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MEMORANDUM FOR RESPONDENT

ON BEHALF OF:

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

AGAINST:

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

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STATEMENT OF JURISDICTION

The Respondent 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 a state-linked entity in Aurion. 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. Speculation also emerged about Aurion's President's personal connections with Veridian firms, particularly the Claimant.
2. The Claimant and Respondent signed a Joint Venture Agreement ("**JVA**") resulting in the creation of Aurion Semiconductor Inc ("**ASI**"). President Ho played a key 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.
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 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 did not definitively conclude that there was modern slavery.
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.
6. On 11th October 2024, the Claimant's CEO listed several demands to the Respondent's CEO and Mr Suvan via WhatsApp. 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.

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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 demanded that the Respondent pay the fine. The Respondent's CEO dismissed the claim, leading to an intervention by Mr Suvan.
 9. The Respondent refused the demands made by the Claimant, 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 SHOULD BE ENTITLED TO CLAIM SOVEREIGN IMMUNITY

The Respondent is entitled to claim state immunity under the United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 (“**UNCSI**”). As a wholly state-owned entity governed by Cabinet members, closely tied to the President, and enjoying privileges uniquely granted by the State, the Respondent should be regarded as an organ of Aurion. Alternatively, its actions were carried out in furtherance of sovereign objectives and bore a governmental character. No express or implied waiver of immunity was made, as neither the arbitration clause nor the Respondent’s conduct demonstrated a clear intention to relinquish this protection. Finally, the JVA cannot be characterised as a commercial transaction within the meaning of the UNCSI.

II. THE CLAIMANT’S INITIATION WAS PREMATURE, BARRING JURISDICTION OF THE TRIBUNAL

The Claimant’s initiation of arbitration was premature and defective as it failed to comply with the mandatory pre-arbitration steps prescribed in Clause 10 JVA. The clause is clear, detailed, and binding, requiring amicable negotiations, written notice, and Ministerial consent before arbitration can be commenced. The Claimant neglected all three obligations, providing neither a genuine attempt at negotiation nor sufficient notice, and securing no ministerial approval. Established jurisprudence confirms that such preconditions are conditions precedent to arbitration, and their breach deprives a tribunal of jurisdiction. At the very least, the claim is inadmissible as it disregards the agreed dispute resolution framework.

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

The Respondent’s labour practices did not breach the JVA, which adopts the UNIDROIT Principles of International Commercial Contracts (“**PICC**”). Clause 4.2 was not breached because the suspension of ASI’s operating licence was politically motivated and not based on any proven contravention of Aurion’s labour laws. Clause 6.1 was also not breached since the practices did not constitute a contravention of the Forced Labour Convention (“**FLC**”). Even if the breaches are made out, they were induced by the Claimant’s interference under Article 7.1.2 PICC. The Claimant’s interference led to the labour malpractice. Alternatively, since the Claimant approved and supported BWS’s hiring, it is jointly liable for any breach.

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

The Claimant unlawfully terminated the JVA, as there was no fundamental non-performance under Clause 8.1 JVA or Article 7.3.1 PICC. The Respondent's obligation to ensure ASI's compliance with labour laws was one of best efforts, not an absolute duty. Under Article 5.1.5 PICC and jurisprudence, obligations dependent on third parties are assessed by diligence, not strict results. BWS was jointly approved and supervised by both parties. Any failings were isolated and did not deprive the Claimant of the contract's core benefit. Even if breaches existed, they were neither fundamental nor reckless, and corrective measures resumed normal operations. Furthermore, the suspension of ASI's operating license cannot qualify as force majeure under Article 7.1.7 PICC, since it was brief, foreseeable, and avoidable through proper compliance oversight.

PLEADINGS

I. THE RESPONDENT IS ENTITLED TO INVOKE STATE IMMUNITY

A. The Respondent is protected by state immunity pursuant to the United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 (“UNCSI”)

1. The State of Aurion is a signatory to the UNCSI¹. The UNCSI recognises that the jurisdictional immunities of States and their property are generally accepted as a principle of customary international law. There is a presumption under the UNCSI that states are immune from foreign proceedings with certain exceptions as Article 5 of the UNCSI stipulates that “[a] State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention” (emphasis added). As explained below, none of these exceptions under the UNCSI applies to strip the Respondent of its immunity.
2. To begin, the relevant provisions of Article 2 of the UNCSI defines a “State” as:
 - a. The State and its various organs of government²; or
 - b. Agencies or other instrumentalities of the state or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the state³.

1. The Respondent is an organ of state of Aurion

3. A number of factors are contemplated in determining whether an entity should be considered an organ, agency or instrumentality of the State; or simply a separate legal entity that does not enjoy the same immunity as the former under the UNCSI. These factors, as elaborated on in State Immunity in International Law include⁴:
 - a. The structure and constitution of the entity;
 - b. The entity's proximity and relationship with the state apparatus; and
 - c. The entity's obligations and privileges.
4. Each of these factors are analysed in turn below.

