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ACCESS TO JUSTICE OR ACCESS TO ARBITRATION? RECONSIDERING THE EFFECTIVENESS OF CROSS-BORDER ARBITRATION FOR MICRO, SMALL AND MEDIUM ENTERPRISES.

-BHAKTI PATEL

ABSTRACT

International commercial arbitration is often presented as a neutral and enforceable method of resolving disputes arising from cross-border trade. For micro, small and medium enterprises (MSMEs), however, its practical value depends on more than the legal availability of a forum or the international enforceability of an award. Tribunal fees, institutional charges, legal representation, translation, travel, expert evidence and enforcement proceedings may together make a meritorious claim commercially irrational to pursue. These burdens are especially significant where the amount in dispute is modest, cash flow is limited, or the opposing party has substantially greater bargaining power.¹ This paper evaluates whether cross-border arbitration delivers meaningful access to justice for MSMEs, with particular attention to the New York Convention, the UNCITRAL Model Law, Indian arbitration law and the delayed-payment framework under the Micro, Small and Medium Enterprises Development Act, 2006.² Using doctrinal and policy analysis, it argues that arbitration is neither inherently inaccessible nor automatically effective: its value depends on proportional procedure, realistic cost allocation, enforceability and the parties' ability to participate on reasonably equal terms.³ It recommends an MSME-sensitive approach based on transparent cost information, expedited and sole-arbitrator procedures where appropriate, carefully drafted dispute clauses, mediation options, institutional assistance and stronger links between dispute resolution and practical recovery. Access to arbitration should be assessed by whether an enterprise can realistically obtain and enforce a remedy, not merely by whether a legal mechanism formally exists.

KEYWORDS

Micro, Small and Medium Enterprises; international commercial arbitration; access to justice; New York Convention; UNCITRAL Model Law; Arbitration and Conciliation Act, 1996; delayed payments; dispute resolution.

1. INTRODUCTION

Cross-border trade can open new markets for smaller businesses, but it also exposes them to unfamiliar legal systems, distant counterparties and disputes that may be difficult to resolve from home. A small supplier may deliver goods to a foreign buyer and face non-payment, a disputed termination or disagreement about contractual terms. Even when the supplier has a strong claim, the cost and complexity of pursuing it can outweigh the amount recoverable. The problem is not simply whether a remedy exists in law; it is whether the business can use that remedy without jeopardising its working capital or continued operation.⁴

International commercial arbitration has recognised attractions. Parties may select a neutral forum, choose decision-makers with relevant expertise, tailor procedure and seek an award capable of recognition in multiple jurisdictions. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention), is central to this framework.⁵ Yet neutrality and cross-border enforcement do not eliminate the costs of commencing proceedings, presenting evidence or enforcing an award against a reluctant debtor.⁶

This paper examines the tension between access to arbitration and access to justice for MSMEs engaged in cross-border commercial transactions.⁷ Its central argument is that arbitration should not be evaluated abstractly against litigation or on the assumption that every small business has identical needs. Its effectiveness depends on claim value, complexity, asset location, bargaining power, procedural design and the likelihood of actual recovery. The paper rejects two extremes: arbitration is not always superior to courts, but nor is it invariably too expensive for smaller enterprises.

2. RESEARCH QUESTION, OBJECTIVES AND METHODOLOGY

This paper addresses questions like :

1. How Indian law addresses disputes involving smaller enterprises, particularly delayed-payment disputes under the Micro, Small and Medium Enterprises Development Act, 2006; and which reforms could improve access without undermining due process.
2. which features of cross-border arbitration create practical financial and procedural barriers for MSMEs;
3. How far the New York Convention and UNCITRAL Model Law mitigate those barriers;

The objectives are to identify the principal barriers faced by MSMEs; assess the strengths and limits of relevant international and Indian legal frameworks; distinguish formal enforceability from effective recovery; and propose practical reforms.

