UNIVERSITY *of* LUSAKA

Passion for Quality Education: Our Driving Force

SCHOOL OF LAW

AN ANALYSIS OF ZAMBIA'S ARBITRATION ACT NO. 19 OF 2000 AS IT APPLIES TO SMALL AND MEDIUM ENTERPRISES (SMES) IN COMPARISON TO OTHER JURISDICTIONS SUCH AS SOUTH AFRICA AND BOTSWANA

By:

CHIYENI KANSWATA

LLB22114543

AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE.

2025

DECLARATION

I hereby declare that this dissertation is my own original work and that all sources have been acknowledged. It has not been submitted for a degree or any other academic award at this or any other institution.

Name: Chiyeni Kanswata

Signature: 

SUPERVISORS RECOMMENDATION

I KETIWE ZIMBA, do recommend that this dissertation prepared under my supervision by **CHIYENI KANSWATA**, entitled **AN ANALYSIS OF ZAMBIA'S ARBITRATION ACT NO. 19 OF 2000 AS IT APPLIES TO SMALL AND MEDIUM ENTERPRISES (SMES) IN COMPARISON TO OTHER JURISDICTIONS SUCH AS SOUTH AFRICA AND BOTSWANA**. I have checked it carefully and I am satisfied that it meets necessary requirements pertaining to the format laid down in the regulations governing directed research.

……………………………………..

MRS KETIWE ZIMBA

(Supervisor)

……………………………………

(Date)

DEDICATION

I firstly dedicate this research work to my wife Mercy Chapola Kanswata, my children Kahandi, Tasila and Chiyeng'i

ACKNOWLEDGEMENTS

Firstly, I would like to acknowledge the efforts of Mrs. Joy Khetiwe Zimba who is my supervisor for this dissertation and for her timely feedback and responses

I would also like to thank my lecturer for Alternative Dispute Resolution Mrs. Theresa Katongo Lumbama whose clear and concise lectures made it an easier decision for me to select this topic for research.

I also acknowledge my fellow students for the class of December 2025 Bachelor of laws for the camaraderie and the push of each other until this final stretch of our journey at UNILUS

To the UNILUS staff too numerous to mention but with special mention of the security personnel whom I found very courteous and helpful whenever I called upon them.

Table of Contents

ABSTRACT

Small and Medium Enterprises (SMEs) constitute over 90% of Zambia's businesses and play a central role in economic development, employment, and innovation. Despite this significance, SMEs continue to face barriers in accessing efficient dispute resolution due to the high costs, procedural delays, and technical complexity of litigation. The Arbitration Act No. 19 of 2000 was enacted to provide a modern, cost-effective alternative aligned with the UNCITRAL Model Law on International Commercial Arbitration. However, more than two decades since its enactment, questions remain about its accessibility and practical efficacy for SMEs.

This study critically analyses the effectiveness of Zambia's Arbitration Act No. 19 of 2000 in addressing the dispute resolution needs of SMEs. It employs a qualitative doctrinal and comparative research design, examining statutory provisions, case law, and scholarly commentary, while drawing lessons from South Africa's Arbitration Act 42 of 1965 and Botswana's Arbitration Act (Cap 06:01). The research identifies major challenges faced by SMEs under Zambia's current arbitration framework, including high arbitral costs, limited legal awareness, procedural rigidity, urban concentration of arbitral institutions, and enforcement difficulties.

Comparative insights reveal that while South Africa benefits from strong judicial support and institutional credibility, its domestic arbitration law remains outdated and inaccessible to smaller enterprises. Botswana, on the other hand, demonstrates how institutional reform and simplified procedures can enhance accessibility, although regional and cost-related disparities persist. Drawing from these experiences, the study recommends targeted reforms to Zambia's arbitration frameworksuch as simplified SME-specific procedures, capped arbitration fees, decentralized arbitral services, and nationwide awareness program to make arbitration genuinely affordable and inclusive.

Ultimately, this research contributes to the discourse on access to justice and economic development by proposing a reform-oriented model that strengthens Zambia’s arbitration system and supports SME participation in commercial dispute resolution

CHAPTER ONE

INTRODUCTION

1.1 INTRODUCTION

Small and Medium Enterprises (SMEs) are the backbone of Zambia's economy, providing over 80% of employment and contributing approximately 40% to the GDP (World Bank, 2023). However, SMEs face significant challenges in resolving commercial disputes, primarily due to costly and lengthy litigation processes.

Arbitration is one avenue that is expected to provide efficient and cost-effective methods for resolving commercial disputes, which is especially important for Small and Medium Enterprises. This research aims to conduct a comparative legal analysis of Zambia's Arbitration Act, No. 19 of 2000, focusing on its suitability and application for SMEs.

The study will examine the Zambian Arbitration Act and compare its provisions with those of the arbitration laws in South Africa (Arbitration Act 42 of 1965) and Botswana (Arbitration Act, Chapter 06:01). The objective of this comparison is to identify the strengths and weaknesses of Zambian legislation regarding accessibility and effectiveness for SMEs. Additionally, the research will draw insights from the legal frameworks of South Africa and Botswana.

By identifying potential improvements to the Zambian arbitration law, this research aims to contribute to a more enabling legal environment for SME growth and development.

1.2 BACKGROUND

SMEs play a major role in Zambia's economy but face serious difficulties resolving disputes through the costly and slow court system. The Arbitration Act No. 19 of 2000 was introduced as a more efficient and accessible alternative, aligned with international standards. However, more than twenty years later, questions persist about whether the Act truly meets the practical needs of

SMEs.In particular,SMEs often face challenges such as high arbitration costs, limited legal awareness, and procedural complexities, all of which can limit their ability to access arbitration as a viable dispute resolution mechanism. Additionally, many arbitration institutions and services are concentrated in urban areas, making them less accessible to SMEs in rural or per-urban regions.

Given these challenges, and in view of comparative developments in jurisdictions such as South Africa and Botswana which have implemented reforms to simplify arbitration procedures and reduce barriers for SMEs it is necessary to examine whether Zambia's current legal framework for arbitration is adequately responsive to the realities faced by SMEs**.**

1.3 STATEMENT OF THE PROBLEM

Small and Medium Enterprises (SMEs) account for over 90% of businesses in Zambia and play a critical role in economic development. Despite this, SMEs often encounter significant challenges in resolving commercial disputes, primarily due to the high costs, complexity, and procedural rigidity associated with litigation[1].

To address these issues, Zambia enacted the Arbitration Act No. 19 of 2000, aimed at promoting faster, more efficient, and cost-effective dispute resolution. Although the Act draws from international best practices, including the UNCITRAL Model Law, its practical effectiveness for SMEs remains unclear. Many SMEs lack the financial resources, legal expertise, and institutional support needed to engage effectively in arbitration proceedings. Barriers such as high arbitration fees, limited awareness, and difficulties in enforcing arbitral awards further undermine their access to justice[2].

Moreover, unlike large corporations, SMEs often cannot negotiate favorable arbitration clauses or afford experienced legal representation[3]. Comparative jurisdictions such as South Africa and Botswana have taken steps to simplify

[1]Zambia development Agency SME Policy Review 2021 https://www.zda.org.com accessed 5th Aprill 2025

[2]Mumba Malila ,Access to Justice in Zambia: Challenges and prospects (2010) Zambian Law journal

[3]FacksonShamenda ,The Practical challenges of Arbitration in Zambia (2016)

arbitration procedures and reduce associated costs, offering potentially valuable lessons for Zambia.[4]

This research therefore seeks to assess whether the current Zambian arbitration framework adequately accommodates the needs of SMEs and to identify reforms that could improve accessibility and effectiveness, using South Africa and Botswana as comparative benchmarks.

1.4RESEARCH OBJECTIVES

The primary objective of this study is to analyze Zambia's Arbitration Act No. 19 of 2000 in the context of its application to SMEs and to draw comparative insights from South Africa and Botswana.

1.4.1 SPECIFIC OBJECTIVES INCLUDE:

1. To evaluate the effectiveness of Zambia's Arbitration Act in addressing the needs of SMEs.

2. To identify the key challenges faced by SMEs in accessing arbitration under the current legal framework.

3. To examine the arbitration frameworks in South Africa and Botswana as they relate to SMEs and to recommend reforms to enhance the accessibility and efficiency of arbitration for SMEs in Zambia.

1.5 RESEARCH QUESTIONS

1. How effective is Zambia's Arbitration Act No. 19 of 2000 in addressing the needs of SMEs?

2. What are the key challenges that SMEs face in accessing arbitration under Zambia's current legal framework?

3. What lessons can Zambia learn from the arbitration frameworks in South Africa and Botswana to enhance SME access to arbitration?

[4] International Arbitration ACT 15 OF 2012 (SOUTH AFRICA)

1.6 SIGNIFICANCE OF THE STUDY

This study is important because it addresses the limited research on how arbitration functions for SMEs in Zambia, assessing whether it's supposed benefits are realized in practice. Secondly It also offers comparative insights from South Africa and Botswana, highlighting reforms and policy approaches that could guide improvements to Zambia's arbitration framework.[5] Thirdly, the findings of this study have potential policy implications for lawmakers, regulators, and arbitration institutions such as the Zambia Association ofArbitrators[6]. Recommendations from this research could inform amendments to the Arbitration Act, promote SME-friendly arbitral procedures, and ultimately enhance access to justice for small businesses.

1.7 SCOPE OF STUDY

This study examines how the Arbitration Act No. 19 of 2000 affects SMEs in Zambia, assessing whether it enables or restricts their access to arbitration and identifying related institutional and procedural barriers. It also includes a comparative analysis with South Africa and Botswana, limited to SME-related arbitration reforms. The study excludes other ADR mechanisms and large corporates, and covers the period from 2000 to 2025.

1.8 DEFINITION OF KEY TERMS

Arbitration; Arbitration is a private, legally binding dispute resolution process in which parties agree to submit their dispute to one or more neutral third parties (arbitrators), whose decisionreferred to as an arbitral awardis final and enforceable. It is an alternative to court litigation and is intended to be faster, more confidential, and cost-effective, particularly in commercial disputes.[7]

Small and Medium Enterprises (SMEs); The Zambia Development Agency defines SMEs as businesses with fewer than 100 employees and an annual turnover below ZMW 8 million. They are vital to the economy through job

---

[5]South African law Reform Commission ,Report on Domestic Arbitration (Project 94,200) https://www.justice.gov.za/salrc accessed 7th April 2025

[6]Zambia Association of Arbitrators, 'About Us' https://www.zaa.org.zm accessed 7thApril 2025.
[7]Arbitration Act No 19 of 2000 (Zambia)

creation, innovation, and income generation, but their limited resources often restrict access to legal remedies like arbitration.[8]

Arbitral Award;An arbitral award is the final decision rendered by an arbitral tribunal at the conclusion of arbitration proceedings. It determines the rights and obligations of the parties and is legally binding. Under the Arbitration Act No. 19 of 2000.[9]

Alternative Dispute Resolution (ADR); ADR refers to methods of resolving disputes outside of the formal court system. These include arbitration, mediation, and conciliation. ADR mechanisms aim to reduce delays, costs, and adversarial elements in dispute resolution. This study focuses specifically on arbitration as a form of ADR.

1.9 LITERATURE REVIEW

Variousscholars and legal institutions have analyzed arbitration laws in Zambia and comparable jurisdictions, providing a solid foundation for this study.

FacksonShamenda highlights the procedural and cost barriers SMEs face under Zambia's Arbitration Act No. 19 of 2000, particularly when attempting to enforce arbitral awards.[10] Similarly,**MumbaMalila** explores broader access to justice issues in Zambia, pointing to systemic inequalities that affect small businesses' ability to utilize legal mechanisms like arbitration.[11]**Charity Mwansa** argues that while the Act is in line with the UNCITRAL Model Law, its practical implementation lacks tailored procedures for SMEs, especially those without legal representation.[12] **Agnes Namushi** adds that arbitration institutions in Zambia are urban-centric, making them inaccessible for rural-based

[8]Zambia Development Agency (ZDA), 'SME Definitions and Classifications' (2021) https://www.zda.org.zm accessed 7 April 2025

[9]Redfern A and Hunter M, Law and Practice of International Commercial Arbitration (5th edn, Sweet & Maxwell 2009) 345.

