

# Enforcing Contracts and Resolving Insolvency

## *Training and efficiency in the judicial system*

A well-prepared and robust judiciary is fundamental to the rule of law. The training of judges facilitates the prompt resolution of trials and can lead to judicial decisions of higher quality. Training can also foster greater uniformity and predictability of decisions and can increase public confidence in the legal system's ability to deal effectively with specialized matters. Well-trained judges maintain the rule of law through enduring principles and predictable processes, while also responding to a rapidly changing society.

Ensuring that the judiciary can handle complex commercial cases efficiently is a fundamental aspect of any rule of law system. For that reason, specialized judicial education and training are critical to guaranteeing the efficiency and quality of court processes. The decisions of judges trained in basic economics, for example, are significantly less likely to be appealed than decisions made by their untrained counterparts.<sup>1</sup> Furthermore, judicial training can prevent ruling errors; courts where judges receive training show lower decision reversal rates.<sup>2</sup> Extensive literature assesses how the regulatory environment for contract enforcement and resolving insolvency affects a broad range of economic outcomes.<sup>3</sup> Empirical research also supports the view that efficient contract enforcement is essential to economic development and sustained growth.<sup>4</sup>

### THE CONCEPT OF JUDICIAL TRAINING

Despite the long history of courts, the training of judges is a relatively recent

phenomenon. The first specialized training schools were established in France, the Netherlands and the United States in the 1960s. Previously, it was believed that judges already had all the required knowledge and, therefore, would not benefit from additional or continuous training. In France judges received no training throughout their careers despite suffering from a poor public image as archaic and cut off from the world and society. After they publicly expressed their distress over their lack of preparation for the growing complexity of legislation, the French National School for the Judiciary was created in 1959.<sup>5</sup>

In recent years, efforts have been made—mainly by the European Union and national judicial schools meeting at international fora—to establish a set of common principles of judicial training (table 6.1). Although these principles are not recognized as international standards, they represent a first effort toward convergence by interested stakeholders.

As law and litigation have grown more complex in recent decades, the need



- Worldwide only 101 of the 190 economies measured by *Doing Business* have a specialized commercial jurisdiction in place; only 31 have a specialized court handling insolvency cases.
- Judicial training programs can improve judicial performance. Economies with training programs for judges on insolvency-related issues tend to perform better in the *Doing Business* resolving insolvency indicators.
- Judicial training is a key factor in the successful implementation and positive impact of regulatory reform governing commercial and insolvency court proceedings.
- Training formed a central part of the United Arab Emirates' strategy to modernize its judiciary and has been instrumental in the successful creation of specialized commercial courts, the introduction of electronic case management systems and the implementation of a new insolvency regime.
- Institutionalized training programs for judges in Indonesia supported the successful implementation of reforms establishing small claims courts and the successful adoption of new insolvency laws, decreasing the time to resolve insolvency cases.



TABLE 6.1 Principles of judicial training

Common principle	European Judicial Training Network principles	International Organization for Judicial Training principles
Judicial training is multidisciplinary and includes legal and non-legal knowledge, professional skills and values.	Judicial training is a multidisciplinary and practical type of training, essentially intended for the transmission of professional techniques and values complementary to legal education.	Acknowledging the complexity of the judicial role, judicial training should be multidisciplinary and include training in law, non-legal knowledge, skills, social context, values and ethics.
Judges need to receive initial training.	All judges should receive initial training before or on their appointment.	All members of the judiciary should receive training before or upon their appointment.
Continuous training is a right and responsibility for judges.	All judges should have the right to regular continuous training after appointment and throughout their careers and it is their responsibility to undertake it. They should have time for it as part of their working time. Every Member State should put in place systems that ensure judges are able to exercise this right and responsibility.	All members of the judiciary should also receive regular training throughout their careers. It is the right and the responsibility of all members of the judiciary to undertake training. Each member of the judiciary should have time to be involved in training as part of their judicial work.
Institutions responsible for judicial training should determine the content.	In accordance with the principles of judicial independence the design, content and delivery of judicial training are exclusively for national institutions responsible for judicial training to determine.	To preserve judicial independence, the judiciary and judicial training institutions should be responsible for the design, content, and delivery of judicial training.
Judges should train judges.	Training should primarily be delivered by judges who have been previously trained for this purpose.	Training should be judge-led and delivered primarily by members of the judiciary who have been trained for this purpose.
Adequate education techniques should be used.	Active and modern educational techniques should be given primacy in judicial training.	Judicial training should reflect best practices in professional and adult training program design. It should employ a wide range of up-to-date methodologies, involving new technologies, distance/online learning (complementary when appropriate) and electronic media.
Appropriate funding should be allocated.	Member States should provide national institutions responsible for judicial training with sufficient funding and other resources to achieve their aims and objectives.	All states should provide their institutions responsible for judicial training with sufficient funding and other resources to achieve their aims and objectives.
The senior judiciary should support training.	The highest judicial authorities should support judicial training.	Judicial leaders and the senior judiciary should support judicial training.

