

- Starting a business
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# Enforcing contracts

Closing a business

Businesses worldwide continue to face challenges as a result of the global financial crisis—and are more concerned than ever about recovering losses fast. In the past 2 years more disputes involving property, supply contracts and banking transactions ended up in court, increasing caseloads and backlogs. Ireland's commercial court had a record number of cases listed in 2009.<sup>1</sup> In the first 6 months of the year it had 192 cases entered, compared with 76 in the same period of 2007.<sup>2</sup> In Denmark caseloads in enforcement courts increased by 38% in 2009 compared with 2007.<sup>3</sup> In the United States, New York State courts finished the year with the highest ever annual tally

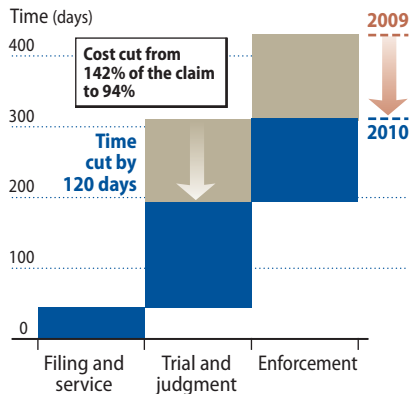
TABLE 10.1  
Where is enforcing contracts easy—and where not?

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

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

Source: Doing Business database.

FIGURE 10.1  
Higher ceiling for claims made enforcing contracts faster and cheaper in Malawi



Source: Doing Business database.

of cases. In the past 5 years foreclosure cases in the state doubled while contract disputes increased by 23%.<sup>4</sup>

In China in 2009 the number of contract disputes was up by 8.6% from the year before.<sup>5</sup> In Montenegro the commercial court of Podgorica had a nearly 300% jump in cases in 2009.<sup>6</sup> In Serbia the 17 commercial courts saw incoming cases grow from 135,497 in 2008 to 165,013 in 2009, an increase of 22%—more than 3 times the 7% increase in 2007 and 2008.<sup>7</sup> The Belgrade commercial court experienced an even larger increase: about 40% more cases were brought in 2009 than in the year before.

Reflecting the effects of the global crisis, most cases were filed by large creditors, such as utility companies and mobile phone providers trying to collect from defaulting debtors. Efficient pro-

cesses for dispute resolution are needed now more than ever (table 10.1).

For some economies growing case-loads have offered an opportunity to come up with new solutions to improve the working of their courts. Dubai responded to pressures on its legal system by creating specialized courts. While the volume of cases has continued to grow, the courts in Dubai can now handle a greater number—resolving 58% more cases in 2009 than in the previous year.<sup>8</sup> Improving court functions remains essential to sustaining a healthy, stable economy, especially during a credit crunch. A recent study found that efficient contract enforcement is associated with greater access to credit for firms.<sup>9</sup>

Thirteen economies made it faster, cheaper or less cumbersome to enforce a contract through the courts in 2009/10 (table 10.2). Malawi improved the ease of enforcing contracts the most by raising the ceiling for commercial claims that small magistrates courts can hear (figure 10.1).

Doing Business measures the time, cost and procedural complexity of resolving a commercial lawsuit between 2 domestic businesses. The dispute involves the breach of a sales contract worth twice the income per capita of the economy. The case study assumes that the court hears an expert on the quality of the goods in dispute. This distinguishes the case from simple debt enforcement (figure 10.2).

FIGURE 10.2  
What are the time, cost and number of procedures to resolve a commercial dispute through the courts?

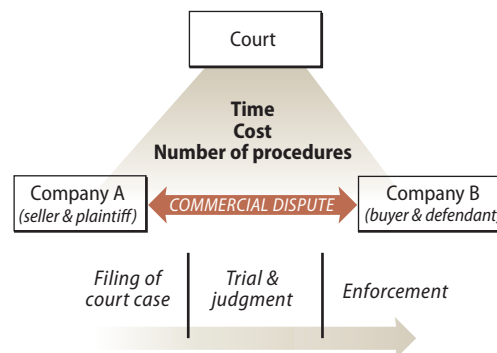


TABLE 10.2  
**Who made enforcing contracts easier in 2009/10—and what did they do?**

Feature	Economies	Some highlights
Increased procedural efficiency at main trial court	Burkina Faso, Canada, Hong Kong SAR (China), Malawi, Mauritius, New Zealand, Timor-Leste, Uganda	In Hong Kong SAR (China) civil justice reforms improved case management, imposed limits on certain applications and appeals, limited the time for witness examination and oral submissions and extended discovery procedures.
Introduced or expanded computerized case management system	Canada, Hong Kong SAR (China), United Kingdom, Zambia	Zambia is moving to electronic forms, real-time court reporting, electronic storage and computer searches of registry files. Records of court proceedings are immediately available to litigants and court officials—as well as to the public, through computer terminals in the courts.
Introduced or expanded specialized commercial court	Burkina Faso, Guinea-Bissau	In Guinea-Bissau the new commercial court was set up, and judges as well as clerks and other support personnel received training.
Made enforcement of judgment more efficient	Georgia	In Georgia private enforcement officers were introduced alongside state enforcement agents, increasing enforcement capacity. And debtors can now pay creditors the outstanding debt before the closing of an auction to avoid the sale of their assets.
Reviewed rules on modes of service and notification	Islamic Republic of Iran	The Islamic Republic of Iran is introducing electronic filing, allowing parties to file petitions electronically with certain courts. Several courts have also implemented text message notification. An electronic case management system has been implemented in branches of Tehran's court of first instance.

Source: Doing Business database.