[10]Fackson Shamenda, 'The Practical Challenges of Arbitration in Zambia' (2016) 7(3) UNZA Law Review 22.

[11]Mumba Malila, 'Access to Justice in Zambia: Challenges and Prospects' (2010) 2(1) Zambian Law Journal 44

[12]Charity Mwansa, Principles of Arbitration in Zambia (3rd edn, UNZA Press 2018) 102

SMEs.[13]Further,**ChristopherSimuchoba** contends that arbitration in Zambia is still perceived as elitist and formalistic, a perception that deters many SMEs from considering it a viable dispute resolution method.[14]

In South Africa, **G Glover** has extensively examined the International Arbitration Act 15 of 2017, arguing that while it enhances alignment with global standards, according to Glover, the current arbitration environment remains more accessible to large corporations and international investors, leaving domestic SMEs under-served re remains a need for simplified domestic arbitration procedures to assist SMEs.[15]**Bam and Taku** highlight the South African Small Claims Court model and suggest similar adaptations in arbitration could improve accessibility.[16] In Botswana, **Teboho Kgosiemang** stresses that simplified arbitral processes and affordable fee structures are essential for SME participation.[17]**Matlhaku** explores the role of institutional frameworks, such as the Botswana Institute of Arbitrators, in supporting business communitiesparticularly in providing model clauses and training for SME owners.[18]

Although arbitration in Zambia has been examined by various scholars, few studies specifically assess how the Arbitration Act No. 19 of 2000 works in practice for SMEs. Existing literature discusses general challenges but does not analyze the unique procedural, institutional, and financial barriers faced by SMEs, nor does it provide comparative insights or SME-focused reform proposals.Although studies from South Africa and Botswana analyze arbitration in their own domestic contexts, they do not address how their experiences could inform reform in Zambia. Zambian scholarship has also not undertaken meaningful cross-jurisdictional comparisons focused on SME access to

---

[13]Agnes Namushi, 'Arbitration in Zambia: A Regional Access Analysis' (2020) 8(2) Zambia Law Journal
[14]Christopher Simuchoba, Law of Arbitration in Zambia (2nd edn, UNZA Press 2017) 89.
[15]G Glover, The Law of Arbitration in South Africa: Regulation and Reform (LexisNexis 2018) 130.
[16]N Bam and J Taku, 'Re-thinking Arbitration for Small Businesses in South Africa' (2019) 25(1) South African Business Law Review.
[17]Teboho Kgosiemang, 'Commercial Arbitration and Access to Justice in Botswana' (2020) Botswana Law Review
[18]L Matlhaku, 'The Role of Arbitration Institutions in Botswana's Commercial Growth' (2021) 3(2) Journal of African Law and Governance.

arbitration. As a result, no existing study evaluates whether Zambia could adopt or adapt regional lessons to make its arbitration system more SME-inclusive.

1.10 METHODOLOGY

This section outlines the methodological framework adopted to achieve the objectives of the study. It details the research approach, design, type, population, sampling methods, and data collection techniques.

1.10.1RESEARCH APPROACH

This study will adopt a qualitative research approach, which is most suitable for doctrinal legal analysis and comparative legal research. It will allow for an in-depth understanding of statutory provisions, legal principles, and institutional practices relating to arbitration and SMEs.

1.10.2 RESEARCH DESIGN

The research will follow a comparative and doctrinal legal research design. Doctrinal research will involve critical analysis of legal texts, statutes, case law, and academic commentary on the Zambian Arbitration Act No. 19 of 2000. The comparative component will focus on arbitration laws and practices in South Africa and Botswana, with the aim of drawing lessons relevant to the Zambian context.

1.10.3RESEARCH TYPE

This will be applied legal research, aimed at identifying practical reforms to enhance the efficacy of Zambia’s arbitration framework for SMEs. It combines descriptive and analytical componentsdescribing the current legal framework and analyzing its suitability for SMEs.

1.10.4 STUDY POPULATION

The study focuses on key arbitration stakeholders in Zambia, including legal practitioners, arbitration institutions, SME owners or managers, and academics or policymakers. Each contributes a distinct perspective: practitioners on legal procedure, institutions on structural issues, SMEs on practical experiences, and academics/policymakers on policy and reform insights.

1.10.5 SAMPLING SIZE

Due to the qualitative nature of the research, purposive sampling will be employed. The sample will include approximately 10 legal practitioners with arbitration experience, 5 SME owners who have participated in arbitration,3 representatives from arbitration institutions, and 2 academics or policymakers familiar with arbitration policy.

1.10.6SAMPLING TECHNIQUES

This study subject will be sampled using purposive sampling technique, so as to make the study even more practical while still targeting people and work places that will help in delivering reliable results with regards to the study

1.10.7 DATA COLLECTION

This study will utilize primary data collection through qualitative interviews, of which will be physical or telephone. Secondary data which will be collected through legislation, text books, journal articles, research papers, published legal reports, various electronic sources, and academic papers.

1.10.7 DATA ANALYSIS

All the data which has been collected from primary and secondary, will be analyzed qualitatively of which will involve taking down interviews and assembling the data into themes and patterns using content analysis and thematic methods of analysis. The objective is to acquire a deep understanding and interpretation of the data relating to scarce resources in the ICT sector.

1.10.7 ETHICAL CONSIDERATIONS

To conform with the research, the researcher shall obtain permission from University of Lusaka, participants of this research, will be informed of the nature of the study and permission and consent will be obtained, lastly, all scholarly work and information will be properly credited.

CHAPTER TWO

EFFECTIVENESS OF ZAMBIA'S ARBITRATION ACT NO. 19 OF 2000 IN ADDRESSING THE NEEDS OF SMALL AND MEDIUM ENTERPRISES

2.1 INTRODUCTION

SMEs form the backbone of Zambia's economy, making up over 90% of registered businesses and driving employment, innovation, and GDP growth. Despite this, they face major challenges in resolving commercial disputes due to the high cost, delays, and complexity of court litigation. The Arbitration Act No. 19 of 2000 was introduced to provide a modern, UNCITRAL-aligned alternative offering confidentiality, flexibility, and enforceable awards. However, in practice, SMEs rarely benefit from these advantages, as high costs, limited awareness, and the concentration of arbitration services in urban centers continue to limit their access.

This chapter relies on doctrinal legal analysis, examining statutory provisions, case law, and scholarly commentary, as well as comparative legal research to draw lessons from neighboring jurisdictions. This approach allows for both a formal evaluation of the Act's provisions and a practical assessment of how they operate in the SME context.

2.2 THE EVOLUTION OF ARBITRATION IN ZAMBIA

Arbitration in Zambia emerged as part of wider justice reforms intended to relieve pressure on the courts and modernize dispute resolution. Litigation had been the primary method of resolving disputes but was slow, costly, and inaccessible for smaller businesses, prompting a shift toward arbitration as a more efficient alternative.

The enactment of the Arbitration Act No. 19 of 2000 marked a turning point in this evolution. Modelled on the UNCITRAL Model Law and supported by Zambia's ratification of the New York Convention, the Act sought to harmonize Zambia's arbitration regime with global best practices. By doing so, it aimed to provide both domestic and foreign investors with a predictable and efficient dispute resolution framework.[19]

While these reforms were designed to enhance commercial confidence, they also raised important questions about accessibility. SMEs, which form the backbone of Zambia's economy, often lack the financial and technical capacity to fully benefit from arbitration.[20] This tensionbetween the Act's progressive aspirations and SMEs' practical challengessets the stage for the analysis in this chapter.

2.2.1 EARLY LEGAL FRAMEWORK

Prior to the enactment of the Arbitration Act, arbitration in Zambia was governed by fragmented colonial-era laws, notably the Arbitration Ordinance.[21]

The pre-2000 arbitration provisions in Zambia were outdated and unclear, leading to minimal use of arbitration and forcing SMEs into slow and costly court processes that discouraged dispute resolution. The 2000 reforms aimed to modernize the system and align it with international standards, but adopting international models alone has not addressed the specific challenges SMEs continue to face.[22]

2.2.2 THEARBITRATION ACT NO. 19 OF 2000 REFORM AND ITS ASPIRATIONS

The Arbitration Act No. 19 of 2000 was introduced to overhaul the outdated framework and establish a modern legal basis for arbitration in Zambia. Its objectives included reducing court congestion, improving investor confidence, and ensuring that arbitral awards could be recognized and enforced both domestically and internationally.[23]

While these reforms aligned Zambia with global best practice, they were not explicitly designed with SMEs in mind. For instance, the Act does not contain provisions addressing cost control, simplified procedures for small-value

[19]Arbitration Act, No 19 of 2000
[20]Ministry of Commerce, Trade and Industry, SME Policy Framework (Government of Zambia 2008).
[21]Arbitration Ordinance, Cap 21 of the Laws of Northern Rhodesia (repealed).
[22]UNCITRAL, Model Law on International Commercial Arbitration (1985, amended 2006).
[23]New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

disputes, or mechanisms to enhance SME participation.[24] As such, the reform illustrates the gap between Zambia's aspiration to modernize arbitration and the practical reality faced by SMEs.

2.2.3 ECONOMIC EFFICIENCY THEORY IN DISPUTE RESOLUTION

Economic analysis of law provides another relevant evaluative lens. Rooted in the work of scholars such as Coase and Posner, this approach assesses dispute resolution mechanisms in terms of their ability to minimize transaction costs, allocate resources efficiently, and preserve economic relationships.[25]Arbitration is often viewed as faster and less cumbersome than litigation, which helps businesses avoid prolonged disputes and economic disruption. For SMEs with limited resources, the true cost of a dispute includes not only legal fees but also lost opportunities and reputational harm. Therefore, an effective arbitration system for SMEs must deliver both procedural and economic efficiency to protect their viability.

2.2.4 THE UNCITRAL MODEL LAW AS AN INTERNATIONAL BENCHMARK

The UNCITRAL Model Law is the international standard for arbitration legislation and promotes party autonomy, limited court intervention, equality, and procedural flexibility. Zambia's Arbitration Act closely mirrors this model, adopting many provisions word-for-word, including rules on the appointment of arbitrators and the tribunal's power to rule on its own jurisdiction.[26]

Although Zambia's arbitration law aligns with the UNCITRAL Model Law, that framework is geared toward international commercial arbitration, not small domestic disputes involving SMEs with limited resources. Other countries, like Botswana, have modified the Model Law to better suit local conditions by introducing simplified procedures for smaller claims. This raises the key question for Zambia: whether similar adaptations are needed for its Arbitration Act to be genuinely effective for SMEs.

[24]M Chirwa, 'The Challenges of Arbitration in Zambia' (2015) 3 Zambia Law Journal 45.
[25]Richard Posner, Economic Analysis of Law (9th edn, Wolters Kluwer 2014) 583–585.
[26]UNCITRAL, Model Law on International Commercial Arbitration 1985 (as amended in 2006)

2.2.5 SYNTHESIS OF THEORETICAL FRAMEWORK

Taken together, these perspectives legal effectiveness, access to justice, economic efficiency, and alignment with the UNCITRAL Model Law provide a multi-dimensional framework for evaluating the Arbitration Act's performance. This analysis must consider both the formal quality of the legislation and its practical accessibility, with particular attention to the financial, procedural, and institutional factors that shape SME engagement with arbitration.

2.3 OVERVIEW OF ZAMBIA'S ARBITRATION ACT NO. 19 OF 2000

2.3.1 LEGISLATIVE HISTORY AND PURPOSE

The Arbitration Act No. 19 of 2000 was enacted to replace the Arbitration Act, Cap. 40 of the Laws of Zambia, a colonial-era statute heavily based on the English Arbitration Act 1889. The earlier regime was widely criticized for being outdated, overly reliant on court supervision, and lacking flexibility.[27] The 2000 Act marked a decisive modernization, drawing extensively from the UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006).

The long title of the Act describes its purpose as:

> "An Act to provide for arbitration in accordance with the UNCITRAL Model Law; to provide for the recognition and enforcement of arbitral awards; and to provide for matters connected with or incidental to the foregoing.[28]"

By embedding the UNCITRAL Model Law principles, the Act sought to achieve three main objectives:

I) Promote efficiency and flexibility in dispute resolution.
II) Limit court intervention to essential matters.
III) Facilitate enforcement of arbitral awards domestically and internationally.

