

**TEAM V2511, MEMORIAL FOR CLAIMANT**

**LAWASIA INTERNATIONAL ARBITRATION MOOT  
10TH - 13TH OCTOBER 2025**

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**ASIAN INTERNATIONAL ARBITRATION CENTRE**

**In Proceeding Between  
CALYX DREAMBOT INC  
*(Claimant)***

**V.**

**RIVUS MICROELECTRONICS GROUP  
*(Respondent)***

**2025**

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## TABLE OF AUTHORITIES

### I. CASES

No.	Cited as	Full Citation
1.	Howsam	Howsam v Dean Witter Reynolds, Inc., 537 US 79 (2002)
2.	Cable & Wireless	Cable & Wireless Plc v IBM United Kingdom Ltd. [2002] APPL.R. 10/11
3.	Fluor Enters	Fluor Enterprises Inc v Solutia Inc (n 12) 649
4.	Slamow	Michael Slamow et al., Appellants, v John Del Col, Respondent, 79 NY 2d 1016, 1018 (1992)
5.	Gosset v Carpelli	Gosset v. Société Carpelli, Cour de Cassation, [1963] D Jur 545
6.	Hecht v Buisman	Hecht v. Société Buisman Cour de Cassation, 4 July 1974, 99 J Droit Int'l (Clunet) 842
7.	Quality Plant	Quality Plant Hire CC / Expectra 388 CC Joint Venture and Others v MEC for the Department: Transport and Public Works, Western Cape Government and Others (20263/2021) [2023] ZAWCHC 156 (20 June 2023)
8.	Himpurna	<i>Himpurna California Energy Ltd v PT (Persero) Perusahaan Listrik Negara</i> , Final Award (4 May 1999) ad hoc arbitration under UNCITRAL Rules

9.	BG Group	<i>BG Group Plc v Republic of Argentina</i> , Final Award (24 December 2007) ad hoc arbitration under UNCITRAL Rules
10	Azurix	<i>Azurix Corp v The Argentine Republic</i> , ICSID Case No ARB/01/12, Award (14 July 2006)
11	Tecmed	<i>Técnicas Medioambientales Tecmed S.A. v United Mexican States</i> , ICSID Case No ARB(AF)/00/2, Award (29 May 2003)
12	Urbaser	<i>Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia v Argentine Republic</i> , ICSID Case No ARB/07/26, Award (8 December 2016)
13	<i>Veliz Rendón</i>	<i>Veliz Rendón et al v Guatemala</i> , IACtHR Series C No. 445, Judgment (30 August 2019)
14	Waste Management	<i>Waste Management Inc v United Mexican States (II)</i> , ICSID Case No ARB(AF)/00/3, Award (30 April 2004)

## II. BOOKS, ARTICLES AND REPORTS

No.	Cited as	Full Citation
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1.	Born, “ <i>International Commercial Arbitration</i> ”	Born GB, <i>International Commercial Arbitration</i> (3rd edn, Kluwer Law International B.V., Alphen aan den Rijn, 2021) §5.08
2.	Kayali, “Enforceability of Multi-Tiered Clauses”	Kayali D, ‘Enforceability of Multi-Tiered Dispute Resolution Clauses’ (2010) 27(6) <i>Journal of International Arbitration</i> 551
3.	Kramer, “ <i>The Law of Contract Damages</i> ”	Kramer A, <i>The Law of Contract Damages</i> (2nd edn, Hart Publishing, Portland, 2017) para 14–06 (301)
4.	Mečar, “Enforceability of Multi-Tiered Clauses”	Mečar M, <i>Enforceability of Multi-Tiered Clauses Leading to Arbitration</i> (LLM thesis, Central European University 2015)
5.	Mulheron, “ <i>Principles of Tort Law</i> ”	Mulheron R, <i>Principles of Tort Law</i> (1st edn, University Printing House, Cambridge, 2016) 500
6.	Moses, “ <i>International Commercial Arbitration</i> ”	Moses ML, <i>The Principles and Practice of International Commercial Arbitration</i> (Cambridge University Press 1st edn, 2008)
7.	Sornarajah, “ <i>Settlement of Foreign Investment Disputes</i> ”	Sornarajah M, <i>The Settlement of Foreign Investment Disputes and Law</i> (Kluwer Law International, The Hague, 2000) 293
8.	Thilakarathna, “Proper Law of Contract”	Thilakarathna KAAN, ‘A Utopia or Reality: Possibility of Using the Proper Law of Contract throughout an International Commercial Arbitration Claim’ (2021) 12 <i>Beijing Law Review</i> 1
9.	Cross & Grant-Smith, “Recruitment Fraud”	Cross C and Grant-Smith D, ‘Recruitment Fraud: Increased Opportunities for Exploitation in Times of Uncertainty?’ (2021) 40 (4) <i>Social Alternatives</i>
10.	Garimella & Siddiqui, “Enforcement of Multi-Tiered Clauses”	Garimella SR and Siddiqui, NA, ‘The Enforcement of Multi-Tiered Dispute Resolution Clauses: Contemporary Judicial Opinion’ (2016) 24(1) <i>IJUM Law Journal</i> 157

11.	Gazmuri & Olivares, “Attribution of Contractual Liability”	de la Maza Gazmuri Í and Vidal Olivares Á, ‘The Attribution of Contractual Liability for the Act of Third Parties Used by the Creditor in the Performance of Their Obligation’ (2024) 12 (2) <i>Latin American Legal Studies</i> 113, 114
12.	Huda, “The Doctrine of Separability of Arbitration Clause”	Huda M, ‘The Doctrine of Separability of Arbitration Clause in Commercial Arbitration Revisited’ <i>Jurnal Hukum dan Pembangunan Edisi Khusus Dies Natalis 85 Tahun FHUI</i> 3
13.	Klass, “The Law of Deception”	Klass G, ‘The Law of Deception: A Research Agenda’ (2018) 89 <i>University of Colorado Law Review</i>
14.	Paziuc, “Remoteness of Damage in Contract”	Paziuc C, ‘Remoteness of Damage in Contract and Its Functional Equivalents: A Critical Economic Approach’ (2016) 5 (1) <i>UCL Journal of Law and Jurisprudence</i> 88
15.	Stauch, “Risk and Remoteness of Damage”	Stauch M, ‘Risk and Remoteness of Damage in Negligence’ (2001) 64(2) <i>Modern Law Review</i> 194

### III. DOCUMENTS

No.	Cited as	Full Citation
1.	Gaukrodger, “Foreign State Immunity”	Gaukrodger D, ‘Foreign State Immunity and Foreign Government-Controlled Investors’ (2010) 2 <i>OECD Working Papers on International Investment</i> 15
2.	IOM, “Ethical Recruitment Considerations”	International Organization for Migration (IOM), 2022. Case Studies Illustrating How Fair and Ethical Recruitment Considerations Can Be Integrated in the Procurement of Labour Recruiters’ Services. IOM. Geneva. <a href="https://publications.iom.int/system/files/pdf/Fair-Ethical-Recruitment.pdf">https://publications.iom.int/system/files/pdf/Fair-Ethical-Recruitment.pdf</a>

## LIST OF ABBREVIATIONS

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<b>No.</b>	<b>Cited as</b>	<b>Full Citation</b>
1.	Moot Problem	LAWASIA 2025 Moot Problem
2.	Exhibit	LAWASIA 2025 Moot Problem's Exhibits
3.	AIAC Rules	Arbitration Rules of Asian International Arbitration Centre 2023
4.	CDI/Claimant	Calyx Dreambot Inc
5.	RMG/Respondent	Rivus Microelectronic Group
6.	ASI	Aurion Semiconductor Inc
7.	BWS	Beta Workforce Solutions
9.	USD	United States Dollars
8.	JVA	Joint Venture Agreement between Calyx Dreambot Inc and Rivus Microelectronic Group
9.	SPV	Specific Purpose Vehicle
10.	IIC	Independent Investigative Committee
11.	JPMT	Joint Project Management Team
12.	UNIDROIT	International Institute for the Unification of Private Law
13.	UNIDROIT Principles	UNIDROIT Principles of International Commercial Contracts 2016
14.	ILC Articles on State Responsibility	Responsibility of States for Internationally Wrongful Acts 2001
15.	ILO Convention No. 29	International Labour Organization Forced Labor Convention No. 29 (1930)
16.	MNE Declaration	ILO Declaration on Multinational Enterprises



## INTRODUCTION

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1. This Statement of Claim (“**Claim**”) is submitted on behalf of the Claimant, Calyx Dreambot Inc (“**CDI**” or “**Claimant**”) pursuant to Rule 1 read with Rule 2 of the Arbitration Rules of Asian International Arbitration Centre 2023 taking effect as from 24 August 2023 (the “**AIAC Rules**”) against Rivus Microelectronic Group (“**RMG**” or “**Respondent**”) (collectively, the “**Parties**”).
2. This dispute arises out of the Joint Venture Agreement dated 20 December 2022 (hereinafter referred to as the “**JVA**”) where the Parties agreed to establish and operate Aurion Semiconductor Inc (hereinafter referred to as “**ASI**”) as their special purpose vehicle (“**SPV**”) - following its termination by CDI due to RMG’s breach to the JVA based on Article 8.1 of the JVA, i.e., to Clauses 4.2(f), 4.2(e), and 6.2 of the JVA.
3. In summary, RMG has failed to perform its contractual obligation in ensuring full compliance with applicable labour and employment laws as well as international standards. This led to the suspension of ASI’s operating license for 3 weeks, which further led to the raise of contractual penalties, governmental fine, loss of revenue, loss of contracts, and damaged reputation. All of these losses were consequently borne by CDI, as the aggrieved party.