Sources: Adapted from European Judicial Training Network 2016 and International Organization for Judicial Training 2017.

for specialized judges has increased. However, just 101 of the 190 economies measured by *Doing Business* have a specialized commercial jurisdiction<sup>6</sup> in place, and only 31 economies have a specialized bankruptcy court handling insolvency cases. Having a specialized commercial jurisdiction can result in shorter resolution times (figure 6.1).

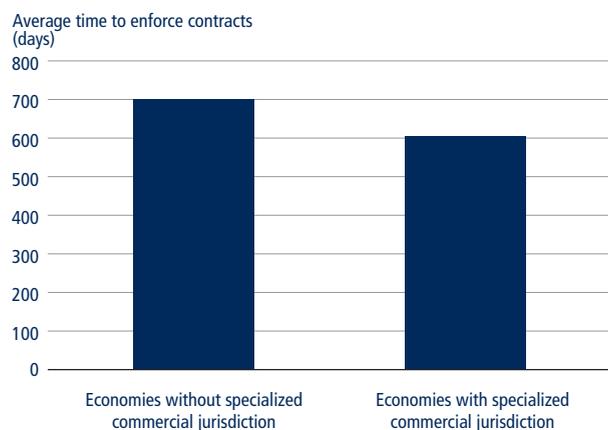
Specialized courts are created to handle complex legal issues in the areas of commercial, insolvency, securities or intellectual property law. Such courts require specialized judges with training in specific and complex procedures. In an ever-changing business world, judges' knowledge must be kept current on the rapidly-evolving business regulatory environment (box 6.1).

Bankruptcy cases, in particular, are complicated due to the demanding interests of the many stakeholders involved,<sup>7</sup>

including a large number and diverse type of creditors, insolvency representatives, practitioners and the debtor facing financial difficulties.<sup>8</sup> Judges that

deal with these types of cases must be highly knowledgeable and develop particular skills (such as financial and accounting skills).<sup>9</sup>

FIGURE 6.1 Solving commercial disputes is 92 days faster in economies with a specialized commercial jurisdiction



Source: *Doing Business* database.

Note: The relationship is significant at the 5% level after controlling for income per capita.

