

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 Respondent

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Statement of Jurisdiction

Calyx DreamBot Inc and Rivus Microelectronics Group have agreed in the Joint Venture Agreement that “any dispute relating to any matter arising out of and connected with this Agreement” shall be submitted to this Honorable Tribunal in Kuala Lumpur, Malaysia in accordance with Rule 1.1(a) of the Asian International Arbitration Centre Arbitration Rules 2023.

However, the Respondent submits that since:

- a. It is a state-owned entity of Aurion which carries out sovereign activities and thus enjoys sovereign immunity; and
- b. the Claimant’s initiation of the arbitration was premature pursuant to the Joint Venture Agreement Clause 10, which mandates prior negotiation and ministerial consent,

the Respondent respectfully requests the Tribunal to dismiss this case on the grounds of lack of jurisdiction.

The Respondent 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. Rivus Microelectronics Group (“**RMG**” or the “**Respondent**”) is one of the Aurion’s key enterprises in the semiconductor industry. RMG is closely affiliated with the Aurion government, with its capital requirements reportedly funded by the Government Treasury. Its leadership structure is influenced by policies of the Ministry of Economy, and its board of directors includes members of Aurion’s Cabinet, as disclosed in records at the Aurion Companies Commission.
2. In 2022, following an introduction facilitated by Aurion’s President Davul Ho through Mr. Suvan, a high-ranking economic envoy, Calyx DreamBot Inc (“**CDI**” or the “**Claimant**”) engaged with RMG to explore relocating its manufacturing facilities to Aurion. President Ho assured CDI’s CEO, Ms. Al Emret, in closed-door meetings in April and May 2022 that RMG operated as a commercially autonomous entity with no governmental interference, prompting CDI to agree to a partnership contingent on significant investment and technical expertise.”
3. In October 2022, the Governments of Aurion and Veridia signed the Aurion-Veridia Bilateral Investment Treaty (“**BIT**”), which paved the way for joint ventures between enterprises of both States.
4. On 20 December 2022, the Respondent and the Claimant executed a Joint Venture Agreement (“**JVA**”) to establish Aurion Semiconductor Inc (“**ASI**”), with the Respondent holding 49% and the Claimant 51% of the shares.
5. Pursuant to the JVA, the Respondent undertook to secure land, obtain permits, and recruit the workforce. The Claimant was to oversee production schedules and supply chain

arrangements. The Claimant was also responsible for providing comprehensive training programs to ensure compliance with industry standards, per Clause 4(b)(ii) of the JVA.

6. In February 2023, the Claimant insisted on accelerating construction to a 15-month schedule, well below the industry average of 24-36 months. The Respondent agreed to the accelerated schedule, which necessitated adjustments in recruitment and construction to meet the deadline.
7. In September 2023, after a joint assessment of labour agencies, the Claimant approved the Respondent's recommendation of Beta Workforce Solutions ("BWS") as the supplier offering the lowest bid. The Claimant raised no objections to the selection at the time.
8. ASI commenced production in May 2024, meeting the accelerated deadline set by the Claimant.
9. In September 2024, allegations emerged of labour law violations at ASI. The Respondent took steps to cooperate with the Independent Investigative Committee ("IIC") established by the Ministry of Trade and Industry of Aurion (the "Ministry"). The Respondent agreed to the accelerated schedule, which necessitated adjustments in recruitment and construction to meet the deadline.
10. On 2 October 2024, the Ministry suspended ASI's license for three weeks. The Respondent worked to remedy the findings and restore operations as quickly as possible.
11. The Respondent was not responsible for the Claimant's internal production quotas or managerial decisions, as these were under the Claimant's control per the JVA.
12. On 16 December 2024, the Ministry of Trade and Industry imposed a USD500 million fine on ASI, purportedly due to labour law violations identified by the IIC. The Respondent disputed the fine's basis, arguing it stemmed from political pressure rather than substantive

breaches of the JVA. This view was informed by widespread public skepticism about the transparency of the BIT negotiations and reports of government censorship of criticisms regarding labour practices, suggesting the fine may have been influenced by geopolitical tensions or domestic efforts to deflect scrutiny from regulatory shortcomings.

13. On 24 December 2024, citing the USD 500 million fine and alleged labour law violations at ASI, the Claimant notified the Respondent of its intent to terminate the JVA, asserting that the Respondent's management of workforce recruitment constituted a fundamental breach. The Respondent promptly proposed negotiations to address the fine and labour concerns, emphasizing its cooperation with the IIC and the shared responsibility for BWS's selection, as CDI had approved the agency and influenced its recruitment strategy. The Claimant, however, rejected further discussions, unilaterally terminated the JVA, and demanded that the Respondent bear the full fine.
14. On 6 January 2025, despite the Respondent's attempts to resolve the dispute through negotiation, the Claimant initiated arbitration against the Respondent at the Kuala Lumpur Regional Centre for Arbitration. The Claimant alleged that the Respondent breached the JVA through mismanagement of labour practices, leading to the fine and operational disruptions. The Respondent maintains that the Claimant's refusal to engage in good-faith negotiations, as required under Clause 10 of the JVA, rendered the arbitration premature and its termination of the JVA unlawful.

