Arbitration in Africa
Arguments for Zambia as an Emerging Seat of Arbitration

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I hereby declare that I have read and understood the regulations governing the submission of dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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ABSTRACT

As Africa focuses more closely on Alternative Dispute Resolution mechanisms, this study evaluates Zambia's potential as an emerging seat of arbitration. The outcomes of this study aim to provide a comprehensive evaluation of Zambia's capacity as an emerging seat of arbitration in Africa. The study reviewed the Zambian Arbitration Act No. 19 of 2000, fundamentally based on the UNCITRAL Model Law of 1986. Zambia's commitment to recognising and enforcing arbitration awards, with a focus on the role of judicial compliance and expertise in supporting arbitration agreements and awards. It also looks at what makes an attractive seat of arbitration through a study of prominent arbitration hubs both within Africa and internationally, providing insights into the strengths and challenges Zambia could face as an emerging seat of arbitration.

The study finds that Zambia has made impressive strides from setting up institutions like the Lusaka Institute for Arbitration Centre to introducing features such as third-party funding, a modern approach also seen in hubs like Singapore. It also demonstrates how Zambia who is a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, in conjunction with its judicial system bolster confidence in arbitration proceedings by facilitating the recognition and enforcement of arbitration awards. However, the study identified several areas for improvement. Zambia's legal framework has not been updated with the 2006 UNCITRAL Model Law amendments, leaving gaps in provisions for modern practices like interim measures. Additionally, a lack of rich arbitration expertise and institutional capacity makes competing with established hubs difficult. By modernising its legal framework, maintaining judicial non-interference, enforcing arbitration awards and increasing its capacity in terms of arbitration expertise, Zambia is on its way to becoming widely recognised as an emerging seat of arbitration.

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1.0 Introduction

The purpose of this chapter is to introduce Zambia as an emerging seat of arbitration by first providing the necessary context. The chapter begins by discussing how disputes are typically resolved through litigation in domestic courts, and introduces arbitration as an effective alternative dispute resolution (ADR) mechanism. This leads to exploring arbitration's advantages, especially in transnational agreements where international arbitration becomes essential. The chapter will explain the workings of international arbitration and why it is often preferred in the global commercial space. Following this, it will focus on the concept of the seat of arbitration, explaining its importance in the arbitration process. Finally, the chapter will contextualise these discussions within Zambia, providing background on arbitration in the country, introducing the Arbitration Act, and demonstrating the operation of the key arbitral institutions in Zambia.

1.1.1 Alternative Dispute Resolution

Disputes arising from commercial transactions are inevitable.[1] Thus, it is crucial to have dependable and effective systems to settle commercial disputes, particularly in the age of globalisation. The International Court of Justice (ICJ) in *Marshall Islands v United Kingdom* stated that a dispute must involve two parties who vehemently disagree on whether certain predetermined obligations are being fulfilled.[2]

ADR is an alternative to traditional court litigation. It has gained a lot of popularity in recent years.[3] ADR was recently perceived as merely a highly fashionable idea, a buzzword rather than a sustainable alternative to court litigation. However, ADR's evident effectiveness has earned it recognition as a workable and worthy alternative to court litigation.[4] The most

[1] Kariuki Muigua 'Promoting International Commercial Arbitration in Africa' (2016) Alternative Dispute Resolution 4(2).
[2] W Bishop 'Interpretation of Peace Treaties with Bulgaria, Hungary and Romania' (1950) 44(4) *American Journal of International Law* at p 742–752.
[3] T J Stipanowich 'ADR and the Vanishing Trial: The Growth and Impact of Alternative Dispute Resolution' (2004) 1 Journal of Empirical Legal Studies 909-911.
[4] Ibid.

recognised forms of ADR are Arbitration, Mediation, Negotiation, and Conciliation.[5] Arbitration involves submitting a dispute to one or more impartial arbitrators for a final and binding decision. Mediation is a voluntary, usually non-binding process in which a neutral mediator facilitates dialogue between parties to help them reach a mutually acceptable settlement. Negotiation is the most informal method, whereby parties communicate directly either with or without legal representation to seek a resolution. Conciliation is similar to mediation but the conciliator often takes a more proactive role in proposing terms for settlement. As mentioned above, ADR's purpose is to offer parties alternative forms of dispute resolution outside of the court systems.[6]

Arbitration is the ADR mechanism commonly used for disputes in commercial spaces. Through arbitration, parties to a dispute can choose to settle their differences outside of litigation with the intervention of impartial, independent arbitrators who are either selected or appointed by the parties involved. All parties would have provided prior consent to this process.[7] To elaborate further, arbitration is "a contractual method of resolving disputes where parties agree to entrust the differences between them to the decision of an arbitrator or a panel of arbitrators, to the exclusion of the courts, and they bind themselves to accept that decision, once made whether or not they think it right."[8]

However, not all scholars recognise arbitration as a form of ADR, stating that ADR should not lead to decisions on the rights and obligations of parties.[9] In non-adjudicative forms of ADR, parties should be able to decline the outcome or opt out of ADR proceedings at any stage. Courts typically do not interfere in these ADR processes because the results do not carry the enforceability in courts. For this reason, some scholars therefore view arbitration as an alternative to litigation but only partially a form of ADR, as it results in a binding ruling. Even though restricted, courts can uphold, enforce, or reassess arbitration agreements/rulings. They also state that the arbitration has governing statutes or codified procedures, making it less of

[5] M J Block 'The Benefits of Alternate Dispute Resolution for International Commercial and Intellectual Property Disputes' (2016) 44 Rutgers Law Record.
[6] Ibid.
[7] Redfern & Hunter *International Commercial Arbitration* 7 Ed (2023) at p 1.
[8] Kennedy Garston 'Examination of Arbitration Related UNCITRAL Texts and Their Adoption by African States' (2017) Panel III – Roundtable with UNCITRAL at p 2.
[9] Jan Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at p 1-15

an ADR procedure. However, this paper will explore arbitration in its commonly known form, an ADR mechanism, rather than within the framework of additional or alternative remarks.[10]

1.1.2 International Arbitration

In domestic disputes within a state, parties can seek recourse with domestic courts or arbitration proceedings in the same country. This process is relatively easy because the law of one state governs both parties. However, when it comes to disputes that arise from a transnational agreement, things become quite complex. Without an arbitration agreement, transnational disputes can be complicated for the parties as there would be a jurisdictional uncertainty because deciding which court should preside over the matter can be challenging when parties are from different jurisdictions. If parties were to choose the courts or legal system of one of their countries to resolve their dispute, there is a risk of bias towards the party whose country is presiding over the matter. Nor are third-party neutral countries appropriate for several reasons. Firstly, entrusting a dispute governed by foreign law to judges trained in a different legal system can be costly and inefficient due to the need to present unfamiliar legal evidence. Secondly, language barriers may require translation of documents and proceedings, making it difficult for those involved to fully understand or participate. Thirdly, courts in a neutral country may not be willing to use their resources to resolve disputes between foreign parties, and jurisdiction could be challenged. Additionally, national court judgments are not as easily recognised across borders as arbitration awards. Lastly, court proceedings lack privacy, as they are generally open to the public.[11]

Arbitration was created to be a neutral platform for parties to resolve their issues without being subjected to the ambiguities and delays that frequently accompany domestic court proceedings, which is one of its benefits.[12] Other advantages of arbitration include its adaptability, the confidentiality of the arbitration process, and its effectiveness, particularly in terms of time and cost savings.[13] Commercial disputes can entail international corporate agreements and issues that occur just inside the boundaries of a single nation. Therefore, it is crucial to have

[10] Jan Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at p 1-15
[11] Kennedy Garston 'Examination of Arbitration Related UNCITRAL Texts and Their Adoption by African States' (2017) Panel III – Roundtable with UNCITRAL at p 1-3.
[12] J Sikamo, A Mwanza & C Mweemba 'Copper mining in Zambia-history and Future' (2016) 11 (6) *Journal of the Southern African Institute of Mining and Metallurgy* at p 491–496.
[13] Redfern & Hunter *International Commercial Arbitration* 7 Ed (2023) at p 1.

modernised laws that not only enhance national arbitration practice but also foster a climate that is welcoming to investors because they will have confidence in resolving disputes.[14]

Arbitration is typically based on a contractual agreement, which allows for extensive party autonomy. It is initiated through an arbitration clause, as parties to a contract are free to set their preferred terms and conditions. The intention of the parties is a crucial element in arbitration; without mutual agreement to arbitrate, either party may choose to pursue litigation or other alternative dispute resolution methods such as mediation, conciliation, or negotiation. The arbitration agreement is the cornerstone of the arbitration process.[15] It is common practice for parties to include an arbitration agreement in their main contract that sets out the procedure to be followed when a dispute occurs. An arbitration agreement is important because it reflects the party's consent to arbitrate.[16]

Arbitration can be carried out in two ways, either through institutional or ad hoc.
Institutional arbitration takes place under the guidance of well-established organisations such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA). These institutions provide a set of rules that govern the arbitration process and handle administrative tasks, including the appointment of arbitrators. One of the main advantages of institutional arbitration is the structured support it offers, with clear procedural rules that are regularly reviewed and updated. Additionally, there are institutions dedicated to specific industries, like the World Intellectual Property Organisation (WIPO) or the London Maritime Arbitrators Association (LMAA) for maritime issues.[17]

Ad hoc arbitration, by contrast, operates without the involvement of a formal institution. The parties can either create their own rules or use established guidelines, such as the widely recognised United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. This form of arbitration is valued for its flexibility, as parties can tailor the process to fit their specific needs. However, it can also present challenges, as the absence of institutional support means the parties must manage the procedure themselves, which can be more time-

[14] Redfern & Hunter *International Commercial Arbitration* 7 Ed (2023) at p 1.
[15] Ibid.
[16] Ibid.
[17] Kennedy Garston 'Examination of Arbitration Related UNCITRAL Texts and Their Adoption by African States' (2017) Panel III – Roundtable with UNCITRAL at p 8-9.

consuming and expensive. Additionally, in cases where the parties cannot agree on arbitrators, an appointing authority may need to be designated in advance.[18]

In essence, institutional arbitration offers a more structured and administratively supported process, while ad hoc arbitration allows for greater flexibility but requires more direct involvement from the parties to ensure smooth proceedings.

When it comes to appealing, reviewing or the overall conclusiveness of an award, an arbitration award is binding and cannot be appealed on its merits. This has generally been seen as an advantage over litigation.[19] While some critics acknowledge that while finality can lead to cost and time savings in arbitration, they also suggest that this advantage might not outweigh the risk of having to accept an inconsistent award, for example when an arbitrator makes an error.[20]

Finality in arbitration is generally beneficial when the arbitral award is accurate or when any potential harm from an error is outweighed by the advantages of finality. In jurisdictions with established arbitration laws, the option to appeal or review a decision is typically limited to cases. For instance, under the UNCITRAL Model Law, an arbitral award can be set aside if the tribunal had no jurisdiction, if due process was not followed, or if the award relates to matters which are outside the scope of the arbitration agreement. The intention behind this is to respect the principle of finality in arbitration, where decisions are meant to be conclusive and binding. Some arbitration bodies have procedures for resolving disputes. If a party disagrees with the arbitration award, they may choose to appeal to the institution.[21]

However, there are drawbacks to having an appeal process for awards.[22] Firstly, a court's decision could override that of the tribunal. Secondly, parties who initially agreed to arbitration may end up being compelled to appear before a court against their will, which in essence goes back to the litigation procedure that the parties were trying to avoid in the first place. Lastly, the appeals process might lead to delays that undermine the efficiency of arbitration proceedings. Therefore, when selecting a seat of arbitration, it is crucial to consider the

[18] Kennedy Garston 'Examination of Arbitration Related UNCITRAL Texts and Their Adoption by African States' (2017) Panel III – Roundtable with UNCITRAL at p 8-9.
[19] C Kajimanga & NK Mutuna *Handbook on Arbitration in Zambia* 1 ed (2023) at p 16-17.
[20] Ibid.
[21] Ibid.
[22] Jonathan DeBoos 'Arbitration Awards: Is Review on the Merits Desirable' (2008) 3 *International Journal of Constitutional Law* at p 31.

country's stance on appeals and reviews.[23] It should be noted, however, that different jurisdictions employ varying approaches to appeals in arbitration. For instance, in the United Kingdom, parties can appeal an arbitral award on a point of law, unless they have specifically agreed to exclude that right. Singapore takes a stricter approach, allowing appeals only in domestic cases. In the United States, review is even narrower, limited to the exceptional situation where an award shows a "manifest disregard of the law".[24]

When it comes to arbitration involving parties from different backgrounds and legal systems, selecting a neutral seat of arbitration is crucial to ensure fairness, and prevent any party from gaining undue advantage over another. The choice of law governing the arbitration seat remains vital in this context. This is because the choice of law determines the substantive rules that will govern the dispute and can directly influence the outcome. [25]

One significant aspect of arbitration is ensuring access to experienced and specialised arbitrators. There is no single, universally required qualification in order to become an arbitrator. Rather, arbitrators are assessed based on their professional experience, reputation, and recognition or accreditation by arbitral institutions.[26] Accreditation, such as through the Chartered Institute of Arbitrators or International Chamber of Commerce, has become an important marker of expertise, but these certification programs are primarily focused on training in terms of arbitral procedure and ethics. In practice however, you do find more often that arbitrators are members of the legal profession.[27]

The limited number of arbitrators with the required expertise often results in high demand for their services. Due to this high demand, leading international arbitrators often face scheduling constraints, which can lead to delays in both hearing dates and the issuance of awards. This demand for experienced arbitrators has been noted as a contributing factor to extended timelines in the arbitration process. This issue has been highlighted in various studies and surveys. For instance, the 2019 Queen Mary University of London (QMUL) International Arbitration Survey, noted that respondents raised concerns over arbitrators' ability to manage

[23] Jonathan DeBoos 'Arbitration Awards: Is Review on the Merits Desirable' (2008) 3 *International Journal of Constitutional Law* at p 31.
[24] Russell Thirgood 'Appeals in Arbitration: "To Be or Not to Be"' (2021) 87 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management at p 423-435.
[25] Redfern & Hunter *International Commercial Arbitration* 7 Ed (2023) at p 17.
[26] Nels E Nelson 'The Selection of Arbitrators' (1986) 37 *Labour Law Journal* at p 703.
[27] Ibid.

construction arbitrations efficiently.[28] They emphasised the importance of arbitrators having sufficient availability, issuing awards within reasonable periods, and demonstrating strong case-management skills. Delays such as these impacted the efficiency of the arbitration process, which is meant to be quicker than going through the court system. Similarly, the 2021 QMUL International Arbitration Survey[29] emphasised the importance of efficiency in arbitration proceedings. Respondents advocated for quicker procedures and, critically, penalties for arbitrators causing delays. This consistent feedback underscores the pressing need for swift and efficient arbitration.[30]

There have, however, been steps made by institutions to mitigate these procedural constraints by arbitrators. For example, the International Chambers of Commerce (ICC) requires arbitrators to disclose their caseload before they are appointed to ensure they have enough time to fulfil their responsibilities.[31] However, this is not the only cause of delays; case complexity is one such factor, as intricate cases with multifaceted legal arguments, extensive documentation, or cross-border considerations naturally require more time for thorough analysis and fair adjudication. Additionally, party tactics often exacerbate delays, with parties deploying strategies such as introducing last-minute evidence or filing repeated adjournment requests to gain procedural advantages. Arbitrator issues also contribute to delays, as scheduling conflicts or frequent replacements disrupt the continuity of proceedings.[32]

Cost is considered a factor in arbitration proceedings. Arbitration aims to be speedy and cost-efficient meaning parties involved want to avoid expenses. The arbitration process focuses mainly on fees related directly to arbitration, such as hiring expert arbitrators and witnesses, administrative costs, like services or registrar fees, and any other incidental expenses that may occur during the proceedings. These costs are typically approved by the arbitration institution.

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[28] Queen Mary University of London *2019 International Arbitration Survey: Driving Efficiency in International Construction Disputes* (2019) available at https://www.troutman.com/insights/the-intersection-of-international-arbitration-and-construction-disputes-a-review-of-the-2019-queen-mary-university-of-london-international-arbitration-survey.html, accessed on 24 November 2024.

[29] 2021 International Arbitration Survey, *Adapting Arbitration to a Changing World* available at https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

[30] Broderick Bozimo, 'Combatting Delays in Arbitration: Expediting the Process' (2021) Available at https://broderickbozimo.com/combatting-delays-in-arbitration-expediting-the-process/, accessed on 10 October 2024.

[31] International Chamber of Commerce Arbitration Rules at Art 11 (2).

[32] Op cit note 30.