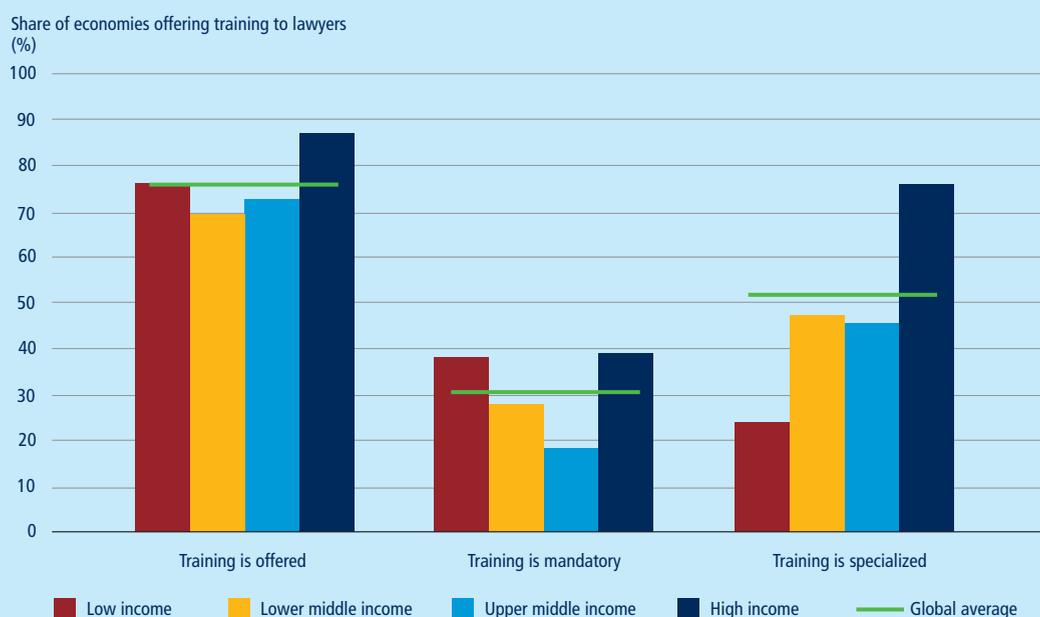
### BOX 6.1 Facilitating investment through enhancing specialized training for lawyers and judges

Companies, corporate finance and capital markets are increasingly complex—they impact wages, financial stability and economic growth. Together with frequent legal and technological changes, this complexity creates obstacles for firms. Businesses must be able to rely on trained, certified professionals (such as accountants, attorneys and judges) to navigate these obstacles. The judiciary's function as a check and balance hinges upon its ability to maintain practical know-how.<sup>a</sup> Regulatory uncertainty in new, complex areas of corporate law increases the risk for information asymmetry among market players. Judges are expected to stay current on the latest investment instruments. Guaranteeing minority investor protections against accrued risks, digital currencies or initial coin offerings<sup>b</sup> are only several examples of the novelties to which legal professionals must adapt.

Given the multidisciplinary nature of business law—it intersects with economics, finance and accounting—specialized training for judges and legal practitioners can act as a critical, mitigating tool. Indeed, the capacity of judges to fairly and efficiently resolve economic disputes is a function of their knowledge of the law and the facts before them. Training can help improve both their understanding of the law and their ability to grapple with complicated financial or technological concepts.

There is a positive correlation between an economy's judicial capacity in commercial law and the quality of its business environment, court efficacy and public confidence.<sup>c</sup> *Doing Business* data for 155 economies show that 120 economies offer training to practicing lawyers, but only 83 provide specialized training on commercial and corporate law. Nearly 76% of high-income economies offer specialized legal training to practicing lawyers while only 24% of low-income economies do.

#### Mandatory training of lawyers is more common in low-income economies, but it is rarely specialized



Source: *Doing Business* database.

The requirements to become a judge vary widely across economies. In 10 economies, judicial candidates to courts adjudicating commercial disputes do not require a law degree (but must satisfy alternative requirements). Only 38 economies—including France, Peru and Madagascar—require that candidates have prior experience or specialized knowledge of business law, finance or capital markets. Specialized training on business, corporate law, finance or capital markets is offered to judges in only 55 economies. Among the main reasons for the lack of specialized training globally are court workload and a lack of targeted training directly applicable to the cases for adjudication.<sup>d</sup>

*continued*

### BOX 6.1 Facilitating investment through enhancing specialized training for lawyers and judges (continued)

#### About one-third of economies offer specialized training to judges



Source: Doing Business database.

