
BEFORE THE
ASIAN INTERNATIONAL ARBITRATION CENTRE



20th LAWASIA INTERNATIONAL MOOT, 2025

CALYX DREAMBOT INC.

(CLAIMANT)

VERSUS

RIVUS MICROELECTRONICS GROUP

(RESPONDENT)

[MEMORIAL FOR THE RESPONDENT]

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STATEMENT OF JURISDICTION

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

**BEFORE THE
ASIAN INTERNATIONAL ARBITRATION CENTRE**

**THE RESPONDENT 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. President Ho, to economically reform and to make Aurion a global powerhouse of technological advancement, expanded its semiconductor industry through Foreign Direct Investment. This was done by seeking out high-profile investments from Veridia in the form of two rounds of closed-door discussions, between the two nations to secure long-term collaborations from April to June 2022. In conclusion, an Aurion-Veridia Bilateral Investment Treaty (BIT) was signed.
- B. To bring this into life, two entities were majorly used: RMG (Rivus Microelectronics Group) was the state-led local investor of Aurion, and CDI (Calyx DreamBot Inc) was one of the largest investors from Veridia. CDI was attracted by Aurion's low operating costs. A JVA was formalised between the two entities in December 2022.
- C. The JVA was brought to life through the ASI on 3rd January 2023. RMG immediately started on its responsibilities. However, CDI pushed RMG for a completion schedule beyond industry norms through a Project Acceleration Memo on 26th February 2023. This led to the formation of a JPMT (Joint Project Management Team). Strain on budget allocation rose as a result of this completion schedule, and hence CDI pushed RMG for recruitment, despite the ongoing construction. This led to engaging a third-party, BWS (Beta Workforce Solutions), to supply labour.
- D. A Service Agreement was entered into on 2nd October 2023 for the supply and management of the workforce. This allowed ASI to focus on operational readiness. CDI on personal meetings with BWS made them aware of the critical deadlines. ASI ramped up the production capacity after the successful shipment to Seratious. As the operations increased, rumours of workforce ill-treatment began to surface. These rumours led the Seratious government to issue a formal statement warning of a complete ban. An

Independent Investigative Committee (IIC) was established by the Government of Aurion to look into these rumours. The IIC did not find definite evidence to categorise the concerning practices found, as modern slavery. However, they did recommend close regulation of ASI's practices. This did not suppress both concerns of the public and Seratious, and this led to the Ministry of Trade and Industry of Aurion to suspend ASI's operating license on 2nd October 2024. During this suspension, CDI initiated its own investigation. The suspension was lifted on 23rd October 2024 after ASI submitted a revised workforce audit report.

- E. However, the effects of the suspension were turbulent. The suspension led to the halting of production, and this led to supply contracts being heavily disrupted. Contractual penalties were imposed upon ASI, and several buyers were reassessing their long-term commitments, leading to an investor and market analysis downgrade. Disappointed with this, Ms Al Emret vented out negative remarks on RMG to the media. Following the submission of the revised workforce audit report, the Ministry of Trade and Industry conducted a further review, which revealed higher overtime hours. The Ministry therefore imposed a fine of USD 500 million on ASI on 16th December 2024.
- F. On 24th December 2024, CDI wrote to RMG to inform them of their decision to terminate the JVA and for RMG to bear the fine. CDI did not want to continue the partnership for fear of legal and operational risks. CDI again engaged with RMG to demand that they pay the fine and then commenced the arbitral proceedings. The Notice of Arbitration was provided on 6th January 2025. Preliminary objections were raised by RMG, including their right to sovereign immunity and non-compliance of CDI to the JVA.
- G. The Arbitral Panel has hence requested a preliminary meeting, where the parties have agreed to the full hearing on the issues mentioned.

SUMMARY OF PLEADINGS

I. RMG IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY.

RMG is a state-led entity of Aurion and, in the context of its responsibilities, should be classified as an organ of the State. This entitles them to claim sovereign immunity. The internal functioning, including its board members, capital funding and policies, was heavily influenced by the State. RMG also satisfies both structural and functional tests to be classified as a State. Under both absolute and restrictive immunity, its acts were ‘jure imperii’. There is no consent for arbitration from RMG, in accordance with the JVA. Therefore, in the present case, there is no waiver of sovereign immunity.

