

Overview
 Starting a business
 Dealing with construction permits
 Employing workers
 Registering property
 Getting credit
 Protecting investors
 Paying taxes
 Trading across borders

Enforcing contracts

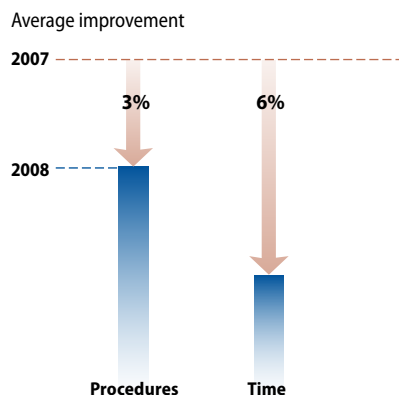
Closing a business

Tan, a litigation lawyer in Singapore, does not mind waiting at the supreme court until his case is called. A computer screen shows the expected wait time for each case. And a text message on his cell phone will alert him when the judge is ready to hear his. Meanwhile, he reviews his oral arguments and enjoys a nice lunch at Academy Bistro, located in the supreme court building.

Tan and his clients can afford to relax, because they know their cases will be resolved expeditiously. In Singapore it takes only 150 days to resolve a commercial dispute—faster than anywhere else in the world.

Not everyone bringing a commercial dispute to court can expect similar efficiency. One common obstacle to doing business in developing countries is the weakness of courts. The problem is

FIGURE 10.1
Top 10 reformers in enforcing contracts



1. Mozambique
2. Macedonia, former Yugoslav Republic of
3. Bulgaria
4. Romania
5. Armenia
6. China
7. Bhutan
8. Belgium
9. Azerbaijan
10. Portugal

Source: Doing Business database.

especially severe in Africa, where 80% of the people turn to informal institutions when seeking justice.¹

Justice delayed is often justice denied. And in many countries only the rich can afford to go to court. For the rest, justice is out of reach. In the absence of efficient courts, firms undertake fewer investments and business transactions. And they prefer to involve only a small group of people who know each other from previous dealings.

Inefficient courts impose big costs. A recent study on Eastern Europe finds that in countries with slower courts, firms on average have less bank financing for new investment. Reforms in other areas, such as creditors' rights, help increase bank lending only if contracts can be enforced before the courts.² A second study, on 41 developing countries, finds that for each 10% improvement in the efficiency of commercial dispute resolution, the informal sector's share in overall economic activity falls by 2.3%.³

Courts serve business best when they are fast, affordable and fair. Worldwide, only 35% of businesses covered by the World Bank Enterprise Surveys believe that the courts in their country are fair, impartial and uncorrupt.⁴

Doing Business measures the efficiency of the judicial system in resolving a commercial dispute. It looks at the time, cost and procedures to enforce a contract through the courts (figure 10.2).

Economies that score well on the

ease of enforcing contracts keep courts efficient by introducing case management, strict procedural time limits and specialized commercial courts or e-courts; by streamlining appeals; and by making enforcement of judgments faster and cheaper (table 10.1).

In Singapore court documents can be filed electronically, and each case is monitored from the moment the action is filed until the moment it is finally decided. Using case management also makes it possible to measure the performance of judges. The right to appeal to the high court exists only for cases above S\$50,000 (\$35,500). Cases below this threshold need prior leave to go to appeal.

Hong Kong (China) speeds the enforcement of judgments by allowing the process to start based on the essentials

TABLE 10.1

Where is enforcing contracts easy—and where not?

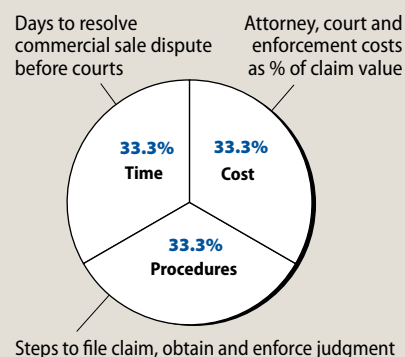
Easiest	RANK	Most difficult	RANK
Hong Kong, China	1	Cameroon	172
Luxembourg	2	Congo, Dem. Rep.	173
Iceland	3	Syria	174
Latvia	4	Benin	175
Finland	5	Honduras	176
United States	6	Suriname	177
Norway	7	Bangladesh	178
Korea	8	Angola	179
Germany	9	India	180
France	10	Timor-Leste	181

Note: Rankings are the average of the economy rankings on the procedures, time and cost to resolve a commercial dispute through the courts. See Data notes for details.