The parties are also in charge of booking a conference venue or meeting space, and are responsible for paying for the lawyers hired for the arbitration process, covering the expenses related to preparing the case, handling fees and costs associated with expert witnesses, covering accommodation and travel costs for attorneys or arbitrators as witnesses, and other necessary expenses during the proceedings. Since the parties are accountable for all fees and expenses, they tend to choose a location that is budget-friendly, convenient, and ideally local to avoid costs.[33]

Arbitration is brought into effect through an agreement called an arbitration agreement. This serves as the foundation that outlines the terms and conditions that will govern the arbitration process. A crafted arbitration agreement encompasses elements essential for ensuring a just and effective arbitration procedure. The dynamic elements that are usually included in the arbitration agreement include components such as:

Selection of Arbitrators: Parties have the option to jointly determine the number and identity of arbitrators aiming to assemble a panel with suitable expertise and impartiality. It is vital as the arbitrators' knowledge and neutrality play a role in upholding the fairness and credibility of the arbitration proceedings. Parties can opt for either an arbitrator or a tribunal to determine their dispute. The approach to selecting arbitrators may differ from party to party. [34]

Arbitration Rules: The agreement should outline the regulations governing how the arbitration will be conducted. These rules may align with those established by bodies such as the International Chamber of Commerce (ICC), the UNCITRAL, or other entities. The selection of rules influences how procedures are carried out during arbitration, encompassing aspects like hearing protocols, evidence presentation methods, and formulation of awards. Institutional rules provide a framework that ensures an equitable progression of arbitration proceedings that is in line with accepted norms.[35]

Governing Law : This refers to the substantive law that will be used when resolving the dispute. The law outlines the rights and responsibilities of the parties involved in a contract. The

[33] Redfern & Hunter *International Commercial Arbitration* 7 Ed (2023) at p 129.
[34] Jan Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at p 31-51.
[35] Ibid.

substantive law is used to guide how the terms of the agreement are to be understood and enforced. Parties can select this law from any jurisdiction, even if it differs from the arbitration procedures and seats. For instance, a contract might state that the laws of London apply while using ICC Arbitration Rules and using South Africa as an arbitral seat.[36]

Seat of Arbitration: The seat of arbitration is crucial as it determines the procedural law of the arbitration. The selection of a seat can greatly influence how well the arbitration proceeds and how easily its decisions can be enforced. The seat of arbitration establishes the legal framework for the proceedings, specifies which national laws apply to them and decides how much authority local courts must intervene in the arbitration process.[37]

1.1.3 The Seat of Arbitration

There are two prominent theories surrounding the discussion of the seat of arbitration, namely: the delocalisation theory and the seat theory.[38] These theories highlight differing perspectives on the role of the arbitral seat. The delocalisation theory advocates for arbitration to operate independently of national legal systems, arguing that the process should not be anchored in the laws of the jurisdiction where the arbitration is seated but instead focus on enforceability in the country where the award will be recognised.[39] In contrast, the seat theory emphasises the inevitable connection between arbitration and the laws of the seat, which provide a legal framework that governs arbitral proceedings and ensures procedural fairness. While the delocalisation theory offers a vision of arbitration free from national constraints, critics argue that it undermines the practical realities of international arbitration, where parties often rely on judicial support at the seat for enforcing interim measures or addressing procedural challenges. The seat theory, on the other hand, aligns with arbitration's dual reliance on party autonomy and judicial oversight, striking a balance between flexibility and structure. This dissertation

[36] Jan Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at p 31-51.
[37] Ibid
[38] Masood Ahmed 'The Influence of the Delocalisation and Seat Theories upon Judicial Attitudes Towards International Commercial Arbitration' (2011) 4 *The International Journal of Arbitration, Mediation and Dispute Management* at p 406-422.
[39] Ibid.

adopts the perspective of the seat theory, focusing on its practical implications for arbitral proceedings and the enforceability of awards.[40]

The selection of an arbitral seat is strategic, as it determines the extent of judicial intervention, the procedural framework, and the enforceability of decisions. The seat of arbitration is what determines the lex arbitri.[41] The application of a lex arbitri is a requirement for arbitration. FA Mann, a British lawyer, is credited with coining the term 'Lex Arbitri'.[42] The seat of arbitration is what the lex arbitri essentially signifies. It requires deciding on the legal framework for the arbitration proceedings. The legality of the arbitral process is governed by the lex arbitri legislation. The lex arbitri also determines the extent to which disputing parties may use interim measures, the extent to which parties may turn to domestic courts for supportive measure to assist the arbitrations, as well as the extent to which the judiciary can interfere in arbitral matters.[43]

The five most popular locations for arbitration, according to a 2021 study on international arbitration[44], are London, Singapore, Hong Kong, Paris, and Geneva. With almost 90 different seats from diverse jurisdictions listed, the findings demonstrated how widespread international commercial arbitration is. The top five desired seats remained similar with surveys conducted in previous years. With 54% of respondents choosing each city, London and Singapore are currently deadlocked for the top place. Hong Kong, which occupies 50% of the third spot, is closely followed by Paris (35%), Geneva (13%), and Paris (50%) in that order.[45] According to the survey, London, which had 64% of the seats in the previous survey, experienced a considerable decline.[46] It also demonstrated some variation as Asian nations appeared to be moving up the preference scale, with Singapore and Hong Kong recording notable increases in comparison to earlier surveys. This is likely due to the growing reputation of arbitration institutions in these regions, such as the Singapore International Arbitration Centre (SIAC) and

[40] Masood Ahmed 'The Influence of the Delocalisation and Seat Theories upon Judicial Attitudes Towards International Commercial Arbitration' (2011) 4 *The International Journal of Arbitration, Mediation and Dispute Management* at p 406-422.
[41] Ibid.
[42] FA Mann *Lex Facit Arbitrum* P Sanders ed (1967) at p 160.
[43] Jonathan Hill 'Determining the Seat of An International Arbitration: Party Autonomy and The Interpretation of Arbitration Agreements' (2014) 63 *The International and Comparative Law Quarterly* at p 517-534.
[44] 2021 International Arbitration Survey, *Adapting Arbitration to a Changing World* available at https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf at p 5-6.
[45] Ibid at p 6.
[46] Ibid.

the Hong Kong International Arbitration Centre (HKIAC), which have established themselves as leading arbitral seats despite being relatively newer compared to some long-standing institutions.[47] The survey also suggests that prominent European cities such as London, Paris and Geneva, have managed to maintain their dominance over time and that this development may have its roots in their longstanding reputation as "safe seats".[48]

2The survey also determined what attracts people to an arbitration seat. Following is a list of the responses, in order of highest ranking[49]:

1. More excellent judicial and court support for arbitration (56 %)[50]
2. Improved neutrality and objectivity of the local justice system (54 %)[51]
3. Better history of upholding contracts and arbitral awards (47 %)[52]
4. Ability to carry out interim measures or emergency arbitrators' rulings (39 %)[53]
5. Remote handling of arbitration-related proceedings by local courts (28 %)[54]
6. Allowing electronic award signatures (14 %)[55]
7. The politics of the region are stable (9 %)[56]
8. Allowable third-party funding in the jurisdiction (8 %)[57]

As mentioned earlier, the selection of an arbitral seat is critical in the dynamic world of international arbitration. The seat determines the extent to which disputing parties may use interim measures, the extent to which parties may turn to domestic courts for supportive measures to assist the arbitrations as well as the extent to which the judiciary can interfere in arbitral matters.[58] In this chapter we will dive deeper into the literature of what makes an

[47] 'Choosing an Arbitration Seat in Asia - Singapore or Hong Kong' available at https://www.pinsentmasons.com/out-law/guides/choosing-an-arbitration-centre-in-asia--hong-kong-or-singapore, accessed on 15 September 2024.
[48] 2021 International Arbitration Survey, *Adapting Arbitration to a Changing World* available at https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf
[49] Ibid at p 6.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] Ibid.
[57] Ibid.
[58] Jan Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at at p 31-51.

attractive seat of arbitration and what factors have previously contributed to certain seats being chosen. This will be done through the lens of the analysis of literature around this topic as well as a look at which countries are popular in being chosen as the seat of arbitration both internationally and in Africa, and what characteristics have made these locations suitable candidates.

The seat of arbitration determines the legal jurisdiction of the arbitration. The choice of the seat can thus be used as a strategic decision by the parties. Once the parties have chosen a seat of arbitration, this establishes the legal framework that will be utilised during the arbitration process.[59] This legal framework can also be referred to as the lex arbitri. The lex arbitri essentially legitimises the arbitration by providing a comprehensive legal framework. The legal framework can be incorporated into the seat's legislation that is dedicated to international arbitration or perhaps a broader legislative instrument that governs both domestic as well as international arbitration. The lex arbitri typically empowers parties with the autonomy to select applicable laws and procedural rules, subject to certain restrictions, and delineates the scope of disputes that are arbitrable.[60]

The term "seat of arbitration" is often interpreted to mean the venue. These terms are mutually exclusive, however in practice, they are often seen to coincide. Theoretically, the venue is the geographical location where procedures such as hearings and general meetings of the parties.[61]. The arbitral tribunal may hold any hearing at any convenient geographical place in consultation with the parties and hold its deliberations at any geographical place of its own choice. The arbitral tribunal may hold hearings or deliberations at any geographical location deemed convenient, even if it is outside the designated seat of arbitration. This principle is widely recognised across major arbitration frameworks. For instance, Article 16.3 of the LCIA Arbitration Rules[62] explicitly permits tribunals to conduct hearings "elsewhere than the seat of arbitration". Similarly, Article 20(2) of the UNCITRAL Model Law[63] allows tribunals to meet at any place they consider appropriate for deliberations, hearings, or inspections, unless

[59] Jan Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at at p 31-51.
[60] Ibid.
[61] Ibid.
[62] London Court of International Arbitration, *Arbitration Rules* (2020) at Art 16.3.
[63] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)*.

otherwise agreed by the parties. The ICC Arbitration Rules Article 18(1)[64] affirm that, while the seat of arbitration determines the jurisdiction, hearings and meetings can be conducted at any suitable location after consultation with the parties. The SIAC Rules (Rule 21.1)[65] and HKIAC Rules (Article 14.1)[66] follow a similar approach, granting tribunals discretion to choose practical venues for proceedings. Additionally, the AAA-ICDR Rules (Article 11(3))[67] echo this flexibility, enabling hearings to be held at any location the tribunal deems appropriate.

1.1.4 African Seats of Arbitration

The default in international arbitration is to choose a seat outside of the parties' home jurisdiction to ensure neutrality. For African parties, this principle often extends to avoiding the continent entirely.[68] This preference often results in African disputants selecting arbitration seats in established hubs such as London, Paris or Singapore rather than those within Africa.[69] Unfortunately, this pattern reflects a broader perception that arbitration centres outside the continent offer more neutrality, efficiency, or reliability.[70] This reliance on external arbitration venues perpetuates the view that Africa lacks the institutional capacity or reputation to host international commercial arbitration, thus undermining the continent's ability to establish itself as a credible player in the global arbitration landscape. In a 2018 International Arbitration Survey, [71] it was revealed that African countries ranked quite low when it comes to being chosen as seats of arbitration, even among African parties. As demonstrated above, this trend persisted in the 2021 survey[72] with the top being London, Paris, Geneva and Singapore, were identified as chosen seats for arbitration activities amongst Africans.

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[64] International Chamber of Commerce, *Arbitration Rules* (2021) at Art 18(1).
[65] Singapore International Arbitration Centre, *Arbitration Rules* (2016) Rule 21.1.
[66] Hong Kong International Arbitration Centre, *Administered Arbitration Rules* (2018) Art 14.1.
[67] International Centre for Dispute Resolution, *ICDR Arbitration Rules* (2021) Art 11(3).
[68] "The Challenges to Growth of International Commercial Arbitration in Africa" available at https://thelawyer.africa/2023/09/21/growth-of-international-commercial-arbitration-in-africa/, accessed on 24 October 2024.
[69] Ibid.
[70] Ibid.
[71] 2018 International Arbitration Survey *The Evolution of International Arbitration* available at https://www.qmul.ac.uk/arbitration/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF, accessed on 29 November 2024.
[72] 2021 International Arbitration Survey, *Adapting Arbitration to a Changing World* available at https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf at p 5-6.

The lack of willingness to select African seats of arbitration has been attributed to several factors. One of the reasons was due to alleged slow progress in establishing arbitration facilities in Africa, suggesting that this indicates a lack of experience in resolving disputes compared to other regions.[73] The 2022 SOAS Arbitration in Africa Survey[74] also identified key reasons why African seats may not be preferred. This survey touched on the effects Covid-19 had on arbitration in Africa, highlighting a lack of infrastructure to accommodate the modernisation of arbitration. For instance, the pandemic exposed weaknesses in technological infrastructure, with poor internet connectivity and inadequate cyber systems hampering the effectiveness of virtual hearings. While the pandemic accelerated the use of digital tools like e-filing, virtual hearings, and online document management, it also underscored disparities in access to technology and the financial capacity of practitioners and institutions to adapt.[75] Therefore, this survey may demonstrate that African states, although developing in the practice of arbitration, re developing at a slower and consequently outdated pace compared to their international counterparts. Thus, they may not have the necessary tools to keep up with the development of arbitration.

Concerns were also raised in terms of there being a lack of information about arbitration institutions across Africa. Many of these institutions are relatively new, lack international recognition, and struggle to establish robust online platforms to disseminate critical information, such as rules of arbitration, panel composition, and procedural guidelines. A weak online presence is symptomatic of a broader structural issue such as insufficient funding as well as technological infrastructure, difficulties which date back to the challenges faced during the Covid-19 pandemic.[76] This deficiency can often be traced back to limited funding and a lack of strategic policy incentives to prioritise digital transformation.[77] This has far-reaching consequences. Arbitration centres with little to no online presence find it hard to draw in international clients, who often depend on readily available information to assess potential venues. Without reliable digital platforms, these centres miss the chance to highlight their expertise or even share their awards, leaving them largely invisible in a competitive global

[73] John Ngisi 'International Arbitration In Africa: Lessons For The Lusaka International Arbitration Center' available at https://www.dlapiperafrica.com/en/zambia/insights/2024/International-Arbitration-In-Africa.html, accessed on 11 May 2024.
[74] SOAS Arbitration in Africa *2022 Arbitration in Africa Survey: Domestic and International Arbitration* (2022) SOAS University of London.
[75] Ibid.
[76] Ibid.
[77] Ibid.

market. With the lack of technological advancements, it can leave international parties with the view that African countries are ill-equipped to compete on the global stage.

For instance, in recent years, the LCIA has taken the lead by updating its Arbitration Rules to focus on making processes smoother and more tech-friendly.[78] The Covid changes highlight this shift, with a stronger emphasis on using electronic communication, holding virtual hearings, enabling quicker decisions on claims, and tightening confidentiality measures.[79] These updates show how modern frameworks can keep up with the changing demands of international arbitration and result in a more efficient process. Additionally, there has been a lack of expertise in terms of the number of arbitrators, experienced lawyers, and arbitration scholars, further impeding Africa's competitiveness in this field.[80] These factors highlight the need for Africa to enhance its legal and institutional frameworks, as well as practices, to attract international parties looking for seats or looking to utilise African arbitration facilities.

A country being a member of the New York Convention is crucial when it comes to the practical implementation of arbitration awards. The convention ensures that international arbitration awards are upheld globally. However, the African continent has the highest number of non-signatory states to the New York Convention. These include Chad, Congo (Brazzaville), Equatorial Guinea, Eritrea, Eswatini, Gambia, Guinea-Bissau, Libya, Namibia, Somalia, South Sudan, and Togo. The absence of these countries from the convention undermines Africa's overall attractiveness as a venue for international arbitration. This gap highlights the need for broader adoption of the convention across the continent to align with global arbitration standards.[81]

Another impediment for Africa is the reputation for corruption when it comes to their processes and systems. According to Transparency International's 2023 Corruption

[78] LCIA embraces technology in update to arbitration rules available at https://www.wfw.com/articles/lcia-embraces-technology-in-update-to-arbitration-rules/, accessed on 3 January 2025.
[79] Ibid.
[80] "The Challenges to Growth of International Commercial Arbitration in Africa"(2023) available at https://thelawyer.africa/2023/09/21/growth-of-international-commercial-arbitration-in-africa/, accessed on 24 October 2024.
[81] Holly Stebbing *'Enforcement of awards across Africa – 42 of Africa's 54 states have now acceded to the New York Convention'* available at https://www.nortonrosefulbright.com/en/inside-africa/blog/2021/03/enforcement-of-awards-across-africa--42-of-africas-54-states?utm_

Perceptions Index[82], many African nations, including Somalia, South Sudan and Libya, are ranked amongst the most corrupt globally. While other countries in Asia, for example, are also known for high levels of corruption, leading arbitration hubs like Singapore and Hong Kong have successfully distanced themselves from these regional perceptions. In contrast, African arbitration seats still seem to be grappling with generalised perceptions of systemic corruption and governance challenges that overshadow their progress.[83]

The 2020 SOAS Arbitration in Africa Survey[84] shows that the top five African countries that act as seats of arbitration are: South Africa, Nigeria, Egypt, Rwanda, and Cote d'Ivoire. According to this survey, participants indicated that the factors influencing their choice of a seat of arbitration, in Africa, include expertise availability in arbitration, the presence of technology and facilities along with the seat's arbitration laws were deemed essential. Political stability and security of the seat were also factors mentioned as crucial in the arbitration process for all involved parties.[85]

The 2024 SOAS Arbitration in Africa Survey[86] brought to light serious concerns about delays and interference by domestic courts, particularly in Nigeria and Kenya, that have previously been considered as arbitration-friendly jurisdictions.[87] Countries like South Africa, Rwanda, and Egypt continued to stand out for their strong legal frameworks, supportive judiciaries, and well-regarded arbitration institutions.[88] This survey also highlighted a glaring gap initially identified in the 2022 survey, namely weak technological infrastructure, a dilemma that became more apparent in the Covid-19 pandemic. Issues like poor internet connectivity and weak cybersecurity made it harder for many centres to adapt to modern arbitration demands, such as virtual hearings and e-filing.[89] The 2024 survey further emphasises that if Africa is to compete on the global arbitration stage, there is a pressing need for bold investments in the field.[90]

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[82] Transparency International's 2023 Corruption Perceptions Index available at https://www.transparency.org/en/cpi/2023?utm_source , accessed on 3 November 2024.
[83] Ibid.
[84] Emilia Onyema '*SOAS Arbitration in Africa Survey Report* : Top African Arbitral Centres and Seats' (2020) SOAS University of London at p 3.
[85] Ibid.
[86] Emilia Onyema '*SOAS Arbitration in Africa Survey Report: Perceptions on Africa-Connected Arbitration: Seats, Female Arbitrators and Tribunal Secretaries* ' (2024) SOAS University of London .
[87] Ibid at p 11.
[88] Ibid at p 11.
[89] Ibid at p 10-11.
[90] Ibid at p 12-16.

1.1.5 Problem Statement

Although arbitration is widely accepted as the preferred mechanism for resolving international commercial disputes, Zambia's role as a potential arbitral seat remains underexamined. While the country has modern legislation in the Arbitration Act No. 19 of 2000[91] and is party to the New York Convention[92], it has not yet achieved visibility or credibility comparable to regional leaders such as South Africa or Nigeria.[93]

This lack of recognition is significant. Without a clear assessment of Zambia's legislative, judicial and institutional capacity, the country risks being overlooked in favour of foreign arbitral seats, even for disputes involving Zambian parties. The problem, therefore, is whether Zambia's current framework meets international standards well enough to support its emergence as a competitive seat of arbitration.

1.2 Research Question

This dissertation seeks to answer the question: Does Zambia's legislative framework, commitment to upholding arbitration judgments, and efforts to align with international arbitration standards, make it an emerging seat of arbitration?

1.3 Aim

This dissertation aims to critically assess Zambia's potential to serve as a competitive seat of arbitration within the African context. The study examines Zambia's legal, institutional, and judicial frameworks to determine how well it supports arbitration and whether it aligns with the factors that define successful arbitration seats. While the primary focus is Africa, the research also draws comparisons from leading global seats in order to provide benchmarks, highlight best practices and identify reforms that could strengthen Zambia's position. Through analysis of legislation, case law and institutional capacity, the study seeks to offer a clear image of Zambia's current standing and practical recommendations for its growth as an arbitration destination.

[91] Arbitration Act 19 of 2000 (Zambia).
[92] The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958.
[93] Emilia Onyema '*SOAS Arbitration in Africa Survey Report: Perceptions on Africa-Connected Arbitration: Seats, Female Arbitrators and Tribunal Secretaries* ' (2024) SOAS University of London at p 11.

1.4 Specific Objectives

1. To examine how Zambia's legal framework, particularly the Arbitration Act, supports arbitration and aligns with international standards.
2. To explore the key factors that make a country an attractive seat for arbitration and assess Zambia's standing in comparison to other jurisdictions in Africa and globally.
3. To analyse how Zambian courts approach arbitration, focusing on enforcing agreements, supporting disputes, and addressing arbitral awards.
4. To identify the existing arbitration institutions in Zambia, understand how many there are, their roles, and their contributions to the arbitration system.
5. To provide practical recommendations for improving Zambia's arbitration framework and enhancing its profile as an emerging seat of arbitration.

1.5 Methodology

a) Data Collection: The research will be conducted through quantitative research. It will comprise of publicly available sources, such as arbitration case reports, legal databases and government publications.

b) Data Analysis: This will be done through a thorough understanding of the Zambian arbitration law framework through the results of the quantitative research. The dissertation will then develop a comparative study of what constitutes an appealing seat of arbitration, and demonstrate how Zambia meets this criterion.

c) Sample Selection: The dissertation relies on purposive sampling by focusing on specific journal papers, court cases, and publications that speak to Zambia's appeal as a seat of arbitration. This is because different viewpoints exist, and individual arbitration results are not always readily available because arbitration is often confidential in nature. Purposive sampling is usually recommended where it is foreseen that there may be a challenge of limited recourses.[94]

[94]M Q Patton 'Qualitative Research and Evaluation Methods' (2002) Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4012002/#:~:text=Purposeful%20sampling%20is%20a%20technique,resources%20(Patton%2C%202002), accessed on 7 June 2023.

