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.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

Enforcing contracts

TABLE 1 Where is enforcing contracts easy—and where not?

<table>
<thead>
<tr>
<th>Easiest</th>
<th>RANK</th>
<th>Most difficult</th>
<th>RANK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td>1</td>
<td>Cameroon</td>
<td>174</td>
</tr>
<tr>
<td>Korea, Rep.</td>
<td>2</td>
<td>Syrian Arab Republic</td>
<td>175</td>
</tr>
<tr>
<td>Iceland</td>
<td>3</td>
<td>Benin</td>
<td>176</td>
</tr>
<tr>
<td>Norway</td>
<td>4</td>
<td>Honduras</td>
<td>177</td>
</tr>
<tr>
<td>Hong Kong SAR, China</td>
<td>5</td>
<td>Suriname</td>
<td>178</td>
</tr>
<tr>
<td>France</td>
<td>6</td>
<td>São Tomé and Principe</td>
<td>179</td>
</tr>
<tr>
<td>United States</td>
<td>7</td>
<td>Bangladesh</td>
<td>180</td>
</tr>
<tr>
<td>Germany</td>
<td>8</td>
<td>Angola</td>
<td>181</td>
</tr>
<tr>
<td>Austria</td>
<td>9</td>
<td>India</td>
<td>182</td>
</tr>
<tr>
<td>New Zealand</td>
<td>10</td>
<td>Timor-Leste</td>
<td>183</td>
</tr>
</tbody>
</table>

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.

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

<table>
<thead>
<tr>
<th>Country</th>
<th>Fastest</th>
<th>Slowest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td>150</td>
<td>Slovenia</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>195</td>
<td>Sri Lanka</td>
</tr>
<tr>
<td>New Zealand</td>
<td>216</td>
<td>Trinidad and Tobago</td>
</tr>
<tr>
<td>Bhutan</td>
<td>225</td>
<td>Colombia</td>
</tr>
<tr>
<td>Korea, Rep.</td>
<td>230</td>
<td>India</td>
</tr>
<tr>
<td>Rwanda</td>
<td>230</td>
<td>Bangladesh</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>237</td>
<td>Guatemala</td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
<td>260</td>
<td>Afghanistan</td>
</tr>
<tr>
<td>Namibia</td>
<td>270</td>
<td>Guinea-Bissau</td>
</tr>
<tr>
<td>Belarus</td>
<td>275</td>
<td>Suriname</td>
</tr>
</tbody>
</table>

**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.

**Source:** Doing Business database.

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**Figure 2:** Fastest courts in Eastern Europe and Central Asia

Regional averages in enforcing contracts

**Time (days)**

- Eastern Europe & Central Asia: 387 days
- East Asia & Pacific: 550 days
- OECD high income: 723 days
- Sub-Saharan Africa: 641 days
- Middle East & North Africa: 765 days
- Latin America & Caribbean: 730 days
- South Asia: 1,083 days

**Procedures (number of steps)**

- Eastern Europe & Central Asia: 36 steps
- East Asia & Pacific: 36 steps
- OECD high income: 24 steps
- Sub-Saharan Africa: 39 steps
- Middle East & North Africa: 44 steps
- Latin America & Caribbean: 40 steps
- South Asia: 43 steps

**Cost (% of claim)**

- Eastern Europe & Central Asia: 25.5%
- East Asia & Pacific: 48.8%
- OECD high income: 48.3%
- Sub-Saharan Africa: 49.4%
- Middle East & North Africa: 44.1%
- Latin America & Caribbean: 31.3%
- South Asia: 31.9%

**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](enforcing-contracts.jpg)

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

<p>| Number of Doing Business reforms making it easier to enforce contracts by Doing Business report year |</p>
<table>
<thead>
<tr>
<th>---------------------------------</th>
<th>-------------------------------------------------</th>
<th>-----------------</th>
<th>-------------</th>
<th>-----------------</th>
<th>-----------------</th>
<th>-----------------</th>
<th>-----------------</th>
<th>-----------------</th>
<th>-----------------</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-Saharan Africa (46 economies)</td>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OECD high income (31 economies)</td>
<td>27</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern Europe &amp; Central Asia (14 economies)</td>
<td>23</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latin America &amp; Caribbean (22 economies)</td>
<td>15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>East Asia &amp; Pacific (24 economies)</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle East &amp; North Africa (18 economies)</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Asia (8 economies)</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.

