

**20th LAWASIA International Moot Competition (International Rounds)**

**Name of the Tribunal: Kuala Lumpur Regional Centre for Arbitration**

**Year of the Competition: 2025**

**Name of the Case: Calyx DreamBot Inc v Rivus Microelectronics Group**

**Title: Memorial for Claimant**

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### **Statement of Jurisdiction**

The Arbitral Tribunal constituted under the Asian International Arbitration Centre (“**AIAC**”) Arbitration Rules 2023 has subject matter jurisdiction over this case pursuant to Rule 11 of the AIAC Arbitration Rules 2023.

Calyx DreamBot Inc (“**CDI**” or the “**Claimant**”) and Rivus Microelectronics Group (“**RMG**” or the “**Respondent**”) have agreed in Clause 10 and 11 of the Joint Venture Agreement (“**JVA**”) that “any dispute relating to any matter arising out of and connected with this Agreement” shall be resolved by arbitration under the AIAC Rules, with Kuala Lumpur, Malaysia as the venue, English as the language, and a tribunal composed of three arbitrators. Pursuant to Clause 10 and 11 of the JVA and Rule 1.1(a) of the AIAC Arbitration Rules 2023, the Claimant submits this dispute to the jurisdiction of this Honorable Tribunal.

The Claimant reserved its rights to comment on the constitution of the Arbitral Tribunal.

## **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

1. Calyx DreamBot Inc (“**CDI**” or the “**Claimant**”) is the largest semiconductor firm in Veridia, previously a main supplier to the Seratious market.
2. In early 2022, following the escalation of the Seratious-Veridia trade conflict, the Claimant sought to relocate manufacturing operations to a jurisdiction offering regulatory stability and market access.
3. Between April and June 2022, the Claimant’s executives engaged in two closed-door meetings with President Davul Ho of Aurion, during which President Ho assured that Rivus Microelectronics Group (“**RMG**” or the “**Respondent**”), a domestic partner he recommended, was commercially autonomous and would operate free from governmental interference.
4. In October 2022, the Governments of Aurion and Veridia signed the Aurion-Veridia Bilateral Investment Treaty (“**BIT**”), guaranteeing fair and equitable treatment, protection against expropriation, and regulatory stability for Veridian investors.
5. On 20 December 2022, the Claimant and the Respondent executed a Joint Venture Agreement (“**JVA**”) to establish Aurion Semiconductor Inc (“**ASI**”), with the Claimant holding 51% and the Respondent 49% of the shares. The Claimant committed USD1.2 billion towards facility construction, equipment procurement, workforce development, and research and development.
6. Under the JVA, the Respondent was responsible for procuring land, securing regulatory approvals, managing workforce recruitment, and ensuring compliance with all applicable

labour laws.

7. ASI was incorporated on 3 January 2023. Leveraging the Respondent's state-linked influence, land alienation, permits, and planning approvals were expedited, and construction commenced within the same month.
8. Being mindful of its contractual commitments to key buyers, the Claimant raised concerns over commercial risks of delay and proposed to adjust the construction schedule which was consented by the Respondent.
9. In September 2023, the Respondent recommended Beta Workforce Solutions ("BWS") as a labour supplier but deliberately concealed BWS's familial connection to President Ho's son-in-law. The Claimant, acting in good faith and relying on the Respondent's representations, consented to the engagement, unaware of this conflict of interest, while the Respondent acted in a misleading manner and with a clear intent to manipulate the process to its advantage.
10. By November 2023, BWS had supplied 1,200 workers, and ASI commenced production in May 2024 within the accelerated time frame.
11. In September 2024, an investigative report alleged exploitative labour practices at ASI, including excessive working hours, overcrowded dormitories, and withholding of passports.
12. On 2 October 2024, the Ministry of Trade and Industry of Aurion suspended ASI's operating license pending a revised workforce audit, halting production for three weeks. This suspension caused the Claimant to suffer contractual penalties, revenue losses, and reputational damage.

13. On 10 October 2024, the Claimant discovered BWS's undisclosed familial ties to the Respondent's political leadership, which amounts to a conflict of interest and a breach of the Respondent's good faith obligations under the JVA. Despite the Claimant promptly sought to engage the Respondent through messages to address the resulting suspension of ASI's license, which undermined both the integrity of delivery commitments to customers and the company's normal operations, the Respondent read the messages but deliberately ignored.
14. On 16 December 2024, the Ministry of Trade and Industry of Aurion fined ASI USD500 million for the alleged labour non-compliance based on undisclosed "actual timesheets" that the Claimant could not verify. While the Respondent as the party solely responsible under the JVA for workforce mobilization and compliance with labour laws, failed to discharge its burden to proof to the contrary.
15. On 24 December 2024, realizing further negotiations would be futile resulted from the Respondent's lack of good faith and constructive engagement, the Claimant notifies termination of the JVA, and expressly invited the Respondent to engage on responsibility for the fine. The Respondent neither acknowledged its role in the underlying labour non-compliance nor proposed any solution, leaving the Claimant without a viable path to resolution.
16. On 6 January 2025, having allowed sufficient time for potential negotiations, the Claimant commenced arbitration proceedings.

## Summary of Pleadings

The Claimant hereby submits its pleadings to address the following issues:

1. Whether RMG is entitled to invoke sovereign immunity;
  - a. The Respondent Being a Commercially Autonomous Company;
  - b. Waiver of Immunity under BIT;
  - c. Waiver of Immunity under JVA;
  - d. Aurion's adoption of a restrictive approach to sovereign immunity.
2. Whether CDI's initiation of arbitration was premature;
  - a. Clause 10.1 Being Directory and Procedural in Nature;
  - b. Clause 10.2 Being Unclear, Ambiguous and Unenforceable;
3. Whether RMG breached the JVA in relation to the alleged labour practices;
  - a. Applicable Laws Governing the Prohibition of Forced and Compulsory Labour;
  - b. Existence of "Forced or Compulsory Labour";
  - c. The Respondent Cannot Shift the Blame to BWS or CDI.
4. Whether CDI's termination of the JVA was lawful.
  - a. Fundamental Breach of the JVA;
  - b. Lawful Termination Procedures under the JVA.