Summary of Pleadings

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

1. Whether RMG is entitled to invoke sovereign immunity;
 - a. Legal Principles on Restrictive State Immunity;
 - b. Nature of the Acts Concerned;
 - c. Entity's Functions and Control;
 - d. Commercial Transaction Exception.
2. Whether CDI's initiation of arbitration was premature;
 - a. Clause 10 Being Jurisdictional and Mandatory in Nature;
 - b. The Claimant's Failure to Comply under Clause 10.1;
 - c. The Claimant's Failure to Comply under Clause 10.2.
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. No Evidence of "Forced or Compulsory Labour";
 - c. Compliance with the JVA;
 - d. Liabilities of ASI and BWS.
4. Whether CDI's termination of the JVA was lawful.
 - a. Absence of Non-compliance of Labour Laws;
 - b. No Fundamental Breach.

Pleadings

I. Whether RMG is entitled to invoke sovereign immunity?

1. The Respondent submits that it is entitled to invoke sovereign immunity because it is an entity acting in the exercise of a sovereign authority.

(A) Legal Principles on Restrictive State Immunity

2. In this case, as a signatory to United Nations Convention on Jurisdictional Immunities (“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.
3. 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*:¹

“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

¹ *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] 1 QB 529 (UK).

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.”²

4. The restrictive approach to sovereign immunity has been adopted by numerous states, including the United Kingdom³, the United States⁴, Canada⁵, Australia⁶, and Singapore⁷ etc. In the US, the relevant test for determining whether an act qualifies for sovereign immunity, as established in cases such as *Republic of Argentina v Weltover*⁸ and *Alfred Dunhill of London Inc. v Republic of Cuba*⁹ focused not on the formal classification of the activity, but rather on its nature. More specifically, the test examines whether the conduct is the type that a private party could lawfully and practically undertake. As the court in *Republic of Argentina v Weltover* held, a sovereign acts commercially only “when it exercises only those powers that can also be exercised by private citizens.”¹⁰
5. Similarly, in the United Kingdom, the courts have adopted the restrictive approach, as evidenced in cases such as *Trendtex Trading Corp v Central Bank of Nigeria* and *La Générale des Carrières et des Mines (Gécamines) v F.G. Hemisphere Associates LLC*. In *Trendtex*, the Court of Appeal emphasized the importance of assessing the functions and control of the entity, distinguishing between acts performed *jure imperii* (sovereign acts) and *jure gestionis* (commercial acts). Lord Denning MR held that the test should focus on

² *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] 1 QB 529 (UK), para. 555.

³ State Immunity Act 1978, c. 33 (UK), section 3.

⁴ Foreign Sovereign Immunities Act of 1976, 28 U.S.C., section 1602.

⁵ State Immunity Act, R.S.C. 1985, c. S-18 (Can.), section 5.

⁶ Foreign Sovereign Immunities Act 1985 (Cth) (Austl.), section 11.

⁷ State Immunity Act 1979, c. 6 (Sing.), section 5.

⁸ *Republic of Argentina and Banco Central de la República Argentina v Weltover, Inc.* [1992] 504 U.S., para. 607.

⁹ *Alfred Dunhill of London Inc. v Republic of Cuba* [1976] 425 U.S. 682, paras. 698-699.

¹⁰ *Republic of Argentina and Banco Central de la República Argentina v Weltover, Inc.* [1992] 504 U.S., para. 607.

whether the entity's actions were governmental in nature or capable of being performed by a private party.¹¹ In *Gécamines*, the Privy Council also reaffirmed that the court must evaluate whether the entity's functions and activities are so intertwined with the state that the entity exercise sovereign authority, thereby losing its separate legal personality.¹²

6. This principle aligns with the earlier reasoning in *Mellenger v New Brunswick Development Corp*, Lord Denning had already succinctly stated:

“The corporation ... has never pursued any ordinary trade or commerce. All that it has done is to promote the industrial development of the province in a way that a government department does.”¹³

7. At the international level, this doctrine is also reflected in UNCJJI. Article 10(1) of UNCJJI 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”. However, this provision does not apply if the parties to the commercial transaction have expressly agreed otherwise.¹⁴
8. In light of the above authorities, the Respondent submits that, in determining whether an act qualifies for sovereign immunity or whether a state-controlled entity can be treated as an organ of the state, this Tribunal should consider the following principles:

¹¹ *Trendtex Trading Corp v Central Bank of Nigeria* [1977] 1 QB 529, para. 560.

¹² *La Générale des Carrières et des Mines (Gécamines) v F.G. Hemisphere Associates LLC* [2012] UKPC 27, para. 29.

¹³ *Mellenger v New Brunswick Development Corp* [1971] 1 WLR 604, para. 609.

¹⁴ United Nations. (2000). *United Nations Convention against Transnational Organized Crime*. United Nations Treaty Series, 2225, 209, Article 2(1)(c).

