumulative effect of these Indicators strongly suggest that ASI was engaging in forced labour practices.
52. On this basis, a two step approach to determine if there was “*forced or compulsory labour*” was espoused in *Van der Musselle v Belgium* (App. no. 8919/80) [1983] ECHR 8919/80 (“**Van der Musselle**”) at [35]-[36], where the court determined (1) whether there existed in the circumstances of the present case “*the menace of any penalty*”; and (2) whether the applicant “*offered himself voluntarily*” for the work in question. The ECHR held that “*forced*” labour can be ascertained using the factor of physical or mental constraint, while “*compulsory*” cannot refer just to any form of legal compulsion or obligation, but rather, only work “*exacted ... under the*

²⁴ Exhibit 10, paragraph 3.4-3.7

²⁵ Exhibit 9

²⁶ Article 2(1) FLC

²⁷ ILO Indicators of Forced Labour

²⁸ Facts at [47]

menace of any penalty” and also performed against the will of the person concerned can constitute work “*not offered himself voluntarily*”²⁹.

53. In *Siliadin v France* (2005) 20 BHRC 654 (“*Siliadin*”) at [118], although the applicant was not threatened by a 'penalty', it was held that she was in an equivalent situation in terms of the perceived seriousness of the threat, which stemmed from, among other factors, the confiscation of her passport and lack of identity papers, cementing her status as an illegal immigrant. Hence, *Siliadin* expanded the scope of coercion to include psychological coercion.
54. Moreover, penalties include “*threats to denounce victims to the police*”, or that “*of a financial nature, including economic penalties linked to debts*”. The ILO emphasises situations where employers require workers to hand over their identity papers, then “*use the threat of confiscation of these documents in order to exact forced labour*”³⁰. Similarly, in the present case, there was withholding of some workers’ passports “*to ensure attendance at work and monitoring*”³¹. Much like the circumstances analysed under Cost of Coercion, the present situation is factually analogous and another strong indicator that penalties were enforced as an undue coercive force on ASI’s workers.
55. In defining a “*voluntary offer*”, the ILO supervisory bodies covered a wide scope, including indirect or subtle forms of coercion, such as through fraud or deception, where victims enter forced labour situations initially voluntarily, only to discover later that they are not free to withdraw their labour³².
56. In this case, the penalty is fulfilled by the majority of workers “*indicating that overtime was imposed in order to meet KPIs, which otherwise, will result in a deduction of wages*”³³. Although workers mentioned that they “*occasionally skipped breaks or meals to meet these deadlines, though there was no explicit compulsion to do so*”³⁴, the implicit pressure of punitive KPIs as mentioned above and “*congested*” living conditions³⁵ cannot be ignored. The situation that the workers were in could constitute a serious threat, similar to the one in *Siliadin*, since they were in congested working conditions with their passports taken away, coupled with pressure to meet KPIs.

²⁹ *Van der Musselle* at [34]

³⁰ The cost of coercion: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 98th Session 2009, Report I(B) (“**Cost of Coercion**”) at [24]

³¹ Exhibit 10 paragraph 3.6

³² Cost of Coercion at [25]

³³ Exhibit 10 paragraph 3.4

³⁴ Exhibit 10 paragraph 3.4

³⁵ Exhibit 10 paragraph 3.5

57. Consequently, due to the Respondent's contravention of the FLC through the “*forced or compulsory labour*” of its workers, the Respondent is liable for its non-performance of Clause 6.2 JVA as international standards were not complied with.

C. The labour practices were brought about due to the Respondent’s actions

58. The Respondent is contractually liable for the impugned labour practices as: (a) the Respondent had full control over ASI’s workers and had significant influence over BWS’ operations; (b) the Respondent caused the Claimant to engage BWS; and (c) there was no interference by the Claimant.

