Enforcing Contracts

The enforcing contracts topic assesses the efficiency of the judicial system by following the evolution of a commercial sale dispute over the quality of goods and tracking the time, cost and number of procedures involved from the moment the plaintiff files the lawsuit until payment is received. The most recent round of data collection was completed in June 2012.

What is Measured?

Imagine an attorney named Adilah who has been practicing law for 15 years in Kuala Lumpur. When Malaysian courts launched a new electronic filing system in March 2011, she had to alter the way she worked. Changing her work habits wasn’t easy. Like her colleagues, Adilah initially resented paying for the new digital certificates and adjusting to online payment. A few months later, after noticing how much faster the court process had become, lawyers were more positive. Some even confessed that they had to prepare more before filing a complaint, because court cases were being heard more quickly.

Doing Business measures the time, cost and procedural complexity of resolving a commercial lawsuit between 2 domestic businesses (figure 1). The dispute involves the breach of a sales contract worth twice the income per capita of the economy. The case study assumes that the court hears arguments on the merits and that an expert provides an opinion on the quality of the goods in dispute. This distinguishes the case from simple debt enforcement. The time, cost and procedures are measured from the perspective of an entrepreneur (the plaintiff) pursuing the standardized case through local courts.

Why it Matters

Why does commercial dispute resolution matter?

Effective commercial dispute resolution has many benefits. Courts are essential for entrepreneurs because they interpret the rules of the market and protect economic rights. Efficient and transparent courts encourage new business relationships because businesses know they can rely on the courts if a
new customer fails to pay. Speedy trials are essential for small enterprises, which may lack the resources to stay in business while awaiting the outcome of a long court dispute (tables 1 and 2).

A study in Eastern Europe found that in countries with slower courts, firms on average tend to have less bank financing for new investment. The study shows that reforms in other areas, such as creditors’ rights, help increase bank lending only if contracts can be enforced before the courts.(1)

In Italy a study of 27 judicial districts found that commercial cases last an average of 53 months, or nearly 4.5 years.(2) In efficient judicial districts such as Venice there are 22 pending cases per 1,000 inhabitants; in Reggio Calabria the backlog is more than twice that. The study concludes that, all other things being equal, where the backlog of pending trials is relatively large, credit is less widely available, the average interest rate is higher, and the default rate is higher.

Another study shows that in economies with good contract enforcement in debt collection cases, firms tend to produce and export relatively more customized products, especially in industries where the continuation of the relationship is most important.(3) Other research finds that in economies with more effective legal systems, firms tend to be larger on average, especially in sectors where proprietorships dominate.(4) A recent study analyzing 98 developing economies suggests that foreign direct investment tends to be greater where the cost of contract enforcement in debt collection and property eviction cases is lower, particularly when the host economy is more indebted.(5)

As measured by Doing Business, enforcing a contract through the courts is fastest on average in Eastern Europe and Central Asia and least costly and complex in OECD high-income economies (figure 2).

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<th>TABLE 2</th>
<th>Who makes enforcing contracts easy—and who does not?</th>
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| Time (days) |                       |
| Fastest | Slowest |
| Singapore | Sri Lanka | 1,580 | 1,318 |
| Uzbekistan | Barbados | 1,230 | 1,340 |
| New Zealand | Trinidad and Tobago | 1,260 | 1,340 |
| Bhutan | Colombia | 1,346 | 1,346 |
| Korea, Rep. | India | 1,400 | 1,400 |
| Rwanda | Bangladesh | 1,402 | 1,402 |
| Azerbaijan | Guatemala | 1,459 | 1,459 |
| Kyrgyz Republic | Afghanistan | 1,642 | 1,642 |
| Namibia | Guatemala-Brasil | 1,715 | 1,715 |
| Russian Federation | Suriname | 1,715 | 1,715 |

| Cost (% of GNI) |                       |
| Least | Most |
| Bhutan | Central | 89.4 | 89.4 |
| Iceland | Mexico | 94.1 | 94.1 |
| Luxembour | Cambodia | 103.4 | 103.4 |
| Norway | Papua New Guinea | 110.3 | 110.3 |
| Korea, Rep. | Zimbabwe | 113.1 | 113.1 |
| China | Indonesia | 138.4 | 138.4 |
| Slovenia | Mozambique | 142.5 | 142.5 |
| Portugal | Congo, Dem. Rep. | 147.6 | 147.6 |
| Finland | Sierra Leone | 149.5 | 149.5 |
| Russian Federation | Turkey | 163.2 | 163.2 |