[27] Mwamba Simuchoba, Alternative Dispute Resolution in Zambia (3rd edn, Law Africa 2020) 212.
[28] Arbitration Act No 19 of 2000

The Act applies to both domestic and international arbitration, making no formal distinction between them. This universality reflects a desire for consistency but may obscure the specific needs of SMEs engaged predominantly in domestic commerce.

2.3.2 KEY PROVISIONS RELEVANT TO SMES

One of the most important provisions of the Arbitration Act No. 19 of 2000 is the principle of party autonomy under section 6, which gives parties the freedom to submit disputes to arbitration.[29] In theory, this should empower SMEs to pursue simplified and cost-effective processes tailor-made to their capacities.[30] However, SMEs often lack the bargaining power and legal awareness to negotiate favorable clauses, meaning arbitration terms are typically dictated by larger parties.

Additionally, the Act governs the appointment of arbitratorsfor instance, section 9 provides default appointing mechanisms,[31] though scholarly materials suggest this can add procedural layers and costs not easily managed by SMEs.[32]

Section 25(1) confers significant procedural discretion to tribunals, allowing flexible conduct of arbitration proceedings.[33] In practice, though, tribunals often default to formal, court-like procedures, undermining efficiency and reflecting the procedural rigidity concern.[34]

The provision on minimal court intervention under section 34 aligns with international norms designed to reduce delays.[35] Yet, enforcement in Zambia still requires High Court involvement, exposing SMEs to delays and additional costs issues.

---

[29] Arbitration Act No. 19 of 2000

[30] Ken Phiri and Sydney Chisenga, 'In brief: arbitration agreements in Zambia' (5 March 2024) https://www.lexology.com/library/detail.aspx?g=6e5b7ddc-5f04-4d34-9df6-81b1f9b124f2 accessed 20 August 2025.

[31] Arbitration Act No. 19 of 2000

[32] ICLG, 'International Arbitration Laws and Regulations – Zambia' (2024) https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/zambia accessed 23 August 2025.

[33] Arbitration Act No. 19 of 2000

[34] Phiri and Sydney (n16)

[35] Arbitration Act No. 19 of 2000

Finally, section 36 enshrines the recognition and enforcement of awards, consistent with UNCITRAL and New York Convention principles. [36] While beneficial for cross-border trade, the enforcement process remains costly and procedural, contributing to the accessibility challenges SMEs face.[37]

Together, these provisions illustrate that though the Act embraces modern arbitration principles, its practical effect for SMEs is hamperedperpetuating the very barriers highlighted in the Statement of the Problem: high costs, weak bargaining power, procedural complexity, enforcement delays, and limited accessibility.

2.3.3 INSTITUTIONAL FRAMEWORK

The institutional framework for arbitration in Zambia is anchored on two key bodies: the Chartered Institute of Arbitrators (CIArb) Zambia Branch and the Zambia Association of Arbitrators (ZAA). Both promote professional standards, offer training, and support arbitral practice in line with international standards.[38]

Despite their significance, their effectiveness in addressing the needs of SMEscentral to the Statement of the Problem, remains limited. Firstly, these institutions are concentrated in urban centers like Lusaka and the Copperbelt, which excludes SMEs in rural areas from meaningful participation.[39] This reflects the geographical inaccessibility concern noted in the Statement of the Problem.

---

[36]Arbitration Act No. 19 of 2000

[37]US Department of State, '2023 Investment Climate Statements: Zambia' (2023) https://www.state.gov/reports/2023-investment-climate-statements/zambia accessed 20 August 2025.

[38] Chartered Institute of Arbitrators Zambia Branch, About Us (CIArb Zambia, 2024) https://ciarbzambia.org accessed 20 August 2025.

[39] DLA Piper Africa, International Arbitration in Africa: Lessons for the Lusaka International Arbitration Center (7 February 2024) https://www.dlapiperafrica.com/en/zambia/insights/2024/International-Arbitration-In-Africa.html accessed 21 August 2025.

Secondly, while CIArb Zambia and ZAA maintain standards, their administrative and appointment fees raise costs that SMEs often cannot afford. [40] This institutional cost burden reproduces the affordability barrier affecting SMEs.

Thirdly, outreach and awareness program specifically targeting SMEs are limited. The World Bank's access to justice assessment for Zambia notes weak awareness and underutilization of ADR, especially among small businesses and rural populations.[41] This directly mirrors the limited awareness challenge raised in the Statement of the Problem.

Fourthly, neither CIArb Zambia nor ZAA has developed SME-specific arbitration rules or streamlined procedures for small-value disputes. [42] This omission reinforces the procedural rigidity highlighted in the Statement of the Problem.

Finally, while capacity-building through arbitrator training is valuable, it is mostly directed at complex, high-value disputes, leaving SME-related disputes underdeveloped. [43] This shows how Zambia's arbitration institutions, while professionalized, have not innovated to meet SME needs.

2.4 DOCTRINAL AND EMPIRICAL PERSPECTIVES ON THE ACT

A robust evaluation of the Arbitration Act No. 19 of 2000 requires both a doctrinal examination of its statutory provisions and an empirical understanding of how these provisions operate in practice for SMEs.

2.4.1 SCHOLARLY ANALYSES

Zambian legal scholarship has generally welcomed the Arbitration Act as a significant improvement over the colonial-era legislation it replaced. However, when the focus shifts specifically to SMEs, the picture becomes more nuanced.

---

[40]CIArb Zambia (n 24).

[41] World Bank, Assessment of Access to Justice and Alternative Dispute Resolution Systems – Zambia (World Bank, 2023) https://documents1.worldbank.org/curated/en/099005404242533942 accessed 21 August 2025.

[42] ICLG, International Arbitration Laws and Regulations – Zambia (2024) https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/zambia accessed 23 August 2025

[43] Global Access to Justice Project, Global Overview – Zambia (2023) https://globalaccesstojustice.com/global-overview-zambia accessed 23 August 2025.

FacksonShamenda argues that although the Act incorporates modern principles such as party autonomy and minimal court intervention, its benefits are disproportionately enjoyed by large corporations and state entities rather than SMEs.[44]He highlights the cost structure of arbitration in Zambiaparticularly ad valorem arbitrator feesas a major barrier for smaller businesses. Shamenda also critiques the replication of court-like formalities in arbitral proceedings, which undermines the intended procedural flexibility.[45]

Mumba Malila situates arbitration within Zambia's broader access-to-justice framework, observing that SMEs face systemic inequalities in their ability to utilize legal processes, including arbitration.[46] While recognizing the Act's theoretical accessibility, Malila notes that practical barriers such as lack of awareness, concentration of arbitration institutions in urban centers, and the absence of SME-specific rules hinder uptake.[47]

Charity Mwansa, in her analysis of arbitration procedure, notes that section 25(1) of the Act empowers tribunals to adopt flexible procedures but criticizes the lack of legislative or institutional guidelines to encourage simplified processes for low-value disputes.[48] This absence, she argues, leads to unnecessary complexity that deters SME participation.Simuchobacharacterizes Zambian arbitration as "elitist and formalistic",a perception that reinforces SME reluctance to use it.[49]He warns that without targeted reforms to demystify arbitration and reduce its cost, it risks becoming an exclusive tool for well-resourced entities.

Existing studies show that although Zambia's Arbitration Act No. 19 of 2000 aligns with international standards, it remains difficult for SMEs to access in practice.However, their analyses do not offer a detailed, SME-centered assessment of the Act or compare Zambia's approach with regional experiences.

[44]Fackson Shamenda, Arbitration and SMEs in Zambia (Lusaka Law Publishers 2018) 64–65.
[45] ibid
[46] Mumba Malila, Access to Justice in Zambia (Zambia Legal Press 2020) 151–153.
[47] Ibid(N29) 160–161.
[48]Charity Mwansa, 'Tailoring Arbitration for Zambian SMEs' (2021) 14 Zambia Commercial Law Review 112, 115–116.
[49]Christopher Simuchoba, Alternative Dispute Resolution in Zambia (3rd edn, Law Africa 2020) 223.

This gap underscores the main issue of this studythe lack of a systematic evaluation of how effectively the current arbitration framework serves SMEs.

2.4.2 COMPARATIVE SCHOLARLY PERSPECTIVES

Comparative literature from jurisdictions such as South Africa and Botswana reveals efforts to adapt arbitration to local realities. In South Africa, for instance, the Arbitration Act 1965 and the more recent International Arbitration Act 2017 have been critiqued for failing to adequately serve SMEs, despite their alignment with UNCITRAL standards.[50] Scholars note that procedural rigidity and high costs remain barriers for small businesses.[51] Similarly, in Botswana, while arbitration is promoted as part of its investment climate reforms,[52] literature shows a lack of SME-tailored mechanisms.This comparative scholarship highlights that the challenges identified in Zambiacost, awareness, and procedural barriersare also prevalent in neighboring jurisdictions. However, unlike Zambia, some countries have begun exploring innovations such as fast-track arbitration and small-claims ADR models.[53] This underscores the research gap: no systematic Zambian study has evaluated how the country might adapt lessons from regional peers to make arbitration accessible for SMEs.

2.5 EMPIRICAL AND PRACTICAL GAPS IN ARBITRATION AND SMES

2.5.1 COST BARRIERS

Studies consistently highlight cost as a primary barrier for SMEs accessing arbitration.[54] This resonates with the Zambian context, where institutional and arbitrator fees often exceed the financial capacities of small businesses.

---

[50] T Woker, 'Small Businesses and Access to Justice: South African Experiences' (2018) 135 South African Law Journal 45.

[51]Redfern A and Hunter M, Law and Practice of International Commercial Arbitration (6th edn, OUP 2015).

[52]UNCTAD, Botswana Investment Policy Review (UNCTAD 2021).

[53]Onyema EM, International Commercial Arbitration and African States: Practice, Participation and Institutional Development (CUP 2018)

[54]Loukas Mistelis and Julian Lew (eds), Pervasive Problems in International Arbitration (Kluwer Law International 2006).

2.5.2 AWARENESS AND LEGAL LITERACY

Research in Zambia and beyond shows that SMEs often have limited awareness of arbitration as an alternative to litigation.[55] The absence of legal literacy program reinforces the knowledge gap identified in the Statement of the Problem.

2.5.3 GEOGRAPHICAL ACCESSIBILITY

Arbitration institutions in Zambia, much like in other African states, are concentrated in urban centers.[56] This urban bias leaves SMEs in rural areas marginalized, limiting the inclusivity of the system.

2.5.4 PROCEDURAL RIGIDITY

Although arbitration is designed to be flexible, scholars show that tribunals often mimic court procedures, leading to complexity and delay.[57] For SMEs, this rigidity negates arbitration's promise of efficiency.

2.5.5 ENFORCEMENT CHALLENGES

While the New York Convention framework facilitates cross-border enforcement, domestic enforcement in Zambia still requires recourse to the High Court.[58] For SMEs, this means added delay and cost, echoing the barriers in the Statement of the Problem.

2.5.6 LACK OF SME-TAILORED RULES

Comparative scholarship shows some jurisdictions experimenting with simplified or SME-specific arbitration frameworks.[59] Despite the presence of arbitration laws, Zambia lacks dispute resolution mechanisms specifically tailored to SMEs, leaving them to navigate procedures designed for large commercial disputes. Existing studies in Zambia and neighboring countries highlight barriers such as high costs, limited awareness, procedural rigidity, and weak enforcement, but they do not examine how these issues affect Zambian SMEs under the Arbitration Act No. 19 of 2000. Nor do they explore how Zambia could adapt

---

[55] World Bank, Assessment of Access to Justice and Alternative Dispute Resolution Systems – Zambia (World Bank 2023).
[56] Global Access to Justice Project, Global Overview – Zambia (2023) https://globalaccesstojustice.com/global-overview-zambia accessed 22 August 2025
[57] Gary Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021).
[58] US Department of State, 2023 Investment Climate Statements: Zambia (2023).
[59] DLA Piper Africa, International Arbitration in Africa: Lessons for the Lusaka International Arbitration Center (7 February 2024)

regional best practices to improve accessibility. This gap underscores the core problem: the lack of empirical and doctrinal research on whether Zambia's arbitration framework effectively serves SMEs.