Justice systems should act as facilitators of investment and economic growth, not obstacles. *Doing Business* data suggest that specialized training of lawyers and judges is an area that could benefit from more attention and resources worldwide. Even where continuing training and education are offered, they are seldom mandatory or practical to the cases assigned and often exacerbate judges' lack of expertise. However, imposing standardized mandatory training is not an adequate solution. Setting minimum standards should not come at the cost of motivation. Instead, integrating training plans into annual judicial performance evaluations (or otherwise creating incentives to continue learning) are opportunities to enhance judicial systems' indirect but significant role in investment.

a. Palumbo and others 2013; Lorizio and Gurrieri 2014; Magnuson and others 2014.

b. Initial coin offerings are an alternative way of raising capital through the sale of virtual coins or tokens. New businesses can create and sell their own virtual currencies without selling stocks.

c. For more on the EBRD's Core Principles for Commercial Law Judicial Training in Transition Countries, see [www.ebrd.com/documents/legal-reform/core-principles-for-commercial-law-judicial-training.pdf](http://www.ebrd.com/documents/legal-reform/core-principles-for-commercial-law-judicial-training.pdf).

d. European Parliament 2017.

Accumulating job-specific human capital in handling insolvency cases vis-à-vis the general legal knowledge of judges has an outsized effect on bankruptcy outcomes by significantly reducing the duration of the insolvency procedure and achieving more reliable results.<sup>10</sup> To successfully carry out a reorganization proceeding, for example, a judge must demonstrate sound accounting and financial skills; therefore, insolvency judges should be designated on their merit and ability to fully understand the financial situation of the debtor, a skill

that is not characteristic of an ordinary commercial judge.<sup>11</sup> In France, insolvency judges, as a rule, have a good understanding of how the business operates, which ensures a more active involvement of the judges in the hearings and evidentiary stage.<sup>12</sup> Insolvency training of the judiciary has a broader impact on the successful implementation of regulatory reforms. By providing quality-based training to judges after insolvency reforms have passed, the system is significantly more likely to operationalize regulatory changes.

### REGULATORY REFORM, TRAINING OF JUDGES AND JUDICIAL EFFICIENCY GO HAND IN HAND

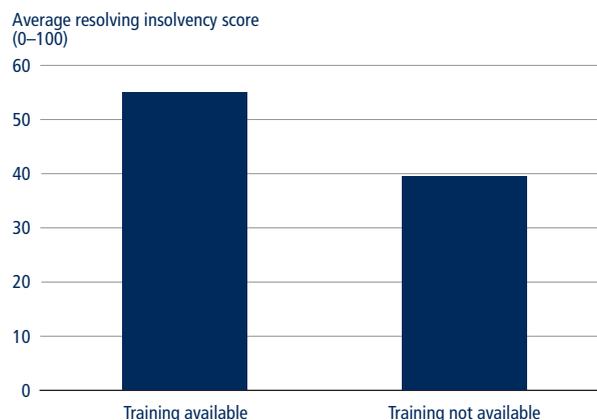
Judicial training programs can improve judicial performance. Specialized training and continuous learning on insolvency law and practice allow the competent judge to make better, more informed decisions, taking into account elements such as the financial well-being and viability of a debtor's business, the effect of the procedures

on the contracts and assets of the debtor, and so on. Economies with training programs for judges score better and are closer to the best regulatory practice as measured by the *Doing Business* resolving insolvency indicators (figure 6.2).

Training can act as an essential conduit for the introduction of new laws, methods and practices to the judiciary.<sup>13</sup> Training can, in effect, make the decisions of judges more predictable. By providing all judges with the same information and knowledge on a particular regulatory reform, they will be more likely to interpret the new rules similarly, resulting in more coordinated, uniform decisions. Chile adopted a new insolvency law in 2014 that specifically required insolvency law training for civil judges dealing with insolvency proceedings; the law also mandated that appellate courts adopt measures to guarantee the law's successful implementation. Since then, judges nationwide have been trained on the new insolvency law and the time to resolve insolvency proceedings has decreased in Santiago. Furthermore, as captured by *Doing Business 2018*, the time to complete a liquidation procedure after an attempt at reorganization fell from 3.2 to two years. *Doing Business* data show a positive association between resolving insolvency reforms and training programs (figure 6.3). Indeed, among economies with the same income per capita, economies with training programs are 11% more likely to have reformed in this area in *Doing Business 2019*.

