

# Enforcing contracts



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 DOES COMMERCIAL DISPUTE RESOLUTION MATTER?

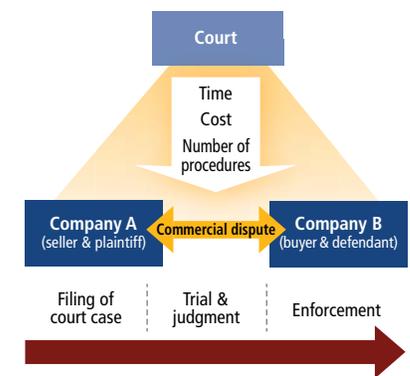
Effective commercial dispute resolution has many benefits. Courts are essential for entrepreneurs because they interpret the rules of the market and protect economic rights. Efficient and transparent courts encourage new business relationships because businesses know they can rely on the courts if a 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.<sup>1</sup>

In Italy a study of 27 judicial districts found that commercial cases last an average of 53 months, or nearly 4.5 years.<sup>2</sup> 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

**FIGURE 1** What are the time, cost and number of procedures to resolve a commercial dispute through the courts?



collection cases, firms tend to produce and export relatively more customized products, especially in industries where the continuation of the relationship is most important.<sup>3</sup> Other research finds that in economies with more effective legal systems, firms tend to be larger on average, especially in sectors where proprietorships dominate.<sup>4</sup> 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.<sup>5</sup>

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).

## WHO REFORMED CONTRACT ENFORCEMENT—AND WHAT HAS WORKED?

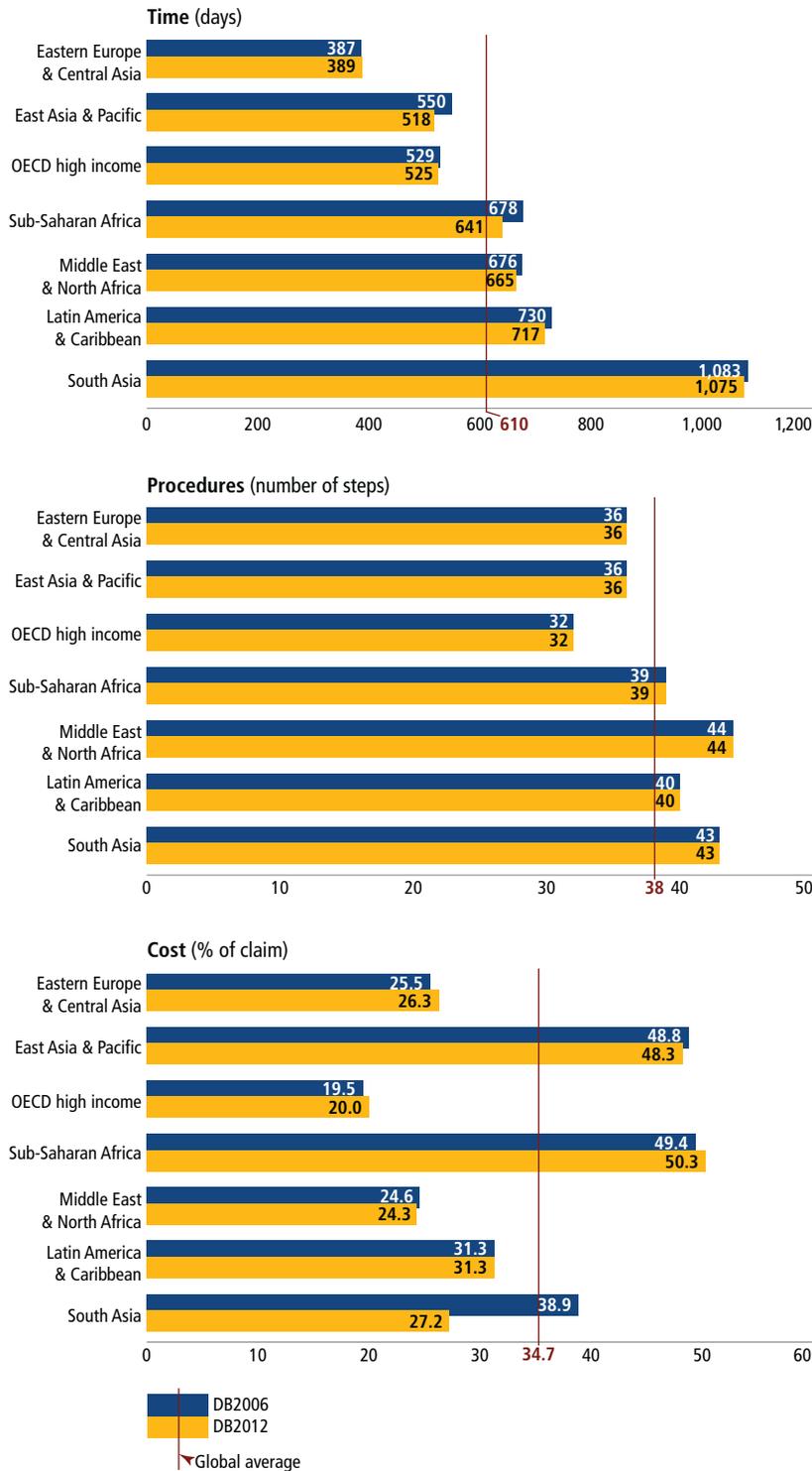
In the past 8 years *Doing Business* recorded 114 reforms that helped improve court

