
BEFORE THE
ASIAN INTERNATIONAL ARBITRATION CENTRE



20th LAWASIA INTERNATIONAL MOOT, 2025

CALYX DREAMBOT INC.

(CLAIMANT)

VERSUS

RIVUS MICROELECTRONICS GROUP

(RESPONDENT)

[MEMORIAL FOR THE CLAIMANT]

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STATEMENT OF JURISDICTION

The Claimant, *CALYX DREAMBOT INC.* submits to the jurisdiction of the Hon'ble Arbitral Panel at the Asian International Arbitration Centre invoking its Jurisdiction under **Rule 2 of the AIAC Arbitration Rules read with Clause 11 of the Joint Venture Agreement**, impleading *RIVUS MICROELECTRONICS GROUP* as the Respondent.

**BEFORE THE
ASIAN INTERNATIONAL ARBITRATION CENTRE**

**THE CLAIMANT HUMBLY AND RESPECTFULLY SUBMITS TO THE
JURISDICTION OF THE HON'BLE ARBITRAL PANEL
AT THE ASIAN INTERNATIONAL ARBITRATION CENTRE.**

QUESTIONS PRESENTED

[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

- A. Seratious and Veridia are two powerful nations, vying for dominance in the semiconductor sector. Aurion is a developing nation, emerging as a global investment hub for its abundant and relatively inexpensive workforce. Recognising these advantages, the newly elected President of Aurion, Mr. Ho, aggressively pursued high-profile investments from Veridia.
- B. President Ho assured Veridian firms of stability and independence with Rivus Microelectronics Group (hereinafter **RMG**) as it's a commercially autonomous vehicle under his influence. Acknowledging Aurion's potential, the governments of Aurion and Veridia signed a Bilateral Investment Treaty (hereinafter **BIT**) in October 2022.
- C. President Ho secured many high-profile investors, notably, Calyx DreamBot Inc. (hereinafter **CDI**) which was the largest semiconductor firm in Veridia. The announcement that CDI will invest USD1.2 billion into a joint venture with RMG made the headlines.
- D. Although RMG is technically a separate entity, it was widely known as President Ho's pet project, with reports that its capital requirements were provided using public funds from the Government Treasury and that its decision-making was heavily influenced by the Government. Although this was never disclosed to the Veridian investors, this fact remained accessible to locals in Aurion.
- E. By the end of December 2022, CDI formalised a Joint Venture Agreement (hereinafter **JVA**) with RMG. With the execution of the JVA, Aurion Semiconductor Inc (hereinafter **ASI**) was incorporated on 3rd January 2023. Leveraging RMG's status, the land alienation, regulatory and planning approvals were all expedited, allowing the project to break ground within weeks.
- F. Despite industry norm, CDI pushed for an accelerated completion schedule, setting an internal target of 15 months, to ensure timely fulfilment of supply agreements with key

buyers. This accelerated deadline was under the supervision of a Joint Project Management Team (JPMT) comprising representatives from both CDI and RMG.

- G. However, as the 15-month construction window progressed, ASI began to incur costs beyond initial projections. Facing these financial pressures, CDI grew increasingly concerned and through the arrangement of Mr Suvan, Ms. Al Emret, the CEO of CDI, met President Ho to voice out her frustrations.
- H. Ms Al Emret once again emailed the JPMT about prioritising operational staff mobilisation and urged RMG to engage a third-party labour agency to accelerate recruitment. RMG proposed a shortlist among them was Beta Workforce Solutions (hereinafter BWS). As per the internal correspondence, engaging BWS was unanimously approved.
- I. ASI entered into a service agreement with BWS for the supply and management of 1,200 workers. This requirement was fulfilled by 20th November 2023, and ASI's production commenced within the targeted 15-month timeframe.
- J. By September 2024, ASI was a competitive player in the global semiconductor supply chain. However, on 13th September 2024, an investigative report was published, raising grave allegations on exploitative labour practices. Post this, the Seratious government issued a formal statement, threatening a complete import ban if the Aurion government failed to take immediate action.
- K. An Independent Investigative Committee ("IIC") was established by the government of Aurion. Inter alia, IIC's findings mentioned that there was no definite evidence of modern slavery and the IP address of the report which triggered the investigation was traced in Seratious.
- L. The IIC's report sparked online criticism, casting a doubt on the neutrality and credibility of its findings. In response to this, the Aurion government suspended ASI's operating license

on 2nd October 2024 until ASI submitted a revised workforce audit report. This suspension was lifted on 23rd October 2024.

- M. During the suspension period, CDI initiated an internal investigation wherein it was found that BWS had close personal ties with RMG. RMG did not disclose this significant conflict of interest to CDI. In light of this, Ms. Al issued stern warnings to RMG's CEO and the team on WhatsApp, but her messages went ignored.
- N. A further review was conducted by the Ministry of Trade and Industry, and the timesheets of an undisclosed ASI employee were found which had not been accurately reflected in the revised report. On 16th December 2024, a fine of USD 500 million was imposed on ASI for failure to meet labour standards.
- O. On 24th December 2024, CDI terminated their JVA with RMG and told them to bear the fine. On 28th December, CDI again demanded that RMG pay the fine but was met with RMG's cavalier attitude and refusal to engage constructively. CDI then initiated arbitration proceedings against RMG pursuant to its arbitration notice dated 6th January 2025.
- P. The matter is now set to be heard by the Arbitral Panel.

SUMMARY OF PLEADINGS

I. RMG IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY.

RMG was presented and operated as a commercial entity, free of any State control. The internal State influence of RMG was disclosed and misrepresented to CDI, violating the AV-BIT. Therefore, even if the Hon'ble Tribunal finds RMG to be a State, it should not be granted sovereign immunity. The theory of restrictive immunity should be applied to prevent sovereign immunity in commercial transactions. This is supported by the waiver of immunity, though the agreement of Clause 11 of the JVA. International law seeks to protect private entities that are in commercial contracts with State entities.