The cases of Indonesia and the United Arab Emirates provide two examples of economies where training programs have supported the implementation of reforms in the areas of commercial litigation and insolvency. Both countries recently introduced regulatory changes that made it easier to enforce contracts and to resolve insolvency as measured by *Doing Business*, but they also adopted robust training frameworks for judges which contributed to the successful implementation of these reforms.

**FIGURE 6.2** There is a positive association between economies with training programs and a higher resolving insolvency score



Source: *Doing Business* database.

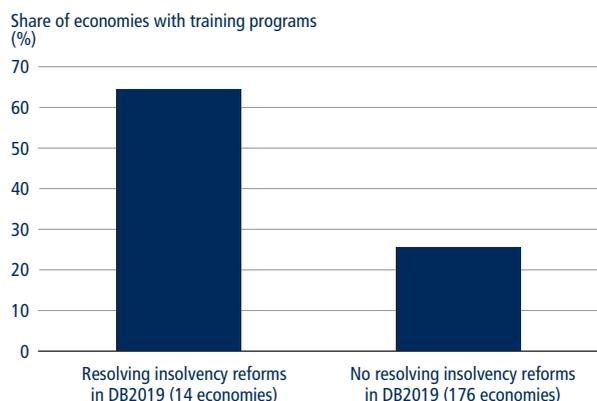
Note: The relationship is significant at the 5% level after controlling for income per capita.

### United Arab Emirates

The United Arab Emirates has been modernizing and improving the quality and efficiency of its judicial system since the early 1990s. The country has effectively redesigned the architecture of its judicial system by implementing court management techniques, adopting new technologies and professionalizing judicial officers within the courts. These efforts have had transformative and

positive effects on the judicial system as a whole, but also in the areas of commercial litigation and insolvency specifically. Judicial training has played a fundamental role in boosting the effectiveness of structural reforms, particularly the creation of specialized commercial courts in 2008, the implementation of an electronic case management system in 2014 and the adoption of a new insolvency regime in 2016. Targeted and continuous

**FIGURE 6.3** Economies with training programs are more likely to have reformed in *Doing Business 2019* in the area of resolving insolvency



Source: *Doing Business* database.

Note: Nine of the 14 economies that reformed in the area of resolving insolvency in 2017/18 have training programs on insolvency law. These economies are Belgium, Djibouti, the Arab Republic of Egypt, Kenya, the Kyrgyz Republic, Malaysia, Pakistan, Rwanda and Turkey. The relationship is significant at the 1% level after controlling for income per capita.

**Training can act as an essential conduit for the introduction of new laws, methods and practices to the judiciary.**

training has allowed judges to put legislative reforms into practice and to use new case management tools to reduce delays and improve the quality of their decisions.

Although training of judicial officers has been an integral part of the strategy to modernize the judiciary since the 1990s, it was formally introduced as a fundamental component in the systems of appointment, performance measurement, incentives and promotion for judges with the Dubai Judicial Authority Law of 2016. The law stipulates that prospective judges must pass a training course before their appointment and that they must attend an orientation before sitting on the bench. Additionally, judges' promotions are linked to their completion of training programs (they are required to attend a minimum number of training programs each year). Indeed, there is a positive association between the accuracy of judgments—understood as the percentage of cases upheld as opposed to the cases overturned or amended by the appellate court—and the number of trainees following the formal inclusion of training in the United Arab Emirates' judicial authority law (figure 6.4).