TABLE 1 Where is enforcing contracts easy—and where not?			
Easiest	RANK	Most difficult	RANK
Luxembourg	1	Cameroon	174
Korea, Rep.	2	Syrian Arab Republic	175
Iceland	3	Benin	176
Norway	4	Honduras	177
Hong Kong SAR, China	5	Suriname	178
France	6	São Tomé and Príncipe	179
United States	7	Bangladesh	180
Germany	8	Angola	181
Austria	9	India	182
New Zealand	10	Timor-Leste	183

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

Source: *Doing Business* database.

**FIGURE 2** Fastest courts in Eastern Europe and Central Asia  
Regional averages in enforcing contracts



Note: The data sample for DB2006 (2005) includes 174 economies. The sample for DB2012 (2011) also includes The Bahamas, Bahrain, Brunei Darussalam, Cyprus, Kosovo, Liberia, Luxembourg, Montenegro and Qatar, for a total of 183 economies. DB2006 data are adjusted for any data revisions and changes in methodology and regional classifications of economies. Source: Doing Business database.

**TABLE 2** Who makes enforcing contracts easy—and who does not?

Time (days)			
Fastest		Slowest	
Singapore	150	Slovenia	1,290
Uzbekistan	195	Sri Lanka	1,318
New Zealand	216	Trinidad and Tobago	1,340
Bhutan	225	Colombia	1,346
Korea, Rep.	230	India	1,420
Rwanda	230	Bangladesh	1,442
Azerbaijan	237	Guatemala	1,459
Kyrgyz Republic	260	Afghanistan	1,642
Namibia	270	Guinea-Bissau	1,715
Belarus	275	Suriname	1,715

Procedures (number)			
Fewest		Most	
Ireland	21	Armenia	49
Singapore	21	Guinea	49
Rwanda	24	Kuwait	50
Austria	25	Belize	51
Belgium	26	Iraq	51
Hong Kong SAR, China	26	Oman	51
Luxembourg	26	Timor-Leste	51
Netherlands	26	Kosovo	53
Czech Republic	27	Sudan	53
Iceland	27	Syrian Arab Republic	55

Cost (% of claim)			
Least		Most	
Bhutan	0.1	Comoros	89.4
Iceland	8.2	Malawi	94.1
Luxembourg	9.7	Cambodia	103.4
Norway	9.9	Papua New Guinea	110.3
Korea, Rep.	10.3	Zimbabwe	113.1
China	11.1	Indonesia	122.7
Poland	12.0	Mozambique	142.5
Thailand	12.3	Sierra Leone	149.5
Slovenia	12.7	Congo, Dem. Rep.	151.8
Portugal	13.0	Timor-Leste	163.2

Source: Doing Business database.

efficiency in commercial dispute resolution (figure 3). No fewer than 23 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 2010/11 the introduction or expansion of computerized case management systems was among the most common improvements recorded by *Doing Business* (table 3).