The methodology is doctrinal and policy-oriented, analysing treaty provisions, model-law principles, Indian legislation and UNCITRAL institutional materials.⁸ It does not claim to quantify arbitration costs or prove that arbitration is always more expensive than litigation. Costs vary by institution, seat, tribunal, claim value, procedural choices and complexity. The analysis instead identifies recurring structural risks. It also recognises that India's statutory delayed-payment mechanism is not a universal solution for every international dispute: eligibility, transaction type and applicable legal conditions must be checked.⁹

3. THE CASE FOR INTERNATIONAL COMMERCIAL ARBITRATION

Arbitration can be valuable to MSMEs when it offers a credible and proportionate route to a binding outcome. A neutral forum may reduce concerns that a party will be disadvantaged by litigating in the other party's home courts. The parties can select an arbitrator with commercial or technical knowledge, potentially reducing the need to explain industry practices from first principles.¹⁰ Confidentiality may also be commercially important, although its scope depends on governing law, institutional rules and the parties' agreement; it should not be treated as absolute.¹¹

The New York Convention supplies a major cross-border advantage. It requires contracting states, subject to its conditions and limited refusal grounds, to recognize arbitration agreements and recognize and enforce foreign or non-domestic awards.¹² Article III provides that covered awards should not face substantially more onerous recognition or enforcement conditions, or higher fees or charges, than domestic awards.¹³ The Convention does not guarantee immediate

payment. A successful claimant may still need local counsel, certified documents, translations and proceedings where the debtor's assets are located.¹⁴

The UNCITRAL Model Law offers a legislative template for modernising arbitration laws. Article 18 requires equality of treatment and a full opportunity for each party to present its case.¹⁵ Article 19 gives parties procedural autonomy, subject to the Model Law, and permits a tribunal to determine procedure when the parties have not agreed.¹⁶ This flexibility can support focused document production, remote hearings and proportionate timetables. But a well-resourced buyer may be able to absorb legal fees, appoint specialist counsel and sustain lengthy proceedings while a small supplier cannot.¹⁷ Arbitration's advantages therefore depend on the parties' practical capacity to use it.

4. WHY FORMAL ACCESS MAY NOT MEAN EFFECTIVE ACCESS?

4.1 DIRECT AND INDIRECT COSTS.

The total cost of arbitration extends beyond an arbitrator's fee. Depending on the process, a claimant may face institutional filing and administration fees, lawyers, experts, interpreters, translation, document management, travel, hearing facilities and post-award enforcement expenses.¹⁸ Parties may also have to advance deposits before the merits are decided.¹⁹ For a business operating on thin margins, funding a dispute while paying employees and suppliers can be prohibitive.²⁰

It would be inaccurate to say arbitration is always more expensive than court litigation. Courts may be slow or costly, and arbitration may avoid multiple appeals or offer procedural efficiencies. The sound comparison considers likely total cost and time in the particular dispute. A sole arbitrator and focused timetable may be proportionate for a modest claim; a three-member tribunal, extensive document production and multiple experts may not be.²¹ Uncertainty itself is a barrier when an MSME cannot estimate expenses before deciding whether to pursue a claim.

4.2 DISPROPORTION BETWEEN CLAIM VALUE AND PROCESS.

A mechanism can be legally sound yet economically unusable if the cost of pursuing a claim approaches or exceeds the likely recovery. A business may abandon a claim, accept a discounted settlement or continue trading with an unpaid invoice. If counterparties learn that

smaller suppliers cannot afford to enforce contractual rights, the imbalance may encourage late payment and opportunistic conduct. Procedure should reflect the amount and complexity in dispute. Expedited rules, a sole arbitrator and limits on unnecessary evidence can help, but must not prevent a party from presenting a material case.²²

4.3 CROSS-BORDER COMPLEXITY AND INFORMATION GAPS.

An MSME may need to understand the seat of arbitration, governing law, applicable rules, language, appointment mechanism, interim relief and the location of assets. These concepts are not interchangeable. The seat generally anchors procedural law and supervisory courts; governing law determines substantive contractual rights; enforcement takes place under the law where recognition or execution is sought.²³ Poorly drafted clauses can create preliminary disputes before the merits are reached. A clause copied from a large commercial agreement may specify a distant seat, costly institution, foreign language and three-member tribunal. The time to address access is therefore at contract formation, not only after a dispute arises.²⁴

4.4 BARGAINING POWER AND PROCEDURAL EQUALITY.

The Model Law's equality principle is essential, but formal equality does not erase practical inequality.²⁵ Two parties may have the same procedural rights while having very different abilities to fund evidence, retain lawyers or wait for an award. A tribunal must remain impartial and cannot favour a party simply because it is smaller. Neutral case management can nevertheless prevent expense from becoming detached from the needs of the dispute: narrowing issues, avoiding duplicative submissions and considering remote hearings where suitable. Procedural economy is legitimate when it reduces waste, not when it denies a meaningful opportunity to be heard.²⁶