Under the direction of the Judicial Council, the general strategy for providing judicial training in the United Arab Emirates is guided by existing needs and the requirements of the judicial inspections done on individual judges. Training is provided by the Dubai Judicial Institute, a dedicated institution for judicial training. The institute offers continuous and specialized training in diverse topics such as legal awareness, Islamic economics and Judicial Council leadership as well as customized training programs. Also, all commercial court judges receive training on every legal reform or new court

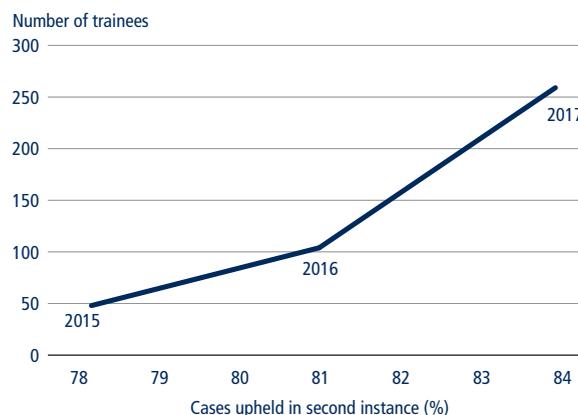
system implemented within 12 months of the enactment of the reform. Training is also offered in the form of workshops in cooperation with other national and international public institutions and programs funded and provided directly by the courts. Monitoring and evaluation are part of the training system; the Dubai Judicial Institute and the Human Resources Department for the courts measure the impact of every training three months after completion.

Judicial training has played a fundamental role in the United Arab Emirates in the effective implementation of regulatory reforms to improve judicial efficiency and quality in commercial litigation. A commercial court was established in 2008 among six specialized courts.<sup>14</sup> Different circuits were created within the court to hear disputes related to commercial contracts, bankruptcy, intellectual property, banking, commercial companies, exclusive distribution licenses and maritime issues. Judges in each circuit received technical training on

these matters. This training has resulted in faster resolution times, lower appeal rates and higher-quality judgments. During the past 3-4 years, around 35% of first instance judgments were appealed and, of these decisions, the appellate court upheld 87-89%.<sup>15</sup> These results suggest that the vast majority of the decisions taken by the commercial court were high-quality decisions in the first place.

The United Arab Emirates also invested resources in providing comprehensive training for judges on new technology. In 2014 Dubai Courts adopted a new case management system and established a Case Management Office in every court to aid the flow of cases and expedite the trial process. A Smart Petitions mobile application also facilitated the filing of petitions, court document submission and payment of court fees. High-quality training allowed these new systems to be used effectively. Following the implementation of these reforms at the commercial court, average resolution times declined. From 2014 to 2018, the average time for filing the case, going through the legal process and obtaining the final judgment decreased from 380 to 351 days. By learning how to use the online case management system, many judges stopped relying on clerks to check and print documents for the case and, by

**FIGURE 6.4** The higher the number of trainees, the more accurate the judgments



Source: Dubai 2016; Dubai 2017.

Note: Accuracy of judgments is the percentage of cases upheld as opposed to the cases overturned or amended by the appellate court.

the end of 2017, more than 300,000 petitions had been electronically submitted and processed by Dubai Courts.

Specialized training for judges on insolvency procedures was essential for the United Arab Emirates to realize the full benefits of its new insolvency law. Seeking to create a robust legal insolvency framework, the United Arab Emirates adopted a new insolvency law in 2016 that introduced a reorganization procedure and replaced an outdated regime. The adequate application of new insolvency procedures required active court involvement; judges needed relevant bankruptcy experience and training to carry out this role effectively. Judges have been receiving training since the enactment of the law. In 2017 bankruptcy judges participated in two workshops on the new law—one, for 27 bankruptcy judges, was delivered by the Judicial Institute and the other, for 31 judges, was delivered by the U.S. Department of Justice. Senior judges provided additional training programs and workshops.

After several years of promoting a coherent system for judicial training, the United Arab Emirates is experiencing improvements in court efficiency and quality of decisions. Judges are embracing a culture of continuous learning and development, which allows them to acquire specialized skills.