1. The Respondent had full autonomy of ASI’s workers and had significant influence over BWS’ operations

59. Firstly, the Respondent had full control over ASI’s workers. The Respondent had the responsibility of “[m]anaging the recruitment and allocation of local and migrant workforce”³⁶, indicating that they had full autonomy over the recruitment of workers prior to the engagement of BWS. Indeed, the Respondent had launched “*recruitment campaigns that advertised competitive salaries, productivity-based bonuses, and long-term career prospects for operational staff*”, seeking “*employees who prioritised work above all else, with incentives tied to performance metrics yet to be determined*”³⁷.

60. Secondly, the Respondent had a significant level of influence over BWS. After engaging BWS, the Claimant instructed the Respondent to share its previous recruitment campaigns to BWS and that was later adopted by BWS in securing the operational staff³⁸. Factually, the recruitment campaigns enacted by BWS were heavily facilitated by the Respondent. This is highly indicative of the fact that BWS acts at the direction of the Respondent, emphasising a certain degree of control and influence the former has over the latter.

D. The Respondent breached Article 1.8 PICC by causing the Claimant to engage BWS

61. Pursuant to Article 1.8 of the PICC, a party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment. The requirements for a contravention to be made out are where: (1) one party causes an understanding in another party; (2) the other party reasonably acts in

³⁶ Clause 4.2(e) JVA

³⁷ Facts at [33]

³⁸ Facts at [38]

reliance on said understanding; (3) there is inconsistent behaviour of the first party in relation to the understanding; (4) causing detriment to the other party³⁹.

62. Firstly, the Respondent caused an understanding — that BWS was pre-approved by the Respondent — in the Claimant by recommending BWS, the Claimant then reasonably relying on that recommendation by agreeing for ASI to engage BWS⁴⁰. The Respondent then acted inconsistently with the understanding of pre-approval caused in the Claimant by asserting that the Claimant's actions “*contributed to the regulatory non-compliance, specifically arguing that CDI pushed for cost-cutting measures that pressured RMG into selecting the cheaper labour agency*” and that “*CDI did not raise any objections against the engagement with BWS*”⁴¹, causing damages to the Claimant. The Respondent's contradictory behaviour thus contravened Article 1.8 of the PICC.
63. Moreover, not only is it evident that the Claimant relied on the Respondent's recommendation to engage BWS for ASI, the Respondent's assertion that the Claimant pressured the Respondent into selecting BWS contravenes Article 1.8 PICC as the Respondent acted inconsistently. As a result, the Respondent should be liable for the aforementioned breaches.

E. There was no interference by the Claimant under Article 7.1.2 PICC

64. For completeness, the Respondent may not argue the non-performance of the Claimant “*to the extent that such non-performance was caused by the [Claimant's] act or omission or by another event for which the [Claimant] bears the risk*”⁴². However, there was no interfering act or omission by the Claimant which would have resulted in the aforementioned breaches, neither was there another event for which the Claimant bears the risk that would absolve the Respondent of liability for its breaches.
65. The Respondent's failure to perform is “*only shielded 'to the extent that' its failure was caused by the interference*” of the Claimant or by an event attributable to the Claimant. To the extent that the failure to perform has been caused by other factors falling into the Claimant sphere of risk, the Claimant “*remains exposed to the remedies provided in Chapter 7 of the PICC*”⁴³. This shows that interference has to be wholly made out, and partial interference would still allow for the Claimant to claim under non-performance.

³⁹ Schelhaas, Harriet, in Stefan Vogenauer (ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)*, 2nd Edition (2015; online edn, Oxford Law Pro), at Chapter Article 1.8 at paragraph 5-12

⁴⁰ Facts at [37]

⁴¹ Facts at [64]

⁴² Article 7.1.2 PICC

⁴³ Schelhaas, Harriet, in Stefan Vogenauer (ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)*, 2nd Edition (2015; online edn, Oxford Law Pro), at Chapter Article 7.1.2 at paragraph 9

