Enforcing contracts

Measuring good practices in the judiciary

Efficient contract enforcement is essential to economic development and sustained growth.[1] Economic and social progress cannot be achieved without respect for the rule of law and effective protection of rights, both of which require a well-functioning judiciary that resolves cases in a reasonable time and is predictable and accessible to the public.[2] Economies with a more efficient judiciary, in which courts can effectively enforce contractual obligations, have more developed credit markets and a higher level of development overall.[3] A stronger judiciary is also associated with more rapid growth of small firms.[4] Overall, enhancing the efficiency of the judicial system can improve the business climate, foster innovation, attract foreign direct investment and secure tax revenues.[5]

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.[6] Another study, focusing on Mexico, found that states with better court systems have larger and more efficient firms.[7] Effective courts reduce the risks faced by firms and increase their willingness to invest.[8] Firms in Brazil, Peru and the Philippines report that they would be willing to invest more if they had greater confidence in the courts.[9]

Where legal institutions are ineffective, improvements in the law may have limited impact. A study of the transitioning economies of Eastern Europe and the former Soviet Union between 1992 and 1998 found that reforms in corporate and bankruptcy laws had little effect on the development of their financial institutions. Improvements began only once their legal institutions became more efficient.[10]

The efficiency of courts continues to vary greatly around the world. Enforcing a contract through the courts can take less than 10 months in New Zealand, Norway and Rwanda but almost 4 years in Bangladesh. And the cost of doing so ranges from less than 10% of the value of the claim in Iceland, Luxembourg and Norway to more than 80% in Burkina Faso and Zimbabwe. In five economies, including Indonesia and Mozambique, the cost can exceed the value in dispute, suggesting that litigation may not be a cost-effective way to resolve disputes.

AN EXPANDED FOCUS FOR THE INDICATORS

Over the years the *Doing Business* indicators on enforcing contracts have measured the time, cost and procedural complexity to resolve a standardized commercial dispute between two domestic businesses through local first-instance courts. The dispute involves the breach of a sales contract worth twice the income per capita or $5,000, whichever is greater. The case study assumes that a seller delivers custom-made goods to a buyer who refuses delivery, alleging that the goods are of inadequate quality. To enforce the sales agreement, the seller files a claim with a local court, which

- *Doing Business* introduces a new measure in the enforcing contracts indicator set this year, the quality of judicial processes index. This indicator tests whether each economy has implemented a series of good practices in the areas of court structure and proceedings, case management, court automation and alternative dispute resolution.
- On average, OECD high-income economies have the largest number of judicial good practices in place as measured by the new index, while Sub-Saharan African economies have the fewest.
- Economies that score well on the new index tend to have faster and less costly dispute resolution as measured by the enforcing contracts indicators.
- None of the 189 economies covered by *Doing Business* receive full points on the new index, showing that all economies still have room for improvement in judicial efficiency.

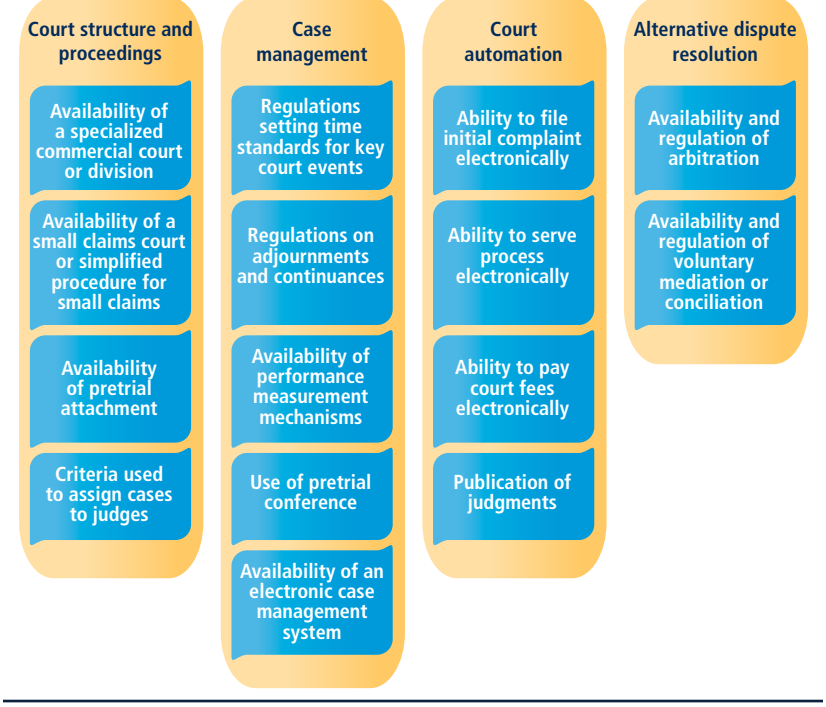
hears arguments on the merits of the case. Before reaching a decision in favor of the seller, the judge appoints an expert to provide an opinion on the quality of the goods in dispute, which distinguishes the case from simple debt enforcement.

