



Sarah Grimmer
Secretary-General

Effective Dispute Resolution for MSMEs: Insights from HKIAC
7 September 2021



OVERVIEW



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)

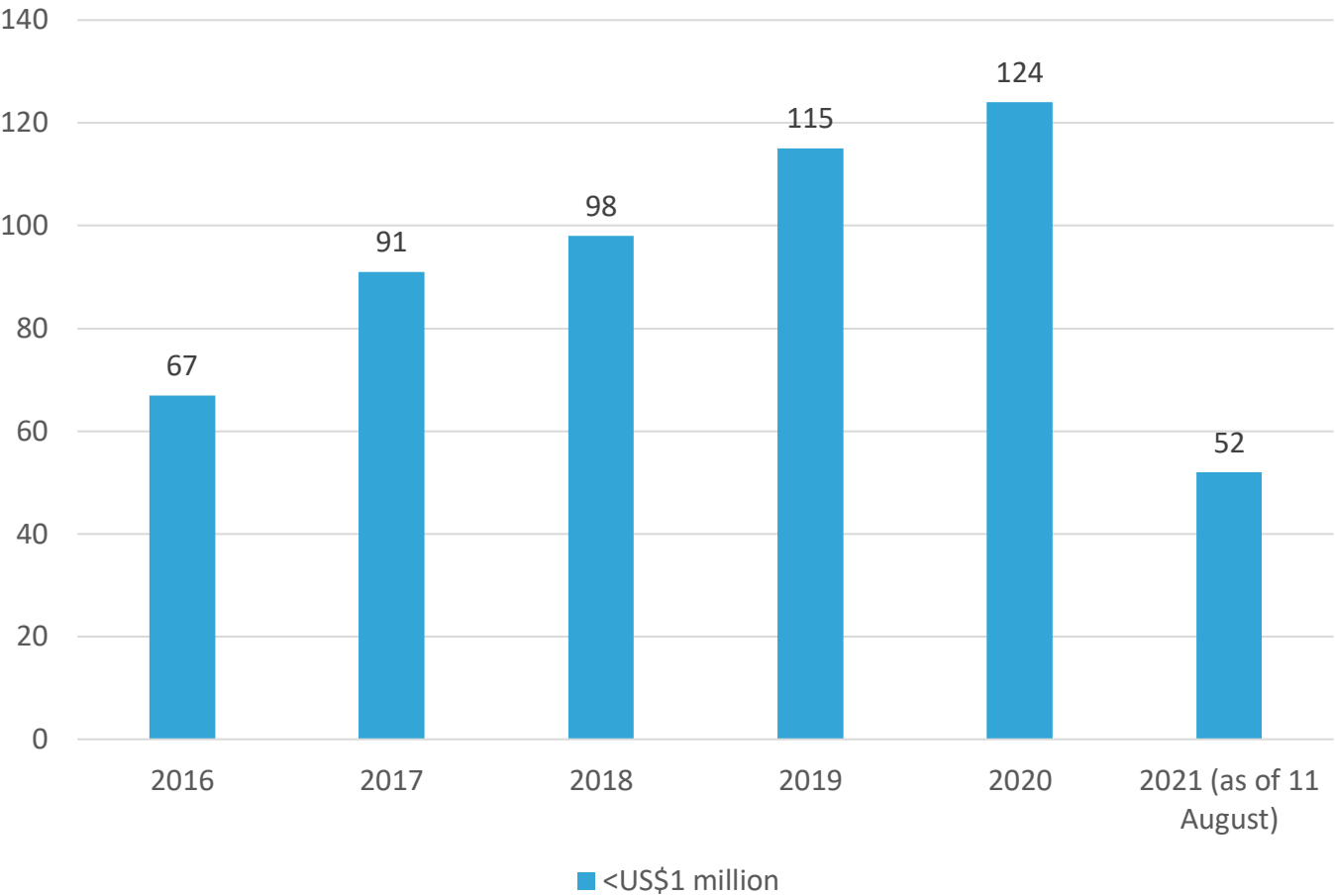


Shanghai
(2015)

