**Arbitration Cost Assessment (Decision Tree in Standardized Format)**

| **Step** | **Question** | **Code** | **Answer** | **Sub-Code** | **Action** |
| --- | --- | --- | --- | --- | --- |
| 1 | Has an arbitration process been initiated? | C1 | Yes | C1.1 | Proceed to Step 2. |
|  |  |  | No | C1.2 | **Outcome:** No arbitration; no cost calculation. |
| 2 | Is the arbitration institutional or ad-hoc? | C2 | Institutional | C2.1 | Proceed to Step 3. |
|  |  |  | Ad-hoc | C2.2 | Proceed to Step 6. |
| 3 | Does the institution have a fee schedule based on the claimed amount? | C3 | Yes | C3.1 | Proceed to Step 4. |
|  |  |  | No | C3.2 | **Outcome:** Review the institution’s rules for cost estimation. |
| 4 | What is the claimed amount? | C4 | Fixed amount | C4.1 | Use the fee schedule to calculate costs → Proceed to Step 5. |
|  |  |  | Variable amount | C4.2 | Estimate fees → Proceed to Step 5. |
| 5 | Are there additional costs (e.g., legal fees, experts, travel)? | C5 | Yes | C5.1 | Calculate and add costs → Proceed to Step 9. |
|  |  |  | No | C5.2 | Proceed to Step 9. |
| 6 | Are arbitrator and admin fees agreed for ad-hoc arbitration? | C6 | Yes | C6.1 | Calculate fees based on agreed rates → Proceed to Step 7. |
|  |  |  | No | C6.2 | Estimate fees based on market rates → Proceed to Step 7. |
| 7 | Are there legal fees and other professional costs? | C7 | Yes | C7.1 | Calculate and add these costs → Proceed to Step 8. |
|  |  |  | No | C7.2 | Proceed to Step 8. |
| 8 | Are there potential costs for appeals, challenges, or enforcement? | C8 | Yes | C8.1 | Estimate these costs → Proceed to Step 9. |
|  |  |  | No | C8.2 | Proceed to Step 9. |
| 9 | Calculate the total arbitration cost by summing all costs. | C9 | — | C9.1 | Proceed to Step 10. |
| 10 | Is the total cost < 10% of the claimed amount? | C10 | Yes | C10.1 | **Outcome:** Pursue arbitration; costs are reasonable. |
|  |  |  | No | C10.2 | Proceed to Step 11. |
| 11 | Is the total cost between 10–50% of the claimed amount? | C11 | Yes | C11.1 | Proceed to Step 12. |
|  |  |  | No | C11.2 | Proceed to Step 13. |
| 12 | Is there a high likelihood of winning? | C12 | Yes | C12.1 | **Outcome:** Consider arbitration (recovery likely). |
|  |  |  | No | C12.2 | **Outcome:** Consider negotiation/ADR. |
| 13 | Is the total cost > 50% of the claimed amount? | C13 | Yes | C13.1 | Proceed to Step 14. |
|  |  |  | No | C13.2 | — |
| 14 | Are there non-monetary factors (confidentiality, precedent)? | C14 | Yes | C14.1 | **Outcome:** Consider arbitration if justified. |
|  |  |  | No | C14.2 | **Outcome:** Arbitration not cost-effective; explore alternative |

**Notes and Explanations**

1. **Step 1 (C1 – Initiation of Arbitration):**

Arbitration costs are only relevant if arbitration proceedings are formally initiated. If the answer is "No," no financial assessment is needed.

1. **Step 2 (C2 – Institutional vs. Ad-hoc Arbitration):**
   * *Institutional arbitration* typically follows a fixed fee schedule provided by the administering body (e.g., ICC, LCIA, CRCICA).
   * *Ad-hoc arbitration* requires parties to negotiate arbitrator fees and administrative expenses, often guided by market practice or models like UNCITRAL Rules.
2. **Step 3 (C3 – Fee Schedule Availability):**

Some institutions (e.g., ICC, DIAC) publish fee scales linked to the claim amount, while others may apply administrative discretion.

1. **Step 4 (C4 – Claimed Amount):**

The value in dispute directly influences cost calculation. Higher claim amounts usually increase arbitrator fees, registration fees, and administrative costs.

1. **Step 5 (C5 – Additional Costs):**

Non-institutional costs such as legal representation, expert witnesses, translators, and travel should be factored in, as they can sometimes exceed tribunal fees.

1. **Step 6 (C6 – Ad-hoc Arbitration Fee Agreements):**

If arbitrator fees are predetermined, they provide certainty. Otherwise, benchmarking against market standards or similar cases is necessary.

1. **Step 7 (C7 – Legal and Professional Fees):**

Legal counsel often constitutes the largest portion of arbitration costs, especially in complex construction disputes.