¹ Clarifications of facts at [1]

² Article 2(1)(i) of the UNCSI

³ Article 2(1)(iii) of the UNCSI

⁴ Yang X. *Separate entities*. In: *State Immunity in International Law*. Cambridge Studies in International and Comparative Law. Cambridge University Press; 2012:230-297 (“**State Immunity in Intl Law**”)

i. The Respondent is wholly owned by the government of Aurion

5. Firstly, the Respondent’s governance structure is indicative of direct state control, as its board is composed entirely of Cabinet members⁵. The Respondent’s directing minds are essentially a mirror image of the Government, similar to state organs whose managements are commonly led by elected Ministers.
6. By way of example, the U.S. Foreign Sovereign Immunities Act expressly recognises that entities wholly owned by a foreign state “*would of course be included within the definition*” of state organs, thereby giving rise to a presumption of immunity from proceedings⁶. Academic commentary reinforces this approach, noting that governments often lack effective market-based governance mechanisms and therefore rely primarily on ownership as the dominant channel through which control is exercised⁷. This underscores why complete state ownership is sufficient to justify treating an enterprise as an organ of the state: ownership of the entity is the mechanism through which governmental authority can be translated into corporate action. Accordingly, the Respondent, being wholly state-owned and governed by Cabinet members, should properly be treated as a state entity entitled to immunity.

ii. The Respondent has very close proximity and relationship to the state apparatus of Aurion

7. The Respondent’s proximity to the governing body and the President of Aurion strongly implies that it functioned as an organ of the state. In *Murphy v Korea*, 421 F Supp 2d 627, 642–645 (SDNY 2005) (“*Murphy*”), when proceedings for fraud were brought against the Korea Asset Management Corporation (“**KAMCO**”), KAMCO was held to have immunity from proceedings as it was an “*organ*” of the state of Korea. In deciding whether KAMCO was an “*organ*” or simply an “*instrument*” the court emphasized the extensive government oversight over KAMCO’s operations⁸ as well as the fact that the Cabinet Officials sat on its supervisory bodies⁹. The same reasoning applies here—only more forcefully. The Respondent was publicly known as the “*President’s pet project*”¹⁰, with the President himself personally assuring stakeholders that he would intervene to resolve any issues that might arise¹¹. Such extraordinary involvement underscores that the Respondent was not merely influenced by the state but was

⁵ Facts at [28]

⁶ 28 USC § 1603(b)(2), Legislative Report

⁷ Curtis J Milhaupt & Mariana Pargendler, *State-Owned Enterprises in the Global Economy: Theoretical and Empirical Perspectives* (Springer, 2017) at 90

⁸ *Murphy* at 628

⁹ *Murphy* at 625

¹⁰ Facts at [27]

¹¹ Facts at [35]

inseparably bound to it, operating under the direct authority and oversight of the President. On this basis, the Respondent must be regarded as an organ of the state.

iii. The Respondent enjoys privileges unique to organs of the state

8. Unique privileges granted by the State is strong evidence that points towards the fact that the Respondent is an “organ” of the State or Aurion. In the case of *Corporacion Mexicana v. Respect*, US, 89 F.3d 650, 654 (9th Cir. 1996), the court held that a Mexican refinery, constituted an “organ” under the US Foreign Sovereign Immunities Act (“FSIA”). Although the company was not directly owned by the Mexican government, the court placed special emphasis on a combination of factors, including the fact that it was granted special privileges such as the level of government financial support. In another case of *Kelly v. Syria*, US, 213 F.3d 841, 848–849 (5th Cir. 2000), the court found that the defendant was an “organ” of Syria. Similarly, one of the key factors that the court emphasized was the exclusive rights that the company had – the exclusive right to explore and develop Syria’s identified petroleum reserves.
9. On the facts, the Respondent similarly enjoyed exclusive governmental benefits. Capital requirements of the Respondent were provided using public funds from the Government Treasury¹². There were also privileges such as expedition of land alienation, regulatory approvals and planning approvals which were granted to the Respondent¹³. Furthermore, in Exhibit 11, it is suggested that the fine imposed on the Respondent could be waived by the government. These are benefits which are unique to the Respondent in this field, strongly pointing towards the fact that the Respondent was an organ of the state of Aurion.

2. Alternatively, the Claimant is an instrument of the state acting in the exercise of sovereign authority of the state

10. In *I Congreso del Partido* [1978] 1 All ER 1169, the Cuban government diverted shipments of sugar in response to political developments in Chile. The question before the court was whether such acts were sovereign in nature (*jure imperii*) or commercial (*jure gestionis*). Lord Wilberforce held that the decisive test lay not in whether the act was carried out under state direction, but in its intrinsic character. The court held that an act attracts immunity only if it is inherently governmental, rather than one that could equally be performed by a private party. Lord Wilberforce added that the wider context — including the political or governmental objectives behind the act — must be considered in determining its character. This approach

¹² Facts at [27]

¹³ Facts at [30]

was considered in *Kuwait Airways Corporation v Iraqi Airways* [1995] 1 W.L.R. 1147, where Iraqi authorities had commandeered and used Kuwaiti aircraft during the Gulf War. Issues arose when Kuwait argued that the integration of these aircrafts into the Iraqi airline was not an act carried out under state direction. Lord Goff appeared to endorse a narrow view, suggesting that each act must independently qualify as sovereign. Yet, he also recognised that routine actions by Iraqi pilots, such as refuelling and flying the planes, assumed a sovereign character when situated within the broader context of Iraq’s governmental policy. This reasoning has been criticised for creating ambiguity¹⁴, but in effect it reflects Lord Wilberforce’s position that sovereign acts cannot be divorced from their overarching governmental purpose.

11. Applying this reasoning, it is evident that the Respondent’s actions bore the character of a government act. The Respondent was set up to help the government of Aurion achieve its goals in the larger context developing the microchip production industry¹⁵. This was an important public goal for the government as it signified jobs and income for the people of Aurion. It also signified an important source of income for the less-developed nation of Aurion¹⁶. Even more glaring is the fact that the JVA was the only agreement that was signed under the BIT¹⁷, itself the product of high-level negotiations personally driven by President Ho¹⁸. There is also clear evidence showing that the partnership was orchestrated through presidential initiatives, including direct interventions and personal favours with a high-ranking envoy to secure the Claimant’s participation¹⁹. The resulting agreement was not something a private entity could have achieved alone; it was the culmination of government efforts executed under the President’s helm. The Respondent was, in essence, carrying out the state’s developmental agenda. Therefore, the Tribunal should find that the Respondent can claim sovereign immunity to legal proceedings.