This year *Doing Business* introduces an important change in methodology for the enforcing contracts indicators. While it continues to measure the time and cost to resolve a standardized commercial dispute under the same assumptions, it now also tests whether each economy has adopted a series of good practices that promote quality and efficiency in the commercial court system. For this purpose it has replaced the indicator on procedural complexity with a new indicator, the quality of judicial processes index. The aim is to capture new and more actionable aspects of the judicial system in each economy, providing a picture of judicial efficiency that goes beyond the time and cost associated with resolving a dispute.

The quality of judicial processes index covers a set of good practices across four areas, corresponding to the four components of the index: court structure and proceedings, case management, court automation and alternative dispute resolution (figure 10.1). These practices can result in a more efficient and transparent judiciary, greater access to justice, a smaller case backlog, faster and less costly contract enforcement and, in some cases, more qualitative judgments.

This case study discusses many of the good practices encompassed by the quality of judicial processes index. It first looks at two aspects of the court structure and proceedings index—the availability of dedicated mechanisms to resolve commercial disputes and the availability of dedicated mechanisms to resolve small claims. It then moves on to case management and court automation, intertwined concepts often treated together. Finally, it explores mechanisms of alternative dispute resolution.

FIGURE 10.1 Areas covered by the quality of judicial processes index



USING DEDICATED SYSTEMS FOR COMMERCIAL CASES AND SMALL CLAIMS

Dedicated systems for commercial cases and small claims can make a big difference in the effectiveness of a judiciary.[11] Having specialized commercial courts or divisions reduces the number of cases pending before the main first-instance court and thus can lead to shorter resolution times within the main trial court—one reason that economies have sometimes introduced specialized courts as a case management tool. But the benefits do not end there. Commercial courts and divisions tend to promote consistency in the application of the law, increasing predictability for court users.[12] And judges in such courts develop expertise in their field, which likely leads to faster and more qualitative dispute resolution.[13]

The data show that 97 of the 189 economies covered by *Doing Business* have a specialized commercial jurisdiction —established by setting up a dedicated stand-alone court, a specialized commercial section within an existing court or specialized judges within a general civil court. In the 16 Sub-Saharan African economies that have introduced commercial courts or sections over the past ten years—Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Ghana, Guinea-Bissau, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Rwanda, Senegal, the Seychelles, Sierra Leone and Togo—the average time to resolve the standardized case measured by *Doing Business* was reduced by about 2.5 months. In Côte d'Ivoire the reduction was more than 6 months. In 2011 resolving a commercial dispute in Abidjan took 770 days. In 2013, after the creation of a specialized commercial court, it took only 585 days.