## Pleadings

### **I. Whether RMG is entitled to invoke sovereign immunity?**

1. The Claimant submits that RMG, the Respondent, is not entitled to invoke sovereign immunity on the grounds that the Respondent is not a state-owned entity but rather a commercially autonomous company; and alternatively, even if the Respondent were a state-owned entity, it shall still not be entitled to invoke sovereign immunity. This is either because Aurion has waived immunity through its standing offer to arbitrate disputes under the BIT or the JVA between CDI and RMG, or, in the alternative, due to Aurion's adoption of a restrictive approach to sovereign immunity.

#### *(A) The Respondent Being a Commercially Autonomous Company*

2. The Claimant submits that the Respondent is not a state-owned entity acting in the exercise of a sovereign authority, and, as such, is not entitled to invoke sovereign immunity.
3. The doctrine of state immunity originates from, and remains grounded in, customary international law.<sup>1</sup> It concerns the protection which a state is given from being sued in the courts of other states.<sup>2</sup> This protection extends to the state itself and to entities that fall within its broader sovereign framework, including its various organs of government, units of a federal state or political subdivisions of the state, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that capacity, as well as agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform

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<sup>1</sup> Peter-Tobias Stoll (2006), *State Immunity*, Max Planck Encyclopedia of Public International Law, Oxford University Press (online edition, updated July 2006), para. 2.

<sup>2</sup> United Nations Convention on Jurisdictional Immunities 2004, Article 1.

and are actually performing acts in the exercise of sovereign authority of the State. The doctrine similarly applies to state representatives acting in their official capacity.<sup>3</sup>

4. In the present case, the Claimant submits that the Respondent does not constitute a state organ, a political subdivision of Aurion, or any agency, instrumentality, or representative thereof performing acts in the exercise of sovereign authority. Rather, it is submitted that the Respondent operated as a commercially autonomous entity and functioned in a private law capacity, as evidenced by the following interrelated factors:
  - a. First, in the closed-door discussions with Veridian firms between April to June 2022, President Ho assured them that RMG was a “commercially autonomous vehicle under his influence.”<sup>4</sup> This suggests RMG operates independently despite its ties to the government.
  - b. Second, the JVA between RMG and CDI treats RMG as a separate corporate entity incorporated under the laws of Aurion with its own registered office.<sup>5</sup> Moreover, RMG’s corporate registration, including details of its board of directors, is publicly accessible through the Aurion Companies Commission.<sup>6</sup> These factors collectively demonstrate that RMG is a separate legal entity and not a direct organ or instrumentality of the State.
  - c. Third, the JVA explicitly emphasized that ASI, the joint venture entity, is to be managed as an independent, commercially driven entity, as stated in Clause 3.3. This provision underscores RMG’s commercial character and operational autonomy,

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<sup>3</sup> United Nations Convention on Jurisdictional Immunities 2004, Article 2(1)(b).

<sup>4</sup> Moot Problem, para. 10.

<sup>5</sup> *Ibid.*, Exhibit 4, the Joint Venture Agreement, Preamble.

<sup>6</sup> *Ibid.*, para. 28.

reinforcing the conclusion that RMG does not act in a sovereign capacity.

- d. Finally, RMG's obligations under the JVA are of a commercial nature.<sup>7</sup> This further demonstrates that RMG operates as a private law entity in the exercise of its corporate functions, rather than as a public organ discharging sovereign responsibilities.
5. Accordingly, the Claimant submits that RMG does not fall within the category of entities entitled to invoke sovereign immunity, as it operates as a commercially autonomous entity and not in the exercise of sovereign authority.

*(B) Waiver of Immunity under BIT*

6. Alternatively, if the Respondent were treated as a state-owned entity, it shall still not be entitled to invoke sovereign immunity on the grounds of waiver resulting from Aurion's standing offer to arbitrate the dispute under the BIT.
7. In *Gold Reserve v Venezuela*<sup>8</sup>, the English Court of Appeal rejected the state's immunity plea on grounds of waiver resulting from the state's standing offer to arbitrate the dispute with the investor under the BIT. In this regard, the court held that:

“In my judgment the reasonable judicial reader of this statement would appreciate that there had been a dispute between the parties in the arbitration as to whether GRI was an investor, that the tribunal *had determined that GRI was an investor and that accordingly GRI was entitled to submit its claim to arbitration pursuant to the provisions of the BIT.* The reader

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<sup>7</sup> Moot Problem, Exhibit 4, Joint Venture Agreement, Clause 4.2.

<sup>8</sup> *Gold Reserve Inc. v Bolivarian Republic of Venezuela* [2016] EWHC 153 (Comm).

would also appreciate that it *was because of the agreement to arbitrate that Venezuela was not entitled to state immunity.*”<sup>9</sup> (emphasis added).

8. This means that a state’s consent to arbitration under a BIT constitutes an implicit waiver of sovereign immunity, precluding it from later invoking immunity as a bar to jurisdiction.
9. In the present case, both Aurion and Veridia signed the BIT in October 2022, aimed at fostering investor confidence by ensuring fair and equitable treatment, protection against expropriation, and guarantees of regulatory stability. The BIT was positioned as a cornerstone of economic cooperation, reinforcing Aurion’s commitment to maintaining a predictable and secure investment environment for Veridian firms.<sup>10</sup> As a matter of course, it is standard practice for bilateral investment treaties to include dispute resolution mechanisms that are binding on the state party. In line with this practice, the current BIT must be interpreted as containing such a mechanism, which operates as an implicit waiver of sovereign immunity. Moreover, the Claimant is a foreign investor that partnered with the Respondent to establish ASI, a semiconductor manufacturing facility in Aurion under the JVA, which operates within the legal framework of the BIT. Furthermore, the current dispute arose out of and is connected with the performance and interpretation of this JVA.
10. Accordingly, even if the Respondent were to be regarded as a state-owned entity of Aurion, the doctrine of sovereign immunity would not avail it because Aurion has effectively waived immunity through its treaty commitments under the BIT.

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<sup>9</sup> *Gold Reserve Inc. v Bolivarian Republic of Venezuela* [2016] EWHC 153 (Comm), para. 70.

<sup>10</sup> Moot Problem, para. 12.