- a. Nature of the acts concerned. Do the acts in question involve powers that a private party could practically exercise?
- b. Relevant entity's functions and control. Are the entity's functions and activities inherently governmental or intertwined with the state?
- c. Commercial transaction exception. Have the parties agreed to waive the state immunity?

(B) Nature of the Acts Concerned

9. The Respondent submits that acts performed by RMG in the context of the Joint Venture Agreement (JVA) go beyond what a private party could practically exercise and instead reflect inherently governmental functions.
 - a. First, under Clause 4.2 of JVA, RMG was tasked with securing regulatory approvals, facilitating land alienation applications, and liaising with government authorities to ensure ASI benefited from investment incentives. These responsibilities are inherently governmental in nature, as they involve interactions with state organs and policy-making entities. RMG's ability to carry out these tasks in an expedited manner further underscores its unique position as a state-owned entity with privileged access to governmental decision-making processes.¹⁵
 - b. Second, RMG's involvement in semiconductor manufacturing is not limited to private gain but aligns with the national economic strategy of the Aurion government. President Ho's administration identified semiconductor manufacturing as a strategic pillar of national development, and RMG's engagement with CDI was the chosen vehicle for this objective. The incorporation of ASI, the structure of the joint venture,

¹⁵ Moot Problem, para. 30.

and the allocation of government land and permits were all components of this broader national blueprint.

- c. Finally, throughout the record, RMG’s work with CDI is described not as a business success, but as a “political milestone” and a “flagship national project”¹⁶. When delays occurred, it was not company executives but the President himself who intervened, stating, “your concerns will be heard and resolved. Don’t worry”¹⁷. Such rhetoric and direct involvement illustrate the symbolic and political weight of the project in the eyes of the State, consistent with sovereign purpose, not market motive.
10. Accordingly, the Respondent submits that RMG was acting in the exercise of sovereign authority, and therefore, its conduct falls within the scope of sovereign immunity and is not subject to the jurisdiction of this Tribunal.

(C) Entity’s Functions and Control

11. The Respondent further submits that RMG is closely integrated with Aurion, both structurally and functionally, reinforcing its status as a state organ.
- a. First, RMG is “widely known in Aurion as President Ho’s pet project”, and the capital requirements of RMG were provided using public funds from the Aurion Government Treasury.¹⁸ While this has not been formally disclosed to Veridian investors, RMG indeed has state involvement or financial backing, evidencing that RMG operates as an instrumentality of the government.
 - b. Second, the board of directors of RMG included members of Aurion’s Cabinet Ministers, as disclosed in filings with the Aurion Companies Commission.¹⁹ This

¹⁶ Moot Problem, paras. 13, 21.

¹⁷ *Ibid.*, para. 35.

¹⁸ *Ibid.*, para. 27.

¹⁹ *Ibid.*, para. 28.

indicated that RMG functions under the direct oversight and influence of the state, rather than as an independent commercial entity.

c. Finally, the leadership and decision-making within RMG were heavily influenced by the Ministry of Economy, and its internal policies often mirrored those established by the government,²⁰ indicating a high degree of policy alignment and operational control.

12. Accordingly, this governance structure and the functional integration of RMG with the state clearly demonstrate that RMG is closely tied to the Aurion government and operates as an instrumentality of the state.

(D) Commercial Transaction Exception

13. Alternatively, even if the conduct in question is characterized as commercial in nature, the Respondent submits that both parties expressly agreed not to waive state immunity, thereby excluding the applicability of the commercial transaction exception.

14. In support of this submission, the Respondent refers to Clause 10.2 of JVA, which provides:

“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.”

15. This clause expressly conditions the initiation of any legal proceedings on the prior consent of a senior government official in Aurion, which clearly reflects the parties’ intention to

²⁰ Moot Problem, para. 28.

preserve the State's immunity from jurisdiction. Although this clause may be subject to challenges procedurally, it in effect demonstrates that even in the context of a commercial agreement, the parties acknowledged that RMG, as a state-owned/controlled entity, could not be subject to legal action without the prior authorization of the Aurion government.

16. Accordingly, the Respondent submits that this clause constitutes an express agreement not to waive sovereign immunity, and therefore, this Tribunal should respect RMG's entitlement to immunity and decline jurisdiction over the present dispute.

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

17. The Respondent submits that the Claimant has prematurely commenced arbitration according to Clause 10 of the JVA on the grounds that the procedures set out in Clause 10 are jurisdictional and mandatory, and that the Claimant has not complied with them.

(A) Clause 10 Being Jurisdictional and Mandatory in Nature

18. The Respondent submits that the requirements to negotiate under Clause 10 of the JVA must be interpreted as mandatory or jurisdictional in nature.
 - a. First, as noted by Born and Šćekić (2015), the primary objective of pre-arbitration procedural mechanisms is to promote efficiency and avoid unnecessary formal legal proceedings. These mechanisms are designed to encourage the amicable resolution of disputes through informal negotiations or conciliation, thereby avoiding the costs, delays, and adversarial nature of formal arbitration.²¹ This objective is particularly significant in the context of long-term commercial agreements, such as the JVA in the present, where continued cooperation between the parties is essential.