Source: Doing Business database.

FIGURE 10.2

Rankings on enforcing contracts are based on 3 subindicators



Note: See Data notes for details.

TABLE 10.2

Where is enforcing contracts the most efficient—and where the least?

Procedures (number of steps)			
Fewest		Most	
Ireland	20	Guinea	50
Singapore	21	Kuwait	50
Hong Kong, China	24	United Arab Emirates	50
Rwanda	24	Belize	51
Austria	25	Iraq	51
Belgium	25	Oman	51
Netherlands	25	Timor-Leste	51
Iceland	26	Sudan	53
Luxembourg	26	Syria	55
Czech Republic	27	Brunei	58
Time (days)			
Fastest		Slowest	
Singapore	150	Sri Lanka	1,318
Kyrgyz Republic	177	Trinidad and Tobago	1,340
Uzbekistan	195	Colombia	1,346
Lithuania	210	Slovenia	1,350
Hong Kong, China	211	India	1,420
New Zealand	216	Bangladesh	1,442
Belarus	225	Guatemala	1,459
Bhutan	225	Afghanistan	1,642
Kazakhstan	230	Suriname	1,715
Korea	230	Timor-Leste	1,800
Cost (% of claim)			
Least		Most	
Bhutan	0.1	Comoros	89.4
Iceland	6.2	Cambodia	102.7
Luxembourg	8.8	Burkina Faso	107.4
United States	9.4	Papua New Guinea	110.3
Norway	9.9	Indonesia	122.7
Korea	10.3	Malawi	142.4
Finland	10.4	Mozambique	142.5
China	11.1	Sierra Leone	149.5
Poland	12.0	Congo, Dem. Rep.	151.8
Hungary	13.0	Timor-Leste	163.2

Source: Doing Business database.

of the court decision. Fully motivated, written court decisions are not needed. The 10 economies with the fastest average times to enforce a contract tend to have specialized commercial courts or specialized commercial sections within existing courts and limits on the number and length of adjournments once a case has started.

Reducing entry barriers in the market for legal services helps. Allowing women to enter the legal profession, for example, can increase competition among lawyers and reduce attorneys'

fees. Saudi Arabia saw its first female law graduates—170 of them—in June 2008. The Saudi government is sending the top 4 to graduate programs abroad, to prepare them to return as the country's first female law professors. Some countries still prohibit women from serving as judges. Others have recently started allowing women on the bench. Bahrain, which did so in 2003, now has 3 female judges. And the first female federal judge was appointed in Abu Dhabi in late March 2008.

WHO REFORMED IN 2007/08?

Twelve economies reformed contract enforcement in 2007/08 (table 10.3). The reforms reduced the time, cost or number of steps in court proceedings by introducing specialized commercial courts and case management, simplifying rules for small cases, streamlining appeals and making enforcement of judgments more efficient.

Most reforms took place in Eastern Europe and Central Asia—in Armenia, Azerbaijan, Bulgaria, the former Yugoslav Republic of Macedonia and Romania. Among OECD high-income economies, Austria, Belgium and Portugal reformed. In Africa, Mozambique and Rwanda did. In South Asia, Bhutan was the only economy that improved its courts in 2007/08. In East Asia, China was the only reformer. The Middle East and North Africa had no reforms.

Mozambique, the top reformer in enforcing contracts, reduced the average time to resolve a commercial dispute from 1,010 days to 730. The newly established commercial courts have started to produce results. Since March 2008 the country has also gained 22 new judges—a 10% increase. Besides hiring more judges, Mozambique introduced performance measures for them. And court administrators now take care of administrative tasks that judges used to handle, such as paying creditors after a public auction of a debtor's assets.