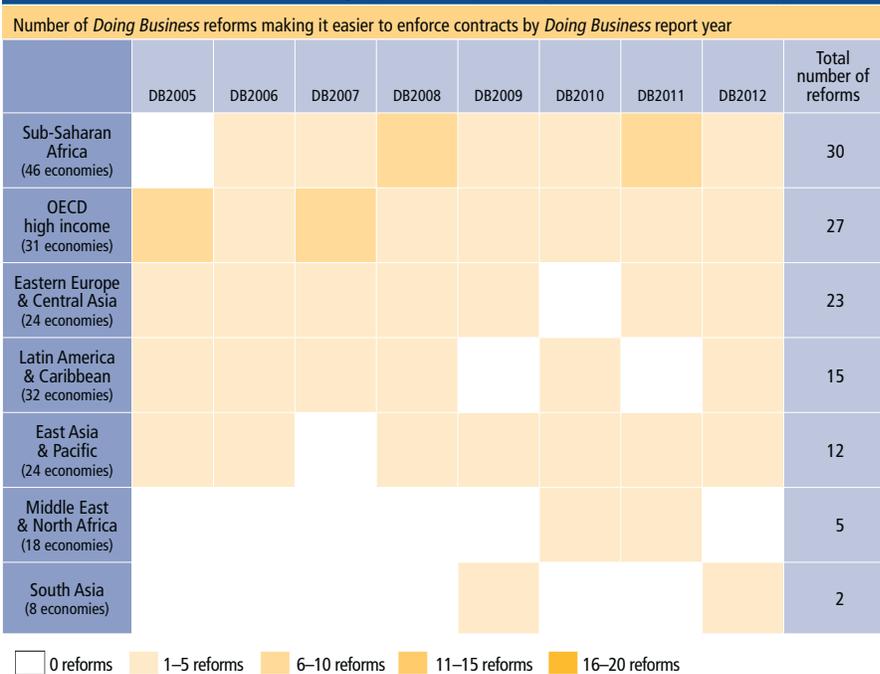
There is no single surefire recipe for court reform. Most economies with successful court reform efforts have had to embrace a holistic approach, looking not only at timely disposition of cases but also at such features as accessibility, transparency, independence, due process, certainty and the competence 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.

Over the years common features of judicial reforms relating to commercial dispute resolution have included updating claim thresholds, introducing case management systems and automation, creating specialized commercial courts and making judgments publicly available (table 4).

### Updating claim thresholds

Today around 116 economies operate a 2-tier civil court system to ensure more efficient processing of commercial cases. Depending on the litigation value of the claim, and in some cases the subject matter, first-instance cases go either to a lower court—often the magistrate's court, city court or justice of the peace—or to the higher court. Some economies further divide lower and higher jurisdictions. Kenya's magistrates' courts alone have 5 different levels.

**FIGURE 3** Pace of reform in enforcing contracts has picked up in Sub-Saharan Africa



*Note:* An economy can be considered to have only 1 *Doing Business* reform per topic and year. The data sample for DB2005 (2004) includes 155 economies. Twenty-eight more were added in subsequent years.

*Source:* *Doing Business* database.

**TABLE 3** Who made enforcing contracts easier in 2010/11—and what did they do?

Feature	Economies	Some highlights
Introduced or expanded computerized case management system	Republic of Korea; Malaysia; Nepal; Russian Federation; Sierra Leone	Korea introduced electronic filing for commercial cases and expanded an electronic litigation system making it possible to submit legal documents through the court's website, deliver judgments electronically and consult legal records remotely.
Increased procedural efficiency at main trial court	Kenya; Malaysia; Nepal; Ukraine	Kenya introduced separate procedural rules for small, simple and complex claims.
Revised rules on modes of service of complaints and notification of court decisions	Republic of Korea; Malaysia; Russian Federation; Ukraine	Malaysia continued to computerize its courts by introducing an electronic filing system. Now complaints can be filed electronically.
Introduced or expanded specialized commercial court	Lesotho; Senegal; Sierra Leone	Sierra Leone launched a fast-track commercial court.
Made enforcement of judgment more efficient	Moldova; Nicaragua; Ukraine	Moldova introduced private bailiffs.

*Source:* *Doing Business* database.

