Training for Reform

Enforcing Contracts

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Doing Business – Global Indicators Group

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I. Why does it matter?

II. What does it measure – and what does it not?

III. Methodology changes in the past 5 years

IV. What are the main findings in *Doing Business 2019*?
Why does Enforcing Contracts matter?

Studies link efficient contract enforcement with:

• **Increase in trade and investment**
  ✓ Firms in Brazil, Peru and the Philippines report that they would be willing to invest more if they had greater confidence in the courts.

• **Economic development and sustained growth**
  ✓ A study focusing on Mexico found that states with better court systems have larger and more efficient firms.

• **Improved access to credit**
  ✓ A study examining court efficiency in different provinces in Argentina and Brazil found that firms located in provinces with more effective courts have greater access to credit.
Why does Enforcing Contracts matter?

Economies with more judicial good practices in place have higher levels of domestic credit provided to the private sector.

The correlation between the quality of judicial processes index and domestic credit to private sector as a percentage of GDP is 0.4.

Sources: Doing Business database; World Development Indicators database, World Bank.

Note: Domestic credit to private sector refers to financial resources provided to the private sector by financial corporations, such as through loans, purchases of nonequity securities, and trade credits and other accounts receivable, that establish a claim for repayment. The data for this indicator are for 2014.
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IV. What are the main findings in *Doing Business 2019*?
What does Enforcing Contracts measure?

Enforcing Contracts measures:

• the time and cost to resolve a commercial dispute through a local first instance court, and

• the quality of judicial processes index, which includes a series of good practices in the areas of court structure and proceedings, case management, court automation and alternative dispute resolution (ADR).
What does Enforcing Contracts not measure?

- Cases other than the standardized case study
- Courts other than the competent court
- Due process standards
- Appeal process
- Procedures for resolving the standardized dispute
Which are the **case study assumptions**?

What are the assumptions of the standardized case study used by *Enforcing Contracts*?
How is **time** measured?

3 different phases, following the life cycle of a case

- **Filing & Service**
  - From the moment the Plaintiff decides to sue until the Defendant is served.

- **Trial & Judgment**
  - From the moment the Defendant is served until the time to appeal has elapsed.

- **Enforcement**
  - From the moment the time to appeal has elapsed until the money is recovered by the winning party.
How is cost measured?

Only actual fees that must be anticipated by the plaintiff

**Attorney Fees** (% of the value of the claim)

- Fees to be paid to a local attorney (including taxes, if applicable) from filing to enforcement, regardless of final reimbursement.

**Court Fees** (% of the value of the claim)

- Filing fees.
- Expert fees.
- Fees for issuance and registration of judgment.

**Enforcement Fees** (% of the value of the claim)

- All costs that the Plaintiff must advance to enforce the judgment through a public sale of the Defendant’s movable assets. Such fees could relate to seizure of goods, advertisement, storage, etc.
How is the **Quality of Judicial Processes index** measured?

### What is measured and…

<table>
<thead>
<tr>
<th>Court structure and proceedings index (0-5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Availability of specialized commercial court, division or section</td>
</tr>
<tr>
<td>Availability of small claims court and/or simplified procedure for small claims</td>
</tr>
<tr>
<td>Availability of pretrial attachment</td>
</tr>
<tr>
<td>Criteria used to assign cases to judges</td>
</tr>
<tr>
<td>Evidentiary weight of woman’s testimony</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case management index (0-6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulations setting time standards for key court events</td>
</tr>
<tr>
<td>Regulations on adjournments and continuances</td>
</tr>
<tr>
<td>Availability of performance measurement mechanisms</td>
</tr>
<tr>
<td>Availability of pretrial conference</td>
</tr>
<tr>
<td>Availability of electronic case management system for judges</td>
</tr>
<tr>
<td>Availability of electronic case management system for lawyers</td>
</tr>
</tbody>
</table>

### …Why does it matter?

- Shorter resolution times, decrease backlog at the main trial court
- Increased consistency in case-law
- Increased access to justice

- Enhances record-keeping
- Reduced delays and case backlog
- Information to support strategic allocation of time and resources
- Improved predictability of court events which can ensure accountability, increase public trust, reduce opportunities for corruption and enhance transparency
How is the **Quality of Judicial Processes index** measured?

<table>
<thead>
<tr>
<th>Court automation index (0-4)</th>
<th>...Why does it matter?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ability to file initial complaint electronically</td>
<td>✓ Speedier trials</td>
</tr>
<tr>
<td>Ability to serve initial complaint electronically</td>
<td>✓ Better access to courts</td>
</tr>
<tr>
<td>Ability to pay court fees electronically</td>
<td>✓ More reliable service of process</td>
</tr>
<tr>
<td>Publication of judgments</td>
<td>✓ Cost savings</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alternative dispute resolution index (0-3)</th>
<th>...Why does it matter?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitration</td>
<td>✓ Reduced case backlogs and bottlenecks</td>
</tr>
<tr>
<td>Voluntary mediation and/or conciliation</td>
<td>✓ Reduced delays where these are caused by complex formal procedures or inadequate court resources</td>
</tr>
<tr>
<td></td>
<td>✓ Gives the parties more control, increasing satisfaction with outcomes</td>
</tr>
</tbody>
</table>
I. Why does it matter?
II. What does it measure – and what does it not?
III. Methodology changes in the past 5 years
IV. What are the main findings in Doing Business 2019?
Methodology changes in the past years

**Doing Business 2015**

**Claim value**

The claim value is determined as 200% of the GNI per capita or USD 5,000, whichever is higher.