Small claims courts or simplified procedures for small claims, as the form of justice most likely to be encountered by the general public, play a special part in

building public trust and confidence in the judicial system.[14] They help meet the modern objectives of efficiency and cost-effectiveness by providing a mechanism for quick and inexpensive resolution of legal disputes involving small sums of money.[15] In addition, they tend to reduce backlogs and caseloads in higher courts. Small claims courts usually use informal hearings, simplified rules of evidence and more streamlined rules of civil procedure—and typically allow the parties to represent themselves.[16]

Faster and less costly dispute resolution matters to small and medium-size enterprises, which may not have the resources to stay in business during long, costly litigation. If a claim could not be enforced because the relative cost is prohibitive, there would be a denial of justice.[17] By providing a venue for resolving claims with costs and procedures that are realistic and proportionate to the size of the dispute, small claims courts and simplified procedures for small claims increase access to justice for businesses and individuals.[18]

According to *Doing Business* data, 128 economies have either a stand-alone small claims court or a simplified procedure for small claims within the first-instance court.[19] Of these 128 economies, 116 allow parties to represent themselves during the proceedings. Across regions, Latin America and the Caribbean and the OECD high-income group have the largest shares of economies with a court or simplified procedure for small claims in place—91% in both cases (figure 10.2).

MANAGING THE FLOW OF CASES

Case management refers to a set of principles and techniques intended to ensure the timely and organized flow of cases through the court from initial filing through disposition. Case management enhances processing efficiency and promotes early court control of cases.[20] When well implemented, case management techniques can enhance record-keeping, reduce delays and case backlogs and provide information to support strategic allocation of time and resources—all of which encourage generally better services from courts.[21] They can also improve the predictability of court events, which can ensure accountability, increase public trust, reduce opportunities for corruption and enhance the transparency of court administration.[22]

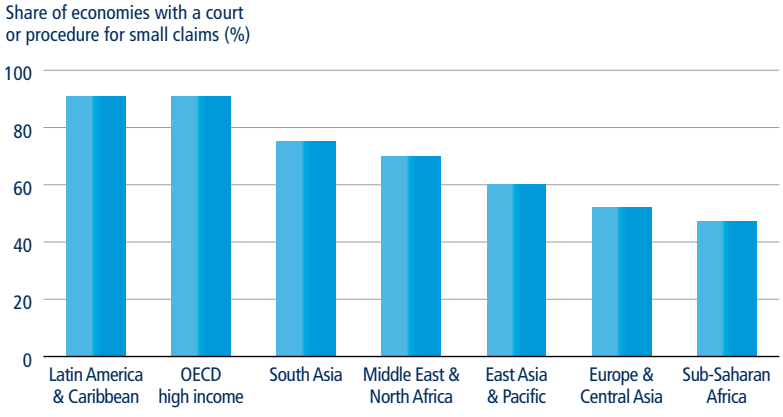
While the case management principles adopted by courts vary depending on their needs and the local legal culture, some have been applied so consistently worldwide as to have evolved into a set of core principles. These include early court intervention, establishing meaningful events such as the filing of a plea or the submission of the final judgment, establishing time frames for these events and for disposition, creating realistic schedules and expectations that events will occur as scheduled, introducing early options for settlement, establishing firm and realistic appearance dates and developing mechanisms that control frivolous adjournments.[23]

Doing Business collects data on three of the recognized core principles: the availability of regulations setting time standards for key court events, the availability of regulations on adjournments and continuances, and the possibility of holding a pretrial conference—a hearing to narrow down contentious issues and evidentiary questions before the trial, explore the complexity of the case and the projected length of the trial, create a schedule for the proceedings and check with the parties on the possibility of settlement. When collecting data relating to regulations on time standards and adjournments, *Doing Business* also surveys experts on whether these standards are respected in practice.

The data show that having a pretrial conference is a common case management tool, used in 87 economies (figure 10.3). Laws or regulations setting time standards for key court events exist in 111 economies, though these time standards are respected in practice in only 76 of these economies. Detailed rules regulating adjournments are available in only 50 economies.