**TABLE 4** Good practices around the world in making it easy to enforce contracts

Practice	Economies <sup>a</sup>	Examples
Making judgments publicly available	122 <sup>b</sup>	Australia; Austria; Chile; Dominican Republic; Greece; Mozambique; Nigeria; Uruguay
Maintaining specialized commercial court, division or judge	87	Burkina Faso; France; Lesotho; Saudi Arabia; Sierra Leone; Singapore
Allowing electronic filing of complaints	16	Australia; Republic of Korea; Malaysia; Russian Federation; United Kingdom

a. Among 183 economies surveyed, unless otherwise specified.

b. Among 175 economies surveyed.

*Source:* *Doing Business* database.

2003	Japan; Netherlands; New Zealand; United Kingdom
2005	Vietnam
2006	Australia; Burundi; Guatemala
2007	Bulgaria; Tonga
2008	Portugal
2009	Jordan; United Kingdom
2010	Canada; Malawi; Uganda
2011	Brunei Darussalam; Nicaragua; Pakistan; Seychelles

Source: *Doing Business* database.

Regardless of the level, monetary thresholds have to be regularly updated to ensure that the workload is adequately distributed. With economic growth and inflation, thresholds can quickly become outdated—and higher courts overburdened with simple cases. Uruguay has not updated its thresholds since 2004, but income per capita has almost doubled since then. Now an \$18,800 commercial case will be heard by the first-instance civil court rather than going to a justice of the peace as initially intended. The result is that many more small commercial cases will be heard at the higher jurisdiction.

At least 19 economies around the world updated claim thresholds or ceilings for commercial cases in the past 8 years (table 5). Many raised the maximum case value for lower courts, allowing more cases to benefit from simplified procedures. In 2007 Tonga quintupled the maximum value for cases assigned to magistrates. In 2009 Jordan more than doubled the maximum case value for its lower court. The United Kingdom raised the threshold for the High Court of England and Wales from £15,000 to £25,000 in the same year.

Some economies changed thresholds so as to move cases to lower jurisdictions. In 2005 Vietnam eliminated its threshold of 50 million dong (\$3,150) for district courts.<sup>6</sup> Many cases that previously would have gone through the provincial courts were now heard at the lower jurisdiction in the district courts. As a result, the standardized case measured by *Doing Business* is now decided 2 months faster on average—by the district court.

In 2010 Malawi raised the ceiling for commercial cases that can benefit from the simplified procedure in magistrates' courts from 50,000 kwacha (\$325) to 2 million kwacha (\$13,000). Because many more cases were now going to the magistrates' courts, 60 new magistrates were recruited and trained.

While updating thresholds is beneficial, the resulting change in caseloads and the availability of resources to meet the new demands need to be carefully assessed. In 2010 the Seychelles took a measure similar to Malawi's, expanding the jurisdiction of the lower court. While the workload of the magistrate's court grew considerably, only 2 more magistrates were hired. Now it takes 27% more time on average to resolve the standardized case measured by *Doing Business*.

### 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 18 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.

Implementing electronic filing is not always easy. The Islamic Republic of Iran allows on-line 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 16 of the 183 economies covered by *Doing Business* allow electronic filing of the initial complaint in a case, including 7 economies that have introduced this capability since 2007. Among these 7, besides Russia, are the Republic of Korea and Malaysia. Korea has continued to expand its electronic filing system (box 1). Malaysia has been modernizing courts for several years—and improved the most in the ease of enforcing contracts in 2010/11 (box 2).

While case management is used in about two-thirds of OECD high-income economies, it is increasingly being adopted in

#### BOX 1 Improving electronic case management in Korea

In Korea in 2006 judges started working in 2 pilot courts—the Seobu and Daejeon district courts—to identify and immediately decide all undisputed cases. This active case management technique led to faster completion of cases. According to data from the Daejeon district court, the share of the court's cases completed within the legal time limits rose from 82% in 2005 to 86% in 2006 for those involving a single judge, and from 91% to 96.7% for those heard by 3 judges.

In parallel, more electronic solutions in the courtroom, or “e-courts,” have become available nationwide. Judges have benefited from information technology systems allowing better access to electronic records and the ability to record trial procedures. Since May 2011 lawyers have been able to electronically file the initial complaint in a case before the main civil courts, including the Seoul West district court. That's not all. Thanks to the e-court program, legal documents can be submitted through the court's website, judgments can be delivered electronically, and court records, including judgments, can be consulted remotely. In 2012 this electronic filing system will be expanded to bankruptcy, family law and public administration cases.<sup>1</sup>

1. Supreme Court of Korea, “E-Court: Status,” <http://eng.scourt.go.kr/eng/ecourt/status.jsp>.

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 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.