Source: http://www.doingbusiness.org/data/exploretopics/enforcing-contracts

Doing Business Reforms

In the past 8 years Doing Business recorded 116 reforms that helped improve court efficiency in commercial dispute resolution (figure 3). No fewer than 25 economies made it easier to enforce contracts by introducing or expanding specialized courts to deal with commercial cases. Other economies overhauled the organization of their courts or their system of judicial case management that deals with commercial dispute resolution. In 2011/12 the introduction or expansion of computerized case management systems was among the most common improvements recorded by Doing Business (table 3).

There is no single surefire recipe for court reform. Most economies with successful court reform efforts have had to embrace a holistic approach, looking not only at timely disposition of cases but also at such features as accessibility, transparency, independence, due process, certainty and the competence of judges and judicial staff. Some economies with efficient commercial dispute resolution have complemented their court systems with alternative dispute resolution systems. Doing Business focuses on how public institutions function in the case of a commercial dispute. Using alternative dispute resolution systems may be more costly than relying on the regular
court system and require the agreement of the parties involved—an agreement that is only sometimes reached by small and medium-size businesses involved in a commercial dispute.

**Good Practices**

- Making all judgments in commercial cases by first-instance courts publicly available in practice
- Maintaining specialized commercial court, division or judge
- Introducing case management systems and automation

Over the years common features of judicial reforms relating to commercial dispute resolution have included making judgments of commercial cases publicly available, maintaining specialized commercial courts or divisions and allowing electronic filing of complaints (table 4).

### Making all judgments in commercial cases by first-instance courts publicly available in practice

Many economies require judgments in court cases to be made publicly available with the aim of improving the efficiency of courts and increasing the transparency of judicial decisions. Many also impose disclosure requirements on members of the judiciary in the hope of making it easier to discover instances of corruption (box 1). These practices do not in themselves guarantee a fair trial. But they can increase the chances for fair trials. And access to court decisions can support judicial certainty and promote the development of consistent case law. As the English jurist and philosopher Jeremy Bentham observed, “Publicity is the very soul of Justice.... It keeps the judge himself, while trying, under trial.”

*Doing Business* collected data on the public availability of judgments in commercial cases in 184 economies. In no fewer than 121 economies courts ensure that the general public can access all judgments in commercial cases by a first-instance court. In most cases a third party can obtain a copy...
of the decision by requesting it from the registrar at the courthouse. In others, court systems make all decisions on commercial cases, or at least the new ones, available to the public. Public availability of judgments is least common in the Middle East and North Africa, where third parties can access written decisions in less than 30% of economies covered, and in Eastern Europe and Central Asia (figure 4).

In at least 38 economies around the world, courts publish virtually all recent commercial judgments online. In some economies, such as Chile and Maldives, the constitution provides for public availability of all judicial decisions. Brazil digitized 300,000 superior court proceedings as a first step toward putting them online, an effort that took about 2 years and cost around $1.2 million. In some economies, such as Chile and Maldives, the constitution provides for public availability of all judicial decisions. Brazil digitized 300,000 superior court proceedings as a first step toward putting them online, an effort that took about 2 years and cost around $1.2 million.

With the aim of promoting transparency and a greater understanding of the judicial system, Australia amended court rules in 2010 to provide open access to more court documents. Courts that support regional integration efforts publish judgments to increase awareness about the interpretation of new laws that are adopted at the regional level. For example, the courts of the Organization of Eastern Caribbean States and the Organization for the Harmonization of Business Law in Africa (OHADA) publish all judgments online.