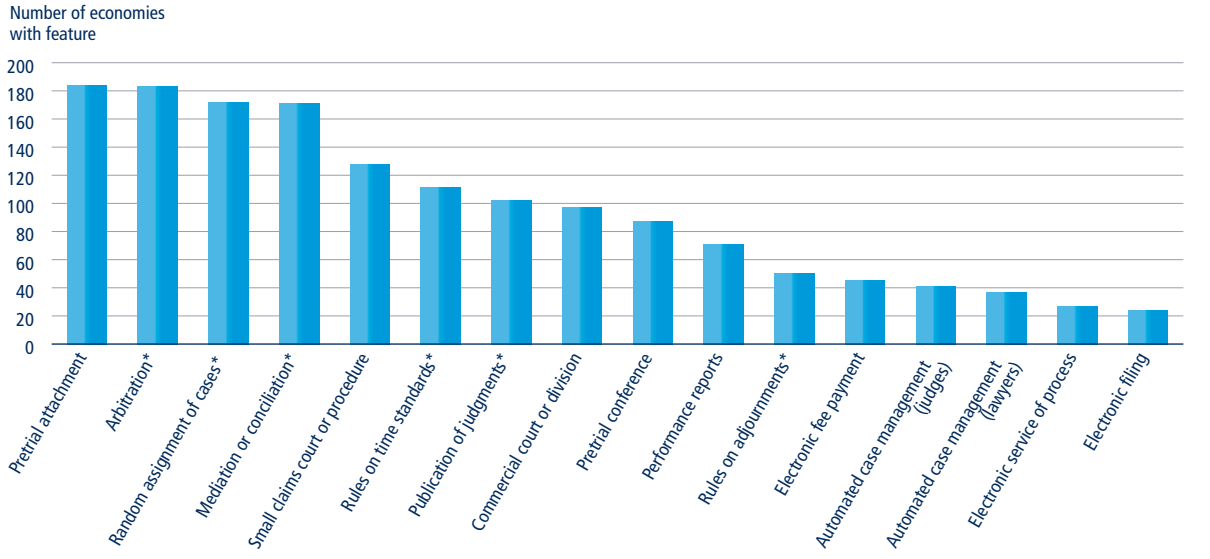
Another way to support effective implementation of case management techniques is to use case management reports that compile and analyze case performance data.[24] These can show

FIGURE 10.2 Most economies in Latin America and the Caribbean have a court or procedure for small claims in place



Source: Doing Business database.

FIGURE 10.3 Some of the features covered by the quality of judicial processes index exist in far more economies than others



Source: Doing Business database.
Note: For features marked with an asterisk, an economy must have received a score of at least 0.5 to be included in the count. For details on the scoring, see the data notes.

whether case management goals have been met in individual cases or at the court level—such as through data on the number of cases pending before the court, the clearance rate, the average disposition time or the age of the pending caseload. Such reports can show court administrators where inefficiencies and bottlenecks lie and also help them track the progress of ongoing case management initiatives. And by breaking data down at the judge level, they can serve as a performance measurement tool—an important use, since research shows that many delays in litigation are attributable to lax case management by the judge.[25] Data collected this year on the availability of four of the more common types of performance management reports show that at least two of these types are publicly available in 71 economies.[26]

Some economies have introduced electronic systems to support case management by automating many of its components.[27] Features available through electronic case management systems may include access to laws, regulations and case law; access to forms to be submitted to the court; automatic generation of a hearing schedule; management of electronic notifications; tracking of the status of cases; management of case documents; electronic filing of briefs and motions; and access to court orders and decisions. Such systems may be available to a range of users, from judges to lawyers, court administrators and court users. *Doing Business* looks at their availability to judges and to lawyers. The data show that they are more commonly available to judges: an electronic case management system as defined by *Doing Business* is available to judges in 41 economies, while such a system is available to lawyers in only 37 economies.[28]

AUTOMATING PROCESSES

As courts around the world have made increasing use of electronic systems, court users have seen the benefits—in greater judicial transparency as well as greater court efficiency.

Automation and judicial transparency

Until this year *Doing Business* measured court automation only in connection with the availability of electronic filing of the initial summons. This year it began looking at two additional features: electronic service of process and electronic payment of court fees. Just as for electronic filing of the initial summons, *Doing Business* tests only whether these features are in place, not whether they are used by the majority of court users. For all these features the court of reference is the one that would have jurisdiction to hear the *Doing Business* standardized case.