## BOX 2 Modernizing courts in Malaysia

On January 1, 2009, the Malaysian sessions courts faced a backlog of 95,554 pending contract and tort cases. The high courts had a similar number pending, and the magistrates’ courts many more. These backlogs were hampering access to justice. They were caused in part by the large number of adjournments, which delayed the resolution of disputes. In 2009 Malaysia set a goal for all civil and commercial courts of resolving cases in 9 months, and claims to have achieved a 95–98% success rate in 2011.<sup>1</sup> And according to recent estimates, the backlogs were reduced by more than 50% by 2011.<sup>2</sup>

Malaysia’s efforts to modernize its courts appear to be paying off. More than 46,000 old cases were removed from the dockets of the sessions courts, either resolved or struck because of inactivity. Many thousands more were removed from the dockets of the high courts and magistrates’ courts. What’s behind these changes? A wide range of improvements. In early 2009 a case management system that sorts cases into 2 tracks by level of complexity was expanded to all courts, and the commercial division of the Kuala Lumpur high court was reorganized. Judges became subject to close monitoring of their performance, but they also received more training. And they were encouraged to play a more active role in moving cases.

An “e-court” project launched at the Kuala Lumpur high court in February 2009 is being expanded to all Malaysian courts. The project includes a range of new systems—all introduced between 2009 and 2011. A queue management system uses text messaging to notify lawyers of hearing dates. A case management system helps optimize judges’ schedules by enabling registrars to use a digital planner to schedule hearings on the basis of which judge is available earliest. The system also allows judges to access minutes of each case electronically. A court recording and transcription system provides video and audio recordings of proceedings, sparing judges from having to take notes by hand. And the introduction of electronic filing has allowed all court documents to be filed and made available electronically, including the initial complaint.

1. Azmi 2011a, pp. 3 and 13.

2. Azmi 2011b.

## Creating specialized commercial courts

Eighty-seven of the 183 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 23 economies introduced or expanded the scope of specialized commercial courts or commercial sections in the past 8 years (table 6). In Lesotho a court dedicated exclusively to hearing commercial cases started operating in 2010. 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.

Specialized courts tend to improve efficiency.<sup>7</sup> 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

**TABLE 6** Economies introducing or expanding the scope of specialized courts

2005	Australia; Burundi; Chad; Georgia; Guyana; Nigeria; Peru; Rwanda
2006	Burkina Faso; Democratic Republic of Congo; Ghana; Mauritania
2007	Malawi; Mozambique
2008	Azerbaijan; FYR Macedonia; Nigeria; Rwanda
2009	Arab Republic of Egypt; Mauritius; Papua New Guinea
2010	Burkina Faso; Guinea-Bissau; Lesotho
2011	Senegal; Sierra Leone

Source: *Doing Business* database.

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.<sup>8</sup>

In 7 African countries that introduced commercial courts or sections in the past 8 years—Burkina Faso, the Democratic Republic of Congo, Ghana, Mauritania, Mozambique, Nigeria and Rwanda—the average time to resolve the standardized case measured by *Doing Business* dropped by 4 months.<sup>9</sup> 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.<sup>10</sup>

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.

### BOX 3 Requiring judges to disclose their assets

In many economies members of the judiciary are required to disclose their assets before taking office, during their tenure and upon leaving office. One study shows that among 176 economies with asset disclosure systems in place, 62% require disclosure by high-ranking prosecutors; 58% by members of the supreme court, constitutional courts or other high-level judicial bodies whose decisions are not subject to further appeal; and 56% by judges or prosecutors.<sup>1</sup> Requirements that judges disclose their assets and business interests are usually aimed at giving the media and the general public an opportunity to uncover instances of corruption.

Whether disclosure requirements for judges actually help fight corruption in the judiciary remains to be seen. But a recent study of disclosure rules and practices for parliamentarians suggests that there is reason to believe that disclosure requirements can help if disclosure not only is required by law but happens in practice.