### THE PARTIES

#### The Claimant

4. The Claimant, CDI, is incorporated under the laws of Veridia, having its registered office at 37 Everoak Lane, Lysoria, Veridia, 71504. CDI is the largest semiconductor manufacturing firm in Veridia.
5. For the purpose of this arbitration and related matters, CDI is represented by **Surya Baras & Partners**, to whom all communications and correspondence should be addressed:

#### **SURYA BARAS & PARTNERS**

IDX Tower, Level 12 Unit 1224G, Jenderal Sudirman Street, South Jakarta  
12190, Indonesia

Attn:

Boas Daniel R. ([boas.daniel@ui.ac.id](mailto:boas.daniel@ui.ac.id))

Rashiq Akbar ([rashiq.akbar@ui.ac.id](mailto:rashiq.akbar@ui.ac.id))

Keisha Dayang S. ([keisha.dayang@ui.ac.id](mailto:keisha.dayang@ui.ac.id))

6. For the purpose of this arbitration and related matters, CDI is represented by **Surya Baras & Partners Law Firm**
7. In addition to the information above, all correspondence and communication regarding the arbitration shall be sent to the following representative of CDI:

Al Emret ([alemret@cdi.com](mailto:alemret@cdi.com))

#### **The Respondent**

8. The Respondent, RMG, is incorporated under the laws of Aurion, having its registered office at Hall 12, Great Aurion Avenue, Aurion Central Administrative Region, Capital of Aurion, 48210
9. The Claimant is not aware of any information regarding the appointed legal counsels or representatives of the Respondent. For the purposes of communicating matters regarding the arbitration, the following contact information is provided to the best of the Claimant's knowledge:

Daryl ([daryl@jpmt.com](mailto:daryl@jpmt.com)) - RMG Lead Representative to ASI

David ([david@rmg.com](mailto:david@rmg.com))

Kelvin ([kelvin@rmg.com](mailto:kelvin@rmg.com))

Stephanie ([stephanie@rmg.com](mailto:stephanie@rmg.com))

## STATEMENT OF FACTS

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10. On 20 December 2022, the Claimant, Calyx Dreambot Inc. (“**CDI**”), a corporation incorporated in the Republic of Veridia and a leading semiconductor manufacturer, entered into a Joint Venture Agreement (“**JVA**”) with the Respondent, Rivus Microelectronics Group (“**RMG**”), a government-linked company incorporated in the Republic of Aurion.
11. The purpose of the JVA was to establish Aurion Semiconductor Inc. (“**ASI**”) as a Special Purpose Vehicle (“**SPV**”) to construct and operate a semiconductor fabrication facility in Northern Aurion.
12. The JVA provided that CDI would hold a 51% shareholding in ASI, while RMG would hold 49%. Governance of ASI was to be managed by a Board of Directors composed equally by representatives from both CDI and RMG, with CDI’s Chief Executive Officer to serve as Chairperson. Day-to-day oversight and implementation responsibilities were delegated to a Joint Project Management Team (“**JPMT**”) composed of representatives from both parties.
13. Under the JVA, CDI was to inject an initial capital investment of USD 1.2 billion to fund the facility’s construction, equipment procurement, and operational setup, and was also responsible for providing technological expertise and training. On the other hand, RMG was obligated to procure the land, secure all relevant regulatory approvals, manage workforce recruitment, and ensure compliance with local labour and employment laws.
14. On 26 February 2023, CDI issued a formal Project Acceleration Memo to the JPMT, instructing that the construction of the ASI facility be completed within 15 months, setting a new target of 26 May 2024. The memo cited commercial imperatives and contractual commitments to CDI’s buyers as justification for this timeline, despite industry standards suggesting a typical construction period of 24 to 36 months.
15. The acceleration directive included specific instructions to double manpower allocations, extend work shifts, and engage third-party labour suppliers. The directive also emphasised the need to maintain cost-efficiency due to budget constraints.
16. Following these instructions, CDI’s Chief Executive Officer sent a follow-up email on 20 September 2023 reiterating the urgency of worker mobilisation and instructing RMG and

JPMT members to “minimise labour costs wherever feasible.” RMG, acting on this directive, recommended a list of local labour suppliers. After deliberation, the JPMT approved the selection of Beta Workforce Solutions (“**BWS**”), a manpower agency that offered competitive rates and had experience handling large-scale industrial projects. For the Tribunal’s note, CDI raised no objections to the appointment of BWS.

17. On 2 October 2023, ASI executed a Service Agreement with BWS for the supply and management of 1,200 operational workers. BWS was contractually responsible for recruitment, deployment, onboarding, accommodation, and ensuring compliance with regulatory requirements.
18. CDI was actively involved in shaping the recruitment specifications and provided BWS with RMG’s earlier campaign materials to guide the process.
19. By 20 May 2024, the facility was operational within the targeted 15-month timeline. ASI commenced production and began shipping to CDI’s former Seratious clients, achieving early commercial success. However, on 13 September 2024, an investigative report surfaced online alleging exploitative labour practices at ASI’s facility. The report - while originating from a questionable source - alleged excessive working hours, poor dormitory conditions, and passport withholding by BWS.
20. On 17 September 2024, the government of Seratious issued a formal warning, threatening a complete import ban on semiconductor goods from Aurion unless immediate corrective actions were taken.
21. In response, the Aurion government established an Independent Investigative Committee (“**IIC**”) composed of government officials, human rights representatives, and compliance experts. The IIC conducted surprise inspections, employee interviews, and audit reviews. In its 30 September 2024 report, the IIC found certain irregularities, including underreported overtime and overcrowded but temporary worker accommodations. However, it did not find conclusive evidence of forced labour, bonded labour, or modern slavery. The IIC recommended improved monitoring and compliance documentation.
22. Despite these findings, the Ministry of Trade and Industry of Aurion suspended ASI’s operating license on 2 October 2024, citing documentation deficiencies. The license was reinstated on 23 October 2024 after ASI submitted a revised workforce audit.

23. Subsequently, on 16 December 2024, the Ministry imposed a USD 500 million fine on ASI based on newly obtained timesheet records allegedly showing an additional 10,000 hours of unreported overtime. ASI's request for transparency on the source and authenticity of these documents was denied on grounds of confidentiality and national interest.
24. On 24 December 2024, CDI issued a unilateral notice of termination of the JVA, citing breach of contract, reputational harm, and loss of trust in RMG. On 28 December 2024, CDI demanded that RMG pay the USD 500 million fine imposed on ASI. RMG rejected this demand, noting that CDI had actively directed the cost-saving and recruitment strategy and had approved all major decisions related to workforce engagement. CDI's subsequent WhatsApp messages to RMG officials received no response, and tensions between the parties escalated.
25. On 6 January 2025, CDI filed a Notice of Arbitration at the Asian International Arbitration Centre, seeking damages totalling USD 742.5 million. These include USD 500 million in regulatory fines, USD 27.5 million in revenue losses during the license suspension, USD 15 million in penalties from buyers, and USD 200 million in estimated reputational harm and lost contracts. CDI contends that RMG breached the JVA by failing to ensure legal compliance in labour practices.
26. RMG denies the allegations and has raised preliminary objections to jurisdiction. RMG asserts that it is entitled to sovereign immunity as a state-linked entity and that it has not waived such immunity. RMG also contends that CDI failed to comply with Clause 10.2 of the JVA, which requires ministerial consent prior to commencing arbitration. RMG further argues that CDI's pressure to minimise labour costs and expedite operations materially contributed to the alleged regulatory violations and that CDI's termination of the JVA was made in bad faith, primarily to avoid reputational fallout and financial liability.
27. The arbitral tribunal has been constituted pursuant to Clause 11 of the JVA, and proceedings are currently ongoing.

## NATURE AND CIRCUMSTANCES OF THE DISPUTE

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28. This arbitration is initiated in relation to RMG's failure to comply with its obligations under the JVA. Under Clause 4.2 of the JVA, RMG is tasked with, *inter alia*, coordinating with government authorities to secure necessary permits, procure land, obtain government incentives, facilitate access to Aurion's natural resources, managing workforce, ensuring compliance with applicable labor and employment laws, as well as providing market insights and strategic recommendations.
29. Further, under Clause 6, RMG is also obliged with ensuring compliance towards internationally recognized principles on environmental protection, fair labor practices, corporate governance, and upholding best practices *inter alia* in social responsibility and human rights in accordance with international norms and standards.
30. The dispute then arises in relation to the termination of the JVA by CDI, which was done as a reaction towards RMG's non-compliance with its obligations and its non-transparency.
31. In summary, RMG has breached Clause 4.2 (f) and Clause 6 of the JVA by failing to conduct oversight which results in the underreported overtime working hours of the workers as well as failure to ensure ASI and BWS' compliance with labor regulations. RMG also failed to comply with relevant international standards including those of human rights by its failure to timely complete the construction of facilities in order to prevent congestion in the workers' dormitories. Additionally, RMG has failed to disclose the conflict of interest it has with BWS which illustrates its bad faith on its recommendation and selection of BWS.
32. Notwithstanding the above and as an attempt to resolve the issues amicably before resorting to arbitration, CDI has issued a notification via Whatsapp on 11th October 2024 which is ignored by RMG and yielded no results. Therefore, CDI invokes Clause 11 of the JVA to initiate arbitration proceedings attempting to claim the compensations for the penalties and damages which amounts to a total of USD 742.5 million.

## ARBITRATION AGREEMENT AND GOVERNING LAW CLAUSE

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33.

### **A. The Arbitration Agreement**

This arbitration is initiated in light of the arbitration agreement contained within Article 11 of the JVA which reads:

*“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 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.”*

### **B. Seat of Arbitration**

As stipulated in Article 11 (a), Aurion is the seat of the arbitration.

### **C. The Language of Arbitration**

Pursuant to Article 11 (c), the language of the arbitration is English

### **D. Governing Law**

Asian International Arbitration Centre (AIAC) Arbitration Rules is the governing law of the arbitration according to Clause 11 (a) of the JVA. Article 11 (a) provides that the governing rule of the arbitration is the Asian International Arbitration Centre (AIAC) Rules. Pursuant to the Notice of Arbitration sent by the Claimant on 6th January 2025, the applicable rule shall be AIAC Arbitration Rules of 2023 which is currently in force.



## ARGUMENTS

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### JURISDICTION

1. The Claimant hereby submits that **(A)** the Tribunal has jurisdiction *rationae materiae* to hear the present case as **(i)** the initiation of arbitration follows the consent of the contracting parties. Second, **(B)** this initiation of arbitration is not premature as **(i)** negotiation under Clause 10.1 JVA is not mandatory, **(ii)** the ministerial consent requirement under Clause 10.2 is not a jurisdictional concern, and **(iii)** that the initiation of arbitration shall not be invalidated by invoking Sovereign Immunity. Finally, the Claimant concludes that the submission of this dispute to arbitration is lawful and follows the consent of the parties.