These features streamline and speed up the process of commencing a lawsuit. But they also have broader benefits. Electronic records tend to be more convenient and reliable. Reducing in-person interactions with court officers minimizes the chances for corruption and results in speedier trials, better access to courts and more reliable service of process. These features also reduce the cost to enforce a contract—court users save in reproduction costs and courthouse visits, while courts save in storage costs, archiving costs and court officers' costs. And studies show that after electronic filing is introduced in courts, the accessibility of information increases and

access to and delivery of justice improve considerably.[29]

In the past five years *Doing Business* recorded 13 reforms focused on introducing an electronic filing system for commercial cases and allowing attorneys to submit the initial complaint online. Introducing electronic filing was the most common feature of enforcing contracts reforms recorded in last year's report and is among the most common in this year's report. Today electronic filing of the initial complaint is allowed in 24 economies. Electronic service of process is slightly more common—the initial summons can be served by e-mail, fax or text messaging in 27 economies. Electronic payment of court fees is the most commonly available feature of court automation measured by *Doing Business*—allowed in 45 economies. Even so, these three features, along with electronic case management, remain the least common of the good practices covered by the quality of judicial processes index (figure 10.4).

Doing Business also explores two dimensions that are closely intertwined with court automation and, ultimately, with judicial transparency. The first relates to how cases are assigned to judges within the competent court. A credible system for random assignment of cases minimizes the chances for corruption.[30] While almost all economies (172) provide for random assignment of cases, only 48 have a fully automated process.

The second relates to whether judgments rendered in commercial cases at all levels are made publicly available.[31] Publishing judgments contributes to transparency and predictability, allowing litigants to rely on existing case law and judges to consistently build on it. Access to the results of commercial cases benefits companies that invest in a particular jurisdiction, clarifying the scope of their rights and duties.[32] Making judgments available does not necessarily require substantial resources, but it does require internal organization. Case decisions must be accessible and catalogued efficiently so that they can be easily searched.

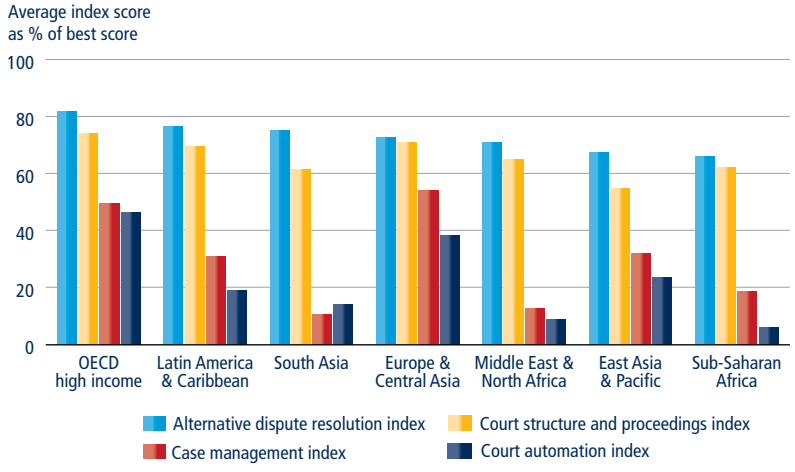
In 42 economies courts publish virtually all recent judgments in commercial cases either online or through publicly available gazettes. Sub-Saharan Africa accounts for only two of these economies; the Middle East and North Africa and South Asia also account for only two each.

Automation and court efficiency

Sophisticated court automation can support effective case management. Courts that have automated processes for actions such as serving documents or submitting a claim can more easily implement electronic case management systems. Even where case management is not fully automated, some court automation can be an effective tool for court administrators, enabling them to more easily monitor the movement of cases through the court. Economies in the OECD high-income group and Europe and Central Asia tend to have both greater court automation and more developed case management than those in any other region. Together, these two regions account for 17 of the 24 economies worldwide that make electronic filing available and for 23 of the 34 economies that offer an electronic case management system for both judges and lawyers. Outside these regions, court automation remains limited: 74 economies score a 0 on the court automation index.