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

<table>
<thead>
<tr>
<th>Feature</th>
<th>Economies</th>
<th>Some highlights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduced or expanded computerized case management system</td>
<td>Republic of Korea; Malaysia; Nepal; Russian Federation; Sierra Leone</td>
<td>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.</td>
</tr>
<tr>
<td>Increased procedural efficiency at main trial court</td>
<td>Kenya; Malaysia; Nepal; Ukraine</td>
<td>Kenya introduced separate procedural rules for small, simple and complex claims.</td>
</tr>
<tr>
<td>Revised rules on modes of service of complaints and notification of court decisions</td>
<td>Republic of Korea; Malaysia; Russian Federation; Ukraine</td>
<td>Malaysia continued to computerize its courts by introducing an electronic filing system. Now complaints can be filed electronically.</td>
</tr>
<tr>
<td>Introduced or expanded specialized commercial court</td>
<td>Lesotho; Senegal; Sierra Leone</td>
<td>Sierra Leone launched a fast-track commercial court.</td>
</tr>
<tr>
<td>Made enforcement of judgment more efficient</td>
<td>Moldova; Nicaragua; Ukraine</td>
<td>Moldova introduced private bailiffs.</td>
</tr>
</tbody>
</table>

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

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

a. Among 183 economies surveyed, unless otherwise specified.
b. Among 175 economies surveyed.

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. In 2006 Australia; Burundi; Guatemala; Bulgaria; Tonga; Portugal; Jordan; United Kingdom; Canada; Malawi; Uganda; Brunei Darussalam; Nicaragua; Pakistan; Seychelles.

<table>
<thead>
<tr>
<th>Year</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>Japan; Netherlands; New Zealand; United Kingdom</td>
</tr>
<tr>
<td>2005</td>
<td>Vietnam</td>
</tr>
<tr>
<td>2006</td>
<td>Australia; Burundi; Guatemala</td>
</tr>
<tr>
<td>2007</td>
<td>Bulgaria; Tonga</td>
</tr>
<tr>
<td>2008</td>
<td>Portugal</td>
</tr>
<tr>
<td>2009</td>
<td>Jordan; United Kingdom</td>
</tr>
<tr>
<td>2010</td>
<td>Canada; Malawi; Uganda</td>
</tr>
<tr>
<td>2011</td>
<td>Brunei Darussalam; Nicaragua; Pakistan; Seychelles</td>
</tr>
</tbody>
</table>

Source: Doing Business database.

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 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 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.

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 2011.1 And according to recent estimates, the backlogs were reduced by more than 50% by 2011.2

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.


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.3 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>
<thead>
<tr>
<th>Year</th>
<th>Economies introducing or expanding the scope of specialized courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>Australia; Burundi; Chad; Georgia; Guyana; Nigeria; Peru; Rwanda</td>
</tr>
<tr>
<td>2006</td>
<td>Burkina Faso; Democratic Republic of Congo; Ghana; Mauritania</td>
</tr>
<tr>
<td>2007</td>
<td>Malawi; Mozambique</td>
</tr>
<tr>
<td>2008</td>
<td>Azerbaijan; FYR Macedonia; Nigeria; Rwanda</td>
</tr>
<tr>
<td>2009</td>
<td>Arab Republic of Egypt; Mauritius; Papua New Guinea</td>
</tr>
<tr>
<td>2010</td>
<td>Burkina Faso; Guinea-Bissau; Lesotho</td>
</tr>
<tr>
<td>2011</td>
<td>Senegal; Sierra Leone</td>
</tr>
</tbody>
</table>

Source: Doing Business database.
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. 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. 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.1 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.2 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. 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.”

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. 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 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
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.15

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

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.18 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.19 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 4 Access to judgments in commercial cases is most restricted in the Middle East and North Africa

Share of economies where judgments are publicly available (%)

OECD high income
South Asia
Latin America & Caribbean
Sub-Saharan Africa
East Asia & Pacific
Eastern Europe & Central Asia
Middle East & 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.

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

Average score on Control of Corruption Index
-2.0 -1.5 -1.0 -0.5 0.0 1.0 1.5 2.0
Economies where judgments are publicly available

Average score on Rule of Law Index
-2.0 -1.5 -1.0 -0.5 0.0 1.0 1.5 2.0
Economies where judgments are not publicly available

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.

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).

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

5. Ahlquist and Prakash 2010.
8. Relationships are significant at the 1% level after controlling for income per capita.
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.
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).
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