66. The event of the hiring of BWS cannot have been said to be due to the Claimant's pressure, since JPMT was managed by both the Claimant and the Respondent with an internal deadline of 15 months rather than the standard 24-36 months⁴⁴. The Respondent approved the expedited timeline.
67. While the Claimant urged the Respondent to "*engage a third-party labour agency to accelerate recruitment*", with explicit instructions to "*minimise labour costs wherever feasible*" in light of the budget overruns⁴⁵, the Respondent impliedly agreed with this decision by quickly proposing a shortlist of local manpower agencies with experience in large-scale industry staffing⁴⁶. Furthermore, BWS was recommended by the Respondent, while the Claimant merely approved of it.
68. Consequently, it cannot be said that the Claimant's actions of expediting the construction timeline caused the Respondent's non-performance JVA, since the expedited timeline was a joint decision, with the third-party labour agency, BWS, being shortlisted and recommended by the Respondent to the Claimant. Moreover, permitting the mere suggestion that an expedited timeline amounts to interference would open the floodgates of liability. Indeed, such a position would place employers an undue risk of being sued, as any construction projects that have been delayed and are thereafter instructed to accelerate would amount to "*interference*". For the abovementioned reasons, the Claimant's arguments must be dismissed.

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

A. The Respondent's failure to ensure compliance with local laws and ethical labour standards was a fundamental non-performance of the JVA

69. Clause 8.1 JVA provides that "*[i]n the event of a fundamental non-performance or breach of this Agreement, the Parties may terminate this Agreement*". This mirrors Article 7.3.1(1) PICC, which states that a 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.

1. The Respondent breached its obligation under the JVA to ensure ASI's full compliance with all applicable labour and employment laws

70. It is undisputed that "*ensuring [ASI's] full compliance with all applicable labour and employment laws*" was one of the Respondent's key obligations as defined in Clause 4.2(f) JVA. The Respondent

⁴⁴ Facts at [32]

⁴⁵ Facts at [36]

⁴⁶ Facts at [37]

clearly breached this obligation, given that the service agreement ASI entered with BWS was on the Respondent's recommendation. Subsequently, BWS substantially underreported workers' overtime hours in its timesheets submitted to the government, breaching labour compliance standards, which resulted in the imposition of a \$500m fine on ASI⁴⁷.

71. The Respondent's obligation to ensure ASI's compliance with labor laws necessarily extended to ensuring BWS, being the provider of manpower for ASI, complied with labor laws. Hence, it is not a defense for the Respondent to say that the obligation laid on BWS to ensure compliance. The Service Agreement included a collaboration clause mandating ASI to collaborate with BWS to oversee workforce management. This included ensuring timely submission of workforce audits, periodic compliance reporting, and addressing any concerns related to employment conditions⁴⁸. Hence, the Respondent clearly had the means to supervise the compliance of workforce management, but failed to do so, breaching a key term of its obligations under the JVA.

2. The Respondent's breach of the JVA was a fundamental non-performance that entitled the Claimant to terminate the JVA.

72. A non-performance is fundamental if it is "*material and not merely of minor importance*"⁴⁹. Furthermore, a fundamental non-performance must be understood as substantial, principal, or significant, taking into account the parties' interests and, above all, the good faith that must govern the entire life of the contract⁵⁰.

73. It is irrelevant whether there was any kind of fault on the part of the non-performing party as the provisions of Chapter 7 Section 3 PICC do not contain a fault requirement: the right to terminate may therefore be granted even if the non-performing party acted neither intentionally nor negligently⁵¹.

74. Article 7.3.1(2) PICC is instructive here, listing a number of circumstances which are relevant to the determination of whether a failure to perform an obligation amounts to fundamental non-performance. Hence, elements (a) to (e) are factors to be considered together: "*In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether*

⁴⁷ Facts at [37], [56]

⁴⁸ Facts at [39]

⁴⁹ UNIDROIT Principles Official Comment at page 250

⁵⁰ CORNET, M., op. cit., page 67

⁵¹ Chapter 7 Section 3 PICC

- a. *the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;*
- b. *strict compliance with the obligation which has not been performed is of essence under the contract;*
- c. *the non-performance is intentional or reckless;*
- d. *the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;*
- e. *the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.”*