II. CDI’S INITIATION OF ARBITRATION WAS PREMATURE.

The Claimant initiated the arbitration proceedings with the allegation that RMG failed to ensure compliance with labour standards, an issue which falls under Clause 6 of the JVA. According to which, any such dispute shall be referred to Clause 10 of the JVA which mentions dispute resolution through amicable negotiations. However, CDI did not comply with Clause 10 and hence acted against both, Clause 6 and Clause 10 of the JVA. CDI also did not provide any proof of complying with sub-clause 10.2 before initiating the proceedings. Lastly, CDI violated Rule 2 (1)(b) of the AIAC Arbitration Rules, 2023.

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

RMG is bound by the Forced Labour Convention and has remained compliant with the provisions of the Convention throughout the duration of the JVA. While the workers have worked overtime, they were not threatened with any menace of penalty but were offered benefits for overtime. Further, the workers were made aware of the nature of work before they

applied, and hence the work is voluntary in nature. Even otherwise, RMG as State can avail the exemption provided in Article 2(d) of the Convention.

IV. CDI'S TERMINATION OF THE JVA WAS NOT LAWFUL.

In accordance with the interpretations of the governing law of the contract, the UNIDROIT Principles of Commercial Contracts, CDI has unlawfully terminated the contract with malicious intent. RMG never conclusively committed a fundamental non-performance of the contract, but CDI terminated the contract with the malafide intent of forcing RMG to bear the fines imposed by the Ministry of Trade and Industry. Even if RMG had committed the breach that CDI claims, it was only because CDI had pushed RMG to prioritize cost-cutting and speed up the timelines. Even in this case, CDI cannot avail remedies.

PLEADINGS

I. RMG IS ENTITLED TO INVOKE SOVEREIGN IMMUNITY.

(A) RMG Should Be Considered As A State

(A.1) RMG is a State Led Entity and Hence Should Be Considered as an Organ of the State

1. A State-Owned Enterprise is defined as “an independent legal entity subject to control by governmental units that engages in commercial activity for profit-making or strategic purposes”.¹ These SOEs can be considered as an organ of the State if they satisfy the condition of being a de facto organ.
2. RMG is an organ of the State, as the leadership structure and decision-making within the entity mirrored the internal policies of the Ministry of Economy. The board of directors also comprised Aurion Cabinet Ministers. This proves the lack of independence of RMG as a commercial entity, as in the case of *Deutsche Bank v Sri Lanka*.² The capital requirements of RMG were also met using public funds from the Government Treasury. This shows how RMG was owned and subject to close control and supervision of the State, as in the case of *Flemingo v Poland*.³ Furthermore, President Ho had only assured CDI that RMG was “a commercially autonomous entity under his influence” and that CDI “will have full autonomy over your operations in Aurion. RMG is our nation’s pride.”⁴ This in no way was an implication that RMG is completely independent and free of government control.

¹ Mark McLaughlin, ‘Defining a State-Owned Enterprise in International Investment Agreements’ (*Kluwer Arbitration*, 2019) <<https://www.kluwerarbitration.com/document/kli-ka-icsid-2019-03-005?q=state%20owned%20enterprise>> accessed 25 August 2025.

² Moot problem [28]; *Deutsche Bank AG v Democratic Socialist Republic of Sri Lanka* ICSID Case No ARB/ 09/ 2, Award, 31 October 2012 [405 a].

³ Moot problem [27]; *Flemingo Duty Free Shop Private Limited v the Republic of Poland* UNCITRAL, Award, 12 August 2016 [432].

⁴ Moot problem [10], [25].