B. The Claimant did not waive its state immunity

12. Even if the default assumption of state immunity is rebutted, the Respondent did not waive immunity, either expressly or implicitly.

¹⁴ State Immunity in Intl Law page 240

¹⁵ Facts at [9]

¹⁶ Facts at [14]

¹⁷ Facts at [17]

¹⁸ Facts at [16]

¹⁹ Facts at [20]-[21]

1. There was no express waiver by way of representation from the Respondent to the Claimant

13. In the FSIA at 1605(a)(1), waiver must be clearly stated in writing. To be recognized as explicit, the waiver must leave no doubt that the state intended to give up its immunity and must be stated in the contract or instrument in precise terms. This is supported by the position in Hong Kong. In the case of *Democratic Republic of the Congo v FG Hemisphere Associates* FACV Nos. 5, 6 & 7, the plaintiff argued that any right to sovereign immunity had been waived by agreements entered by the defendant. Those agreements provided for dispute resolution by way of arbitration to be held in Paris and Zurich respectively under International Chambers of Commerce Arbitration Rules. However, the Hong Kong Court of Final Appeal affirmed the holding that any waiver must be express and "*in the fact of court*" to be effective since it concerned relations between States. In this case, there was no clear representation by the Respondent nor the Minister of Aurion that there was a waiver of sovereign immunity. Hence, the Tribunal should hold that the Respondent did not waive its rights to sovereign immunity.

2. There was no implicit waiver from the Respondent's conduct

14. Signing a contract with an arbitration clause is not itself an implicit waiver of immunity. In *Republic of Philippines v. Westinghouse Elec. Corp.*, 821 F. Supp. 292 (D.N.J. 1993), the court refused to treat a standard arbitration clause as a waiver, especially where state capacity and authority were contested. Likewise, Hazel Fox & Philippa Webb, *The Law of State Immunity* (3rd ed., Oxford UP) stressed that context matters, and that arbitration clauses do not automatically signal consent to waive immunity unless tied to commercial transactions and agreed to by competent state officials.
15. In this case, there was no clear agreement or meeting of the minds that the Respondent would waive all sovereign immunity to any legal proceedings. In fact, on the contrary, Clause 10.2 JVA stipulates that the consent of a government official must be obtained prior to commencement of legal proceedings. This indicates that the Respondent had never intended to waive its sovereign immunity at the time of contract.

3. Furthermore, the Claimant did not agree to arbitrate the present dispute as no ministerial approval obtained pursuant to the Clause 10.2 JVA

16. Clause 10.2 JVA requires ministerial approval before initiating dispute resolution. There is no evidence such approval was obtained. Hence, even if an arbitration clause exists, there was no

binding consent to arbitrate this specific dispute. Without the required government authorization, there is no valid agreement to submit to arbitration, reinforcing the Respondent's retained immunity and jurisdictional objection.

C. In any case, there is no exception to state immunity as the JVA does not constitute a “commercial transaction”

17. Per Article 17 of the UNCSI, a state is precluded from the defence of sovereign immunity if the transaction that it had entered was a commercial one in nature. However, this does not act to bar the Respondent's defence of sovereign immunity since the JVA was not a contract of commercial nature. Under UNCSI s 2, the term “*commercial transaction*” refers to:
 - a. Any commercial contract or transaction for the sale of goods or supply of services;
 - b. Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction; or
 - c. Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.
18. Nonetheless, the Respondent submits that the JVA falls under none of these categories as explained below.
19. There was no sale of goods and services. The UNCSI contains no express definition of “*sale of goods*” or “*supply of services*,” so reference must be drawn from international sources. The UK Sale of Goods Act 1967 — whose definition is similarly adopted in Singapore and Malaysia — defines a sale of goods in s 2(1) as a contract where the seller transfers property in goods to the buyer for a price, with “*goods*” in s 61(1) including personal chattels and certain severable items from land. On this definition, the JVA plainly does not qualify: while goods were produced, they were not transferred by one party to another. Instead, the arrangement was a joint venture to manufacture electronics for sale. It therefore falls outside the scope of both a sale of goods and a supply of service.
20. There was also no contract for a loan as there was no financial lending, indemnity, or guarantee involved, which excludes it from being considered a loan or financial transaction under UNCSI Article 2(1)(c)(2).
21. Lastly, the JVA was also not for “*any other transactions*”. Though involving elements like knowledge transfer, the primary purpose of the JVA was developmental and public in nature. As UNCSI recognises, purpose may also be relevant when assessing the character of a

transaction. Here, the public developmental purpose dominates, especially given the Respondent's status as a state vehicle for national goals.