²¹ Born, G. & Šćekić, M. (2015). *Pre-Arbitration Procedural Requirements: 'A Dismal Swamp'*, p. 229, para. 1.

- b. Second, as noted by Gary B. Born (2013) in *International Arbitration and Forum Selection Agreements: Drafting and Enforcing*, it is common practice in international contracts and investment treaties to require negotiation or consultation between the parties before initiating arbitration. Born observed:

“*[M]ost commonly*, the arbitration clause in a contract or investment treaty will, provide for the parties to negotiate to resolve their differences before initiating an arbitration.” (Emphasis added)

- c. Third, as noted in the WilmerHale 2020 Report on Procedural Requirements in International Arbitration, where dispute settlement clauses are sufficiently certain and contain explicitly mandatory language, tribunals have consistently held that pre-arbitration requirements, such as cooling-off periods or negotiation obligations, must be complied with before arbitration may proceed.

“Where they [dispute settlement clauses] are sufficiently certain to be valid, and where the applicable agreement or treaty contains *explicitly mandatory language*, tribunals have held that cooling-off periods and domestic litigation requirements must be complied with.”²² (emphasis added.)

- d. The Report further clarified that the use of imperative language, such as “shall” or “must”, is indicative of a mandatory obligation, reflecting the parties’ clear intent to be bound by the procedural precondition. In contrast, terms such as “can” or “may”

²² WilmerHale. (2020). *Pre-Arbitration Procedural Requirements: A Comparative Analysis of Treaty and Contractual Approaches*, p. 17.

are generally interpreted as non-mandatory, and do not create enforceable preconditions to arbitration.²³

- e. This reasoning has been endorsed by international tribunals. In *Philip Morris v Uruguay*,²⁴ the tribunal held that the use of the term “shall” in a pre-arbitration clause demonstrated a binding obligation, reflecting the clear intent of the parties to comply with the prescribed procedures before initiating formal proceedings. This interpretative principle is widely accepted and has been applied consistently in investment and commercial arbitration.
- f. Finally, in *Prime Mineral Exports Private Limited v Emirates Trading Agency LLC*, negotiation was defined as a formal discussion between the parties attempting to reach an agreement.²⁵ This definition underscores the substantive and procedural significance of negotiation clauses and reinforces the position that a mere assertion of disagreement, without *bona fide* attempts at resolution, does not satisfy the obligation to negotiate in good faith.

19. Applying these principles to the present case, the Respondent submits that the negotiation requirement under Clause 10 of the JVA shall be interpreted as mandatory, and in light of the imperative language used, the parties expressed intent, and established international arbitration practice, it constitutes a condition precedent to the initiation of arbitration.

- a. Clause 10 of JVA has clearly stated that no arbitration may be initiated unless the dispute settlement clauses set out in the clause are first satisfied. The use of the phrase “shall commence” in Clause 10.1, and the phrase “shall NOT be commenced before” in Clause 10.2, imposes a clear and unambiguous procedural precondition. The use

²³ WilmerHale. (2020). *Pre-Arbitration Procedural Requirements: A Comparative Analysis of Treaty and Contractual Approaches*, p. 12.

²⁴ *Philip Morris Brands Sàrl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7 [2016], para. 141.

²⁵ *Ibid.*, para. 31.

of imperative language such as “shall” and “shall NOT” reflects the parties’ express intention that compliance with the pre-arbitration negotiation process is mandatory, not discretionary.

- b. This interpretation is consistent with established international arbitration practice as stated above, under which tribunals have consistently recognized that clauses containing such directive language create binding obligations that must be fulfilled before a claimant may lawfully initiate arbitration.
- c. Accordingly, the Claimant was under a clear obligation to strictly comply with both Clauses 10.1 and 10.2 of the JVA before commencing arbitration. Since there is no evidence that the Claimant engaged in the required negotiations or sought consent as stipulated under the JVA, the initiation of arbitration was premature and non-compliant with the agreed dispute resolution mechanism.

(B) The Claimant’s Failure to Comply under Clause 10.1

- 20. In the present case, Clause 10.1 of the JVA sets out a clear and specific 14-day window for negotiation following the service of written notice. This provision is neither vague nor aspirational; it establishes both a starting point and an expected course of conduct for the parties in the event of a dispute. It requires a *bona fide* attempt at resolution, not merely the unilateral communication of demands.
- 21. However, the Claimant failed to demonstrate any genuine willingness to engage in meaningful communication with the Respondent. On 28 December 2024, the Claimant sent a WhatsApp message stating that RMG “needed to provide compensation” and added, “That’s the least you can do.” This unilateral assertion of entitlement, delivered through an informal messaging platform, does not constitute the commencement of formal negotiations under Clause 10.1.