75. These principles will be discussed in turn.

i. Substantial deprivation

76. In general, to assess whether the breach (or the obligation to which it relates) is fundamental, it is necessary first and foremost to consider the parties' intent in this regard⁵². In the case of Centro de Arbitraje de México (CAM), Arbitral Award, 30-11-2006 (“**CAM**”), the Tribunal concluded that the Respondent’s failure to supply products caused substantial deprivation as “*the supply of the Products was the primary reason the Claimant entered into the Contract*”, and hence “*the Respondent deprived the Claimant of precisely what it expected under the agreement*”.

77. To borrow the language of CAM, regulatory compliance and a stable investment environment was the primary reason the Claimant entered the JVA; by failing to ensure compliance with local laws and causing ASI to incur the \$500m fine, the Respondent deprived the Claimant of precisely what it expected under the agreement.

ii. Intentional or reckless

78. The Claimant’s internal investigation revealed that BWS was owned by the uncle of President Ho’s son-in-law⁵³, meaning it had close ties to the Respondent through personal connections. The Respondent had failed to disclose this connection, which the Claimant perceived as a significant conflict of interest⁵⁴, suggesting bad faith in the Respondent’s recommendation and selection of the agency.

79. In the case of CAM, the Tribunal held that a breach was intentional where it was an act that required deliberate action and could not happen inadvertently. Similarly, the Respondent’s

⁵² Camera Arbitrale Nazionale ed Internazionale di Milano, A-1795/51, Arbitral Award, 01-12-1996 at III 4.4.4

⁵³ Facts at [54]

⁵⁴ Facts at [54]

recommendation of BWS without disclosure of the connection, or sufficient supervision, does not happen inadvertently.

iii. Cannot rely on future performance

80. An intentional breach may indicate that a party cannot be trusted⁵⁵. The Respondent's failure to disclose the close connection between BWS which it recommended, and President Ho's familial ties, would naturally raise doubt and create uncertainty as to the reliability of the Respondent. This can also be seen through Ms Al Emret's attempts to contact the Respondent regarding the labour law investigation as to why information had been suppressed on 11 October 2024, which were ignored until the notice of termination issued to the Respondent on 28 December 2024 (*"Where were you when I texted you? It's too late for this."*)⁵⁶.

iv. Disproportionate loss

81. Article 7.3.1(2)(e) PICC deals with situations in which a party who fails to perform has relied on the contract and has prepared or tendered performance. In these cases regard is to be had to the extent to which that party suffers disproportionate loss if the non-performance is treated as fundamental.
82. Clause 3.1 JVA states that ASI is incorporated with *"an initial paid-up capital of USD1.2 billion, of which CDI shall contribute in full"*. This clearly shows that the Claimant is the party who has tendered performance and faces financial risk, rather than the Respondent. Analogising to the case of *ACBU v. AABU and AWS* Case No. 9797/CK/AER/ACS, the Respondent *"cannot possibly suffer any harm from the termination of its contractual relationship"* because it *"is an instrumentality for the purpose of"* ensuring ASI's regulatory compliance with Aurion's laws.
83. As such, the Respondent's failure to ensure ASI's full compliance with all applicable labour and employment laws should be considered a fundamental non-performance that entitled the Claimant to terminate the JVA.

⁵⁵ Chapter 7 Section 3 PICC

⁵⁶ Exhibit 11

B. In the alternative, the suspension of ASI’s operating license was a Force Majeure event that entitled the Claimant to terminate the JVA under Clause 8.3 JVA