3. It was a known fact that RMG was a State. It was because RMG was a state-linked entity that the initial projects of ASI were able to break ground within weeks: They commenced land alienation process by obtaining approval in principle. A government-linked contractor was also appointed to construct the semiconductor manufacturing facility. Leveraging RMG's status as a state-linked entity, the land alienation, regulatory approvals, and planning approvals were all expedited.⁵ It was also because of RMG's government affiliations that ASI obtained fast-tracking approvals and infrastructure work to meet the completion schedule.⁶ If we take the dispute resolution clause of the JVA into consideration, Clause 10.2 states that these proceedings should not commence without the consent of the Minister in charge of economic policy, foreign investments and trade of Aurion.⁷ It is also important to recognise that Ms Al Emet, Chief Executive Officer of CDI, was aware of RMG's status as a State. In a WhatsApp text chain of Ms Al, Mr Suvan and the CEO of RMG, on 28th December 2024, it was assured to Ms Al by Mr Suvan that RMG had the right to waive off the fine imposed on ASI.⁸
4. In conclusion, RMG first satisfies the structural test to be considered as a State.⁹ In the case of *Bosch v. Ukraine*, the tribunal had found a separate legal entity to be a parastatal body of the State since the funding was largely by the State. This is similar to the case of RMG, further provided that RMG's board of directors comprised cabinet Ministers as discussed in [2], and the goal of RMG was for the advancement of the national interest of Aurion.¹⁰ The second test of functionality¹¹ is also fulfilled by RMG. It

⁵ Moot problem [30].

⁶ Moot problem [40].

⁷ Exhibit 4, moot problem.

⁸ Exhibit 11, moot problem.

⁹ Carlo de Stefano, *Attribution in International law and Arbitration* (OUP 2020) 105-150.

¹⁰ *Bosh International, Inc and B&P Ltd Foreign Investments Enterprise v Ukraine* ICSID Case No ARB/ 08/ 11, Award, 25 October 2012 [173].

¹¹ Stefano (n 9).

served national interests by economically developing the north of Aurion.¹² Therefore, it satisfies both governance by governmental authority and public function.¹³

(B) A State Should Be Granted Sovereign Immunity From Arbitrational Proceedings

(B.1) RMG Should Be Granted Immunity In Accordance With The Concerned Laws And Acts Performed By The Entity

5. Absolute immunity is an approach that continues to be widely adopted internationally.

The theory is continued in practice to protect and respect the sovereign state.¹⁴ Here, Aurion was established as the seat of arbitration, if at all the arbitration clause is being taken into consideration. This would imply that RMG would be immune from all actions in Aurion, since it is to be considered as a State and hence should be given protection in international law as well.¹⁵ Aurion, being a nation that has strict state control and protectionist legislation and policies¹⁶, is more likely to provide absolute immunity to its State. It is based on the principle that: “As an integral part of this mystique, the sovereign could not be made subject to the judicial processes of his country. Accordingly, it was only fitting that he could not be sued in foreign courts.”¹⁷ This, is further supported by the fact that Mr Suvan had assured Ms Al that RMG could waive the fine [3].

6. If the Hon’ble Tribunal only accepts the restrictive theory of immunity, it works on the principle of distinction between acts taken place in its capacity as a state, *jure imperii*,

¹² Moot problem [6].

¹³ Georgios Petrochilos, ‘Attribution’ in Katia Yannaca- Small (ed), *Arbitration under International Investment Agreements: A Guide to the Key Issues* (Oxford University Press 2010) 287, 322.

¹⁴ Samarth Sagar, ‘Waiver of Sovereign Immunity’ Clauses in Contracts: An Examination of their Legal Standing and Practical Value in Enforcement of International Arbitral Awards’ (*Kluwer Arbitration*, October 2014) <<https://www.kluwerarbitration.com/document/kli-ka-joia-310504?q=%E2%80%98Waiver%20of%20Sovereign%20Immunity%E2%80%99%20Clauses%20in%20Contracts>> accessed 25 August 2025.

¹⁵ Dewi Susanti Siagian, 'Sovereign Immunity in Commercial Transaction under International Law' (2023) 20 *Indonesian J Int'l L* 287.

¹⁶ Moot problem [10].