Examining disclosure and conflict-of-interest regulations in 175 economies, the study finds that disclosure of assets and business interests by parliamentarians is correlated with lower perceived corruption when the information is made public.<sup>2</sup> When the information in disclosures is not made public, officials cannot be held accountable. The study also finds that higher income per capita is associated with greater disclosure, possibly because richer (or higher human capital) economies demand greater accountability of their public officials and consequently impose more stringent disclosure rules to promote such accountability.

1. Rossi and others forthcoming.

2. Djankov and others 2009.

### Making judgments publicly available

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 3). 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.<sup>11</sup> 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.”<sup>12</sup>

This year *Doing Business* collected data on the public availability of judgments in commercial cases in 175 economies. In no fewer than 122 economies courts ensure that the general public can access judgments in commercial cases. 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

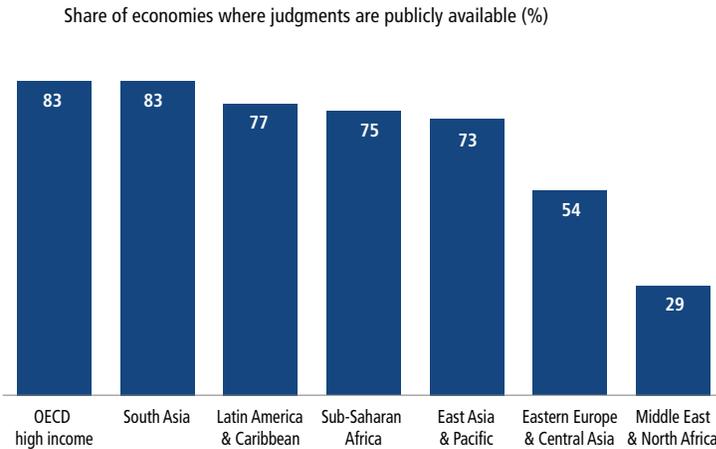
East and North Africa, where third parties can access written decisions in less than 30% of economies covered, and in Eastern Europe and Central Asia (figure 4).

In at least 25 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.<sup>13</sup> 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.<sup>14</sup>

The new 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

**FIGURE 4** Access to judgments in commercial cases is most restricted in the Middle East and North Africa



*Note:* Judgments in commercial cases are considered publicly available if they are systematically made available to third parties upon request or through legal publications. If judgments are not available because of poor storage of decisions or if a third party must demonstrate particular legal interest in the case to obtain a copy, they are not considered publicly available. The data sample includes 175 economies.

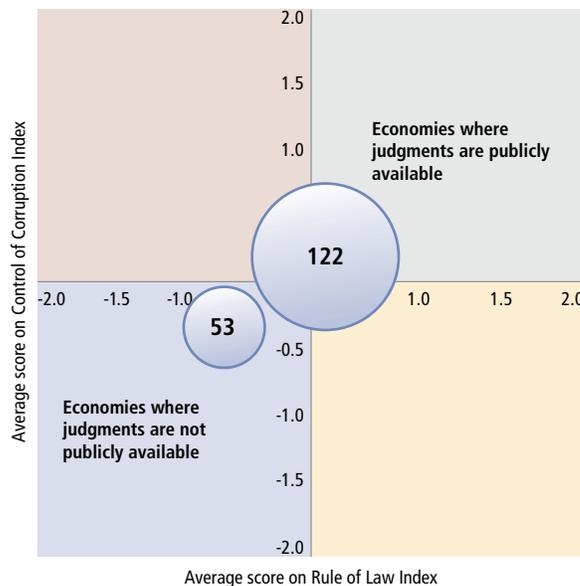
*Source:* Doing Business database.

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.<sup>15</sup>

But the right of the general public to have access to such information must be weighed against duties of confidentiality in certain matters.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> 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.

**FIGURE 5** Judgments are more likely to be publicly available in economies perceived as having lower corruption and stronger rule of law



*Note:* Higher scores on the indices indicate perceptions of lower corruption and stronger rule of law. Relationships are significant at the 5% level after controlling for income per capita. See the note to figure 4 for an explanation of *publicly available*. The data sample includes 175 economies.

*Source:* Doing Business database; World Bank, Worldwide Governance Indicators (2009 data).