II. THE TRIBUNAL HAS NO JURISDICTION TO HEAR THE PRESENT DISPUTE

A. The Tribunal has no jurisdiction to hear the present dispute as the Claimant's initiation of arbitration was premature

1. Parties agreed on the pre-arbitration procedures in Clause 10 JVA

i. Pre-arbitration procedures are strictly binding upon the parties and govern their conduct prior to arbitration

22. Clause 10.1 JVA expressly sets out procedural steps that must be completed before arbitration can be commenced. This is not mere aspirational language – where dispute resolution clauses are drafted in specific, clear terms, both courts and tribunals have treated them as binding and enforceable obligations.
23. In ICC Case No. 9812, 20(2) ICC Ct. Bull. 69, 73 (2009), per the contract, the claimant was required to undergo a mandatory 120 days of negotiation. As a result of failing to do so, the tribunal dismissed the proceedings and held that they did not have jurisdiction to hear the case. This highlights the significance of obeying the pre-arbitration procedures on the jurisdiction of the Tribunal. Similarly, the SGHC in *Int'l Research Corp. plc v. Lufthansa Sys. Asia Pac. Pte Ltd* [2012] SGHC 226 held that because the mediation clause in question was clear and detailed, failure to comply deprived the tribunal of jurisdiction.
24. In this case, Clause 10 JVA imposes specific steps such as requiring negotiations to be conducted as well as ministerial consent to be obtained. These authorities reinforce that, as Clause 10 precedes Clause 11 JVA and imposes specific steps, it forms a condition precedent to arbitration. The tribunal must therefore give effect to this sequencing and treat Clause 10's obligations as mandatory.
25. Courts and tribunals have been more willing to enforce pre-arbitration clauses where the procedure is laid out with precision - for example, fixed time periods, designated mediation bodies, or express consent requirements. In *Ohpen Operations UK Ltd v. Invesco Fund Managers Ltd* [2019] EWHC 2246, the EWHC enforced a mediation clause that prescribed a defined procedure and institutional rules, holding that such specificity demonstrated the parties' intention to make it binding.

26. Therefore, the Tribunal should also find that Clause 10 JVA, which has been precisely laid out in the contract, is an enforceable obligation that is strictly binding on the parties.

ii. Clause 10 JVA is mandatory in nature given its specific and detailed procedural requirements

27. In past cases, detailed procedural requirements are often held to be mandatory in nature. This would require the parties to undergo the necessary procedures prior to commencement of arbitration.

28. In ICC Case No 12739, Award, cited in Michael Bühler and Thomas H Webster, *Handbook of ICC Arbitration* (Sweet & Maxwell 2008) 67, the arbitral tribunal held that a Request for Arbitration was premature, and dismissed the arbitration because of the claimant's failure to complete the pre-arbitral dispute resolution steps of compulsory mediation.

29. Similarly, another tribunal concluded that the pre-arbitration procedures were "*strictly binding upon the parties and govern their conduct before resorting to arbitration*" (ICC Case No 6276 (n 4)).

30. In this case, Clause 10 JVA similarly specifies:

- a. Amicable negotiations as the first step;
- b. A cooling-off period before arbitration;
- c. A written notice requirement; and
- d. The need for ministerial consent.

31. The detailed nature of these steps, coupled with the use of mandatory language ("*shall*"), reflects an unequivocal intention to create binding preconditions to arbitration, as opposed to mere procedural preferences.

iii. The arbitral tribunal must give proper effect to the parties' intentions

32. As observed in *Berger, Law and Practice of Escalation Clauses and in Emirates Trading Agency LLC v. Prime Mineral Exports Ltd* [2014] EWHC (Comm) ("*Emirates*"), tribunals and courts should construe dispute resolution clauses like any other commercial term, respecting the parties' choice to limit their own procedural freedom in the interest of amicable settlement. This aligns with United Nations Commission on International Trade Law's general interpretive principle that contractual terms must be read in context and enforced according to the parties' mutual intent.

33. On the facts, Clause 10 JVA was carefully worded, requiring that parties undergo a negotiation process in an attempt to settle any disputes in an amicable manner. This is also evidenced from

President Ho's conduct where he assured that as long as he is around, there would not be any issues that could not be resolved. Hence, both the written contract and the conduct of the contracting parties point towards the interpretation that Clause 10 JVA was meant to be binding on the parties and a precondition to any formal legal proceedings.

2. The Claimant has failed to satisfy the pre-arbitration procedures in Clause 10.1 JVA as there were no attempted negotiations

34. Pursuant to Clause 10.1 JVA, the parties must attempt to resolve disputes amicably via negotiations. Case law demonstrates that this obligation is not satisfied by a mere exchange of letters or a token discussion; there must be a genuine attempt to negotiate in good faith.
35. In *United Group Rail Servs. Ltd v. Rail Corp. NSW* [2009] NSWCA 177, the court upheld a clause requiring “*genuine and good faith negotiations*” as enforceable, emphasising that commercial parties expect such commitments to be honoured. Similarly, the EWHC in *Emirates* confirmed that good faith negotiations have an identifiable standard – fair, honest, and genuine discussions aimed at resolving the dispute.
36. International jurisprudence also confirms that a negotiation requirement is satisfied only when negotiations have failed or become futile – but even if success is unlikely, the attempt must still be made. In *Georgia v. Russia* [2011] ICJ Rep. 70 (“*Georgia*”) at [131], the court explained the importance of the negotiation requirement. Purposes of doing so include: (1) giving notice to the respondent State that a dispute exists as well as the scope of the dispute and its subject matter; (2) avoiding recourse to binding third party adjudication; and (3) indicating the limits of consent given by States. Since the negotiation requirements established preconditions to be fulfilled prior to the seisin of the Court, it was held that the Court had no jurisdiction over the case²⁰.
37. Even though there is no requirement to negotiate in “*good faith*”, the requirement for negotiation is equally important in this case for the same reasons that were listed in the case of *Georgia*. This is clear from the requirement that ministerial consent must be obtained prior to legal proceedings. Hence, the negotiation requirement plays an important part in the delineation of the limits of consent given by the states as well as establishing the scope of the dispute.

²⁰ *Georgia* at [141]

38. Nevertheless, the Claimant made no attempt to engage in negotiations, thereby disregarding the requirement for amicable settlement entirely. This constitutes a form of premature arbitration, which should lead the Tribunal to find that its jurisdiction to hear the present case is affected.