¹⁷ Nigel Blackaby and Others, *REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION Student Version* (OXFORD UNIVERSITY PRESS) 798-804.

and acts taken place in a commercial capacity, *jure gestionis*.¹⁸ Therefore, the functions performed by RMG fall under the category of *jure gestionis*. The responsibilities of RMG, defined under Clause 4.2 of the JVA, were to be carried out in its sovereign capacity as already discussed in [3]. This extends to their responsibilities regarding labour practices as well under Clause 4.2. Governmental authority is said to be present when there exists regulatory authority and the entity can issue legislative instruments.¹⁹ Further, the incorporation of RMG into the JVA was a diplomatic move made to establish Aurion as the global powerhouse of technological advancement.²⁰

7. In conclusion, whether the Hon'ble Tribunal applies the theory of absolute immunity or restrictive immunity, RMG is shielded by sovereign immunity due to its action being sovereign in nature and it being undertaken to pursue the national policies of Aurion. However, RMG pleads to the Hon'ble Tribunal that absolute immunity should be granted to RMG according to the jurisdictional law of Aurion.

(B.2) RMG Never Consented To Arbitration

8. Consent to arbitrate is the core of arbitration.²¹ There needs to be an agreement to arbitrate, without which the sovereign immunity of a State stands. This is the case in restrictive immunity as well. Clause 11 of the JVA to arbitrate would flow from Clause 10 of Dispute Resolution of the JVA. Clause 10.2 states that any proceedings of dispute or controversy in connection to the JVA should not commence before obtaining the consent of the Minister in charge of economic policy, foreign investments and trade of Aurion.²² This was not satisfied as the consent was not obtained from the required

¹⁸ *ibid.*

¹⁹ *Gustav F W Hamester GmbH & Co KG v Republic of Ghana* ICSID Case No ARB/ 07/ 24, Award, 18 June 2010 [190].

²⁰ Moot problem [22].

²¹ Dr Chaeva Natalia, 'Consent to Arbitration' (*Kluwer Arbitration*) <<https://jsumundi.com/en/document/publication/en-consent-to-arbitration>> accessed 25 August 2025.

²² Exhibit 4, moot problem.

Minister after CDI sent out the Notice of Arbitration on 6th January 2025 and hence there is no consent to arbitrate in the present case. RMG is a State, and according to the pre-condition in the JVA, consent to arbitrate in the present case was not given. Without this consent, the argument of waiver of sovereign immunity through agreement to arbitrate fails.

9. In conclusion, to counter the argument of sovereign immunity, an explicit waiver that gives up on this right is required²³. No such clause on waiver of sovereign immunity was agreed upon by RMG.

²³ Natalia (n 21).

II. CDI'S INITIATION OF ARBITRATION WAS PREMATURE.

(A)(A) CDI Violated Clause 6 of the JVA.

1. The Claimant initiated the arbitration proceedings against the Respondent with the allegation that RMG had breached the JVA by failing to ensure compliance with local laws and ethical labour standards.²⁴ In this connection, Clause 6 of the JVA talks about international standards and compliance with various laws including labour practices. The relevant portion, i.e. sub-clause 6.3 merely mentions that the parties 'shall' refer to Clause 10 which is the dispute resolution, Clause.²⁵
2. Plain reading of the sub-clause reveals that in case a dispute arises in relation to any alleged non-compliance with respect to the laws and practices mentioned in Clause 6, sub-clause 6.1, the parties shall refer to Clause 10 of the JVA which is the dispute resolution clause. The Respondent would again like to highlight that CDI mentioned the alleged non-compliance of ethical labour standards by RMG as a reason for initiating the arbitration proceedings. This alleged non-compliance squarely falls under Clause 6 of the JVA, according to which the remedy for that dispute was to refer to Clause 10. Clause 10 of the JVA mentions the amicable resolution of any dispute that arises, through negotiations wherein there shall be an appointed representative of each party, and further, a written notice needs to be served by either party, detailing the dispute in question.²⁶
3. It is pertinently mentioned that the Claimant never served the Respondent any written notice in connection with any dispute regarding the alleged non-compliance of labour standards. The Claimant has evidently failed to comply with the provisions of the JVA which they themselves had signed together with the Respondent.

²⁴ Moot problem [61].

²⁵ Exhibit 4, moot problem.

²⁶ *ibid.*

(B) CDI Violated Clause 10 of the JVA.