1.6 Significance of Study/Conclusion

This study hopes to contribute to arbitration scholarship by providing a comprehensive evaluation of what makes a destination an attractive seat of arbitration. It will also highlight Zambia's strengths as well as its shortcomings, which require improvement. The study also hopes to inform policy in not only Zambia but countries around the world that are interested in developing their arbitration framework. Additionally, by showing Zambia in the light of it being an attractive seat of arbitration, this study hopes to draw international investment and increased collaboration with the country, ultimately contributing to its economic development.

1.7 Thesis Structure

The remainder of this dissertation is structured as follows. Chapter 2 situates Zambia within the arbitration landscape by providing historical and geographical context, tracing the influence of English law and colonial legacies on its legal system, and assessing the country's evolving attitudes toward arbitration as an alternative to litigation. Chapter 3 examines the factors that make a jurisdiction an attractive seat of arbitration, using the Centenary Principles as a benchmark. It also evaluates Zambia's position against these principles and undertakes comparative analyses with South Africa and Nigeria in Africa, as well as established global seats such as London and Singapore. Chapter 4 then narrows the focus to Zambia's legal framework, providing a detailed analysis of the Arbitration Act No. 19 of 2000 and the judiciary's approach, supported by case law. This chapter also highlights areas for reform and efforts to modernise the framework in line with international standards. Finally, Chapter 5 brings together the findings in a summative discussion, offering recommendations and concluding reflections on Zambia's prospects as an emerging seat of arbitration in Africa and beyond.

Chapter 2 – Arbitration in Zambia

2.0 Introduction

This chapter sets out the background necessary to contextualise Zambia within this study of arbitration. It begins by situating Zambia geographically and historically, noting its diverse

cultural landscape and peaceful reputation in the Southern African region. It then traces how Zambia's legal system has been shaped by English law and colonial legacies, before turning to the country's evolving attitudes towards arbitration as an alternative to litigation. These contextual elements offer insight into Zambia's political, economic and institutional environment. By setting this foundation, the chapter prepares the ground for the following chapters, which examine Zambia's arbitration framework in greater depth.

2.1 Background

Zambia is a landlocked country in Africa that borders most of the countries in the Southern African region. This means that it is at the nexus of multiple economies as well as cultures. It is globally known as a peaceful country.[95] It boasts 73 different tribes within its borders, making it rather a broad and dynamic jurisdiction.[96] Previously known as Northern Rhodesia, Zambia gained independence from colonial rule on 24 October, 1964. Before gaining independence, the legal system of Rhodesia was greatly influenced by English law, statutes, and precedents. Following independence, Zambia kept many of these laws in place through the English Law (Extent of Application) Act[97] ensuring that English common law principles, equity doctrines and certain statutes remained applicable.[98]

In the years following independence there was public confidence in arbitration as a method for resolving disputes; however, people preferred the court system. The Arbitration Act of 1933 modelled after the English Arbitration Act of the year was considered outdated, and it lacked clear definitions regarding the role of courts in arbitration processes. This ambiguity often led to the intervention of courts. The political and economic transformations in the 1990s, such as transitioning to party democracy and privatising state-owned enterprises, resulted in a rise in commercial disputes and court backlogs. Recognising the importance of dispute resolution, the Law Association of Zambia (LAZ) launched the LAZ Arbitration Project to promote arbitration as an alternative to traditional litigation.[99]

[95] Institute for Economics & Peace *Global Peace Index 2024* (Institute for Economics & Peace 2024), available at https://www.economicsandpeace.org/wp-content/uploads/2024/06/GPI-2024-web.pdf at p 8.
[96] Geoffrey J Williams, Andrew D Roberts, Richard Hamilton Hobson 'Zambia', available at https://www.britannica.com/place/Zambia, accessed on 8 August 2023.
[97] English Law (Extent of Application) Act 4 of 1963 (Zambia).
[98] C Kajimanga & NK Mutuna *Handbook on Arbitration in Zambia* 1 ed (2023) at p 1-6.
[99] Ibid.

The steering committee established two subcommittees, known as the Drafting Committees, in Ndola and in Lusaka, to begin the process of repealing and rewriting the 1933 Act. The LAZ President at the time, George Kunda, presided over the one in Ndola, while Hon. Mr. Justice Nigel Mutuna, the Honorary Secretary of the LAZ at the time, presided over the one in Lusaka. The Ministry of Justice received a layman's draft of the Arbitration Act that was created by the two committees. Chapter 40 of the Laws of Zambia was removed and replaced by the new Arbitration Act (the Arbitration Act), which was approved by the Ministry of Justice. A significant reform occurred within the framework, with the repeal of the 1933 Arbitration Act and introduction of the modernised Arbitration Act No. 19 of 2000. The recent law, backed by the government, updated arbitration procedures and clearly defined the oversight and support roles of the courts clearly.[100]

Educational campaigns, including conferences and training sessions, were aimed at informing stakeholders such as lawyers, bankers, engineers, and insurers about the advantages of arbitration. Moreover, a workshop for judges in 2008 funded by USAID sought to raise awareness among the judiciary about how arbitration can complement court functions. This workshop emphasised that arbitration was meant to support rather than replace processes in resolving disputes effectively.[101] These efforts to renew interest in arbitration resulted in increased acceptance and use of arbitration in Zambia. The Arbitration Act No. 19 of 2000 and the establishment of supporting bodies led the way for arbitration practices facilitating resolution of conflicts and fostering foreign investment.[102]

2.2. Arbitration Act

The Arbitration Act No. 19 of 2000 (the 'Arbitration Act')[103] is the main piece of legislation in Zambia that governs arbitration proceedings. The Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (the 'UNCITRAL Model Law') on 21 June, 1985[104] is adopted and domesticated by the Arbitration Act. The fact that the Arbitration Act incorporates the UNCITRAL Model Law demonstrates

[100] C Kajimanga & NK Mutuna *Handbook on Arbitration in Zambia* 1 ed (2023) at p 1-6.
[101] Ibid.
[102] Ibid.
[103] The Arbitration Act No. 19 of 2000 (Zambia).
[104]Mulenga Mudashi Legal Practitioners 'Zambia: International Arbitration' available at https://www.legal500.com/guides/chapter/zambia-international-arbitration/, accessed on 3 July 2023.

its dedication to aligning to global standards. Although the 1985 version is not the latest iteration of the UNCITRAL Model Law, and there have been amendments as of 2006, countries that adopt this framework generally do so to align with international standards. Therefore, Zambia's adoption of the Model Law emphasises its dedication to upholding internationally recognised standards.[105] Zambia is yet to adopt these initiatives (discussed further under chapter 4); however, discussions are underway to amend the Act to adhere to the updated version of the Model Law, ensuring adherence to international standards.[106] The incorporation of the UNCITRAL Model Law into the Arbitration Act also demonstrates Zambia's willingness to adapt to the evolving practices of international arbitration, which is arguably beneficial to the disputing parties.[107]

The two main strands in the UNCITRAL Model Law are: the liberalisation of international commercial arbitration by limiting the role of national courts; and emphasising party autonomy by allowing parties the freedom to choose how their disputes should be settled. There are also mandatory provisions that are intended to ensure fairness and due process.[108] The UNCITRAL Model Law also contains a framework for conducting international commercial arbitration. This ensures the successful, yet uniform completion of arbitration proceedings if the parties are unable to agree on a procedure. In 1985 the then General Assembly of the UNCITRAL recommended that all states give due consideration to adopting the UNCITRAL Model Law, "in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice".[109] It established to resolve any existing disparities between various countries regarding their international trade laws. With these disparities out of the way, international trade laws will be able to grow and develop, and an integrated trading system can be established.[110]

2.3 The New York Convention

[105] Jan Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at p 3.
[106] Call For Submissions-Review Of The Arbitration Act No 19 OF 2000 available at https://www.zambialawdevelopment.org/call-for-submissions-review-of-the-arbitration-act-no-19-of-2000/, accessed on 28 April 2024.
[107] Op cit note 94 at p 1.
[108] Christopher R Drahozal 'Diversity and Uniformity in International Arbitration Law' (2017) 31 *Emory International Law Review*.
[109] Ibid.
[110] Ibid.

When the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('The New York Convention')[111], was coming into effect, Zambia had not gained independence yet. Subsequently, Zambia acceded to the convention in 2002.[112] This demonstrates its dedication to facilitating international recognition and enforcement of arbitral judgements. This makes it easier for arbitral awards to be adhered to and gives parties confidence that their awards will be upheld and recognised internationally.[113]

The New York Convention focuses on two key areas of arbitration: enforcing arbitration agreements and recognising arbitral awards. First, it requires countries that have signed the Convention to respect valid arbitration agreements. Article II of the New York Convention makes it clear that countries that are signatories must honour arbitration agreements. If two parties agree to resolve their disputes through arbitration, courts in these countries must respect that choice and send the case to arbitration instead of allowing it to go to court. The only exceptions are if the agreement is invalid or impossible to enforce. This approach supports the idea that parties have the right to decide how they want to handle their disputes.

In the Zambian case of *ZCCM Investment Holdings Plc v Vedanta Resources Holdings*,[114] The Supreme Court discussed how arbitration processes work. The panel of judges emphasised that when parties choose arbitration to settle their dispute, they are essentially declaring their wish to avoid going to court, apart from certain circumstances specified by law. The court further stressed that, pursuant to section 20 of the Arbitration Act, once an arbitration award is made, pursuant to an arbitration agreement, it has the force of law and is binding and enforceable against the parties concerned.[115] In the case of *Moba Hotel and Convention Centre v Lyco Business Solutions*[116], it was decided that when parties have willingly agreed to arbitrate issues, the court's jurisdiction is waived unless there is convincing proof that the arrangement is

[111] The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958.
[112] Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII1&chapter=22&clang=_en, accessed on 29 June 2024.
[113] George Bermann 'Recognition and Enforcement of Foreign Arbitral Awards' (2017) *The Interpretation and Application of the New York Convention by National Courts* at p 171.
[114] *ZCCM Investment Holdings Plc v Vedanta Resources Holdings Limited and Konkola Copper Mines Plc* (Appeal No. 14/2021) at p 53–54.
[115] Arbitration Act 19 of 2000 (Zambia).
[116] *Moba Hotel and Convention Centre v Lyco Business Solutions Ltd* 2022 (Appeal 66 of 2022) ZMCA 133.

unlawful or impractical. A similar viewpoint was shared in the case of *Allan Gwamba v Swift Capital Limited*.[117]

As may be seen from the cases given above (which are discussed further in chapter 4), Zambian courts generally avoid interfering with arbitration processes in accordance with the Zambian Constitution[118] in Article 118(2)(d), which mandates the promotion of alternative dispute resolution proceedings.

> *118. (1) The judicial authority of the Republic derives from the people of Zambia and shall be exercised in a just manner and such exercise shall promote accountability.*
> *(2) In exercising judicial authority, the courts shall be guided by the following principles:*
> *(a) justice shall be done to all, without discrimination.*
> *(b) justice shall not be delayed.*
> *(c) adequate compensation shall be awarded, where payable.*
> *(d) alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted, subject to clause (3).*
> *(e) justice shall be administered without undue regard to procedural technicalities; and*
> *(f) the values and principles of this Constitution shall be protected and promoted.*

Consequently, the national courts demonstrate a willingness to uphold arbitration processes wherever there is a legal agreement to arbitrate. This strengthens Zambia's reputation as an attractive seat of arbitration. The courts' readiness to maintain arbitration agreements, and refer parties to arbitration, reflects this commitment. The High Court of Zambia, particularly the Commercial Division Court intentionally refer parties to the arbitration process as a dispute resolution mechanism rather than encouraging litigation.[119]

On the second key aspect, the New York Convention provides a framework for the recognition and enforcement of arbitral awards made in foreign jurisdictions. Articles III to V state that member states must treat these awards as binding and enforce them according to their own legal procedures. However, there are a few exceptions stated in Article V, where enforcement can be refused; for example, if the award goes against public policy, questionable arbitrator authority, or if there were procedural errors. This framework ensures that arbitration awards

[117] *Allan Gwamba v Swift Capital Limited* (Appeal No. 249/2022) [2023] ZMCA 338.
[118] Constitution of the Republic of Zambia 2, 2016.
[119] High Court Rules of Zambia, of the High Court Act, Order 29 Rule 2, as amended by S.I No. 27 of 2012.

made in one country can be enforced in another, making arbitration a truly global solution for resolving disputes.[120]

According to Section 18 of the Arbitration Act[121], an arbitral award, regardless of the country in which it was made, shall be regarded as binding, and shall be enforced upon application in writing to the appropriate court. This provision mainly guarantees that arbitration awards made in foreign states are acknowledged and enforceable in Zambia to enhance the enforcement of arbitration awards and comply with global arbitration norms. Together with Zambian courts limiting interference in arbitration proceedings, this further contributes to fostering trust in Zambia's arbitration framework by demonstrating a commitment to international cooperation in arbitration. It reflects a pro-arbitration approach, reinforcing the autonomy of arbitral processes and providing disputing parties with confidence in the impartiality and finality of arbitration outcomes.

The case of *Mosi Resources PTY Limited v Geohydro Consulting Services Limited*[122] highlights the enforcement of arbitral awards under Section 18 of the Arbitration Act. This section provides that arbitral awards, regardless of where they are made, are binding and enforceable by the courts, provided the claimant submits a written application along with the original award and arbitration agreement, or certified copies thereof.

In this case, the tribunal awarded Mosi Resources ZMW 46,138.18, to be paid by Geohydro Consulting Services in two equal instalments.[123] The respondent failed to comply, prompting the claimant to seek enforcement through the High Court. The court confirmed the binding nature of the award under Section 18 and ordered the respondent to begin payments, adding interest at the Bank of Zambia's lending rate to compensate for the delay.[124] The court also stressed that arbitration awards are legally enforceable decisions, not mere recommendations. By enforcing the award, the court reinforced the importance of respecting arbitration as a viable and reliable dispute resolution mechanism. This case illustrates the Zambian judiciary's

[120] The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958.
[121] The Arbitration Act (No. 19 of 2000).
[122] *Mosi Resources PTY Limited v Geohydro Consulting Services Limited* (2016) ZMHC 122.
[123] Ibid at p 4.
[124] Ibid.

commitment to upholding the integrity of arbitration and ensuring compliance with its outcomes.[125]

2.4 Zambian Arbitration Institutions

Arbitration institutions were established as supportive structures to support alternative dispute resolution in Zambia. These were established in time to succeed the steering committee mentioned above. The Zambia Arbitration Association (ZAA) was founded in 1998, and its interim committee was established during the organisation's first meeting, which was called by the steering committee. Members of the business community as well as accountants, architects, bankers, physicians, engineers, insurers, lawyers, surveyors, and other professionals made up the ZAA's membership. After the ZAA was registered, a request was submitted to the Minister of Justice to have it accepted as an arbitral institution.[126]

The Zambia Centre for Dispute Resolution Limited (ZCDR), established in 2001, is another organisation acknowledged as an arbitral institution. It is a private company limited by guarantee. The entities that provided the guarantees are the Zambian Association of Chartered Accountants (ZACCI), the Bankers Association of Zambia (BAZ), the Association of Consulting Engineers of Zambia (ACEZ), the Zambia Association of Manufacturers (ZAM), the Zambia Congress of Trade Unions (ZCTU), the Federation of Free Trade Unions of Zambia, the Zambia Federation of Employers (ZFE), the Engineering Institution of Zambia (EIZ), and the Zambia Institute of Quantity Surveyors (ZIQS).[127] The ZCDR operates under its own set of arbitration rules, adopted to take effect for arbitrations commencing on or after 1 January 2004.[128] These rules are designed to align with international best practices while addressing local needs, ensuring efficient and fair dispute resolution processes.[129] The ZCDR offers arbitration and mediation services, specialising in commercial disputes across sectors such as banking, construction, and manufacturing. Its procedures are tailored to provide flexibility and neutrality, making it a preferred choice for entities seeking alternatives to

[125] *Mosi Resources PTY Limited v Geohydro Consulting Services Limited* (2016) ZMHC 122.
[126] C Kajimanga & N K Mutuna *Handbook on Arbitration in Zambia* 1 ed (2023) p 1-6.
[127] C Kajimanga & N K Mutuna *Handbook on Arbitration in Zambia* 1 ed (2023) p 1-6.
[128] *Rules of Arbitration and Mediation* (2004) Zambia Centre for Dispute Resolution Limited available at https://searchworks.stanford.edu/view/6716053, accessed on 29 October 2024.
[129] Ibid.

traditional litigation. Beyond dispute resolution, the ZCDR has been instrumental in promoting ADR in Zambia by organising workshops and training programmes to build capacity among practitioners and raise awareness about the benefits of arbitration and mediation.[130]

Other institutions include the Chartered Institute of Arbitrators (Zambia Branch). The Chartered Institute of Arbitrators (CIArb) is a globally recognised professional body dedicated to promoting ADR. The Zambia Branch, established on September 21, 2011, is part of the CIArb's extensive network.[131] The CIArb Zambia plays a pivotal role in training and accrediting arbitrators and mediators, offering courses ranging from introductory to advanced levels. These programmes adhere to international standards, ensuring that practitioners are well-equipped to handle both domestic and international disputes.[132]

As seen above, the ZCDR and CIArb Zambia primarily focus on training and accrediting arbitrators and other ADR practitioners. Recently, a national body dedicated specifically to not only the promotion but also the facilitation of arbitration and other forms of ADR in Zambia was opened, namely Lusaka International Arbitration Centre (LIAC).[133] The LIAC was officially launched in April 2024. It was established through a collaboration between the LAZ and the CIArb Zambia Branch, aiming to provide a platform for both domestic and international arbitration.[134]

The LIAC goes beyond just efficiency and international standards.[135] With its own document of rules, it brings innovative, practical features designed to work for both local and international users. For example, its rules allow for the early dismissal of weak or unmeritorious claims and defences[136], helping to save time and resources. It also makes it easier to handle complex

[130] *Rules of Arbitration and Mediation* (2004) Zambia Centre for Dispute Resolution Limited available at https://searchworks.stanford.edu/view/6716053, accessed on 29 October 2024.
[131] Chartered Institute of Arbitrators Zambia Branch 'About the Institute in Zambia' (2019) available at https://www.facebook.com/CIArbZambia/posts/about-the-institute-in-zambiathe-chartered-institute-of-arbitrators-zambia-branc/1109785769108522/, accessed on 29 November 2024.
[132] 'Chartered Institute of Arbitration, Zambia Branch Gets New Patron' (2022) Judiciary of Zambia available at https://judiciaryzambia.com/chartered-institute-of-arbitration-zambia-branch-gets-new-patron/,accessed on 29 November 2024.
[133] C Kajimanga & N K Mutuna Handbook on Arbitration in Zambia 1 ed (2023) at p 6.
[134] Lusaka Times "President Hichilema Launches The Lusaka International Arbitration Centre" (5 April 2024) available at https://www.lusakatimes.com/2024/04/05/president-hichilema-launceches-the-lusaka-international-arbitration-centre/, accessed on 29 November 2024.
[135] Lusaka International Arbitration Centre (LIAC) Arbitration Rules, 2024 available at https://liac.co.zm/wp-content/uploads/2024/06/LIAC-Arbitration-Rules.pdf, accessed on 28 December 2024.
[136] Ibid at p 47.

disputes by allowing additional joinders and merging related arbitrations into one streamlined process.[137] The LIAC keeps up with modern trends too, like permitting third-party funding to help parties with financial challenges, and offering emergency arbitration to quickly deal with urgent issues before the main tribunal is set up.[138] The LIAC focuses predominantly on confidentiality and data security, building trust in its processes.[139] These features make the LIAC not merely a standout arbitration centre in Zambia but also a serious contender for resolving disputes internationally.