## DATA NOTES ON ENFORCING CONTRACTS

Indicators on enforcing contracts 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. The data are collected through study of the codes of civil procedure and other court regulations as well as surveys completed by local litigation lawyers and by judges. The ranking on the ease of enforcing contracts is the simple average of the percentile rankings on its component indicators (figure A.1).

The name of the relevant court in each economy—the court in the largest business city with jurisdiction over commercial cases worth 200% of income per capita—is published at <http://www.doingbusiness.org/ExploreTopics/EnforcingContracts/>.

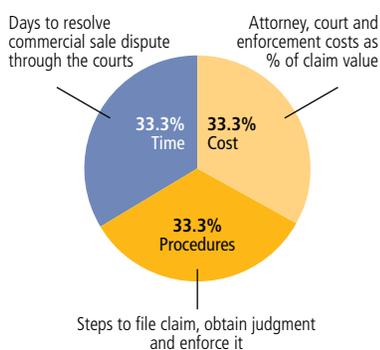
### Assumptions about the case

- The value of the claim equals 200% of the economy's income per capita.
- The dispute concerns a lawful transaction between 2 businesses (Seller and Buyer), located in the economy's largest business city. Seller sells goods worth 200% of the economy's income per capita to Buyer. After Seller delivers the goods to Buyer, Buyer refuses to pay for the goods on the grounds that the delivered goods were not of adequate quality.

- Seller (the plaintiff) sues Buyer (the defendant) to recover the amount under the sales agreement (that is, 200% of the economy's income per capita). Buyer opposes Seller's claim, saying that the quality of the goods is not adequate. The claim is disputed on the merits. The court cannot decide the case on the basis of documentary evidence or legal title alone.
- A court in the economy's largest business city with jurisdiction over commercial cases worth 200% of income per capita decides the dispute.
- Seller attaches Buyer's movable assets (for example, office equipment and vehicles) before obtaining a judgment because Seller fears that Buyer may become insolvent.
- An expert opinion is given on the quality of the delivered goods. If it is standard practice in the economy for each party to call its own expert witness, the parties each call one expert witness. If it is standard practice for the judge to appoint an independent expert, the judge does so. In this case the judge does not allow opposing expert testimony.
- The judgment is 100% in favor of Seller: the judge decides that the goods are of adequate quality and that Buyer must pay the agreed price.
- Buyer does not appeal the judgment. Seller decides to start enforcing the judgment as soon as the time allocated by law for appeal expires.
- Seller takes all required steps for prompt enforcement of the judgment. The money is successfully collected through a public sale of Buyer's movable assets (for example, office equipment and vehicles).

**FIGURE A.1** Enforcing contracts: resolving a commercial dispute through the courts

Rankings are based on 3 indicators



### Procedures

The list of procedural steps compiled for each economy traces the chronology of a commercial dispute before the relevant court. 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

**TABLE A.1** What do the enforcing contracts indicators measure?

Procedures to enforce a contract through the courts (number)
Any interaction between the parties in a commercial dispute, or between them and the judge or court officer
Steps to file and serve the case
Steps for trial and judgment
Steps to enforce the judgment
Time required to complete procedures (calendar days)
Time to file and serve the case
Time for trial and obtaining judgment
Time to enforce the judgment
Cost required to complete procedures (% of claim)
No bribes
Average attorney fees
Court costs, including expert fees
Enforcement costs

judgment and steps necessary to enforce the judgment (table A.1).

The survey allows respondents to record procedures that exist in civil law but not common law jurisdictions and vice versa. For example, in civil law jurisdictions the judge can appoint an independent expert, while in common law jurisdictions each party submits a list of expert witnesses to the court. 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. Some procedural steps that take place simultaneously with or are included in other procedural steps are not counted in the total number of procedures.

### Time

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. The average duration of different stages of dispute resolution is recorded: the completion of service of process (time to file and serve the case), the issuance of judgment (time for the trial and obtaining the judgment) and the moment of payment (time for enforcement of the judgment).

## Cost

Cost is recorded as a percentage of the claim, assumed to be equivalent to 200% of income per capita. No bribes are recorded. Three types of costs are recorded: court costs, enforcement costs and average attorney fees.