4.5 ENFORCEMENT IS NOT RECOVERY.

The New York Convention improves the legal portability of awards, but recognition and enforcement are not identical to collecting money.²⁷ The creditor must identify assets, satisfy local procedural requirements and navigate any available challenge. Article V identifies limited grounds for refusal, including invalidity of the arbitration agreement, lack of proper notice or inability to present a case, excess of jurisdiction, procedural irregularity, an award not yet binding or set aside, non-arbitrability and public policy.²⁸ Article IV may require authenticated

documents and translations.²⁹ A claimant may win yet discover that the debtor has no reachable assets or that enforcement in several jurisdictions is necessary. A realistic assessment must consider asset location and enforcement costs from the outset.

5. INTERNATIONAL LEGAL FRAMEWORK: STRENGTHS AND LIMITS

5.1 THE NEW YORK CONVENTION

The Convention creates a common framework for recognising arbitration agreements and enforcing foreign or non-domestic awards. It discourages discrimination against covered awards and restricts the grounds for refusal.³⁰ For MSMEs trading internationally, this reduces the risk that a favourable award will be treated as merely local. Nevertheless, the Convention is primarily an instrument of recognition and enforcement. It does not prescribe low-cost arbitration, subsidise legal representation, cap tribunal fees or ensure that a claimant can finance proceedings. It makes an award legally portable, but the claimant still bears the practical burden of invoking it.³¹

5.2 THE UNCITRAL MODEL LAW

The Model Law's provisions on equality, procedural autonomy, jurisdiction, court intervention and enforcement provide a widely used legislative framework.³² Flexibility can support cost-conscious arbitration, but does not guarantee that parties will choose economical procedures.³³ Commercial parties may agree to expensive arrangements, and bargaining power may shape those terms. The Model Law is enabling infrastructure, not a complete access-to-justice policy; it must be complemented by accessible rules, transparent fees, competent institutions, sound clause drafting and effective enforcement systems.

5.3 EXPEDITED ARBITRATION AND MEDIATION

Expedited arbitration may reduce time and cost through shortened deadlines, simplified submissions and, commonly, a sole arbitrator. UNCITRAL's arbitration materials include expedited rules and model clauses.³⁴ Suitability depends on the dispute: a straightforward unpaid-invoice claim may fit, while a technically complex matter requiring extensive evidence may not. Mediation can provide a less adversarial and potentially less expensive first step.³⁵ A tiered clause may require negotiation or mediation before arbitration, but should set a clear and short process. Poorly drafted preconditions can create satellite disputes. Settlement steps

should not delay urgent relief or pressure a financially vulnerable party into an unfair compromise.

6. THE INDIAN CONTEXT: ARBITRATION AND MSME PROTECTION

6.1 ARBITRATION AND CONCILIATION ACT, 1996

India's Arbitration and Conciliation Act, 1996 provides the domestic statutory framework for arbitration and addresses foreign awards in Part II.³⁶ Its application must be considered alongside treaty obligations, the arbitration agreement and the seat of arbitration.³⁷ The Act provides a legal route; it does not automatically make every dispute affordable. Costs, representation, institutional choice and enforcement remain practical considerations. Indian MSMEs entering international contracts should carefully address the seat, rules, language, number and appointment of arbitrators, governing law and any staged dispute-resolution process.³⁸ A clause should be proportionate to the commercial value and risk of the transaction.

6.2 MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

Sections 15–18 establish a statutory framework concerning timely payment to qualifying micro and small suppliers and references to the Micro and Small Enterprises Facilitation Council.³⁹ Section 18 provides for conciliation and, where conciliation fails, arbitration in the manner set out by the statute.⁴⁰ This can be important for eligible suppliers facing delayed payments. Its reach must not be overstated: it is not a universal cross-border arbitration code for all enterprises or all commercial disputes. Eligibility and statutory conditions matter, and foreign counterparties may raise additional questions about jurisdiction, contractual arrangements and enforcement abroad. Medium enterprises should not automatically be assumed to enjoy every protection available to qualifying micro and small suppliers.⁴¹ Each case requires checking the statute and current law.