22. More importantly, from 28 December 2024 to 6 June 2025, a period of over five months, the Claimant initiated no further communication, made no effort to convene a formal negotiation session, and did not serve any written notice as required under the JVA. This complete lack of engagement falls far short of the good-faith effort contemplated by Clause 10.1.
23. The Respondent emphasizes that the JVA contemplates formal negotiation, not informal exchanges via WhatsApp or similar platforms. The use of instant messaging to assert claims does not satisfy the procedural and substantive requirements of Clause 10.1, which envisions structured, written, and good-faith negotiations as a prerequisite to arbitration.
24. The absence of any formal written notice, structured discussion, or sustained attempt to resolve the dispute confirms that the Claimant did not comply with the mandatory pre-arbitration obligations under the JVA. Consequently, the initiation of arbitration was premature, and the Tribunal lacks jurisdiction to proceed until such time as the Claimant complies with the agreed dispute resolution mechanism.

(C) The Claimant's Failure to Comply under Clause 10.2

25. Clause 10.2 of the JVA explicitly provides that arbitration “shall NOT be commenced” unless and until the consent of the Minister in charge of economic policy, foreign investments, and trade of Aurion has been obtained. This provision not only reflects Aurion’s substantive intent not to waive sovereign immunity, but also establishes a clear procedural precondition to the initiation of any arbitral proceedings.
26. It is acknowledged that the phrase “the Minister in charge of economic policy, foreign investments, and trade of Aurion” is not drafted with perfect precision. However, through a reasonable and purposive interpretation, it is evident that the parties intended to refer to “the Minister of the Ministry of Trade and Industry”, who is the government official most

directly responsible for the matters identified in the clause.

27. In interpreting the JVA, the Respondent submits that the UNIDROIT Principles of International Commercial Contracts (2016) are applicable. Article 4.1 of the UNIDROIT Principles provides:

“(1) A contract shall be interpreted according to the common intention of the parties.

(2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.”

28. According to the Working Group for the Preparation of Principles of International Commercial Contracts (UNIDROIT Working Group), in determining the meaning to be attached to the terms of a contract, preference is to be given to the intention common to the parties. However, as the Working Group has also acknowledged, proving the existence of common intention can be extremely difficult once a dispute arises.²⁶ Accordingly, when the common intention of the parties cannot be established, the contract shall then be interpreted in accordance with the meaning which reasonable persons of the same kind as the parties would give to it in the same circumstances.²⁷

29. In elaborating on the “reasonable person test”, the UNIDROIT Working Group emphasized that:

²⁶ International Institute for the Unification of Private Law (UNIDROIT). (2016). *UNIDROIT principles of international commercial contracts 2016*. International Institute for the Unification of Private Law, p. 90.

²⁷ *Ibid.*, p. 91.

“The test is not a general and abstract criterion of reasonableness, but rather the understanding which could reasonably be expected of persons with, for example, the same *linguistic knowledge*, technical skill, or *business experience* as the parties.”²⁸ (emphasis added)

30. Applying these principles to the present case, since the phrase “the Minister in charge of economic policy, foreign investments, and trade of Aurion” is in dispute, the very existence of this disagreement demonstrates that the parties did not share a common intention as to the meaning of the phrase at the time of contracting. Accordingly, the interpretation must proceed under Article 4.1(2) of the UNIDROIT Principles. In other words, a reasonable person with the same commercial and legal background as the parties, namely, a foreign investor and a state entity entering into a joint venture agreement, would interpret the phrase “the Minister in charge of economic policy, foreign investments, and trade of Aurion” as referring to the Minister of the Ministry of Trade and Industry.
31. First, the Ministry of Trade and Industry (“**Ministry**”) serves as the central authority for economic policy and foreign investment in Aurion:
 - a. As the primary policymaker, the Ministry engaged in shaping Aurion’s external economic relations. It announced the signing of the BIT in an official press release and, together with the Ministry of Foreign Affairs, issued a statement reaffirming Aurion’s commitment to international labour standards²⁹.
 - b. The Ministry has played a leading role in ensuring compliance of foreign-funded projects. For example, it established the IIC to investigate alleged labour violations

²⁸ International Institute for the Unification of Private Law (UNIDROIT). (2016). *UNIDROIT principles of international commercial contracts 2016*. International Institute for the Unification of Private Law, p. 91.

²⁹ Moot Problem, Exhibit 1, para. 1.

by ASI, a prominent foreign-invested enterprise, and in response to the IIC's findings and public concern, it suspended ASI's business license and subsequently conducted a further review of ASI's revised workforce audit report.³⁰

32. Second, since the Ministry of Trade and Industry is responsible for implementing economic and foreign investment policies as well as handling related disputes, it is the Minister of this Ministry who actually exercises the powers contemplated in Clause 10.2 of the JVA. Accordingly, the Claimant must first obtain his consent before initiating arbitration proceedings.
33. In this regard, the Respondent submits that the Claimant's initiation of arbitration was premature and in breach of the express precondition set out in Clause 10.2 of the JVA. Since the Claimant commenced arbitration without first obtaining the required consent from the Minister of the Ministry of Trade and Industry, the Tribunal lacks jurisdiction to proceed at this time. The Respondent accordingly requests that the Tribunal stay or dismiss the proceedings until such consent is obtained.