Court costs include all court costs and expert fees that Seller (plaintiff) must

advance to the court, regardless of the final cost to Seller. Expert fees, if required by law or commonly used in practice, are included in court costs. Enforcement costs are all costs that Seller (plaintiff) must advance to enforce the judgment through a public sale of Buyer's movable assets, regardless of the final cost to Seller. Average attorney fees are the fees that Seller (plaintiff) must advance

to a local attorney to represent Seller in the standardized case.

*The data details on enforcing contracts can be found for each economy at <http://www.doingbusiness.org> by selecting the economy in the drop-down list. This methodology was developed in Djankov and others (2003) and is adopted here with minor changes.*

## NOTES

1. Safavian and Sharma 2007.
2. Jappelli, Pagano and Bianco 2005.
3. Nunn 2007.
4. Laeven and Woodruff 2007; Cooley, Marimon and Quadrini 2004.
5. Ahlquist and Prakash 2010.
6. Based on the 2005 exchange rate for the Vietnamese dong.
7. Botero and others 2003.
8. Relationships are significant at the 1% level after controlling for income per capita.
9. *Doing Business* database.
10. World Bank 2007, p. 52.
11. 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.
12. Bentham 1843.
13. 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/>).
14. See the websites of the Eastern Caribbean Supreme Court (<http://www.eccourts.org>) and OHADA (<http://www.ohada.com>).
15. Byfield 2011.
16. 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.

17. This is particularly common for decisions that relate to trade secrets.
18. 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.
19. 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.

## REFERENCES

- Ahlquist, John S., and Aseem Prakash. 2010. "FDI and the Costs of Contract Enforcement in Developing Countries." *Policy Sciences* 43 (2): 181-200.
- Azmi, Zaki (chief justice of Malaysia). 2011a. "Access to Justice: Clearing Backlogs of Cases—The Malaysian Way." Ministry of Justice, Kuala Lumpur.
- \_\_\_\_\_. 2011b. "Administration of Case Backlog: The Malaysian Experience." Ministry of Justice, Kuala Lumpur.
- Bentham, Jeremy. 1843. *The Works of Jeremy Bentham, Published under the Superintendence of His Executive, John Bowring*. Facsimile edition. Boston, MA: Adamant Media Corporation, 2001.
- Botero, Juan Carlos, Rafael La Porta, Florencio López-de-Silanes, Andrei Shleifer and Alexander Volokh. 2003. "Judicial Reform." *World Bank Research Observer* 18 (1): 67-88.
- Byfield, Paul. 2011. "The Publication of Commercial Court Decisions in the Western Commonwealth of Independent States." In *Law in Transition 2011*. London: European Bank for Reconstruction and Development.
- Cooley, Thomas, Ramon Marimon and Vincenzo Quadrini. 2004. "Aggregate Consequences of Limited Contract Enforceability." *Journal of Political Economy* 112 (4): 817-47.
- Djankov, Simeon, Rafael La Porta, Florencio López-de-Silanes and Andrei Shleifer. 2003. "Courts." *Quarterly Journal of Economics* 118 (2): 453-517.
- \_\_\_\_\_. 2009. "Disclosure by Politicians." NBER Working Paper 14703, National Bureau of Economic Research, Cambridge, MA.
- Jappelli, Tullio, Marco Pagano and Magda Bianco. 2005. "Courts and Banks: Effects of Judicial Enforcement on Credit Markets." *Journal of Money, Credit, and Banking* 37 (2): 223-44.
- Laeven, Luc, and Christopher Woodruff. 2007. "The Quality of the Legal System, Firm Ownership, and Firm Size." *Review of Economics and Statistics* 89 (4): 601-14.
- Nunn, Nathan. 2007. "Relationship-Specificity, Incomplete Contracts, and the Pattern of Trade." *Quarterly Journal of Economics* 122 (2): 569-600.
- Rossi, Ivana, with Laura Pop, Francesco Clementucci and Lina Sawaqed. Forthcoming. *Using Asset Disclosure for Identifying Politically Exposed Persons*. World Bank Working Paper. Washington, DC: World Bank.
- Safavian, Mehnaz, and Siddharth Sharma. 2007. "When Do Creditor Rights Work?" *Journal of Comparative Economics* 35 (3): 484-508.
- World Bank. 2007. *Doing Business 2008*. Washington, DC: World Bank Group.