Conclusion

This chapter has introduced Zambia's arbitration framework, including the Arbitration Act of 2000, its adoption of the UNCITRAL Model Law, and its accession to the New York Convention. This chapter has showcased Zambia's commitment to global arbitration standards. The establishment of key institutions further demonstrates the country's readiness to support both domestic and international arbitration. The foundation laid here sets the stage for the next chapters which will look at the objectives of this dissertation in greater depth.

Chapter 3 –Factors that influence a good seat of arbitration

3.0 Introduction

Selecting the seat of arbitration is a critical decision in international arbitration. This choice impacts not only the procedural framework governing the arbitration but also the level of judicial support, enforceability of awards, and even the overall experience of the arbitration process. To provide a comprehensive analysis, this chapter begins by examining the concept of the arbitral seat and its importance. It then looks at the factors that make some seats more attractive than others, using the Centenary Principles developed by the CIArb as a guide.[140] This chapter will assess how Zambia measures up against some Centenary Principles. However, the Centenary Principles selected for this dissertation (principles in focus) will be examined in greater depth in the next chapter. Some of these principles in focus have been

[137] Lusaka International Arbitration Centre (LIAC) Arbitration Rules, 2024 available at https://liac.co.zm/wp-content/uploads/2024/06/LIAC-Arbitration-Rules.pdf, accessed on 28 December 2024 at p 42.
[138] Ibid at p 47.
[139] Ibid at p 48.
[140] Chartered Institute of Arbitrators CIArb *London Centenary Principles* (2015) available at https://ciarb.org/media/ui1fjuf2/london-centenary-principles.pdf, accessed on 29 November 2024.

redefined or adapted to reflect a more focused perspective on the aims of this research. These principles are unpacked in more detail to show how they contribute to make a seat arbitration friendly. Finally, a comparative analysis of arbitration seats in Africa, focusing on South Africa and Nigeria, as well as globally, highlighting London and Singapore by illustrating how these principles are applied in practice.

3.1 Understanding the Seat

The notion of the arbitral seat has undergone substantial development over time. Initially, arbitration procedures were limited, and disputes were usually settled in the jurisdiction where the parties operated. With the growth of international trade and the parties requiring more autonomy over their disputes, there was a clear need for a structured and universally accepted arbitration system, which allowed parties from different national backgrounds and laws the flexibility to choose the exact procedure their arbitration disputes would follow. Some commentators have argued that the seat is frequently underestimated or overlooked during the drafting of dispute resolution clauses.[141] Many drafters, particularly those with limited experience in arbitration, fail to fully grasp the consequences of either selecting an unsuitable arbitral seat or neglecting to specify the seat with clarity. The seat essentially serves as the arbitration's legal anchor, dictating the procedural laws that will govern the process. Moreover, the chosen seat establishes which court holds supervisory authority over the arbitration. This is a crucial consideration, especially in matters such as challenging arbitral awards or seeking interim relief.[142]

A major turning point in the history of international arbitration was the New York Convention (Hereafter "(The) Convention"). This Convention greatly improved the predictability and dependability of arbitration as a means of resolving disputes by establishing a framework for the recognition and enforcement of international arbitral rulings. Before the Convention, it was sometimes difficult and unpredictable to execute an arbitral ruling in foreign jurisdictions because it mostly depended on the national legislation where the enforcement of the award was

[141] Chambers and Partners 'The Seat of Arbitration & Its Significance' (10 May 2022) available at https://chambers.com/articles/the-seat-of-arbitration-its-significance, accessed on 29 November 2024.
[142] Ibid.

needed. With few exceptions, the Convention requires that its member states must recognise and uphold arbitral verdicts rendered in other member nations.[143]

The establishment of the UNCITRAL Model Law in 1985 further advanced the legal infrastructure supporting international arbitration by providing a harmonised set of procedural law that could be adopted by countries worldwide. While the UNCITRAL Model Law is an excellent example of a standardised arbitration framework. Not all jurisdictions immediately embraced the model law and others still have not, rather choosing their own rules to better suit their local needs.[144] Even so, the crucial part when choosing a seat of arbitration is to have a legal framework that supports international arbitration, and emerging seats would benefit from leveraging the already established Model Law.[145] Over time, certain jurisdictions emerged as preferred seats of arbitration due to their supportive legal frameworks, experienced judiciary, and robust infrastructure.

As mentioned in the introductory chapter, the selection of an arbitral seat is critical in international arbitration. The seat determines the extent to which parties may turn to domestic courts for supportive measures to assist the arbitrations , the extent to which the judiciary can interfere in arbitral matters and the extent to which disputing parties may use interim measures.[146]

3.2 Centenary Principles

As mentioned in the introduction of this chapter, this chapter uses the Centenary Principles developed by the CIArb as a guiding framework. These principles set out the key characteristics that a jurisdiction should have to support efficient, fair, and reliable arbitration proceedings. First, the Principle of Law[147] which calls for a clear and modern arbitration law that respects the parties' choice to arbitrate their disputes. Such a law should facilitate fair outcomes, limit

[143] Chambers and Partners 'The Seat of Arbitration & Its Significance' (10 May 2022) available at https://chambers.com/articles/the-seat-of-arbitration-its-significance, accessed on 29 November 2024.
[144] I Welser & G De Berti 'Best Practices in Arbitration: A Selection of Established and Possible Future Best Practices' (2010) Austrian Arbitration Yearbook p 94-95.
[145] Ibid.
[146] Jonathan Hill 'Determining the Seat of An International Arbitration: Party Autonomy and The Interpretation of Arbitration Agreements' (2014) 63 *The International and Comparative Law Quarterly* 3 at 517–34.
[147] Chartered Institute of Arbitrators CIArb *London Centenary Principles* (2015) available at https://ciarb.org/media/ui1fjuf2/london-centenary-principles.pdf, accessed on 29 November 2024.

unnecessary court interference, and strike the right balance between confidentiality and transparency, particularly in sensitive cases like investor-state disputes.

The Judiciary is another crucial factor. [148] An arbitral seat must have an independent judiciary with the expertise to handle arbitration matters efficiently and with respect for the arbitration process. Alongside this, another principle is Legal Expertise: parties need access to a competent legal profession with specialists in arbitration who can represent them well, whether during arbitration proceedings or if the matter ends up in court. [149]

The next principle is Education.[150] This principle stresses the need for ongoing training for arbitrators, counsel, judges and even students to ensure that the jurisdiction remains competitive and up to date with international arbitration trends. Equally important is the Right of Representation.[151] This right is essential for ensuring fairness and respecting party autonomy, as it allows individuals and organisations to choose representatives who truly understand their case and strategy, even if those representatives are based outside the jurisdiction where the arbitration is taking place. Accessibility and practicality are covered by the principle of Accessibility and Safety, which highlights the importance of easy entry, work and exit for all participants, as well as providing a safe and secure environment for hearings, witnesses, and sensitive documentation. [152] The principle of Facilities ensures that practical support services, such as hearing rooms, transcription services, and translation assistance, are readily available to meet the demands of complex arbitration cases.[153] Professional norms and ethical standards are equally significant, as captured by the principle of Ethics.[154] A good arbitral seat should promote ethical behaviour among arbitrators and counsel while respecting the diversity of legal and cultural traditions. The Enforceability principle addresses the need for a jurisdiction to adhere to international treaties like the New York Convention, ensuring that arbitration agreements and awards are recognised and enforceable across borders.[155] Finally, Immunity protects arbitrators from civil liability for decisions made in good faith,

[148] Chartered Institute of Arbitrators CIArb *London Centenary Principles* (2015) available at https://ciarb.org/media/ui1fjuf2/london-centenary-principles.pdf, accessed on 29 November 2024.
[149] Ibid.
[150] Ibid.
[151] Ibid.
[152] Ibid.
[153] Ibid.
[154] Ibid.
[155] Ibid.

allowing them to perform their role independently and without fear of reprisal.[156] Together, these principles create a comprehensive framework for assessing what makes a jurisdiction suitable as an arbitral seat.

3.2.1 Zambia and The Other Centenary Principles

While this dissertation will primarily focus on discussing the principles in focus in the next section and Zambia's positioning in next chapter, it is worth briefly considering how Zambia measures up to the remaining centenary principles.

Ethics

The Zambian Arbitration Act has supporting statues to ensure ethical standards are upheld such as the Arbitration (Code of Conduct and Standards) Regulations and Arbitration (Recognition and Arbitral Institutions) Regulations[157] and the Arbitration (Recognition and Arbitral Institutions) Regulations.[158]

Facilities

The newly established Lusaka International Arbitration Centre (LIAC) manages arbitration cases and provides hearing rooms. It operates from the Law Association of Zambia building. Due to the fact that LIAC just opened and is still in the process of fully establishing itself, it is yet to have a space of its own.[159] However, this research found that Zambia still lacks modern, state-of-the-art arbitration facilities. To truly compete internationally, having a dedicated, well-equipped arbitration centre would send a strong message that Zambia is indeed an emerging seat of arbitration.

Accessibility and Safety

Zambia is a stable and well-positioned country in Africa, making it a practical choice for arbitration. [160] Lusaka, its capital also has direct international flights, making travel relatively easy for arbitration professionals. Giving the evolving nature of arbitration, when considering

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[156] Chartered Institute of Arbitrators CIArb *London Centenary Principles* (2015) available at https://ciarb.org/media/ui1fjuf2/london-centenary-principles.pdf, accessed on 29 November 2024.
[157] The Arbitration (Code of Conduct and Standards) Regulations, SI 12 of 2007 (Zambia).
[158] Arbitration (Recognition of Arbitral Institutions) Regulations, SI 73 of 2001 (Zambia).
[159] Lusaka Times "President Hichilema Launches The Lusaka International Arbitration Centre" (5 April 2024) available at https://www.lusakatimes.com/2024/04/05/president-hichilema-launceches-the-lusaka-international-arbitration-centre/, accessed on 29 November 2024.
[160] "Democracy, Rights and Governance" available at https://www.usaid.gov/zambia/democracy-human-rights-andgovernance#:~:text=For%20the%20past%2030%20years,democratic%20weaknesses%20threaten%20this%20stability , accessed on 2 January 2025.

accessibility and safety, one also needs to consider a country's digital infrastructure and safety. Internet connectivity in Zambia has improved significantly over the years additionally the Data Protection Act of 2021[161] shows a growing commitment to the digital infrastructure and security.

Right of Representation

The Zambian Arbitration Act does not specify any restrictions when it comes to choosing legal representation. This gives parties the flexibility to work with arbitrators who best understands their case, even if this means international arbitrators. However, if an arbitration matter ends up in court, for the sake of enforcement or setting aside an award, a locally licensed lawyer may be required.[162]

Immunity

Section 28 of the Zambian Arbitration Act[163] provides protection to arbitrators against being sued for decisions they make in good faith while carrying out their duties. This means they can handle cases independently, without having to worry about legal repercussions, as long as they act honestly and fairly.

Zambia has made solid strides in arbitration, with strong ethical regulations and arbitrator immunity. In terms of physical infrastructure, the launch of the Lusaka International Arbitration Centre is a good start, however modern and world-class facilities are still needed. Zambia's accessibility and safety seem promising, with direct international flights and an improving digital infrastructure. Additionally, while parties can choose their legal representatives freely, clearer rules would bring more certainty. The discussion will now proceed to the Principles in Focus.

3.3 Principles in Focus

While the Centenary Principles provide a strong foundation for evaluating the effectiveness of an arbitral seat, this dissertation focuses on specific factors that align more closely with the aims of this study. Rather than seeking to replace the Centenary Principles, this dissertation

[161] Data Protection Act 3 of 2021 (Zambia).
[162] Legal Practitioners Act Cap 30 (Zambia).
[163] Arbitration Act No. 19 of 2000 (Zambia).

adopts a more focused approach while acknowledging the significance of these principles as established by the CIArb. This targeted approach aims to delve deeper into particular aspects of arbitration that are central to this study's objectives. As mentioned earlier, Zambia's alignment with the principles in focus will be discussed in chapter 4.

3.3.1 Legal Framework

The principle of Law under the Centenary Principles[164] highlights the importance of a clear and modern arbitration framework. This section hopes to act as an addition to the principle in order to enrich this principle further by highlighting how the specific adoption of the UNCITRAL Model Law would enrich the adoption of harmonised legal instruments. This addition emphasises global legal consistency and predictability, reducing complexities for parties navigating arbitration across diverse jurisdictions.

As highlighted in the introductory chapter, it is essential to choose a seat with an established and encouraging arbitration law system. Adoption of modern arbitration laws like the UNCITRAL Model Law, is one example of this. Without the adoption of the Model Law, parties involved in international disputes would have to navigate a clash of conflicting and diverse national laws. The Model Law provides a uniformed set of procedural rules that minimise this complexity, thereby reducing legal uncertainty, resulting in a more straightforward and accessible arbitration process.[165]

3.3.2 The principle of Judicial Non- Interference

One of the most fundamental characteristics of international arbitration is the freedom that it allows parties to be able to agree on the process of how they want their disputes to be resolved. Similarly, the Centenary Principles' focus on the Judiciary and Judicial Non-Interference is critical, yet the principle of judicial restraint in arbitration processes deserves a more detailed examination. Another primary reason as to why parties opt for international arbitration is because it is designed to avoid the formalities and technicalities associated with many national litigation systems, providing commercially sensible and pragmatic resolutions to cross-border

[164] Chartered Institute of Arbitrators CIArb *London Centenary Principles* (2015) available at https://ciarb.org/media/ui1fjuf2/london-centenary-principles.pdf, accessed on 29 November 2024.
[165] Tapiwa Victor Warikandwa & Usebiu Lineekela 'A proposal for international arbitration law in Namibia based on the UNCITRAL Model Law on International Commercial Arbitration' (2023) 56(1) *De Jure Law Journal* at p 259–279.

commercial disputes. This allows for the adoption of procedures that will achieve commercially practicable results.[166]An attractive seat of arbitration is one where the judiciary respects the autonomy of the arbitration process and refrains from unnecessary interference. Courts in these jurisdictions should be willing to enforce arbitral awards and provide supportive measures, when necessary, but not overstep their bounds.

Arbitration statutes and judicial decisions in most developed jurisdictions are more emphatic than international arbitration conventions regarding the principle of judicial non-interference. Article 5 of the UNCITRAL Model Law[167] provides that courts should not intervene except were provided in this law. The Model Law states limited circumstances involving judicial support for the arbitral process, such as resolving jurisdictional objections, assisting in the constitution of the tribunal, granting provisional relief, and considering applications to vacate awards. However, it does not permit judicial supervision of procedural decisions through interlocutory appeals or otherwise.

Arbitration legislation in other jurisdictions is similar in excluding judicial supervision of arbitral procedures or omitting any provision for interlocutory judicial review or supervision of arbitrators' procedural rulings. The scope for the court to intervene by injunction before an award made by arbitrators is very limited. Section l(c) of the English Arbitration Act 1996[168], provides that English courts should not intervene in arbitral proceedings, which is intended to preserve the different judicial powers to intervene to correct serious injustices in narrowly cabined and exceptional circumstances. In summary, arbitration statutes and judicial decisions in most developed jurisdictions emphasise the principle of judicial non-interference, with the national courts having the power to examine these questions only once the final arbitral decision has been rendered.[169]

Maintaining the principle of non-interference by courts in arbitration is essential, as it aligns with the parties' intentions when choosing arbitration. Parties opt for arbitration to seek a more

[166] Gary Born 'Principle of Judicial Non-Interference in International Arbitral Proceedings' (2009) 30 *The Anniversary Contributions – International Litigation & Arbitration*, University of Pennsylvania *Journal of International Law* p 1049-1056.
[167] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)*.
[168] The Arbitration Act 1996 (UK).
[169] Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at p 111-114.

flexible process where they have more control, and can select neutral and expert arbitrators instead of relying on national courts. Allowing a review of decisions during arbitration could undermine these goals and lead to delays and challenges to the arbitral process.[170]

The New York Convention, established in 1958, requires that courts in member states abstain from intervening in active international arbitration processes. This idea is upheld by domestic arbitration statutes, which embody the New York Convention's stipulation for restricted judicial interference. Article V of the New York Convention[171] delineates the circumstances under which courts may decline to recognise or enforce arbitral awards, largely at the enforcement phase rather than during the arbitration process itself. Numerous jurisdictions impose limitations on interlocutory appeals to avoid procedural delays and maintain the efficacy of arbitration as a dispute resolution mechanism. The principle of judicial non-interference in international arbitration proceedings is a central pillar of contemporary international arbitration, ensuring the efficacy of the arbitral process as a means of international dispute resolution. Interlocutory challenges or appeals from arbitrators' procedural decisions have profoundly damaging consequences for the arbitral process.[172]

Another aspect of judicial non-interference is the Kompetenz-Kompetenz (competence-competence) principle.[173] This principle allows for an arbitral tribunal to be able to determine its own jurisdiction as well as define the scope of its authority. The principle was created on the basis of encouraging party autonomy, which is one of the fundamental principles of arbitration. This power awarded to the arbitral institutions corrects any excesses or inadequacies in jurisdiction by providing a prompt remedy to a party objecting, saving both money and time. Therefore, a jurisdiction that subscribes to the Kompetenz-Kompetenz principle shows how committed the jurisdiction is to upholding party autonomy and consequently, judicial non-interference.[174]

3.3.3 Experienced Judiciary/ Arbitration Expertise

[170] Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at p 111-114.
[171] The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958.
[172] Op cit note 170 at 111-114.
[173] H Whitfield, H '*Kompetenz-Kompetenz*: An Arbitral Tribunal Authority to Decide Its Jurisdiction' (2023) *Beijing Law Review* 14.
[174] Ibid.

This section builds on the Principles of Legal Expertise and the Principle of Education, as highlighted in the Centenary Principles. In order for a country to be recognised as a reputable seat of arbitration, it is essential that it possesses a significant degree of proficiency in both its judiciary and among its legal professionals and scholars. This is quite significant since it determines the course of action in the practice of arbitration. This contributes to the process of shaping legislation drafting, reform, and academic research in the field. Courts support arbitration by enforcing arbitration agreements, assisting with the admission of evidence, and issuing interim measures. Courts also play a role in appointing arbitrators, removing arbitrators, deciding on arbitral jurisdiction, and setting aside awards. Evidently expertise in supporting as well as facilitating the development of arbitration is crucial. Specialisation plays a crucial role in ensuring there are informed and sympathetic judicial attitudes towards the practice of arbitration.[175]

Courts will continue to play a crucial role in supporting and facilitating the development of arbitration. Specialisation in arbitration-related matters within courts is increasing, ensuring informed and sympathetic judicial attitudes towards arbitration.