## Indonesia

Shaken by the impact of the 1997 Asian financial crisis, Indonesia has worked continuously to improve its commercial regulatory framework. With the assistance of the IMF, the government has focused on bringing commercial sophistication to the courts, including through training.<sup>16</sup> The independence of the judicial system was strengthened in 1999 with the adoption of the so-called “one roof” approach which was implemented following the transfer of administrative control over the courts from the executive branch to the judiciary; fundamental changes were also made to

the organization of judicial training.<sup>17</sup> In 2003 the Supreme Court assumed the authority to provide judicial training and became the primary counterpart for international assistance on judicial reform.<sup>18</sup> Within the Supreme Court, the Judicial Training Center (JTC) evolved to be the central unit responsible for developing and organizing judicial training.<sup>19</sup>

The JTC exercises its mandate by operating three separate training programs: integrated initial judicial training, continuing judicial education and certification training.<sup>20</sup> The two-year integrated initial judicial training program, for judge candidates, includes a combination of courses and an internship. The continuing judicial education program, which provides supplementary training for judges who have worked for 1-5 years and 6-10 years, is organized based on training needs. The certification training program is designed for ad-hoc judges and judges serving in special courts and covers specific issues such as, for example, mediation, commercial disputes and fisheries.

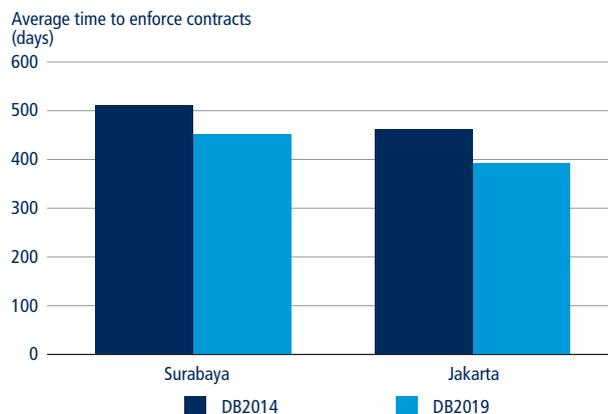
The emphasis on training has spilled over to other areas of Indonesia’s legal system. Reforms to improve judicial efficiency were implemented by the Supreme Court, including organizational

restructuring, improved work procedures, human resource development, new working groups and a new judicial training center, all of which contributed to reducing the number of unresolved cases from 20,314 in 2004 to 11,479 in 2009.<sup>21</sup> A significant milestone was reached in 2015 when Indonesia introduced a dedicated procedure for small claims that allows for parties’ self-representation.<sup>22</sup> Based on the established small claims procedure, the JTC also developed a five-day small claims court training for judges on efficient case administration. This training resulted in a marked increase in the clearance rate for small claims, from 79% in 2015 to 88% in 2016.<sup>23</sup>

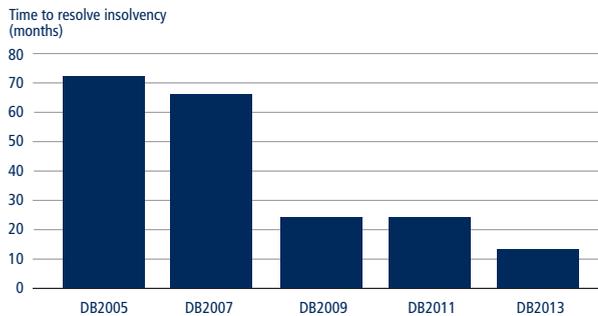
Judicial reform and the development of judicial training in Indonesia are also reflected in the *Doing Business* data, which show a decrease in the time to resolve a commercial dispute through a local first-instance court, both in Jakarta and Surabaya (figure 6.5).

In the area of resolving insolvency, Indonesia’s 2004 insolvency law<sup>24</sup> included an explicit training provision for prospective judges.<sup>25</sup> Training was also provided for existing commercial court judges with jurisdiction over insolvency cases.<sup>26</sup> As the judges’ expertise

**FIGURE 6.5** The time to resolve a commercial dispute through a local first-instance court decreased in both Jakarta and Surabaya



Source: *Doing Business* database.

**FIGURE 6.6** The time to resolve insolvency of SMEs has steadily decreased in Jakarta

Source: *Doing Business* database.