#### A. THE TRIBUNAL HAS JURISDICTION *RATIONAE MATERIAE* OVER THE CASE

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##### *i. Initiation of arbitration follows the consent of the contracting parties.*

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- a. Submission of the dispute to arbitration follows the parties' intention as expressed in Clause 11 of the JVA, without a compulsory prior negotiation*
2. This arbitration is initiated pursuant to the arbitration agreement found at Clause 10.1 and 11 of the JVA, which provides:

##### **Clause 10.1 of the JVA**

*“Parties agree to regulate their own affairs and resolve any dispute arising from or connected to this Agreement amicably through negotiations between an appointed representative of each of the Party which shall commence within fourteen (14) days from the date on which either Party has served written notice on the other containing particulars of the dispute in question. A dispute is deemed to arise upon the issuance of a written notice.”*

##### **Clause 11 of the JVA**

*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 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.*

3. Despite the requirement to first resolve any dispute amicably, Clause 10.1 does not clearly mention that such a step is compulsory.
4. The obligatory nature of pre-arbitration procedural requirements shall be determined according to the parties' common intention.<sup>1</sup> Where the parties have clearly stated their intentions to the designated nature of the preliminaries, they shall be respected. However, in the present case, it is unclear whether the parties agreed or intended that the provisions in Clause 10.1 of the JVA constituted the conditions precedent to arbitration. Therefore, it is notable that there exists no strong intent between the parties to consider such preliminaries as mandatory.
5. Whether or not Clause 10.1 indicates a mandatory condition precedent to arbitration, regard shall be taken into the wording of the article which reflects the parties' intent as also emphasized in *Slamow*<sup>2</sup> which is followed by *Quality Plant*<sup>3</sup>. Clause 10.1 does not clearly state the mandatory nature of negotiations nor specify the procedures in a similar way to that in *Cable & Wireless*, to which Coleman J stated that reference to ADR is more than an attempt to merely negotiate in faith because the parties had prescribed a particular procedure by which such attempt should be made.<sup>4</sup> As observed in *Fluor Enters*<sup>5</sup>. The Court viewed that clauses lacking clear emphasis on its mandatory nature possess diminished enforceability.
6. The existence of Clause 11 of the JVA regarding the provisions of arbitration illustrates the parties' intent and consent to solve disputes through arbitration. This consent plays a pivotal role in establishing the obligation to arbitrate, and in determining the validity of the

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<sup>1</sup>Howsam, Pp. 83–86. See also Moses, “*International Commercial Arbitration*,” p. 91

<sup>2</sup>Slamow, p. 726. See [https://storage.courtlistener.com/harvard\\_pdf/6074462.pdf](https://storage.courtlistener.com/harvard_pdf/6074462.pdf)

<sup>3</sup>Quality Plant, Pp. 17–18.

<sup>4</sup>Cable & Wireless, pp. 21, 23. See also Kayali, “Enforceability of Multi-Tiered Clauses,” p. 565.

<sup>5</sup>Fluor Enters, see also Garimella & Siddiqui, “Enforcement of Multi-Tiered Clauses,” p. 180–181.

arbitration process to be sought after. This also serves to establish the jurisdiction of the arbitral tribunal.<sup>6</sup>

7. As stipulated in Clause 11, it is evident that the parties have agreed to settle any dispute arising from or in relation to the JVA to arbitration. This broad scope of the arbitration clause encompasses the present disputes regarding the Claimant's rightful termination of the JVA in response to the Respondent's breach of its obligation under the JVA as well as its lack of transparency in carrying out its duty as the Claimant's business partner.
8. Article 10 of the JVA does not reflect the parties' intention to consider the pre-arbitration procedural requirements as mandatory. Furthermore, there is no explicit emphasis that such procedural requirements shall be exhausted before the Claimant can resort to arbitration. Therefore, the Claimant is not bound to satisfy those prerequisites and the Claimant's arbitration application shall not be rendered inadmissible.
9. This arbitration is initiated in relation to RMG's failure to comply with its obligations under the JVA. Under Clause 4.2 of the JVA, RMG is tasked with, *inter alia*, coordinating with government authorThis arbitration is initiated pursuant to the arbitration agreement found at Clause 10.1 and 11 of the JVA, which provides:

**Clause 10.1 of the JVA**

*“Parties agree to regulate their own affairs and resolve any dispute arising from or connected to this Agreement amicably through negotiations between an appointed representative of each of the Party which shall commence within fourteen (14) days from the date on which either Party has served written notice on the other containing particulars of the dispute in question. A dispute is deemed to arise upon the issuance of a written notice.”*

**Clause 11 of the JVA**

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

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<sup>6</sup> Miftahul Huda, “The Doctrine of Separability of Arbitration Clause in Commercial Arbitration Revisited,” *Jurnal Hukum dan Pembangunan Edisi Khusus Dies Natalis 85 Tahun FHUI*, . 3.

- 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 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.*

10. Despite the requirement to first resolve any dispute amicably, Article 10.1 does not clearly mention that such a step is compulsory. Neither it mentions specific time limits for an amicable settlement.
11. The obligatory nature of pre-arbitration procedural requirements shall be determined according to the parties’ common intention. Where the parties have clearly stated their intentions to the designated nature of the preliminaries, they shall be respected. However, in the present case, it is unclear whether the parties agreed or intended that the provisions in Clause 10.1 of the JVA constituted the conditions precedent to arbitration. Therefore, it is notable that there exists no strong intent between the parties to consider such preliminaries as mandatory.
12. The existence of Clause 11 of the JVA regarding the provisions of arbitration illustrates the parties’ intent and consent to solve disputes through arbitration. This consent plays a pivotal role in establishing the obligation to arbitrate, and in determining the validity of the arbitration process to be sought after. This also serves to establish the jurisdiction of the arbitral tribunal.
13. As stipulated in Clause 11, it is evident that the parties have agreed to settle any dispute arising from or in relation to the JVA to arbitration. This broad scope of the arbitration clause encompasses the present disputes regarding the Claimant’s rightful termination of the JVA in response to the Respondent’s breach of its obligation under the JVA as well as its lack of transparency in carrying out its duty as the Claimant’s business partner.
14. Clause 10 of the JVA does not reflect the parties’ intention to consider the pre-arbitration procedural requirements as mandatory. Furthermore, there is no explicit emphasis that such procedural requirements shall be exhausted before the Claimant can resort to arbitration.

15. In light of the above, the Claimant is not bound to satisfy those prerequisites and the Claimant's arbitration application shall not be rendered inadmissible.

**B. CLAIMANT’S SUBMISSION OF THE PRESENT DISPUTE TO ARBITRATION  
IS NOT PREMATURE**

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**i. Requirement to Negotiate under Clause 10.1 JVA Does Not Constitute A  
Mandatory Condition Precedent**

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16. The provisions of Clause 10.1 of the JVA have no mandatory nature and the arbitration agreement in Clause 11 stands independently of the main contract, as stated by the “separability” doctrine acknowledged *inter alia* by the French Court of Cassation in *Societe Gosset v. Societe CarPELLI*<sup>7</sup> and *Hecht v. Soci t  Buisman*.<sup>8</sup> Therefore, the Claimant is justified to resort directly to arbitration.
17. Where pre-arbitration requirements merely constitutes a mutual agreement to settle disputes without outlining conditions of its implementation, the court in *Medissimo* held that it does not constitute a mandatory conditions precedent.<sup>9</sup> Therefore, any claims submitted will not be rendered inadmissible if such requirements are disobeyed. As Clause 10.1 of the JVA merely states the deadline to commence negotiations and the parties involved, the conditions of its implementation are still unclear and therefore it is not mandatory.
18. The enforceability of pre-arbitration requirements to negotiate contained in Clause 10.1 depends on the specific contractual language, wording, structure of the clause.<sup>10</sup> Even if the 14-day time bar and specification of representatives to be involved enshrined in Clause 10.1 is considered as elements of certainty, the Claimant is only bound to engage in the negotiation without having to commit to a particular result.
19. This means that the obligation is no more than merely indicating availability to exchange views about the dispute and then to pursue it. Where the negotiation is not seen to have any realistic possibility to succeed, a party is generally not obliged to continue the negotiation

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<sup>7</sup>Gosset, as cited in Thilakarathna, “Proper Law of Contract,” p. 6

<sup>8</sup>Buisman, as cited in Huda, “The Doctrine of Separability of Arbitration Clause,” pp. 19–20

<sup>9</sup>Medissimo, as cited in Me ar, “Enforceability of Multi-Tiered Clauses,” p. 30 and Garimella & Siddiqui, “Enforcement of Multi-Tiered Clauses,” pp. 180–182.

<sup>10</sup>Gary B. Born, *International Commercial Arbitration: Third Edition*, 3rd ed., (Alphen aan den Rijn: Kluwer Law International B.V., 2021)  5.08

until a consented resolution ends the dispute. This is because the obligation is only of a procedural, and not a substantive, nature.<sup>11</sup>

20. Regardless, meeting the requirements under Clause 10.1 itself would produce no significant progress towards the resolution of the parties' dispute. The Respondent itself displayed a cavalier attitude towards the Claimant, further illustrating that the Respondent refused to engage constructively.<sup>12</sup> By displaying such an attitude, it is apparent that the Respondent would not have altered its position meaningfully.
21. Any such hesitation to engage constructively would then result in the negotiation process being futile. As noted by Gary B. Born, arbitral tribunals frequently relied on the asserted futility of negotiation as a ground to reject challenges on jurisdiction or admissibility of the dispute put forward by a party.<sup>13</sup> Therefore, jurisdictional challenges due to the Claimant's direct resort to arbitration shall be rejected.

**ii. Approval to Initiate Proceedings by the Ministry under Clause 10.2 was a procedural concern and not jurisdictional**

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22. Additionally, the mere existence of Clause 10.2 as a condition precedent would only cause more procedural delay in the dispute resolution. Recent acts of the Aurion government's top-tier officials including President Ho shows no clarity of his willingness to take concrete steps to protect the rights of the Claimant as a foreign investor.<sup>14</sup> A similar attitude is visible in Mr. Suvan's ignorance towards the concerns conveyed by the Claimant. This is apart from him showcasing a pro-Respondent stance in communicating with the Claimant.<sup>15</sup>
23. Such acts of lip service and ignorance implies that there is an uncertainty regarding the prospects of the Claimant to ever obtain the ministerial consent necessary to initiate arbitration proceedings. This also illustrates that Clause 10.2 merely serves as a procedural bar, rather than jurisdictional.

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<sup>11</sup>Gary B. Born, (above no. 9)

<sup>12</sup> Moot problem, para. 60

<sup>13</sup>Gary B. Born (above no. 9),

<sup>14</sup> See, Moot problem para. 35

<sup>15</sup>Exhibit 11

24. Notwithstanding the nature of Clause 10, the Claimant has attempted to invite the Respondent to resolve disputes amicably as observable through the Claimant's CEO's messages to RMG's CEO on Whatsapp on 11th October 2024.<sup>16</sup> The Respondent's ignorance of the messages therefore show that the Respondent is not interested to resolve disputes amicably.
25. Even if the Claimant's direct resort to arbitration is seen as a breach of the mandatory pre-arbitration procedural requirements, such non-fulfillment shall not be considered as a jurisdictional bar to the valid initiation of arbitral proceedings<sup>17</sup> under Clause 11 of the JVA.
26. Upon submitting the present dispute to arbitration under Clause 11 of the JVA, the Claimant has also given a notice of arbitration to the Respondent dated 6th January 2025. This has been done lawfully fulfilling the requirements in Rule 2 of the AIAC Rules of Arbitration, as an unfulfillment of any one of the criteria would mean that arbitration cannot commence.
27. Therefore, the Claimant contends that it has attempted to settle the dispute amicably following the procedures under AIAC Rules and Clause 10 of the JVA, and that Clause 10.2 shall not bar the Claimant from initiating a valid and non-premature arbitration proceeding under Clause 11 of the JVA.