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

Foremost, initiating the arbitration proceedings against the Respondent was not an isolated step, rather it was the product of a progressive buildup, closely connected to the cavalier attitude of RMG. Further, sub-clause 10.1 of the JVA, nowhere explicitly mentions that the negotiations are a mandatory pre-condition to arbitration. In *Grupo Unidos por el Canal SA and others v Autoridad del Canal de Panama*, the Tribunal adjudged that they had jurisdiction even though the parties did not comply with the pre-condition to arbitration. Therefore, the above said claim shall not be sustained.

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

RMG is bound by the Forced Labour Convention, but it violated the provisions of the Convention by exacting forced labour from the workers of ASI through a menace of penalty and without the voluntary offer by the workers. RMG is liable for violation of Article 2 and Article 4, even if it is a private entity. If it is a State entity then it cannot claim to be exacting

forced labour for economic growth. Since RMG is obligated to comply with applicable laws under the JVA, this constitutes a breach of the JVA.

IV. CDI'S TERMINATION OF THE JVA WAS LAWFUL

In accordance with the governing law of the contract, the UNIDROIT Principles of Commercial Contracts, CDI made bona fide use of its rights to terminate the contract. RMG has committed a fundamental non-performance by violating applicable laws, hence CDI has the right to terminate the JVA. RMG also committed fraudulent misrepresentation by withholding material facts in order to induce CDI to enter into the contract. CDI is terminating the JVA for these reasons, in good faith. It is not abusing its rights as claimed by RMG.

PLEADINGS

I. RMG IS NOT ENTITLED TO INVOKE SOVEREIGN IMMUNITY.

(A) RMG Should Not Be Considered As A State And Hence They Are Not Entitled To Sovereign Immunity.

(A.1) RMG Is A Commercially Autonomous Entity

1. The word ‘autonomous’ implies that an entity is self-governing, independent and subject to its own laws.¹ Therefore, RMG was independently functioning in all its commercial activities. President Ho stated this during the closed-door discussions with Veridian firms from April to June 2022. He assured that the local investment partners would be independent. He also further stated that RMG would be commercially autonomous. This was done to reassure the firms against Aurion’s state control, protectionist legislations and policies which the Veridian investors feared.² It is also further submitted that RMG was a separate entity³ and hence has a legal standing of its own.
2. The Aurion- Veridia Bilateral Investment Treaty (“AV-BIT”) was signed in pursuance of the above negotiations. The agreement also guaranteed “regulatory stability for investors”.⁴ Therefore, it would not be a level playing field for CDI, if RMG could avail sovereign immunity after claiming to be commercially independent and hiding the facts of its internal functioning as mentioned in [6].
3. Even if RMG is a State-Owned Entity, it cannot be considered as an organ of the State. According to what was mentioned by President Ho, it was not a body exercising

¹ ‘autonomous’ (*Dictionary.com*) <<https://www.dictionary.com/browse/autonomous>> accessed 25 August 2025.

² Moot Problem [10].

³ Moot problem [27].

⁴ Exhibit 1, moot problem.

elements of governmental authority nor acting on the instructions or under the directions or control of the State. The case of *F-W Oil Interests v Trinidad and Tobago* established that these elements are to be satisfied for an SOE to be considered as a State according to Articles 4, 5 and 8 of the ILC Articles on Responsibility of States for Internationally Relevant Acts (ARSIWA).⁵ The ARISWA, which is customarily used by ISDS tribunals to establish international laws, is important here to establish the definition of a 'State'.⁶

4. RMG does not satisfy the functional test condition to be considered as an organ of the state as laid down in the cases of *Emilio Agustín Maffezini v The Kingdom of Spain* and *Tulip Real Estate and Development Netherlands BV v Republic of Turkey*. This is because the acts done by RMG were commercial in nature and were not of governmental authority. These commercial acts of labour were not under the direction or the control of the State.⁷ The responsibilities of RMG are described under Clause 4.2 of the JVA as discussed further in [10]. In conclusion, RMG is a commercially autonomous entity, performing commercial functions without State authority.

(A.2) The Influence of the Government of RMG Was Not Revealed to CDI Which Falls Under the Category of Non-Disclosure and Misrepresentation.

5. Article 3.2.5 of the UNIDROIT Principles states the importance of disclosure of circumstances according to reasonable commercial standards: "...fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed".⁸ This includes fraudulent

⁵ *F- W Oil Interests, Inc v The Republic of Trinidad and Tobago* ICSID Case No ARB/ 01/ 14, Award, 3 March 2006 [203].

⁶ Carlo de Stefano, *Attribution in International law and Arbitration* (OUP 2020) 105-111.

⁷ *Emilio Agustín Maffezini v The Kingdom of Spain* ICSID Case No ARB/ 97/ 7, Award, 13 November 2000 [52], [57]; *Tulip Real Estate and Development Netherlands BV v Republic of Turkey* ICSID Case No ARB/ 11/ 28, Award, 10 March 2014 [307]-[308].

⁸ The UNIDROIT Principles of International Commercial Contracts 2016, art 3.2.5.

misrepresentation. Misrepresentation is said to be done when something is presented as something which it is not. President Ho acted fraudulently to present RMG as an independent entity for his own benefit. It therefore satisfies the three conditions of fraudulent misrepresentation: (1) misrepresentation or non-disclosure of internal functions of RMG, (2) the link between misrepresentation/non-disclosure and conclusion to the contract, which showcased RMG as a commercially autonomous body, and (3) the fraudulent intention of President Ho to secure investment.⁹

6. Internal functioning of RMG, including its capital funding from public funds, leadership structure where board members consisted of Cabinet Ministers and decision-making that mirrored the internal policies of the Government of Aurion, was not revealed to CDI¹⁰, and they were led to believe that they were commercially autonomous. In the case of *Bridas et al, v. Turkmenistan*, it was found that a Turkmenistan entity was not financially independent from the Government and the Government used this to commit fraud. The fraud was to prevent the other entity from claiming damages.¹¹ In the present case, RMG is claiming sovereign immunity, post its fraudulent misrepresentation to CDI.
7. While entering into a JVA, an entity has the responsibility to disclose information on the entity that a reasonable person would be entitled to know. The reason for disclosure should be to deliver an efficient, competitive and informed market where shareholders have an equal opportunity to participate.¹² Therefore, providing sovereign immunity to

⁹ JUS MUNDI 'Danubai Files 2: Lessons from the Vis Moot' (2024) Chapter 11: XXX VIS MOOT - 2022-23 - DRONES/ AIRCRAFT <<https://jusmundi.com/fr/document/publication/en-chapter-11-xxx-vis-moot-2022-23-drones-aircraft>> accessed 25 August 2025.

