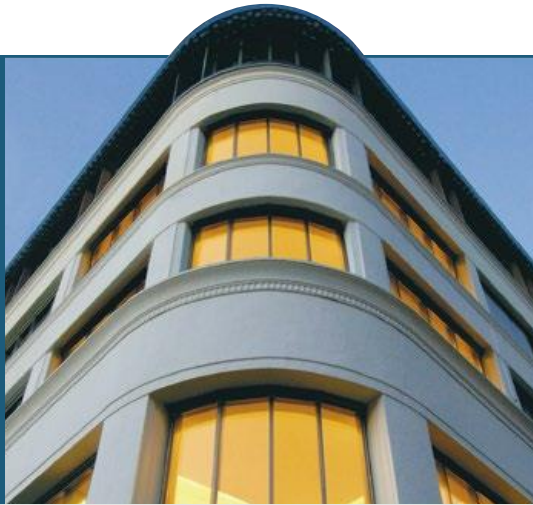


LALIVE



## 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  $\leq$  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  $\leq$  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

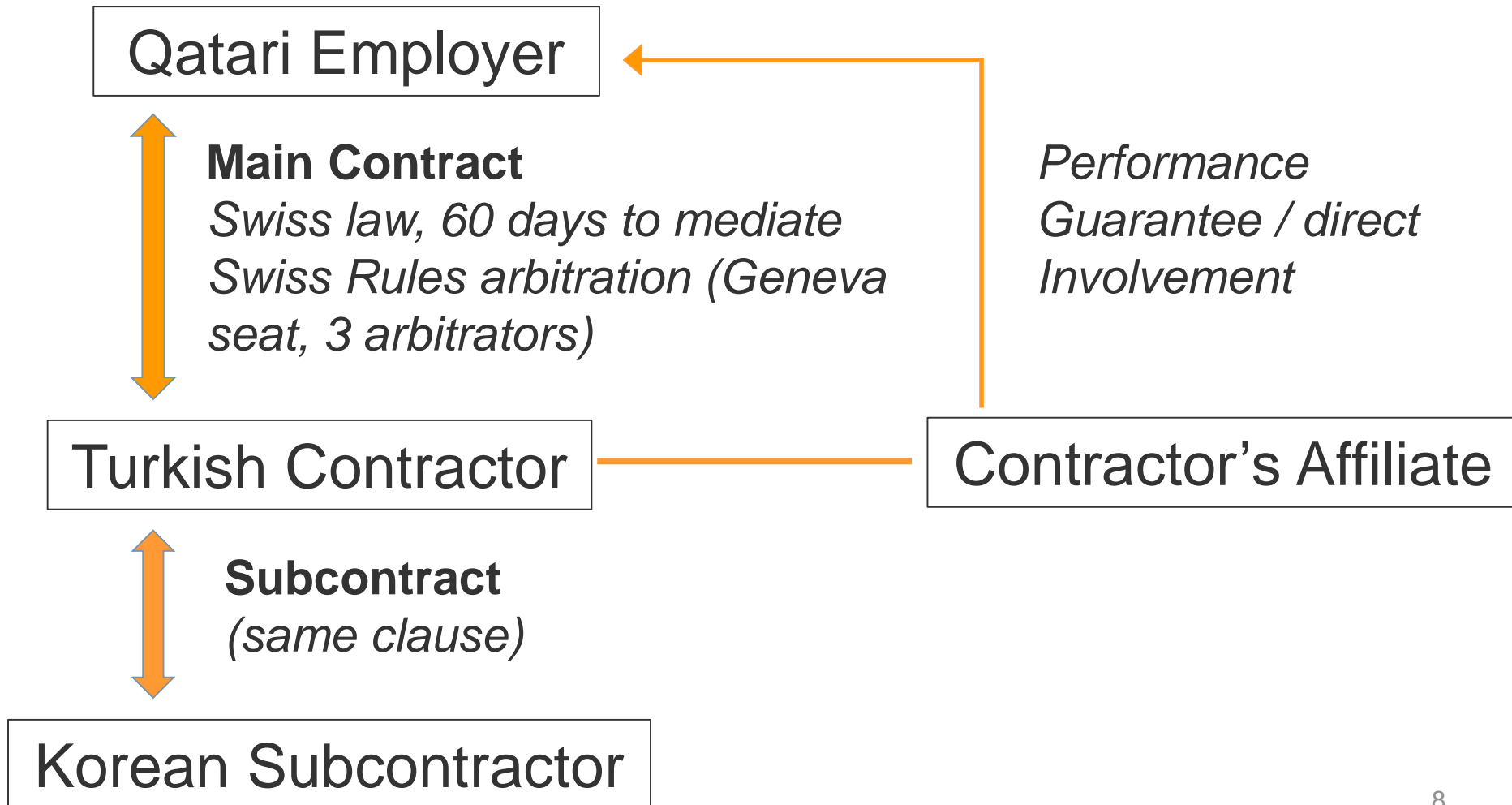
# Complementary Rules of Commercial Mediation of the Swiss Chambers

- 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





## 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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