3. The Claimant has not complied with the pre-arbitration procedure in Clause 10.1 JVA as the Claimant has not served any written notice onto the Respondent

i. Clause 10.1 JVA mandates that written notice with particulars of the dispute in question must be served onto a party

39. Non-compliance with notice requirements has led courts to deny access to arbitration entirely. In *Rockland County v. Primiano Constr. Co. and re Jack Kent Cooke Inc. & Saatchi & Saatchi* N. Am. 635 N.Y.S.2d 611, the notice period was a precondition to arbitration, barring the tribunal from presiding over the dispute.

40. Written notice provisions have also repeatedly been treated as conditions precedent to arbitration. In *Silverstein Props. Inc. v. Paine, Webber, Jackson & Curtis, Inc.* 65 N.Y.2d 785, the court granted a permanent stay of arbitration because the claimant failed to give written notice within the contractual time limit. This highlights the importance of providing the opposing party with appropriate written notice of the dispute in question.

41. In this case, under Clause 10.1 JVA, the Claimant was required to serve the Respondent with written notice setting out the particulars of the dispute before commencing negotiations. However, no such notice was ever provided. The particulars of the dispute were only set out for the first time in the Notice of Arbitration dated 6th January.

42. Although the Claimant may claim that written notice was provided on 24th December, the Tribunal should find that this does not constitute appropriate notice. On the facts, the Claimant merely informed the Respondent of its decision to terminate the JVA and failed to include any particulars of the dispute. There was no mention of commencement of negotiation or arbitration proceedings in the written notice. The same can be said for the demand made by the Claimant on the 28th of December for the Respondent to pay the fine.

43. Given that there was no appropriate notice that was given to the Respondent prior to the commencement of proceedings, the Tribunal should hold that the Claimant has failed to comply with necessary pre-arbitration procedures, therefore denying them access to arbitration.

ii. As a corollary, no “dispute” has arisen

44. Without notice, the procedural trigger for a dispute under Clause 10 JVA has not occurred. This further reinforces that the tribunal presently lacks jurisdiction to hear the Claimant’s claim. In *PT First Media TBK v Astro Nusantara International BV* [2014] 1 SLR 372, the court reinforced that jurisdiction depends on the scope of the parties’ consent, which includes preconditions. Here, no unequivocal claim was ever made before arbitration. The Claimant’s communications on 24th and 28th December lacked specificity and thus failed to crystallise a dispute.

4. Additionally, the Claimant has not obtained consent from the Minister prior to the initiation of arbitration pursuant to Clause 10.2 JVA

45. Where a contract expressly requires third-party consent before proceedings, courts have enforced such provisions strictly. In effect, ministerial consent here is another condition precedent – without it, no valid arbitration can be commenced.

5. The Tribunal should not endorse the Claimant’s breach of Clause 10 JVA

46. Given the Claimant’s clear breach of the contractual preconditions to arbitration under Clause 10, the Tribunal should decline to permit the proceedings to continue. Tribunals that have disregarded such preconditions have been found to lack jurisdiction. In *DFT 4A_488/2011* (Swiss Fed. Trib.) and *Nihon Plast Co. v. Takata-Petri AG* (Paris Cour d’Appel), failure to comply with conciliation requirements rendered claims unable to be heard by the tribunal. Similarly, the Tribunal should find that the Claimant’s failure to comply with the requirements of Clause 10.1 JVA renders its claim outside the Tribunal’s jurisdiction.

B. In the alternative, the Claimant’s premature initiation of the present arbitration proceeding renders it inadmissible

47. Even if the tribunal concludes that it has jurisdiction, the claim remains inadmissible due to the Claimant’s failure to satisfy the preconditions of Clause 10. The distinction is clear: jurisdiction concerns the tribunal’s power to hear the case at all; admissibility concerns whether the claim is procedurally or substantively defective. As noted in *Waste Management, Inc. v. United Mexican States (“Number 2”)*, ICSID Case No. ARB(AF)/00/3 and reflected in the ICJ’s approach, a claim may be dismissed as inadmissible where it has been brought prematurely, even if jurisdiction exists. On this view, the tribunal should decline to proceed until the Claimant fulfils its contractual obligations to attempt negotiations, serve notice, and obtain ministerial consent.

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

A. The labour practices did not breach Clause 4.2 or 6.1 JVA.

48. The labour practices identified were neither: (1) a breach of any local labour laws; nor (2) "*forced or compulsory*" labour. Correspondingly, there was no breach of Clauses 4.2 and 6.1 JVA, as elaborated on below.

49. 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 UNIDROIT Principles of International Commercial Contracts 2016 ("**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 jurisdictions²¹.

1. There was no breach of Clause 4.2 JVA as the suspension of ASI's operating license could not definitively indicate that there was a contravention of local labour laws

50. The Respondent performed the obligation stipulated in Clause 4.2(e) JVA, which expressly stipulates the Respondent's contractual responsibility to "*[ensure] full compliance with all applicable labour and employment laws*", as there was no definitive evidence, to conclude that the suspension of ASI's operating license was due to any contravention of local labour laws.

51. Firstly, the suspension of ASI's operating license was politically motivated. The suspension of ASI's license was preceded by Seratiuous' direction to Aurion's government, requesting for "*a copy of ASI's workforce audit report [to] be provided to them to ensure transparency*" and threatening a "*complete import ban*" otherwise²², indicating that there was a serious threat to Aurion's economy, pressuring the government to investigate and take action regarding the alleged labour malpractice. However, the IIC report which was cited as the basis for suspension had no "*definitive evidence that would categorise [the] practices as modern slavery*"²³. The report, premised on a lack of "*definitive evidence*", was instead weaponised and exploited for geopolitical leverage.

