

# Doing Business

## Enforcing contracts

Why do many Italians live with their parents? A recent study finds that renting an apartment is difficult in countries where the courts are slow.<sup>1</sup> In Italy resolving disputes in the courts takes 1,210 days on average, so landlords hesitate to rent to young people.

Running efficient courts is a challenge for many governments, even in rich countries such as Italy and Slovenia. In 2006 Slovenia adopted a law obliging the government to pay plaintiffs up to €5,000 per case as a fine for delayed justice. This came after the European Court of Human Rights ruled that the Slovenian government had failed to deliver justice within a reasonable time. Slovenian courts outdo those in Djibouti and Guinea-Bissau in trying the patience of plaintiffs, taking 1,350 days on average to resolve a dispute.

Sometimes governments are to blame for the heavy caseloads in the courts. In Bosnia and Herzegovina state

utility companies bring truckloads of claims for unpaid bills to the courthouse. These represented 70% of the court backlog in 2006/07. In India the government is the biggest litigator—mostly on tax matters. That country has one of the least efficient judiciaries in the world (table 10.1).

The primary role of the judiciary is to enhance justice, fairness and equity. But efficient courts do much more—they help the economy grow. A recent study finds that in countries with expedient courts, such as Lithuania, adopting a creditor protection law increases bank lending by 27% on average. But such a law makes little difference in countries with slow courts, such as Serbia, increasing bank lending by only 7%.<sup>2</sup>

In many countries only the rich can afford to resolve disputes through the courts. For the rest, justice is out of reach. In Indonesia recovering an overdue debt of \$2,840 (twice the annual income per capita) would often cost more in court and attorney fees than the amount claimed. In Papua New Guinea a creditor might pay as much as \$1,700 to recover a debt of \$1,540 (again twice the average income). In Mozambique the fees for collecting a debt of \$680 can be more than the amount claimed. Businesses have little incentive to use the courts.

TABLE 10.1  
Where is enforcing contracts easy—and where not?

Easiest	Rank	Most difficult	Rank
Hong Kong, China	1	Central African Republic	169
Luxembourg	2	Belize	170
Latvia	3	Syria	171
Iceland	4	Cameroon	172
Singapore	5	Congo, Dem. Rep.	173
Austria	6	Suriname	174
Finland	7	Bangladesh	175
United States	8	Angola	176
Norway	9	India	177
Korea	10	Timor-Leste	178

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

Source: Doing Business database.

## Who is reforming?

In 2006/07, 14 countries reformed contract enforcement. Almost half the reforms were in Africa—in Burkina Faso, the Democratic Republic of Congo, Ghana, Malawi, Mauritania and Mozambique. Eastern Europe followed, with reforms in Bulgaria, Moldova and Poland. For the third straight year no major reforms took place in South Asia, the region with the longest court delays (figure 10.1).

Tonga was the top reformer, cutting the time to enforce contracts from 510 days to 350. A newly appointed chief justice introduced case management, transferring 90% of all cases—criminal, commercial and land—from paper to computer. Cases are now monitored daily. If they remain inactive for 3 months, the judge summons the parties and asks whether they plan to pursue the dispute. In this way 472 cases that had been dormant for years were uncovered and dropped. Others were put on a strict timetable.

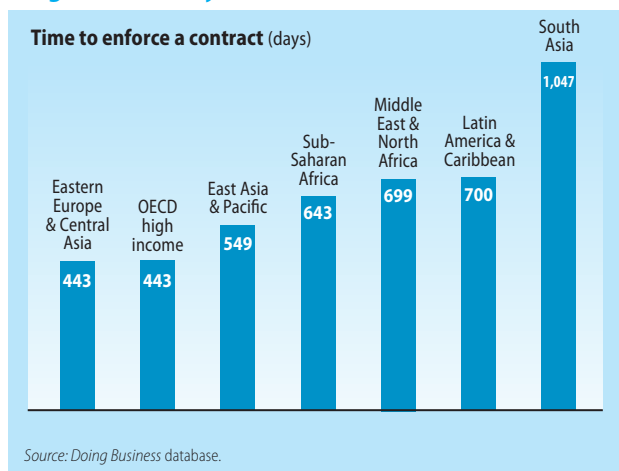
The reforms also raised the threshold for the magistrates courts fivefold, to 10,000 pa'anga (\$5,230), allowing more cases to use a simpler procedure. And new rules of procedure for the supreme court provide for court referral to mediation in civil cases for the first time. Court staff are undergoing training in Australia.