*(C) Waiver of Immunity under JVA*

11. Alternatively, even if the Respondent were to be regarded as a state-owned entity, and in the absence of an express waiver of immunity under the BIT, it shall still not be entitled to invoke sovereign immunity under JVA.
12. State immunity does not prevent a state or state agency from agreeing to submit to the authority of an arbitral tribunal.<sup>11</sup> It is a well-established principle of international law that a sovereign is bound by an agreement to arbitrate contractual disputes.<sup>12</sup> Article 7(1)(b) of the United Nations Convention on Jurisdictional Immunities (“**UNCJI**”) also contains a similar provision, which stipulates that a state cannot invoke immunity from jurisdiction in a proceeding if it has expressly consented to the exercise of jurisdiction. In the present case, Clauses 10 and 11 of the JVA establish a clear dispute resolution mechanism, under which the parties have expressly agreed to submit their disputes to arbitration according to the Asian International Arbitration Centre rules.
13. More specifically, Clause 11 provides as follows:

“Parties agree that any dispute relating to any matter arising out of and connected with this Agreement shall be determined by arbitration:

- (a) Under the Asian International Arbitration Centre (“**AIAC**”) rules, with Aurion as the seat of arbitration;
- (b) By three arbitrators, one appointed by each Party, and the third, who shall be the

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<sup>11</sup> Nigel Blackaby et al. (2015), *Redfern & Hunter on International Arbitration*, 6th ed., Oxford University Press, § 9.59.

<sup>12</sup> *Libyan American Oil Co. (Liamco) v Government of the Libyan Arab Republic* [1982] 62 ILR 140, para.178.

presiding arbitrator, selected by the two appointed arbitrators, or failing agreement, by the Director of the AIAC;

(c) The language of the arbitration shall be English; and

(d) The place of arbitration shall be Kuala Lumpur, Malaysia.”

14. This constitutes express consent to the exercise of jurisdiction by an arbitral tribunal, thereby precluding the Respondent from invoking sovereign immunity as a bar to arbitration.

15. The Respondent may argue that the Claimant has not obtained the required consent from “the Minister in charge of economic policy, foreign investments and trade of Aurion,” as stipulated in Clause 10.2 of the JVA. However, the Claimant submits that this provision is ambiguously and unclearly drafted, which renders it unenforceable in practice. This issue will be further addressed under Issue 2 below.

*(D) Aurion’s adoption of a restrictive approach to sovereign immunity*

16. In the alternative, even if the Respondent were to be regarded as a state-owned entity, and in the absence of an express waiver of immunity under the BIT or the JVA, it shall still not be entitled to invoke sovereign immunity due to Aurion’s adoption of a restrictive approach to sovereign immunity.

17. Under the restrictive approach, sovereign immunity does not apply to a state or its entities when they engage in commercial transactions rather than exercising sovereign functions. This reflects the view that states commonly enter into commercial activities and that it would be unfair to treat them differently in that context. As noted by Lord Denning in

*Trendtex Trading Corp v Central Bank of Nigeria*:<sup>13</sup>

“In the last 50 years there has been a complete transformation in the functions of a sovereign state. Nearly every country now engages in commercial activities. It has its department of state - or creates its own legal entities - which go into the market places of the world. They charter ships. They buy commodities. They issue letters of credit. This transformation has changed the rules of international law relating to sovereign immunity. Many countries have now departed from the rule of absolute immunity. So many have departed from it that it can no longer be considered a rule of international law. It has been replaced by a doctrine of restrictive immunity.”<sup>14</sup>

18. The restrictive approach to sovereign immunity has been adopted by numerous states, including the United Kingdom<sup>15</sup>, the United States<sup>16</sup>, Canada<sup>17</sup>, Australia<sup>18</sup>, and Singapore<sup>19</sup>. At the international level, this doctrine is also reflected in the UNCJI. Article 10 of UNCJI sets out a clear exemption to state immunity, providing that a “State” cannot rely on state immunity where it “engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State”. This term “commercial transaction” is defined in UNCJI to include a range

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<sup>13</sup> *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] 1 QB 529 (UK), para. 366.

<sup>14</sup> *Ibid.*, para. 555.

<sup>15</sup> State Immunity Act 1978 (UK), Section 3.

<sup>16</sup> Foreign Sovereign Immunities Act, 28 USC., Section 1605.

<sup>17</sup> Canadian State Immunity Act R.S.C 1985, Section 5.

<sup>18</sup> Foreign States Immunity Act 1985 (Australia), Section 11.

<sup>19</sup> State Immunity Act 1979 (Sing.), Section 5.

of activities such as (i) contracts for the sale of goods or supply of services, (ii) financial agreements including loans, guarantees, or indemnities, and (iii) other contracts of a commercial, industrial, trading, or professional nature, excluding contracts of employment. When determining whether a particular contract or transaction qualifies as a “commercial transaction” under this definition, the primary consideration is the nature of the transaction itself.<sup>20</sup>

19. In light of the above, the Claimant makes two submissions. First, as a signatory to UNCJI, Aurion has undertaken a legal obligation to refrain from any acts that would defeat the object and purpose of UNCJI, in accordance with Article 18(b) of the Vienna Convention on the Law of Treaties. Since UNCJI clearly distinguishes between sovereign acts and commercial acts, and limits the grant of immunity to the former, it reasonably follows that Aurion, by adhering to the principles reflected in the Convention, must have adopted a restrictive approach to state immunity. Second, the following acts in which the Respondent has engaged are of a commercial nature:

- a. By entering into the JVA with the Claimant and incorporating ASI, a semiconductor manufacture facility, on 3 January 2023, the Respondent engaged in a typical private law arrangement for the establishment of a commercial enterprise;
- b. Pursuant to Clauses 3.1 and 4.1(a) of JVA, the Respondent undertook to provide substantial capital contributions amounting to USD 1.2 billion for the development of ASI’s manufacturing plant, which mirrors the financial commitments of private investors;
- c. In compliance with Article 4.2(e)-(f) of JVA, the Respondent collaborated with the

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<sup>20</sup> United Nations Convention on Jurisdictional Immunities 2004, Article 2(1)(c).