¹⁰ Moot problem [27], [28].

¹¹ *Bridas S.A.P.I.C., et al, v. Government of Turkmenistan and Turkmenneft* ICC Case No. 9058/FMS/KGA.

¹² Andrew Lumsden, 'Continuous Disclosure & Confidentiality Issues in Joint Ventures' (2003) Corrs Chambers Westgarth.

RMG would be a breach of the fair and equitable treatment guaranteed under the AV-BIT treaty for Veridian investors.¹³

8. In conclusion, the principle of *Fraus omnia corrumpit* should be implied here. This states that once fraud is discovered, it invalidates all aspects of an arbitral award.¹⁴ Applying this principle, RMG should not be entitled to sovereign immunity, as it fraudulently misrepresented to be a commercially autonomous entity.

(B) Even if RMG is Considered as a State, They Should Not be Granted Sovereign Immunity.

(B.1) RMG Was Engaged In Commercial Acts

9. The common and current modern international law of restrictive immunity states that States engaged in commercial acts should not be entitled to claim sovereign immunity: “States engaging in trade should lose their sovereign immunity while doing so”. This theory takes a look at both the sovereignty status of a State and the nature of the transaction. The shift from absolute immunity to restrictive immunity has been one that has been accepted by foreign courts over the last half-century and has been reinstated in landmark cases such as *Trendtex Trading v Bank of Nigeria*.¹⁵ Once a sovereign entity opts to act as a commercial entity, it should be treated as one. Only the restrictive immunity theory should be adopted for the growing usage of International Commercial Arbitration.¹⁶

¹³ Exhibit 1, moot problem.

¹⁴ ‘*Fraus omnia corrumpit*’ (Oxford Reference) <<https://www.oxfordreference.com/display/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-828>> accessed 25 August 2025.

¹⁵ *Trendtex Trading V Bank of Nigeria* (1977) 1 QB 529 Finance.

¹⁶ *KLA Const. Technologies Pvt. Ltd. v. The Embassy of Islamic Republic of Afghanistan at New Delhi* AIRONLINE 2021 DEL 1605.

10. The nature of an act as to whether it is sovereign or commercial in nature would depend on the purpose and nature of the transaction of the State¹⁷. Clause 4.2 of the JVA describes the responsibilities of RMG. The present issue here is that of labour breach. Two clauses under Clause 4.2 talk about RMG's responsibility in terms of labour and workforce:

Clause 4.2(e): The management and allocation of workforce is not sovereign in nature; it is purely commercial in nature.

Clause 4.2(f): Ensuring with compliance applicable laws is a responsibility of every commercial entity.¹⁸

11. As States increasingly enter the commercial sphere through State-owned entities, they should be subjected to the same limitations as private entities in commercial transactions. Sovereign immunity, which allows states to avoid their obligations, can be a point of contention and may lead to private parties seeking alternative means of redress. The defence of sovereign immunity would allow States to have an undue advantage over the other contracting party.¹⁹ In the present case, Aurion being the seat of arbitration²⁰ would increase this undue influence.

12. Common law jurisdictions have switched to Statutes which explicitly state restrictive immunity, and those that lack these Statutes have confirmed to international laws on the same, according to the 1982 UN Survey and 1988 ILC questionnaire. The restrictive doctrine has also seen development in civil law jurisdictions. These changes were adopted due to these five factors: "increased accountability of the forum State before its own courts; increased trading activity of States; declining support for a rationale

¹⁷ Ibid.

¹⁸ Exhibit 4, moot problem.

¹⁹ Dewi Susanti Siagian, 'Sovereign Immunity in Commercial Transaction under International Law' (2023) 20 Indonesian J Int'l L 287.

²⁰ Exhibit 4, moot problem.

based on sovereignty and dignity of States; increased use of waivers, particularly in public debt transactions; and a fundamental unfairness towards the private party in the operation of the doctrine.”²¹ This proves that absolute immunity should not be an acceptable argument to this Hon’ble Tribunal, and in conclusion, restrictive immunity should be applied to deny sovereign immunity in commercial acts.

(B.2) Agreement To Arbitration Serves As An Implicit Waiver Of Sovereign Immunity

13. Clause 11 of the JVA explicitly states that both parties had agreed to the arbitration proceedings: “Parties agree that any dispute relating to any matter arising out of and connected with this Agreement shall be determined by arbitration”. This was in furtherance of the parties’ agreement to dispute resolution in Clause 10.²² This implies an implicit waiver of sovereign immunity. In *IPITRADE INTERN. v. Federal Republic of Nigeria*, it was concluded that internationally, an agreement to arbitrate would constitute an implicit waiver, whether it is to submit to local or international laws.²³ In the present case, efforts for negotiations were made by Ms AI according to Clause 10 of the JVA. However, it was met with no response from RMG. This led CDI to initiate arbitral proceedings under Clause 11 of the JVA.²⁴

14. The international principle of a sovereign being bound to an agreement to arbitrate contractual disputes was established in the case of *Libyan American Oil Co. (Liamco) v Government of the Libyan Arab Republic*.²⁵ This is because arbitration is based on consent, and agreeing to submit to the authority of an arbitral tribunal is the ability of a State to waive its sovereign immunity.²⁶

²¹ Hazel Fox, Philippa Webb, *THE LAW OF STATE IMMUNITY* (3rd Edition THE OXFORD INTERNATIONAL LAW LIBRARY 2015) 133-166.