**iii. The Respondent shall not invalidate the Claimant's Effort to Initiate Valid Arbitration Proceedings by Invoking Sovereign Immunity**

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28. In determining whether an entity is entitled to invoke sovereign immunity, regard shall be taken to whether or not its activities constitute an act of sovereignty. This is because the restrictive theory of sovereign immunity primarily focuses on and favors an examination of the nature of the transaction at issue<sup>18</sup>, rather than on the status or structure of the foreign entity. Therefore, activities of a commercial nature are not covered by the sovereign immunity as it only encompasses sovereign acts.<sup>19</sup>

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<sup>16</sup>Exhibit 11

<sup>17</sup>Gary B. Born (above no. 9)

<sup>18</sup>M. Sornarajah, *The Settlement of Foreign Investment Disputes and Law*, (The Hague: Kluwer Law International, 2000), p. 293.

<sup>19</sup>D. Gaukrodger, "Foreign State Immunity and Foreign Government-Controlled Investors," *OECD Working Papers on International Investment*, Vol. 2 (2010), p. 15

29. The determination of whether an activity done by the Respondent is commercial in nature shall be left to the court to answer. Reflecting upon Lord Denning’s view in *Trendtex*, regardless of the nature of the act, even if the Respondent acted in accordance with the JVA as part of the state of Aurion, the state should still be bound to the rules of the “marketplace” and therefore cannot invoke sovereign immunity.
30. The fact that RMG is under the influence of the President of Aurion, the Ministry of Economy in terms of its internal decision-making, and that its capital requirements were provided using public funds from the Government of Aurion’s treasury, do not necessarily mean that RMG is within the right to invoke sovereign immunity. In *Sarrio v. KIA/KIO*, it has been established that the government’s economic dominance over an entity, including the fact that its officials are also a part of the entity’s council board, and that the entity’s investments were made to benefit the State are factors that are irrelevant in determining that the entity forms a part of the State and therefore enjoys sovereign immunity.
31. Further, the commercial nature of the JVA is evident as it clearly stipulates that the joint venture company, i.e., ASI, shall be managed as an independent and commercially driven entity, as per Clause 3.3 and 4.2 (i) of the JVA:

**Clause 3.3 of the JVA**

*“The Parties agree that ASI shall be managed as an **independent, commercially driven entity** [emphasis added], with neither Party exercising undue influence over its governance or operations.”*

**Clause 4.2 (i) of the JVA**

*“Providing market insights and strategic recommendations to expand **ASI’s commercial footprint** [emphasis added] in semiconductor markets in the region.”*

32. Throughout its operations and engagement with the Claimant and third parties, the Respondent does not act as a state. Under the JVA, the Respondent is only obliged to conduct acts that facilitate the ease of establishing ASI and for it to operate. Following the reasoning in *Certain Iranian Assets*<sup>20</sup>, a transaction carried by the entity shall be examined in

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<sup>20</sup>Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment) [2023], para. 51.

light of its context and any links that it may have with the exercise of a sovereign function in order to determine whether the entity is a “company” separate from the government.

33. In addition to the clear stipulation of Clause 3.3 that reflects both Claimant<sup>21</sup> and Respondent’s intention to engage and collaborate freely from any form of third-party intervention, President Ho has also explicitly guaranteed that collaborating with the Respondent would enable the Claimant to have full control over operations and be free from interference.<sup>22</sup> This is in light of the Respondent’s status as a separate commercial entity.<sup>23</sup>
34. Moreover, the existence of Clause 11 of the JVA which contains an arbitration agreement not only illustrates the parties’ intent to arbitrate, but also constitute an implicit waiver of sovereign immunity for Aurion, even if the Respondent acts on behalf of it. Similar position was also taken by the court in *LIAMCO v. Libya*<sup>24</sup> and *Ipitrade v. Nigeria*.<sup>25</sup>
35. In conducting activities to fulfill its obligations under the JVA, the Respondent acts in its full capacity as a commercial entity and not as part of the Aurion government. Despite existing government influence within its organizational structure, decision-making, and internal budgeting, such facts are irrelevant to be considered to portray it as part of the state. Additionally, following *LIAMCO v. Libya* and *Ipitrade v. Nigeria*, Clause 11 of the JVA shall be seen as the parties’ waiver of sovereign immunity. Therefore, the Respondent is not eligible to invoke the rights of sovereign immunity.

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<sup>21</sup>Moot problem para. 24

<sup>22</sup>Moot problem, para. 25

<sup>23</sup>Moot problem, para. 27

<sup>24</sup> 923 F. 2d 380, 385 (5th Cir. 1991)

<sup>25</sup> 482 F. Supp. 1175, 1178 (DDC 1980)

## ARGUMENTS

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### MERIT

36. Respondent has violated several JVA provisions. (C) First, by failing to do its obligation under the ILO and Fundamental Performance under UNIDROIT Principle, Respondent has breached Clause 4.2(f). (D) Second, RMG'S non-disclosure of information for worker recruitment and recommendation of BWS to CDI amount to deception. (E) Third, Damages Suffered by the Claimant Shall Not be Considered Remote to Exempt the Respondent of Liability, and Finally (F) CDI is within the right to terminate the JVA and compensate for its losses.

### **C. REPENDENT FUNDAMENTALLY BREACHED CLAUSE 4.2(f) OF THE JVA THROUGH NON-COMPLIANCE WITH INTERNATIONAL LABOUR OBLIGATIONS**

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#### *i. Respondent's actions constitute ILO's framework identification of 'Forced Labour'*

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37. Pursuant to Article 2(1) International Labour Organization ("ILO") Convention No. 29 on Forced Labour, a breach of an international obligation arises where a party's conduct falls within the scope of obligations voluntarily assumed under a treaty or convention incorporated into the contract, and such conduct fails to meet the standards prescribed therein.<sup>26</sup>

38. ILO through its Committee of Experts and the 2012 ILO Indicators of Forced Labour sets out a binding interpretative framework for the identification of forced labour in both domestic and international proceedings. Under Article 2(1) of ILO Convention No. 29 on Forced Labour, a determination of forced labour requires the cumulative satisfaction of two

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<sup>26</sup> International Labour Organization, *Convention concerning Forced or Compulsory Labour* (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55

essential elements: (a) the absence of free and informed consent, and (b) the presence of a menace of penalty or coercion compelling the work.<sup>27</sup>

39. Accordingly, Claimant submits that the JVA's express incorporation of international norms of good corporate governance and socially responsible business practices as mentioned in Clause 6.2 of the JVA imports binding standards from ILO Conventions Nos. 29 and 105, in which both were ratified by Aurion.<sup>28</sup> Where the Respondent's operational practices exhibit recognised indicators of forced labour, this constitutes a violation of an international obligation embedded in the contractual framework, regardless of whether such conduct is carried out directly or through agents.

**a. *The Absence of Informed Consent (involuntariness)***

40. The ILO has recognised several hard indicators of involuntariness, including but not limited to; deceptive recruitment, retention of identity documents, incomprehensible contracts, debt bondage, restrictions on movement, misrepresentation of legal status, and withholding of wages.<sup>29</sup> Importantly, these indicators should be cumulative.<sup>30</sup> While any single one may raise concern, the law regards their combined presence as conclusive evidence of involuntariness.<sup>31</sup>

41. In the present case, Claimant submits that the Respondent's operational conduct satisfies this first element in full measure. Workers were recruited on the promise of fixed wages, predictable hours, and adequate housing, only to be confronted with undisclosed KPI-linked deductions, compulsory overtime, and overcrowded dormitories upon arrival.<sup>32</sup> Such a stark disparity between representation and reality is the type of deceptive recruitment the CEACR

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<sup>27</sup> International Labour Organization, *Convention concerning Forced or Compulsory Labour* (No 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55, art 2(1)

<sup>28</sup> International Labour Organization, *Protocol of 2014 to the Forced Labour Convention, 1930* (adopted 11 June 2014, entered into force 9 November 2016) 54 ILM 752, art 1

<sup>29</sup> International Labour Organization, *Convention concerning the Abolition of Forced Labour* (No 105) (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291, art 1(a)

<sup>30</sup> *Slavery, Forced Labour, and Trafficking*, in *Slavery: The Law and Slavery* (Springer, 2024)

<sup>31</sup> *Estimating Forced Labour: From a Legal Category to a Statistical Category for International Political Campaigns* (2024) International Statistical Review

<sup>32</sup> *Moot Problem* para 33

has held to negate consent, as in Observation on Convention No. 29 Myanmar (2015)<sup>33</sup>, where similar false promises were deemed incompatible with voluntariness.

42. Moreover, the retention of passports under the pretext of visa compliance removed any practical ability to leave employment. The ILO General Survey (2007) is unequivocal, by which stated that even with nominal consent, document retention constitutes coercion when it restricts movement or access to alternative work.<sup>34</sup> The Respondent compounded this by ensuring that employment contracts were issued solely in Aurion's official language, without translations or explanations for workers lacking proficiency.<sup>35</sup> This deprived them of any realistic understanding of their contractual rights and obligations.<sup>36</sup>
43. The situation was further aggravated by recruitment fees imposed by BWS, which placed workers in immediate debt before they had earned their first wage.<sup>37</sup> Debt bondage is a recognised form of involuntariness under the ILO framework, as it creates economic dependence and severely limits the worker's ability to exit employment.<sup>38</sup> Restrictions on movement, imposed through curfews, visitor bans, and threats of retaliation for unauthorised absences, reinforced this dependency, while misrepresentations about visa status, locked workers into their positions under fear of losing their right to remain in Aurion.<sup>39</sup> Wage delays and KPI-based deductions further entrenched economic control, completing a cycle in which workers had neither meaningful choice to stay nor viable means to leave.
44. Tribunals have been unequivocal in treating such cumulative indicators as satisfying the involuntariness requirement. In *Veliz Rendón v. Guatemala* (IACtHR, 2019), the court found that debt bondage, coupled with document retention and restricted movement, established the absence of free consent. Similarly, in *Urbaser v. Argentina* (ICSID Case No. ARB/07/26),<sup>40</sup> the tribunal held that non-delegable duties extend to subcontractors where there is a foreseeable risk of rights violations, given Clause 3.3 of the JVA, which places ultimate responsibility for compliance on the Respondent regardless of delegation to BWS or ASI.