In the former Yugoslav Republic of Macedonia, the runner-up reformer, a commercial division of the Skopje civil court started operating in November 2007, after initial difficulties with allocating judges were resolved. Starting in January 2008, all cases have been electronically recorded. The Skopje commercial division will soon have 15 additional computers to begin electronic registration of cases.

In Rwanda specialized commercial courts started operating in May 2008. Three lower commercial courts—in Kigali and in the Northern and Southern Provinces—cover commercial disputes

TABLE 10.3

Increasing procedural efficiency—the most popular reform feature in 2007/08

Increased procedural efficiency at main trial court	Armenia, Belgium, Bulgaria, former Yugoslav Republic of Macedonia, Mozambique
Introduced or expanded specialized commercial courts	Azerbaijan, former Yugoslav Republic of Macedonia, Rwanda
Made enforcement of judgment more efficient	China, Romania
Simplified rules for small claims	Bhutan, Portugal
Established e-courts	Austria
Streamlined appeals	Bulgaria

Source: *Doing Business* database.

with a value below about \$37,000. A fourth commercial court, attached to the high court, handles cases above that value in addition to appeals of decisions from the 3 lower courts. Commercial courts not only resolve disputes faster; they also bring the needed expertise to commercial cases.

Bulgaria shortened trial times by requiring judges to refuse incomplete court filings rather than allow multiple extensions. To ensure compliance with deadlines, disciplinary sanctions now apply to judges who systematically violate them. Bulgaria also reformed its appeals process. Appeals are now possible only on the basis of newly discovered facts and only against judgments exceeding lev 1,000 (about \$800). And final appeals before the supreme court have been limited to substantive issues.

Romania simplified the enforcement of judgments by eliminating the need for an enforcement order and allowing the attachment of credit balances and accounts receivable. The reform reduced the time to enforce a judgment by a month, from 120 days to 95.

In Armenia procedural rules that became effective in January 2008 introduced a new principle: all court decisions become enforceable 1 month after being issued. In addition, a May 2007 law established specialized criminal and administrative jurisdictions and a new civil court that will deal with the financially most important cases.

Azerbaijan reduced the average time to enforce a contract from 267 days to 237 by establishing a second specialized

commercial court in Baku and increasing the number of commercial court judges from 5 to 9.

In Western Europe, Austria made electronic filing mandatory in the civil courts. All filings from lawyers in civil litigation and enforcement proceedings now go through an electronic data channel operated by the Ministry of Justice. And judgments are delivered by e-mail rather than by the old hard-copy notification process.

Belgium adopted a law in 2007 to speed court procedures. The law introduced a mandatory procedural calendar that includes binding time limits to submit written pleadings. The agenda is fixed by the parties or, if they fail to agree, by the judge. If judges fail to render a judgment within a month after hearing a case, they are subject to disciplinary sanctions. A separate law aims to encourage experts to produce their reports more quickly by having the court control the payment of their fees.

Portugal expanded the scope of its simplified proceedings to include all cases with a value up to €30,000.

China adopted a new set of procedural rules. The focus was on speeding the enforcement of judgments. In East Asia enforcement accounts for 34% on average of the time needed to resolve a commercial dispute—the largest share among all regions. In China, enforcing a judgment takes up almost half the total time to resolve a commercial dispute.

To reduce the time for enforcement, China's new rules require parties to disclose their assets at the beginning of the

court procedure. Those refusing to do so may be fined. Enforcement officers can take measures to prevent parties from concealing or transferring their assets during or immediately after court proceedings. And courts can prohibit parties from leaving the country if they are suspected of trying to escape the enforcement of a decision.

In South Asia, Bhutan transferred all land disputes—which account for about 30% of cases before the Thimphu district court—to a specialized land commission. The measure freed up more of the court's time to handle commercial cases. The result: the Thimphu district court reduced the average time to resolve commercial disputes from 275 days to 225.

WHAT ARE THE REFORM TRENDS?