²² Exhibit 4, moot problem.

²³ *IPITRADE INTERN. v. Federal Republic of Nigeria* 465 F. Supp. 824 (D.D.C. 1978).

²⁴ Moot problem [60].

²⁵ *Libyan American Oil Co. (Liamco) v Government of the Libyan Arab Republic* Award, 12 Apr 1977.

²⁶ Nigel Blackaby and Others, *REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION Student Version* (OXFORD UNIVERSITY PRESS) 798-804.

15. The above is further supported by Article 17 of the United Nations Convention on Jurisdictional Immunities of States and Their Property. It states that once an agreement for arbitration is made in writing, a foreign national cannot claim sovereign immunity.²⁷ This can be applied in the present case to prevent RMG from claiming sovereign immunity from the arbitral tribunal whose seat is Aurion.
16. In conclusion, political and legal tensions arise between nations when a jurisdiction is established without the consent of the parties.²⁸ However, in the present case, both parties had given consent to the jurisdiction, and it is strengthened by the fact that the agreed seat of jurisdiction is Aurion itself.²⁹

²⁷ The United Nations Convention on Jurisdictional Immunities of States and Their Property, art 17.

²⁸ Siagian (n 19).

²⁹ Exhibit 4, moot problem.

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

(A) Initiating the Arbitration Proceedings Was Not an Isolated Step.

17. The initiation of arbitration proceedings by CDI was not an isolated or standalone step but rather it was the product of a progressive buildup, closely connected to the cavalier attitude of RMG. On 11th October 2024, CDI's CEO, Ms. Al Emret texted her concerns and frustrations on the WhatsApp group namely, 'ASI Project' which had Mr. Suvan, the CEO of RMG and others as its members.³⁰ Though not explicitly pointed out in her messages, the context and cause behind her frustration was the discovery that RMG did not disclose their close personal ties with BWS to CDI, which was perceived as a significant conflict of interest.
18. This finding came to light during CDI's internal investigation which they had commenced during the period when ASI's operations were under suspension by the Government of Aurion. This said investigation concluded on 10th October 2024,³¹ and on the following day itself, Ms. Al conveyed her concerns on the abovementioned WhatsApp group.
19. However, despite her messages being blue ticked on WhatsApp, she received no reply at all from any party on the group.³² Ms. Al's concerns regarding BWS held high importance because the three-week suspension which was faced by ASI was due to the alleged non-compliance of labour laws, a matter which came under BWS's duties. The alleged non-compliance which occurred under the accountability of BWS was what prompted CDI to undertake the internal investigation to probe the matter on its own.
20. Concisely, this was the first instance where Ms. Al's effort to resolve concerns/ disputes in good faith via conversation, went in vain. In fact, in one of her messages from the

³⁰ Exhibit 11, moot problem.

³¹ Moot problem [54].

³² Moot problem [55].

11th of October conversation, she even said “I really don’t want to fight”,³³ sidelining the fact that not disclosing such a major conflict of interest to CDI was a grave concern, Ms. Al’s intention was only to resolve the matter peacefully by having a conversation and discussion about it. However, as clearly evident, her efforts to do so turned out to be futile. RMG’s unresponsive attitude leading to erosion of trust, coupled with the damaging aftermath of ASI’s suspension, prompted CDI to terminate its JVA with RMG on 24th December 2024.

21. Ms. Al’s efforts to make good faith conversations once more, proved to be in vain on 28th December, wherein she mentioned the payment of fine of USD 500 million as a reminder for RMG. However, she received a grossly agitated response by RMG’s CEO who himself mentioned in his text that “if you are not happy, why don’t you just challenge the fine in court?”,³⁴ in light of this behaviour and the message sent by RMG’s CEO himself, their allegation that CDI initiated the arbitration proceedings prematurely is not sustainable. Further to the WhatsApp exchange on 28th December 2024, Mr. Suvan, a person who had close personal ties to President Ho and also served as a crucial connection during the introduction of RMG’s executives with Ms. Al, texted on the group about why did Ms. Al panic and that he was speaking to President Ho about this. His message explicitly said, “you know who RMG is and that the fine can be waived right...”.³⁵

22. Mr. Suvan never provided any follow up on such big claim of his. In light of this behaviour, CDI sent the arbitration notice on 6th January 2025. It is also pertinent to mention that there were ample number of days to respond and follow up on Ms. Al’s texts and in connection to the termination of the JVA since it was terminated on 24th

³³ Exhibit 11, moot problem.

³⁴ Exhibit 11, moot problem.

³⁵ *ibid.*

December 2024 and the notice of arbitration proceedings was sent on 6th January 2025. A gap of almost two weeks should be deemed sufficient to converse about the issue and the fact that Mr. Suvan never followed up on his empty claim about getting the entire fine ‘waived’, furthers CDI’s initiation of the arbitration proceedings.

(B) This Hon’ble Arbitral Tribunal has Jurisdiction over the Present Dispute.

23. The counsel for the Claimant expressly denies the Respondent’s claim that the arbitral tribunal has no jurisdiction over the present dispute. The Respondent may argue that the Claimant did not comply with Clause 10, sub-clause 10.1 of the JVA which is the dispute resolution clause to negotiate any disputes that arise, in an amicable manner. However, it is respectfully submitted that such a clause should be treated as a merely a contractual obligation, whose breach can entitle the counter party to damages, but it is not a condition whose breach will preclude the Claimant from initiating arbitration.³⁶
24. In fact, to decide whether a particular clause or provision of an agreement is a mandatory ‘condition precedent’ to arbitration, the language of the provision is important.³⁷ In the present dispute, sub-clause 10.1 of the JVA talks about amicable resolution of disputes through negotiations. The said sub-clause merely mentions that the parties agree to resolve any disputes that arise through amicable negotiations.³⁸
25. A glance at the language of the abovesaid clause will reveal that it is framed as a contractual obligation only. Nowhere does the clause mention that the negotiations are a mandatory pre-condition to arbitration or that arbitration proceedings cannot be initiated unless and until such negotiations are undertaken, rather it merely states that the parties agree to resolve any disputes amicably. Even in response to this context, the Claimant has shown in the preceding argument, how RMG refused to engage in good

³⁶ Gary Born and Marija Šćekić, ‘Pre-Arbitration Procedural Requirements ‘A Dismal Swamp’’ (2015) Oxford Academic < <https://doi.org/10.1093/acprof:oso/9780198739807.003.0015>> accessed 21 August 2025.