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<sup>33</sup> Ian Marshall Sander, *Qatar, Migrants Laborers, and the ILO* (2018) *Michigan Journal of International Law* Vol 39

<sup>34</sup> United Nations, *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III)) art 4

<sup>35</sup> *Moot Problem* para 25

<sup>36</sup> Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) § 5.08

<sup>37</sup> *Moot Problem* para 28

<sup>38</sup> *Moot Problem* para 35

<sup>39</sup> *Moot Problem* para 28

<sup>40</sup> Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) § 5.08.

45. Accordingly, Claimant submits that the Respondent's conduct, when viewed in light of the ILO's established legal framework and international jurisprudence, incontrovertibly meets the first essential element of forced labour. The multiplicity of hard indicators each substantiated on the facts, leaves no doubt that workers did not offer their services voluntarily in the sense contemplated by Article 2(1) of Convention No. 29.<sup>41</sup>

**b. *The Presence of a Menace of Penalty (coercion compelling the work)***

46. Against the legal yardstick, the Respondent's operating model is coercive in design and effect. Most immediately, KPI-linked wage deductions and withholding or delay of wages functioned as a standing financial sanction for non-compliance with output demands. Under ILO Convention No. 95 on the Protection of Wages and the CEACR's practice, opaque or disproportionate deductions are a classic menace of penalty, especially where they jeopardise subsistence or debt servicing.<sup>42</sup> Here, deductions were triggered by ambiguous performance metrics known *ex ante* to be unattainable without excessive overtime. A reasonable worker would understand that saying no to additional hours or quotas would directly translate into income loss. As what was stated by Mohammed Helal, a legal expert at Moritz College of Law in Ohio through his public paper No. 475, *The choice is illusory, the penalty is constant*.<sup>43</sup>

47. CEACR and 2012 ILO Indicators of Forced Labour confirm that penalty is understood broadly in encompassing financial sanctions, threats to legal or migratory status,<sup>44</sup> disciplinary measures (including dismissal and blacklisting), restrictions on movement or housing, and any other adverse consequence that a reasonable worker would perceive as the cost of refusal.<sup>45</sup> The ILO General Survey emphasises two methodological points that are dispositive here: the assessment is objective (would a reasonable worker feel they have no

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<sup>41</sup> *Moot Problem* para 25

<sup>42</sup> International Labour Organization, *Convention concerning the Abolition of Forced Labour* (ILO No 105) (adopted 25 June 1957, entered into force 17 Jan 1959) 320 UNTS 291

<sup>43</sup> M Sornarajah, *The Settlement of Foreign Investment Disputes* (Kluwer Law International, The Hague 2000) 293

<sup>44</sup> International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (adopted 18 June 1998, amended 2022)

<sup>45</sup> United Nations, *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III)) art 4

genuine alternative) and cumulative.<sup>46</sup> As noted by Davidov in *A Purposive Approach to Labour Law* (Oxford University Press, 2016)<sup>47</sup>, the deliberate structuring of performance metrics in such a way that non-compliance automatically results in punitive wage deductions effectively replicates the coercive dynamics characteristic of compulsion, both in its practical operation and in its legal consequences.<sup>48</sup> Where multiple hard indicators co-exist, it is then for the employer to demonstrate that workers retained a real freedom to refuse, resign, or seek redress without suffering adverse consequences.

48. The IIC, established by the Aurion government, conducted unannounced inspections and identified substantial concerns including underreported overtime, overcrowded worker dormitories, and instances of withheld passports.
49. Following the submission of ASI's revised workforce audit, the Ministry of Trade and Industry reviewed the new documentation and received a cumulative report from the IIC. Based on these combined findings, the Ministry imposed an administrative fine of USD 500 million, reflecting the systemic failures in regulatory compliance and the exceptional severity of the violations.<sup>49</sup>
50. These elements, particularly when occurring cumulatively, satisfy the ILO's totality of circumstances test for establishing forced labour stating that no single indicator is determinative, but the interaction between several indicators can substantiate a finding.<sup>50</sup> The fact that passports were retained even under the pretext of visa compliance directly contradicts ILO General Survey stating that retaining identity documents, even with consent, constitutes coercion when it restricts the worker's freedom of movement.
51. Coercion also arose through immigration leverage. Retention of passports in which is already probative of involuntariness became a coercive device when paired with the message that departure without employer sign-off could jeopardise visa status. The CEACR has repeatedly treated the threat or fear of deportation as a menace of penalty, even where no formal removal proceedings are initiated, because the credible risk of losing lawful presence

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<sup>46</sup> International Labour Organization, *Protocol of 2014 to the Forced Labour Convention, 1930* (adopted 11 June 2014, entered into force 9 Nov 2016) 54 ILM 752

<sup>47</sup> Charuka Ekanayake & Susan Harris Rimmer, 'Applying Effective Control to the Conduct of UN Forces' (2018) *International Organizations Law Review* Vol 15 No 1

<sup>48</sup> *Ibid.*, page 32

<sup>49</sup> David Gaukrodger, 'Foreign State Immunity and Foreign Government-Controlled Investors' (2010) 2 OECD Working Papers on International Investment 15

<sup>50</sup> *Moot Problem.*, Clause 3.3 JVA

is itself sufficient to compel continued labour.<sup>51</sup> In this record, workers explain they remained not because conditions were acceptable, but because exit risked immigration consequences they could neither predict nor contest.

52. That is coercion by any objective measure. In *Chowdury and Others v. Greece* (ECtHR, 2017)<sup>52</sup>, the Court found that combinations of non-payment, threats, and armed supervision compelled agricultural workers to continue labour.<sup>53</sup> Physical violence was not required because the practical unavailability of exit was dispositive.<sup>54</sup> Likewise, in *Siliadin v. France* (ECtHR, 2005)<sup>55</sup>, the Court held that a migrant's constrained liberty document control, fear of authorities, constant oversight met the coercion prong even absent continuous physical force.<sup>56</sup> Those tribunals focused on the ecosystem of sanctions, so should this Tribunal.
53. Housing dependency compounds the penalty structure.<sup>57</sup> Where shelter is conditional on employment, loss of the job entails loss of accommodation, another adverse consequence the ILO treats as a menace of penalty.<sup>58</sup> In settings where wages are already unstable and mobility is restricted, tying housing to ongoing compliance multiplies the cost of refusal.<sup>59</sup>
54. A worker who objects to overtime or wage deductions faces not only immediate income loss but also the prospect of eviction. That pressure is integral to how control is exerted.<sup>60</sup> These penalties did not operate in isolation. Debt from recruitment fees while central to involuntariness, also magnifies coercion by raising the stakes of exit.<sup>61</sup> When a worker begins to be encumbered, the threat of wage loss, dismissal, or eviction carries amplified force: refusal now risks default, penalties, or loss of collateral at home. The ILO recognises

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<sup>51</sup> *State Responsibility for Modern Slavery: Uncovering and Bridging the Gap* (2022) *International & Comparative Law Quarterly*

<sup>52</sup> Pierre D'Argent, 'State Organs Placed at the Disposal of the UN, Effective Control, Wrongful Abstention, and Dual Attribution of Conduct' (2014) *Question of International Law* No 1, pp 27–28

<sup>53</sup> *Slavery, Forced Labour, and Trafficking*, in *Slavery: The Law and Slavery* (Springer, 2024)

<sup>54</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 26–27.

<sup>55</sup> *State Responsibility for Modern Slavery: Uncovering and Bridging the Gap* (2022) *International & Comparative Law Quarterly*

<sup>56</sup> International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) UN Doc A/56/10 arts 4–11

<sup>57</sup> Pierre D'Argent, 'State Organs Placed at the Disposal of the UN, Effective Control, Wrongful Abstention, and Dual Attribution of Conduct' (2014) *Question of International Law* No 1

<sup>58</sup> Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159, art 25(1)

<sup>59</sup> Asian International Arbitration Centre, *AIAC Arbitration Rules 2023* (effective 24 August 2023), art 1(1)

<sup>60</sup> Alienation of Labour Regulations in the Job Creation Law With International Human Rights'

<sup>61</sup> L C Backer, 'From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art 23, The ILO, and Working Rights Principles' (2019) *Working Paper*

this debt bondage increases a worker's vulnerability to other penalties, making the cumulative test easier to satisfy.<sup>62</sup> The doctrinal fit with international jurisprudence is straightforward. *Veliz Rendón v. Guatemala* (IACtHR, 2019)<sup>63</sup> accepted that debt, document retention, and mobility constraints *together* satisfy the coercion element because they remove meaningful exit options.<sup>64</sup>

55. Siliadin and Chowdury confirm that coercion includes legal and socio-economic pressures, not merely physical force.<sup>65</sup> Arbitral practice likewise rejects liability outsourcing in *Urbaser v. Argentina* (ICSID ARB/07/26),<sup>66</sup> the tribunal recognised that primary obligations cannot be evaded by delegating to contractors where risks are foreseeable. That approach aligns with this contract's text.
56. As mentioned, Clause 4.2(f) imposes on each party a duty to ensure compliance with labour law, Clause 6.2 incorporates international norms and under UNIDROIT Principles Articles 1.7, 5.1.3, and 5.1.4, Respondent owes a continuous, result-oriented duty to organise performance so that coercive penalties cannot arise within its workforce or recruitment chain. The failure to remove known penalties after inspection findings and a notice to cure is as much a breach as imposing them.
57. Evidentiary standards further support a finding of coercion. In commercial arbitration, the applicable standard is typically the balance of probabilities, informed by reasonable inferences from credible, contemporaneous records.<sup>67</sup> The IIC inspection reports, worker statements, and the administrative fine imposed by the Ministry that is persuasive, independent confirmations that penalties were embedded in practice.
58. The ILO's methodology endorses pattern evidence and cumulative assessment, tribunals and courts routinely accept such material when evaluating coercion.<sup>68</sup> Once several hard

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<sup>62</sup> United Nations Convention against Transnational Organized Crime (Palermo Convention) (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, art 5(1)

<sup>63</sup> UN General Assembly, *Guiding Principles on Business and Human Rights* (UN Doc A/HRC/17/31, 21 March 2011)

<sup>64</sup> International Centre for Settlement of Investment Disputes, *ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159

<sup>65</sup> United Nations, *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 7.

<sup>66</sup> *Slavery, Forced Labour, and Trafficking*, in *Slavery: The Law and Slavery* (Springer, 2024)

<sup>67</sup> Christine Sim, 'Attributing Responsibility to International Organisations: Lessons from the EU-Singapore Investment Protection Agreement' (2018) *European Investment Law and Arbitration Review* Vol 3 No 1

<sup>68</sup> Charuka Ekanayake & Susan Harris Rimmer, 'Applying Effective Control to the Conduct of UN Forces' (2018) *International Organizations Law Review* Vol 15 No 1

indicators are proven, the burden effectively shifts to the employer to show that workers could refuse without adverse consequences by pointing to functioning grievance channels, non-retaliation guarantees, or actual instances of penalty-free exit.