1. The suspension of ASI’s operating license was a Force Majeure event

84. A Force Majeure event is defined in Article 7.1.7(1) PICC to be “*an impediment beyond [a party’s] control*” where it could not “*reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences*”.
85. Clause 8.3 JVA states that “*If either Party is unable to perform its obligations due to an event of Force Majeure, the Party may terminate this Agreement*”. Clause 7.1(c) JVA further defines an event of Force Majeure to include “*governmental actions, embargoes, trade restrictions, or economic sanctions*”.
86. In the present case, the suspension of ASI’s operating license on 2nd October 2024 was a governmental action that constitutes a Force Majeure event. The findings of the IIC revealed ASI’s concerning labor practices and strongly recommended that ASI’s practices be closely monitored moving forward⁵⁷. This, coupled with strong public backlash, led to the suspension of ASI’s operating license for a period of three weeks.
87. Given that the very purpose of the Claimant entering the JVA was for the Respondent to ensure regulatory compliance for ASI’s operations it could not reasonably have been expected to have accounted for the Respondent’s failure to do so, at the time of contracting. This is supported by the conversation between Ms Al and President Ho⁵⁸, where President Ho assuaged her fears of governmental control by saying “*there will be no interference, and I am certain that you will find no better partner than [the Respondent]*”. Clause 4.2 JVA describing the Respondent’s obligations also clearly shows how the bulk of its obligations concerned regulatory compliance.

2. The suspension of ASI's operating license altered the nature of performance of the contract, such that the Claimant was entitled to terminate the JVA

88. Pursuant to Article 7.1.7(2) PICC, an impediment that is temporary will excuse non-performance only for “*such a period as is reasonable, having regard to the effect of the impediment on the performance of the contract*”. While ASI’s suspension of license was formally lifted after three weeks, the consequences of that suspension were neither short-lived nor minor⁵⁹. Rather, they had a

⁵⁷ Facts at [48]

⁵⁸ Facts at [23]-[24]

⁵⁹ Facts at [51]

lasting and material impact on ASI's ability to perform under the contract as originally contemplated by the parties.

89. The impact manifested in three ways – firstly, immediate operational disruption. The suspension brought ASI's production to a complete halt, disrupting its ability to fulfil existing obligations. International buyers — including key Seratious clients — faced delays and non-delivery, leading to the imposition of contractual penalties and straining ASI's commercial relationships⁶⁰.
90. Secondly, the suspension also eroded buyer confidence for future contracts. Several major buyers, unsettled by the suspension and the scrutiny surrounding ASI's labour practices, began reassessing their long-term commitments⁶¹. The suspension thus destabilised ASI's market position and undermined its reliability as a supplier.
91. Thirdly, the suspension led to direct financial and reputational harm⁶². Market analysts and investors downgraded ASI's outlook, citing heightened operational uncertainty and reputational damage. These assessments diminished ASI's long-term viability, creating structural obstacles to the performance of the contract beyond the three-week period of suspension.
92. The implications of the suspension directly contradict what was contemplated by the Claimant in entering the agreement. The Claimant's CEO had had concerns that *“any long-term investment would require a neutral and independent business environment, fearing governmental control, bureaucratic interference, or hidden policy shifts that could jeopardise [the Claimant]'s interests”*⁶³. The Claimant's intention in investing a sum as large as USD 1.2 billion in ASI was in hopes of expanding its operations by tapping on Aurion's strategic location and growing infrastructure for manufacturing operations. Instead, due to the suspension of ASI's license, ASI lost its ability to fulfil existing contracts, and lost credibility to win future contracts, clearly showing how this Force Majeure event had detracted from the original performance envisioned by the Claimant.
93. Hence, the suspension of ASI's operating license was a Force Majeure event that entitled the Claimant to terminate the JVA under Clause 8.3 JVA.

V. PRAYER FOR RELIEF

94. For the above reasons, the CLAIMANT respectfully requests the Tribunal to:

⁶⁰ Facts at [51]

⁶¹ Facts at [51]

⁶² Facts at [51]

⁶³ Facts at [24]

- a. Dismiss the Respondent's claim of sovereign immunity;
- b. Dismiss the claim that the Claimant's initiation of arbitration was premature;
- c. Declare that the Respondent is liable for breaches of the JVA; and
- d. Dismiss the claim that the Claimant's termination was unlawful.