Note: The time to resolve insolvency of SMEs in Jakarta as measured by *Doing Business* has remained 13 months since 2012.

increased, so did the performance of the courts, as evidenced by their swift adjudication of cases.<sup>27</sup> The latter is also corroborated by *Doing Business* data. The time to resolve insolvency of small and medium-size enterprises (SMEs), for example, has steadily fallen in Jakarta, from 72 months in 2004 to 13 months in 2012, where it has remained ever since (figure 6.6). Furthermore, although the number of incoming reorganization cases in Jakarta more than doubled—from 66 applications in 2012 to 146 in 2016—the Commercial Court of Central Jakarta continued to consider them at the same pace: 55 closed cases in 2012 compared to 118 in 2016.<sup>28</sup>

Although Indonesia has established an impressive judicial training program, there is room for improvement in terms of the quality of its judicial services. Given the high rotation rate in the judiciary, training programs may require further development. Nonetheless, the focus of the Indonesian government on judicial training is visible, as is the economy's improvements across the *Doing Business* metrics.

## CONCLUSION

Businesses must be able to operate knowing that, if a problem arises, they

can rely on the court system to resolve their case in a timely fashion, with a competent judge correctly interpreting and implementing the law. Judges should be well-trained professionals that enjoy the confidence of the business community and society—and that requires a training framework which enables judges to receive comprehensive and continuous training.

Economies worldwide have adopted effective training frameworks for judges. The United Arab Emirates has been particularly active in promoting a coherent system for judicial training with impressive results in court efficiency and quality of decisions. Indonesia's efforts to train judges following judicial reform bore positive results through a substantial decrease in court backlogs and insolvency case resolution times.

Continuous and comprehensive judicial and court staff training is not, however, the norm in many economies. As evidenced by *Doing Business* data, the education and skills of court staff—including clerks, registrars and bailiffs—are often disregarded in national training programs in the justice sector, but they are no less important to ensure efficiency and quality in the courts.

## NOTES

This case study was written by Najah Nina Dannaoui, Maksym Iavorskyi, Herve Kaddoura, Klaus Koch-Saldarriaga, Joseph Antoine Lemoine, Tiziana Londero, Raman Maroz, Madwa-Nika Phanord-Cadet, Marion Pinto, María Antonia Quesada Gámez and María Adelaida Vélez Posada.

1. Baye and Wright 2011.
2. Nees 2007.
3. See Dam 2006; Trebilcock and Leng 2006; Mitman 2016.
4. Esposito, Lanau and Pompe 2014; Ahsan 2013; Laeven and Woodruff 2007.
5. For more information on the *École Nationale de la Magistrature*, see <https://www.enm.justice.fr>.
6. A specialized commercial jurisdiction is 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.
7. UNCITRAL 2001.
8. Rachlinski, Guthrie and Wistrich 2006.
9. Rachlinski, Guthrie and Wistrich 2006.
10. Iverson and others 2018.
11. UNCITRAL 2001.
12. For more on the perspective of insolvency judges, see Broude and others 2002.
13. Broude and others 2002.
14. Dubai, Dubai Courts 2008.
15. Dubai, Dubai Courts 2008.
16. Tomic 2013.
17. HRRC 2014.
18. Cox, Duituturaga and Sholikin 2012.
19. In addition to these tasks, the Judicial Training Center is responsible for administrative and management training within the judiciary.
20. Indonesia, Supreme Court 2012.
21. Men Yon and Hearn 2016.
22. These data are from the *Doing Business* database. For more information see <http://www.doingbusiness.org/Reforms/Overview/Economy/indonesia>.
23. The clearance rate is the number of decided cases as a share of incoming cases. The calculations are based on the data provided by the Commercial Court of Central Jakarta. For more information see <http://pn-jakartapusat.go.id/>.
24. Indonesia's insolvency law is Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts.
25. The training provision for judges can be found in Article 302 of Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts.
26. Indonesia, Supreme Court 2008; Indonesia, Supreme Court 2011.
27. Bedner 2008.
28. These data are from the Commercial Court of Central Jakarta database. For more information see <http://pn-jakartapusat.go.id/>.