4. The Respondent now wishes to draw the attention of this Hon'ble Tribunal towards Clause 10, sub-clause 10.2 of the JVA. This sub-clause expressly mentions the requirement that needs to be fulfilled before commencement of any proceedings or claims in connection with the JVA. The said clause mentions that any proceedings, claims etc. shall not be initiated before obtaining the consent of Minister of economic policy, foreign investments and trade of Aurion.²⁷
5. Plain reading of the provision will reveal that it sets out a requirement which shall be fulfilled before commencement of any proceedings, claims, etc., moreover, the language of the said clause shows the requisite nature of this provision. However, CDI has not provided any proof of obtaining the consent of the aforementioned Ministries of Aurion before initiating the arbitration proceedings against RMG. Therefore, CDI has blatantly violated clause 10 of the JVA and hence, the arbitration proceedings initiated by them are premature and liable to be set aside.

(C) CDI Did Not Follow Rule 2 (1)(b) of the AIAC Arbitration Rules, 2023.

6. Rule 2 (1)(b) of the AIAC Arbitration Rules, 2023 talks about the provision for commencement of arbitration. According to which, the party commencing the arbitration shall file, along with the notice of arbitration, “a confirmation that all existing pre-conditions to arbitration have been satisfied”,²⁸ it is pertinently mentioned that CDI has not provided any proof of whether they have submitted such a confirmation or not. In either situation, i.e. in case CDI has done so, firstly, they must provide a proof of the same to the Respondent, and secondly, such a confirmation is tainted with false affirmation because as mentioned in the preceding contention, the

²⁷ *ibid.*

²⁸ AIAC Arbitration Rules, 2023, Rule 2 (1)(b).

Claimant neither followed the negotiation procedure as mentioned in Clause 10 of the JVA nor did they provide a proof of the requirement laid down in sub-clause 10.2 of the JVA. Therefore, the Claimant cannot sign a confirmation that affirms that all existing pre-conditions to arbitration have been complied with. Alternatively, in the event that the Claimant has not complied with Rule 2 (1)(b) of the AIAC Arbitration Rules, 2023, then the arbitration notice dated 6th January 2025 shall be deemed invalid since it does not duly follow the procedure that has been laid down.

7. The Claimant may allege that the Respondent did not comply with Article 4 of the AIAC Arbitration Rules, 2023 in terms of submitting a response to the notice of arbitration, in this regard, the Respondent submits that Clause 3 of Article 4 of the AIAC Arbitration Rules, 2023, clearly mentions that a failure to send the said response shall not hinder the working of the arbitral tribunal.²⁹ Therefore, it is respectfully submitted that any claim of the Claimant with regards to non-compliance of Article 4 of the AIAC Arbitration Rules, 2023, shall not be sustained.

²⁹ AIAC Arbitration Rules, 2023, art 4, clause 3.

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

8. Aurion has ratified the Vienna Convention on Law of Treaties, 1969 (“VCLT”), and the Forced Labour Convention, 1930 (“FLC”).³⁰ 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.³¹ 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,³² the State of Aurion has validly consented to be bound by the Articles of the FLC.
9. Clause 4.2(f) of the JVA imposes an obligation upon RMG to ensure full compliance with all applicable labour and environment laws, and Clause 4.1.(c)(ii) imposes an obligation upon CDI to cooperate with RMG on matters of compliance with applicable labour standards. 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.³³ Due to the Aurion’s ratification of the FLC, Aurion has been fulfilling these obligations by performing their obligations under the JVA in compliance with the FLC.

(A) RMG’s Conduct Does Not Qualify as Having Induced Forced Labour Under Article 2 of the FLC.

10. Article 2 of the FLC delineates three key criteria for labour to qualify as forced labour. These are that there must be work, there must be a menace of penalty if the worker does not complete the work, and the work done must not have been voluntarily offered by the worker.

³⁰ Exhibit 2, moot problem.

³¹ The Forced Labour Convention 1930, art 26.

³² The Vienna Convention on the Law of Treaties 1969, art 14.

³³ Exhibit 4, moot problem.

(A.1) RMG’s employment of the workers does qualify as work.

11. As discussed in *Van der Musselle vs Belgium*, and ILO Committee Reports, the FLC adopts an expansive definition of workers, including any work or service, hence any form of employment would fall within the ambit of workers under this Convention.³⁴ Thus, RMG’s workers do fall within the scope of workers under FLC.

(A.2) RMG did not impose any menace of penalty.