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

34. The Respondent submits that there is no evidence to prove it has breached the obligations under both Clause 4.2(f) and Clause 6.1 of the JVA in relation to the alleged labour practices, i.e. forced labour.

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

35. To begin, the Respondent points out that Clause 4.2(f) required RMG to ensure full compliance with all applicable labour and employment laws, while Clause 6.1 imposed a

³⁰ Moot Problem, paras. 50, 56.

broader obligation to conduct operations in accordance with all applicable laws, regulations, and internationally recognised principles on fair labour practices.

36. Aurion is a state party to the ILO Forced Labour Convention (No. 29) and the Labour Inspection Convention (No. 81); 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.³¹
37. 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.
38. 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 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 labor” in the Forced Labor Convention and ILO’s indicators of forced labor³² to interpret “forced labor” in Article 4 of European Convention on Human Rights:

³¹ Moot Problem, Exhibit 2; Clarification, Question 7.

³² *F.M and Others v Russia*, ERHC Case No. 71671/16 40190/18 [2025], paras. 186, 188.

“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). 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). The notion of ‘penalty’ is to be understood in the broad sense, as confirmed by the use of the term “any penalty”.³³

39. 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 constitutes forced or compulsory labour.³⁴ 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.³⁵
40. 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

³³ *F.M and Others v Russia*, ERHC Case No. 71671/16 40190/18 [2025], paras. 237, 243, 276.

³⁴ International Labour Office. (2012). *ILO indicators of forced labour*. Special Action Programme to Combat Forced Labour (SAP-FL), p. 3.

³⁵ *Ibid.*

determine whether the work or service was performed involuntarily and under the menace of penalty.³⁶

41. 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) No Evidence of "Forced or Compulsory Labour"

42. The Respondent submits that several of the ILO's indicative factors of forced or compulsory labour are relevant in determining whether such practices existed in this case. Specifically, these factors include (i) abuse of vulnerability; (ii) debt bondage; (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.
43. An assessment of these indicators, particularly in light of the findings of the Independent Investigative Committee (IIC), has clearly demonstrated that there is no evidence to prove that no forced or compulsory labour occurred at the facility.

(i) Abuse of Vulnerability, Debt Bondage and Excessive Overtime

44. The Respondent submits that none of the circumstances indicative of forced or compulsory labour existed in the present case.
45. In respect of "abuse of vulnerability", this occurs when:

³⁶ International Labour Office. (2012). *ILO indicators of forced labour*. Special Action Programme to Combat Forced Labour (SAP-FL), p. 3.

“An employer takes advantage of a worker’s vulnerable position, for example, to impose excessive working hours or to withhold wages, that a forced labour situation may arise.”³⁷

46. With regard to “debt bondage”, the ILO defined this as a situation where:

“Forced labourers are often working in an attempt to pay off an incurred or sometimes even inherited debt. The debt can arise from wage advances or loans to cover recruitment or transport costs or from daily living or emergency expenses, such as medical costs.”³⁸

47. For the alleged practice of “excessive overtime”, the ILO noted that:

“The determination of whether or not overtime constitutes a forced labour offence can be quite complex. As a rule of thumb, if employees have to work more overtime than is allowed under national law, under some form of threat (e.g. of dismissal) or in order to earn at least the minimum wage, this amounts to forced labour.”³⁹

48. In the present case, all these allegations are unfounded. The IIC confirmed that first of all, no definitive evidence of debt bondage was found during the investigation.⁴⁰ Moreover, although several workers reported working beyond regular working hours due to perceived pressure, including threats of wage deductions if KPIs were not met, this finding was not

³⁷ International Labour Office. (2012). *ILO indicators of forced labour*. Special Action Programme to Combat Forced Labour (SAP-FL), p. 5.

³⁸ *Ibid.*, p. 21.

³⁹ *Ibid.*, p. 25.

⁴⁰ Moot Problem, Exhibit 10, Section 3.6.

conclusive, as it was contradicted by other worker statements indicating that overtime was voluntary, undertaken primarily to meet production targets and earn performance-based bonuses. In some instances, workers admitted to skipping breaks or meals in order to stay on schedule and meet deadlines, which they understood were important for securing bonus payments.⁴¹

(ii) Retention of Identity Documents

49. The Respondent submits that practices amounting to forced labour in this regard did not exist in the present case.
50. In respect of “retention of identity documents”, the ILO recognises this as a potential indicator of forced labour, stating:

“The retention by the employer of identity documents or other valuable personal possessions is an element of forced labour if workers are unable to access these items on demand and if they feel that they cannot leave the job without risking their loss.”⁴²

51. In the present case, the findings of the IIC Report concluded that while some workers had their passports withheld, these actions were primarily related to visa and work permit procedures for foreign workers, as explained by BWS. It was further explained that the withholding was to ensure attendance at work and monitoring.⁴³

⁴¹ Moot Problem, Exhibit 10., Section 3.4.