The statutory framework illustrates that specialised mechanisms can lower barriers when designed around a particular commercial problem. Yet access to a forum is only one part of the solution; businesses still need clear information, timely proceedings and a realistic route to payment.⁴² A domestic statutory remedy may help an eligible supplier establish a claim, while a cross-border dispute may still require enforcement where the counterparty's assets are located.⁴³ Conversely, an international arbitration clause may provide neutrality and an

enforceable award but may not be proportionate for a modest invoice dispute. Mechanism selection should reflect the transaction, legal eligibility and recovery prospects.

7. POLICY REFORMS FOR MEANINGFUL MSME ACCESS

7.1 PROPORTIONATE PROCEDURES

Arbitral institutions should make expedited procedures easy to identify, explaining eligibility, likely timetables and fee structures. For lower-value disputes, a sole arbitrator should ordinarily be considered unless complexity or other case-specific factors justify a larger tribunal. Tribunals should narrow issues and avoid disproportionate evidence processes, while preserving a fair opportunity to present a case under Article 18 of the Model Law and applicable law.⁴⁴

7.2 TRANSPARENT AND PREDICTABLE COSTS

Institutions and appointing authorities should provide accessible fee calculators or illustrative ranges that distinguish administrative fees, arbitrator fees and other likely expenses. Estimates cannot be guarantees, but help a small business make an informed decision.⁴⁵ Institutions could consider reduced administrative fees, staged deposits or payment schedules for eligible low-value disputes under transparent criteria and safeguards. Any assistance must preserve arbitrator independence and avoid unfairly shifting costs to the opposing party.⁴⁶

7.3 CONTRACT-STAGE GUIDANCE

Public agencies, chambers of commerce, trade associations and MSME support bodies should publish plain-language guides and model clauses for different transaction sizes and risk profiles.⁴⁷ Guidance should explain the difference between seat, venue, governing law and enforcement jurisdiction; the cost implications of a sole versus three-member tribunal; and the importance of checking asset locations.⁴⁸ Businesses should obtain proportionate legal advice before agreeing to a dispute clause, particularly where the contract value is material to cash flow.

7.4 MEDIATION AND SETTLEMENT PATHWAYS

A short negotiation or mediation stage may resolve disputes before the parties incur the full cost of arbitration.⁴⁹ Institutions can offer fixed-fee or capped-fee mediation for suitable cases

and set clear timelines so a pre-arbitration step does not become a delaying tactic. Clauses should specify when mediation is concluded and preserve urgent interim relief.⁵⁰ Settlement must remain voluntary and informed; the aim is to widen realistic options, not pressure a weaker party to surrender a valid claim.

7.5 DIGITAL AND REMOTE PARTICIPATION

Remote hearings can reduce travel and accommodation expenses where parties, counsel and witnesses are in different countries.⁵¹ Electronic filing and virtual case-management conferences can improve convenience. But digital procedure is not cost-free or universally accessible. Connectivity, document security, time zones, interpretation and the ability to test witness evidence must be considered.⁵² Institutions should preserve flexible options, including hybrid hearings, where remote participation would impair fairness.

7.6 ENFORCEMENT PLANNING

Before commencing arbitration, a claimant should consider the debtor's likely assets, possible interim measures, jurisdictions where enforcement may occur and the expected cost of each step.⁵³ Institutions and MSME support organisations can make this analysis more accessible through checklists and referrals to qualified professionals. A favourable award is an important milestone, but not a substitute for a realistic recovery plan.

7.7 A TARGETED FRAMEWORK

India and other jurisdictions could develop an optional MSME-sensitive framework combining low-value expedited arbitration, mediation, transparent fees, model clauses and referral support.⁵⁴ Eligibility rules should be clear and should not disadvantage a smaller party merely because its counterparty is large. Cross-border operation would require attention to treaty compatibility, enforceability, party autonomy and procedural fairness.⁵⁵ The objective is to remove unnecessary barriers while retaining a credible and impartial process.

8. CRITICAL EVALUATION

The strongest argument for arbitration is that a neutral, specialised and internationally enforceable decision may be more useful than litigation in an unfamiliar foreign court.⁵⁶ The strongest criticism is that these benefits may remain theoretical if the cost of obtaining an award

is disproportionate to the claim or enforcement is commercially unrealistic. Both propositions can be true.