Elsewhere in the Pacific, Fiji reformed. Judges now focus exclusively on deciding legal disputes. A magistrate was appointed to deal with other matters, such as assessing damages after liability has been established.

The big trend in Africa was to introduce specialized commercial courts. All 6 African reformers did so. Since October 2006, 4 judges in Burkina Faso have been dealing exclusively with commercial cases in

FIGURE 10.1

### Longest court delays in South Asia



Bobo-Dioulasso and Ouagadougou. Getting there wasn't easy—the reform had been in the works since 1990. The Democratic Republic of Congo did it faster. Four years after being created on paper, commercial courts in Kinshasa started operating in November 2006. New rules for these courts set strict deadlines, such as 8 days to appeal judgments. Still, the cost of going to court is among the highest in the world (table 10.2).

Ghana's commercial courts, now fully operational, have reduced the time to enforce a contract from 552 days to 487. In Mauritania separate commercial courts

TABLE 10.2

### Where is enforcing contracts the most efficient—and where the least?

#### Procedures (number)

Fewest		Most	
Ireland	20	Guinea	50
Singapore	22	Kuwait	50
Hong Kong, China	24	United Arab Emirates	50
Rwanda	24	Belize	51
Netherlands	25	Iraq	51
Austria	26	Oman	51
Iceland	26	Timor-Leste	51
Luxembourg	26	Sudan	53
Belgium	27	Syria	55
Czech Republic	27	Brunei	58

#### Time (days)

Fastest		Slowest	
Singapore	120	Sri Lanka	1,318
Kyrgyz Republic	177	Trinidad and Tobago	1,340
Uzbekistan	195	Colombia	1,346
Lithuania	210	Slovenia	1,350
Hong Kong, China	211	India	1,420
New Zealand	216	Bangladesh	1,442
Belarus	225	Guatemala	1,459
Kazakhstan	230	Afghanistan	1,642
Korea	230	Suriname	1,715
Finland	235	Timor-Leste	1,800

#### Cost (% of claim)

Least		Most	
Bhutan	0.1	Comoros	89.4
Iceland	6.1	Cambodia	102.7
China	8.8	Burkina Faso	107.4
Luxembourg	8.8	Papua New Guinea	110.3
United States	9.4	Indonesia	122.7
Norway	9.9	Malawi	142.4
Poland	10.0	Mozambique	142.5
Korea	10.3	Sierra Leone	149.5
Finland	10.4	Congo, Dem. Rep.	151.8
Germany	11.8	Timor-Leste	163.2

Source: Doing Business database.

have replaced the commercial chambers in the general courts. And in March 2007, 2 commercial judges were added to the 3 judges who had been dealing with all civil matters in Maputo, Mozambique's capital.

More recently, in May 2007, the commercial division of the Blantyre high court in Malawi started hearing cases above 50,000 kwacha (\$350). The court had been scheduled to start earlier, but the procurement rules of a major donor delayed the disbursement of money needed to equip the courthouse.

Also in May 2007 Rwanda adopted a law to replace the 12 commercial chambers in the general courts with 3 separate specialized courts, 1 of them in Kigali. The new courts have a separate budget and court rules tailored to resolving commercial disputes. This followed earlier reforms that abolished the requirement for 2 lay judges to assist each professional judge in hearing commercial cases. No one had volunteered to work as a lay judge, as this implied no pay, so no commercial cases were heard between March 2004 and March 2006.

In Eastern Europe reformers in Bulgaria, Moldova and Poland focused on making the enforcement of judgments more efficient and reducing judicial corruption.

Bulgaria introduced private bailiffs in 2006/07, shortening the time to enforce a judgment from 150 days to 125. In Poland judgments are now immediately enforceable, with no need for a separate enforcement procedure. For debt collection, creditors will soon be able to choose the most effective bailiff in each district court, because the restriction of one bailiff per district court was abolished. Poland also changed its procedural code. Now new evidence can be presented for only 2 weeks after the trial starts, and judges can impose fines on parties *and* their attorneys for adjourning cases by relying on false facts. Another common delaying tactic—filing counterclaims—has been restricted. The average time to obtain a judgment fell from 730 days to 580.