3.3.4 Enforcement of Awards

The Principle of Enforceability, highlighted in the Centenary Principles, stresses how vital it is for a jurisdiction to recognise and enforce arbitration agreements and awards. At the heart of this principle is the New York Convention.

The New York Convention is an essential instrument for the implementation and enforcements of arbitration awards. The New York Convention mandates that foreign arbitral rulings must be acknowledged as legally binding and capable of being enforced by the courts of the contracting states, subject to procedural requirements and grounds of refusal.[176] These grounds of refusal are based on limited grounds, such as invalidity of the arbitration agreement, lack of due process, excess of authority by the arbitral tribunal, irregularities in tribunal composition or procedure, and the award not being binding or having been set aside in the country of

[175] Clyde Croft 'How the Judiciary Can Support Domestic and International Arbitration' (2013) *Arbitrators and Mediators Institute of New Zealand Annual Conference* at p 12.
[176] Jan Albert van den Berg 'The New York Convention of 1958: An Overview' (2008) In *Enforcement of Arbitration Agreements and International Arbitral Awards* p 39–68.

origin.[177] Signatories of the New York Convention are also required to refer parties to arbitration when there is a valid arbitration agreement, provided the agreement meets the written form requirement and is not null, void, inoperative, or incapable of being performed.[178]

It is crucial that when choosing a seat of arbitration, parties choose a seat where arbitration agreements and awards will be acknowledged, upheld, and enforced. The New York Convention is the instrument required and therefore choosing a seat where the country is member nation of the New York Convention is crucial.

3.4 Reservations of New York Convention

Article I(3)[179] of the New York Convention allows states the option to make two types of reservations when it comes to incorporating the convention into their laws.[180] Firstly, the reciprocal reservation, where member states decide how to apply the recognition of awards offered by the convention, whether it is only to member states or all foreign awards. Secondly, commercial reservation, where states have the choice to restrict the application of the convention to matters categorised as commercial under their laws. Therefore, one may consider a good seat of arbitration, one that limits the application of these reservation.[181]

3.5 Comparative Study: Africa- South Africa and Nigeria

This section will take a closer look at arbitration systems in two African jurisdictions, namely South Africa and Nigeria, by focusing on the Centenary Principles which this paper focuses on: legal framework, judicial non-interference, experienced judiciary/arbitration expertise, and enforcement of awards. By providing real-world examples, the analysis aims to provide a nuanced as well as relatable understanding of what makes an attractive seat of arbitration. The choice of South Africa and Nigeria for this comparative study is deliberate. South Africa has been regarded as a leading seat of arbitration in Africa with a strong legal framework and the presence of the Arbitration Foundation of Southern Africa (AFSA), which cements its position

[177] The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958 at Article V.
[178] Jonathan DeBoos 'Arbitration Awards: Is Review on the Merits Desirable' (2008) 3 *International Journal of Constitutional Law* at p 31.
[179] Op cit note 167.
[180] Op cit note 167 Article I (3).
[181] Ibid.

as a regional powerhouse. Nigeria, on the other hand, has historically been seen as an important arbitral seat, but recent surveys show a decline in its attractiveness. Examining Nigeria alongside South Africa therefore, provides insight into both the strengths and the challenges faced by African jurisdictions in maintaining competitiveness as arbitral seats.

3.5.1 South Africa

South Africa has been seen to be part of the top preferred seats of arbitration in Africa each offering benefits and factors to consider.[182] With the 2024 survey ranking it as one of the most favourable arbitration hubs on the African continent.[183] South Africa domestically still uses their Arbitration Act from 1965[184], however, for international arbitration, South Africa has embraced the UNCITRAL Model Law by establishing a framework that promotes a conducive environment for arbitration through the International Arbitration Act of 2017 (IAA)[185] for international disputes. This recognition of the need for a dual system ensures that its arbitration regulations adhere to accepted standards, which make them more attractive.[186]

The IAA brought in several forward-thinking measures to enhance arbitration in South Africa.[187] It gives arbitral tribunals the power to issue interim orders, such as securing costs, preserving assets, or taking custody of goods temporarily.[188] The act also firmly establishes the Kompetenz-Kompetenz principle, meaning tribunals can decide on their own jurisdiction, though courts can still review these decisions.[189] Additionally, it ensures that foreign arbitration

[182] Queen Mary University of London *2019 International Arbitration Survey: Driving Efficiency in International Construction Disputes* (2019) available at https://www.troutman.com/insights/the-intersection-of-international-arbitration-and-construction-disputes-a-review-of-the-2019-queen-mary-university-of-london-international-arbitration-survey.html ,accessed 24 November 2024.
[183] Emilia Onyema '*SOAS Arbitration in Africa Survey Report: Perceptions on Africa-Connected Arbitration: Seats, Female Arbitrators and Tribunal Secretaries* ' (2024) SOAS University of London .
[184] The Arbitration Act 42 of 1965 (South Africa).
[185] International Arbitration Act 15 of 2017 (South Africa).
[186] Siphokazi Kayana, Nomfundo Mkatshwa, Mawande Ntontela 'International Arbitration Law and Rules in South Africa' available at https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/south-africa, accessed on 15 March 2024.
[187] Sarah McKenzie, Erin Warmington, Kirsten Wolmarans , Anel de Meyer , Kgololego Pooe, Tayla Dye & Jayshall Vassen 'Arbitration in South Africa' (2019) Practical Law UK Practice Note w-022-4384 available at https://www.webberwentzel.com/Documents/arbitration-in-south-Africa.pdf, accessed on 2 January 2025.
[188] Sarah McKenzie, Erin Warmington, Kirsten Wolmarans , Anel de Meyer , Kgololego Pooe, Tayla Dye & Jayshall Vassen 'Arbitration in South Africa' (2019) Practical Law UK Practice Note w-022-4384 available at https://www.webberwentzel.com/Documents/arbitration-in-south-Africa.pdf, accessed on 2 January 2025.
[189] Ibid at p 7.

awards are enforceable under the New York Convention, with only a few clearly defined exceptions for refusal.[190]

South African courts play a vital role in supporting arbitration, maintaining a generally pro-arbitration stance and respecting agreements and awards. The courts follow the principle of minimal judicial interference, stepping in only when absolutely necessary.[191] For instance, Article 5 of the IAA 2017, which aligns with the UNCITRAL Model Law, limits court involvement to specific situations like appointing arbitrators or addressing challenges to awards.[192] Some landmark cases highlight this approach: in *Telcordia Technologies Inc v Telkom SA Ltd*,[193]the courts upheld an arbitral award despite procedural objections, showing their commitment to arbitration. Similarly, in *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another*,[194] the Constitutional Court emphasised the importance of procedural fairness while reinforcing respect for arbitration agreements.[195]

South Africa, other than possessing a good legal framework and being praised for judicial non-interference, also has very prominently established arbitral institutions. The Arbitration Foundation of Southern Africa (AFSA) stands out, managing both local and international disputes with rules that meet global standards. Another major institution is the China-Africa Joint Arbitration Centre (CAJAC Johannesburg), which focuses on resolving disputes arising from the increasing trade between China and Africa.[196] With its progressive laws, arbitration-friendly courts, and top-notch institutions, South Africa has firmly established itself as a leading arbitration hub in Africa, ready to tackle even the most complex international disputes.[197]

3.5.2 Nigeria

[190] Sarah McKenzie, Erin Warmington, Kirsten Wolmarans , Anel de Meyer , Kgololego Pooe, Tayla Dye & Jayshall Vassen 'Arbitration in South Africa' (2019) Practical Law UK Practice Note w-022-4384 available at https://www.webberwentzel.com/Documents/arbitration-in-south-Africa.pdf, accessed on 2 January 2025 at p 14-15.
[191] Ibid.
[192] Ibid at p 10.
[193] *Telcordia Technologies Inc v Telkom SA Limited* (2007) 3 SA 266 SCA at para 158.
[194] *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* (2009) 4 SA 529 CC at para 52.
[195]Op cit note 178 at p 12.
[196] Ibid at p 5-6.
[197] Ibid at p 15–16

Just like South Africa, Nigeria has long been seen as a dependable place for arbitration, with surveys on arbitration in Africa over the years backing up its reputation.[198] However, the 2024 survey[199] shows a shift, suggesting that trust in Nigeria as an arbitration seat has started to decline.[200] Nigeria recently revamped its arbitration system with the replacement of the 35-year-old Arbitration and Conciliation Act 1988[201] which was based on the 1985 UNCITRAL Model Law, by the new Arbitration and Mediation Act 2023.[202] This change, approved on 26 May, 2023 aligns with the updated UNCITRAL Model Law amendments from 2006. Although recent, this signifies a step forward in improving both local and global arbitration practices in Nigeria. With the previous Arbitration and Conciliation Act, Nigeria faced challenges in their courts, such as judicial support and lengthy legal processes which posed obstacles to efficient arbitration in Nigeria.[203] Known cases like *IPCO v NNPC*[204] highlight the protracted court process delays that Nigeria was facing, which occasionally lasted more than ten years for the resolution of arbitration-related court cases. With these on-going struggles, the new Arbitration and Mediation Act will bring about a new dawn for arbitration in Nigeria. Since it was only introduced in 2023, it is understandable that the 2024 survey is yet to capture the positive changes it is likely to bring.

The New Act requires arbitration agreements to be in writing, including electronic formats such as emails and data messages.[205] While not mandating specific terms, it encourages parties to define elements like tribunal composition, seat, procedural rules, and cost allocation, with default provisions ensuring clarity where agreements are silent.[206] The New Act governs both domestic and international arbitration, promoting consistency and fairness. It upholds the Kompetenz-Kompetenz principle, empowering tribunals to rule on their jurisdiction.[207] Courts

[198] Emilia Onyema '*SOAS Arbitration in Africa Survey Report* : Top African Arbitral Centres and Seats' (2020) SOAS University of London.
[199] Emilia Onyema '*SOAS Arbitration in Africa Survey Report: Perceptions on Africa-Connected Arbitration: Seats, Female Arbitrators and Tribunal Secretaries* ' (2024) SOAS University of London .
[200] Ibid.
[201] The Arbitration and Conciliation Act of 1988 (Nigeria).
[202] The Arbitration and Mediation Act of 2023 (Nigeria).
[203] Aje-Famuyide, Olufunke & Nimisore Akano. 'Challenges of Nigeria as a Preferable Seat of International Commercial Arbitration *Reality of Politics* 18 (2021): 11–32.

[204]*IPCO (Nigeria) Limited v Nigerian National Petroleum Corporation* (2017) UKSC 16.
[205] Mena Ajakpovi, Festus Onyia & Udo Udoma and Bela Osagie 'International Arbitration Laws and Regulations Nigeria 2024–2025' (2024) available at https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/nigeria, accessed on 5 January 2024.
[206] Mena Ajakpovi, Festus Onyia & Udo Udoma and Bela Osagie 'International Arbitration Laws and Regulations Nigeria 2024–2025' (2024) available at https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/nigeria, accessed on 5 January 2024.
[207] Ibid.

support arbitration by staying proceedings and referring parties to arbitration, unless agreements are void or unenforceable. Nigeria's judiciary plays a vital role in enforcing arbitration agreements and awards, with foreign awards recognised under the New York Convention.[208] Once enforced, awards carry res judicata status, preventing re-litigation.[209] Institutions like the Lagos Chamber of Commerce International Arbitration Centre (LACIAC) and the International Centre for Arbitration and Mediation Abuja (ICAMA) have introduced fast-track rules to streamline processes, and arbitration referrals in sectors like oil and gas continue to grow. Virtual hearings have also become more common, ensuring accessibility post-Covid-19. Prior to the new legislation in 2023, critics argued that the previous legislation was outdated and lacked provisions suitable for today's global commercial arbitration landscape. The New Act demonstrates Nigeria's commitment to fostering an arbitration-friendly environment, hoping to regain its position as a leading hub for dispute resolution in Africa.

South Africa seemingly has quite a well-established arbitration system, while Nigeria is working to catch up with its 2023 reforms. If these changes are implemented effectively, Nigeria could strengthen its position, however, currently South Africa remains the more reliable and preferred arbitration hub in Africa.

Evidently, both Nigeria and South Africa have made significant strides in arbitration. South Africa continues to have a solid and trusted arbitration system , with a legal system that gives arbitration the space to work without unnecessary court interference. The country's courts generally respect arbitration agreements and awards, only stepping in when absolutely necessary. That predictability makes South Africa an attractive seat of arbitration. On the other hand, Nigeria initial attractiveness has slowly diminished due to long court battles and extensive judicial involvement, losing its place as a trusted seat of arbitration. The 2023 is meant to bring much-needed updates to help arbitration run more smoothly in Nigeria. However, due to its newness the results will take a while to reflect in the overall system. When it pertains to arbitration institutions, both jurisdictions seemingly have quite established ones. South Africa's well-known and established arbitration institutions namely AFSA and CAJAC.

[208] Mena Ajakpovi, Festus Onyia & Udo Udoma and Bela Osagie 'International Arbitration Laws and Regulations Nigeria 2024–2025' (2024) available at https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/nigeria, accessed on 5 January 2024.
[209] Ibid.

Nigeria's LACIAC and ICAMA looking to upgrade its infrastructure to continue to align to global standards. However, Nigeria's biggest challenge is not its arbitration institutions but rather the overall arbitration system and its setbacks. Seemingly if Nigeria's reforms work as intended , it could start closing the gap with South Africa and take back its place as one of the top seats of arbitration in Africa.

3.6 Comparative Study Global: London and Singapore

As was indicated in the first chapter, two prominent hubs for arbitration are London and Singapore, each of which has unique advantages that attract a sizable volume of international arbitration cases.[210] Similar to the comparative study above, this section will look at legal framework, judicial non-interference, experienced judiciary/arbitration expertise. and enforcement of awards in both these arbitration hubs. By providing real-world examples, the analysis aims to provide a nuanced as well as relatable understanding of what makes an attractive seat of arbitration. London and Singapore were selected as global comparators because they represent two of the most influential arbitral seats worldwide, yet embody contrasting approaches. London is a traditional hub with deep historical roots, long-established institutions and a reputation for stability and predictability. By contrast, Singapore is a more recent entry in terms of the global arbitration stage but has risen rapidly through modern legislation, efficiency and innovation, including the integration of technology and progressive institutional practices. Analysing these two jurisdictions together provides a balanced view of how both tradition and innovation contribute to making a jurisdiction attractive as a seat of arbitration.

3.6.1 London

London's status as a preferred seat is one that has deep historical roots. The English Arbitration Act 1996[211] is the backbone of the arbitration framework in England, Wales, and Northern Ireland. It is based on the United Kingdom's (UK) common law, rather than the UNCITRAL Model Law which is prevalent in many other jurisdictions around the world. Similarly to UNCITRAL Model Law, it is built on the principles of giving parties control over the process

[210] 2021 International Arbitration Survey, *Adapting Arbitration to a Changing World* available at https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf at p 5-6.
[211] The English Arbitration Act 1996.

and limiting court involvement.[212] This approach ensures disputes are resolved efficiently while preserving the fairness and integrity of arbitration.[213]

Key features of The English Arbitration Act[214] are that it gives parties the freedom to choose their arbitrators, set their own procedural rules, and rely on minimal court interference when enforcing awards.[215] Other features of the Act include treating arbitration agreements as separate from the main contract, allowing tribunals to decide on their own jurisdiction (Kompetenz-Kompetenz), and enabling courts to provide interim relief without overstepping the tribunal's authority.[216] London's courts have a strong reputation for supporting arbitration while respecting its independence. They step in, when necessary, by enforcing interim measures or compelling witnesses, but otherwise avoid unnecessary interference. This approach is anchored in Section 1(c) of the English Arbitration Act[217], which ensures arbitration stays efficient and independent.[218]

In the case *Halliburton Co v Chubb Bermuda Insurance Ltd*[219], the Supreme Court highlighted the importance of arbitrators' duties of impartiality and disclosure while reinforcing their commitment to maintaining the integrity of the arbitration process. London is home to arguably one of the best arbitration institutions in the world, the LCIA which plays a key role in cementing the city's reputation as a global arbitration hub. The LCIA's rules are designed to ensure a smooth and efficient process, by offering options like emergency arbitrators and fast-tracked decisions to keep the arbitration process moving efficiently.[220] The UK is a signatory to the New York Convention. This makes it easy to recognise and enforce arbitration awards.

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[212] Vinson & Elkins 'Guide to Arbitral Institutions and the Seat of Arbitration in London' (2024) available at https://www.velaw.com/insights/guide-to-arbitral-institutions-and-the-seat-of-arbitration-in-london/, accessed on 23 December 2024.
[213] Anastasia Medvedskaya ' London vs Singapore: A (false) struggle for the title of world's leading seat of arbitration' available at https://dailyjus.com/world/2021/09/london-vs-singapore-a-false-struggle-for-the-title-of-worlds-leading-seat-of-arbitration, accessed on 5 June 2024.
[214] Op cit note 202.
[215] Op cit note 203.
[216] Ibid.
[217] Vinson & Elkins 'Guide to Arbitral Institutions and the Seat of Arbitration in London' (2024) available at https://www.velaw.com/insights/guide-to-arbitral-institutions-and-the-seat-of-arbitration-in-london/, accessed on 23 December 2024.
[218] Anastasia Medvedskaya ' London vs Singapore: A (false) struggle for the title of world's leading seat of arbitration' available at https://dailyjus.com/world/2021/09/london-vs-singapore-a-false-struggle-for-the-title-of-worlds-leading-seat-of-arbitration, accessed on 5 June 2024.
[219] *Halliburton Co v Chubb Bermuda Insurance Ltd* (2020) UKSC 48.
[220] Vinson & Elkins 'Guide to Arbitral Institutions and the Seat of Arbitration in London' (2024), available at https://www.velaw.com/insights/guide-to-arbitral-institutions-and-the-seat-of-arbitration-in-london/ , accessed on 23 December 2024.

The courts also support this by enforcing awards effectively only refusing in rare cases like procedural issues or disputes over jurisdiction. This enforcement-friendly attitude is one of the key reasons London remains such a popular choice for arbitration.