Claimant and a third-party recruitment agency, BWS, to recruit workers, and to manage labour in accordance with employment and immigration laws, which are activities typical of private employers;

- d. The Respondent participated in the day-to-day management of ASI through the JPMT, and exercised oversight in a corporate vehicle governed by company law, not by public law prerogatives;
- e. Finally, the Respondent has actively participated in the arbitration process initiated under Clause 11 of JVA, which presupposes the existence of a commercial dispute governed by private law principles, namely UNIDROIT Principles of International Commercial Contracts (2010) and international commercial laws, mandated by Clause 12 of JVA. Its reliance on the arbitration agreement and private laws are fundamentally inconsistent with any assertion that its actions are sovereign in character.

20. Accordingly, the Respondent is not entitled to sovereign immunity, as the acts it has engaged in are of a commercial nature and fall outside the scope of sovereign functions protected under the principles of restrictive state immunity.

## **II. Whether CDI's initiation of arbitration was premature?**

21. The Claimant submits that it has not prematurely commenced arbitration according to Clause 10 of the JVA on the grounds that (a) the procedures set out in Clause 10.1 are directory and procedural in nature and not strictly mandatory, and that the Claimant has duly complied with them; and (b) the requirements stipulated in Clause 10.2 are vague,

ambiguous, and therefore unenforceable.

*(A) Clause 10.1 Being Directory and Procedural in Nature*

22. The Claimant submits that the requirement to negotiate under Clause 10.1 of JVA must be interpreted as procedural and directory, rather than mandatory or jurisdictional in nature, and that the Claimant has duly complied with it.
23. In *SGS v Pakistan*, a case arising under the Switzerland-Pakistan BIT, Article 9 of that BIT stated: “[F]or the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party [...] consultations shall take place between the parties concerned.” Article 9(2) went on to state that “[i]f these consultations do not result in a solution within twelve months” and the investor concerned gave its consent, the dispute shall be submitted to the International Centre for the Settlement of Investment Disputes (“**ICSID**”) arbitration. The tribunal found that consultations provisions are generally “directory and procedural rather than jurisdictional and mandatory” in nature.<sup>21</sup> Accordingly, the tribunal held that compliance with such provisions is not a condition precedent to tribunal jurisdiction. To dismiss a claim and require the parties to consult, after which they could resubmit the claim to arbitration, would be inefficient.
24. Similarly, in *Bayindir v Pakistan*, a case arising under the Turkey-Pakistan BIT, the tribunal held that a failure to comply with a notice requirement, intended to give the parties an opportunity to settle the dispute, did not deprive the tribunal of jurisdiction. On 15 April 2002, Bayindir submitted a Request for Arbitration to the ICSID and sought relief, while

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<sup>21</sup> *SGS Société Générale de Surveillance S.A. v Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13 [2003], para. 184.

no pre-arbitration step has been employed before the phase of arbitration. On 16 April 2002, the tribunal accepted the arbitration between Pakistan and the United States of America irrespective of the notice being absent.<sup>22</sup>

25. Applying these principles to the present case, Clause 10.1 of JVA, which provides that the parties “agree to regulate their own affairs and resolve any dispute arising from or connected to this Agreement amicably through negotiations” within 14 days of written notice, is clearly procedural in nature. It does not impose a mandatory precondition to arbitration but rather encourages an efficient, amicable resolution before resorting to formal dispute mechanisms. To dismiss a claim and require the parties to negotiate, after which they could resubmit the claim to arbitration, would be inefficient, a concern explicitly recognized in *SGS v Pakistan*. Therefore, requiring the Claimant to re-initiate negotiations would serve no practical purpose and would unduly delay the resolution of a well-defined and mature commercial dispute. Accordingly, even a failure to comply with it will not render CDI’s initiation of arbitration premature, let alone when the Claimant has duly complied with the requirement.

26. In this regard, the Claimant submits that as long as some effort at amicable resolution has been made, tribunals should generally find such efforts sufficient. For example, in *Salini v Morocco*, the tribunal observed that the attempt to consult should include the existence of the grounds for the complaint and the desire to negotiate a resolution but need not be complete or detailed. Documents submitted to the Moroccan government were sufficient to put Morocco on notice of the dispute and met the treaty’s specification that any dispute

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<sup>22</sup> *Bayındır İnşaat Turizm Ticaret v Sanayi A.Ş. v Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29 [2005], para. 48.

“should, if possible, be resolved amicably.”<sup>23</sup>

27. In *Sedelmayer v Russia*, a case arising under the Germany-Russia BIT, the claimant had made numerous attempts to resolve his dispute with the Russian government, but the government had refused to meet with him. The tribunal rejected the respondent’s argument that the necessary efforts at amicable settlement had not been made, observing that, having refused to communicate with the claimant, “[t]he Respondent cannot now complain that measures have not been taken with a view to finding an amicable solution of the dispute.”<sup>24</sup>

28. In the present case, the Claimant has duly complied with Clause 10.1 by making genuine attempts at amicable settlement, which were consistently frustrated by the Respondent’s refusal to cooperate:

- a. The Claimant initiated negotiations in good faith, but the Respondent failed to reciprocate and remained evasive. On 11 October 2024, Ms. Al Emret, on behalf of the Claimant, issued a written communication to the Respondent’s CEO and Mr. Suvan, raising concerns over the Respondent’s mishandling of labour recruitment and compliance, and stressing the urgency of resolving the suspension of ASI’s license which jeopardized the agreed production and delivery schedule. These messages were read but deliberately ignored. Following the Ministry’s imposition of a USD 500 million fine on 16 December 2024, and in its letter of 24 December 2024 notifying termination of JVA, the Claimant expressly invited the Respondent to engage on responsibility for the fine. The Respondent, however, failed to offer

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<sup>23</sup> *Salini Costruttori S.p.A. and Italstrade S.p.A. v Kingdom of Morocco*, ICSID Case No. ARB/00/4 [2001], para. 151.

<sup>24</sup> *Franz Sedelmayer v The Russian Federation*, Decision of the German Federal Court of Justice [2015], para. 124.

any substantive response or constructive proposal, frustrating the Claimant's attempts at resolution.