TABLE 10.3

**Specialized commercial courts—still a popular reform in 2006/07****Introduced specialized commercial courts**

Burkina Faso, Democratic Republic of Congo, Ghana, Malawi, Mauritania, Mozambique

**Made enforcement of judgments more efficient or cheaper**

Brazil, Bulgaria, Burkina Faso, Poland

**Expanded scope of small claims courts or introduced simplified rules for small claims**

Guatemala, Portugal, Tonga

**Established case management**

Fiji, Tonga

**Made efforts to reduce judicial corruption**

Bulgaria, Moldova

**Streamlined appeal**

Brazil

Source: *Doing Business* database.

To fight corruption, Bulgaria and Moldova introduced random allocation of court cases to judges and doubled judges' salaries. Bulgaria also made the selection and appointment of judges more transparent.

In Latin America, Brazil continued its efforts to make enforcement easier by allowing assets to be sold through private rather than public sales only. Creditors can often get a higher price that way. Brazil now also obliges debtors to tell their creditors where their goods are. If debtors do not cooperate, they risk a penalty of 20% of the claim. Guatemala focused on expanding its small claims courts; they can now hear cases up to \$7,850, rather than \$2,000 as before.

Portugal was the only rich country to reform (table 10.3). Since 2006 it has experimented with 4 pilot courts—2 near Lisbon and 2 near Porto. The 4 pilot courts apply simplified rules to debt collection cases below €15,000. If successful by 2008, the reform will be extended to the rest of the country. This reform is based on the model used in the United Kingdom, a country that continues to inspire court reform worldwide.

## What to reform?

*Doing Business* has documented 65 reforms in contract enforcement since 2004. Some countries—Brazil, Burundi, Germany, the Philippines, Poland, Portugal, Rwanda and Serbia—have reformed more than once. Five reforms made the biggest difference:

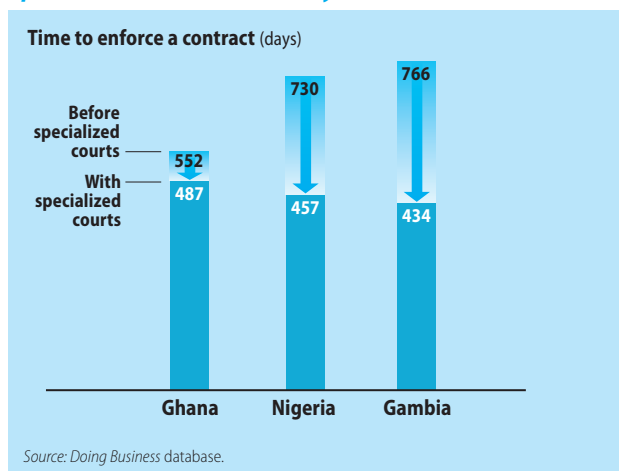
- Introduce specialized commercial courts.
- Streamline appeals.
- Make the enforcement of judgments faster and cheaper.
- Introduce case management.
- Introduce e-courts.

### Introduce specialized commercial courts

Six of the reformers in 2006/07 introduced specialized courts. Other countries, such as Azerbaijan and Egypt, will do so in the coming months. Countries with specialized courts resolve commercial disputes about 30% faster on average than those without them (figure 10.2). And if reforms in the specialized courts yield satisfied users, they embolden governments to try broader reforms.

Success with specialized courts also can bring unreasonable demand. One example is 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 ordered the transfer to them of 11,000 enforcement cases—about 11 times their caseload—flooding the commercial courts and increasing average delays.

FIGURE 10.2  
*Specialized courts reduce delays*



### Streamline appeals

A number of countries have reformed their appeals processes, respecting the right to appeal while limiting abuses. A balance can be achieved by excluding only the smallest cases from appeals and by allowing the higher courts to accept only cases that are new and fundamentally important to the country. In Sweden commercial cases can be appealed, but the appeals court now decides which cases to consider.

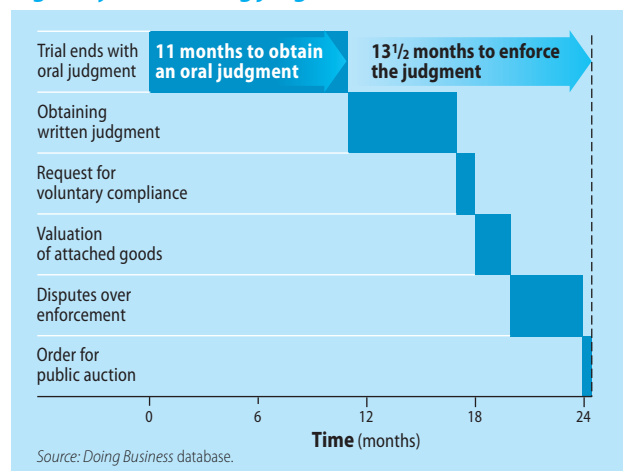
In Brazil and Denmark the supreme court now determines which cases it will decide. Still, judges are overwhelmed. The supreme court in Brazil issues opinions in 700 times as many cases as that in the United States.