12. 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.³⁵ However, in the case of *Van der Musselle vs Belgium*, the ECHR placed a limitation on the definition of menace of penalty. The bench opined that every legal compulsion cannot be referred to as a menace of penalty, providing the example that if a person entered into a valid agreement to fulfil certain obligations and then faced a threat of sanction if he failed to fulfil those obligations then that would not qualify as a menace of penalty.³⁶

13. In the present case, while the IIC report claimed that some workers had indicated that a failure to work overtime would result in a deduction of their wages, other workers explicitly stated that overtime was voluntary, and workers who worked overtime were offered bonuses. Thus, the workers have clearly negated the rumours of any threat of penalty imposed by RMG.³⁷ The Committee has also opined that 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. However, overtime is unlawful if imposed

³⁴ Van der Musselle v. Belgium, Application No. 8919/90 (23 November 1983).

³⁵International 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.

³⁶ Van der Musselle v. Belgium, Application No. 8919/90 (23 November 1983).

³⁷ Moot Problem [Exhibit 10].

under a threat of penalty.³⁸ The Committee Report further clarifies that an imposition of penalties for refusing to work overtime is still not in contravention of the FLC, as long as the reduced wage is still above the minimum wage requirements of the applicable laws.³⁹

14. In the present case, not only has overtime not been offered under a threat of penalty, but the workers have been offered additional benefits for working overtime.⁴⁰ Hence, by no standard can there be said to be a threat of penalty.

(A.3) The work done by the workers was voluntarily offered to RMG.

15. The third element delineated in Article 2 of the FLC is whether the work was voluntarily offered by the worker. While this does overlap with the second element in some circumstances, it differs where the manner of coercion is indirect, or there are any circumstances that prevent the worker from freely consenting to the work. Further, in the judgement of *Van der Mussele vs Belgium*, the bench also discussed the voluntary nature of undertaking work, particularly that in the absence of other external factors pushing him to choose this line of work, the advocate would weigh the pros and cons of becoming an advocate before he chose that as his work. Thus, this could not be considered forced labour since he was aware of the fact that he would have to provide services to some clients free of cost, and he chose this line of work despite this.⁴¹

16. In the present case, the job postings posted by RMG specifically sought employees who prioritised work above all else, with incentives that would be tied to performance metrics.⁴² There was hence ample notice provided to the applicants that they would be

³⁸ 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 133.

³⁹ 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 134.

⁴⁰ Exhibit 10, moot problem.

⁴¹ *Van der Mussele v. Belgium*, Application No. 8919/90 (23 November 1983).

⁴² Moot Problem [33].

required to engage in long work hours with a certain level of dedication, and also that they would be rewarded for their commitment to their work accordingly. In such circumstances, the workers voluntarily signed up for the work.

17. Further, while the IIC report does state that the workers' living conditions were subpar, these conditions are temporary, until the completion of the permanent on-site dormitories. The workers' passports have also been withheld for the purpose of obtaining visas and work permits for the migrant workers to be able to legally work in ASI.⁴³ While the ministry of trade claims to have found substantive proof of modern slavery in timesheets submitted by an anonymous worker, they refuse to share any of details regarding the source of the timesheet with ASI.⁴⁴ This is in contravention of due process norms, and such serious allegations cannot be made without conclusive evidence from a reliable source. This further review by the Ministry of Trade and Industry seems to further be motivated by pressures from Seratiou, which is an important trade partner. The IIC, which was constituted by members of the Aurion National Human Rights Commission, did not find any conclusive evidence of human rights violations in the form of forced labour, despite being given full unfettered access to conduct unannounced inspections at the relevant facilities, interview the workers and management, review all documents, and assess compliance with the FLC.⁴⁵ It is unlikely that the Ministry of Trade and Industry would stumble upon a report that conclusively proved the practice of modern slavery, especially at the convenient time when Seratiou was demanding accountability from the government and threatening to ban imports from Aurion.⁴⁶

(B) RMG can avail the exemption under Article 2(d) of the FLC.

⁴³ Exhibit 10, moot problem.

⁴⁴ Moot problem [57].

⁴⁵ Exhibit 10, moot problem.

⁴⁶ Moot problem [49].