⁴² International Labour Office. (2012). *ILO indicators of forced labour*. Special Action Programme to Combat Forced Labour (SAP-FL), p. 17.

⁴³ Moot Problem, Exhibit 10, Section 3.6.

(iii) Abusive Working and Living Conditions

52. The Respondent submits that RMG and BWS have made genuine efforts to improve working and living conditions within the shortest possible time, as required under Article 1(1) of the ILO Forced Labour Convention.

53. With respect to “abusive working and living conditions”, the ILO Indicators of Forced Labour stated that:

“Forced labourers may also be subjected to substandard living conditions, made to live in overcrowded and unhealthy conditions without any privacy.”

54. In the present case, the IIC found that while dormitories provided to the workforce were found to be congested and substandard, but workers were nevertheless supplied with basic essentials. Importantly, the living arrangements were described as temporary, pending the completion of permanent dormitories on ASI’s premises, with improvements already scheduled.⁴⁴ This indicated that RMG that the Respondent acted in good faith to improve these conditions within a reasonable timeframe, consistent with its contractual and legal obligations.

55. Under the circumstances, the Respondent respectfully invites the Tribunal to accord significant weight to the findings of the IIC, given the independent, transparent, and procedurally sound nature of its investigation.

a. The IIC was a fully independent and impartial body, comprising senior government officials, legal and regulatory compliance specialists, and representatives from Aurion’s National Human Rights Commission.⁴⁵

⁴⁴ Moot Problem, Exhibit 10, Section 3.5.

⁴⁵ *Ibid.*, Section 2.1.

- b. It was granted full authority to conduct a comprehensive and independent investigation into the labour conditions at the facility. It exercised its unrestricted prerogative to conduct unannounced inspections, interview workers and review employment records and workforce audit reports.⁴⁶
- c. This mandate enabled the IIC to carry out a transparent, fact-based assessment of the working conditions and to verify compliance with applicable labour laws and international standards.⁴⁷

56. In contrast, the Respondent respectfully invites the Tribunal to decline to accord any weight or evidentiary value to the unverified allegations contained in the unverified investigative report published on 13 September 2024, and the findings of the Ministry of Trade and Industry following an additional investigation concerning potential violations of labour practices.

- a. For the former, the credibility of this report is highly questionable, as it failed to disclose its sources, did not provide concrete or verifiable evidence, and lacked any independent corroboration from official investigations, witness testimony, or documentary support.⁴⁸
- b. For the latter, its credibility is also seriously undermined. When CDI sought to challenge the authenticity of the timesheets and requested access to the underlying source data, the Ministry declined to provide the supporting documentation, thereby preventing any independent verification of the findings.

57. Accordingly, the Respondent submits that none of the ILO's key indicators of forced or compulsory labour are substantiated in this case, and that the allegations of forced or

⁴⁶ Moot Problem, Exhibit 10, Section 2.2.

⁴⁷ *Ibid.*, Section 3.1.

⁴⁸ Moot Problem, para. 43.

compulsory labour are speculative, unsubstantiated, and inconsistent with the factual record.

(B) Compliance with the JVA

58. The Respondent submits that RMG has also complied with Clause 4.2(f) of the JVA, which requires RMG to ensure full compliance with all applicable labour and employment laws because RMG has fully the JVA.
- a. RMG recommended BWS based on its competitive rates and relevant experience, and further ensured that BWS was fully informed of the required workforce specifications.⁴⁹ In this regard, RMG's engagement of BWS was not merely transactional, but included a clear expectation of legal compliance. There is no evidence to suggest that RMG failed in its obligation under Clause 4.2(f) of the JVA to ensure that BWS adhered to all applicable labour and employment laws.
 - b. This interpretation is further supported by the absence of any objection from CDI to RMG's recommendation.⁵⁰ CDI approved BWS's selection, and ASI subsequently entered into a formal Service Agreement with BWS on 2 October 2023, for the supply and management of an initial workforce of 1,200 workers.⁵¹ This approval and formalisation of the arrangement by both CDI and ASI confirms that RMG acted within the scope of its contractual obligations in accordance with the JVA.
59. In light of the above, the Respondent respectfully submits that RMG has not breached Clause 4.2(f) of the JVA. On the contrary, RMG acted within its contractual mandate, exercised due diligence in the selection of BWS, and ensured that all applicable labour and

⁴⁹ Moot Problem, Exhibit 7.

⁵⁰ Moot Problem, para. 37.

⁵¹ *Ibid.*, para. 38.

employment laws were respected. The Tribunal should therefore reject the Claimant's allegations concerning non-compliance with labour obligations.

