Efficient Resolution of International Construction Disputes – The Role of the Swiss Chambers’ Arbitration Institution

Istanbul Bilgi University – International Construction Contracts and Dispute Resolution

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Key features of the Swiss Rules of International Arbitration (1)

- Globally **recognised**
- **Flexible**: much room for the parties’ choice of:
  - Applicable law
  - Language
  - Number of arbitrators
  - **Seat** of the arbitration
  - Counsel
Key features of the Swiss Rules of International Arbitration (2)

- Light but **efficient administration**
- Fast decisions
- Appointment of arbitrators
- No Terms of Reference
- Light scrutiny of the award / Control on fees and costs of arbitrators
- No administrative costs if dispute ≤ CHF2M (EUR1.8 M)
Key features of the Swiss Rules of International Arbitration (3)

- **Fast** procedure generally (av. 14 months)
- **Expedited procedure**: Art. 42
  - Award within 6 months - enforced
  - Chosen by the parties / automatic dispute ≤ CHF1M (EUR 0.8M)
  - Sole arbitrator, single exchange of briefs, single hearing
  - Opting out
Key features of the Swiss Rules of International Arbitration (4)

- **Emergency interim relief** available prior to the constitution of the Tribunal
  - *E.g.* order to vacate or allow access to site, prevent call of a guarantee
  - Decision within 15 days
  - Possibility of ex parte preliminary order
  - Requirement to commence arbitration within 10 days
  - Advantages: speed, neutrality, confidentiality
Complementary Rules of Commercial Mediation of the Swiss Chambers

- Chambers may be seized even absent a mediation agreement
- Appointment of a mediator
  - By the parties
  - If no agreement, by the Chambers: at least three names shortlisted, or directly appointed
- Med-arb
- Arb-med
- Arbitrator as settlement facilitator
Swiss Rules of International Arbitration in practice

- *Prima facie* ruling on jurisdiction
- Consolidation of cases
- Arbitral appointments
  - in multi-party arbitrations
  - When parallel arbitrations
Basic factual scenario

Qatari Employer

Main Contract
Swiss law, 60 days to mediate
Swiss Rules arbitration (Geneva seat, 3 arbitrators)

Turkish Contractor

Subcontract
(same clause)

Korean Subcontractor

Contractor’s Affiliate

Performance Guarantee / direct Involvement
Factual scenario – *Prima facie* review of jurisdiction

- Employer discovers defective works (welds) and raises issue with contractor, but neither party makes any attempt to initiate a mediation.

- Three months later, Employer initiates arbitration against Contractor and its Affiliate.

- In Answer, Contractor **objects to jurisdiction** as there was no attempt at mediation.

- Affiliate **does not submit an Answer** (or objects to jurisdiction on the basis that it did not sign the Main Contract)
Factual scenario – Consolidation

- Shortly after Employer initiates arbitration, Contractor initiates *separate arbitration* against Subcontractor under the Swiss Rules regarding the same weld defects.

- Contractor then requests that the cases be *consolidated* pursuant to Art. 4(1) Swiss Rules.

- Employer and Subcontractor object to consolidation.
Factual scenario – Arbitral appointments: multi-party arbitration

- Employer has initiated arbitration against both the Contractor and its Affiliate as co-Respondents
- However, the Contractor and its Affiliate cannot agree on one co-arbitrator
Factual scenario – Arbitral appointments: Parallel arbitration

- Employer initiates a **separate arbitration** against Contractor under a separate but almost identical contract dealing with a different phase of the same project, advancing claims in respect of similarly defective welds.

- Parties designate same co-arbitrators as in initial arbitration, but cannot agree on a presiding arbitrator.
THANK YOU

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