3.6.2 Singapore

Singapore has quickly risen as a leading arbitration hub. Like South Africa, Singapore operates on a dual legal system with the Arbitration Act of 2001[221] governing domestic arbitration and the International Arbitration Act of 1994[222], governing International Arbitration. The International Arbitration Act incorporates the UNCITRAL Model Law.[223]

Singapore's judiciary is highly respected for its hands-off approach to arbitration, staying true to the pro-arbitration principles outlined in both their domestic and international arbitration acts.[224] If there is an arbitration agreement in place, courts almost always halt legal proceedings in favour of arbitration, as provided by Section 6 of their International Arbitration Act. Tribunals also have the authority to decide on their own jurisdiction (Kompetenz-Kompetenz), with only limited oversight from the courts. [225] Under Section 12, tribunals have wide-ranging powers to grant interim relief and allows the High Court to enforce these orders when needed.[226]

Key institutions like the Singapore International Arbitration Centre (SIAC) and the Singapore International Mediation Centre (SIMC) play a significant role in enhancing Singapore's reputation.[227] The expansion of Singapore's arbitration industry is intricately tied to the liberalisation of its sector, positioning it as a hub for global commercial disputes. Singapore sets itself apart from more traditional arbitration hubs like London through its government's

[221] The Arbitration Act of 2001 (Singapore).
[222] The International Arbitration Act of 1994 (Singapore).
[223] Hamza Malik 'A General Introduction to International Arbitration in Singapore' available at https://www.legal500.com/developments/thought-leadership/a-general-introduction-to-international-arbitration-in-singapore/, accessed on 28 December 2024.
[224] Hamza Malik 'A General Introduction to International Arbitration in Singapore' available at https://www.legal500.com/developments/thought-leadership/a-general-introduction-to-international-arbitration-in-singapore/, accessed on 28 December 2024.
[225] Ibid.
[226] Ibid.
[227] Anastasia Medvedskaya ' London vs Singapore: A (false) struggle for the title of world's leading seat of arbitration' available at https://dailyjus.com/world/2021/09/london-vs-singapore-a-false-struggle-for-the-title-of-worlds-leading-seat-of-arbitration, accessed on 5 June 2024.

initiatives, such as updating regulations and promoting mediation.[228] Singapore's advantageous position and modern amenities further boost its attractiveness as an easily accessible location for arbitration involving parties from Eastern Europe, the Middle East, and the Asia Pacific region.[229]

Another reason why Singapore has solidified its position as a global leader in arbitration is through constant innovation. The SIAC continues to raise the bar with new rules like the Streamlined Procedure, allowing quick resolutions for low-value disputes, and an updated Expedited Procedure with a higher threshold for eligibility.[230] Digital tools like the SIAC Gateway make case filing seamless, while virtual and hybrid hearings cater to modern needs. Parties also have more say in appointing arbitrators through a new list procedure, with a focus on diversity and inclusion. Transparency is boosted with mandatory disclosure of third-party funding and the publication of anonymised awards.[231]

London and Singapore both provide structures, experienced judges and world-class arbitration facilities, London has a rich history and its adherence to common law offers a sense of long standing tradition and reliability. On the hand, Singapore's progressive and futuristic outlook presents a choice for those in search of a contemporary and inventive arbitration setting..[232] Ultimately, choosing between London and Singapore as a seat of arbitration comes down to the specific needs and goals of the parties involved. This comparison also highlights broader shifts in the arbitration world. As international commerce evolves, jurisdictions must find the right balance between preserving tradition and embracing innovation to meet the changing needs of arbitration users. By understanding the strengths of each jurisdiction, parties can make more informed choices that align with their disputes and strategic priorities, ensuring a seat of arbitration that best supports their goals.

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[228] Anastasia Medvedskaya ' London vs Singapore: A (false) struggle for the title of world's leading seat of arbitration' available at https://dailyjus.com/world/2021/09/london-vs-singapore-a-false-struggle-for-the-title-of-worlds-leading-seat-of-arbitration, accessed on 5 June 2024.

[229] Ibid.

[230] Chen Han Toh 'Singapore International Arbitration Centre puts innovation at heart in latest developments' (2024) available at https://www.pinsentmasons.com/out-law/analysis/singapore-international-arbitration-centre-innovation-latest-developments, accessed on 8 January 2024.

[231] Ibid.

[232] Hamza Malik 'A General Introduction to International Arbitration in Singapore' available at https://www.legal500.com/developments/thought-leadership/a-general-introduction-to-international-arbitration-in-singapore/, accessed on 28 December 2024.

Conclusion

In conclusion, this chapter has explored the key factors that make a seat of arbitration attractive, firstly by contextualising and understanding the idea of a seat, and thereafter looking at the Centenary Principles by specifically focusing on the legal frameworks, judicial non-interference, experienced judiciary, and the enforceability of awards. By also looking at comparisons with South Africa, Nigeria, London, and Singapore, this chapter has shown how different jurisdictions achieve these principles in their own unique ways. South Africa balances its strong legal foundation with a dual-system approach, while Nigeria is in the midst of transformative reforms that could reshape its arbitration landscape. On the global stage, London leans on its rich legal history and judicial expertise, whereas Singapore shines with its innovation and forward-thinking approach. These insights lay the foundation for the arguments this dissertation will present in positioning Zambia as an emerging seat of arbitration. In the following chapter this dissertation will evaluate Zambia's potential as an attractive and subsequently, an emerging seat of arbitration, using the centenary principles in focus discussed in this chapter as a benchmark.

Chapter 4 – Evaluation of the Zambian Legal Framework and Court Approach

4.0 Introduction

This chapter takes a close look at Zambia's legal framework for arbitration, with a particular focus on the Arbitration Act No. 19 of 2000 ("The Act") and the role of the judiciary in supporting arbitration principles. It combines an analysis of the Act's key provisions with examples from case law to show how these rules are applied in practice. The chapter also highlights areas where the framework could be improved and discusses ongoing efforts to modernise the Act to meet international standards. By examining how the law and judicial decisions interact, it sheds light on the strengths and weaknesses of Zambia's arbitration system and its potential to become a competitive hub for arbitration.

Section 3 of The Act extends its application to both domestic and international arbitration.[233] Many sections are adopted verbatim. The Act operates in conjunction with its subsidiaries, namely[234]:

1. Arbitration Act (Commencement) Order[235]
2. Arbitration (Recognition and Arbitral Institutions) Regulations[236]
3. Arbitration (Court Proceedings) Rules[237]
4. Arbitration (Code of Conduct and Standards) Regulations[238]

These subsidiaries provide and complement the legal, ethical, and procedural foundations needed to implement The Act's application and enforcement. The UNCITRAL Model Law was created to have a uniform legal framework to regulate international arbitration. Therefore, Zambia's adoption of the model law demonstrates its commitment to aligning and participating in international arbitration and its standards. Section 2(3) in the preliminary section of the Act states that when interpreting the Act, arbitrators and courts are required to consult documents related to the Model Law, as well as documents by the UNCITRAL working group. It further states that the international origin of the Act and its purpose of achieving international uniformity should always be considered.

4.1 Upholding Arbitration Agreements

9. (1) An arbitration agreement may be a clause in a contract or a separate agreement.

(2) An agreement is "in writing" if it is:

signed by the parties,

recorded in letters or other communications,

admitted in exchanged pleadings (not denied by the other party), or

[233] Sydney Chisenga Chapter 11.- Zambia. *Arbitration in Africa: A Practitioner's Guide*, edited by Lise Bosman, Wolters Kluwer Law International, 2021.*ProQuest Ebook Central* available at https://ebookcentral.proquest.com/lib/uoct/detail.action?docID=6723150, accessed on 5 May 2024.
[234] Ibid.
[235] Arbitration Act (Commencement) Order, SI No. 30 of 2001 (Zambia).
[236] Arbitration (Recognition and Arbitral Institutions) Regulations, SI No. 63 of 2001 (Zambia).
[237] Arbitration (Court Proceedings) Rules, SI No. 75 of 2001 (Zambia).
[238] Arbitration (Code of Conduct and Standards) Regulations, SI No. 12 of 2007 (Zambia).

included by reference in a written contract that makes an arbitration clause part of it.

(3) An oral agreement that refers to written terms is treated as a written agreement.

Section 9 requires agreements to be writing that the arbitration agreements be in writing. However, it takes a flexible approach on what exactly constitutes a written agreement. Apart from the standard documents it also includes agreements which are reduced into writing in the form of letters, telex or telegrams or may be inferred from statements of claim and defence made. This definition allows agreements to be established in non-traditional formats if there is a written record of the agreement. The 2006 amendments in Article 7(4)[239], expanded the definition of "writing" to include agreements made through electronic means, such as emails. This is in line with the UNCITRAL Model Law on Electronic Commerce (1996) and the United Nations Convention on the Use of Electronic Communications in International Contracts of 2005.

The lack of recognition of electronic agreements in the Act may create challenges, especially international arbitration, where transnational parties rely on electronic communication to formalise their arbitration agreements. An example of a challenge that could arise is if parties enter into an arbitration agreement electronically, courts may deny or question its enforceability, creating uncertainty. This could lead to hesitance when choosing Zambia as a seat of arbitration. The Model Law was amended in 2006. These amendments introduced changes that were quite significant. Changes include the broadening of the definition of an "arbitration agreement" to include electronic means of entering into the agreement. This aligned the Model Law with the 1996 UNCITRAL Model Law on Electronic Commerce and the 2005 United Nations Convention on the Use of Electronics Communications in International Contracts.[240] This also resulted in this definition being wider than what is included in the New York Convention.

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

Section 10 outlines how, through legislation, courts are required to uphold arbitration agreements. Section 11 also outlines circumstances where courts may assist the effectiveness of the arbitral process by being able to implement interim measures.

> 10. (1) A court before which legal proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so requests at any stage of the proceedings and notwithstanding any written law, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
>
> (2) Where proceedings referred to in subsection (1) have been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made while the issue is pending before the court.

As per Section 10, if a court is faced with a dispute covered by an arbitration agreement, it must direct the parties to arbitration. The only deviation from this is if the court deems the agreement null and void, not operational, or impossible to execute.

Section 10, particularly, has been quite pivotal in ensuring courts uphold arbitration agreements, for instance, *Moba Hotel and Convention Centre v Lyco Business Solutions Ltd.*[241] This case plays an important role in shaping the understanding of how courts implement Section 10 of the Arbitration Act. The dispute arose from an "Engagement Agreement" that included an arbitration clause requiring arbitration under the International Commerce Arbitration Association in London.[242] Moba Hotel, the appellant, sought to stay the court proceedings, arguing that the dispute fell within the arbitration clause. Prior to the appeal, the High Court rejected this request, ruling that the clause was vague and therefore unenforceable. However, the Court of Appeal reversed the decision, ruling that the clause was valid, clear, and enforceable. It directed the parties to resolve their dispute through arbitration as initially agreed.[243] This case illustrates the obligation of courts to uphold arbitration agreements unless they are proven to be null, void, inoperative, or incapable of being performed, as stated in Section 10. The Court of Appeal emphasised that arbitration clauses should generally be presumed enforceable unless there is strong evidence to the contrary. It criticised the High Court's reliance on the contra proferentem rule, explaining that the arbitration clause was clear enough to reflect the parties' intention to arbitrate their disputes.[244] The Court also addressed the issue of ambiguity in arbitration clauses, stating that such ambiguities should not

[241] *Moba Hotel and Convention Centre v Lyco Business Solutions Ltd* 2022 (Appeal 66 of 2022) ZMCA 133.
[242] Ibid at p 19.
[243] *Moba Hotel and Convention Centre v Lyco Business Solutions Ltd* 2022 (Appeal 66 of 2022) ZMCA 133 at p 25-26.
[244] Ibid at p 24-25.

automatically render an agreement unenforceable unless they prevent the clause from functioning as intended.[245] It reinforced the principle that courts should focus on ensuring that arbitration agreements are valid and workable, rather than overanalysing their procedural details. The judgment reflects a strong pro-arbitration stance.

Similarly, *Allan Gwamba v Swift Capital Limited*.[246] In this case the court reaffirmed its commitment to honouring arbitration agreements by citing Section 10[247] once more. The case centred on a contract of sale that included an arbitration clause, but the appellant argued the contract was fraudulent and therefore void. The Court emphasised that before a matter can be referred to arbitration, the validity of the main contract must first be established. If there are significant allegations, such as claims of fraud, the courts must resolve these issues before enforcing the arbitration clause. In this instance, the Court found that the lower court erred in referring the dispute to arbitration without first considering the appellant's allegations of fraud. Consequently, the appeal was allowed.

The cases above highlight how Zambian courts have taken a generally pro-arbitration stance, aligning with the principles set out in Section 10 of the Act.[248] Both illustrate the judiciary's commitment to ensuring arbitration agreements are respected, provided they are clear, valid, and not undermined by allegations like fraud or ambiguity. These decisions reinforce Zambia's position as a favourable seat for arbitration, demonstrating that its courts are both supportive of arbitration and vigilant in addressing any foundational issues that might compromise fairness or justice.

There are also instances where Zambian courts have adopted a narrower approach. In certain cases, they have been cautious in referring disputes to arbitration when there were concerns about the scope or enforceability of the arbitration agreement.

In *Nyambe v Total Zambia Limited,*[249] the Supreme Court dealt with a dispute that arose after Total Zambia terminated a marketing licence agreement without notice. The agreement

[245] *Moba Hotel and Convention Centre v Lyco Business Solutions Ltd* 2022 (Appeal 66 of 2022) ZMCA 133 at p 23.
[246] *Allan Gwamba v Swift Capital Limited* (Appeal No. 249/2022) [2023] ZMCA 338.
[247] The Zambian Arbitration Act 19 of 2000.
[248] Ibid.
[249] *Audrey Nyambe v Total Zambia Limited* SCZ Judgment No. 1 of 20153.

included an arbitration clause that applied only to disputes arising "during the continuance of this agreement."[250] The High Court referred the case to arbitration, but the Supreme Court overturned this decision. The Court ruled that the clause did not apply to disputes arising after the contract ended and emphasised that arbitration agreements must be interpreted according to their exact wording.[251]

In *UPEO (Zambia) Ltd v ZCON Construction Ltd,*[252] the dispute involved a multi-step dispute resolution clause that required adjudication before arbitration. ZCON Construction applied to the High Court to refer the matter to arbitration under Section 10 of the Arbitration Act. However, the Court found that the arbitration clause only applied to decisions made by an adjudicator and that ZCON Construction had not followed the required procedural steps, such as referring the matter to adjudication within the specified timeframe. The Court also noted that the dispute, which was about a breach of contract, fell outside the scope of the arbitration clause. As a result, the application was dismissed. This case demonstrates that procedural requirements in arbitration clauses are not optional and must be strictly followed for the clause to be enforceable.[253]

These two cases reflect the Zambian courts' approach to arbitration. While they support arbitration agreements and uphold the principles of Section 10 of the Arbitration Act[254], they insist that the agreements must be clear, valid, and properly followed. By carefully examining the wording and procedural compliance of arbitration clauses, the courts ensure that arbitration is only used where it aligns with the parties' original intentions. This approach strikes a balance between promoting arbitration and maintaining judicial oversight to prevent misuse or ambiguity.

The party autonomy that is provided for as per Section 10 is further entrenched into law through the High Court Rules[255] where it states that:

> "If the parties to a suit are desirous that the matters in difference between them in the suit, or any of such matters, should be referred to the final decision of one or more arbitrator or

[250] *Audrey Nyambe v Total Zambia Limited* SCZ Judgment No. 1 of 20153 at p 9.
[251] Ibid.
[252] *UPEO (Zambia) Ltd v ZCON Construction Ltd* (HPC 362 of 2016) [2017] ZMHC 296.
[253] Ibid.
[254] The Zambian Arbitration Act 19 of 2000.
[255] Zambian High Court Rules Order XLV Rule 1.

> arbitrators, they may apply to the Court or a Judge, at any time before final judgment, for an order of reference; and the Court or a Judge may, on such application, make an order of reference accordingly".[256]

This enhances how supportive the courts are when it comes to upholding arbitration as a practice. Even when there is no explicit arbitration agreement, the court allows for parties to opt for arbitration through an order of reference during the court proceedings. This synergy between the Act and the High Court Rules enhances the legal infrastructure for arbitration in Zambia, demonstrating that the Zambian judicial system is positioned in a way which ensures that the courts act as facilitators rather than obstacles to arbitration.

4.2- Arbitral Tribunal Jurisdiction

The principle of Kompetenz-Kompetenz is crucial in arbitration since it grants an arbitral tribunal the authority to decide on its own jurisdiction, including any challenges questioning the existence or validity of the arbitration agreement. The application of this theory is essential for preserving the independence and effectiveness of the arbitration process, guaranteeing that the tribunal can handle jurisdictional disputes without immediately resorting to national courts. This principle is seen in Article 16(1) of the First Schedule of the Arbitration Act:

> "16 (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause."

The idea was effectively portrayed in the case of *Sundaram and Anor v Kawina*[257]. In this case, the dispute arose from a contract that included an arbitration clause, requiring any disagreements to be resolved through arbitration. During the proceedings, Sundaram and Another, who were the appellants, questioned whether the arbitral tribunal had the authority to hear the case, arguing that it was not properly constituted and lacked jurisdiction. The arbitral tribunal applied the principle of Kompetenz-Kompetenz as per Article 16(1) of the First Schedule of the Arbitration Act. Although the appellants raised concerns about the tribunal's jurisdiction, they actively participated in the proceedings without formally objecting in a timely

[256] Zambian High Court Rules Order XLV Rule 1.
[257] *Sundaram and Anor v Kawina* (Appeal 76 of 2017) [2018] ZMCA 376.

manner. The tribunal concluded that by continuing to take part without promptly raising their objections, the appellants had effectively waived their right to challenge its authority.[258]

When the matter was appealed to the Zambian Court of Appeal, the Court upheld the tribunal's decision. It emphasised that jurisdiction objections must be raised at the earliest opportunity, as required by Article 16(1) of the First Schedule of the Arbitration Act. The Court also confirmed that participation in arbitration without raising timely objections amounts to a waiver of the right to later challenge the tribunal's jurisdiction. This decision reinforced the principle that arbitrators have the primary authority to resolve jurisdictional issues.[259]

Ultimately, the effective implementation of the Kompetenz-Kompetenz principle in Zambian case law and court system, as illustrated by instances such as *Sundaram and Anor v Kawina*[260], showcases Zambia's potential to be recognised as a reliable location for arbitration. The nation's commitment to international arbitration rules and its robust legal framework makes it an appealing option for parties in search of a dependable and independent arbitration process.

4.3– Judicial Support- Interim Relief

Courts have the authority to make interim orders or evidence preservation before or even during arbitration proceedings in order to ensure fairness of the arbitral process. This is seen in Section 11 of The Act.[261]

> 11. (1) A party may, before or during arbitral proceedings, request from a court an interim measure of protection and subject to subsections (2), (3), and (4), the court may grant such measure.

Similarly, Section 14 gives arbitral tribunals the same authority[262]:

> 14. (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute and the
> arbitral tribunal may require any party to provide appropriate security in connection with any such measure.

[258] *Sundaram and Anor v Kawina* (Appeal 76 of 2017) [2018] ZMCA 376. at p 2-9.
[259] Ibid at p 15-19.
[260] Ibid.
[261] The Zambian Arbitration Act 19 of 2000.
[262] Ibid.

As demonstrated above, arbitrators have the power to unilaterally issue certain orders, but they can seek assistance from the court if needed. The interim relief provided by the court is also slightly different from that of an arbitral tribunal. The procedures for submitting these court applications are detailed in the Arbitration (Court Proceedings) Rules. Section 11 of the Act[263] permits Zambian courts to grant interim relief in support of arbitration proceedings. The types of interim relief a court may grant include: the preservation, custody, or inspection of disputed goods; the amount in dispute or the arbitration's costs and expenses; courts can issue interim injunctions; and prevent any award from being rendered ineffectual.[264]

It should also be noted that the interim relief provided for by the national courts does not affect the jurisdiction of the arbitration tribunal. This recognition demonstrates a harmonious relationship between the judicial support and the arbitration proceeding. It safeguards the parties' interests whilst aligning Zambia with global standards, as the judiciary is required to respect and provide legitimacy to the arbitration process.[265] The courts also seem to grant interim relief on a case-by-case basis. This is seen in the *Roraima Data Services Limited v Zambia Postal Services Corporation*[266] case, where the court granted an interim injunction, awaiting arbitration. The rationale of the court was that it acknowledged that damages would not be enough and that not granting the injunction would result in an injustice.