1. **Step 8 (C8 – Appeal and Enforcement Costs):**

While arbitral awards are generally final, parties may still incur expenses for setting-aside proceedings, recognition, or enforcement in different jurisdictions.

1. **Step 9 (C9 – Cost Summation):**

The total cost should include:

* + Tribunal fees (arbitrators, institution)
  + Party costs (lawyers, experts, evidence preparation)
  + Ancillary costs (travel, translations, venue)
  + Potential post-award costs (enforcement, challenges)

1. **Steps 10–13 (C10–C13 – Cost-to-Claim Ratio):**

A benchmark approach is used:

* + **<10% of claim** → Costs considered reasonable.
  + **10–50% of claim** → Decision depends on likelihood of success.
  + **>50% of claim** → Arbitration often uneconomical unless strategic or non-monetary benefits justify proceeding.

1. **Step 12 (C12 – Likelihood of Success):**

The strength of the case and supporting evidence should guide whether arbitration remains worthwhile despite costs.

1. **Step 14 (C14 – Non-Monetary Considerations):**

Even when costs appear excessive, factors such as maintaining confidentiality, preserving commercial reputation, or establishing a legal precedent may justify arbitration.

**Example Flow:**

1. **Dispute Value**: $500,000
   * **Institution**: ICC (fixed fee structure)
   * **Arbitrators**: Sole arbitrator
   * **Legal Representation**: Yes
   * **Administrative Fees**: 3% of dispute value
   * **Additional Expenses**: $10,000 for travel and experts
2. **Calculate Costs**:
   * **Institution Fee**: $500,000 \* 3% = $15,000
   * **Arbitrator Fee**: $200/hour \* 50 hours = $10,000 (estimated 50 hours of hearings)
   * **Legal Fees**: $300/hour \* 100 hours = $30,000 (estimated time for legal representation)
   * **Additional Expenses**: $10,000
   * **Total Estimated Arbitration Cost**: $15,000 (institution) + $10,000 (arbitrator) + $30,000 (legal) + $10,000 (additional) = $65,000

Here’s the rule-based decision tree for calculating the cost of an arbitration process in table format:

| **Step** | **Question/Rule** | **Options** | **Cost Calculation** |
| --- | --- | --- | --- |
| **1. Dispute Value** | What is the estimated value of the construction dispute? | - Low (<$100,000)  - Medium ($100,000 - $1M)  - High (> $1M) | Impact on the fee structure, higher value = higher costs |
| **2. Arbitration Institution** | Which arbitration institution is chosen? | - ICC (fixed fee structure)  - Local Institution (percentage fee or hourly)  - Ad hoc (negotiated) | Institution’s fee is based on the dispute value or agreed rate |
| **3. Arbitrator Type** | How many arbitrators will be involved? | - Sole Arbitrator  - Panel of Arbitrators | Sole = lower cost, Panel = higher cost |
| **4. Arbitrator Fees** | What is the hourly/daily rate of the arbitrator? | - Sole Arbitrator: $X/hour  - Panel Arbitrators: $Y/hour | Sole Arbitrator: $X \* hours, Panel: $Y \* hours |
| **5. Legal Representation** | Do the parties have legal representation? | - Yes  - No | Legal fees are based on hourly rates or fixed fees |
| **6. Administrative Fees** | What is the administrative fee structure of the institution? | - Fixed fee based on dispute value (e.g., $5,000 for small disputes, $20,000 for large)  - Percentage fee (1-5%) | Fixed fee or a Percentage of the dispute value |
| **7. Additional Expenses** | Are there any additional expenses (e.g., travel, expert fees)? | - Yes  - No | Add costs for travel, documentation, translation, and experts |

**Example Calculation:**

| **Step** | **Details** | **Cost Calculation** |
| --- | --- | --- |
| **1. Dispute Value** | $500,000 | Impacts total cost |
| **2. Arbitration Institution** | ICC (Fixed fee structure) | Administrative Fee = 3% of $500,000 = $15,000 |
| **3. Arbitrator Type** | Sole Arbitrator | Arbitrator Fee = $200/hour \* 50 hours = $10,000 |
| **4. Arbitrator Fees** | $200/hour | 50 hours estimated |
| **5. Legal Representation** | Yes (Legal representation is hired) | Legal Fees = $300/hour \* 100 hours = $30,000 |
| **6. Administrative Fees** | Fixed Fee = 3% of dispute value | $15,000 (3% of $500,000) |
| **7. Additional Expenses** | Travel, experts, documentation | $10,000 for travel & expert witness fees |

**Total Estimated Arbitration Cost:**

**$15,000 (Administrative Fee) + $10,000 (Arbitrator Fees) + $30,000 (Legal Fees) + $10,000 (Additional Expenses)** = **$65,000**