59. Respondent offers no audited proof of returned passports on demand, no records of wage restoration after contested KPIs, no credible evidence that resignations were processed without threat to immigration status or housing.<sup>69</sup> It must also be emphasised that while BWS was contractually engaged as the labour supplier, RMG retained responsibility under Clause 3.3 of the JVA for ensuring operational compliance and due diligence in third-party appointments.<sup>70</sup> Despite being in a position to conduct audits, require certifications, or impose termination clauses for non-compliance, RMG failed to exercise any oversight.
60. No compliance audit was initiated, no labour rights monitoring framework was implemented, and no redress mechanism for worker complaints was established. This represents a failure of “positive due diligence” and a breach of the duty to prevent unlawful acts by intermediaries, as recognised in *Urbaser v. Argentina* (ICSID Case No. ARB/07/26),<sup>71</sup> where the tribunal affirmed that business actors cannot escape liability by delegating core obligations to subcontractors without safeguards<sup>72</sup>
61. Moreover, the breach was not cured within the five-day period specified in CDI’s Notice of Breach dated 6 October 2023, as required by Clause 8.1 of the JVA.<sup>73</sup> CDI acted within its contractual right to terminate the JVA, particularly given that the breach was ongoing, structural,<sup>74</sup> and of a nature that went to the root of the agreement. RMG’s failure to invoke the dispute resolution clause prior to or during this period does not invalidate CDI’s lawful termination but rather underscores RMG’s continuing reluctance to resolve a grave compliance crisis.

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<sup>69</sup> Attribution of Conduct to a State’ (2022) *ICSID Review – Foreign Investment Law Journal* Vol 37 No 1-2 (analysis of ARSIWA articles 4, 5, 8)

<sup>70</sup> *Alienation of Labour Regulations in the Job Creation Law With International Human Rights* (2023) *ADLIYA: Jurnal Hukum dan Kemanusiaan*

<sup>71</sup> Pierre D’Argent, ‘State Organs Placed at the Disposal of the UN, Effective Control, Wrongful Abstention, and Dual Attribution of Conduct’ (2014) *Question of International Law* No 1, pp 27–28

<sup>72</sup> *The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries* (CUP 2002)

<sup>73</sup> *Protection of Migrant Workers in Suriname: How do Indonesian Representatives Implement International Labour Organization Conventions?* (2021) *Udayana Journal of Law and Culture*

<sup>74</sup> *RaFoLa: A Rationale-Annotated Corpus for Detecting Indicators of Forced Labour* (2022) arXiv

62. In conclusion, the elements required to establish the conduct and omissions of RMG fulfill the legal tests for both contractual default and modern slavery. The termination by CDI was not only permitted but compelled by the factual and legal realities. It is therefore submitted that the Tribunal must find that RMG bears full legal responsibility for the breach and the resulting consequences, including reputational, operational, and regulatory harm to the joint venture.
63. Accordingly, the Tribunal should conclude that the Respondent's actions amount to a fundamental breach of the JVA, coupled with non-compliance with binding international labour obligations, thereby entitling the Claimant to the reliefs sought.

*ii. Respondent's Non-Compliance Meets the Threshold of Fundamental Non-Performance under UNIDROIT Principle*

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64. To determine the Respondent's conduct constitutes fundamental non-performance under the UNIDROIT Principles, the Tribunal must first establish that Respondent breached its contractual obligations under Clause 4.2(f) and Clause 6.2 of the JVA, and that such breach satisfies one or more of the cumulative criteria for fundamental non-performance set out in Article 7.3.1(2) UNIDROIT Principles of International Commercial Contracts ("**PICC**"), thereby entitling the Claimant to terminate the contract without liability.
65. The doctrine of fundamental non-performance under the PICC provides a clear threshold for contract termination in transnational commercial disputes. Article 7.3.1(2)<sup>75</sup> of the PICC enumerates the circumstances in which non-performance rises to a fundamental level, allowing the aggrieved party to terminate without liability. These circumstances include:
- 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 (**a**),
  - b. strict compliance with the obligation which has not been performed is of essence under the contract (**b**),

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<sup>75</sup> *Attribution of Conduct to a State* (2022) *ICSID Review – Foreign Investment Law Journal* Vol 37 No 1

- c. the non-performance is intentional or reckless (**c**),
  - d. the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance (**d**), and
  - e. the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.
66. The provision further recognises that these criteria are to be assessed cumulatively by the nature and purpose of the agreement.

***a. "the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract"***

67. Article 7.3.1(2)(a) provides that non-performance is fundamental where it substantially deprives the aggrieved party of what it was entitled to expect under the contract. The decisive question, as Bonell explains (*An International Restatement of Contract Law*, 4th ed., 2016, p. 351), is whether the breach has deprived the aggrieved party of the very benefit of the bargain, rather than whether some degree of performance has been rendered.
68. The Claimant entered into the JVA with the expectation of a viable and lawfully compliant joint venture. This expectation was central to the agreement and is reflected expressly in Clause 4.2(f), which imposes an obligation on each party to ensure compliance with labour and safety laws, and Clause 6.2, which elevates that obligation by incorporating international norms of good corporate governance and socially responsible business practices. By exposing the joint venture to widespread labour law violations, Respondent deprived Claimant not only of profitability but also of the legal and reputational integrity essential for participation in international markets.
69. The administrative sanction of USD 500 million imposed by Aurion's Ministry of Trade and Industry is evidence that the non-performance had direct and material regulatory consequences. Schwenger, Hachem, and Kee in *Global Sales and Contract Law* (2012, §45.21) observe that deprivation exists when performance subjects the aggrieved party to public law sanctions or renders its commercial purpose unattainable. The imposition of penalties and reputational injury demonstrate that Claimant was substantially deprived of the contractual benefit.

***b. Non-Performance Substantially Deprives the Aggrieved Party of What It Was Entitled to Expect Under the Contract***

70. The second criterion under Article 7.3.1(2)(b) is that strict adherence to the obligation must be “of the essence.” As McKendrick observes in *The UNIDROIT Principles of International Commercial Contracts: A Commentary* (2nd ed., 2021), obligations expressly tied to public law compliance or reputational integrity often carry this essential character, because their breach jeopardises the entire contractual foundation.
71. Here, The JVA expressly conditioned the partnership on adherence to compliance norms. By incorporating international labour standards, the parties made clear that these obligations were foundational. Fontaine and De Ly (*Drafting International Contracts*, 2009, §9-44) emphasise that where parties elevate regulatory compliance into the contractual matrix, such obligations cannot be treated as collateral.
72. Respondent’s persistent labour violations therefore breached obligations “of the essence,” because they invalidated the lawful and ethical basis of the joint venture. A venture tainted by forced labour cannot meet its contractual or commercial purpose.

***c. Intentional or Grossly Negligent Breach***

73. Article 7.3.1(2)(c) qualifies non-performance as fundamental where it results from intent or recklessness. The commentary clarifies that recklessness involves a conscious disregard of known risks.
74. Respondent was fully aware of systemic risks in Aurion’s recruitment chain. Reports from the Independent Investigatory Commission identified practices such as passport retention, coercive wage deductions, and exploitative housing. Despite these warnings, Respondent undertook no compliance audits, required no certifications, and provided no grievance mechanisms.
75. This failure to act amounts to reckless disregard. The *Urbaser v. Argentina* tribunal (ICSID ARB/07/26)<sup>76</sup> held that corporate actors cannot shield themselves from liability by

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<sup>76</sup> UN General Assembly, *Guiding Principles on Business and Human Rights* (UN Doc A/HRC/17/31, 21 March 2011)

outsourcing obligations to intermediaries where risks are foreseeable. The Inter-American Court in *Veliz Rendón v. Guatemala* (2019) likewise recognised that inaction in the face of known recruitment abuses constitutes culpable breach.

76. Scholarly commentary strengthens this conclusion. Davidov (*A Purposive Approach to Labour Law*, OUP 2016, p. 178) argues that performance frameworks linking wages to punitive deductions are functionally indistinguishable from coercion, evidencing reckless disregard of workers' autonomy. By designing or tolerating such practices, Respondent acted with reckless indifference to its obligations.

#### ***d. Destruction of Reliance on Future Performance***

77. This criterion requires consideration of whether the innocent party can reasonably rely on future performance. Once trust is destroyed, continuation of the contractual relationship becomes untenable.

78. Here, Respondent's systemic breaches and the magnitude of resulting sanctions meant Claimant could no longer rely on Respondent's assurances. As McKendrick observes (2021, p. 853), a pattern of serious violations extinguishes the possibility of trust in future performance.

79. The principle is reflected in arbitral reasoning. In *Veliz Rendón*, the tribunal emphasised that repeated disregard of labour obligations undermines confidence in future compliance, justifying termination. The same logic applies here: Claimant had no rational basis to expect Respondent would suddenly begin to comply after years of misconduct and regulatory penalties.

#### ***e. Incurability of the Breach***

80. Article 7.3.1(2)(e) provides that breach is fundamental if it is not capable of cure within a reasonable time. Bonell (2016, p. 355) explains that incurability arises where the defect lies not in performance quality but in legality or trust, which cannot be retrospectively repaired.

81. The Respondent's breach was incurable. The USD 500 million fine and reputational harm had already crystallised, rendering any subsequent remedial steps irrelevant to restoring the

contractual purpose. Even if compliance mechanisms were belatedly introduced, they could not retroactively erase sanctions or rebuild lost trust. Comparative jurisprudence under CISG Article 25 confirms this principle, as tribunals have held that regulatory illegality cannot be cured without nullifying the bargain itself.

82. It is respectfully submitted that the Respondent's conduct, when assessed under the holistic framework of Article 7.3.1(2) of the UNIDROIT Principles, satisfies all five indicia of fundamental non-performance. The commentary to Article 7.3.1 underscores that tribunals must engage in a global assessment, weighing the cumulative impact of breaches rather than viewing them in isolation. This approach is consistently reflected in comparative jurisprudence, such as the Oberlandesgericht Frankfurt decision (CLOUT Case No. 123), which confirmed that the determination of a fundamental breach requires consideration of the "totality of the circumstances."
83. Applied here, the record reveals that: (i) Claimant has been substantially deprived of the contractual benefits envisaged under the JVA, (ii) the obligations breached were expressly central to the contract's performance, (iii) Respondent acted with reckless disregard of foreseeable harm, (iv) the continuing nature of the violations eroded any reasonable reliance on future performance, and (v) the breach was legally and practically incapable of cure. Taken together, these factors render the breach paradigmatic of the very conduct the drafters of the UNIDROIT Principles intended to capture under the doctrine of fundamental non-performance.
84. Accordingly, this Tribunal is invited to conclude that Respondent's persistent and systemic non-compliance is not an ordinary breach but an aggravated form of fundamental non-performance. Under the governing law, Claimant was therefore entitled to terminate the JVA, and the termination must be upheld as lawful and effective.