18. Since RMG does qualify as an actor of State, even if RMG's actions do qualify as inducing forced labour, RMG does qualify for the exemption provided in Article 2(d) of the FLC, which exempts States from penalties for inducing forced labour under the FLC, on the grounds of a State emergency. The Committee in its report observed that many countries do include economic crises and socioeconomic emergencies within the ambit of State emergency depending on the quantum of the emergency.⁴⁷
19. In the present case, the Aurion economy is heavily dependent on its semiconductor trade with Veridia and Seratious, to the extent that the Aurion officials did fear an economic crisis if efforts were not taken to meet their operational and compliance requirements respectively.⁴⁸ Hence, even if RMG's acts constitute forced labour under provisions of the FLC, it would be excused as an actor of State under the exemption provided in Article 2(d) of the FLC.
20. RMG's acts cannot be deemed unlawful or in contravention of the FLC, since in addition to the above reasons, RMG shortlisted a third-party labour agency, Beta Workforce Solutions ("BWS"), on CDI's request, to manage the labour aspects of the operation. BWS was shortlisted because it offered highly competitive rates and had previously supplied labour for projects of a comparable scale. Further, ASI entered into an Agreement with BWS only post CDI's approval of BWS, not unilaterally based on a decision taken by RMG.⁴⁹ BWS had the full scope of workforce management for 12 months, including regulatory compliance. CDI also had independent discussions with BWS, where CDI indicated that it had a preference for highly dedicated and capable workers who could meet the demanding production schedules, with the understanding

⁴⁷ 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 63.

⁴⁸ Moot problem [46].

⁴⁹ Moot problem [37].

that meeting the tight deadlines was critical.⁵⁰ Thus, RMG did not have complete control of the management of the labour operations to be the sole actor in contravention of the FLC, it could not have unilaterally violated or caused violations of the FLC.

⁵⁰Moot problem [38].

IV. CDI'S TERMINATION OF THE JVA WAS NOT LAWFUL.

21. Clause 12 of the JVA establishes the UNIDROIT Principles of International Commercial Contracts, 2016 ("PICC") as the law governing the contract.⁵¹ 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 was not in violation of the FLC, and hence did not commit any fundamental breach of the JVA.

22. Clauses 4.2(f) and Clause 6 of the JVA imposed an obligation on RMG to ensure full compliance with the applicable labour and environment laws.⁵² CDI claims that RMG breached these provisions by exacting forced labour in contravention to the provisions of the FLC. CDI argues that this is a fundamental non-performance under Article 7.3.1 of the PICC, and hence grants CDI right to terminate the contract.⁵³ This is reflected in Clause 8.1 of the JVA as well. However, as elaborated upon earlier, all the evidence of any forced labour being exacted by RMG is purely circumstantial and cannot be relied upon as conclusive evidence. The IIC report recommended that ASI's operations be monitored, but stated that they did not find any conclusive violations of the FLC or other applicable law. Even the Ministry of Trade and Industry are unwilling to provide the source of the overtime report that they received, and they have ulterior motives for publicising such a report.

23. CDI hence unilaterally initiated termination of the JVA without pursuing any substantive proof of these alleged breaches.

⁵¹ Exhibit 4, moot problem.

⁵² Exhibit 4, moot problem.

⁵³ UNIDROIT Principles of International Commercial Contracts 2016, art 7.3.1.

Further, Clause 6.3 of the JVA specifically provides that in the event of any alleged non-compliance with the international standards, the parties must seek dispute resolution under Clause 10 of the JVA. There is no mention of non-compliance with applicable law or international standards in Clause 8 of the JVA, the termination clause. This serves to prove that both the Claimant and the Respondent intended the remedy for alleged non-compliance with international standards to be dispute resolution and not termination.

24. Thus, CDI should have followed the procedure provided for in the JVA or at least sought conclusive evidence of a breach before unlawfully terminating the JVA.

(B) CDI is engaging in Abuse of Rights.