³⁷ *ibid.*

³⁸ Exhibit 4, moot problem.

faith internal negotiations and instead showed a hostile and cavalier attitude to the Claimant. The Claimant would also like to highlight the language of Clause 11 of the JVA which is the arbitration clause. The said clause mentions that the parties agree to resolve any dispute through arbitration.³⁹

26. Nowhere does the clause mention that Clause 11 cannot be invoked unless the parties have complied with Clause 10 of the JVA. Therefore, Clause 10, sub-clause 10.1 can in no manner be treated as a mandatory pre-condition to arbitration. Moreover, there is an understanding that the obligation to negotiate is, by its nature, imperfect, and such obligations have only minimal consequences on the rights of parties and are not intended to bar the access to arbitration.⁴⁰

27. In one such dispute, it has been decided by the tribunal that “The provision in the arbitration clause that disputes “be settled in an amicable way” constituted no condition precedent to referral to arbitration . . .”,⁴¹ this case is analogous to the present dispute wherein the clause mentioning amicable resolution of disputes cannot be considered as a condition precedent to arbitration. Concisely, such a clause shall be treated as directory in nature and not mandatory. Furthermore, in the case of *Grupo Unidos por el Canal SA and others v Autoridad del Canal de Panama*,⁴² the Respondent had raised an objection to the jurisdiction of the Tribunal on the claim that the Claimant had failed to comply with the pre-conditions to arbitration provided in their contract which involved referring of disputes to the Dispute Adjudication Board (DAB). Ultimately, the Tribunal adjudged that they did have jurisdiction over the dispute and that it was

³⁹ Exhibit 4, moot problem.

⁴⁰ Gary Born and Marija Šćekić (n 36).

⁴¹ ICC Case No 11490, Final Award (2012) XXXVII YB Comm Arb 32.

⁴² ICC Case No 22588/ASM/JPA (Final Award, 12 December 2018) <<https://jsumundi-com.opj.remotlog.com/en/document/decision/en-1-grupo-unidos-por-el-canal-s-a-2-sacyr-s-a-3-salini-impregilo-s-p-a-and-4-jan-de-nul-n-v-constructora-urbana-s-a-and-5-sofidra-s-a-v-autoridad-del-canal-de-panama-final-award-wednesday-12th-december-2018>> accessed 20 August 2025.

admissible. In this decision, they also quoted the U.S. Supreme Court which said that the DAB has “no direct impact on the resolution of [the Parties’] dispute”.⁴³

28. Moreover, in the above said case, the Claimant had also shown that the pre-condition would have been futile which is why they initiated arbitration proceedings against the Respondent. Similarly, in the present dispute, seeing the conduct of the Respondent, as evidenced in the preceding argument which is not repeated here for the sake of brevity, the Claimant believes that complying with Clause 10.1 of the JVA would have been utterly futile and would have only delayed the arbitration unnecessarily. Moreover, the Respondent shall be required to prove that the validity of the arbitration clause depends on the proper implementation of the pre-condition which was not implemented.⁴⁴ This however, is not the case in the present dispute as argued through the aforesaid contentions.

29. The Respondent may refer to the case of *White v. Kampner*,⁴⁵ wherein the arbitral award had been set aside on the grounds that the parties did not comply with the mandatory negotiations which were a pre-condition to arbitration. However, the Claimant would like to highlight a strong contrast between the said case and the present dispute, non-compliance of pre-condition to arbitration cannot be a ground to challenge the initiation of arbitration itself. In *White v. Kampner*,⁴⁶ this ground was considered for vacating the ‘arbitral award’ which had been granted by the Tribunal and that award was then set aside. The present dispute is at a completely different stage and hence non-compliance

⁴³ *ibid* [284].

⁴⁴ Matthias Scherer, ‘Multi-tier Dispute Resolution Clauses: Swiss Supreme Court Considers Impact Of (Omitted) Pre-arbitral Expert Appointment and Conciliation on Arbitral Tribunal’s Jurisdiction’ (*Kluwer Arbitration Blog*, 25 May 2011) < <https://legalblogs.wolterskluwer.com/arbitration-blog/multi-tier-dispute-resolution-clauses-swiss-supreme-court-considers-impact-of-omitted-pre-arbitral-expert-appointment-and-conciliation-on-arbitral-tribunals-jurisdiction/>> accessed 20 august 2025.

⁴⁵ *White v. Kampner* 641 A.2d 1381, 229 Conn. 465 (Conn. 1994).

⁴⁶ *ibid*.

of Clause 10.1 cannot be a ground to challenge the initiation of arbitration proceedings itself.

(C) Procedural Irregularities by RMG.

30. Foremostly, the Claimant questions the credibility of the preliminary objections raised by RMG. According to Article 4 of the AIAC Arbitration Rules, 2023, the Respondent is required to file a response to the notice of arbitration wherein inter alia, they are required to submit a response to the claims raised in the arbitration notice.⁴⁷ However, RMG has not provided any proof of submission of their response to the arbitration notice dated 6th January 2025, therefore, the Claimant respectfully requests the Tribunal to probe the credibility and validity of the Respondent's preliminary objections on account of procedural irregularity.

31. Further, the Claimant expressly denies RMG's claim that they never agreed to participate in arbitration proceedings,⁴⁸ it is pertinently mentioned that since the JVA contains Clause 11 which is the arbitration clause, it is self-evident that the Respondent agreed for arbitration of any disputes that arise when the JVA was signed. Furthermore, as mentioned above, whether the Respondent has formally followed the procedure and submitted a response to the Claimant's arbitration notice remains uncertain. In light of the submissions made hereinabove, the claim that CDI initiated the arbitration proceedings prematurely, shall not be sustained.