²¹ 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

²² Facts at [49]

²³ Facts at [48]

Indeed, the Ministry of Trade and Industry explicitly admitted the suspension was in response to "*public concerns*"²⁴.

52. Correspondingly, the result of the investigative report was not the main factor leading to the suspension of the license. The main factor behind the suspension was pressure from Seratiuous' government to take decisive action and their attempt to score political points on the same matter. As evident, the Respondent did not breach any local labour laws or regulations. In short, there was no contravention of Clause 4.2 JVA, and the Respondent has upheld all its contractual obligations under the JVA.
53. Secondly, a contravention of local labour regulations does not amount to a contravention of law. The term "*law*" is explicitly stated in Clause 4.2 JVA. There was no court judgment that indicated that the Respondent had contravened any laws. Indeed, any report premised on a lack of "*definitive evidence*" would have been unlikely to withstand scrutiny in any court or legal proceedings. The evidential threshold to prove any claim that the Respondent had breached local labour laws would simply not have been met, Furthermore, any contravention would, at most, fall afoul of mere labour regulations²⁵ rather than "*labour and employment laws*"²⁶.
54. It is generally uncontroversial that statutes are seen as primary rules that govern conduct, while regulations are seen as secondary rules that govern how laws are made, changed, or applied²⁷. The distinction between statutory law and mere regulations should be maintained, and cannot be confused as one concept, contrary to the Claimant's misguided assertions. Correspondingly, absent any court judgment, there was no established breach of "*law*" for the purposes for Clause 4.2 JVA. Consequently, the Respondent is not liable for any breach of the JVA.

B. There was no breach of Clause 6.1 JVA as nothing amounted to a contravention of Article 2(1) of the Forced Labour Convention

55. Clause 6.1 JVA mandates compliance with internationally recognised labour principles, including the Forced Labour Convention, 1930 (No. 29) ("**FLC**"), which Aurion has ratified²⁸.
56. The labour practices did not contravene Article 1(1) FLC which prohibits work exacted under penalty or without voluntary consent. Under the Convention, "*forced or compulsory labour*" is

²⁴ Facts at [50]

²⁵ Facts at [48]

²⁶ Clause 4.2 JVA

²⁷ H. L. A. Hart, *The Concept of Law* (2012, 3rd Edition) at Chapters 5-6

²⁸ Exhibit 9

defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"²⁹.

57. Firstly, since there was no explicit complaint of any threat or penalty, "*forced and compulsory*" labour cannot be derived from the evidence shown in IIC's report. In *Basfar v Wong* [2023] AC 33 ("*Basfar*") at [129], it was held that since the Claimant never argued that there was "*a threat of penalty or that the work was performed against her will*", they could not be a victim of forced labour under the FLC definition. Likewise, in this case, there were no explicit complaints of any threat of penalty³⁰. Accordingly, no "*forced or compulsory labour*" can be established under the FLC.
58. Secondly, the EHCR specifies that not all work exacted from an individual under threat of a "*penalty*" is necessarily "*forced or compulsory labour*". Factors that must be taken into account include the "*type and amount of work involved*"³¹. Furthermore, ILO has stressed that "*forced labour*" encompasses activities which are more serious than the mere failure to respect labour laws and working conditions³².
59. Once more, since there was no explicit threat from the Respondent, coupled with the voluntariness of the workers³³, the FLC was not breached and correspondingly, no breach of Clause 6.1 JVA exists.

C. Even if any alleged labour malpractice were found to constitute a breach of the JVA, said breach was induced by the Claimant's actions; alternatively, the Claimant is jointly liable for any breach of the JVA by inducing ASI's labour malpractices

60. Even if there was a breach of the JVA by reason of any proven labour malpractices, the Respondent is not wholly liable for said breach. Indeed, the Claimant's actions and conduct induced any labour malpractices affecting ASI as elaborated on below.

1. The Claimant caused ASI to engage BWS

61. The Claimant induced ASI's breach of the JVA as it interfered with the Respondent. Interference in the PICC is defined as an act or omission by the first party or another event for which the first party bears the risk that results in the other party's non-performance³⁴. The failure of the obligor to perform, if attributable to the obligee under Art 7.1.2, does not qualify

²⁹ Article 2(1) FLC

³⁰ Exhibit 10 paragraph 3.4

³¹ *C.N. and V. v. France* (App. No. 67724/09) [2012] EHCR 67724/09 at [74]

³² *S.M. v Croatia* (App. No. 60561/14) [2020] ECHR 60561/14 at [144]

³³ Facts at [47]

³⁴ Article 7.1.2 PICC

as "*non-performance*" under Art 7.1.1³⁵. Where the Claimant's interference is proven, the Respondent cannot be liable for any non-performance for ASI's labour practices.

62. The Claimant's interference came in the form of constant pressure to engage a third-party labour agency to accelerate recruitment, with explicit instructions to "*minimise labour costs wherever feasible*" in light of the budget overruns³⁶. Constant pressure is also illustrated in Exhibit 6, where the claimant wrote to "*emphasise the urgent need to prioritise operational mobilisation for ASI*". The Claimant's interference of a shortened window to complete construction³⁷ left the Respondent no choice but to expedite recruitment, which in turn resulted in the alleged labour practices.
63. Since the Claimant's pressure to cut costs and accelerate construction resulted in the alleged labour practices, under the first limb of Article 7.1.2 PICC, the breach was induced by the Claimant and the Claimant cannot sue on the breach of the same clause.