The Republic of Korea and Singapore are two of only four economies worldwide that receive full points on the court automation index; they also score points for the availability of electronic case management systems for both judges and lawyers. Unsurprisingly, both these economies reformed in this area in the past few years. Korea launched an electronic case filing system in 2010 that allows electronic document submission, registration, service notification and access to court documents (box 10.1). Singapore introduced a new electronic litigation system in 2014. The system allows litigants to file cases online—and it enables courts to keep litigants and lawyers informed about their cases through e-mail, text alerts and text messages; to manage hearing dates; and even to hold certain hearings by videoconference.

FIGURE 10.4 Court automation and case management are two areas where many economies can improve



Source: Doing Business database.

BOX 10.1 The computerization of Korean courts

Today Korean courts are fully computerized, but this did not happen overnight. The process started in the late 1970s with the creation of a database of cases flowing through courts. In the early 1980s a word processing software was introduced to support judges in writing judgments. In 1986 a case management system was launched, enabling clerks and judges to search all civil cases in the database and deal more efficiently with their caseloads. Soon after, a master plan for creating e-courts was conceived—and this was followed by steps to make the case management system accessible to external users, add electronic signatures and digital certificates to the system and make real-time national data on court activities available. Finally, in 2010 Korea launched an electronic case filing system. The system enables some judges to adjudicate up to 3,000 cases a year, manage up to 400 a month and hear up to 100 pleas a month.

Sources: Doing Business research; interview with Korean Judge Hoshin Won, Daegu District Court, Seoul.

The data suggest a striking relationship between court automation and case management on the one hand and the time and cost for dispute resolution on the other. Singapore has the shortest resolution time worldwide—150 days for the standardized commercial dispute. Korea is a short step away, with a resolution time of 230 days. Korea also has among the lowest costs worldwide to resolve a commercial dispute, at about 10.3% of the value of the claim. And both Korea and Singapore are among the economies that have been promoting judicial transparency and the development of consistent case law through the online publication of judgments rendered at all levels.

USING ALTERNATIVE MEANS TO RESOLVE DISPUTES

While the *Doing Business* indicators on enforcing contracts have traditionally measured dispute resolution through the local court system, this year the focus has broadened to also cover mechanisms of alternative dispute resolution (ADR)—in particular, arbitration, voluntary mediation and conciliation. In commercial arbitration the parties agree to submit their dispute to an independent arbitrator or arbitral tribunal, which issues a final and binding decision. In a mediation or conciliation process the parties ask a third person to assist them in reaching an amicable settlement of their dispute.

ADR should be seen not as something that can replace traditional litigation but as a tool that can assist courts in resolving disputes in a timely, cost-effective and transparent way. ADR mechanisms can improve efficiency in the court system as a whole by helping to reduce case backlogs and bottlenecks.[33] They can reduce delays where these are caused by complex formal procedures or inadequate court resources—and reduce high costs where these are driven by formal procedures, high filing fees and court delays. Economies with an integrated system of courts and ADR tend to have a more reliable judiciary, benefiting the courts, the parties involved and the economy as a whole.[34]

When used as an alternative to the judicial process, ADR has its own set of benefits. It gives the parties more control over the resolution of disputes and in most cases increases their satisfaction with outcomes. A study in the Canadian province of Quebec has even shown that a form of ADR known as judge-presided settlement conference promotes access to justice.[35]

Effective systems of domestic commercial arbitration and mediation or conciliation matter to investors.[36] Lawyers and business owners know that high litigation costs and long delays make resolving commercial disputes in court difficult and expensive and may look elsewhere for dispute resolution—and businesses may pass the costs on to consumers or abstain from investing in a jurisdiction.[37]

Especially in smaller cases, having a neutral mediator or arbitrator saves businesses time and money in resolving commercial disputes and provides greater control over outcomes and confidentiality.[38] It also reduces the instances in which a dispute leads to the termination of a commercial relationship.[39] And with today's increasingly complex business dealings, specialized ADR programs focusing on particular types of technical or complex disputes can be more effective and produce better settlements than courts, increasing litigants' satisfaction with outcomes.