⁴⁷ AIAC Arbitration Rules, 2023, art 4.

⁴⁸ Moot problem [63].

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

32. Aurion has ratified the Vienna Convention on Law of Treaties, 1969 (“VCLT”), and the Forced Labour Convention, 1930 (“FLC”).⁴⁹ Article 26 of the FLC dictates that a State can express consent to be bound by the FLC through the process of ratification, which is delineated in the same Article.⁵⁰ Thus, in accordance with Article 14 of the VCLT, which delineates the requirements for a state to consent to being bound by a treaty by ratification,⁵¹ the State of Aurion has validly consented to be bound by the Articles of the FLC.

33. Clause 4.2(f) of the JVA imposes an obligation upon RMG to ensure full compliance with all applicable labour and environment laws. Clause 6 of the JVA further imposes a general obligation upon both parties to the JVA that they must conduct operations in compliance with international standards and compliance.⁵² Due to the Aurion’s ratification of the FLC, Aurion and RMG hence owed an obligation CDI to perform their obligations under the JVA in compliance with the FLC.

(A) RMG’s Treatment of the Workers Qualifies as Forced Labour as per Article 2 of the FLC.

34. Article 2 of the FLC defines Forced Labour as comprising three key elements: work, a menace of penalty in case the work is not done, and the non-voluntariness of doing the work.⁵³ The manner in which RMG treated its workers satisfies all three elements, as elaborated upon below.

(A.1) The labourers qualified as workers under RMG.

⁴⁹ Exhibit 2, moot problem.

⁵⁰ The Forced Labour Convention 1930, art 26.

⁵¹ The Vienna Convention on the Law of Treaties 1969, art 14.

⁵² Exhibit 4. Moot problem.

⁵³ The Forced Labour Convention 1930, art 2.

35. The FLC adopts an expansive definition of workers, hence any form of employment would fall within the ambit of workers under this Convention. Thus, RMG's workers do fall within the scope of workers under FLC.

(A.2) RMG threatened to penalise the workers if they did not continue working despite the ill-treatment.

36. The ILO Committee of Experts has elaborated in multiple reports and official communications that "menace of penalty" need not necessarily mean penal sanctions, it can also mean any form of threat of losing rights or privileges that were previously being offered to the worker.⁵⁴ The Committee has also opined that while overtime generally is not in contravention of the FLC as long as it is within the limits permissible under the applicable national and international laws, overtime would be unlawful if it were performed under a threat of dismissal if the worker refused to work overtime. In the case of *United States v. Bradley*, the First Circuit court established that a threat of serious harm need not be physical, it includes the threat of any consequences that, in tandem with the other existing circumstances, compel a reasonable person in those circumstances to work or continue working.⁵⁵

37. In the present circumstances, clause 3.4 of the IIC Report stated that 54% of RMG's workers reported that overtime was imposed to meet the KPIs, at the threat of deduction of wages.⁵⁶ Additionally, the further review conducted by the Ministry of Trade and Industry also revealed that overtime that the workers had undertaken had been substantially underreported, and was in contravention of the labour standards in

⁵⁴International Labour Conference (96th Session) Report III (Part 1B): General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) (Geneva 2007), para 37.

⁵⁵ *United States v. Bradley* 390 F.3d 145 (1st Cir. 2004).

⁵⁶ Exhibit 10, moot problem.

actuality. The Ministry found this to be conclusive evidence of modern slavery as well.⁵⁷ Hence, RMG did impose a significant threat of penalty upon its workers.

38. Although the ministry did not provide ASI with the proof of the source of the timesheet, they provided the same to the Seratious government on request, along with sufficient documentation to address the discrepancies. This was found to be satisfactory by the Seratious government, indicating that the source was reliable and the Aurion government had different reasons for non-disclosure to ASI.⁵⁸

(A.3) The workers did not voluntarily offer their services.

39. The Committee of Experts has also stated that while this third criterion of the work not being voluntarily committed is distinct from the second criterion, there are certain circumstances where the two criteria overlap. If the previous “menace of penalty” criterion is satisfied, where the workers consented to working under the threat of a penalty, then this involuntariness criterion is also satisfied, since it is not possible to volunteer or provide free consent under a looming threat.⁵⁹

40. However, even if the menace of penalty criterion is not satisfied, proof that the services were not voluntarily offered can still be found in any other form of indirect coercion, or any other factors that might have indirectly induced the workers into offering their services, without which they would not volunteer such an offer. Such factors stretch from any statutory instrument or act of authorities, to any deceit, false promises, or retention of documents by the employer that might result in the worker being indirectly forced to remain at the disposal of the employer.⁶⁰ Further, even the worker voluntarily

⁵⁷ Moot problem [56].

⁵⁸ Moot problem 58.

⁵⁹ International Labour Conference (96th Session) Report III (Part 1B): General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) (Geneva 2007), para 38.

⁶⁰ International Labour Conference (96th Session) Report III (Part 1B): General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) (Geneva 2007), para 39.

entered the employment, his freedom of choice of employment remains inalienable. Thus, if any such circumstances arose during the course of his employment that did not allow him to freely terminate his employment, those would also fall within the ambit of a non-voluntary offer.⁶¹ In the case of *Prosecutor v. Krnojelac*, while dealing with a case of illegal detention and labour practices, the court opined that the existence of this coercive factor would have to be decided on the basis of the specific circumstances of each case, but the deciding factor needs to be whether the workers in question had a real choice to work or not.⁶²

41. The ILO report on Indicators of Forced Labour categorically lists retention of identity documents, withholding of wages, abusive working and living conditions, and excessive overtime as indicators of forced labour.⁶³ Multiple judgements such as *Chowdury and Others vs Greece*,⁶⁴ and *Siliadin vs France*,⁶⁵ have further corroborated these indicators and contributed to the jurisprudence that these indicators may individually and collectively serve as evidence of forced labour.