D. In the alternative, the Claimant's agreement to engage BWS renders the former is jointly liable for any breach of the JVA

64. Firstly, it must be noted that the Claimant had more autonomy over the business decisions of ASI since the Claimant had more stake in ASI than the Respondent. Under the JVA, both parties are forbidden from exercising undue influence over ASI's governance or operations³⁸, with equal number of representatives from the Claimant and the Respondent, while the Chief Executive Officer of the Claimant shall be appointed as the Chairperson of the Board³⁹. Additionally, all modifications to the acceleration strategy must be pre-approved by the Claimant⁴⁰. This indicates that no decisions would have passed without the approval of the Claimant.
65. Secondly, under Article 2.1.1 PICC, a contract may be concluded by conduct of the parties that is sufficient to show agreement. The Claimant approved BWS's selection with no recorded objections⁴¹, which caused ASI to enter into a service agreement with BWS⁴². The Claimant's

³⁵ 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 11

³⁶ Facts at [36]

³⁷ Facts at [32]

³⁸ Clause 3.3 JVA

³⁹ Clause 3.4 JVA

⁴⁰ Exhibit 5 paragraph 5.3

⁴¹ Facts at [37]

⁴² Facts at [38]

subsequent conduct, such as by getting the Respondent to share recruitment strategies with BWS, evinced agreement regarding BWS's engagement.

66. As such, the Claimant not only approved of the engagement of BWS pre-contractually, but also post-contractually by instructing the Respondent to share recruitment campaigns with BWS. The contract for service between ASI and BWS was unanimously approved⁴³, which is further evidence of the parties' joint decision to engage BWS.
67. If the engagement of BWS caused any breach of Clause 6.1 JVA, the Claimant would be jointly liable for said breach together with the Respondent. Clause 6.1 applies to both parties and not solely to the Respondent. Thus, it would fly in the face of logic for the Claimant to suggest that any breach of the JVA by reason of BWS' engagement is wholly the Respondent's contractual liability.

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

A. There was no fundamental non-performance of the JVA giving rise to a right to termination

68. 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 did not breach its obligation under the JVA to ensure ASI's full compliance with all applicable labour and employment laws

69. The Respondent's obligation to ensure ASI's full compliance with all applicable labour and employment laws was a duty of best efforts, and not a duty to achieve a specific result. Hence, the isolated failings of BWS do not automatically transfer liability to the Respondent where the Respondent exercised reasonable diligence and the Claimant shared control and supervision.
70. Article 5.1.5 PICC supplies the criteria for distinguishing both types of duties: “*In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or a duty to achieve a specific result, regard shall be had, among other factors, to*
- a. the way in which the obligation is expressed in the contract;*
 - b. the contractual price and other terms of the contract;*

⁴³ Exhibit 7

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- c. *the degree of risk normally involved in achieving the expected result;*
- d. *the ability of the other party to influence the performance of the obligation.”*

71. In the case of France / Arbitration / Silva Romero / Unilex 1662 / 2006, the Tribunal treated an undertaking tied to external dependencies as best efforts under Article 5.1.4 PICC, then tested the party’s diligence rather than demanding a guaranteed result.
72. The isolated failings of BWS do not automatically transfer liability to the Respondent where the Respondent exercised reasonable diligence and the Claimant shared control and supervision. On the facts, BWS was jointly approved and engaged through the joint project management process, and supervision of BWS was contractually shared.
73. The Claimant pressed for a third-party manpower agency to accelerate mobilisation and “*minimise labour costs wherever feasible*”⁴⁴. The JPMT — with representatives from both sides — worked from a shortlist tabled by the Respondent; the Claimant ultimately approved BWS with no recorded objections, and the JPMT email then “*put it on record*” that the engagement of BWS was unanimously approved⁴⁵.
74. Under the Service Agreement, BWS initially handled “*the full scope of workforce management, including ... regulatory compliance*”⁴⁶, while ASI would assume full responsibility within 12 months. Crucially, a “*collaboration clause*” required ASI to collaborate with BWS to oversee workforce management, including ensuring timely workforce audits, periodic compliance reporting, and addressing employment-condition concerns. This aids in determining the kind of duty imposed by “*ensure full compliance*” in Clause 4.2(f) JVA.

2. Even if there was a breach of obligation, this was not a fundamental non-performance that entitled the Claimant to terminate the JVA

75. A non-performance is fundamental if it is “*material and not merely of minor importance*”⁴⁷. 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 contract⁴⁸.

⁴⁴ Facts at [36]

⁴⁵ Exhibit 7

⁴⁶ Facts at [38]

⁴⁷ UNIDROIT Principles Official Comment at page 250

⁴⁸ CORNET, M., *op. cit.*, page 67

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76. 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 negligently.
77. 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*
- 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.”*
78. These principles will be discussed in turn.
- i. Substantial deprivation*
79. 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 regard⁴⁹.
80. International jurisprudence confirms that termination is only available when the contract's core purpose has been defeated. In *Centro de Arbitraje de México (CAM)*, Arbitral Award, 30-11-2006, the tribunal found fundamental non-performance where the claimant was deprived of the very products it contracted for.
81. Here, however, the Claimant received the core benefit of a functioning facility and access to the Seratious semiconductor market. The JVA's core objective was to establish and operate ASI as a functioning semiconductor manufacturer. This goal was achieved: ASI was constructed, licensed, and operating successfully by May 2024, with orders exceeding forecasts

⁴⁹ Camera Arbitrale Nazionale ed Internazionale di Milano, A-1795/51, Arbitral Award, 01-12-1996 at III 4.4.4

by 35% in September 2024⁵⁰. Regulatory lapses in workforce reporting did not inherently amount to deprivation of the “*essence*” of the JVA.