A blanket preference for court litigation is misplaced: court proceedings may involve delay, unfamiliar procedures, jurisdictional disputes and difficulty enforcing judgments abroad.⁵⁷ Equally, the assumption that arbitration is inherently efficient ignores the fact that parties can design a costly process. The appropriate question is not “arbitration or courts in the abstract?” but which available process offers this enterprise a fair, affordable and enforceable route to a remedy.

There are limits to reform. Cost reduction cannot come at the expense of impartiality, the right to be heard or the reliability of the result. A very rapid process may be unsuitable where substantial evidence is disputed. Reduced fees will not solve the problem of an insolvent debtor. Mediation may fail where a party uses negotiation to delay payment. Remote hearings reduce travel but may introduce technological or evidentiary disadvantages. A workable policy must therefore improve information before contract formation, make proportionate procedures available, provide predictable costs, encourage suitable settlement and treat enforcement planning as part of dispute resolution rather than an afterthought.

9. CONCLUSION

International commercial arbitration can provide MSMEs with neutrality, procedural flexibility and access to a system for cross-border recognition and enforcement. Those advantages are significant, but do not by themselves establish meaningful access to justice. Financial burdens, procedural complexity, unequal bargaining power and uncertainty about recovery can prevent smaller enterprises from using arbitration effectively. The New York Convention addresses recognition and enforcement; the UNCITRAL Model Law supplies a procedural framework; and Indian legislation, including the Arbitration and Conciliation Act, 1996 and the Micro, Small and Medium Enterprises Development Act, 2006, offers important but distinct legal mechanisms. None removes every practical barrier.

The central policy objective should be proportionality. MSMEs need a dispute-resolution route whose cost, speed and complexity are reasonably related to the dispute, while preserving impartiality and a full opportunity to present a case. Transparent cost information, expedited procedures, sole arbitrators where suitable, carefully drafted clauses, mediation options, digital

participation with safeguards and realistic enforcement planning can help bridge the gap between formal rights and practical remedies. Access to arbitration should not be measured by the mere existence of a clause or the legal portability of an award. It should be measured by whether an enterprise can realistically pursue a claim, participate fairly, obtain a decision and convert it into meaningful relief.

¹ See Mark Walter, *The CISG and Cross-Border Access to Commercial Justice*, 38 J.L. & COM. 155, 158, 160 (2020) (observing that smaller cross-border traders face higher and more personal financial stakes, and postulating that dispute-resolution costs typically exceed the sums in dispute while enforcement remains uncertain). Cf. Katia Fach Gómez & Catharine Titi, *Facilitating Access to Investor-State Dispute Settlement for Small and Medium-Sized Enterprises: Tracing the Path Forward*, 34 EUR. BUS. L. REV. 1039 (2023) (analyzing comparable cost barriers for small and medium-sized enterprises in investor-state dispute settlement).

² See Convention on the Recognition and Enforcement of Foreign Arbitral Awards arts. II–V, June 10, 1958, 330 U.N.T.S. 38 [hereinafter New York Convention], https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards; U.N. Comm’n on Int’l Trade L., UNCITRAL Model Law on International Commercial Arbitration arts. 18–19, G.A. Res. 40/72, annex (Dec. 11, 1985), as amended by G.A. Res. 61/33, annex I (Dec. 4, 2006) [hereinafter Model Law], https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration; Arbitration and Conciliation Act, No. 26 of 1996, pts. I–II, India Code [hereinafter Arbitration and Conciliation Act], <https://www.indiacode.nic.in/>; Micro, Small and Medium Enterprises Development Act, No. 27 of 2006, §§ 15–18, India Code [hereinafter MSMED Act], <https://www.indiacode.nic.in/>

³ See Model Law, *supra* note 2, arts. 18–19.

⁴ See Walter, *supra* note 1, at 158 (observing that smaller disputes lack practical access to commercial justice).

⁵ See New York Convention, *supra* note 2, arts. II–III, V. See also Int’l Council for Com. Arb., ICCA’s GUIDE TO THE INTERPRETATION OF THE 1958 NEW YORK CONVENTION (2016) (commentary on arts. II–III, V) [hereinafter ICCA Guide], https://cdn.arbitration-icca.org/s3fs-public/document/media_document/icca_guide_ny_convention_bilingual_version_printed-mar2016.pdf

⁶ See Walter, *supra* note 1, at 160 (postulating that the costs of international dispute resolution typically exceed the value in dispute and that enforcement is uncertain). See generally Susan Franck, *A Survival Guide for Small Businesses: Avoiding the Pitfalls in International Dispute Resolution*, 3 MINN. J. BUS. L. & ENTREPRENEURSHIP 19 (2004) (addressing how small businesses should structure international dispute-resolution provisions).