42. In the present circumstances, the IIC committee report provides proof of existence of all these indicators in some form, even though RMG has provided some justification for each indicator. The majority of workers reported a threat of withholding wages if they did not work overtime, the living conditions were congested and generally subpar, some workers had their passports withheld, and the overtime worked was severely

⁶¹ International Labour Conference (96th Session) Report III (Part 1B): General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) (Geneva 2007), para 40.

⁶² *Prosecutor v. Krnojelac* Case No. IT-97-25 (15 March 2002) and Case No. IT-97-25-A (17 September 2003) (Appeals Chamber).

⁶³ International Labour Office, Special Action Programme to combat Forced Labour (SAP-FL), 'ILO Indicators of Forced Labour' (Geneva 1 October 2012).

<https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms_345673.pdf> accessed 24 August 2025.

⁶⁴ *Chowdury and Others v. Greece* Application no. 21884/15.

⁶⁵ *ibid.*

underreported.⁶⁶ While IIC did not find this to be conclusive evidence, the ILO standards and precedent dictate that the presence of so many indicators together can only translate to evidence lack of voluntary offering of services.

43. Further, the news channels and the IIC which claimed that the report originated in Seratious were both from Aurion, and the IIC was fully comprised of senior government officials and representatives from Aurion's National Human Rights Commission.⁶⁷ They had a good incentive to assist in hiding or trivialising the issues raised, since an economic crisis would befall Aurion if the forced labour was unearthed.⁶⁸ The Ministry of Trade and Industry only conducted a further review on being pressure by Seratious.⁶⁹

(B) RMG Can Be Held Liable Even as a Non-State Actor.

44. RMG is an individual actor and not an actor of State, and norms against forced labour are generally considered to be a part of customary international law, and hence, inapplicable to private parties. However, this principle was rebutted in the case of *Doe Iv. Unocal Corporation*. In this case Unocal corporation was an American oil company, accused of committing human rights violations including forced labour against Burmese villagers during a project in Myanmar. The District Court established that forced labour is a form of modern slavery, and hence does give rise to individual liability. While the Court acquitted Unocal Corporation because it did not actively participate in propagating forced labour, and simple encouragement was not enough to establish liability under international law, the Court did assert that active propagation would give rise to individual liability.⁷⁰

⁶⁶ Moot problem [10].

⁶⁷ Moot problem [46].

⁶⁸ Moot problem [44]-[47].

⁶⁹ Moot problem [55].

⁷⁰ *Doe Iv. Unocal Corporation*, 395 F.3d 978 (9th Cir. 2003).

45. In the present circumstances, RMG has actively participated in perpetuating the conditions of forced labour during ASI's operations, since under Clause 4.2(e) of the JVA, RMG was in complete control of recruitment, allocation, and maintenance of the local and migrant workforce.⁷¹ Unlike the *Unocal* case, where the Myanmar Government was carrying out operations,⁷² here, RMG was solely responsible for creating the conditions that led to the mistreatment and abusive conditions of work for the workers of ASI.

(C) The Exceptions to Liability Under the FLC Do Not Apply to RMG in the Present Circumstances.

46. Even if RMG were considered to be an actor of the State of Aurion, and could hence impose forced labour under certain circumstances without being in contravention of the FLC, Article 1(b) of the FLC expressly prohibits the use of forced labour for the purposes of economic development.⁷³ The case of *Bandhua Mukti Morcha vs Union of India* further discussed this Article of the FLC, along with the provisions of the Abolition of Forced Labour Convention, 1957, and elaborated upon this same principle in congruence with the domestic laws of India. In this case as well, it was held that economic growth could not be prioritised over human life, even if it was important for the country. No development goals can serve as a justification for engaging workers in forced labour, which was a violation of their fundamental rights.⁷⁴

47. In the present circumstances, RMG clearly engaged ASI's workers in forced labour and attempted to justify the same only to please CDI and attempt to meet their operational requirements. The only reason for this is that collaboration with CDI was extremely

⁷¹ Exhibit 4, moot problem.

⁷² *Doe* (n 69).

⁷³ The Forced Labour Convention 1930, art 1(b).

⁷⁴ *Bandhua Mukti Morcha v. Union of India* (AIR 1984 SC 802).

beneficial to Aurion's semiconductor industry and to its general economic growth. Thus, RMG has engaged workers in forced labour in violation of the FLC, and consequently, has breached the terms of the JVA that specify compliance with applicable laws.

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

48. Clause 12 of the JVA establishes the UNIDROIT Principles of International Commercial Contracts, 2016 ("PICC") as the law governing the contract.⁷⁵ Thus, in accordance with the Preamble of the PICC, any disputes pertaining to the rights and obligations set out in the JVA must be decided as per the interpretations of the clauses of the JVA according to the rules of the PICC.

(A)RMG Committed a Fundamental Non-Performance of the JVA by Violating Applicable Law.

49. Clauses 4.2(f) of the JVA imposed an obligation on RMG to ensure full compliance with the applicable labour and environment laws. Clause 6 of the JVA further imposed a general obligation upon both parties to ensure that the operations are carried out in accordance with internationally recognised standards on environmental protection, fair labour practices, and corporate governance.⁷⁶ RMG breached these obligations by exacting forced labour for the purposes of completing the obligatory operations, thus contravening the provisions of the FLC, which is applicable law in this case since Aurion has ratified the FLC.

50. Article 7.3.1 of the PICC grants a party to the contract a right to terminate the contract in case the other party commits a fundamental non-performance of the contract.⁷⁷ This is also reflected in Clause 8.1 of the JVA.⁷⁸ Article 7.3.2 of the PICC delineates the factors that must be taken into consideration while determining whether a breach of contract constitutes a fundamental non-performance. These include 7.3.2(a) whether the breach deprived the party of what it was entitled to expect under the contract,

⁷⁵ Exhibit 4, moot problem.