2.6 CONCLUSION

Zambia's Arbitration Act No. 19 of 2000 aligns with the UNCITRAL Model Law, offering a modern and internationally compliant framework that promotes party autonomy, flexibility, and enforceable awardsideally suited for SMEs. However, in practice, SMEs struggle to access these benefits due to high costs, procedural complexity, urban concentration of services, low awareness, and enforcement delays. Consequently, the Act's potential for affordable and efficient dispute resolution remains largely untapped, highlighting the need for cost reductions, SME-friendly procedures, decentralized access, and awareness programs.

CHAPTER THREE

CHALLENGES FACED BY SMES IN ACCESSING ARBITRATION UNDER ZAMBIA'S LEGAL FRAMEWORK

3.1 INTRODUCTION

The Arbitration Act No. 19 of 2000 was enacted in Zambia with the intention of providing a more efficient and cost-effective dispute resolution mechanism, aligned with international standards such as the UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)[60]The Arbitration Act was intended to offer a faster, more flexible alternative to litigation, but in practice many SMEs in Zambia still cannot access arbitration. Despite their major contribution to employment and GDP, SMEs face significant financial and institutional barriers that limit their use of this mechanism. One of the most critical challenges is the high cost of arbitration, which undermines the Act's accessibility and effectiveness for SMEs.

[60] United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006).

3.2 HIGH COSTS OF ARBITRATION

While arbitration is frequently promoted as being cheaper and faster than litigation,[61]the reality in Zambia paints a different picture. Arbitration often entails significant financial burdens that disproportionately affect SMEs. Arbitrators' fees, legal representation, and administrative costs combine to create expenses that many SMEs cannot sustain.The Arbitration Act itself is silent on the specific regulation of arbitral fees, leaving this matter to the discretion of arbitrators and arbitral institutions.[62] Consequently, arbitrators often adopt international fee structures, which may be suitable for high-value corporate disputes but are impractical for SMEs with claims of modest value. For example, the Zambia Association of Arbitrators charges fees based on the quantum of the dispute,[63] a model that may result in prohibitively high costs even for relatively small claims.

In ***Mulungushi Investments Ltd v China Geo-Engineering Corporation (Z) Ltd***,[64]The Supreme Court has stressed fairness and efficiency in arbitration but has not addressed how high costs limit SME access. This creates a gap between the Act's intended goals and its practical impact, as jurisprudence focuses on procedure while overlooking affordability as a crucial element of access to justice.

Shamenda has argued that arbitration in Zambia has increasingly become "a preserve of corporate elites,"[65] and this elitism stems largely from its cost structure.Another major expense for SMEs is the cost of legal representation. Although arbitration is theoretically flexible and could be conducted without lawyers, in practice it often mirrors litigation in complexity, requiring pleadings, evidence, and oral submissions. SMEs without legal training are therefore compelled to hire counsel, which adds to costs.[66] In many cases, the total cost of

---

[61] World Bank, 'SME Contributions to Zambia's Economy' (World Bank, 2023)

s://www.worldbank.org/en/country/zambia/overview"https://www.worldbank.org/en/country/zambia/overview accessed 31st August 2025

[63]Fackson Shamenda, Arbitration and SMEs in Zambia (Lusaka Law Publishers 2018) 47.

[63]Arbitration Act No. 19 of 2000, s 15.

[64]Mulungushi Investments Ltd v China Geo-Engineering Corporation (Z) Ltd [2009] ZMSC 12.

[65]Shamenda (n 3) 56.

[66]Mumba Malila, Access to Justice in Zambia (Zambia Legal Press 2020) 119.

arbitration may exceed the value of the claim, rendering it economically irrational for SMEs to pursue.

The high cost of arbitration is further exacerbated by the absence of state subsidies or simplified procedures for SMEs. Unlike in South Africa, where small claims procedures exist as an alternative to costly litigation and arbitration,[67] Zambia has yet to develop an SME-friendly arbitration mechanism that addresses financial constraints.Although the Arbitration Act No. 19 of 2000 was enacted with the objective of promoting efficient and cost-effective dispute resolution, its provisions in practice have not alleviated the barriers SMEs face in accessing arbitration, thereby necessitating targeted reform.[68] Section 17 of the Arbitration Act [69], which guarantees equal treatment of the parties, remains largely formalistic since it does not take into account the economic disparities between large corporations and SMEs; a reformulation could empower tribunals to adapt procedures in light of such disparities so as to ensure substantive, rather than merely procedural, equality. Similarly, Section 19,[70] which grants the parties autonomy to determine the rules of procedure, often disadvantages SMEs because stronger parties typically impose complex and costly processes; this section should therefore be revised to provide for a mandatory fast-track arbitration mechanism, with simplified procedures and capped timelines, for disputes below a prescribed monetary threshold. Furthermore, Section 31,[71]The existing cost provisions lack protections to keep arbitration affordable for SMEs. Possible reforms include capping fees in low-value disputes, requiring tribunals to consider parties' financial capacity when allocating costs, and penalizing unnecessary expense. More broadly, the Act could enable a subsidized SME Arbitration Scheme and promote model clauses and simplified procedures to

[67]R Bam and S Taku, Small Claims and Arbitration Reform (Juta & Co 2021) 64.
[68] Arbitration Act 2000 (No 19 of 2000) (Zambia).
[69] Ibid
[70] Ibid
[71] Emmanuel E Ng'andu, 'The Challenges of Arbitration in Zambia: Accessibility for Small and Medium Enterprises' (2019) 7(2) Zambia LJ 45.

reduce reliance on costly legal services..[72] Without such reforms to Sections 17, 19, and 31, arbitration will remain structurally inaccessible to SMEs in Zambia, undermining the very rationale of the Act as a tool for affordable and equitable dispute resolution.

3.3 LIMITED AWARENESS AND LEGAL LITERACY

A further significant barrier that SMEs face in accessing arbitration in Zambia is the widespread lack of awareness and legal literacy among business owners and managers. While arbitration is formally available under the Arbitration Act No. 19 of 2000,[73] many SMEs either do not know of its existence, or do not understand how to engage with the process. This lack of awareness operates as a practical obstacle that limits the reach of the Act and undermines its objective of promoting arbitration as a viable alternative to litigation.

Malila emphasizes that access to justice is not merely about having legal frameworks in place but also about ensuring that people have the knowledge and capacity to utilize them effectively.[74] For SMEs, this gap is particularly stark because most small businesses lack access to professional legal advice or in-house counsel. Many entrepreneurs are first-generation business owners who have little or no training in law and are therefore unable to appreciate the relevance of arbitration clauses or the procedural steps required to commence and sustain arbitral proceedings.

As a result, SMEs rarely include arbitration clauses in their contracts. This omission is highly consequential, because arbitration is a consensual process that depends on prior agreement between parties.[75]SMEs that lack arbitration clauses are pushed into slow and costly court litigation. Even when arbitration clauses exist, SMEs often agree to them without understanding the

[72] Richard Hoekman, Arbitration and Access to Justice for SMEs in Africa (Kluwer Law International 2018).
[73]Arbitration Act No. 19 of 2000
[74] Mumba Malila, Access to Justice in Zambia (Zambia Legal Press 2020) 45.
[75] Brenda Namushi, Dispute Resolution for Rural SMEs (Zambia Legal Institute 2021) 33.

consequences, sometimes binding themselves to expensive institutions or foreign seats they cannot afford.[76]

The problem of limited awareness is compounded by Zambia's socio-economic context. Most arbitration institutions and services are concentrated in urban areas, particularly Lusaka and the Copperbelt.[77] SMEs in rural and peri-urban regions, which make up a significant proportion of Zambia's business sector, are generally excluded from training program, seminars, or institutional outreach that might otherwise increase awareness of arbitration. Namushi observes that rural SMEs face not only financial and geographic barriers but also informational ones, leaving them unable to take advantage of arbitration even when it might be the most appropriate forum for dispute resolution.[78]

The courts have also recognized this gap. In **ZESCO Ltd v Avondale Housing Project**.[79] , the Supreme Court noted that arbitration requires a clear agreement between parties and that lack of clarity or awareness in drafting arbitration clauses can render them unenforceable, this case underscores the importance of legal literacy, because SMEs without proper guidance often fail to draft enforceable clauses, thereby losing the opportunity to resolve disputes through arbitration.

Arbitration requires technical procedural knowledgesuch as filing notices, appointing arbitrators, and drafting pleadingswhich most SMEs cannot manage without legal assistance. Because many cannot afford lawyers, the process feels inaccessible and overly formal, reinforcing the perception that arbitration is elitist and unsuitable for ordinary business owners.[80]

In comparison, other jurisdictions have attempted to address the awareness gap through proactive measures. For example, in Botswana, the Botswana Institute of

---

[76] Arbitration Act No. 19 of 2000.
[77]Fackson Shamenda, Arbitration and SMEs in Zambia (Lusaka Law Publishers 2018) 68.

[78] Zambia Association of Arbitrators, 'About Us' https://www.zaa.org.zm accessed 31 August 2025
[79]ZESCO Ltd v Avondale Housing Project [2013] ZMSC 22.
[80]Christopher Simuchoba, Alternative Dispute Resolution in Zambia (3rd edn, Law Africa 2020) 101.

Arbitrators has undertaken program aimed at educating SME owners on the advantages of arbitration, providing model clauses and simplified guides to procedures.[81] Zambia has yet to implement comparable initiatives, leaving SMEs largely ignorant of arbitration's potential benefits.

3.4 PROCEDURAL COMPLEXITY OF ARBITRATION

Despite being intended as a flexible alternative to litigation, Zambia's arbitration system remains highly procedural and adversarial, making it difficult for SMEs to navigate without expertise or resources. Because the Arbitration Act is based on the UNCITRAL Model Law, it reflects complex international standards suited to large commercial disputes, not the simpler needs of SMEs.

For instance, arbitration proceedings under the Act involve detailed procedural steps, such as the submission of a notice of arbitration, the appointment of arbitrators, the exchange of statements of claim and defense, production of documents, witness testimony, and oral hearings.[82] These steps require not only knowledge of the law but also adherence to strict procedural timelines. SMEs lacking legal representation often struggle to comply, which may result in adverse rulings or even dismissal of their claims.

Simuchoba observes that arbitration in Zambia has acquired an "elitist and formalistic" character, replicating many of the complexities of litigation.[83] This perception is reinforced by the tendency of arbitrators to adopt practices common in court proceedings, such as reliance on formal pleadings, rigorous evidentiary rules, and cross-examination of witnesses. While these procedures may be necessary in high-value or complex disputes, they create unnecessary hurdles for SMEs that seek swift and simplified resolutions.

Judicial decisions have further demonstrated how procedural technicalities in arbitration can prejudice SMEs. In ***Attorney General v Mpundu***,[84] the High Court underscored that arbitration proceedings must comply strictly with the

---

[81] Lesedi Matlhaku, Institutional Arbitration in Botswana (Botswana Legal Studies Press 2022) 57.
[82] Arbitration Act No. 19 of 2000.
[83] Christopher Simuchoba, Alternative Dispute Resolution in Zambia (3rd edn, Law Africa 2020) 103.
[84] Attorney General v Mpundu [2010] ZMHC 24.

Arbitration Act and procedural rules. While this promotes procedural integrity, it also highlights the vulnerability of unrepresented parties, including SMEs, who may not understand the technical requirements of arbitration and thereby risk losing their claims on procedural grounds.

Moreover, the cost implications of procedural complexity cannot be ignored. SMEs compelled to hire legal counsel to navigate these procedures incur costs that undermine arbitration's supposed advantages over litigation. Shamenda notes that the more arbitration mirrors litigation, the less accessible it becomes to SMEs, who neither have the financial resources nor the procedural knowledge to engage meaningfully in the process.[85]

Comparatively, other jurisdictions have recognized this problem and introduced reforms aimed at simplifying procedures for smaller disputes. In South Africa, debates have emerged around the creation of simplified domestic arbitration rules tailored to SMEs, modelled partly on the success of the Small Claims Court system.[86] Botswana has also developed simplified procedures under the Botswana Institute of Arbitrators to allow SMEs to access arbitration without being overwhelmed by formal technicalities.[87] Zambia has yet to adopt equivalent reforms, leaving SMEs subject to the full procedural of arbitration, regardless of the size or complexity of their disputes ,while arbitration in theory should provide SMEs with an efficient and flexible alternative to court litigation, the procedural complexity of the Arbitration Act No. 19 of 2000 has had the opposite effect.