⁷ See Walter, *supra* note 1, at 156–58 (discussing the lack of cross-border access to commercial justice for smaller participants).

⁸ See generally U.N. Comm’n on Int’l Trade L., *International Commercial Arbitration*, UNCITRAL, <https://uncitral.un.org/en/texts/arbitration> (last visited Oct. 19, 2026); U.N. Comm’n on Int’l Trade L., *Mediation*, UNCITRAL, <https://uncitral.un.org/en/texts/mediation> (last visited Oct. 19, 2026).

⁹ See MSMED Act, *supra* note 2, §§ 2(n), 15–18.

¹⁰ See Model Law, *supra* note 2, arts. 10–11 (addressing the number and appointment of arbitrators).

¹¹ See U.N. Comm’n on Int’l Trade L., UNCITRAL Arbitration Rules arts. 28(3), 34(5) (2021) [hereinafter UNCITRAL Rules] (providing that hearings are held in camera unless the parties agree otherwise, and that an award may be made public only with the parties’ consent or where a legal duty or legal proceedings require it), <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>

¹² See New York Convention, *supra* note 2, arts. I(1), II(1)–(3), III.

¹³ See *id.* art. III.

¹⁴ See *id.* arts. III, IV(1)–(2).

¹⁵ See Model Law, *supra* note 2, art. 18.

¹⁶ See *id.* art. 19(1)–(2).

¹⁷ Cf. Walter, *supra* note 1, at 158 (describing the financial stakes of smaller businesses engaged in cross-border trade).

¹⁸ See UNCITRAL Rules, *supra* note 11, art. 40 (defining the costs of the arbitration to include tribunal fees, expert costs and reasonable legal costs).

¹⁹ See *id.* art. 43 (permitting the tribunal to request deposits toward the costs of the arbitration).

²⁰ See Walter, *supra* note 1, at 160 (postulating that the costs of international dispute resolution typically exceed the value in dispute).

²¹ See Model Law, *supra* note 2, art. 10(2) (providing for three arbitrators where the parties have not determined the number). See also U.N. Comm'n on Int'l Trade L., UNCITRAL Expedited Arbitration Rules art. 7 (2021) (appendix to the UNCITRAL Arbitration Rules) [hereinafter Expedited Rules] (providing for a sole arbitrator), <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>

²² See Expedited Rules, *supra* note 21, arts. 7, 15–16 (providing for a sole arbitrator, discretion over the taking of evidence and an award within six months of the tribunal's constitution). See also Model Law, *supra* note 2, art. 18.

²³ See Model Law, *supra* note 2, arts. 1(2), 6, 20(1), 28(1) (addressing territorial scope, the court supervising the arbitration, the place of arbitration and the rules of law applicable to the substance of the dispute); New York Convention, *supra* note 2, art. III.

²⁴ See generally Franck, *supra* note 6 (addressing dispute-resolution clause drafting for small businesses). See also Walter, *supra* note 1, at 171 (explaining that contracts allocating risk and responsibilities are less likely to be breached).

²⁵ See Model Law, *supra* note 2, art. 18.

²⁶ See UNCITRAL Rules, *supra* note 11, art. 17(1) (requiring the tribunal to avoid unnecessary delay and expense while treating the parties equally and giving each a reasonable opportunity to present its case); Model Law, *supra* note 2, art. 19(2).

²⁷ See New York Convention, *supra* note 2, art. III. Cf. Walter, *supra* note 1, at 172 (observing that universal adoption of the New York Convention does not amount to harmonized implementation).

²⁸ See New York Convention, *supra* note 2, art. V(1)(a)–(e), (2)(a)–(b). See also ICCA Guide, *supra* note 5 (commentary on art. V).

²⁹ See New York Convention, *supra* note 2, art. IV(1)–(2).

³⁰ See *id.* arts. III, V.

³¹ See generally *id.* arts. I–VII (regulating recognition and enforcement but not tribunal fees, legal representation or the funding of a claim).

³² See Model Law, *supra* note 2, arts. 5, 16, 18–19, 35–36.

³³ See *id.* art. 19(1) (leaving the procedure to the parties' agreement).