### Make the enforcement of judgments faster and cheaper

On average 30% of the total time to resolve a commercial dispute—the number of days from the time a case is filed until payment is made to the winning party—is spent enforcing the judgment. Sometimes enforcement actions take years. In Côte d’Ivoire, for example, enforcing the judgment takes more than half the total time spent to resolve a dispute. Obtaining a written copy of the judgment and resolving disputes over enforcement are the biggest bottlenecks (figure 10.3).

Several countries—Brazil, the Czech Republic, Finland, FYR Macedonia, Poland and Romania—have recently reformed enforcement laws. In Poland creditors can attach debtors’ goods while the case is being appealed. If debtors want to keep possession of their goods during appeal, they must give a financial guarantee instead. Since last year courts in the Czech Republic can order all financial institutions in the country to check

FIGURE 10.3  
*Big delays in enforcing judgments in Côte d’Ivoire*



whether the debtor holds an account with them and, if so, to automatically pay a judgment from that account. Before, creditors themselves had to identify the banks where debtors held an account. In Romania a new law allows creditors to attach credit balances and accounts receivable. In FYR Macedonia private bailiffs have started operating, shortening the average time to enforce a judgment from 90 days to 60.

In some countries creditors pay a registration tax to obtain an original copy of the judgment. Without it, they cannot start enforcement proceedings. In the Central African Republic and the Democratic Republic of Congo creditors pay 6% of the judgment amount as a registration tax. Cameroon, Guinea and Niger impose a 5% tax. In 2006/07 Burkina Faso reduced its registration tax from 4% to 2%. Côte d'Ivoire reduced its tax from 5% to 2.5%.

### **Introduce case management**

Case management involves monitoring and managing cases in the court docket from the moment the action is filed until the moment it is finally decided. Analyzing court workloads can help predict trends and plan strategically.

Case management is successful if court data are simultaneously being computerized and if support functions such as case tracking, document management, deadline reminders and scheduling of hearings are done automatically. In 2006/07 the Philippines introduced such procedures for 60% of all lower courts in Manila.

Case management also makes it possible to measure the performance of judges. And measuring performance enhances performance—even for judges. If lazy judges are not disciplined and hard-working ones not compensated or promoted, performance suffers.

In countries such as Nicaragua judges continue to oppose case management and performance measurement by arguing that they would interfere with their independence. The rationale for this opposition lies elsewhere. Randomly assigning cases to judges, by using case management software, can prevent shopping for the judge most willing to accept bribes. In 2006 FYR Macedonia introduced such software in its effort to fight judicial corruption. By July 2007 the country's judicial council had brought charges of corruption against 10 judges.

### **Introduce e-courts**

Litigants in New York have been able to access case data and documents through the Internet since 2006. Lawyers in Milan can upload case information in a bar code that court staff scan and transfer to a case management database. In 2006 Singapore introduced 3G mobile phones to conduct virtual court hearings and a pilot project allowing pretrial conferences by e-mail. Austria, Finland, Germany, Ireland and the United Kingdom set up online systems with simplified procedures for dealing with small claims. These claims previously took up most of the courts' time.

In rich countries such as Australia, Denmark, Finland, Norway, the Netherlands and Portugal businesses can file court cases electronically. Some middle-income countries, such as Brazil, the Czech Republic, Slovakia and Turkey, made it possible to submit claims by e-mail using electronic signatures.

Courts in some poor countries are going high-tech too. In India, for example, the supreme court, many high courts and even some district courts have their own website where businesses can download forms, look at the court's schedule for the day, check the status of a case or read the judge's orders. The supreme court even allows electronic filing of cases. That saves lawyers time and money, because they no longer need to go to the courthouse to pick up forms or receive the judge's order.

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### **Notes**

1. Casas-Arce and Saiz (2006).
2. Safavian and Sharma (forthcoming).