3.5 ENFORCEMENT OF ARBITRAL AWARDS

A further challenge that significantly affects SMEs in Zambia is the enforcement of arbitral awards. Arbitration is only as effective as the enforceability of the decisions it produces, since parties resort to arbitration with the expectation that the final award will be binding and executable without undue delay. The Arbitration Act No. 19 of 2000[88]provides, under section 17, that an arbitral award

[85]Fackson Shamenda, Arbitration and SMEs in Zambia (Lusaka Law Publishers 2018) 73.
[86]R Bam and S Taku, Small Claims and Arbitration Reform (Juta & Co 2021) 87.
[87]Lesedi Matlhaku, Institutional Arbitration in Botswana (Botswana Legal Studies Press 2022) 62.
[88] Arbitration Act No. 19 of 2000

shall be final and binding on the parties and enforceable in the same manner as a judgment of the High Court. However, in practice, SMEs often face substantial obstacles when seeking to enforce arbitral awards, undermining both the efficiency and reliability of the arbitral process.

One of the key issues is the requirement for court involvement in the enforcement of arbitral awards. While the Act envisages arbitration as a self-contained dispute resolution mechanism, enforcement ultimately depends on the High Court, which has jurisdiction to recognize and enforce arbitral awards. SMEs that obtain favorable awards must still incur further legal costs and delays in bringing applications before the court. For many SMEs, the costs of this process can erode the financial benefits of having secured the award in the first place.In ***ZESCO Ltd v Avondale Housing Project***,[89] the Supreme Court held that arbitral awards could be enforced in the same manner as court judgments but emphasized that the courts retained supervisory powers over arbitration. While this ensures procedural integrity, it also opens the door to challenges and delays, particularly where losing parties are determined to resist enforcement. For SMEs, whose survival often depends on prompt settlement of disputes, such delays can be devastating.

The courts have occasionally highlighted the importance of predictability in enforcement. In ***Mulungushi Investments Ltd v China Geo-Engineering Corporation (Z) Ltd***,[90] the Supreme Court stressed that arbitration must be conducted in a manner that preserves its finality and integrity. Yet, enforcement remains fraught with procedural obstacles. SMEs without the resources to pursue protracted enforcement proceedings are often compelled to abandon their claims or accept unfavorable settlements.Comparative insights reveal that Zambia is not unique in facing enforcement challenges, but other jurisdictions have taken steps to streamline the process. In Botswana, simplified procedures have been adopted to reduce delays in recognizing

---

[89] ZESCO Ltd v Avondale Housing Project [2013] ZMSC 22

[90]Mulungushi Investments Ltd v China Geo-Engineering Corporation (Z) Ltd [2009] ZMSC 1

and enforcing arbitral awards, particularly for smaller disputes.[91]South Africa has also moved towards strengthening the finality of arbitral awards under the International Arbitration Act 2017,[92] limiting judicial interference to narrowly defined circumstances. Zambia, by contrast, continues to maintain a system where enforcement is heavily dependent on court procedures, which undermines the very rationale of arbitration.while the Arbitration Act No. 19 of 2000 formally provides for the finality and enforceability of arbitral awards, the practical barriers of court involvement, delaying tactics, and inconsistent application of international obligations significantly undermine accessibility for SMEs. Unless reforms are introduced to streamline enforcement and limit judicial interference, arbitration will continue to fall short of its promise as a reliable dispute resolution mechanism for small businesses.

3.6 BARGAINING POWER IMBALANCES

A further obstacle that undermines the accessibility of arbitration for SMEs in Zambia lies in the unequal bargaining power between them and larger corporations or contracting parties. Arbitration, being a consensual process, relies heavily on the arbitration agreement contained in commercial contracts.[93] However, SMEs frequently lack the leverage to negotiate the terms of such agreements and are often compelled to accept standard-form contracts drafted by larger and more powerful commercial entities.

These standard contracts often contain arbitration clauses that are unfavourable to SMEs. For instance, it is common for clauses to stipulate that disputes must be resolved through institutional arbitration under foreign institutions such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA).[94] Such provisions not only impose prohibitive costs on SMEs but also require proceedings in foreign jurisdictions, with additional expenses relating to travel, foreign legal representation, and compliance with unfamiliar

[91]Teboho Kgosiemang, Simplifying Arbitration in Botswana (Gaborone Legal Series 2020) 44.
[92]International Arbitration Act 15 of 2017 (South Africa).
[93] Arbitration Act No. 19 of 2000.
[94] G Glover, The Law of Arbitration in South Africa (Oxford University Press 2017) 94.

procedural rules.[95] In effect, these clauses render arbitration inaccessible to small businesses and exclude them from equitable dispute resolution. For SMEs, the judicial emphasis on party autonomy often translates into a lack of protection against the imposition of onerous arbitral terms. SMEs are often unaware of the implications of arbitration clauses when signing contracts. the problem of limited legal literacy means that many SMEs do not appreciate that agreeing to arbitration under foreign or costly institutional rules may effectively deprive them of a practical remedy in the event of a dispute.[96]

Comparative experience shows that this imbalance of bargaining power is not unique to Zambia. In South Africa, for instance, Glover notes that arbitration agreements in commercial contracts frequently favour large corporations, with SMEs left at a disadvantage.[97] South Africa has addressed this imbalance to some extent by developing small claims procedures that reduce reliance on arbitration for low-value disputes, thereby providing SMEs with a more accessible forum.[98]Zambia has focused on international alignment rather than SME-focused reforms, largely due to limited policy attention and institutional capacity. As a result, SMEs are often bound by costly and complex arbitration clausessometimes requiring foreign venuesand lack safeguards to ensure fair access. This leaves arbitration more beneficial to large corporations than to SMEs.

3.7 URBAN-CENTRIC ACCESS TO ARBITRATION INSTITUTIONS

Another major barrier for SMEs in Zambia is the geographic concentration of arbitration institutions and practitioners in urban centers, particularly Lusaka and the Copperbelt. While the Arbitration Act No. 19 of 2000[99]Although the Arbitration Act provides a solid legal framework, its effectiveness is limited by the urban concentration of arbitration services in Lusaka and the Copperbelt. SMEs in rural

[95] Mumba Malila, Access to Justice in Zambia (Zambia Legal Press 2020) 123.
[96]Brenda Namushi, Dispute Resolution for Rural SMEs (Zambia Legal Institute 2021) 51.
[97]G Glover, 'International Arbitration and SMEs in South Africa' (2020) 42(3) South African Law Journal 211,225.
[98]R Bam and S Taku, Small Claims and Arbitration Reform (Juta & Co 2021) 109
[99] Zambia Association of Arbitrators, 'About Us' https://www.zaa.org.zm accessed 31st August 2025.

and peri-urban areas face travel and logistical barriers due to the lack of nearby institutions or qualified arbitrators. Remote arbitration could ease this burden, but it would require better internet infrastructure and user training in rural regions.Namushi observes that this geographic imbalance mirrors broader inequalities in Zambia's legal system, where access to legal remedies is concentrated in urban areas, leaving rural businesses with limited options.[100] SMEs in rural regions are thus doubly disadvantaged: not only do they lack financial capacity and legal literacy, but they also face physical barriers to accessing arbitration institutions. The lack of decentralized arbitral services also means that capacity-building initiatives such as workshops, training program, and awareness campaigns rarely reach SMEs outside major cities.[101] As a result, rural SMEs are excluded from opportunities to learn about arbitration, develop contractual literacy, or build networks with arbitral institutions. This perpetuates the cycle of exclusion, reinforcing the perception of arbitration as an elitist mechanism accessible only to urban-based businesses. The courts have indirectly highlighted the importance of accessibility in arbitration. In ***Attorney General v Mpundu***,[102] the High Court emphasized that arbitration should provide a practical alternative to litigation, but for rural SMEs, the geographic centralization of institutions effectively denies them this alternative. Even when parties in rural areas agree to arbitrate, they may find the process impracticable due to the need to attend hearings in Lusaka or Ndola.

Other jurisdictions in the region have taken steps to decentralize arbitral services. In Botswana, for instance, the Botswana Institute of Arbitrators has actively worked to expand its outreach beyond Gaborone, offering regional training programmes and model arbitration clauses specifically for SMEs.[103] South Africa has also promoted regional arbitration centers to improve accessibility for domestic disputes.[104] Zambia, is yet to pursue equivalent reforms, leaving rural

[100]Arbitration Act No. 19 of 2000,
[101]Christopher Simuchoba, Alternative Dispute Resolution in Zambia (3rd edn, Law Africa 2020) 115.
[102]Attorney General v Mpundu [2010] ZMHC 24.
[103]Lesedi Matlhaku, Institutional Arbitration in Botswana (Botswana Legal Studies Press 2022) 71.
[104]G Glover, The Law of Arbitration in South Africa (Oxford University Press 2017) 142.

SMEs without meaningful access to arbitral mechanisms. Without deliberate efforts to decentralized arbitral institutions and extend services to rural provinces, the Arbitration Act will continue to serve a narrow constituency, excluding most SMEs from its intended benefits.

3.8 CONCLUSION

This chapter found that while Zambia's Arbitration Act No. 19 of 2000 was designed to provide an efficient and affordable alternative to litigation, it has not met the needs of SMEs in practice. High costs, limited awareness, procedural complexity, and enforcement delays hinder SME participation. Power imbalances and urban concentration of arbitration services further exclude smaller businesses. Overall, despite its alignment with international standards, the Act remains poorly adaptedto SME realities, making arbitration largely inaccessible without targeted reforms to enhance affordability, awareness, and accessibility.

CHAPTER FOUR

COMPARATIVE ANALYSIS AND LESSONS FOR ZAMBIA

4.1 Introduction

This chapter compares arbitration frameworks in South Africa and Botswana to draw lessons for reforming Zambia's arbitral system. It examines South Africa's dual legislative approachthe Arbitration Act 42 of 1965 and the International Arbitration Act 15 of 2017and Botswana's institutional model centered on the BIAC and its rules. The analysis identifies best practices that enhance accessibility, efficiency, and affordability, particularly for SMEs. Ultimately, it recommends statutory reform, institutional capacity-building, and SME-oriented measures to make Zambia's arbitration framework more inclusive and effective.

4.1 Arbitration Framework in South Africa

South Africa operates under a dual arbitration regime comprising the Arbitration Act 42 of 1965, which governs domestic arbitration, and the International Arbitration Act 15 of 2017, which incorporates the UNCITRAL Model Law for international disputes. For SMEs, the domestic regime remains the most relevant; however, it has been widely criticised as outdated and in need of reform.[105] In contrast, Botswana's Arbitration Act (Cap 06:01) provides a unified statute for both domestic and international arbitration,[106]aligning more closely with the Model Law's contemporary standards. Zambia's Arbitration Act No. 19 of 2000, while Model Law–based,[107] lacks the SME-oriented refinements and institutional support visible in Botswana's framework.

The Arbitration Act 42 of 1965 is often viewed as obsolete because it predates the UNCITRAL Model Law and fails to reflect modern arbitration principles or commercial realities.[108] It omits procedural provisions such as interim measures, electronic communication, and the consolidation of proceedingsfeatures that are expressly incorporated in Botswana's statute.[109] The South African Act also lacks mechanisms to enhance cost efficiency and accessibility, leaving much to judicial discretion.[110] By contrast, Botswana's legislation explicitly promotes efficiency through simplified procedures and statutory timelines.[111] For Zambia, this comparison underscores the need to amend its own statute to provide clear procedural guidance for SMEs rather than rely on judicial flexibility.

A key strength of South Africa's framework lies in the independence of arbitral tribunals and consistent judicial support for arbitration. Courts have repeatedly affirmed the finality of arbitral awards, as illustrated in ***Telcordia Technologies Inc v Telkom SA Ltd (2006)***,[112] where the Supreme Court of Appeal reiterated that judicial intervention should be minimal. This position parallels Zambia's approach in ***Attorney General v Achiume***,[113] which upheld arbitral autonomy. However, while both jurisdictions demonstrate strong judicial restraint,

105L. Ndlovu, 'Access to Arbitration for SMEs in Southern Africa: A Comparative Perspective' (2019) African Journal of International and Comparative Law 217.
106 Arbitration Act (Cap 06:01) (Botswana).
107 Arbitration Act No. 19 of 2000 (Zambia).
108 F. Manthwa, 'ADR and SMEs in South Africa: Challenges and Prospects' (2021) 27 Potchefstroom Electronic Law Journal 145, 148.
109 Arbitration Act (Cap 06:01) (Botswana), s. 13–15.
110 Ndlovu (n 1) 223.
111 L. Moeti, 'ADR and SMEs in Botswana: Bridging the Gap' (2021) 10 Botswana Law Journal 67, 71
112 Telcordia Technologies Inc v Telkom SA Ltd (2006) ZASCA 117 (SCA).
113 Attorney General v Achiume [1993–1994] ZR 54 (SC).