³⁴ See UNCITRAL Rules, *supra* note 11, art. 1(5), annex (providing that the Expedited Arbitration Rules apply where the parties so agree, and setting out a model arbitration clause); Expedited Rules, *supra* note 21, arts. 7, 16.

³⁵ See generally UNCITRAL, Mediation, *supra* note 8. See also Walter, *supra* note 1, at 161–62 (describing multi-tiered dispute resolution in which assisted negotiation and mediation precede arbitration and may resolve most disputes).

³⁶ See Arbitration and Conciliation Act, *supra* note 2, pts. I–II (Part II, chapter I, §§ 44–52, governing awards under the New York Convention).

³⁷ See *id.* § 2(1)(f), (2) (defining international commercial arbitration and the territorial application of Part I).

³⁸ See *id.* §§ 10–11, 20, 22 (addressing the number and appointment of arbitrators, the place of arbitration and the language of the proceedings).

³⁹ See MSMED Act, *supra* note 2, §§ 15–18.

⁴⁰ See *id.* § 18(1)–(3) (providing for reference to the Facilitation Council, conciliation and, failing settlement, arbitration).

⁴¹ See *id.* § 2(n) (defining “supplier” by reference to micro and small enterprises that have filed the required memorandum).

⁴² Cf. Walter, *supra* note 1, at 171 (emphasizing that a dispute-resolution system will not be used if its market does not understand it or prepare for the possibility of needing it).

⁴³ See New York Convention, *supra* note 2, art. III.

⁴⁴ See Model Law, *supra* note 2, art. 18; Arbitration and Conciliation Act, *supra* note 2, § 18. See also Expedited Rules, *supra* note 21, arts. 7, 16.

⁴⁵ See UNCITRAL Rules, *supra* note 11, arts. 40–43 (addressing the definition of costs, arbitrator fees, allocation of costs and deposits). See generally Fach Gómez & Titi, *supra* note 1 (proposing, for investor-state disputes, that legal assistance may be a more efficient and cost-effective support mechanism for small enterprises than financial assistance).

⁴⁶ See Model Law, *supra* note 2, art. 12 (addressing disclosure and challenge where circumstances give rise to doubts about an arbitrator's impartiality or independence); UNCITRAL Rules, *supra* note 11, art. 42 (providing that costs are in principle borne by the unsuccessful party, subject to reasonable apportionment by the tribunal).

⁴⁷ See UNCITRAL Rules, *supra* note 11, annex (setting out a model arbitration clause). See generally Franck, *supra* note 6. See also Walter, *supra* note 1, at 171–72 (describing the role of contract understanding and capacity building in making dispute resolution usable).

⁴⁸ See Model Law, *supra* note 2, arts. 20(1)–(2), 28(1) (addressing the place of arbitration, meetings at other locations and the rules of law applicable to the substance of the dispute).

⁴⁹ See generally UNCITRAL, Mediation, *supra* note 8. See also Model Law, *supra* note 2, art. 30(1)–(2) (allowing settlement terms to be recorded as an award on agreed terms).

⁵⁰ See Model Law, *supra* note 2, arts. 17–17J (addressing interim measures and preliminary orders).

⁵¹ See Walter, *supra* note 1, at 161–62 (describing remote arbitration and mediation as a means of lowering the cost of cross-border dispute resolution for smaller businesses).

⁵² See *id.* at 167 (identifying privacy and due-process concerns in technology-assisted dispute resolution, particularly in developing economies).

⁵³ See New York Convention, *supra* note 2, arts. III, V. See also Model Law, *supra* note 2, arts. 17–17J. Cf. Walter, *supra* note 1, at 160 (noting that enforcement of judgments in cross-border disputes involving smaller enterprises is uncertain).

⁵⁴ Cf. Arbitration and Conciliation Act, *supra* note 2, § 29B (providing a fast-track procedure with a sole arbitrator and an award within six months); MSMED Act, *supra* note 2, § 18. See generally Fach Gómez & Titi, *supra* note 1.

⁵⁵ See Walter, *supra* note 1, at 172–73 (proposing minimum standards of neutrality, accessibility, due process, transparency and party autonomy for cross-border dispute resolution involving smaller enterprises).

⁵⁶ See New York Convention, *supra* note 2, arts. III, V.

⁵⁷ See Walter, *supra* note 1, at 160 (noting the uncertainty of enforcing judgments in cross-border disputes involving smaller enterprises).

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