The data collected by Doing Business suggest that judgments are more likely to be made publicly available to third parties in economies with stronger rule of law and greater control of corruption (figure 5). Making judgments in commercial cases public allows outsiders to learn the outcomes of particular cases, reveals the level of efficiency of the courts and might affect the perception of the courts’ judgments as open and transparent. And access to the results of commercial cases benefits companies that invest in a particular jurisdiction, clarifying the scope of their duties and rights.

But the right of the general public to have access to such information must be weighed against duties of confidentiality in certain matters. In some economies companies are allowed to request that a judgment be made anonymous or that certain parts of a decision be redacted and treated as confidential.

Making judgments available does not necessarily require large resources. But it does require that case files be accessible and catalogued efficiently so that they can be conveniently searched. In many low-income economies judgments are available upon request at the courthouse, but only if the case number or names of the parties are provided. Greater resources for online access increase the options...
for the terms and speed of search. Electronic storage of judgments also can reduce the risk of losing records when physical files are misplaced or destroyed. As access to the latest technologies expands—a process driven in part by a sustained reduction in their cost—a growing number of economies have been able to modernize the administration of justice and facilitate public access to judgments and other information generated by the courts.

Maintaining specialized commercial court, division or judge

Eighty-two of the 185 economies covered by Doing Business have a specialized commercial jurisdiction—established by setting up a dedicated stand-alone court, a specialized commercial section within existing courts or specialized judges within a general civil court. Economies with stand-alone commercial courts include Austria, Belgium, Mali and Sri Lanka. Those with a commercial division within their courts include Kenya, Nigeria, Uganda, the United Kingdom and the United States. Where a limited number of commercial cases need to be handled, specialized commercial sections provide a less expensive alternative to a commercial court.

As recorded by Doing Business, about 27 economies introduced or expanded the scope of specialized commercial courts or commercial sections in the past 9 years. Sierra Leone created a fast-track commercial court in 2011, offering a new, more modern venue for commercial dispute resolution in addition to the commercial division at its high court. And in Senegal commercial chambers with specialized judges started operating in 2011. Liberia launched a specialized commercial court in November 2011 and has appointed 3 new judges for the court. And in 2012, Cameroon established commercial divisions within the first instance courts.

Specialized courts tend to improve efficiency. Creating specialized commercial courts can result in faster and less costly contract enforcement. One reason for the greater efficiency is that judges become expert in handling commercial disputes. Commercial courts often have less formal procedures: the use of oral arguments is permitted even in economies where the general courts require written procedures. Analysis of Doing Business data shows that commercial disputes are resolved 5 months faster on average in economies with specialized commercial courts or sections than in those without them.

In 7 Sub-Saharan African economies that introduced commercial courts or sections in the past 10 years—the Democratic Republic of Congo, Ghana, Lesotho, Mauritania, Mozambique, Nigeria and Rwanda—the average time to resolve the standardized case measured by Doing Business dropped by more than 5 months. Within 2 years after establishing a commercial court in 2005, Ghana saw the average time to resolve the standardized case fall by 2 months. Mozambique saw the average time drop by 9 months after it created a commercial court in 2007. Elsewhere, Azerbaijan reduced the average time by 1 month by establishing a second specialized commercial court in Baku in 2008.

The creation of specialized sections or courts needs to be matched by a commitment of more resources as demand for their services expands. Take the case of Peru. The Lima commercial courts,
in operation since April 2005, made headlines in 2006 for deciding cases in less than a year. In February 2007 the judiciary transferred 11,000 enforcement cases to the new courts. These cases, amounting to about 11 times their existing caseload, flooded the courts and increased average delays again.(5)

Specialized commercial courts are often criticized because in some economies they deal only with financially important cases. Those in Tanzania, for example, accept only cases with a value of at least 75 times income per capita. Such 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 thresholds as courts are gradually able to accept more cases. This is better than having courts inundated with cases from the start.