- b. The Claimant allowed a reasonable period for negotiations to take place before initiating arbitration, consistent with the principle of good faith and the intent behind Clause 10.1. Notably, the Claimant waited until 6 January 2025 to submit its Notice of Arbitration, demonstrating its commitment to amicable resolution before initiating formal proceedings.
- c. The Claimant has provided documentary records evidencing its negotiation efforts. These include correspondence and written proposals submitted to the Respondent, substantiating the Claimant's compliance with Clause 10.1's procedural requirement.
- d. The Respondent's evasion and hostility ultimately rendered further negotiations futile. On 28 December 2024, when the Claimant reiterated its proposal on the allocation of fines bearing, the Respondent's CEO emotionally dismissed the claim as "nonsensical" and refused to take the responsibility. It is clear that that the Respondent never intended to resolve the dispute amicably, leaving arbitration as the Claimant's only viable recourse.

29. Accordingly, given the Claimant's proactive and efforts to initiate negotiations, and the Respondent's failure to engage in any meaningful dialogue, the Claimant submits that the procedural requirement under Clause 10.1 has been satisfied. As demonstrated in *Salini* and *Sedelmayer*, tribunals have consistently held that where a party has attempted to initiate amicable resolution but is met with silence or refusal, such efforts must be considered sufficient. To require more would be unreasonable and contrary to the purpose of pre-

arbitration negotiation clauses.

*(B) Clause 10.2 Being Unclear, Ambiguous and Unenforceable*

30. The Claimant submits that Clause 10.2 is formulated in such an unclear and ambiguous manner that it cannot be regarded as a valid precondition to arbitration, and must therefore be treated as unenforceable.

31. In respect of a dispute resolution clause, it must be sufficiently certain to be enforceable. In *Holloway v Chancery Mead Limited*, Ramsey J. identified three requirements for such agreements to be enforceable:

“First, that the process must be sufficiently certain in that there should not be the need for an agreement at any stage before matters can proceed. Secondly, the administrative processes for selecting a party to resolve the dispute and pay that person should also be defined. Thirdly, the process or at least a model of the process should be set out so that the detail of the process is sufficiently certain.”<sup>25</sup>

32. Further guidance was provided by Hildyard J in *Tang v Grant Thornton International Ltd* [2012] EWHC 3198 (Ch):

“[60] In the context of a positive obligation to attempt to resolve a dispute or difference amicably before referring a matter to arbitration or bringing proceedings the test is whether

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<sup>25</sup> *Holloway v Chancery Mead Limited* [2007] EWHC 2495 (TCC), para. 81.

the provision prescribes, without the need for further agreement...”

33. This principle was later affirmed with approval by the English court in *Ohpen Operations UK Limited v Invesco Fund Managers Limited* [2019] EWHC 2246, such a clause “must be sufficiently clear and certain by reference to objective criteria [...] without the requirement of any further agreement by the parties.”<sup>26</sup>

34. The principles articulated in English case law were notably applied in *Krupp v Benedetti* [2014] EWHC 1887 (Comm), where a dispute resolution clause was found unenforceable due to vagueness and lack of certainty. The clause in that case provided:

“Laws of England and Wales. In the event of any dispute between the parties pursuant to this Agreement, the parties will endeavor to first resolve the matter through Swiss arbitration. Should a resolution not be forthcoming the courts of England shall have non-exclusive jurisdiction.”

35. The judge found that this clause did not create a binding precondition to litigation or arbitration because the clause in question amounted to no more than a non-binding expression of intent to “endeavor” to resolve disputes through “Swiss arbitration”.<sup>27</sup> The reference to “Swiss arbitration” further contributed to the ambiguity of the clause, given

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<sup>26</sup> *Ohpen Operations UK Limited v Invesco Fund Managers Limited* [2019] EWHC 2246 (TCC), [2019] BLR 576, para. 32.

<sup>27</sup> *Kruppa v Benedetti* [2014] EWHC 1887 (Comm), para. 11.

the unique legal structure of Switzerland. As the judge observed:

“Switzerland is divided into cantons; this would require a cantonal court to apply the provisions of Swiss law, but the clause does not give any cantonal court jurisdiction nor specify a cantonal seat.”<sup>28</sup>

36. The English court concluded that the clause was too vague and uncertain to be enforceable, emphasizing that arbitration clauses must be sufficiently clear and specific to create binding legal obligations.

37. In the present case, Clause 10.2 of the JVA suffers from the same deficiencies identified in *Krupp v Benedetti* and the other authorities cited above. It reads as follows:

“Any proceedings, claims, or suits in relation to any dispute or controversy, arising out of or in connection with this Agreement shall NOT be commenced before first obtaining the consent of the Minister in charge of economic policy, foreign investments and trade of Aurion.”

38. The Claimant submits that this clause fails to meet the requirements for enforceability:

- a. It does not define or clarify what is meant by “consent”, whether it must be express, written, or may be implied.
- b. It does not specify who exactly is responsible for granting the so-called “consent”. The phrase “Minister in charge of economic policy, foreign investments and trade of Aurion” is inherently unclear and ambiguous, as Aurion’s governmental structure

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<sup>28</sup> *Kruppa v Benedetti* [2014] EWHC 1887 (Comm), para. 11.

does not include a minister with that precise portfolio. According to publicly available information, Aurion only has a Ministry of Foreign Affairs and a Ministry of Trade and Industry. The absence of a clearly identifiable ministerial authority with the designated responsibilities renders the clause unworkable and incapable of objective enforcement.

- c. It does not specify a time frame within which consent must be sought or granted, or provide any guidance on what happens in the event that consent is not forthcoming. This omission fails to establish a sufficiently clear and certain framework for dispute resolution and places the parties in a state of procedural uncertainty.
- d. Nor does it permit the commencement of proceedings or arbitration without being contingent upon a subjective and undefined authority, thereby creating a procedural obstacle that cannot be practically implemented. English courts have consistently held that a dispute resolution clause must set out objective and ascertainable steps without requiring any further agreement between the parties; otherwise, it cannot give rise to binding legal obligations.<sup>29</sup>

39. In light of these deficiencies, the Claimant submits that Clause 10.2 of JVA is too vague and uncertain to operate as a valid precondition to arbitration, and must therefore be treated as unenforceable.