#### **D. RMG'S NON-DICLOSURE INFORMATION FOR WORKER RECRUITMENT AND RECOMMENDATION OF BWS TO CDI AMOUNT TO DECEPTION**

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85. According to IOM, recruitment refers, *inter alia*, to the advertising, information dissemination, selection, transport, and placement into employment of the workers.<sup>77</sup> The recruitment process aimed to acquire human resources can also utilize services provided by labor recruiters which is BWS.<sup>78</sup> During this phase, BWS recruited workers from Northern Aurion as well as migrant workers to supply the workforce needed by ASI to commence production. However, it was done without a written contract signed between BWS and the individual workers which specified the employment requirements.
86. In light of such intransparency, the way BWS recruited workers violates the ethical recruitment standards set by IOM IRIS.<sup>79</sup> This is further proven by BWS' imposition of recruitment fees to the majority of migrant workers<sup>80</sup>, which violates the core "employer pays principle."<sup>81</sup> The fact that BWS negligently failed to disclose crucial employment conditions to the workers also indicates that the process was conducted with deception, as the campaign itself promotes career prospects and productivity-based bonuses.
87. This creates a false belief that the job opportunity promoted by BWS is prospective and ethical, while BWS also made no attempt to correct it. In this case, deception can be proved without the conduct (omission) having to be made with a lie (intent to deceive).<sup>82</sup> Furthermore, it also suffices to conclude that the mere existence of deception in BWS' worker recruitment campaign also indicates that BWS has committed recruitment fraud.<sup>83</sup>
88. However, it shall also be noted that this particular worker recruitment strategy implemented by BWS originated from RMG. While it was intended to enable RMG to retain full control over compliance with local labor laws<sup>84</sup>, in practice this was implemented in an intransparent and deceptive manner luring potential workers to perceive an inaccurate working environment within ASI.

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<sup>77</sup> IOM, "Ethical Recruitment Considerations," p. 5.

<sup>78</sup> Ibid, p. 8

<sup>79</sup> *ibid.*, 7

<sup>80</sup> Clause 3.6 of the IIC Report

<sup>81</sup> IOM (above no. 79), p. 17

<sup>82</sup> Klass, "The Law of Deception," p. 105

<sup>83</sup> Cross & Grant-Smith, "Recruitment Fraud," p. 9.

<sup>84</sup> Moot problem, para. 33

89. Additionally, the recommendation by the Respondent of BWS as a third-party labor supplier to CDI is also deceptive in the first place. After conducting a further internal investigation following the suspension of ASI's operating license, the Claimant also discovered the existence of a personal tie between BWS and President Ho's son-in-law.<sup>85</sup> This uncovers that the Respondent has failed to disclose crucial information that could cause the Claimant to make a different decision had it been discovered earlier.
90. This omission on the part of the Respondent of not acting disclose this fact from the beginning illustrate that both the Respondent and BWS colluded in a way that deceived the Claimant into believing that BWS is the best option.

**E. DAMAGES SUFFERED BY THE CLAIMANT SHALL NOT BE CONSIDERED  
REMOTE TO EXEMPT THE RESPONDENT OF LIABILITY**

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91. Having regard to contractual relations in which a debtor delegated its obligations to a third party, a question of attribution of liability arises when that third party then performed the obligations wrongfully. Through attribution, it is to be determined whether the wrongful conduct or omission of the third party can be transferred to the debtor. This will result in the debtor being held liable for the act or omission of the third party hired to execute the obligation.<sup>86</sup> This general rule<sup>87</sup> will then determine whether the party delegating the obligations (the principal) remains liable for any harm resulting from the performance of the obligation by the third party.
92. Respondent's failure to ensure regulatory compliance regarding labor and employment goes against its obligation to perform due diligence, seen as a requirement for an active and good faith effort in ensuring compliance. As a company established in the home jurisdiction of Aurion and having connections to the government, it shall be reasonable to expect that the Respondent has the best knowledge of the regulatory and standard requirements needed to ensure compliance with its obligations under the JVA.
93. Despite having delegated the authority to manage workforce recruitment to a third-party

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<sup>85</sup> Moot problem, para. 54

<sup>86</sup> Gazmuri & Olivares, "Attribution of Contractual Liability", p. 114

<sup>87</sup> Ibid, p. 113

labor agency which is BWS, a closer review of the wording of Clause 4.2 (f) of the JVA would highlight that the Respondent's obligation to ensure compliance with labor and employment laws is not limited by scope or duration. Therefore, it should be considered as an ongoing obligation. This once again emphasizes that the delegation of its duties to manage the workforce to BWS shall not relinquish such duty from the Respondent.

94. Moreover, considering that it was the Respondent, as the debtor, who initially recommended BWS among the list of third-party labor agencies, it shall be held that the Respondent is responsible for the acts of BWS. As according to Carrasco Perera, the act of third parties that was introduced to the obligation by the debtor shall also be borne by the debtor and not the creditor.<sup>88</sup>
95. As a result of the Respondent's failure to ensure regulatory compliance by not proactively conducting a review of the labor reports made by BWS and ASI, the discrepancies in information which also includes the underreporting of worker overtime hours are left unchecked until it reached Aurion government officials. At this point, it should have been foreseeable by the Respondent that any failure to conduct quality checks and further review of the reports could lead to the Ministry questioning the validity and accuracy of data provided by ASI, should there be any inaccuracies or incomplete information, which further leading to the degradation of trust towards ASI and as a result also extends to the Claimant.
96. Furthermore, this also led the Ministry to suspend ASI's operating license resulting in production delays and failure to meet contractual obligations. In turn, it created a domino effect resulting in contractual penalties and a further USD500 fine imposed by the Ministry, which also impacted the Claimant. Additionally, this sequence of events also caused reputational harm towards the Claimant. This has signified that a further collaboration with the Respondent would only impose more risks to the Claimant, hence this is why the Claimant seeks to terminate the JVA.
97. The "Remoteness Rule" refers to a rule that limits the imposition of liability by employing the foreseeability criteria to determine how much compensation has to be given to damages. This rule arose from *Hadley v. Baxendale* in which recovery to damages is only given to damages that are perceived to arise naturally or within the contemplation of the parties at the

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<sup>88</sup>Gazmuri & Olivares, "Attribution of Contractual Liability," p. 114

time of drafting the contract.<sup>89</sup> To identify whether a damage is compensable, it must be seen as directly emanating from the conduct in question.<sup>90</sup>

98. The remoteness test involves the assumption of responsibility approach by which contracts are interpreted as a whole, against its commercial background. Examination will be done on the contract's wording, context, the matrix of facts, and the purpose of the contract itself.<sup>91</sup>

99. According to Mulheron, as long as the type of damage is reasonably foreseeable, the specific sequence of events leading up to the damage does not matter as long as there is still a causal link between the conduct and the damage. In the present case, as explained above, by not reviewing the reports the Respondent should have reasonably foreseen that any defects in the data would cause such a domino effect leading up to the Claimant's economic loss and harm to its reputation. This indicates the clear causal link between the Respondent's conduct (in this case omission) and the damages suffered by the Claimant. Regardless of the types and sequence of events that led up to the damages suffered by the Claimant, the causal link requirement is fulfilled. Therefore, the damage is not remote and the liability can be attributed to the Respondent.

100. The fact that the semiconductor manufacturing facility is located in Northern Aurion, an economically underdeveloped region<sup>92</sup>, does not preclude the possibility that BWS may as well recruit low-skilled workers with high economic vulnerability. As the Respondent is obliged to ensure full compliance with all applicable labor and employment laws under Clause 4.2f of the JVA, it is also the Respondent's responsibility to ensure the fair and adequate pay of the factory workers. Although such responsibilities are now handled by either JPMT, ASI, or BWS which are tasked with the full scope of workforce management, any damages in the form of economic loss suffered by the workers should also entitle the Respondent of liability.

101. This attribution of liability for damages to the Respondent shall not be considered as remote. It shall be reasonable for the Respondent, whose duty is to conduct a helicopter-view examination of labor conditions, to foresee that any failure to conduct proper examination may result in the workers being subjected to economic losses under the "normal fortitude"

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<sup>89</sup>Cristian Paziuc, 'Remoteness of Damage in Contract and Its Functional Equivalents: A Critical Economic Approach' (2016) 5(1) *UCL J Law Jurisprudence* 88.

<sup>90</sup>Marc Stauch, 'Risk and Remoteness of Damage in Negligence' (2001) 64(2) *Modern Law Review* 194

<sup>91</sup>Kramer, *The Law of Contract Damages*, 2nd ed. (Portland: Hart Publishing, 2017), para. 14-06 (p. 301)

<sup>92</sup>Moot problem, para. 6.

rule<sup>93</sup>. For this failure, the Respondent shall be held fully liable for all consequences of its wrong.

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<sup>93</sup>Rachel Mulheron, *Principles of Tort Law*, 1st ed. (Cambridge: University Printing House, 2016), p. 500

## **F. CDI IS WITHIN THE RIGHT TO TERMINATE THE JVA AND COMPENSATE FOR ITS LOSSES**

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102. Clause 4.2(f) of the JVA expressly required RMG to ensure full compliance with applicable labour and employment laws. However, the factual record establishes the existence of forced labour indicators, including passport confiscation, sub-minimum wage payment, and excessive overtime. These are evident by the fact that the IIC, established by the Government of Aurion through the Ministry of Trade and Industry and the Ministry of Foreign Affairs, in its official report dated 30th September 2024, found concerning indicators of forced labour, including passport confiscation, sub-minimum wage payments, excessive working hours, and congested living conditions.
103. Although the IIC concluded that the conditions identified did not meet the definitional threshold of "modern slavery," its findings nonetheless revealed significant underreporting of overtime hours, instances of coercive wage deductions linked to inflated performance targets, and temporary yet substandard worker accommodations. These observations, while falling short of constituting legal violations under domestic Aurion law, align with internationally recognized indicators of labour rights concerns. The public dissemination of the IIC report was subsequently amplified by extensive media coverage and public discourse within both Aurion and Veridia.
104. RMG's failure is exacerbated by the fact that it was contractually obliged under Clause 4.2(f) to ensure compliance with all applicable employment laws and under Clause 6 to uphold "international norms and standards" in human rights, labour governance, and corporate social responsibility. The delegation of recruitment to BWS, an entity with undisclosed political ties to RMG, does not absolve RMG of responsibility. Under principles of non-delegable duties and vicarious liability in international business arrangements, a party cannot outsource a compliance obligation and evade liability where negligence is foreseeable and systemic.
105. Moreover, the Ministry of Trade and Industry's USD 500 million fine, imposed after reviewing both the IIC's findings and the revised audit, reflects the state's own finding of egregious misconduct. It also fulfills the doctrine of official act attribution under international law, particularly Article 5 of the ILC Articles on State Responsibility, where

state-linked entities performing governmental functions (as RMG did by facilitating worker regulation and visa practices) are treated as extensions of the state for the purposes of wrongful acts.