However, the Act is based on the 1985 UNCITRAL Model Law. While it provides a foundation for managing disputes, it has not kept pace with more recent developments. The 2006 amendments to the Model Law introduced significant enhancements, granting arbitral tribunals the authority to issue enforceable orders aimed at preserving evidence, maintaining the status quo, and safeguarding the arbitration process. However, because the Act remains rooted in the 1985 framework, it falls short of these advancements.

The 2006 Model Law, under Article 17[267], introduced a more detailed framework for interim measures, making it easier for parties to seek orders from courts or tribunals and even allowing

[263] The Zambian Arbitration Act 19 of 2000.
[264] Ibid.
[265] International Arbitration Laws and Regulations Zambia 2023–2024 available at https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/zambia, accessed on 5 March 2024.
[266] *Roraima Data Services v Zambia Postal Services Corporation* (2011) 3 Z.R. 283.
[267] UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006.

for ex parte applications in certain cases. The 2006 Model Law also draws a clearer line between the roles of courts and tribunals, ensuring courts step in only when necessary. While Section 11[268] lets courts grant interim measures and Section 14[269] gives tribunals the power to do the same, these sections do not go as far as the 2006 amendments in addressing more complex issues, such as enforcing these measures or dealing with jurisdictional disputes. The 2006 Model Law provides a much clearer and more practical system for handling interim measures, emphasising where Sections 11 and 14 could be improved to better support arbitration proceedings. Updating Zambia's Arbitration Act to include these provisions would be beneficial to ensure that Zambia has current and modernised laws in order to demonstrate its willingness to keep up with global norms.

4.4-Finality of Arbitration Awards – Challenging and Setting Aside Awards

Section 20 highlights the significance of an arbitral decision being final and binding for all parties.[270]

> 20. (1) Subject to subsections (2) and (3), an award made by an arbitral tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.
>
> (2) Subsection (1) shall not affect the right of a person to challenge the award by any available process provided for in this Act.
>
> (3) Where the time for making an application to set aside an arbitration award has expired or where the application has been refused by a court, the award shall be deemed to be and shall be enforceable in the same manner as an order of the court.

This sense of finality is very important when it comes to arbitration because it offers assurance for the parties who specifically chose the route of arbitration. This section further illustrates that arbitration judgements are enforceable akin to court judgments, once the prescription for seeking to overturn the decision has lapsed or if such a request has been rejected by the court. This binding nature of decisions strengthens the effectiveness and dependability that the Act provides.

[268] The Arbitration Act 19 of 2000 (Zambia).
[269] Ibid.
[270] The Arbitration Act 19 of 2000 (Zambia).

The recognition and enforcement of arbitration awards are pivotal when it comes to assessing the efficacy of arbitration in Zambia.

> 19 (1)(a) Enforcement may be refused, at the request of the opposing party, if they prove:
>
> (i) A party lacked capacity or the arbitration agreement is invalid under the applicable law.
>
> (ii) They were not properly notified of the proceedings or could not present their case.
>
> (iii) The award covers issues beyond the arbitration agreement (unless separable).
>
> (iv) Tribunal composition or procedure was not in line with the agreement or the law of the seat.
>
> (v) The award is not yet binding, or has been set aside/suspended by a court at the seat.
>
> 19(1)(b) Enforcement may also be refused if the court itself finds:
>
> (i) The subject matter is not arbitrable under Zambian law.
>
> (ii) Enforcement would violate public policy.
>
> (iii) The award was induced by fraud, corruption, or misrepresentation.
>
> 19(2) If an award is being challenged or suspended in another court, the Zambian court may postpone its decision and may order the opposing party to provide security

Sections 18 and 19 outline a procedure for recognising and enforcing awards irrespective of which country the award was made. This also aligns with Zambia being a member of the New York Convention. Prior to the New York Convention coming into effect, when disputes arose in international trade disputes, the world relied on international litigation.[271] This form of dispute resolution on the international stage was seen as inefficient, and parties were often left unsatisfied. What was relied on was the rules of private international law, and this made the enforcement of the judgments made via these international litigation proceedings quite cumbersome.[272] Consequently, many viewed international dispute resolution to be quite a daunting experience. This changed when the New York Convention was adopted. It has since been seen as the pillar of international arbitration. The convention's primary contributions to resolving international disputes are that it ensures the enforcement of arbitration agreements (article II) and the enforcement of foreign arbitral awards (article III).[273]

[271] Benefits of New York Convention available at https://arbitrationacademy.org/wp-content/uploads/2018/07/7.pdf, accessed on 20 November 2023.
[272] Ibid.
[273] Ibid.

Section 18 also directly correlates to Article I (3) of the New York Convention and the doctrine of reciprocity. As mentioned in Chapter 2, Article I(3) of the New York Convention states that member states are at liberty to choose how they apply the New York Convention, and whether they will adhere to the doctrine of reciprocity. Section 18 of the Act demonstrates how Zambia recognises all foreign awards. Furthermore, Section 2(3) of the Act states that the Act is applicable to all arbitration agreements and not only commercial agreements. Therefore, Zambia does not impose the doctrine of reciprocity requiring the recognition of only member state, illustrating its commitment to facilitating and reinforcing its position on international arbitration.

One of the features that are considered when determining whether a place makes for an appropriate seat of arbitration is the enforceability of awards.[274] There are currently about 172 states that are signatories to the New York Convention.[275] When parties select their seat of arbitration as one that is a member of the New York Convention, they are able to benefit from the fact that this guarantees reduced barriers when it comes to the enforcement of the arbitration awards. As mentioned in the introductory chapter, Zambia is a member of the New York Convention. Section 31 also directly states that awards under the New York Convention are acknowledged as binding and can be enforced in Zambia. The Convention mandates that countries that are part of it must honour and uphold arbitration awards issued in member states. By abiding by the Convention, Zambia ensures that arbitration awards granted within its borders can be enforced in member states and vice versa.

Judicial interference is another crucial factor that should be considered through the lens of the Act. Section 5 highlights that courts have the authority to step in during arbitration proceedings only when explicitly allowed by the law. This limited interference aims to aid rather than obstruct the arbitration process. For instance, courts can assist in selecting arbitrators (Section 12), issue measures (Section 11), and help with evidence collection (Section 27). This controlled approach maintains the independence of the arbitration process while offering assistance. Judicial interference will be further discussed in the next chapter.

[274] Chartered Institute of Arbitrators CIArb *London Centenary Principles* (2015) available at https://ciarb.org/media/ui1fjuf2/london-centenary-principles.pdf, accessed on 29 November 2024.
[275] Contracting States available at https://www.newyorkconvention.org/countries, accessed on 21 November 2023.

Section 17 of the Act mimics verbatim Article 34 of the Model Law. It provides for circumstances where parties can challenge an arbitration award which was issued by an arbitrator/tribunal. It is only under these circumstances that an arbitration award can be challenged.

> 17(1) An arbitral award may be challenged in court only through an application to set it aside, in line with subsections (2) and (3).
>
> 17(2) A court may set aside an award only if:
>
> (a) On application by a party, with proof that:
>
> (i) A party lacked capacity, or the arbitration agreement is invalid under the chosen law, or failing that, under Zambian law.
>
> (ii) The applicant was not properly notified of the arbitrator's appointment or the proceedings, or was unable to present their case.
>
> (iii) The award deals with disputes outside the arbitration agreement, or includes matters beyond its scope; separable valid parts may still stand.
>
> (iv) The tribunal's composition or procedure was not consistent with the parties' agreement, or failing that, with this Act or the law of the seat.
>
> (v) The award is not yet binding, or has been set aside or suspended by a court of the seat.
>
> (b) If the court itself finds that:
>
> (i) The subject matter cannot be resolved by arbitration under Zambian law.
>
> (ii) The award conflicts with public policy.
>
> (iii) The award was obtained through fraud, corruption, or misrepresentation.

The courts respect the autonomy of the parties involved, allowing them to define the rules and composition of the tribunal, which aligns with international norms and makes the jurisdiction more trustworthy to international parties. The laws also prioritise fairness, making sure everyone has a chance to be heard and to present their case, which is crucial for a just arbitration process. Additionally, they protect against the tribunal overstepping its bounds, ensuring that arbitrators stick to the agreed scope of the dispute. This not only prevents power abuses but also reassures all parties that the process is secure and well-regulated. Furthermore, courts involvement is strictly for due process. Adopting standards from the UNCITRAL Model Law further boosts this confidence, signalling to the world that Zambia adheres to globally recognised practices.

In the case of *Cash Crusaders Franchising (PTY) Limited v Shakers and Movers Zambia Limited*[276]. The case came about after a dispute between Cash Crusaders, a franchising company and Shakers and Movers Zambia, was resolved through arbitration. Shakers and Movers, unhappy with the arbitral award, went to court to challenge it on two grounds: a stay of execution to pause the enforcement of the award and extra time to apply to have the award set aside. While the Deputy Registrar initially allowed both requests, Cash Crusaders appealed this decision.

The High Court later ruled in favour of Cash Crusaders making it clear that the three-month time limit for challenging an award is not flexible. The court emphasised:

> "Section 17(3) of the Arbitration Act makes it explicitly clear that no application to set aside may be made after three months."[277]

This approach shows the courts' commitment to fairness and respecting the process agreed upon by the parties. The adherence of the Zambian courts following the law so closely builds confidence in Zambia's arbitration system.

Zambian courts have consistently upheld a cautious and restrained approach to interfering with arbitration awards, underscoring the principle of finality in arbitration. In the case of *Mbazima v Tobacco Association of Zambia* [278], the Supreme Court reinforced this position, reiterating the narrow grounds under which an arbitral award can be set aside.[279] The applicant, Mr Mbazima, sought to overturn the award on the basis of alleged fraud and procedural irregularities, including the respondent's legal standing and the omission of a forensic audit report. The Court, however, determined that these issues should have been addressed during the arbitration proceedings. It further stressed that claims of fraud must be substantiated with clear and compelling evidence; the mere failure to present evidence, such as the forensic report, could not form a valid basis for setting aside the award. By applying Section 17 of the Arbitration Act, the Court underscored that intervention is limited to exceptional circumstances, such as cases involving breaches of public policy or procedural irregularities of

[276] Cash Crusaders *Franchising (PTY) Limited v Shakers and Movers Zambia Limited* [HPARB 1 of 2008] (2012) ZMHC 40.
[277] Ibid at p 10.
[278] *Mbazima v Tobacco Association of Zambia* (SCZ 8 of 2021) [2022] ZMSC 48 (9 November 2022).
[279] Ibid at p 24-30.

a serious nature.[280] This decision reflects the judiciary's commitment to upholding party autonomy and ensuring that arbitration remains a reliable and respected mechanism for dispute resolution.[281]

The court also reiterated this stance in *ZCCM Investments Holding PLC v Vedanta Resources Holding Limited and Konkola Copper Mines PLC*[282], stressing that it is not the court's jurisdiction to re-examine matters that the arbitral tribunal has previously decided. The court emphasised that in accordance with Article 5 of the Model Law[283], the judiciary is required to uphold the principle of limited interference, honouring the autonomy of the parties and their decision to settle conflicts through arbitration.[284]

Respecting parties' sovereignty in selecting arbitration serves as the foundation for this non-interventionist approach. This is further enforced by Section 17 of the Arbitration Act, which states that awards may only be set aside by courts in extremely specific situations, maintaining the binding and final character of arbitral rulings.

As effected through section 17, an arbitral award can only be set aside if there is found to be circumstances such as evidence of irregularities in procedure, lack of jurisdiction, or public policy violations. Other than these specified grounds as per this section, courts do not redetermine the actual merits or determinations of fact of the case which were made by the tribunal.

Res judicata is a principle that states that a matter that has been resolved and finalised through a competent court and has reached final judgement cannot be re-examined. [285] Thus, it can be said that Section 17 of the Arbitration Act and Article 34 of the Model Law support the concept of res judicata by effectively embodying its principles by ensuring the finality and binding nature of arbitral awards, even though the term is not explicitly codified in the sections.

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[280] *Mbazima v Tobacco Association of Zambia* (SCZ 8 of 2021) [2022] ZMSC 48 (9 November 2022).
[281] Ibid.
[282] *ZCCM Investment Holdings Plc v Vedanta Resources Holdings Limited and Konkola Copper Mines Plc* (Appeal No. 14/2021) at 53–54.
[283] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)*.
[284] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)*.
[285] R Von Moschzisker 'Res Judicata' (1929) 38(3) *The Yale Law Journal* at 299–334.

4.5 Minor supporting provisions

There are also other provisions of the Act that demonstrate how Zambia, on a fundamental level, is determined to have a pro-arbitration approach. For example, the law acknowledges arbitration institutions, which are crucial in managing arbitration processes and upholding standards.

> 23. (1)A professional body or organisation, in Zambia or elsewhere, may apply to the Minister for a *recognition order* declaring it an arbitral institution under this Act.
>
> (2)An application must:
> (a) follow the procedure prescribed by statutory instrument; and
> (b) include any information the Minister reasonably requires.
>
> (3) Every application must also include a copy of the organisation's constitution or proof of its legal authority.
>
> (4) "Professional body or organisation" means one that regulates a profession.
>
> 24. (1) After reviewing an application under section 23, the Minister may grant or refuse a recognition order.
>
> (2) The Minister may refuse if recognition is unnecessary due to the existence of other dispute resolution bodies.
>
> (3) If refused, the Minister must notify the applicant in writing and give reasons.
>
> 25. The Minister shall only grant a recognition order if satisfied that the organisation has proper rules covering:
> (a) membership qualifications,
> (b) certification of arbitrators,
> (c) monitoring and enforcement of arbitration standards,
> (d) integrity, conduct, discipline, and control of arbitrators,
> (e) investigation of complaints, and
> (f) other requirements for proper arbitration standards.

Sections 23 to 25 detail the steps for groups and/or associations to seek acknowledgement as arbitration bodies. To qualify, these entities must meet requirements like having regulations concerning arbitrators' qualifications and certification monitoring, and ensuring adherence to standards and procedures for addressing complaints and disciplinary issues. Acknowledged organisations boost the credibility and effectiveness of arbitration proceedings in Zambia, therefore their recognition is quite important.

Another crucial aspect when it comes to arbitration proceedings is confidentiality.

> 27. (1) Unless the parties agree otherwise, an arbitration agreement is taken to mean that the parties must not publish, disclose, or share information about the proceedings or the award.

(2) This duty of confidentiality does not apply where:
(a) disclosure is required by law,
(b) disclosure is made to a party's professional or other adviser, or
(c) an arbitral institution (or its authorised person) publishes information anonymously, revealing only what is necessary to explain the arbitration and the decision.

28. (1) An arbitrator, arbitral institution, or any authorised person is not liable for acts or omissions done in good faith while performing arbitration functions.

(2)A witness in arbitral proceedings has the same legal protection as a witness in court.

Section 27 includes measures to safeguard the privacy of arbitral processes and decisions. Generally, parties are not allowed to share, reveal, or discuss any details about the arbitration without the party's approval. This confidentiality covers both the proceedings and the final decision, ensuring that sensitive information and the party's identities remain protected. There are a few situations where this confidentiality may be waived, such as legal obligations or consulting with professional experts. The Act, through Section 28, also offers a safeguard for arbitrators and witnesses, protecting them from consequences when carrying out their responsibilities in faith. It guarantees that arbitrators can fulfil their duties without facing issues.

4.6 Efforts to modernise legal framework

Although Zambia should be commended when it comes to how it not only adopted but also modified the model law when creating the Act, as demonstrated earlier in the chapter, it has not undergone the necessary provisions in order to update the Act and bring it into compliance with the 2006 model law amendments. This is quite alarming as it is crucial for legislation to be up to date and modernised when considering a favourable seat of arbitration.

However, in 2019 the CIArb Zambia branch collaborated with the Zambia Law Development Commission (ZLDC) to reassess the Arbitration Act No. 19 of 2000 aiming to establish standards and address concerns.[286] The current Arbitration Act outlines the procedures for arbitration in Zambia, covering both domestic and international arbitration. It addresses elements such as the arbitration agreement, the composition and jurisdiction of the tribunal,

[286] Call For Submissions-Review Of The Arbitration Act No 19 OF 2000 available at https://www.zambialawdevelopment.org/call-for-submissions-review-of-the-arbitration-act-no-19-of-2000/ , accessed on 28 April 2024.

court intervention levels, and the recognition and enforcement of arbitral awards. The Act incorporates elements from the UNCITRAL Model Law tailored to suit Zambia's requirements to ensure efficient arbitration processes. Furthermore, it aligns with agreements like the Geneva Protocol on Arbitration Clauses (1923) and the Geneva Convention on the Execution of Foreign Arbitral Awards (1927). The ongoing review aims to revoke and update the Act by integrating the 2006 amendments of the UNCITRAL Model Law, thus modernising and enhancing Zambia's legal framework governing arbitration. This endeavour is geared towards establishing a structure for both domestic and international arbitration proceedings that reflect contemporary best practices and global standards (Zambia Law Development Commission, 2024).

Conclusion

Zambia's Arbitration Act provides a good starting point for both domestic and international arbitration, with a clear foundation built on the 1985 UNCITRAL Model Law. The law's emphasis on party autonomy, minimal judicial interference, and the enforceability of arbitration awards shows Zambia's positive attitude towards arbitration and its role in resolving disputes fairly and efficiently. The courts have shown a strong commitment to supporting arbitration, upholding agreements, and ensuring that the process remains trustworthy and effective.

However, there are still gaps, particularly because the Act has not yet caught up with the 2006 UNCITRAL Model Law amendments. For example, the Act does not fully recognise electronic arbitration agreements or provide a clear framework for interim relief, both of which are becoming more important in modern arbitration. If Zambia addresses these gaps and adopts the necessary reforms, it will be in a stronger position as an emerging seat.

Chapter 5 – Summative Discussion

International arbitration is gaining a lot of traction globally as an alternative dispute resolution method in comparison to traditional court systems and litigation processes, specifically when it comes to international business dealings. This is because the nature of arbitration is that it creates a neutral platform for the parties to resolve their transnational disputes without being

subjected to the ambiguities and delays that frequently accompany domestic court proceedings.[287] It is also known to be adaptable, confidential, and effective, even in terms of time and cost.[288] This traction is also extended to Africa, which slowly continues to grow its arbitration systems. This is seen through things such as the growing establishment of arbitration centres and the continuous and intentional alignment of arbitration laws to international standards, such as the UNCITRAL Model Law[289] and the New Convention[290] through the enhancement of legal frameworks.

Zambia is one of the African countries significantly making strides to be put on the map when it comes to international arbitration. The Zambian Arbitration Act[291] is one that was designed to align to international standards of international arbitration and to create an atmosphere for international arbitration to thrive and be favourable not only locally but on the global scale. The UNCITRAL Model Law was not only the basis of drafting the Act but also remains the cornerstone when it comes to the interpretation of the Act. [292] Additionally, Zambia is a member of the New York Convention and through the Act states the recognition as well as enforceability of foreign arbitration awards. Although there is judicial oversight, the Act ensures that the foundation of this oversight is that Zambia is dedicated to upholding the foundational principle of international arbitration being party autonomy and the integrity of international arbitration.[293]

It is also evident through case law that it is not only codified but in practice as well, that Zambia has been upholding arbitration agreements and practicing judicial interference on a limited basis. For instance, the UNCITRAL Model Law[294] Article 5 limits court involvement to scenarios such as settling disputes, establishing tribunals granting relief and examining requests to contest arbitration rulings. A similar approach is adopted in the Zambian Arbitration Act,

[287] Jan Paulsson & Nigel, The Freshfields Guide to Arbitration Clauses in International Contracts 3 ed (2010) at 1 - 15
[288] Ibid.
[289] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)*.
[290] The New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, 10 June 1958.
[291] The Arbitration Act No. 19 of 2000 (Zambia).
[292] Ibid at Section 2(3).
[293] Ibid at Section 10.
[294] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)*.

where judicial interference is confined to circumstances explicitly outlined in Section 5 of the Arbitration Act to protect the autonomy of the arbitration process.