### **III. Whether RMG breached the JVA in relation to the alleged labour practices?**

40. The Claimant submits that the Respondent failed to meet its obligations under both Clause

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<sup>29</sup> *Ohpen Operations UK Limited v Invesco Fund Managers Limited* [2019] EWHC 2246 (TCC), [2019] BLR 576, para. 32.

4.2(f) and Clause 6.1 of the JVA in relation to the alleged labour practices, i.e., the use of “forced or compulsory labour”.

*(A) Applicable Laws Governing the Prohibition of Forced and Compulsory Labour*

41. To begin, the Claimant points out that Clause 4.2(f) required the Respondent to ensure full compliance with all applicable labour and employment laws<sup>30</sup>, while Clause 6.1 imposed a broader obligation to conduct operations in accordance with all applicable laws, regulations, and internationally recognised principles on fair labour practices.<sup>31</sup>
42. Aurion is a state party to the International Labour Organization Forced Labour Convention (No. 29)<sup>32</sup> and the Labour Inspection Convention (No. 81)<sup>33</sup>. Aurion has undertaken binding international commitments to prohibit forced labour and ensure effective labour oversight. Moreover, the Aurion Labour Code 1994 has explicitly declared the application of the provisions of the Forced Labour Convention without modification, incorporating these international standards directly into domestic law.<sup>34</sup>
43. According to Article 2(1) of the Forced Labour Convention, which is reproduced verbatim in the Aurion Labour Code, “forced or compulsory labour” means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.<sup>35</sup>
44. The jurisprudence of international human rights bodies further supports and elaborates upon this definition. In *F.M. and Others v Russia*, a case concerning the State’s failure to

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<sup>30</sup> Moot Problem, Exhibit 4, the Joint Venture Agreement, Clause 4.2.

<sup>31</sup> *Ibid.*, Clause 6.1.

<sup>32</sup> Clarification to the Moot Problem, Question 7.

<sup>33</sup> Additional Clarifications, Question 4.

<sup>34</sup> *Ibid.*, Question 5.

<sup>35</sup> International Labor Organization. (1930) ILO Forced Labour Convention (No. 29), Article. 2(1).

fulfil its positive obligations under Article 4 of European Convention on Human Rights by neither criminalising nor preventing the trafficking, servitude and forced labour of irregular female migrant workers, nor conducting any effective investigation into their exploitation, the European Court of Human Rights has also adopted the definition of “forced or compulsory labour” in the Forced Labour Convention and ILO’s indicators of forced labour<sup>36</sup> to interpret “forced labour” in Article 4 of European Convention on Human Rights:

“The term ‘forced labour’ brings to mind the idea of physical or mental coercion. What there has to be is work ‘exacted under the menace of any penalty’ and also performed against the will of the person concerned, that is, work for which he or she ‘has not offered himself [or herself] voluntarily’ (see *Chowdury and Others v. Greece*, no. 21884/15, § 90, 30 March 2017)<sup>37</sup>. Where an employer abuses his or her power or takes advantage of the vulnerability of his or her workers in order to exploit them, they do not offer themselves for work voluntarily (ibid., § 96)<sup>38</sup>. The notion of ‘penalty’ is to be understood in the broad sense, as confirmed by the use of the term “any penalty”.<sup>39</sup>

45. To further give effect to the meaning of “forced or compulsory labour” and to assist in its practical identification, the ILO’s Special Action Programme to Combat Forced Labour (“SAP-FL”) has developed eleven indicative factors to assess whether a situation

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<sup>36</sup> *F.M and Others v Russia*, ERHC Case No. 71671/16 40190/18 [2025], paras. 186, 188.

<sup>37</sup> *Chowdury and Others v Greece*, no. 21884/15, 30 [2017], para. 90.

<sup>38</sup> *Ibid.*, para. 96.

<sup>39</sup> *F.M and Others v Russia*, ERHC Case No. 71671/16 40190/18 [2025], paras. 237, 243, 276.

constitutes forced or compulsory labour.<sup>40</sup> These indicators include: (i) abuse of vulnerability; (ii) deception; (iii) restriction of movement; (iv) isolation; (v) physical and sexual violence; (vi) intimidation and threats; (vii) retention of identity documents; (viii) withholding of wages; (ix) debt bondage; (x) abusive working and living conditions; and (xi) excessive overtime.<sup>41</sup>

46. These indicators are intended to guide national authorities, employers, workers, and other stakeholders in identifying exploitative conditions that may amount to forced labour, even in the absence of physical coercion. Importantly, SAP-FL has cautioned that while the presence of a single indicator may, in some cases, be sufficient to suggest the existence of forced labour, in other cases multiple indicators must be examined collectively to determine whether the work or service was performed involuntarily and under the menace of penalty.<sup>42</sup>

47. Accordingly, the definition of forced labour set forth in the ILO Forced Labour Convention, as incorporated into the Aurion Labour Code and interpreted by international jurisprudence, together with the ILO's indicative factors, establishes the legal benchmark for determining whether alleged labour practices amount to forced or compulsory labour under both international law and the domestic law of Aurion.

*(B) Existence of "Forced or Compulsory Labour"*

48. The Claimant submits that several of the ILO's indicative factors of forced or compulsory

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<sup>40</sup> International Labor Organization. (2012). *ILO Indicators of Forced Labor* (Online version), p. 2.

<sup>41</sup> *Ibid.*, p. 3.

<sup>42</sup> *Ibid.*

labour are present in the present case. Specifically, indicators such as (i) abuse of vulnerability; (ii) restriction of movement; (iii) retention of identity documents; (iv) abusive working and living conditions; and (v) excessive overtime have been reported in relation to the working conditions at the ASI facility.

49. These elements, when considered individually or collectively, point to the existence of “forced or compulsory labour”. Under such circumstances, there is no “free and informed consent of the worker”, as required under Article 5(d) of the ILO Guidelines Concerning Measurement of Forced Labour.<sup>43</sup>

(i) Abuse of Vulnerability

50. The Claimant submits that the Respondent and BWS have abused the employees’ vulnerable position.

51. In respect of “abuse of vulnerability”, the ILO Indicators refers to:

“Forced labour is also more likely in cases of multiple dependency on the employer, such as when the worker depends on the employer not only for his or her job but also for housing, food and for work for his or her relatives.”<sup>44</sup>

52. In the present case, the workers relied on ASI to provide housing, and 54% of them indicated that failure to meet KPIs would result in wage deductions.<sup>45</sup> Therefore, RMG

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<sup>43</sup> International Labor Organization. (2018). *ILO Guidelines Concerning Measurement of Forced Labor* (Online version), Article 5(d).