106. Crucially, the nature of RMG's breaches cuts to the core of the JVA's contractual foundation, namely, mutual trust, ethical cooperation, and the sustainable operation of ASI as a rights-compliant business vehicle. Under UNCITRAL's Commentary on International Commercial Contracts, a fundamental breach occurs where "a failure deprives the other party of what it is substantially entitled to expect under the contract." CDI's expectation of a lawful, ethical, and reputationally stable investment environment was obliterated by RMG's conduct. As such, RMG's breach is not merely material. It is foundational, triggering CDI's right to termination under Article 8.1 of the JVA.
107. By failing to uphold international labour standards to which the host state is bound, RMG also triggered BIT-level noncompliance that directly exposed CDI to reputational harm, regulatory scrutiny, and commercial retaliation from international buyers. This reinforces that the breach was not confined to the internal performance of the JVA but extended into CDI's protected interests under public international law, thereby cementing its character as a multi-layered, fundamental breach.
108. The above facts are clear violations to the ILO Convention No. 29 (1930) which defines forced labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.' Under international precedent, notably *Waste Management*, the non-compliance with domestic regulations constitutes a breach of international obligations when the violation is systemic and damages the investment's integrity.
109. These violations breach ILO Convention No. 29 and Convention No. 105 concerning Forced Labour, which impose upon states and, by extension, transnational corporate actors, obligations to eradicate forced labour in all its forms. The tripartite MNE Declaration further provides that enterprises must respect human rights and labour standards regardless of the jurisdiction of operation.
110. RMG's failure to ensure lawful recruitment practices constitutes a clear breach of its contractual obligation under Clause 4.2(f) of the JVA, which mandates compliance with applicable labour laws. This breach is compounded by RMG's disregard for its duty of good

faith under Article 1.7 of the UNIDROIT Principles, which obliges parties to act with fairness and prevent foreseeable harm to their counterparty. By allowing BWS to operate without effective oversight, RMG facilitated unlawful labour practices that harmed worker welfare and exposed the joint venture to reputational and regulatory risk.

111. The violations are well-documented. Reports from the IIC confirmed coercive wage deductions, underreported overtime, and substandard accommodations. These were corroborated by worker testimonies indicating deception during recruitment, aligning with ILO indicators of forced labour. ASI's subsequent suspension and the imposition of USD 500 million in fines further confirm the seriousness of these failures.
112. International jurisprudence supports CDI's position. In *Veliz Rendón*, the Inter-American Court of Human Rights affirmed corporate liability for failure to prevent third-party labour exploitation. Similarly, in *Urbaser*, the ICSID tribunal held that companies in public-private ventures have a duty to uphold human rights standards, and failure to supervise business partners may give rise to liability.
113. Taken together, RMG's inaction breached both the express terms of the JVA and broader international standards. These failings justify CDI's termination under Clause 8.1 of the JVA following RMG's failure to cure the breach after notice.
114. In conclusion, RMG's violations were neither isolated nor excusable. They amounted to fundamental breaches of contract and international labour norms, giving CDI just cause to terminate the JVA.

***i. Breach of Ethical Representation and Good Faith (Failure to Disclose Conflict of Interest)***

115. RMG's failure to disclose its beneficial connection to BWS, the labour recruitment agency eventually contracted for ASI's operations, constitutes a serious breach of both the JVA and the fundamental principles of international commercial law. This non-disclosure directly contravenes Clause 6.2 of the JVA, which binds each party to uphold internationally recognised norms on corporate governance, ethical labour practices, and transparency.
116. In the context of a high-value joint venture involving sensitive labour and compliance risks, the concealment of a material interest in a key subcontractor is neither trivial nor

excusable, it is a structural failure that undermines the entire edifice of mutual trust upon which such agreements are built.

117. Under the UNIDROIT Principles of International Commercial Contracts (2016) which serve as the governing law pursuant to Clause 12 of the JVA, transparency and good faith are not aspirational values but binding standards. Article 1.7 imposes on both parties a duty to act in good faith and engage in fair dealing throughout the contractual lifecycle, while Article 1.8 affirms the prohibition against acting inconsistently with expectations one party has induced in the other. By failing to disclose that BWS was owned by the uncle of President Ho's son-in-law RMG fundamentally breached these obligations. The result was a breakdown in procedural integrity, as CDI was deprived of the ability to evaluate the neutrality, credibility, and competence of a proposed operational partner.
118. The *Tecmed* tribunal notably held that transparency and the duty to provide information necessary to form legitimate expectations are central to fair and equitable treatment. In that case, a failure to disclose a policy change that materially affected the investor's decision-making invalidated state conduct. Similarly, in *Azurix*, the tribunal underscored the importance of clear, open communication, especially where regulatory or reputational risk is at stake. Applying these precedents, RMG's conduct in concealing material interests from CDI not only tainted the recruitment process but arguably constituted an act of bad faith tantamount to fraud in contract execution.
119. In sum, RMG's non-disclosure of its relationship with BWS represents a breach that is legal, moral, and structural in nature. It disrupted CDI's ability to manage risk, exercise due diligence, and uphold its own contractual obligations to ethical labour sourcing. This breach led directly to the labour violations that occurred, the regulatory sanctions imposed, and the reputational and commercial harm suffered by CDI. On that basis, RMG must bear full liability for the consequences that flowed from its failure to be forthright, and CDI's claims for relief are both legally grounded and morally justified.

***ii. Respondent's Vicarious Liability for BWS's Actions***

120. Under Clause 4.2(e), RMG is responsible for ensuring that third-party service providers operate within the bounds of applicable laws. Despite known risks associated with labour

recruiters, RMG failed to monitor or audit BWS, effectively endorsing its unlawful activities.

121. The UNIDROIT Principles, particularly Article 6.1.1, maintain that delegation does not absolve a party of its performance obligations. International tribunals such as in *Wena Hotels v. Egypt* have upheld the liability of principals for acts of affiliated or delegated parties when supervision is absent or negligent.
122. The intended purpose of the JVA to establish an ethically and legally compliant joint operation was frustrated by RMG's negligent delegation. This violates Article 5.1.4 UNIDROIT, which mandates performance in a manner consistent with the contract's purpose.
123. Publicly available records of BWS's prior non-compliance, coupled with RMG's inaction, demonstrate a pattern of willful disregard. This establishes not only contractual breach but also a failure to meet the minimum threshold of diligence required in joint undertakings involving human capital.

### ***iii. Claimant's Termination of the JVA is Lawful***

124. Clause 8.1 of the JVA provides the Claimant with a right to terminate upon the occurrence of a fundamental breach. Article 7.3.1 of the UNIDROIT Principles echoes this entitlement where one party's failure to perform deprives the other of what it is entitled to expect under the contract. CDI's decision to terminate followed credible government findings, regulatory sanctions, and failed dialogue with RMG. CDI attempted resolution through correspondence and meetings, but RMG declined to address or admit responsibility for the breaches. International tribunals, including *BG Group*, have affirmed that performance which becomes untenable due to systemic breach justifies termination. CDI's decision was not precipitous but arose after sustained losses, reputational harm, and failed negotiations.
125. The termination was a reasonable and proportionate response to the fundamental collapse of the joint venture's compliance framework. The cumulative effect of the breaches rendered performance not only impractical but contrary to CDI's legal and ethical obligations.

*iv. CDI's Entitlement to Retain ASI's Assets Under Clause 8.4(b)*

126. Furthermore, Clause 8.4(b) JVA permits the non-breaching party to retain the joint venture's assets. CDI's decision to retain and assume the JV's operations is legally justified and proportionate.
127. Under UNIDROIT Article 7.4.1, an aggrieved party is entitled to full compensation. In *BG Group v. Argentina*, asset retention was upheld when contract breach rendered the project non-viable. The bad faith argument raised by RMG that termination was opportunistic due to upcoming elections lacks merit. The timing was dictated by the closure of investigations by the Ministry of Labour and the formal finding of non-compliance. Under *Redfern & Hunter*, opportunism must be proven with direct causal nexus. No evidence has been provided that CDI's motives were political or reputational in nature. The termination was objectively tied to RMG's misconduct. Additionally, in accordance with general principles of international commercial law and comparative arbitral jurisprudence, the obligation to perform in good faith is not merely an aspirational norm, but a binding legal standard. The jurisprudence of ICSID and UNCITRAL tribunals reflects the growing importance of ethical transparency, compliance-based conduct, and cooperative engagement in multi-jurisdictional joint ventures.
128. Retention is not punitive but curative. In *Himpurna*, asset control was granted to protect remaining value and preserve operational continuity. Similar logic applies here, where CDI's retention minimizes further loss. Financial projections confirm that asset retention mitigates risk, preserves value, and enables CDI to rehabilitate ASI's operations in accordance with legal and ethical standards. This aligns with the UNIDROIT framework and the ILC's doctrine of full reparation.
129. The remedy is proportionate to the scope of breach and consistent with the parties' risk allocation under the JVA. CDI's conduct remains within the bounds of reasonableness and legal entitlement under both domestic and international commercial law.

## PRAYER FOR RELIEF

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In light of the above submissions, Respondent respectfully requests this Tribunal to find that:

1. The Tribunal has jurisdiction over the present dispute;
2. Alternatively, Claimant's initiation of arbitration is valid and admissible; and
3. On further alternative, Respondent has fundamentally breached its obligations under Clauses 4.2(f), 4.2(e), and 6.2 of the JVA.;

Alternatively, in the event that this Tribunal opines that it does have the requisite jurisdiction over the present dispute, the Respondent urges this Tribunal to recognize that:

1. Respondent materially contributed to the regulatory violations through its failure of oversight, non-disclosure of conflicts of interest, and reckless recommendation of BWS; and
2. Claimant's termination of the JVA was valid and lawful.

The Respondent urges this Tribunal to conclude that the Claimant has caused severe environmental damage for the Claimant, and therefore to order that:

1. Respondent compensate Claimant for all losses amounting to USD 742.5 million, including the USD 500 million regulatory fine, lost revenues, contractual penalties, and reputational harm; and
2. Respondent bear all costs of these proceedings, including the Tribunal's fees and expenses and Claimant's legal and related costs.

Respectfully submitted on August 18th

By:

Team V2511

On Behalf the Claimant

Calyx Dreambot Inc