(C) Liabilities of ASI and BWS

60. Alternatively, even if there were violations of labour practices, which the Respondent firmly denies, such breaches would be the joint responsibility of ASI and BWS, and cannot be attributed to RMG.
- a. RMG was not a party to the Service Agreement between ASI and BWS, nor did it have direct control over the day-to-day operations of BWS or the management of the workforce. Under the Service Agreement, the recruitment, deployment, and supervision of workers were exclusively managed by BWS, under the oversight of ASI, as stipulated in the contractual framework.⁵²
 - b. Moreover, this new contractual arrangement has effectively amended and limited the scope of Clause 4.2(f) by confining RMG's role to fulfilling its obligations by selecting a licensed and experienced recruitment agency and by communicating clear workforce specifications. This interpretation of Clause 4.2(f) is consistent with Article 4.1 of the UNIDROIT Principles which states that a contract shall be interpreted according to the common intention of the parties.
 - c. This common intention is further evidenced by the conduct of the parties. Through CDI's approval of BWS, and ASI (with CDI and RMG being shareholders and equal numbers of directors) subsequently entered into a formal Service Agreement with BWS on 2 October 2023, the relevant parties, by common intention that RMG's role in the workforce management would be limited and defined, and that the recruitment

⁵² Moot Problem, para. 38.

and supervision of workers would be managed exclusively by BWS under ASI's oversight

- d. Accordingly, RMG's contractual role and operational capacity under Clause 4.2(f) was clearly understood to be only confined to the selection of a qualified recruitment agency and the communication of workforce specifications, as understood and accepted by all parties in the present context.
- e. At no point did RMG assume responsibility for the direct management or supervision of workers, which remained within the exclusive purview of ASI and BWS. Accordingly, any alleged labour law violations arising from the conduct of BWS in the course of its operations must be attributed to ASI and BWS, not to RMG.

61. Accordingly, the Respondent respectfully submits that even if there were violations of labour practices, RMG cannot be held liable, as it did not exercise control over the day-to-day operations or workforce management, and its role was limited to the selection and oversight of BWS in accordance with the common intention of the parties as reflected in the contractual and corporate structure.

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

62. The Respondent submits that the termination of the JVA by CDI was not lawful because there no valid grounds for termination under the JVA.

(A) Absence of Non-compliance of Labour Laws

63. Building upon the Respondent's submissions on Issue 3, the Respondent submits that RMG has duly complied with its obligations under the JVA, particularly under Clause 4.2(f), which requires RMG to ensure compliance with applicable labour and employment laws. Accordingly, no valid ground for termination existed at the time CDI purported to

terminate the Agreement.

64. Even assuming, *arguendo*, that a breach of Clause 4.2(f) had occurred, which the Respondent firmly denies, a breach of labour practices falls within the scope of Clause 6, which provides:

“6.1. Each Party shall conduct its operations in compliance with all applicable laws, regulations, and internationally recognised principles on environmental protection, fair labour practices, and corporate governance.

...

6.3. In the event of any alleged non-compliance, the Parties shall refer to Clause 10 – Dispute Resolution.”

65. This clause makes it clear that any alleged breach in relation to labour practices must be first addressed through the dispute resolution mechanism set out in Clause 10, and not through immediate unilateral termination. However, as submitted under Issue 2, the Claimant failed to comply with the pre-arbitration negotiation requirements set forth in Clause 10 of the JVA. Consequently, CDI’s unilateral termination of the Agreement was neither procedurally compliant with the contractual framework, nor substantively justified. As such, it must be deemed unlawful and invalid.

(B) No Fundamental Breach

66. The Respondent also submits that the alleged erosion of trust between the parties does not constitute a fundamental breach of the JVA, and therefore cannot justify its termination under general principles of contract law or the applicable legal framework.
67. The Claimant alleged that RMG’s failure to disclose the fact that BWS is owned by the

uncle of President Ho's son-in-law constitutes a significant conflict of interest, leading to an erosion of trust between CDI and RMG. In this regard, the Respondent submits that RMG was not in a position to know that BWS was actually owned by a relative of President Ho's family, given the indirect and non-public nature of the connection and the limited scope of RMG's contractual obligations. More importantly, the JVA did not impose on RMG a duty to conduct political due diligence, and the Claimant's expectations of disclosure in this regard were neither reasonable nor contractually founded.

68. Alternatively, even assuming, *arguendo*, RMG was aware of the political connection between BWS and the President's uncle and failed to disclose it, such an omission does not constitute a fundamental breach of the JVA.
69. In support of this position, the Respondent first 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." 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.
70. 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. 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.
71. These principles are also reflected in Article 7.3.1 of the UNIDROIT Principles of International Commercial Contracts (2016), which confirms that where a breach

substantially undermines the contractual expectations of the innocent party, termination will be a legitimate remedy. Article 7.3.1 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 to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result [...]

72. In the present case, the alleged failure to disclose a political affiliation falls well short of constituting a fundamental breach under the JVA. First, it did not affect RMG’s performance under the JVA. Second, there is no evidence to show it has materially prejudiced CDI’s rights or interests, as the connection in question was indirect, non-public, and unrelated to the operational or contractual obligations of the parties. Finally, it had no impact on the core obligations of the Agreement or the joint venture’s objectives. Therefore, even if RMG had a duty to disclose, which the Respondent firmly denies, the alleged omission falls far short of the threshold required to justify termination according to Clause 8.1 of the JVA.

Prayer for Relief

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