Although it can be said that there is still room for improvement due to the fact that the Act is based on the 1985 Model Law, and thus needs to align to the 2006 amendments of the Model Law, discussions are already underway when it comes to amending or replacing the current Zambian Arbitration Act. This further enhances the argument that Zambia is dedicated to ensuring that it stays up to date and in alignment with international standards. This can also be seen through the creation of the new arbitration centre, namely the LIAC. These are notable and commendable efforts that should be applauded and recognised.

In Africa, countries such as South Africa have established themselves as destinations for arbitration. In South Africa, the international arbitration sector seems quite operative and is one of the best in terms of aiming to be progressive through legal framework and internationally recognised and trusted institutions like the AFSA and the CAJAC Johannesburg. Consequently, South Africa is viewed to be one of the best seats in Africa. Nigeria offers a compelling case study in the evolution of arbitration hubs. For years it stood as a leading arbitration centre in Africa, thanks to the judiciary's strong commitment to uphold arbitration agreements and awards. This judicial support helped Nigeria build a solid pro-arbitration reputation, even with an outdated legislative framework. However, its recent decline as a preferred seat serves as a stark reminder of how crucial consistent judicial adherence to arbitration principles is for maintaining a country's standing in the global arbitration landscape. However, Nigeria updated its international arbitration legislation as of 2023 in order to align to the modifications of the UNCITRAL Model Law and addressed issues raised by critics, such as lack of judicial support and lengthy legal processes.

Zambia, while taking its time to update its arbitration laws, is making steady strides toward aligning with international standards. Efforts to reform legislation and a judiciary committed to upholding arbitration agreements and awards, show a clear intention to create a pro-arbitration environment. These actions are building trust among parties choosing Zambia as their arbitration seat. Following the lead of established hubs like Singapore, Zambia has adopted modern practices such as allowing third-party funding, supported by institutions like the LIAC. These advancements highlight the country's readiness to embrace evolving trends in arbitration. However, global misconceptions about Africa, often tied to assumptions about

infrastructure and corruption, tend to overshadow these achievements. This undermines the recognition African countries deserve for their growing capabilities in arbitration.

This dissertation aims to shed light on Zambia's potential, showcasing the country's determination to establish itself as a credible arbitration hub and challenging the narratives that limit Africa's standing in the global arbitration stage.

Recommendations

- To continue aligning to international standards as well as to boost its competitiveness on a global scale, Zambia should continue making strides to either amend or replace its current Arbitration Act.
- It should also try, and combat issues raised in the broader African context, especially those pertaining to online visibility and efficiency. Improving and/or creating user-friendly and accessible online platforms for arbitration institutions, and better advertisement of what the country has to offer in terms of arbitration, will be extremely beneficial in ensuring competitiveness.
- Ensuring that current websites such as the parliament's website are up to date in terms of the current arbitration laws and amendments so that potential international stakeholders and parties are not misled and are more enticed when considering Zambia as a seat of arbitration.
- The Zambian cases online on arbitration were mainly local and not many were cross-border.

Conclusion

Therefore, Zambia even with its current imperfections should not be left out of the discussion of emerging seats of arbitration in Africa. Zambia, as demonstrated in this study, continues to show promising potential as well as making major strides when it comes to international arbitration. The recent engagement of the ZLDC by the CIArb to modernise the Arbitration Act as well as the launch of the LIAC is a significant step towards aligning Zambia's arbitration framework with international standards.

BIBLIOGRAPHY

Primary Sources

Constitution

Constitution of the Republic of Zambia (Amendment) Act No 2 of 2016.

Legislation

(*Primary statutes / Acts*)

Data Protection Act 3 of 2021 (Zambia).

English Law (Extent of Application) Act 4 of 1963 (Zambia).

Legal Practitioners Act, Cap 30 (Zambia).

International Arbitration Act 15 of 2017 (South Africa).

English Arbitration Act 1996 (UK).

Arbitration and Conciliation Act 1988 (Nigeria).

Arbitration and Mediation Act 2023 (Nigeria).

Arbitration Act 2001 (Singapore).

International Arbitration Act 1994 (Singapore).

Arbitration Act 19 of 2000 (Zambia).

Arbitration Act 42 of 1965 (South Africa).

Subordinate Legislation (Rules and Regulations)

(*Regulations, rules, orders, statutory instruments, institutional rules*)
Arbitration (Commencement) Order SI 30 of 2001 (Zambia).

Arbitration (Recognition of Arbitral Institutions) Regulations SI 63 of 2001 (Zambia).

Arbitration (Court Proceedings) Rules SI 75 of 2001 (Zambia).

Arbitration (Code of Conduct and Standards) Regulations SI 12 of 2007 (Zambia).

High Court Rules, Order XLV Rule 1 (Zambia).

Hong Kong International Arbitration Centre, *Administered Arbitration Rules* (2018).

International Centre for Dispute Resolution, *ICDR Arbitration Rules* (2021).

International Chamber of Commerce, *Arbitration Rules* (2021).

London Court of International Arbitration, *Arbitration Rules* (2020).

Lusaka International Arbitration Centre, *Arbitration Rules* (2024).

Singapore International Arbitration Centre, *Arbitration Rules* (2016).

Cases

Allan Gwamba v Swift Capital Ltd (Appeal No 249 of 2022) [2023] ZMCA 338.

Angela Raguz v Sullivan [2000] HCA 7.

Audrey Nyambe v Total Zambia Ltd SCZ Judgment No 1 of 2015.

Cash Crusaders Franchising (Pty) Ltd v Shakers and Movers Zambia Ltd (HPARB 1 of 2008) [2012] ZMHC 40.

Halliburton Co v Chubb Bermuda Insurance Ltd [2020] UKSC 48.

IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation [2017] UKSC 16.

Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another 2009 (4) SA 529 (CC).

Mbazima v Tobacco Association of Zambia (SCZ 8 of 2021) [2022] ZMSC 48 (9 November 2022).

Moba Hotel and Convention Centre v Lyco Business Solutions Ltd (Appeal 66 of 2022) [2022] ZMCA 133.

Mosi Resources (Pty) Ltd v Geohydro Consulting Services Ltd [2016] ZMHC 122.

Roraima Data Services v Zambia Postal Services Corporation (2011) 3 ZR 283.

Sundaram and Another v Kawina (Appeal 76 of 2017) [2018] ZMCA 376.

Telcordia Technologies Inc v Telkom SA Ltd 2007 (3) SA 266 (SCA).

UPEO (Zambia) Ltd v ZCON Construction Ltd (HPC 362 of 2016) [2017] ZMHC 296.

ZCCM Investment Holdings Plc v Vedanta Resources Holdings Ltd and Konkola Copper Mines Plc (Appeal No 14 of 2021).

International Conventions

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

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) 10 June 1958.

Secondary Sources

Books

C Kajimanga & N K Mutuna *Handbook on Arbitration in Zambia* 1 ed (2023).

FA Mann *Lex Facit Arbitrum* in P Sanders (ed) (1967) 160.

Jan Paulsson & Nigel Rawding *The Freshfields Guide to Arbitration Clauses in International Contracts* 3 ed (2010) 1–15.

Nigel Blackaby, Constantine Partasides, Alan Redfern & Martin Hunter *Redfern & Hunter on International Commercial Arbitration* 7 ed (2023) 1.

Sydney Chisenga 'Chapter 11 – Zambia' in Lise Bosman (ed) *Arbitration in Africa: A Practitioner's Guide* (Wolters Kluwer Law International 2021) ProQuest Ebook Central https://ebookcentral.proquest.com/lib/uoct/detail.action?docID=6723150.

Reports

Chartered Institute of Arbitrators *CIArb London Centenary Principles* (2015) https://ciarb.org/media/ui1fjuf2/london-centenary-principles.pdf (accessed 29 November 2024).

Emilia Onyema *SOAS Arbitration in Africa Survey Report: Perceptions on Africa-Connected Arbitration* (SOAS University of London 2020).

Emilia Onyema *SOAS Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats* (SOAS University of London 2020).

Institute for Economics & Peace *Global Peace Index 2024* https://www.economicsandpeace.org/wp-content/uploads/2024/06/GPI-2024-web.pdf (accessed 7 June 2024).

Kennedy Garston 'Examination of Arbitration Related UNCITRAL Texts and Their Adoption by African States' (Panel III – Roundtable with UNCITRAL 2017) 2.

Queen Mary University of London *2018 International Arbitration Survey: The Evolution of International Arbitration* https://www.qmul.ac.uk/arbitration/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF (accessed 29 November 2024).

Queen Mary University of London *2019 International Arbitration Survey: Driving Efficiency in International Construction Disputes* https://www.troutman.com/insights/the-intersection-of-international-arbitration-and-construction-disputes-a-review-of-the-2019-queen-mary-university-of-london-international-arbitration-survey.html (accessed 24 November 2024).

Queen Mary University of London *2021 International Arbitration Survey: Adapting Arbitration to a Changing World* https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf (accessed 29 November 2024).

SOAS Arbitration in Africa *2022 Arbitration in Africa Survey: Domestic and International Arbitration* (SOAS University of London 2022).

Transparency International *Corruption Perceptions Index 2023* https://www.transparency.org/en/cpi/2023 (accessed 3 November 2024).

Journal Articles

CR Drahozal 'Diversity and Uniformity in International Arbitration Law' (2017) 31 *Emory International Law Review*.

C Croft 'How the Judiciary Can Support Domestic and International Arbitration' (2013) *Arbitrators and Mediators Institute of New Zealand Annual Conference*.

G Born 'Principle of Judicial Non-Interference in International Arbitral Proceedings' (2009) 30 *University of Pennsylvania Journal of International Law* (Anniversary Contributions – International Litigation & Arbitration).

G Bamodu ‘Judicial Support for Arbitration in Nigeria: On Interpretation of Aspects of Nigeria’s Arbitration and Conciliation Act’ (2018) 62(2) *Journal of African Law* 255–279.

G Bermann ‘Recognition and Enforcement of Foreign Arbitral Awards’ in *The Interpretation and Application of the New York Convention by National Courts* (2017) 171.

G Vial ‘Influence of the Arbitral Seat in the Outcome of an International Commercial Arbitration’ (2017) 50 *International Lawyer* 331–333.

H Whitfield ‘Kompetenz-Kompetenz: An Arbitral Tribunal Authority to Decide Its Jurisdiction’ (2023) 14 *Beijing Law Review*.

I Welser & G De Berti ‘Best Practices in Arbitration: A Selection of Established and Possible Future Best Practices’ (2010) *Austrian Arbitration Yearbook* 94–95.

J Sikamo, A Mwanza & C Mweemba ‘Copper Mining in Zambia – History and Future’ (2016) 11(6) *Journal of the Southern African Institute of Mining and Metallurgy* 491–496.

JA van den Berg ‘The New York Convention of 1958: An Overview’ in *Enforcement of Arbitration Agreements and International Arbitral Awards* (2008) 39–68.

J DeBoos ‘Arbitration Awards: Is Review on the Merits Desirable’ (2008) 3 *International Journal of Constitutional Law* 31.

J Hill ‘Determining the Seat of an International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements’ (2014) 63 *International and Comparative Law Quarterly* 517–534.

K Muigua ‘Promoting International Commercial Arbitration in Africa’ (2016) 4(2) *Alternative Dispute Resolution*.

M Ahmed ‘The Influence of the Delocalisation and Seat Theories upon Judicial Attitudes Towards International Commercial Arbitration’ (2011) 4 *International Journal of Arbitration, Mediation and Dispute Management* 406–422.

MJ Block ‘The Benefits of Alternate Dispute Resolution for International Commercial and Intellectual Property Disputes’ (2016–2017) 44 *Rutgers Law Record*.

NE Nelson ‘The Selection of Arbitrators’ (1986) 37 *Labour Law Journal* 703.

O Aje-Famuyide & N Akano ‘Challenges of Nigeria as a Preferable Seat of International Commercial Arbitration’ (2021) 18 *Reality of Politics* 11–32.

P Cortés & F Esteban de la Rosa ‘Building a Global Redress System for Low-Value Cross-Border Disputes’ (2013) 62 *International and Comparative Law Quarterly* 407–440.

R von Moschzisker ‘Res Judicata’ (1929) 38(3) *Yale Law Journal* 299–334.

R Thirgood ‘Appeals in Arbitration: To Be or Not to Be’ (2021) 87 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 423–435.

S McKenzie, E Warmington, K Wolmarans, A de Meyer, K Pooe, T Dye & J Vassen ‘Arbitration in South Africa’ (2019) *Practical Law UK Practice Note* w-022-4384 https://www.webberwentzel.com/Documents/arbitration-in-south-Africa.pdf (accessed 2 January 2025).

TV Warikandwa & U Lineekela ‘A Proposal for International Arbitration Law in Namibia Based on the UNCITRAL Model Law on International Commercial Arbitration’ (2023) 56(1) *De Jure Law Journal* 259–279.

TJ Stipanowich ‘ADR and the Vanishing Trial’ (2004) 1 *Journal of Empirical Legal Studies* 909–911.

W Bishop ‘Interpretation of Peace Treaties with Bulgaria, Hungary and Romania’ (1950) 44(4) *American Journal of International Law* 742–752.

Internet Sources

A Medvedskaya ‘London vs Singapore: A (false) struggle for the title of world’s leading seat of arbitration’ https://dailyjus.com/world/2021/09/london-vs-singapore-a-false-struggle-for-the-title-of-worlds-leading-seat-of-arbitration (accessed 5 June 2024).

SOAS University of London Arbitration in Africa Survey Report: Seats, Female Arbitrators and Tribunal Secretaries (2024) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4012002/#:~:text=Purposeful%20sampling%20is%20a%20technique,resources%20(Patton%2C%202002) (accessed 7 June 2023).

Broderick Bozimo ‘Combatting Delays in Arbitration: Expediting the Process’ (2021) https://broderickbozimo.com/combatting-delays-in-arbitration-expediting-the-process/ (accessed 10 October 2024).

Broderick Bozimo ‘Combatting Delays in Arbitration: Expediting the Process’ https://broderickbozimo.com/combatting-delays-in-arbitration-expediting-the-process/ (accessed 15 October 2024).

‘Benefits of New York Convention’ https://arbitrationacademy.org/wp-content/uploads/2018/07/7.pdf (accessed 20 November 2023).

‘Call for Submissions – Review of the Arbitration Act No 19 of 2000’ https://www.zambialawdevelopment.org/call-for-submissions-review-of-the-arbitration-act-no-19-of-2000/ (accessed 28 April 2024).

Chartered Institute of Arbitrators Zambia Branch ‘About the Institute in Zambia’ (21 September 2011) https://www.facebook.com/CIArbZambia/posts/about-the-institute-in-zambiathe-chartered-institute-of-arbitrators-zambia-branc/1109785769108522/ (accessed 29 November 2024).

Chartered Institute of Arbitrators ‘Zambia Branch Gets New Patron’ (19 July 2022) Judiciary of Zambia https://judiciaryzambia.com/chartered-institute-of-arbitration-zambia-branch-gets-new-patron/ (accessed 29 November 2024).

Chambers and Partners ‘The Seat of Arbitration & Its Significance’ (10 May 2022) https://chambers.com/articles/the-seat-of-arbitration-its-significance (accessed 29 November 2024).

C Han Toh ‘Singapore International Arbitration Centre puts innovation at heart in latest developments’ (2024) https://www.pinsentmasons.com/out-law/analysis/singapore-international-arbitration-centre-innovation-latest-developments (accessed 8 January 2024).

‘Choosing an Arbitration Seat in Asia – Singapore or Hong Kong’ https://www.pinsentmasons.com/out-law/guides/choosing-an-arbitration-centre-in-asia--hong-kong-or-singapore (accessed 15 September 2024).

‘Democracy, Rights and Governance’ USAID https://www.usaid.gov/zambia/democracy-human-rights-andgovernance#:~:text=For%20the%20past%2030%20years,democratic%20weaknesses%20threaten%20this%20stability (accessed 2 January 2025).

GJ Williams, AD Roberts & RH Hobson ‘Zambia’ *Encyclopaedia Britannica* https://www.britannica.com/place/Zambia (accessed 8 August 2023).

H Malik ‘A General Introduction to International Arbitration in Singapore’ https://www.legal500.com/developments/thought-leadership/a-general-introduction-to-international-arbitration-in-singapore/ (accessed 28 December 2024).

H Stebbing ‘Enforcement of Awards Across Africa – 42 of Africa’s 54 States Have Now Acceded to the New York Convention’ https://www.nortonrosefulbright.com/en/inside-africa/blog/2021/03/enforcement-of-awards-across-africa--42-of-africas-54-states?utm (accessed 3 November 2024).
‘International Arbitration Laws and Regulations: Zambia 2023–2024’ https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/zambia (accessed 5 March 2024).

J Ngisi 'International Arbitration in Africa: Lessons for the Lusaka International Arbitration Center' https://www.dlapiperafrica.com/en/zambia/insights/2024/International-Arbitration-In-Africa.html (accessed 11 May 2024).

'LCIA Embraces Technology in Update to Arbitration Rules' https://www.wfw.com/articles/lcia-embraces-technology-in-update-to-arbitration-rules/ (accessed 3 January 2025).

Lusaka Times 'President Hichilema Launches The Lusaka International Arbitration Centre' (5 April 2024) https://www.lusakatimes.com/2024/04/05/president-hichilema-launcehes-the-lusaka-international-arbitration-centre/ (accessed 29 November 2024).

M Ajakpovi, F Onyia, U Udoma & B Osagie 'International Arbitration Laws and Regulations: Nigeria 2024–2025' (2024) https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/nigeria (accessed 5 January 2024).

Mulenga Mudashi Legal Practitioners 'Zambia: International Arbitration' https://www.legal500.com/guides/chapter/zambia-international-arbitration/ (accessed 3 July 2023).

'Rules of Arbitration and Mediation' (2004) Zambia Centre for Dispute Resolution Ltd https://searchworks.stanford.edu/view/6716053 (accessed 29 October 2024).

S Kayana, N Mkatshwa & M Ntontela 'International Arbitration Law and Rules in South Africa' https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/south-africa (accessed 15 March 2024).

'The Challenges to Growth of International Commercial Arbitration in Africa' (2023) https://thelawyer.africa/2023/09/21/growth-of-international-commercial-arbitration-in-africa/ (accessed 24 October 2024).

Transparency International *Corruption Perceptions Index 2023* https://www.transparency.org/en/cpi/2023?utm_source (accessed 3 November 2024).

Vinson & Elkins ‘Guide to Arbitral Institutions and the Seat of Arbitration in London’ (2024) https://www.velaw.com/insights/guide-to-arbitral-institutions-and-the-seat-of-arbitration-in-london/ (accessed 23 December 2024).