ARBITRATION CASE STATISTICS



Number of arbitration cases under US\$1 million over last 5 years



MICRO, SMALL, MEDIUM-SIZED ENTERPRISES



- 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

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

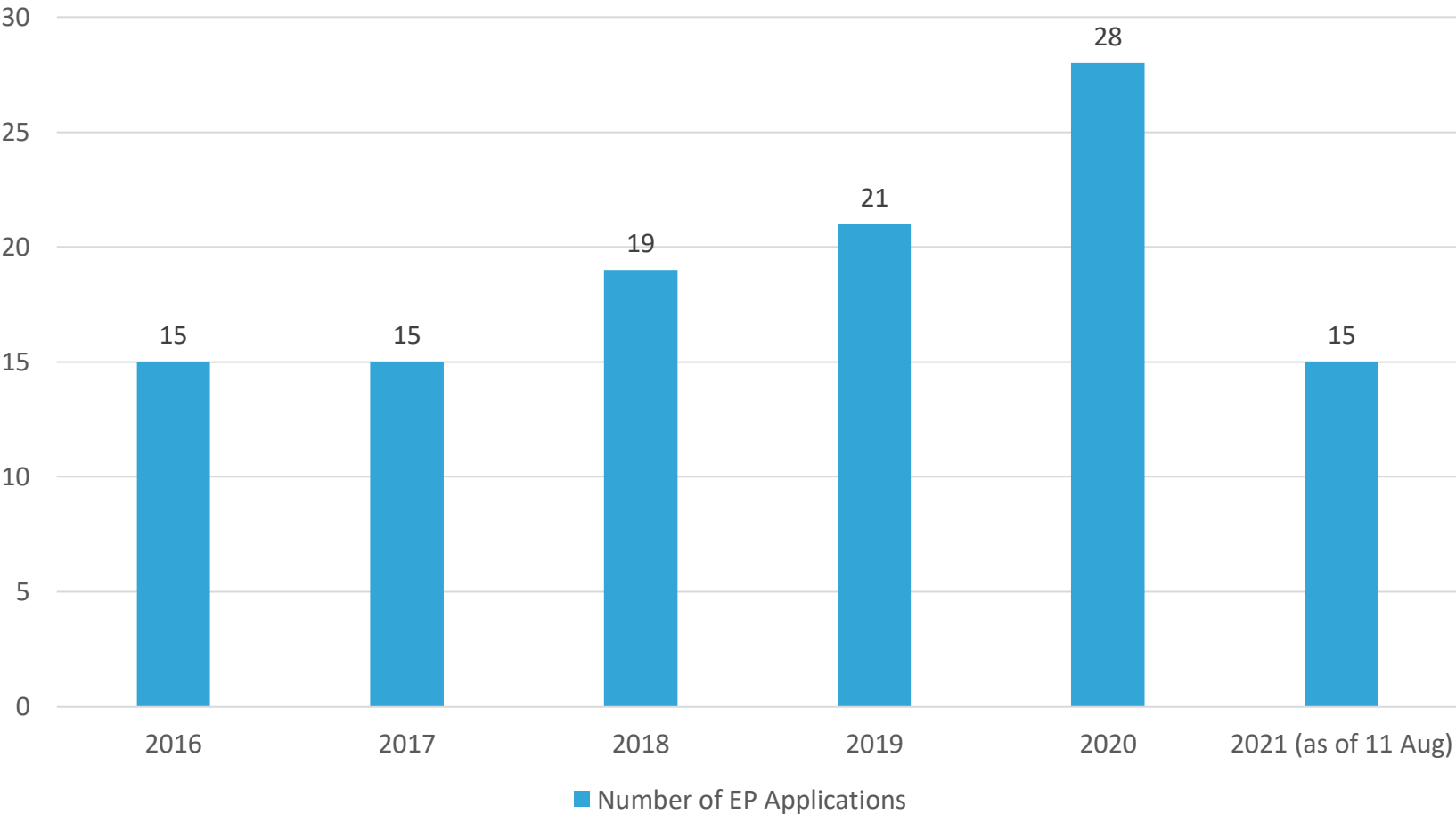


- Time limit for issuing awards
- Expedited procedure
- Early determination procedure

HKIAC EXPEDITED PROCEEDINGS: GROWING TREND



Number of cases under expedited proceedings over last 5 years



HKIAC EXPEDITED PROCEEDINGS: COSTS AND DURATION



EXPEDITED PROCEDURE	
	<i>Median</i>
Transmission of file to award (months)	5.8
Duration of arbitration (months)	8.9
Cost of arbitration (US\$)	24,212

*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

HKIAC TOOLS TO LEVEL THE PLAYING FIELD: PROTECTION AGAINST OBSTRUCTIONIST CONDUCT



Article 41.5

Protection against non-payment

The tribunal may make an award for reimbursement of substitute deposit payments when the other side does not pay.



Article 35.1

Protection against obstructionist conduct

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 & MAINLAND CHINA - INTERIM MEASURES



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