**Doing Business 2016**

**Quality of Judicial Processes Index (QJPI) and removal of procedures**

The QJPI tests whether each economy has adopted a series of good practices in the areas of court organization, case management, court automation and alternative dispute resolution.

**Doing Business 2017**

**Gender component**

Evidentiary weight of men’s and women’s testimony.
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IV. What are the main findings in *Doing Business 2019*?
What are the **main findings** in Enforcing Contracts in 2017/18?

<table>
<thead>
<tr>
<th>Top ten performers</th>
<th>Score</th>
<th>Time (days)</th>
<th>Cost (% of claim)</th>
<th>Quality of the judicial processes index (0-18)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Singapore</td>
<td>84.53</td>
<td>164</td>
<td>25.8</td>
<td>15.5</td>
</tr>
<tr>
<td>2 Korea, Rep.</td>
<td>84.15</td>
<td>290</td>
<td>12.7</td>
<td>14.5</td>
</tr>
<tr>
<td>3 Norway</td>
<td>81.27</td>
<td>400</td>
<td>9.9</td>
<td>14</td>
</tr>
<tr>
<td>4 Kazakhstan</td>
<td>81.25</td>
<td>370</td>
<td>22</td>
<td>16</td>
</tr>
<tr>
<td>5 Australia</td>
<td>79.00</td>
<td>402</td>
<td>23.2</td>
<td>15.5</td>
</tr>
<tr>
<td>6 China</td>
<td>78.97</td>
<td>496</td>
<td>16.2</td>
<td>15</td>
</tr>
<tr>
<td>7 Lithuania</td>
<td>78.80</td>
<td>370</td>
<td>23.6</td>
<td>15</td>
</tr>
<tr>
<td>8 Georgia</td>
<td>76.90</td>
<td>285</td>
<td>25</td>
<td>13</td>
</tr>
<tr>
<td>9 United Arab Emirates</td>
<td>75.88</td>
<td>445</td>
<td>21</td>
<td>14</td>
</tr>
<tr>
<td>10 Austria</td>
<td>75.49</td>
<td>397</td>
<td>20.6</td>
<td>13</td>
</tr>
</tbody>
</table>

Enforcing Contracts

Good practices

Global good practices

- Specialized commercial court, section or division
- Small claims court / dedicated procedure
- Court automation
- Modern civil procedure rules
- Case management tools like performance measurement reports and pre-trial conference
- Comprehensive ADR framework
What are the main findings in Enforcing Contracts in 2017/18?

Economies with more judicial good practices in place tend to have faster and less costly contract enforcement.

**Highest scores on the QJPI**

- **Kazakhstan (16)**
  - Time: 370 days
  - Cost: 22%

- **Australia (15.5)**
  - Time: 402 days
  - Cost: 23.2%

- **Singapore (15.5)**
  - Time: 164 days
  - Cost: 25.8%

- **China (15.5)**
  - Time: 496.3 days
  - Cost: 16.2%

**Lowest scores on the QJPI**

- **Iraq (1.5)**
  - Time: 520 days
  - Cost: 28.1%

- **Bahrain (2.5)**
  - Time: 635 days
  - Cost: 14.7%

- **Timor-Leste (2.5)**
  - Time: 1285 days
  - Cost: 163.2%

What are the **main findings** in Enforcing Contracts in 2017/18?

*Doing Business* recorded **49 reforms** making it easier to enforce contracts between June 2, 2017 and May 1, 2018.

Among regions, OECD high-income economies have numerous **court good practices** in place as measured by the index, while Middle East & North Africa is the region with the greatest need for reforms.

**Puerto Rico** improved the most in the ease of Enforcing Contracts in 2017/2018 by implementing an electronic case management system for judges and lawyers and by introducing an e-filing and an electronic payment of court fees systems.