25. Article 1.7 of the PICC describes good faith and fair dealing, and according to the UNIDROIT comments on the PICC, it 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.⁵⁴

26. In the present case, the Ministry of Trade and Industry imposed the fine on ASI on 16th December, and shortly after that, CDI sent RMG a notice of termination on 24th December, and insisted that RMG bear the burden of the fine. This is a clear abuse of rights, where CDI has terminated the JVA without just cause, simply so that it RMG has to pay the fine and pay CDI damages even though RMG did not cause CDI any damage. Since Article 1 of the PICC, good faith and fair dealing, is mandatory in nature,

⁵⁴ *ibid*, art 1.7.

CDI's act of abusing its rights by terminating the JVA is in itself unlawful, hence making the termination unlawful.

(C) Even if RMG Contravened the FLC, CDI Cannot Terminate Since it Contributed to the Non-Performance.

27. Article 7.1.2 of the PICC creates a rule where a party to the contract cannot rely on the non-performance of the other party to the contract if the non-performance was caused by an act or omission of the aggrieved party.⁵⁵

28. In the present case, even if it is concluded that RMG did commit a fundamental non-performance of the JVA, CDI has not only contributed to this non-performance, it has driven RMG to commit this non-performance. Clause 4(c)(ii) of the JVA imposes an obligation upon CDI as well, that it must provide full compliance to RMG in ensuring maintenance of labour standards in compliance with applicable domestic and international norms.

29. Before CDI and RMG entered into the JVA, modern slavery was an already an issue widely reported in Veridia's labour sector. Activists raised alarms over the possibility of Veridian companies exploiting Aurion's regulatory loopholes in seeking to cut costs, leaving Aurion's workers vulnerable to exploitation.⁵⁶ CDI's CEO, Al Emret herself chose to work in Aurion to further her aggressive expansion strategies, since Aurion had low operating costs and minimal regulatory barriers.⁵⁷ Once the project commenced, CDI sent a Project Acceleration Memo pushing for an accelerated timeline of 15 months,⁵⁸ even though the industry standard for constructing such a facility is 24 to 36 months.⁵⁹ When the costs started increasing due to RMG paying the workers'

⁵⁵ *ibid*, art 7.1.2.

⁵⁶ Moot problem [15].

⁵⁷ Moot problem [24].

⁵⁸ Exhibit 5, moot problem.

⁵⁹ Moot problem [37].

wages for overtime, Al Emret expressed her worries about the cost overruns and gave RMG explicit instructions to minimise labour costs wherever feasible.⁶⁰

30. From these facts it becomes clear that CDI's priority was always speeding up the timelines and cutting costs where possible, which resulted in CDI repeatedly indirectly instructing RMG to reduce the labour budget and increase the working time of the workers.

31. From these facts it is amply clear that CDI was not just complicit to the breach, it pushed RMG to commit the breach.

32. In addition to this, RMG did not even retain full control over the labour aspects of the project. The Joint Project Management Team which was handling the labour aspects was comprised of an equal number of representatives from CDI and RMG.⁶¹ CDI and RMG then outsourced all aspects of workforce engagement to BWS. This was merely for a transitional period, after which BWS handed control back to ASI and its JPMT. Thus, the Agreement between ASI and BWS was also that ASI would oversee the workforce management through audits, compliance reporting and addressing any concerns regarding the employment conditions for that period of twelve months.⁶² Al Emret went so far to state that ASI's success was due to the joint efforts and dedication of CDI and RMG.⁶³

33. From these facts it is evident that RMG did not even have sole control over the labour aspects of the operation, CDI was continuously involved in the oversight and even interacted with BWS independently to convey that timelines and cost-cutting are the priority. Thus, if there was a breach on RMG's part, CDI was the reason for the same,

⁶⁰ Moot problem [36].

⁶¹ Moot problem [32].

⁶² Moot problem [39].

⁶³ Moot problem [42].

and hence CDI cannot use this as grounds to unilaterally terminate the JVA, in accordance with Article 7.1.2. of the PICC.

PRAYER FOR RELIEF

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

1. RMG is entitled to invoke sovereign immunity.
2. CDI's initiation of arbitration was premature.
3. RMG did not breach the Joint Venture Agreement in relation to the alleged labour practices.
4. CDI's termination of the JVA was not lawful.
5. CDI is equally liable to pay the fine of USD 500 million imposed on ASI.
6. RMG is not liable to pay any damages to CDI.

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 RESPONDENT [V2508-R]