ii. Intentional or reckless

82. A fundamental breach requires intentional or reckless conduct under Article 7.3.1(2)(c) PICC. However, the evidence does not support this. There is evidence to show the pattern of the Claimant repeatedly pressuring the Respondent to accelerate processes and cut costs. The Claimant expressly pressured the Respondent to accelerate construction in May 2024, pushing for a 15-month construction window instead of the industry norm of 24-36 months⁵¹. and instructed minimisation of labour costs. Later, it was the Claimant who 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 overruns⁵².
83. Furthermore, the Respondent had provided a shortlist of multiple local manpower agencies with experience in large-scale industry staffing, with BWS being one of them. Ultimately, the decision to engage BWS had been taken jointly, with the Claimant’s knowledge and approval, and no recorded objections.

iii. Cannot rely on future performance

84. Generally, a sustained impossibility or breakdown of trust is required to justify termination. This is not present for two reasons – firstly, the suspension of ASI’s license lasted only three weeks⁵³. Once lifted, operations resumed, and ASI remained fully functional.
85. Secondly, the fact remains that BWS was engaged after the joint approval of both the Claimant and the Respondent, as highlighted in the JPMT email in Exhibit 7: “*BWS offered the most competitive rates and relevant experience for our needs...I am writing to formally put it on record that it has been unanimously approved for ASI to proceed with engaging BWS*”. The relationship between the owner of BWS and President Ho was immaterial to the selection criteria upon which both the Claimant and the Respondent chose to engage BWS. The Claimant clearly believed of its own accord, with the information it had, BWS aligned with its goals of cost-effectiveness, and so it had no misplaced reliance on the Respondent.

⁵⁰ Facts at [40], [42]

⁵¹ Facts at [32]

⁵² Facts at [36], Exhibit 6

⁵³ Facts at [51]

iv. Disproportionate loss

86. Termination would disproportionately harm the Respondent and Aurion. The JVA was a USD 1.2 billion venture⁵⁴, with ASI projected to generate revenues exceeding USD 5 billion⁵⁵. By unilaterally terminating, the Claimant sought to escape liability for a USD 500 million fine. Such opportunistic termination imposes undue economic harm on the Respondent and contradicts the proportionality principle under Article 7.3.1(2)(e) PICC.

B. The suspension of ASI's operating license was not a Force Majeure event that entitled the Claimant to terminate the JVA under Clause 8.3

87. A Force Majeure event is defined in the 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*”.

88. Case law has consistently set a high threshold for what qualifies as force majeure: the event must be extraordinary, unavoidable, and render performance objectively impossible; not merely more burdensome or temporarily disrupted.

1. The suspension was only temporary

89. Fundamentally, the suspension of ASI's operating license cannot constitute a Force Majeure event as it was only temporary and not an “*absolute impediment*” to the operation of the factory. The suspension of ASI's license lasted only three weeks, after which operations resumed on 23rd October 2024 after ASI submitted a revised workforce audit report⁵⁶.

90. International jurisprudence makes clear that temporary interruptions do not justify termination: in *World Leisure Holidays (Pty) Ltd v Georges* 2002 (5) SA 531 (W) the Tribunal held that a cyclone-related flight suspension was a temporary impossibility that did not permit contract termination, since the foundation of the contract was not destroyed. Similarly, the suspension here was brief and reversible; ASI could resume operations immediately thereafter, even if existing customers had faced delays or expressed dissatisfaction. The foundation of the JVA did not extend so far as to guarantee there would never be disruptions to ASI's operations.

91. Further, in *Granuco S.A.L. v. FAO* (UNILEX, 2000) (“*Granuco*”), the Tribunal held that even a significant EU decision requiring the claimant to move its entire plant did not constitute force majeure because the impediment was not absolute – performance remained possible

⁵⁴ Facts at [17]

⁵⁵ Facts at [42]

⁵⁶ Facts at [51]

from a new location. By analogy, ASI's suspension was far less onerous: a short pause, not an absolute impossibility of performance. Hence, the suspension was a curable, temporary regulatory measure, not a Force Majeure event sufficient to justify termination.

2. The impediment was foreseeable and avoidable

92. Force majeure cannot excuse non-performance if the risk was foreseeable at the time of contracting⁵⁷. The Claimant knew from the onset that Aurion's labour protections were weak and politically sensitive⁵⁸, such that the hiring of BWS, a local Aurion company entrenched in this environment of weak regulation, could have led to sub-standard accountability manifesting in the underreporting of overtime hours.
93. Further, the suspension arose from underreporting of overtime hours by BWS, a failure that could have been prevented through diligent supervision by both parties under the Service Agreement's collaboration clause. In fact, the sharing of responsibility enshrined in the collaboration clause to oversee workforce management squarely included ensuring timely submission of workforce audits, periodic compliance reporting, and addressing any concerns related to employment conditions. The onus had equally been on the Claimant to ensure timely submission of workforce audits, the very failure to do so had been the reason for the suspension of licenses.
94. As in *Granuco*, where relocation of production was burdensome but not unavoidable, ASI's compliance failures do not satisfy the "*unavoidable impediment*" criterion. Unlike natural disasters or wars, the suspension was not unavoidable; it was the foreseeable outcome of poor compliance management.

V. PRAYER FOR RELIEF

95. For the above reasons, the RESPONDENT respectfully requests the Tribunal to:
- a.* Declare that the Respondent is entitled to invoke sovereign immunity;
 - b.* Declare that the Claimant's initiation of arbitration was premature;
 - c.* Dismiss the claim that regarding breach; and
 - d.* Declare that the Claimant's termination was unlawful.

⁵⁷ Article 7.1.7 PICC

⁵⁸ Facts at [15]