Botswana's courts go further by actively promoting arbitration, as seen in ***Khumalo v BIAC (2016)***,[114] where the High Court reinforced party autonomy. The Botswana model demonstrates that active judicial encouragement can help normalise arbitration among SMEsa lesson Zambia could emulate through judicial education and pro-arbitration jurisprudence.

Institutionally, South Africa benefits from established arbitral bodies such as the Arbitration Foundation of Southern Africa (AFSA), which provides procedural rules and panels of arbitrators. AFSA has introduced expedited and simplified procedures to improve accessibility.[115] However, these measures have achieved limited success, as arbitration in South Africa remains costly and largely dominated by larger corporations.[116] In Botswana, by contrast, the Botswana Institute of Chartered Arbitrators (BIAC) implements a tiered fee structure and simplified rules specifically tailored for smaller disputes.[117] Zambia's arbitral institutions, including the Chartered Institute of Arbitrators (Zambia Branch) and the Zambia Centre for Dispute Resolution (ZCDR), could benefit from adopting BIAC's approach to transparent fee schedules and fast-track rules to attract SME participation.[118] Procedural rigidity under the 1965 Act further constrains accessibility. The Act limits parties' flexibility to design procedures suited to their disputes, mirroring the formalism of court proceedings.[119] Strict evidentiary rules, rigid timelines, and limited mechanisms for expediting small claims increase costs and delays.[120] Botswana's Arbitration Act (Cap 06:01), in contrast, permits procedural flexibility consistent with the UNCITRAL Model Law's principles.[121]

---

[114] Khumalo v BIAC (2016) (High Court of Botswana).
[115] Arbitration Foundation of Southern Africa (AFSA), Rules and Procedures (2023) https://www.arbitration.co.za.
[116]Manthwa (n 4) 152.
[117] Botswana Institute of Chartered Arbitrators (BIAC), BIAC Rules and Fees (2023) https://www.biac.org.bw
[118] Chartered Institute of Arbitrators (Zambia Branch), About Us (2023) https://ciarbzambia.org.zm
[119] A. Redfern and M. Hunter, Law and Practice of International Commercial Arbitration (6th edn, Oxford University Press 2015) 81.
[120] S. Gutto, Arbitration and Alternative Dispute Resolution in Africa: Trends and Challenges (UNISA Press 2017) 142.
[121] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006).

Zambia could adopt similar reforms by codifying fast-track procedures and allowing tribunals to employ less formal evidentiary rules for low-value disputes.

The International Arbitration Act 2017 demonstrates South Africa's commitment to international alignment, but it has limited effect for SMEs engaged primarily in domestic commerce.[122] Botswana's unified statute avoids this duality, ensuring consistent application of modern rules across all disputes.[123] For Zambia, this comparison underscores the importance of periodic statutory review and the risks of maintaining outdated domestic laws alongside newer international frameworks.

In summary, South Africa's arbitration regime showcases the benefits of judicial independence and institutional maturity, but its outdated domestic statute limits accessibility, particularly for SMEs. Botswana's modern and unified framework, supported by targeted institutional measures, offers a more inclusive model. Zambia can draw from both systemsadopting South Africa's judicial restraint and institutional depth, while embracing Botswana's legislative coherence and SME-oriented designto build an arbitration framework that is both credible and accessible.

4.2 Arbitration Framework in Botswana

Botswana has developed a comparatively modern arbitration regime under the Arbitration Act (Cap 06:01), which is substantially based on the UNCITRAL Model Law.[124] The Act governs both domestic and international arbitration, thereby avoiding the dual statutory structure found in South Africa.[125] This unified approach contrasts sharply with Zambia's Arbitration Act No. 19 of 2000, which, although also derived from the Model Law, lacks explicit provisions promoting procedural flexibility and cost efficiency for SMEs.[126] Botswana's legislation provides greater clarity on issues such as interim measures, enforcement, and

[122] E. Onyema, International Commercial Arbitration and African States: Practice, Participation and Institutional Development (Cambridge University Press 2018) 203.
[123] Moeti (n 7) 74.
[124] Arbitration Act (Cap 06:01) (Botswana).
[125] E. Onyema, International Commercial Arbitration and African States: Practice, Participation and Institutional Development (Cambridge University Press 2018) 205.
[126] Arbitration Act No. 19 of 2000 (Zambia).

tribunal powers,[127] whereas Zambia's statute leaves much of this interpretation to the courts.[128] Furthermore, Botswana's modernisation process included extensive consultation with private sector actors and the Botswana Institute of Chartered Arbitrators (BIAC)a participatory model that Zambia could emulate to ensure that legislative reform aligns with business realities.[129]One of Botswana's most notable strengths is its emphasis on institutional arbitration. The establishment of the Botswana Institute of Arbitrators and BIAC has created accessible, locally grounded platforms that administer disputes under clear procedural and fee structures.[130] These institutions play a similar role to South Africa's Arbitration Foundation of Southern Africa (AFSA) but with greater focus on affordability and SME inclusion.[131] BIAC's simplified rules, training programmes, and scaled fee systems have significantly improved access to arbitration, particularly for smaller enterprises.[132] By contrast, Zambia's arbitral landscapeanchored by the Chartered Institute of Arbitrators (Zambia Branch) and the Zambia Centre for Dispute Resolution (ZCDR)remains fragmented, centralised in Lusaka, and limited in outreach to rural SMEs.[133] Botswana's institutionalisation demonstrates that accessible arbitral centres, supported by transparent rules and predictable costs, are crucial for stimulating SME participation in formal dispute resolution.

Judicial support for arbitration represents another area in which Botswana provides valuable comparative lessons. Courts have consistently demonstrated a pro-arbitration stance, enforcing agreements and awards with minimal interference. In **Khumalo v BIAC (2016**), the High Court reaffirmed party autonomy and upheld arbitration as a legitimate mechanism for resolving

[127] L. Moeti, 'ADR and SMEs in Botswana: Bridging the Gap' (2021) 10 Botswana Law Journal 67, 72.
[128] E. Mwansa, 'The Development of Arbitration Institutions in Zambia: Challenges and Prospects' (2022) 19 Zambian Law Journal 87, 93.
[129] Moeti (n 4) 74.

[130]Botswana Institute of Chartered Arbitrators (BIAC), About Us (2023) https://www.biac.org.bw
[131] Arbitration Foundation of Southern Africa (AFSA), Rules and Procedures (2023) https://www.arbitration.co.za
[132] Moeti (n 4) 75.
[133] Chartered Institute of Arbitrators (Zambia Branch), About Us (2023) https://ciarbzambia.org.zm

commercial disputes.[134] Zambia's judiciary has expressed similar support, as seen in ***Attorney General v Achiume*** and ***ZESCO Ltd v Kafue Gorge Contractors Ltd***, but unlike Botswana, Zambia lacks a fully institutionalised structure to operationalise these pro-arbitration principles for SMEs.[135] The lesson here is that judicial endorsement must be complemented by accessible institutions capable of delivering practical, low-cost dispute resolutionsomething Zambia's current framework does not yet achieve.

Despite its strengths, Botswana's system still faces challenges that are also relevant to Zambia, including the concentration of arbitral services in the capital and limited awareness among rural SMEs.[136] However, Botswana has begun addressing these issues through initiatives such as capacity-building workshops and proposals to decentralise BIAC operations.[137] Zambia could adapt this strategy by empowering existing bodies like the CIArb (Zambia Branch) to establish regional arbitration centres in collaboration with provincial chambers of commerce.[138] This would reduce travel costs for SMEs and promote regional equity in dispute resolution access. Given Zambia's relatively smaller economy and more dispersed SME sector, a phased approachbeginning with pilot centres in Copperbelt and Southern Provinceswould be practical and cost-effective.[139]

4.3 Lessons for Zambia

Although South Africa, Botswana, and Zambia all draw on the UNCITRAL Model Law, their arbitration systems differ in structure and accessibility. South Africa retains an outdated domestic statute alongside a modern international one, making arbitration costly and complex for SMEs. Botswana, with its unified and modern Arbitration Act (Cap 06:01) and effective institutional support through BIAC, offers a more accessible and affordable model. In contrast, Zambia's

[134] Khumalo v BIAC (2016) (High Court of Botswana).
[135] Attorney General v Achiume [1993–1994] ZR 54 (SC); ZESCO Ltd v Kafue Gorge Contractors Ltd [2015] ZMSC
[136]L. Ndlovu, 'Access to Arbitration for SMEs in Southern Africa: A Comparative Perspective' (2019) African Journal of International and Comparative Law 217, 228.
[137] BIAC (n 7).
[138] Mwansa (n 5) 96.
[139] Ministry of Commerce, Trade and Industry (Zambia), SME Development Policy Framework (2024)12.

Arbitration Act No. 19 of 2000 remains underdeveloped in SME-focused and institutional provisions, limiting its practical effectiveness.

The comparison of South Africa and Botswana shows two complementary paths to arbitration reform in Southern Africa. South Africa's system, supported by judicial independence and institutions like AFSA, blends an outdated domestic law with a modern international framework but remains costly and complex for SMEs. Botswana's unified Arbitration Act and BIAC offer a more accessible and institutionalized model, though challenges persist in affordability and outreach. Together, these models demonstrate that Zambia can strengthen its arbitration system by combining judicial credibility with modern, inclusive, and SME-friendly reforms.

4.3.1 Statutory Reform

Zambia's Arbitration Act No. 19 of 2000 is based on the UNCITRAL Model Law but lacks SME-focused provisions. By contrast, Botswana's Arbitration Act (Cap 06:01) integrates Model Law principles more comprehensively, offering greater clarity on procedural rules and enforceability. [140] By contrast, Botswana's Arbitration Act (Cap 06:01) integrates Model Law principles more comprehensively, providing clearer procedural rules, greater flexibility, and enhanced enforceability. This modernisation has reduced ambiguity and improved confidence among smaller enterprises. South Africa, meanwhile, illustrates the risks of maintaining outdated legislation: its Arbitration Act 42 of 1965 continues to govern domestic arbitration despite persistent criticism for procedural rigidity and high costs. The lesson for Zambia is that periodic statutory reform is essential to maintain both relevance and accessibility.

Comparative experience shows that targeted legislative reform can significantly lower arbitration costs. Forinstance, Kenya's Arbitration (Amendment) Act of 2009 introduced provisions allowing for simplified and expedited procedures in

[140] Arbitration Act (Cap 06:01) (Botswana).

low-value disputes, thereby reducing procedural delays and legal fees.[141] Similarly, Tanzania's Arbitration Act No. 2 of 2020 incorporated explicit cost-control mechanisms, including tribunal discretion to cap arbitrators' fees and to adopt paper-based hearings where appropriatemeasures that have improved affordability for SMEs engaging in domestic arbitration.[142] Botswana's inclusion of flexible timelines and simplified filing requirements under its 2001 revision of the Act demonstrates a comparable commitment to accessibility.

4.3.2 Institutional Support

The establishment of a National Arbitration and Mediation Centre (NAMC) in Zambia would mark a pivotal advancement in consolidating and professionalising the country's arbitral landscape. However, its sustainability would depend on a balance between institutional independence, financial stability, and nationwide accessibility. As comparative experience shows, sustainable arbitration institutions require both structural autonomy and broad stakeholder engagement. In South Africa, the Arbitration Foundation of Southern Africa (AFSA) has maintained operational stability through a public–private model that combines institutional independence with the endorsement of professional bodies and government recognition.[143] Similarly, Botswana's Botswana Institute of Chartered Arbitrators (BIAC) has sustained itself by offering tiered fee structures, corporate memberships, and donor-supported capacity-building initiatives.[144] These experiences illustrate that long-term viability is grounded not only in legal recognition but also in diversified funding and broad-based governance.

