**Rule-Based Decision Tree: Competence-Competence in Arbitration of Construction Disputes**

**Decision Tree Table**

| **Step** | **Decision Point** | **Code** | **Possible Answers** | **Sub-Code** | **Action / Next Step** |
| --- | --- | --- | --- | --- | --- |
| 1 | Is there an arbitration agreement between the parties? | C1 | No | C1.1 | The dispute is not subject to arbitration → refer to litigation. |
|  |  |  | Yes | C1.2 | Proceed to Step 2. |
| 2 | Does the agreement contain a valid arbitration clause? | C2 | No | C2.1 | No arbitrable basis under the contract → refer to litigation. |
|  |  |  | Yes | C2.2 | Proceed to Step 3. |
| 3 | Does the dispute fall within the scope of the arbitration clause? | C3 | No | C3.1 | Tribunal has no jurisdiction → refer to litigation. |
|  |  |  | Yes | C3.2 | Proceed to Step 4. |
| 4 | Does the arbitral tribunal have jurisdiction on its face? | C4 | No | C4.1 | Tribunal cannot rule → refer to court for determination. |
|  |  |  | Yes | C4.2 | Proceed to Step 5. |
| 5 | Has a challenge to jurisdiction been raised (competence-competence)? | C5 | No | C5.1 | Tribunal assumes jurisdiction → proceed with arbitration. |
|  |  |  | Yes | C5.2 | Proceed to Step 6. |
| 6 | Is the challenge based on alleged invalidity of the arbitration agreement? | C6 | Yes | C6.1 | Tribunal applies competence-competence to rule on validity. |
|  |  |  | No (challenge is procedural, e.g., improper appointment) | C6.2 | Tribunal rules on procedure → proceed with arbitration if no fatal defect. |
| 7 | If based on validity: Does the arbitration agreement appear valid? | C7 | No | C7.1 | Tribunal cannot proceed → refer to court for final determination. |
|  |  |  | Yes | C7.2 | Tribunal confirms jurisdiction → proceed with arbitration. |
| 8 | Tribunal’s decision on jurisdiction | C8 | Confirms jurisdiction | C8.1 | Arbitration proceeds under tribunal authority. |
|  |  |  | Declines jurisdiction | C8.2 | Dispute referred to court for resolution. |

**Explanatory Notes**

**Step 1–3 (Existence, Clause, Scope):**

* These steps establish the foundation of arbitrability: there must be an arbitration agreement, a valid clause, and the dispute must fall within its scope.
* Construction contracts often include **multi-tier dispute resolution**; confirming scope avoids jurisdictional confusion.

**Step 4–5 (Tribunal Jurisdiction & Challenge):**

* Even if jurisdiction appears valid, parties may contest it.
* The competence-competence doctrine allows the tribunal to examine such challenges rather than deferring immediately to courts.

**Step 6–7 (Grounds for Challenge):**

* **Validity-based challenges**: Tribunal must assess whether the arbitration agreement is prima facie valid.
* **Procedural challenges**: Generally within the tribunal’s authority to resolve (e.g., arbitrator appointment, timelines).
* If validity is lacking, courts become the final arbiter.

**Step 8 (Final Determination):**

* If jurisdiction is confirmed → arbitration proceeds.
* If rejected → litigation or judicial resolution ensues.

**Important Considerations**

1. **Validity of Arbitration Clause**
   * Must comply with national law and international standards (e.g., New York Convention, UNCITRAL Model Law).
2. **Autonomy of Arbitral Tribunal**
   * Competence-competence gives tribunals the **first say** on jurisdiction, speeding up resolution but subject to later court review.
3. **Choice of Law**
   * The applicable law and institutional rules influence how competence-competence is applied.
4. **Construction-Specific Complexity**
   * Multiple parties, subcontractors, and cross-border elements complicate jurisdiction → the clause must be clear and comprehensive.