Reformers considering ways to improve the regulatory environment for businesses often shy away from tackling court reforms. This is not surprising. The success rate of court reforms is low: on average, only 1 in 4 attempted reforms succeed in reducing costs and delays. Even successful reforms often take years to produce visible results.

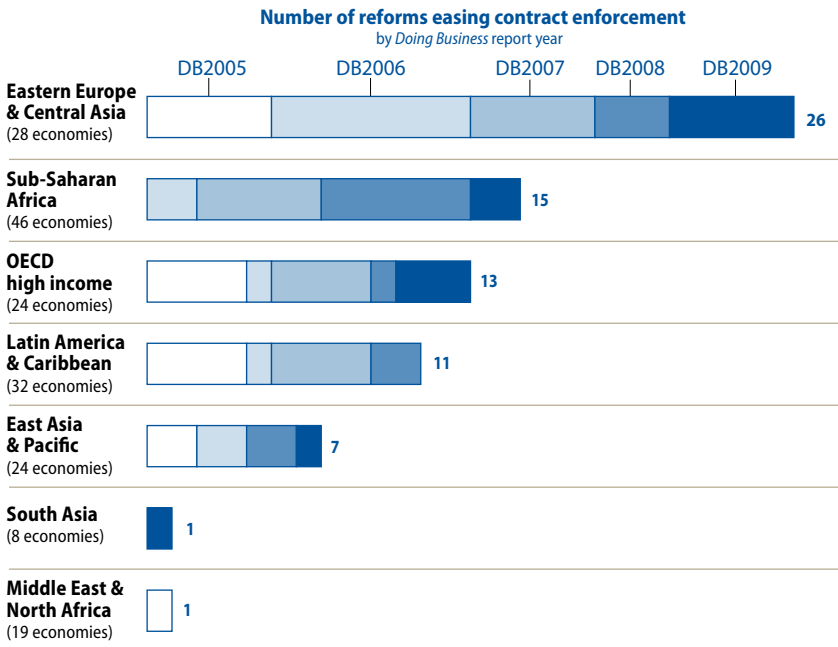
As a general rule, economies that rank high on the ease of enforcing contracts continually reform their courts to adjust to changing business realities. Denmark is an example. In 2006 it introduced special rules for cases below about \$8,600. That reduced the number of cases before the general courts in Copenhagen by 38%. Reformers did not stop there. In March 2008 a new law introduced mediation after a successful pilot showed that two-thirds of all cases referred to mediation in 2003–05 resulted in an amicable settlement. The message: stay focused on improvement, even if you are already doing well.

INTRODUCING COMMERCIAL COURTS IN AFRICA

The most popular reform feature in Africa over the past 5 years has been introducing specialized commercial courts or commercial sections within

FIGURE 10.3

Few reforms in the Middle East & North Africa and in South Asia



Note: A reform is counted as 1 reform per reforming economy per year.
Source: Doing Business database.

existing courts. Some African countries have a longer track record with specialized courts or divisions—including Kenya, Madagascar, Tanzania, Uganda and Zambia.

In 7 African countries that introduced commercial courts or sections in the past 5 years—Burkina Faso, the Democratic Republic of Congo, Ghana, Mauritania, Mozambique, Nigeria and Rwanda—the average time to resolve a commercial dispute dropped by about 19%, from 604 days to 492 (figure 10.5). Because judges must be hired and trained, rules adjusted and funding ensured, achieving such reductions in time usually takes years. In Ghana, for example, a commercial division began operating in its high court in March 2005. *Doing Business 2008* records a drop in time from 552 days to 487—more than 2 years later.

Specialized commercial courts are often criticized because they deal only with the financially most important cases. Those in Tanzania, for example, accept only cases with a value 66 times income per capita. In Zambia it is 15 times income per capita. Minimum thresholds can be justified as a way to avoid overloading

newly established specialized courts. But a balance must be struck between access to justice and a reasonable caseload for the new courts. A pragmatic approach is to lower minimum thresholds as courts are gradually able to accept more cases. This is better than having courts inundated with cases from the start.

