Sarah Grimmer
Secretary-General
Effective Dispute Resolution for MSMEs: Insights from HKIAC
7 September 2021
Founded in 1985, HKIAC has managed over 11,000 cases to date.

Top 3 arbitral institutions globally

Independent & non-profit organisation

One stop shop for arbitration, mediation, adjudication & domain name disputes
GLOBAL PRESENCE

Hong Kong
(1985 – Main Office)

Seoul
(2013)

Shanghai
(2015)
Number of arbitration cases under US$1 million over last 5 years

- 2016: 67 cases
- 2017: 91 cases
- 2018: 98 cases
- 2019: 115 cases
- 2020: 124 cases
- 2021 (as of 11 August): 52 cases
For smaller businesses, main concerns in respect of dispute resolution:

- Costs and duration
- Litigation and arbitration is an investment of money and resources. Is it worth it? What will be the return?
- Efficiency of process is critical
- Enforceability is key
HKOAC: COST AND TIME SAVING MEASURES

**Cost saving measures**
- Arbitrator fee choice system (hourly rate/amount in dispute)
- Cap on arbitrator hourly rate
- Secretariat’s work on hourly rates

**Time saving measures**
- Time limit for issuing awards
- Expedited procedure
- Early determination procedure
HKIAC EXPEDITED PROCEEDINGS: GROWING TREND

Number of cases under expedited proceedings over last 5 years

- 2016: 15
- 2017: 15
- 2018: 19
- 2019: 21
- 2020: 28
- 2021 (as of 11 Aug): 15

Number of EP Applications
# HKIAC EXPEDITED PROCEEDINGS: COSTS AND DURATION

<table>
<thead>
<tr>
<th>EXPEDITED PROCEDURE</th>
<th>Median</th>
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<tbody>
<tr>
<td>Transmission of file to award (months)</td>
<td>5.8</td>
</tr>
<tr>
<td>Duration of arbitration (months)</td>
<td>8.9</td>
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<tr>
<td>Cost of arbitration (US$)</td>
<td>24,212</td>
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*Based on 44 cases under the Expedited Procedure.*
HKIAC EXPEDITED PROCEEDINGS: RULES

- May apply for expedited proceedings before the constitution of the arbitral tribunal
- Three grounds available (Article 42 of the 2018 Rules):

1. Amount in dispute less than HKIAC threshold (HKD 25 million)
2. The parties agree
3. Exceptional urgency
EXPEDITED PROCEEDINGS: KEY FEATURES

- Sole arbitrator, unless otherwise agreed
- No hearing
- One round of pleadings
- Award within 6 months
The tribunal may make an award for reimbursement of substitute deposit payments when the other side does not pay.

The tribunal may issue costs awards throughout the arbitration.
HKIAC TOOLS TO LEVEL THE PLAYING FIELD: THIRD PARTY FUNDING

- Available in Hong Kong and elsewhere for parties that cannot fund their arbitration
- HKIAC Rules provide for third party funding
- Disclosure of third party funding, confidentiality, costs
HKIAC TOOLS TO LEVEL THE PLAYING FIELD: USE OF TECHNOLOGY

- Virtual hearings
  - 150 hearings
  - All kinds of cases (other institutions and courts)
  - Multiple locations/time zones
    - All services
    - Increased availability of arbitrators

- Online case platform
  - Central repository for all case information and documents
    - Secure
    - Convenient
    - Cost-saving

- HKIAC Rules encourage use of technology
  - Arbitrator’s obligation
    - Saves costs
    - Increases efficiency
    - Environmental impact
EFFECTIVE ENFORCEMENT

New York Convention applies to Hong Kong

Hong Kong courts high level of enforcement

Legal framework for enforcement of awards between Hong Kong and Mainland China (1999, updated 2020)
Hong Kong seat, administered by HKIAC = interim relief from Mainland Chinese courts (assets, evidence and conduct)

- 49 applications worth RMB 14.1 billion (USD 2.2 billion)
- 30 court orders, granted RMB 10.8 billion (USD 1.7 billion) worth of assets
- 75% foreign, 25% Mainland Chinese applicants
- 55% Mainland Chinese, 45% foreign respondents