Almost all (183) of the economies surveyed recognize arbitration in one way or another as a mechanism for dispute resolution. Most (171) also recognize voluntary mediation or conciliation. To be effective, ADR mechanisms need to be accessible. They also need to be comprehensively regulated, with all substantive and procedural provisions available in a single source, such as a specific statute. The data show that this is more often the case for arbitration: while 179 economies have a dedicated law or chapter on arbitration, only 102 have a similar instrument on voluntary mediation or conciliation.

Economies worldwide have consistently focused on promoting and regulating arbitration and mediation. Three economies—Côte d'Ivoire, Latvia and Senegal—have made such issues a priority over the past year, introducing new laws that regulate mediation.

TABLE 10.1 On average, OECD high-income economies have the highest number of judicial good practices in place as measured by the new indices

Region	Court structure and proceedings index (0–5)	Case management index (0–6)	Court automation index (0–4)	Alternative dispute resolution index (0–3)	Quality of judicial processes index (0–18)
OECD high income	3.70	2.96	1.85	2.45	10.96
Europe & Central Asia	3.54	3.24	1.52	2.18	10.48
Latin America & Caribbean	3.48	1.84	0.75	2.30	8.37
East Asia & Pacific	2.74	1.91	0.94	2.02	7.61
South Asia	3.06	0.63	0.56	2.25	6.50
Middle East & North Africa	3.25	0.75	0.35	2.13	6.48
Sub-Saharan Africa	3.11	1.11	0.23	1.98	6.43

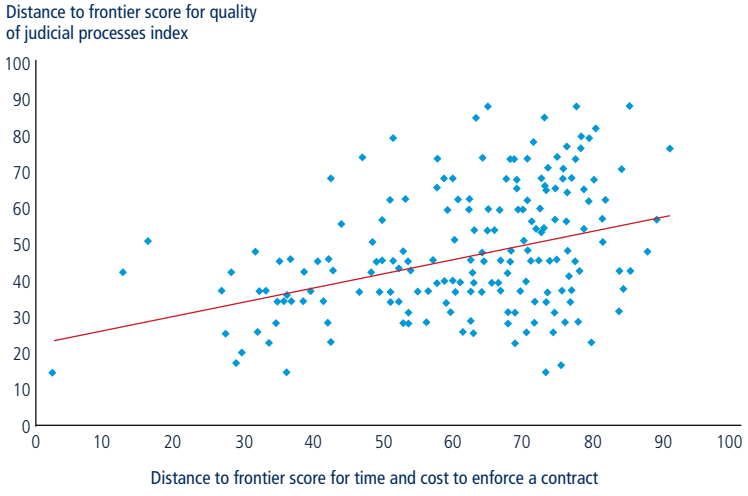
Source: Doing Business database.

Note: The quality of judicial processes index is the sum of the four other indices shown here, with 18 being the highest possible score. For details on how the indices are constructed, see the data notes.

WHY DOES ALL THIS MATTER?

OECD high-income economies tend to focus more consistently on implementing judicial good practices. On average, these economies have the largest number of judicial good practices as measured by *Doing Business* (table 10.1). But top performers can be found in all income groups. Of the three economies with the highest scores on the quality of judicial processes index—Singapore, Australia and the former Yugoslav Republic of Macedonia—only two are high-income economies. And while some regions have relatively low average scores on the new index, top performers can be found in these regions as well. In Sub-Saharan Africa, for example, Mauritius receives 13 of 18 possible points, a higher score than the average for OECD high-income economies.

FIGURE 10.5 Economies with more judicial good practices in place tend to have faster and less costly contract enforcement



Source: Doing Business database.

Note: The correlation between the distance to frontier score for the quality of judicial processes index and the distance to frontier score for the time and cost to enforce a contract is 0.37. The relationship is significant at the 1% level after controlling for income per capita.

A well-organized, reliable and streamlined judiciary plays an important part in the efficient delivery of justice. The data for the enforcing contracts indicators show that economies that have more judicial good practices in place also tend to have faster and less expensive commercial dispute resolution (figure 10.5).