**Introducing case management systems and automation**

Introducing case management and automating court processes have been common practices among economies improving contract enforcement. Judicial case management involves monitoring and managing cases in the court docket from the filing of the claim until judgment is rendered. It has proved to be an effective tool for reducing procedural delays at court and for monitoring the performance of judges and court officers. By analyzing court workloads, case management systems can help predict trends and allocate resources strategically. Case management can be particularly successful when courts are computerized and when support functions—such as electronic filing, case tracking, document management, deadline reminders and scheduling of hearings—are performed automatically.

Since 2008 *Doing Business* has recorded 21 major reforms in judicial case management and automation of court proceedings. The Russian Federation made it possible to electronically submit case documents, including initial complaints, to its high commercial court (the Arbitrazh Court) in July 2010. Russia also introduced videoconferencing for hearings, which allows parties to participate in court hearings without having to incur travel costs. As of November 2011, it is possible to file an initial complaint, as well as other court documents, electronically in Brazil’s Sao Paolo Civil District Court.

And in March 2012, Saudi Arabia expanded the computerization of its courts and introduced an e-filing system in the Board of Grievances, for commercial matters. Attorneys are now allowed to submit the summons online through the dedicated website of the Board of Grievances.

*Source: http://www.doingbusiness.org/data/exploretopics/enforcing-contracts*
Implementing electronic filing is not always easy. The Islamic Republic of Iran allows online filing of complaints, but paper copies still need to be submitted to the court. Italy has been piloting electronic case filing in some courts for several years.

Today 19 of the 185 economies covered by Doing Business allow electronic filing of the initial complaint in a case, including 10 economies that have introduced this capability since 2007. Among these 10, besides Russia, are the Republic of Korea and Malaysia. Korea has continued to expand its electronic filing system (box 2). Malaysia has been modernizing courts for several years—and improved the most in the ease of enforcing contracts in 2010/11 (box 3).

While case management is used in about two-thirds of OECD high-income economies, it is increasingly being adopted in lower-income economies. Kenya introduced a “case track” system in late 2010. This system categorizes cases as small claims, fast track or multitrack and allocates resources strategically to avoid delays in resolving commercial disputes. While cases with complex facts and legal issues get multitrack treatment, those that involve undisputed facts and legal issues, and are likely to be concluded within 180 days after pretrial directions, get fast-track treatment.

As part of ongoing court reforms, Benin is implementing an automated case management system and computerizing the country’s 8 courts of first instance as well as the court of appeals of Abomey, its seventh largest city. The improvements include setting up an intranet system to link the courts with the Ministry of Justice and constructing and equipping a legal and judicial information center.

In Ethiopia the first-instance courts in Addis Ababa have a computerized case management system. Anyone can access the court schedule—online, by telephone or from a touch screen at the court building. The system produces real-time data on the number of cases assigned to each court chamber, helping in the assessment of the performance of judges, chambers and courts across Ethiopia. Over time these data will help determine which courts have heavier caseloads and guide the allocation of resources.

Jordan recently implemented an updated computer-aided case management system known as Mizan II. The system automatically assigns certain cases to specific judges, permits online access to court

Source: http://www.doingbusiness.org/data/exploretopics/enforcing-contracts
records for authorized users and allows lawyers to check the status of their cases online and receive notifications by text message.

Other electronic systems, such as the Praetor system in Poland, have improved the internal operations of courts over time. The Praetor software has made the handling and transmission of documents easier and streamlined control of the process by allowing users to check the decision stage of cases. It also helps in creating statistics on the progress of cases and in monitoring the actions taken by court employees.