<sup>44</sup> International Labor Organization. (2012). *ILO Indicators of Forced Labor* (Online version), p. 5.

<sup>45</sup> Moot Problem, Exhibit 10, Section. 3.4.

and BWS abused the migrant workers' vulnerable position by making them work overtime.

(ii) Restriction of Movement, and Retention of Identity Documents

53. The Claimant submits that the workers at the ASI facility were subjected to significant restrictions on their freedom of movement, including the retention of their identity documents.

54. In *F.M. and Others v Russia*, the retention of passport was found as an indicator of breach of Article 4 - Prohibition of Slavery and Forced Labour of the European Convention on Human Rights<sup>46</sup>. The Independent Investigative Committee (“IIC”) found that some workers had their passports withheld by BWS, which left the workers with no chance to leave but to comply with overtime working requirements. The Respondent claimed that this practice was “in line with visa and work permit procedures for foreign workers and to ensure attendance at the workplace”<sup>47</sup>. However, RMG could not prove that it is short-term retention and complies with visa application procedures, and that workers have free access to their own passports.

55. The retention of passports still cannot be justified based on the following two grounds:

- a. First, retention of a passport for a visa application is not a common practice. US Citizenship and Immigration Services requires employers to return the original copy: “[Y]ou may make copies (or electronic images) of the documentation you reviewed, but must return original documentation to the employee”.<sup>48</sup> In Singapore, employers submit copies of the passport biodata page; the Ministry of Manpower

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<sup>46</sup> *F.M and Others v Russia*, ERHC Case No. 71671/16 40190/18 [2025], paras. 271, 275.

<sup>47</sup> Moot Problem, para. 47.

<sup>48</sup> U.S. Citizenship and Immigration Services, *Handbook for Employers M-274*, Article 4.1.

expressly forbids employers from retaining workers' passports.<sup>49</sup>

- b. Second, employers are required to allow workers to leave freely. The preamble of the Migrant Workers (Supplementary Provisions) Convention affirms "the right of everyone to leave any country [...] as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights".<sup>50</sup>

56. In the present case, BWS withheld workers' passports while there was no evidence showing the necessity to use original copies for a visa application. When employees requested the return of their passports, they were refused by the administration of BWS using vague statements without a specific timeline for their return. And no passport was ever returned to any of the employees.<sup>51</sup> BWS denied workers free access to their passports, constraining workers from leaving the country freely. Therefore, RMG and BWS restricted workers' movement by withholding workers' identity documents.

*(C) The Respondent Cannot Shift the Blame to BWS or CDI*

57. The Claimant submits that the Respondent cannot disclaim liability by shifting the blame to BWS or CDI, as RMG was substantively involved in the recruitment and management of workers for ASI.

- a. Under Clause 4.2(e) of the JVA, RMG was explicitly tasked with the responsibility of "managing the recruitment and allocation of local and migrant workforce to meet production demands". This obligation was to commence at least six (6) months

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<sup>49</sup> Ministry of Manpower (Singapore), *Can an Employer Keep a Worker's Passport?*, MOM FAQ, <https://www.mom.gov.sg/faq/work-pass-general/can-an-employer-keep-a-workers-passport>.

<sup>50</sup> Migrant Workers (Supplementary Provisions) Convention (No. 143)[1975], Preamble, para. 7.

<sup>51</sup> Additional Clarifications, Question 3.

before production and was required to be maintained on an ongoing basis. Moreover, RMG was further required to “ensure full compliance with all applicable labour and employment laws”.<sup>52</sup> This contractual duty establishes that RMG had direct and active involvement in workforce recruitment and management.

- b. RMG, through its representatives David, Kelvin, and Stephanie, played a central role in the selection and engagement of BWS as the third-party recruitment agency. An internal email from the JPMT, dated 20 September 2023, instructed RMG to “take all necessary measures to minimize labour costs”.<sup>53</sup> Subsequently, in an internal communication dated 22 September 2023, RMG was noted to have recommended BWS based on its competitive rates and relevant experience.<sup>54</sup> The same document further indicated that RMG was expected to “communicate workforce specifications” to BWS. These documents collectively illustrate RMG’s active supervision, coordination, and managerial control over the recruitment process.
- c. The IIC Report identified significant discrepancies in workforce audits, particularly with regard to the under-reporting of overtime hours. While ASI representatives admitted that these discrepancies originated from oversights by BWS, the IIC emphasized that ASI bore ultimate responsibility for the accuracy and transparency of workforce documentation and compliance with labour standards. Given that RMG was the party solely responsible under the JVA for workforce mobilization and compliance with labour laws, it reasonably follows that RMG failed in its

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<sup>52</sup> Moot Problem, Exhibit 4, the Joint Venture Agreement, Clause 4.2.

<sup>53</sup> *Ibid.*, Exhibit 6.

<sup>54</sup> *Ibid.*, Exhibit 7.

contractual duties by not ensuring transparency and accuracy in workforce reporting.<sup>55</sup>

58. Accordingly, the Claimant submits that RMG was not a passive observer in the recruitment and management of workers but was actively involved in selecting, supervising, and coordinating with BWS. Therefore, RMG cannot absolve itself of liability by shifting responsibility to a third party, especially when it had contractual obligations and operational control over labour practices under the JVA.

#### **IV. Whether CDI's termination of the JVA was lawful?**

59. The Claimant submits that its termination of the JVA was lawful on the grounds of the Respondent's breach of the JVA in relation to the alleged labour practices has constituted a fundamental breach.

##### *(A) Fundamental Breach of the JVA*

60. Building upon the Claimant's submissions on Issue 3, the Claimant submits that the Respondent's failure to comply with its obligations in relation to the alleged labour practices has resulted in a material and fundamental breach of the Agreement. These violations, which include the use of forced or compulsory labour, contrary to both international law and the domestic law of Aurion, have fundamentally undermined the integrity and purpose of the JVA, thereby justifying termination.