The availability of good practices making contract enforcement easier and more efficient matters to businesses and, indeed, even plays a role in the level of domestic credit provided by the financial sector to the economy. Economies that score well on the quality of judicial processes index have higher levels of credit provided to the private sector by domestic financial institutions (figure 10.6).

CONCLUSION

Data for the new quality of judicial processes index highlight great variation in the implementation of judicial good practices across the 189 economies covered. Some practices—such as the availability of arbitration or the availability of a small claims court or procedure—are widespread; others still need attention in even the most sophisticated economies. One example is electronic case management, available to judges in only 41 economies and to lawyers in only 37.

FIGURE 10.6 Economies with more judicial good practices in place have higher levels of domestic credit provided to the private sector

Sources: Doing Business database; World Development Indicators database (http://data.worldbank.org/indicator), 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. The correlation between the distance to frontier score for the quality of judicial processes index and domestic credit to private sector as a percentage of GDP is 0.40. The relationship is significant at the 1% level after controlling for income per capita.

None of the 189 economies covered by *Doing Business* receive full points on the quality of judicial processes index. By helping to identify specific areas needing attention, the index can be a useful tool for governments seeking to reform and modernize their judiciary.

NOTES

This case study was written by Erica Bosio, Salima Daadouche, Christian De la Medina Soto and Maksym Iavorskyi.

1. Esposito, Lanau and Pompe 2014; Dakolias 1999; Ball and Kesan 2010; Klerman 2006; Dam 2006; Rosales-López 2008.
2. Dakolias 1999; Sherwood, Shepherd and De Souza 1994.
3. Dam 2006.
4. Islam 2003.
5. Esposito, Lanau and Pompe 2014.
6. World Bank 2004.
7. World Bank 2004.
8. World Bank 2004.
9. Castelar-Pinheiro 1998; Sereno, de Dios and Capuano 2001; Herrero and Henderson 2001.
10. Pistor, Raiser and Gelfer 2000.
11. Djankov and others 2003.
12. Zimmer 2009.
13. Zimmer 2009.
14. Ramsay 1996.
15. Axworthy 1976; Ramsay 1998.
16. HALT 2007; Baldwin 2000.
17. Axworthy 1976.
18. Baldwin 2000.
19. Throughout this case study, any economy for which *Doing Business* covers two cities is included in the count of economies with a particular feature as long as the feature is available in at least one of the two cities.
20. Michigan State Court Administrative Office 2004; Gramckow and Nussenblatt 2013.
21. Michigan State Court Administrative Office 2004; Gramckow and Nussenblatt 2013; Rooze 2010; Steelman, Goerdt and McMillan 2004.
22. USAID, Center for Democracy and Governance 2001; Gramckow and Nussenblatt 2013; Rooze 2010; Steelman, Goerdt and McMillan 2004.
23. Michigan State Court Administrative Office 2004; Gramckow and Nussenblatt 2013; Rooze 2010; Steelman, Goerdt and McMillan 2004.
24. Gramckow and Nussenblatt 2013; Steelman, Goerdt and McMillan 2004.
25. Steelman 2008.
26. The four types of reports are time to disposition report, clearance rate report, age of pending caseload report and single case progress report.
27. Rooze 2010.
28. Under the *Doing Business* methodology, an economy is considered to have an electronic case management system available to judges if judges in the relevant court can use such a system for at least four of eight specified purposes. An economy is considered to have an electronic case management system available to lawyers if lawyers can use such a system for at least four of a different set of seven purposes. For more details, see the data notes.
29. Berkman Center for Internet & Society at Harvard University 2010; Zorza 2013.
30. USAID 2009.
31. An exclusion is made for very small cases and cases in which privacy may be an issue.
32. Byfield 2011.
33. Love 2011.
34. World Bank Group, Investment Climate Advisory Services 2011.
35. Roberge 2014.
36. Pouget 2013.
37. National Arbitration Forum 2005.
38. Pouget 2013; Stipanowich 2004; Love 2011.
39. UNCITRAL 2004b.