Enforcing contracts is fastest in **Singapore** (164 days) and least expensive in **Iceland** (9%). **Kazakhstan** has the highest score in the Quality of Judicial Processes Index (16).
**Who reformed in Enforcing Contracts in 2017/18?**

<table>
<thead>
<tr>
<th>Feature</th>
<th>Economies</th>
<th>Some highlights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduced significant changes to applicable civil procedure or enforcement rules</td>
<td>Albania; Armenia; Djibouti; Kyrgyz Republic; Malawi; Mongolia; Niger; Nigeria (Lagos); Rwanda; São Tomé and Príncipe; Saudi Arabia; Slovenia; Sri Lanka; Ukraine</td>
<td>Kyrgyz Republic, Slovenia, Sri Lanka and Ukraine amended the civil procedure rules to introduce a <strong>pre-trial conference</strong> as part of the case management techniques used in court.</td>
</tr>
<tr>
<td>Expanded court automation by introducing electronic payment, electronic service of process, automatic assignment of cases to judges or by publishing judgments</td>
<td>Canada; Georgia; Jordan; Kazakhstan; Madagascar; Poland; Puerto Rico (U.S.); Slovak Republic; Turkey; Vietnam; Zambia; Zimbabwe</td>
<td>Albania, Armenia, Niger, Nigeria (Lagos) and Ukraine issued new rules of <strong>procedure for small claims</strong>. Canada, Jordan and Puerto Rico (U.S.) implemented a <strong>platform to pay fees electronically</strong>.</td>
</tr>
<tr>
<td>Introduced or expanded the electronic case management system</td>
<td>Denmark; Kazakhstan; Madagascar; Namibia; Puerto Rico (U.S.)</td>
<td>Kazakhstan, Turkey, Vietnam and Zimbabwe made <strong>decisions rendered in commercial cases publicly available</strong>. Denmark, Madagascar and Puerto Rico (U.S.) introduced an <strong>electronic case management system</strong>.</td>
</tr>
</tbody>
</table>

**World Bank Group**
<table>
<thead>
<tr>
<th>Feature</th>
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<th>Some highlights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduced electronic filing</td>
<td>Canada; Chile; Denmark; Puerto Rico (U.S.); Saudi Arabia</td>
<td>Canada, Chile, Denmark, Puerto Rico (U.S.) and Saudi Arabia introduced an <strong>electronic filing system</strong> for commercial cases, allowing attorneys to submit the initial summons online.</td>
</tr>
<tr>
<td>Introduced or expanded specialized commercial court</td>
<td>Djibouti; Ethiopia</td>
<td>Djibouti and Ethiopia introduced <strong>dedicated benches to resolve commercial disputes.</strong></td>
</tr>
<tr>
<td>Expanded the alternative dispute resolution framework</td>
<td>Benin; Burkina Faso; Cameroon; Central African Republic; Chad; Comoros; Congo, Dem. Rep.; Congo, Rep.; Côte d'Ivoire; Djibouti; Equatorial Guinea; Gabon; Guinea; Guinea-Bissau; Ireland; Kyrgyz Republic; Mali; Niger; Senegal; Singapore; Sudan; Togo; Turkey</td>
<td>Djibouti, Ireland and Kyrgyz Republic adopted <strong>laws that regulate all aspects of mediation</strong> as an alternative dispute resolution mechanism. Sudan recognized voluntary conciliation and mediation as ways of resolving commercial disputes. Turkey introduced <strong>financial incentives for mediation.</strong></td>
</tr>
</tbody>
</table>
Top improvers in 2017/18 - **Denmark**

- **Denmark** made enforcing contracts easier by gradually automating its courts since 2016.

- In 2018, all courts in Denmark became equipped of an electronic filing system and an electronic case management system for the use of judges and lawyers was implemented.

<table>
<thead>
<tr>
<th></th>
<th>2016/17</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Time (days):</strong></td>
<td>485</td>
<td>485</td>
</tr>
<tr>
<td><strong>Cost (% of claim)</strong></td>
<td>23.3%</td>
<td>23.3%</td>
</tr>
<tr>
<td><strong>QJPI (1-18):</strong></td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td><strong>Score</strong></td>
<td>68.37</td>
<td>73.92</td>
</tr>
<tr>
<td><strong>Ranking</strong></td>
<td>31</td>
<td>14</td>
</tr>
</tbody>
</table>

Source: Doing Business database.
Top improvers in 2017/18 - Niger

Following the creation of a specialized commercial court in 2016, the time for trial and to obtain a judgment decreased.

In 2018, a simplified small claims procedure was adopted.

The OHADA Uniform Act on Mediation entered into force in Niger in March 2018, regulating substantially all aspects of mediation.

Source: Doing Business database.
Where is it **easy** and where is it **difficult** to resolve a commercial dispute in 2017/18?

Features covered by the Quality of Judicial Processes Index

Number of economies with feature

- Court Automation
- Structure & proceedings
- Case management
- ADR

Which economies have put in place good practices and which economies have not?

Quality of judicial processes index score (0-18)

Training and efficiency in the judicial system

- With law and litigation becoming more complex in recent decades, the need for specialized judges has increased.
- Judicial training is a key factor in the successful implementation of regulatory reform governing commercial court proceedings.
- Only 101 of the 190 economies measured by Doing Business have a specialized commercial jurisdiction in place.
- Specialized commercial jurisdictions can result in shorter resolution times.

Solving commercial disputes is 92 days faster in economies with a specialized commercial jurisdiction

THANK YOU!

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