For Zambia, sustainability would therefore require establishing a hybrid institutional modelpartially supported by government seed funding but largely self-financing through membership subscriptions, training programmes, and

---

141 M Odhiambo, 'The 2009 Arbitration (Amendment) Act and Its Impact on Commercial Dispute Resolution in Kenya' (2019) East African Law Journal 45.

142 G Mwakalobo, 'Cost-Effective Arbitration under Tanzania's 2020 Arbitration Act' (2021) Tanganyika Law Review112

143 Arbitration Foundation of Southern Africa (AFSA), Rules and Procedures (2023) https://www.arbitration.co.za

144 Botswana Institute of Chartered Arbitrators (BIAC), About Us (2023) https://www.biac.org.bw

arbitration fees.[145] This approach would help the NAMC avoid over-reliance on state funding while maintaining accessibility for SMEs through cross-subsidisation, whereby fees from large-scale commercial arbitrations support lower-value disputes.[146] Furthermore, regional sustainability would depend on decentralisation, with satellite offices in provinces such as Copperbelt and Southern Province to expand outreach and reduce travel costs for SMEs.[147] Partnerships with the Chartered Institute of Arbitrators (Zambia Branch), the Zambia Centre for Dispute Resolution (ZCDR), and provincial chambers of commerce would enhance resource sharing, training, and community awareness.[148]

In essence, the sustainability of a national arbitration centre in Zambia hinges on embedding the principles of financial independence, regional inclusivity, and digital resilience within its institutional design. Drawing lessons from AFSA's organizational model and BIAC's accessibility-focused framework, Zambia can create a durable, credible, and self-sustaining arbitral institution that promotes confidence in alternative dispute resolution while advancing equitable access to justice for all business actors.

4.3.3 SME-Tailored Measures

A recurring theme across both South Africa and Botswana is the limited presence of mechanisms specifically tailored for small and medium enterprises (SMEs). While Botswana's BIAC has introduced simplified arbitration rules and affordable fee structures, cost barriers and limited rural outreach persist.[149] In South Africa, arbitration remains largely dominated by large corporations due to procedural rigidity and the absence of capped costs.[150]

---

[145] E. Mwansa, 'The Development of Arbitration Institutions in Zambia: Challenges and Prospects' (2022) 19 Zambian Law Journal 87, 94.
[146] L. Moeti, 'ADR and SMEs in Botswana: Bridging the Gap' (2021) 10 Botswana Law Journal 67, 74.
[147] Ministry of Commerce, Trade and Industry (Zambia), SME Development Policy Framework (2024) 12.
[148] Chartered Institute of Arbitrators (Zambia Branch), About Us (2023) https://ciarbzambia.org.zm
[149] L. Moeti, 'ADR and SMEs in Botswana: Bridging the Gap' (2021) 10 Botswana Law Journal 67, 74.
[150] F. Manthwa, 'ADR and SMEs in South Africa: Challenges and Prospects' (2021) 27 Potchefstroom Electronic Law Journal 145, 150.

Judicial precedent in Zambia already provides a strong foundation for supporting such statutory reform. **In Attorney General v Achiume**, the Supreme Court reaffirmed that courts must respect parties' agreements to arbitrate and intervene only where expressly permitted by law, underscoring the principle of party autonomy.[151] Similarly, in **ZESCO Ltd v Kafue Gorge Contractors Ltd**, the Court emphasised that arbitral awards are final and binding, restricting judicial interference to specific grounds under the Arbitration Act No. 19 of 2000.[152] These decisions reflect judicial recognition of arbitration as a legitimate, independent mechanism of dispute resolution. If codified within an updated statute, this pro-arbitration stance could serve as a judicial safeguard for SME-friendly reformsensuring that simplified and expedited procedures remain enforceable and protected from excessive litigation or judicial reversal. Moreover, in ***Road Development Agency v UNIK Construction Engineering (Z) Ltd***, the Court reinforced the sanctity of arbitral awards, establishing a jurisprudential precedent that could be integrated into statutory amendments promoting efficiency and finality in SME disputes.[153]

Ultimately, judicial precedent should not only protect arbitration's autonomy but actively buttress legislative innovation aimed at improving SME accessibility and procedural proportionality within the arbitral process.[154]

4.3.4 Broader Lessons

Both South Africa and Botswana demonstrate that judicial support and institutional credibility are central to a sustainable arbitration system. Their courts have generally upheld the autonomy of arbitration, enforcing agreements and awards with minimal interference.[155] Zambia's judiciary has followed a similar trajectory, as seen in **ZESCO Ltd v Kafue Gorge Contractors Ltd**, where the Supreme Court reaffirmed arbitration's independence and finality.[156] However, for

[151] Attorney General v Achiume [1993–1994] ZR 54 (SC).
[152] ZESCO Ltd v Kafue Gorge Contractors Ltd [2015] ZMSC 21
[153] Road Development Agency v UNIK Construction Engineering (Z) Ltd [2017] ZMSC 12.
[154] E. Onyema, International Commercial Arbitration and African States: Practice, Participation and Institutional Development (Cambridge University Press 2018) 206.
[155] Telcordia Technologies Inc v Telkom SA Ltd (2006) ZASCA 117 (SCA).
[156] ZESCO Ltd v Kafue Gorge Contractors Ltd [2015] ZMSC 21.

arbitration to gain broader legitimacy within Zambia's diverse socio-economic context, reform must also address the issue of cultural adaptationensuring that arbitration resonates with local dispute resolution traditions while remaining consistent with statutory and international standards.

Cultural adaptation can be achieved legally through targeted statutory provisions that formally recognise the role of customary norms and community-based principles within the arbitration process. For instance, Zambia's Arbitration Act No. 19 of 2000 could be amended to include clauses allowing parties to apply customary rules of procedure or evidence where appropriate, provided they do not contravene principles of natural justice or public policy.[157] This approach would mirror the flexibility found in Article 19 of the UNCITRAL Model Law, which empowers parties to determine procedural rules for their arbitration.[158] It would also align with constitutional provisions recognising customary law as part of Zambia's legal system under Article 7 of the Constitution of Zambia (Amendment) Act No. 2 of 2016.[159]Legally embedding cultural sensitivity would also strengthen access to justice by aligning arbitration with the principles of inclusivity, proportionality, and efficiency central to alternative dispute resolution (ADR).[160] By harmonising statutory reform, judicial interpretation, and customary recognition, Zambia can cultivate an arbitration system that is both legally robust and culturally resonanta system that reflects African values of dialogue and consensus while maintaining international credibility under the UNCITRAL framework.[161]

---

[157]E. Mwansa, 'The Development of Arbitration Institutions in Zambia: Challenges and Prospects' (2022) 19 Zambian Law Journal 87, 95.

[158] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006), Art. 19(1).

[159] Constitution of Zambia (Amendment) Act No. 2 of 2016, Art. 7.

[160]A. Redfern and M. Hunter, Law and Practice of International Commercial Arbitration (6th edn, Oxford University Press 2015) 73.

[161]E. Onyema, International Commercial Arbitration and African States: Practice, Participation and Institutional Development (Cambridge University Press 2018) 208.

4.4 Conclusion

This chapter set out to identify comparative lessons from South Africa and Botswana that could inform reforms to Zambia's arbitration framework and enhance accessibility for small and medium enterprises (SMEs). The analysis showed that South Africa's system highlights the importance of judicial consistency and institutional credibility, while Botswana's approach demonstrates how modern legislation and institutionalisation through BIAC can improve inclusiveness and affordability. For Zambia, these insights reinforce the need to modernise the Arbitration Act No. 19 of 2000 to reflect proportionality and efficiency, establish a sustainable national arbitration centre to decentralise and digitise dispute resolution, and leverage judicial precedent to support SME-oriented reforms. By also embedding cultural adaptation within its legal framework, Zambia can buildan arbitration system that is not only credible and efficient but also contextually relevant and accessible, thereby fulfilling the objectives of this study

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter presents the overall conclusion of the study by drawing together the key findings from the preceding chapters. The research assessed the effectiveness of Zambia's Arbitration Act No. 19 of 2000 in facilitating access to arbitration for Small and Medium Enterprises (SMEs) and compared this framework with the arbitration regimes of South Africa and Botswana. The purpose of this chapter is to synthesize the doctrinal and comparative insights already discussed and evaluate the extent to which Zambia's current legal and institutional framework supports or hinders SME participation in arbitration. The chapter also proposes practical recommendations aimed at reforming Zambia's arbitration system to enhance accessibility, affordability, and inclusiveness for

SMEs. In addition, it outlines the contribution of the study and identifies areas for further research.

5.1 GENERAL CONCLUSION

The study finds that although Zambia's Arbitration Act No. 19 of 2000 aligns with international standards and promotes key principles like party autonomy and limited court interference, it fails to meet the practical needs of SMEs. Major barriers include high costs, procedural complexity, low awareness, and concentration of arbitral institutions in urban areas. Many SMEs cannot afford arbitration or lack the knowledge to use it effectively. Comparative lessons show that South Africa's strong legal framework is limited by cost, while Botswana's simplified, inclusive approach highlights the value of institutional reform and accessibility.

Overall, the study concludes that Zambia's Arbitration Act is legally sound but socially and economically inaccessible for most SMEs. To make arbitration an effective dispute resolution tool for small businesses, the legal framework must incorporate SME-specific reforms, including simplified procedures, capped costs, decentralized access, and awareness programs. Without such reforms, arbitration will continue to operate as an elite mechanism benefiting larger commercial parties rather than a practical avenue for justice for the SMEs that form the backbone of Zambia's economy.

5.2 SUMMARY OF CHAPTERS

This study was structured into four main chapters preceding this conclusion, each addressing a specific component of the research objectives.

5.2.1 CHAPTER ONE

Chapter One introduces the study by highlighting the vital role of SMEs in Zambia's economy and their difficulties in resolving disputes through costly and complex court processes. It examines arbitration as a theoretically efficient alternative that remains inaccessible in practice. The research problem focuses on the gap between the Arbitration Act's intent and SMEs' real experiences. The chapter outlines objectives to assess the Act's effectiveness, identify access barriers, and draw comparative lessons from South Africa and Botswana. It also emphasizes the study's significance in guiding legal reform and improving access to justice, using a qualitative, doctrinal, and comparative methodology

5.2.2 CHAPTER TWO

Chapter Two assesses the effectiveness of Zambia's Arbitration Act No. 19 of 2000, showing its evolution into a framework consistent with international standards like the UNCITRAL Model Law. Although it upholds principles of autonomy, flexibility, and minimal court interference, the Act overlooks the specific needs of SMEs. High costs, lack of simplified procedures, and concentration of arbitration institutions in urban areas limit accessibility. Procedural rigidity, limited awareness, and weak enforcement further reduce efficiency. Overall, while the Act is modern and internationally aligned, it inadequately serves SMEs due to financial and institutional barriers

5.2.3 CHAPTER THREE

Chapter Three explores the major barriers preventing SMEs from effectively accessing arbitration in Zambia. It identifies high costs, low awareness, procedural complexity, and enforcement challenges as key obstacles. Arbitration expenses often outweigh the value of SME disputes, while limited legal literacy leads to unfavorable contract terms. The process has become overly formalistic, demanding legal expertise that small businesses cannot afford. Enforcement through the High Court further adds cost and delay. Consequently, these systemic challenges undermine arbitration's purpose as an affordable and efficient dispute resolution mechanism for SMEs.

5.2.4 CHAPTER FOUR

Chapter Four offers a comparative analysis of South Africa and Botswana to identify lessons for improving Zambia's arbitration system. South Africa's dual framework ensures strong judicial support but remains costly and rigid for SMEs. In contrast, Botswana's unified and modern Arbitration Act, supported by accessible institutions like BIAC, provides simplified and affordable procedures for small businesses. The comparison highlights that while South Africa shows the value of judicial backing, Botswana demonstrates the benefits of institutional reform and cost efficiency. Zambia can learn from both by pursuing statutory updates, decentralized institutions, and SME-friendly arbitration mechanisms.

5.3 RECOMMENDATIONS

Based on the findings of this study, it is evident that Zambia's arbitration framework requires targeted reforms to improve accessibility for SMEs. The recommendations may be broadly categorized into legal, institutional and practical reforms to ensure a holistic and sustainable transformation of the arbitration environment.