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<sup>55</sup> Moot Problem, Exhibit 10, Section. 3.7.

61. In support of this position, the Claimant refers to Clause 8.1 of the JVA, which provides:

“In the event of a fundamental non-performance or breach of this Agreement, the Parties may terminate this Agreement.”<sup>56</sup> This clause establishes a clear contractual basis for termination where a breach rises to the level of fundamental breach, which is precisely the case here.

62. A fundamental breach occurs where the breach of a contractual term is so serious that it substantially deprives the innocent party of the benefit of the contract. This principle was authoritatively articulated in *Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 1 All ER 474 (ECA), where the Court held that only breaches which go to the root of the contract justify termination.<sup>57</sup> Similarly, in *Bunge Corp v Tradax SA* [1981] 2 All ER 540 (UK), the Court confirmed that the test for fundamental breach involves an assessment of whether the breach substantially defeats the commercial purpose of the agreement.<sup>58</sup>

63. These principles are also reflected in Article 7.3.1 of the UNIDROIT Principles of International Commercial Contracts (2010), which provides:

“(1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.

(2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether:

(a) the non-performance substantially deprives the aggrieved party of what it was entitled

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<sup>56</sup> Moot Problem, Exhibit 4, Clause 8.1.

<sup>57</sup> *Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 1 All ER 474 (ECA), paras. 28, 41.

<sup>58</sup> *Bunge Corp v Tradax SA* [1981] 2 All ER 540 (UK), pp. 1-2.

to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result.”<sup>59</sup>

64. These guiding principles confirm that where a breach substantially undermines the contractual expectations of the innocent party, termination is a legitimate remedy.

65. In the present case, the breach of the JVA by the Respondent constituted a fundamental breach, depriving CDI of what it is entitled to expect under the contract:

- a. First, RMG’s breaches jeopardized the project’s viability. The Ministry’s suspension of ASI’s operating license for three weeks<sup>60</sup> directly halted production and disrupted critical supply agreements with Seratious clients, forcing buyers to reassess long-term commitments<sup>61</sup>, thereby destroying the joint venture’s commercial foundation and operational sustainability.
- b. Second, RMG’s breaches caused direct financial losses. The Ministry imposed a USD 500 million fine on ASI for labour non-compliance<sup>62</sup>, compounded by USD 27.5 million in lost revenue during the suspension and USD 15 million in contractual penalties from buyers for delayed deliveries<sup>63</sup>, all directly attributable to RMG’s failure to ensure labour standards.
- c. Third, RMG’s breaches caused reputational harm to CDI and long-term impact to CDI’s future cooperation. Public exposure of labour violations triggered by the IIC

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<sup>59</sup> UNIDROIT Principles of International Commercial Contracts (2010), Article 7.3.1.

<sup>60</sup> Moot Problem, para. 50.

<sup>61</sup> *Ibid.*, para. 51.

<sup>62</sup> *Ibid.*, para. 56.

<sup>63</sup> *Ibid.*, para. 62.

report<sup>64</sup> irreparably damaged CDI's global reputation as an ethical investor, resulting in the loss of around USD 200 million in future contracts<sup>65</sup> and permanently impairing CDI's ability to secure partnerships in markets with stringent human rights due diligence requirements.

66. Accordingly, the breach of the JVA by the Respondent deprived CDI of what it is entitled to expect under the contract, and thus constituted a fundamental breach of the contract.

*(B) Lawful Termination Procedures under the JVA*

67. The Claimant submits that it has duly and fully complied with the procedural requirements for the termination of the JVA, thereby rendering the termination valid, lawful, and enforceable in both substance and form.

68. Clause 6.3 reads as follows:

“In the event of any alleged non-compliance, the Parties shall refer to Clause 10 – Dispute Resolution.”<sup>66</sup>

69. While this clause mandates the initiation of dispute resolution procedures in the event of alleged non-compliance, it does not preclude the right of termination where a fundamental breach has occurred.

70. Under well-established principles of contract law, a non-breaching party who elects to

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<sup>64</sup> *Moot Problem*, para. 49.

<sup>65</sup> *Ibid.*, para. 62.

<sup>66</sup> *Ibid.*, Exhibit 4, the Joint Venture Agreement, Clause 6.3.

accept a repudiatory breach must communicate its election to terminate to the breaching party. However, as confirmed in *Chao Keh Lung v Don Xia* [2003] 4 HKC 660 (HKCA), no specific form or formula of words is required — the communication must simply be clear and unequivocal in expressing the intention to terminate the agreement.<sup>67</sup>

71. In the present case, CDI wrote to RMG to inform them of their decision to terminate the JVA and for RMG to bear the fine on 24 December 2024. In the written notice, CDI clearly cited ongoing breaches of the JVA which resulted in the non-compliance of labour laws and the erosion of trust in RMG as a reliable partner as key reasons for their decision.<sup>68</sup> The communication was clear and unequivocal in expressing the intention to terminate the JVA. And CDI has complied with the procedural requirements to negotiate under Clause 10 of the JVA as proven in the Claimant's submissions on Issue 2.

72. Accordingly, CDI's termination of the JVA was unequivocally lawful both in substance and procedure. It was grounded in a fundamental breach by the Respondent and was accompanied by a clear and effective notice of termination, in compliance with general principles of contract law and the contractual architecture of the JVA. Accordingly, the termination is therefore valid and enforceable.

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<sup>67</sup> *Chao Keh Lung v Don Xia* [2003] 4 HKC 660 (HKCA), para. 41.

<sup>68</sup> Moot Problem, para. 59.

### **Prayer for Relief**

1. As a result, the Claimant respectfully requests the arbitral tribunal to issue an award:
  - a. declaring that the Respondent is not entitled to invoke sovereign immunity;
  - b. declaring that the Claimant's initiation of arbitration was not premature;
  - c. declaring that the Respondent breached the JVA in relation to the alleged labour practices;
  - d. declaring that the Claimant's termination of the JVA was lawful; and
  - e. ordering that the Respondent bears the USD 500 million fine.