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1. Based on the 2005 exchange rate for the Vietnamese dong.
3. Differences are statistically significant at the 1% level after controlling for income per capita.
6. In some economies the underlying principle that justice must be rendered by the people demands that judgments be made public. In France this principle applies not only in criminal or administrative cases but also in civil and commercial cases.
8. All recent Chilean decisions are available at http://www.poderjudicial.cl. In Maldives publication of decisions is provided for in article 42b of the constitution (available at http://www.maldivesinfo.gov.mv/).
9. See the websites of the Eastern Caribbean Supreme Court (http://www.eccourts.org) and OHADA (http://www.ohada.com).
11. Judgments in commercial cases are considered publicly available if they are generally made easily available to third parties, either upon request or through publication (online or in legal gazettes or law reports). Exceptions to the general rule, such as the nondisclosure of trade secrets, sensitive private information or state secrets, did not affect the qualification of public availability.
12. This is particularly common for decisions that relate to trade secrets.
13. Setting up clear guidelines on who can access judgments is also important. In some economies those interested in accessing a judgment must show legitimate interest, leaving wide room for discretion by the person who is deciding. In some economies the decision might be made by an entry-level court clerk with little guidance on the matter.
14. Online databases can be either public or private, with a fee required to access a judgment in private databases. In some economies both options may be available, with privately run databases adding value by permitting enhanced search options.
Frequently Asked Questions

- What does the Enforcing Contracts indicator measure?
- How are attorney fees calculated?
- Does the Enforcing Contracts indicator take into account Alternative Dispute Resolution (ADR) mechanisms?
- How are procedural steps recorded?
- What is a specialized court according to the Enforcing Contracts methodology?
- Why is a bonus point given for allowing electronic filing of complaints?

What does the Enforcing Contracts indicator measure?

The three indicators on enforcing contracts (procedure, time and cost) measure the efficiency of the judicial system in resolving a commercial dispute. The data are built by following the step-by-step evolution of a commercial sale dispute before local courts. A list of procedural steps compiled for each economy traces the chronology of a commercial dispute before the relevant court. The time is recorded in calendar days, counted from the moment the plaintiff decides to file the lawsuit in court until payment. This includes both the days when actions take place and the waiting periods between. Three types of costs are recorded: court costs, enforcement costs and average attorney fees.

How are attorney fees calculated?

Average attorney fees are the fees that a plaintiff must advance to a local attorney to be represented in the standardized case. Even though it is assumed that judgment will be 100% in favor of the plaintiff and the plaintiff is likely to be entitled to an award of legal cost along with the judgment, the methodology takes into account all the attorney fees that the plaintiff needs to advance to his attorney, which comprises (i) the fees to handle the case up to judgment, including pre-trial attachment, (ii) the fees for enforcement if a lawyer is commonly retained for this purpose, and (iii) if applicable, the value added tax or other taxes.

Does the Enforcing Contracts indicator take into account Alternative Dispute Resolution (ADR) mechanisms?

The Enforcing Contracts indicator is measured on the basis of a standardized case study, which refers to a commercial dispute that is heard through the regular court system. The indicator does not measure alternative dispute resolution mechanisms. ADR is indirectly measured, however, insofar as it is a mandatory part of the regular procedure (e.g. mandatory mediation), or if a successful ADR mechanism, either mandatory or voluntary, helps to reduce the backlog in courts or to shorten the trial time.

Source: http://www.doingbusiness.org/data/exploretopics/enforcing-contracts
How are procedural steps recorded?

A procedure is defined as any interaction, required by law or commonly used in practice, between the parties or between them and the judge or court officer. This includes steps to file and serve the case, steps for trial and judgment and steps necessary to enforce the judgment.

To indicate overall efficiency, 1 procedure is subtracted from the total number for economies that have specialized commercial courts, and 1 procedure for economies that allow electronic filing of the initial complaint in court cases.

What is a specialized court according to the Enforcing Contracts methodology?

A specialized commercial procedure can be established by setting up a dedicated standalone court, a specialized commercial section within existing courts or specialized judges within a general civil court. Specialized judges hear commercial cases only and do not hear other types of civil cases.

Why is a bonus point given for allowing electronic filing of complaints?

Allowing litigants to file complaints electronically in commercial cases has many benefits. Using technology to track court processes can make managing cases easier and initiating a lawsuit faster, while increasing transparency and limiting opportunities for corruption in the judiciary. Automated court processes can also prevent the loss, destruction or concealment of court records.