⁷⁶ *ibid.*

⁷⁷ UNIDROIT Principles of International Commercial Contracts 2016, art 7.3.1.

⁷⁸ Exhibit 4, moot problem.

7.3.2(c) whether the non-performance is intentional or reckless, and 7.3.2(d) whether the breach gave the aggrieved party reason to believe that it cannot rely on the other party's future performance.⁷⁹ In the present case, CDI was entitled to expect RMG to comply with the applicable law as explicitly stated in the contractual clauses. RMG could also have foreseen its non-compliance since it was forcing the workers to live in abusive conditions and making them work unreasonably overtime.⁸⁰ Lastly, this breach and the attempts made to hide it gave CDI reason to believe that it could not rely on RMG's future performance of the JVA.⁸¹ Thus, RMG's non-compliance with the applicable law satisfies these three factors, qualifying as a fundamental non-performance. Hence, CDI is entitled to terminate the contract in light of such a fundamental non-performance.

51. In the Arbitral award in the case of *Andersen Consulting Business Unit Member Firms vs Arthur Andersen Business Unit Member Firms and Andersen Worldwide Societe Cooperative*, the nature of the agreement was such that one of the breaching party's obligations was to coordinate the aggrieved party's professional practice with other firms internationally. The breaching party's non-performance was decided to be fundamental non-performance since it deprived the aggrieved party of the beneficial effects of the contract that they were supposed to receive and was in fact highly detrimental to the business of the aggrieved party.⁸²

52. In the present case, RMG's non-compliance with the FLC jeopardises not only all of CDI's business that developed from their collaboration ASI, but is also extremely detrimental CDI's reputation as an ethical company, jeopardising any future business

⁷⁹ UNIDROIT Principles of International Commercial Contracts 2016, art 7.3.2.

⁸⁰ Exhibit 10, moot problem.

⁸¹ Moot problem [59].

⁸² ICC Case No. 9797/CK/AER/ACS.

collaborations that it might venture into. Thus, RMG's non-performance qualifies as fundamental non-performance.

(B) RMG committed Fraud by failing to make the necessary disclosures to CDI.

53. Article 3.2.5 of the PICC allows the aggrieved party to avoid the contract if the other party has made a fraudulent representation or fraudulent non-disclosure of circumstances which the other party should have disclosed, according to reasonable commercial standards of fair dealing.⁸³

54. In the present case, RMG withheld crucial information relevant to the JVA on multiple occasions. RMG never intimated CDI that its decisions were heavily influenced by the internal policies of the Ministry of Economy.⁸⁴ RMG also failed to disclose that it had such close ties with BWS, and that both are linked to each other through President Ho.⁸⁵ Both of these facts were very important and would have changed CDI's approach to its engagement with RMG and towards appointing BWS to assist with labour management. It is an established principle of law that the non-disclosure would be considered a material non-disclosure if one party had intentionally withheld the fact in order to induce the other party to enter into a contract with it. In the present case the knowledge that RMG followed the policies of the Ministry of Economy would have deterred CDI from entering into a contract with it, since then CDI would have reason to doubt that RMG would not necessarily always operate to further its own economic and business interests. Similarly, if CDI were made aware that BWS had ties with RMG, this would deter CDI from selecting BWS as the third party to manage labour, since there would be concerns of bias and collusion to hide discrepancies. Thus, RMG had a motive to withhold this information as well, hence this criterion is also satisfied.

⁸³ UNIDROIT Principles of International Commercial Contracts 2016, art 3.2.5.

⁸⁴ Moot problem [28].

⁸⁵ Moot problem [54].

Hence, RMG has committed fraudulent misrepresentation by not disclosing this material information, and CDI has the right to avoid the contract.

(C) CDI's Termination of the JVA Was Not an Abuse of Rights.

55. Article 1.7 of the PICC describes good faith and fair dealing and includes Abuse of Rights within the scope of dealing in bad faith under this Article. An Abuse of Rights occurs when a party exercises a right available to it, but not for the purposes for which this right was provided. Instead, the party uses the right maliciously either to harm the other party, or in a manner that achieves a result that is disproportionate to the intended result of the right.⁸⁶ In the present circumstances, RMG alleges that CDI terminated the JVA in bad faith imposition, as a response to the imposition of the fine, so that RMG would have to bear the entire amount.⁸⁷ This allegation is expressly denied, with evidence to the contrary. A clear proof of CDI's discomfort with RMG's practices is provided in the WhatsApp group chats between Al and the management of the ASI team. Al expressed her concerns on this group chat on 11th October, which was ignored by the entire team, as already mentioned above. The fine was imposed by the Ministry much later, on 16 December. Even though the JVA was terminated on 24th December, i.e. after the fine had been imposed, CDI had already flagged its concerns and frustrations on the WhatsApp group well in advance. Therefore, CDI expressly denies the allegation that CDI terminated the JVA in bad faith.

56. The fact that RMG did not inform CDI of its personal ties with BWS was a major conflict of interest; any commercial entity would lose trust in such a business partner. Hence, in accordance with the aforementioned arguments, CDI was well within its right to terminate the JVA, and such a termination is lawful.

⁸⁶ UNIDROIT Principles of International Commercial Contracts 2016, art 1.7.

⁸⁷ Moot problem [64].

PRAYER FOR RELIEF

Wherefore, in the light of the facts stated, issues raised, arguments advanced, and authorities cited, the Claimant most humbly and respectfully prays that this Arbitral Panel be pleased to adjudge and declare that:

1. RMG is not entitled to invoke sovereign immunity.
2. CDI's initiation of arbitration was not premature.
3. RMG breached the Joint Venture Agreement in relation to the alleged labour practices.
4. CDI's termination of the JVA was lawful.
5. RMG is liable to pay the fine of USD 500 Million imposed by the Aurion Ministry of Trade and Industry.

And pass any other order in the pursuance of complete justice. All of which is most humbly and respectfully submitted.

DATE: 25th August 2025

PLACE: Aurion

Respectfully submitted,

COUNSEL FOR THE CLAIMANT [2508-C]