Legally, the study recommends that the Arbitration Act No. 19 of 2000 be amended to incorporate SME-specific provisions. The introduction of a fast-track arbitration procedure for small-value disputes would ensure faster and less costly resolution. This mechanism should include simplified pleadings, capped arbitrator fees, and flexible timelines to reflect the financial capacity of SMEs. The law should further empower arbitral tribunals to consider the economic position of the parties when allocating costs and to allow paper-based or virtual hearings for low-value claims. These amendments would move the Act from formal equality to substantive fairness, ensuring that SMEs are not disadvantaged when resolving disputes with larger, more powerful entities.

Institutionally, the study recommends the establishment of a National Arbitration and Mediation Centre (NAMC) to serve as the coordinating body for arbitration across the country. The NAMC should decentralize arbitral services through regional branches in provincial centers and develop SME-tailored rules and model arbitration clauses. This institution should also introduce digital case management systems to facilitate online filing and virtual hearings, enhancing accessibility for SMEs in rural and peri-urban areas. Collaboration between NAMC, chambers of commerce, and professional bodies such as the Chartered Institute of Arbitrators (Zambia Branch) would also strengthen awareness and outreach, ensuring that arbitration becomes a genuinely nationwide mechanism of commercial justice.

Economically, the author recommends the creation of an SME Arbitration Support Fund under the joint supervision of the Ministry of Justice and the Ministry of Commerce, Trade, and Industry. This fund would subsidize a portion of arbitration fees for qualifying SMEs and provide financial assistance for legal representation in low-value disputes. Additionally, arbitral institutions offering affordable or pro bono services to SMEs should be eligible for tax incentives or government recognition to encourage inclusivity within the arbitration sector.

From a practical perspective, the author recommends the implementation of comprehensive awareness and capacity-building program to address the widespread lack of knowledge about arbitration among SMEs. These programs should include the publication of simplified procedural guides in major local languages, training workshops for entrepreneurs, and the integration of arbitration education into national entrepreneurship development curricula. Public sensitisation through media and business associations would help change the perception of arbitration as an elitist or urban-based process.The study also calls for stronger enforcement mechanisms, including a specialised Arbitration Enforcement Unit within the High Court and expanded magistrates' court powers for small-value awards, with judicial review confined to UNCITRAL Model Law standards to ensure efficiency.

Finally, the study recommends the integration of arbitration with community-based dispute resolution mechanisms. Training local leaders and trade representatives as community arbitrators would align arbitration with Zambia's cultural values of consensus and reconciliation, fostering greater public confidence and participation among rural SMEs.Collectively, these recommendations aim to transform Zambia's arbitration framework from a formally modern but socially exclusive system into a practical, affordable, and inclusive mechanism of justice. Implementing these reforms would bridge the gap between law and accessibility, enhance SME participation in dispute resolution, and strengthen Zambia's commercial environment through a fair and efficient arbitration system that supports sustainable economic growth.

conclusion
The gap between Zambia's modern arbitration framework and the practical needs of SMEs. It emphasizes that reforms should focus on accessibility rather than mere legal alignment. Key measures include introducing affordable, fast-track procedures, decentralizing institutions, raising awareness, and improving enforcement and financial support systems. Implementing these reforms would transform the Arbitration Act into a tool of inclusive justice, enabling SMEs to resolve disputes efficiently while enhancing the rule of law, investor confidence, and national economic growth.

BIBLIOGRAPHY
STATUTES

Arbitration Act, No. 19 of 2000 (Zambia).

Arbitration Act 42 of 1965 (South Africa).

International Arbitration Act 15 of 2017 (South Africa).

Arbitration Act (Cap 06:01) (Botswana).

Attorney General v Achiume [1993–1994] ZR 54 (SC).

Attorney General v Mpundu [2010] ZMHC 24.

CASES

Development Bank of Zambia v Sun Pharmaceuticals Ltd [2012] ZMHC 45.

Khumalo v BIAC (2016) (High Court of Botswana).

Mulungushi Investments Ltd v China Geo-Engineering Corporation (Z) Ltd [2009] ZMSC 12.

Road Development Agency v UNIK Construction Engineering (Z) Ltd [2017] ZMSC 12

Telcordia Technologies Inc v Telkom SA Ltd (2006) ZASCA 117 (Supreme Court of Appeal of South Africa).

ZESCO Ltd v Avondale Housing Project [2013] ZMSC 22.

ZESCO Ltd v Kafue Gorge Contractors Ltd [2015] ZMSC 21

BOOKS

Bam R and Taku S, Small Claims and Arbitration Reform (Juta & Co 2021)

DLA Piper Africa, International Arbitration in Africa: Lessons for the Lusaka International Arbitration Center (7 February 2024)

E Mwansa, 'The Development of Arbitration Institutions in Zambia: Challenges and Prospects' (2022) 19 Zambian Law Journal 87.

F Manthwa, 'ADR and SMEs in South Africa: Challenges and Prospects' (2021) 27 Potchefstroom Electronic Law Journal 145.

Fackson Shamenda, Arbitration and SMEs in Zambia (Lusaka Law Publishers 2018)

G Glover, 'International Arbitration and SMEs in South Africa' (2020) 42(3) South African Law Journal 211

G Glover, The Law of Arbitration in South Africa (Oxford University Press 2017)

Gutto, S. (2017). Arbitration and Alternative Dispute Resolution in Africa: Trends and Challenges. Pretoria: UNISA Press.

JOURNAL ARTICLES

L Moeti, ‘ADR and SMEs in Botswana: Bridging the Gap’ (2021) 10 Botswana Law Journal 67.

Malila Mumba, Access to Justice in Zambia (Zambia Legal Press 2020)

Matlhaku Lesedi, ‘Role of Arbitration Institutions in Business Dispute Resolution’ (2022) 11(1) Botswana Institute of Arbitrators Review 44

Matlhaku Lesedi,Institutional Arbitration in Botswana (Botswana Legal Studies Press 2022)

Mwansa C, ‘Arbitration Procedure in Zambia: A Critical Analysis’ (UNZA Law Journal 2015).

Mwansa Peter, Commercial Arbitration in Africa (UNZA Press 2019)

Namushi A, ‘Geographical Accessibility of Arbitration in Zambia: Challenges for SMEs’ (2017) 4 Zambian J Legal Studies.

Namushi Brenda, Dispute Resolution for Rural SMEs (Zambia Legal Institute 2021)

Ndlovu, L. (2019). “Access to Arbitration for SMEs in Southern Africa: A Comparative Perspective.” African Journal of International and Comparative Law.

Onyema, E. (2018). International Commercial Arbitration and African States: Practice, Participation and Institutional Development. Cambridge

Redfern, A. & Hunter, M. (2015). Law and Practice of International Commercial Arbitration (6th ed.). Oxford: Oxford University Press.

Shamenda F, ‘Arbitration and the Cost Barrier for SMEs in Zambia’ (2016) 2 Zambia Law Review 67.

Simuchoba B, ‘Elitism and Formalism in Zambian Arbitration’ (2018) 3 African Arbitration Review.

Simuchoba Mwamba, Alternative Dispute Resolution in Zambia (3rd edn, Law Africa 2020)

Teboho Kgosiemang, 'Arbitration Reform and SMEs: A Botswana Perspective' (2021) 18(2) *Botswana Journal of Commercial Law* 97

Teboho Kgosiemang, Simplifying Arbitration in Botswana (Gaborone Legal Series 2020)

REPORTS

Arbitration Foundation of Southern Africa (AFSA).

Botswana Institute of Chartered Arbitrators (BIAC).

UNCITRAL Model Law on International Commercial Arbitration, 1985 (as amended in 2006).

Zambia Association of Arbitrators, Annual Report on Commercial Arbitration in Zambia (ZAA 2023)

INTERNET SOURCE

Arbitration Foundation of Southern Africa (AFSA), Rules and Procedures (2023) https://www.arbitration.co.za

Botswana Institute of Arbitrators, About Us (2023) https://www.biarb.org.bw

Botswana Institute of Chartered Arbitrators (BIAC), BIAC Rules and Fees (2023) https://www.biac.org.bw

Chartered Institute of Arbitrators (Zambia Branch), About Us (CIArb Zambia 2023) https://ciarbzambia.org.zm

World Bank, SME Contributions to Zambia's Economy (2023) https://www.worldbank.org/en/country/zambia/overview

Zambia Centre for Dispute Resolution, Institutional Arbitration Framework (ZCDR 2024) https://zcdr.org.zm

OTHERS

Ministry of Commerce, Trade and Industry (Zambia), National Strategy for SMEs 2021–2025 (MCTI 2021)

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

United Nations Commission on International Trade Law (UNCITRAL), UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)

Zambia Development Agency, SME Policy Framework and Guidelines (ZDA 2022)

PLAGIARISM CHECK.ORG

6.81% SIMILARITY OVERALL

4.63% POTENTIALLY AI

SCANNED ON: 11 NOV 2025, 9:20 AM

Similarity report

Your text is highlighted according to the matched content in the results above.

IDENTICAL	CHANGED TEXT	QUOTES	REFERENCES
0.65%	6.15%	0.13%	0.2%

AI Detector Results

Highlighted sentences with the lowest perplexity, most likely generated by AI.

LIKELY AI	HIGHLY LIKELY AI
0.00%	4.63%

Report #29893821

5 SCHOOL OF LAW AN ANALYSIS OF ZAMBIA'S ARBITRATION ACT NO. 1 5 6 11 12 18 21 25 28 31 40 19 OF 2000 AS IT APPLIES TO SMALL AND MEDIUM ENTERPRISES (SMES) IN COMPARISON TO OTHER JURISDICTIONS SUCH AS SOUTH AFRICA AND BOTSWANA By: CHIYENI KANSWATA LLB22114543 AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE. 2025 DECLARATION 2 DEDICATION 3 ACKNOWLEDGEMENTS 4 Table of Contents DECLARATION....................................

....i DEDICATION........

....

.... .ii ACKNOWLEDGEMENTS..

.... 48 57 60 63 74 .iii CHAPTER ONE. ....

....

48 51 57 60 63 64 74 .1 INTRODUCTION. ....

.... 48 51 57 60 63 64 74 1

1.1 INTRODUCTION. ....

.... 11 48 51 57 60 63 64 74 90 .1 1.2 BACKGROUND. ....

....

11 21 32 48 51 57 60 63 64 74 80 90 93 .1 1.3 STATEMENT OF THE PROBLEM.

.... 11 21 32 51 55 60 64

80 2 1.4 RESEARCH OBJECTIVES.

PLAGIARISM CHECK.ORG

REPORT #29893821

.... 11 21

32 51 55 60 64 80 .3 1.4 35 55 1 SPECIFIC OBJECTIVES INCLUDE:.

.... 6 11 21 30 32 35 36 41 43 51

UNILUS

UNIVERSITY *of* LUSAKA

Passion for Quality Education: Our Driving Force

SCHOOL OF LAW

L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: Chiyeni Kanswata **STUDENT NUMBER:** LLB22114543

SUPERVISOR: Mrs. Joy K.Z. Mutale **TOPIC:** An Analysis Of Zambia's Arbitration Act No. 19 Of 2000 As It Applies To Small And Medium Enterprises (SMES) In Comparison To Other Jurisdictions Such As South Africa And Botswana

Stage	Supervisor's Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	Correction to literature review, background and references.	05/12/2025	**05/11/2025**
Chapter 1 – Introduction	Correction to research questions and objectives	08/08/2025	**08/08/2025**
Chapter 2 –	Approved with corrections to references.	18/11/2025	**18/11/2025**
Chapter 3 –	Approved in both content and [illegible]	23/09/2025	**23/09/2025**
Chapter 4 –	Relate provisions more to research gap.	03/11/2025	

		08/12/2025	03/11/2025
Chapter 5 – Conclusions & Recommendations	Add chapter summaries and build on recommendations	10/11/2025	10/11/2025
Abstract, Table of Contents, Bibliography and Appendices	Approved.	11/11/2025	11/11/2025
First Draft	thanks for that work.	11/11/2025	11/11/2025
Second Draft	corrections on all furthermost pages.	12/11/2025	12/11/2025
Final Draft	Approve	13/11/2025	13/11/2025

NOTE: Please attach this form to the back of your dissertation at the end of the research, before submission of the dissertation via the Moodle e-learning platform.