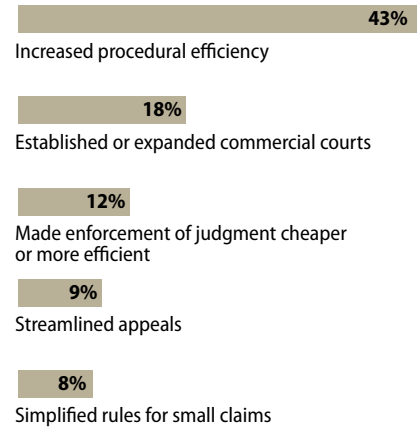
MOVING TO ORAL PROCEEDINGS IN LATIN AMERICA

Countries in Latin America have sped criminal cases by using oral proceedings rather than an exchange of written documents. Argentina and Chile started this trend in the 1990s. Colombia, Gua-

FIGURE 10.4

Top 5 reform features in enforcing contracts

Reforms including feature since DB2005 (%)



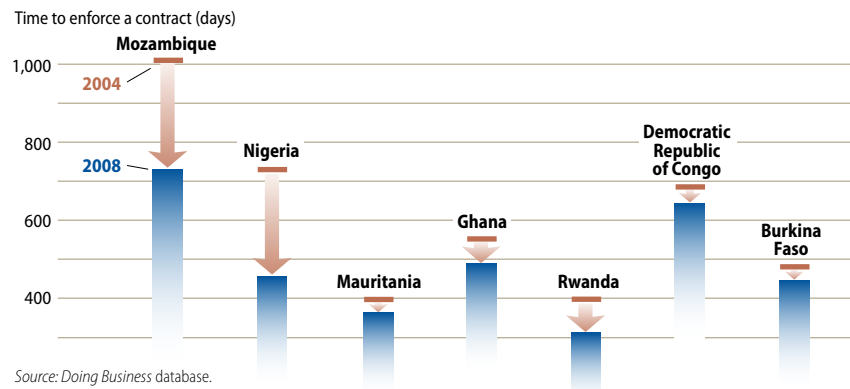
Note: A reform may include several reform features.
Source: Doing Business database.

temala, Honduras and Mexico are now working on similar reforms. And Colombia plans to extend oral proceedings to commercial cases over the next 4 years.

In El Salvador the legislature is close to adopting a bill to make court cases, including commercial cases, oral. Now everything takes place in writing between the parties, with little intervention from the judge. In the future there will be a preliminary hearing during which the judge will first try to reconcile the parties. Failing that, the judge will determine the facts and evidence to be presented in the case. At a second and final hearing the parties, witnesses and

FIGURE 10.5

Specialized commercial courts in Africa help to reduce delays in enforcing contracts



Source: Doing Business database.

experts will be questioned. Under the new rules the judge must issue a written judgment within 15 days after the second hearing.

While oral proceedings are a recent trend in Latin America, countries in other regions have a longer history with them. Take Luxembourg, which ranks second on the ease of enforcing contracts. There, parties do not exchange long, written pleadings in commercial cases. Instead, they exchange only the written evidence they intend to rely on during oral arguments before the judge. This saves several months.

IMPOSING STRICT DEADLINES

In 1995 the “arbitrazh courts” became responsible for dealing with commercial disputes in the Russian Federation. In 2002, to make proceedings faster, the Russian Federation revised its commercial procedural code. Its most significant innovation was to introduce strict mandatory time limits: 2 months for a full hearing, 1 month for accelerated procedures.

Most Central Asian countries copied the Russian procedural rules, including the strict deadlines. Judges are held accountable for respecting the deadlines, with those who do best standing better chances for promotion. Not surprisingly, of the 10 economies with the fastest average times to enforce a contract, half are in Eastern Europe and Central Asia.

NOTES

1. Wojkowska (2006).
2. Safavian and Sharma (2007).
3. Dabla-Norris, Gradstein and Inchauste (2008).
4. World Bank Enterprise Surveys (<http://www.enterprisesurveys.org>).