## WHAT ARE THE TRENDS?

Economies in all regions have implemented reforms easing contract enforcement in the past 7 years (figure 10.3). A judiciary can be improved in different ways. Higher-income economies tend to look for ways to enhance efficiency by introducing new technology. Lower-income economies often work on reducing backlogs by introducing periodic reviews to clear inactive cases from the docket and by making procedures faster.

### MORE AUTOMATION IN OECD HIGH-INCOME ECONOMIES

OECD high-income economies lead in the ease of enforcing contracts, with court processes that are the cheapest and among the fastest for commercial litigants. For a plaintiff to go from filing a claim to collecting the proceeds from the sale of movable assets costs 19% of the claim value and takes about 518 days on average.

What has driven the advances made? Investing in automation. Half of OECD high-income economies have set up electronic processes for filing claims in commercial disputes, far more than in any other region (table 10.3). Tech-

nological innovations include systems to electronically store court documents on microfilm (as in Germany) and the use of electronic communication through data mailboxes to serve process (as in the Czech Republic). In Norway a computer system that tracks deadlines and requires judges to justify postponements, together with new procedural rules since 2008, helped reduce the time for trial by a month. The United Kingdom recently introduced an electronic system in its commercial court that allows filings 24 hours a day, so litigants can now initiate lawsuits outside normal court hours.

### MORE SPEED IN EASTERN EUROPE AND CENTRAL ASIA

Courts in Eastern Europe and Central Asia are the fastest globally, resolving commercial disputes in 402 days on average. Thanks to consistent efforts to streamline courts, they have also accelerated the process the most since 2003—by nearly 7 weeks on average. Many in the region focused on the enforcement of judgments after the trial, reducing the time it takes by an average of 15 days since 2003.

A trend that started in Estonia in 2001 and Latvia in 2002 is to move en-

forcement of judgments to the private sector. In 2003, inspired by the French model, Lithuania introduced private enforcement officers. In 2006 Bulgaria and FYR Macedonia followed suit, replacing state enforcement officers with self-employed private bailiffs.<sup>10</sup> Georgia combined the state and private models, introducing private bailiffs in 2008 alongside the state bailiffs to increase enforcement capacity. Since 2009 the Georgian Ministry of Justice has issued 38 licenses to private enforcement agents. Kazakhstan has a draft law aimed at introducing private enforcement agents by 2011. Armenia studied the introduction of private bailiffs but decided to focus for now on improving the performance of state enforcement agencies.

### INCREASED EFFICIENCY IN SUB-SAHARAN AFRICA

Court reforms in Sub-Saharan Africa have had the second greatest impact in speeding up the enforcement of contracts. New case management systems, commercial courts and measures to reduce backlogs have cut the time it takes to resolve a commercial dispute by an average of nearly 4 weeks since 2005. But resolving a commercial dispute still costs

businesses 50% of the claim value on average. The main reason: high lawyers' fees relative to the value of the claim.

One solution being explored by some African countries is to introduce small claims courts or small claims procedures. These offer simplified processes that take less time. Parties can often represent themselves, saving fees that they would normally spend on lawyers. In addition, filing fees are lower, and judges issue decisions more quickly.<sup>11</sup> Particularly for female entrepreneurs, who typically own small businesses, small claims courts can be a preferable forum for resolving simple disputes. In Zimbabwe the small claims court takes cases up to \$250, and no lawyers are allowed. In neighboring Zambia a new small claims court for cases up to about \$5,000 started operating in 2009. One limitation is that a company cannot file a claim in the court but can appear only to respond to a claim filed against it by an individual. Kampala, Uganda, is piloting a small claims procedure with magistrates dedicated to hearing simple cases.

#### LESS COMPLEXITY IN EAST ASIA AND THE PACIFIC

In East Asia and the Pacific changes to civil procedure laws have been aimed at reducing procedural complexity. In 2009/10 Hong Kong SAR (China) introduced wide-ranging civil justice reforms, including procedural deadlines, case management, limits on appeals, flexible settlement arrangements and an emphasis on alternative dispute resolution. The previous year Malaysia introduced stricter enforcement of procedural deadlines to process documents and created a separate "fast track" for disposing of interlocutory matters. Among the Pacific islands, Papua New Guinea introduced a specialized commercial division in its national court in 2007, now fully operational. Tonga set up court-referred mediation in 2008. The Solomon Islands is scheduled to launch it in 2010.

TABLE 10.3

#### Good practices around the world in making it easy to enforce contracts

Practice	Economies <sup>a</sup>	Examples
Using active case management	100 <sup>b</sup>	Armenia, Ghana, Japan, Jordan, Malaysia, Puerto Rico, Sri Lanka
Maintaining specialized commercial court, division or judge	85	El Salvador, Germany, Malaysia, Maldives, Mauritius, Russian Federation, Tunisia
Allowing electronic filing of complaints	19	Australia, Czech Republic, Estonia, Singapore, Turkey, United Arab Emirates, United States

a. Among 183 economies surveyed, unless otherwise specified.

b. Among 164 economies surveyed.

Source: *Doing Business* database.

#### FEW COURT REFORMS IN SOUTH ASIA

In some parts of the world slow courts still risk delaying commercial justice. South Asia has the longest court delays. The process of deciding a standard commercial dispute and enforcing the judgment takes on average more than 1,000 days, or nearly 3 years—almost twice as much time as the average for other regions, 585 days (figure 10.4). Contributing to the delays are the inadequate number of judges; the lack of strict deadlines, which encourages constant adjournments; and the large caseloads and backlogs.

South Asian economies have been slow to make changes. *Doing Business*

recorded no major court reforms in the region in the past 2 years. To avoid lengthy court trials, the private sector has introduced systems of alternative dispute resolution as a way to bypass the courts in such countries as Bangladesh, India and Pakistan.

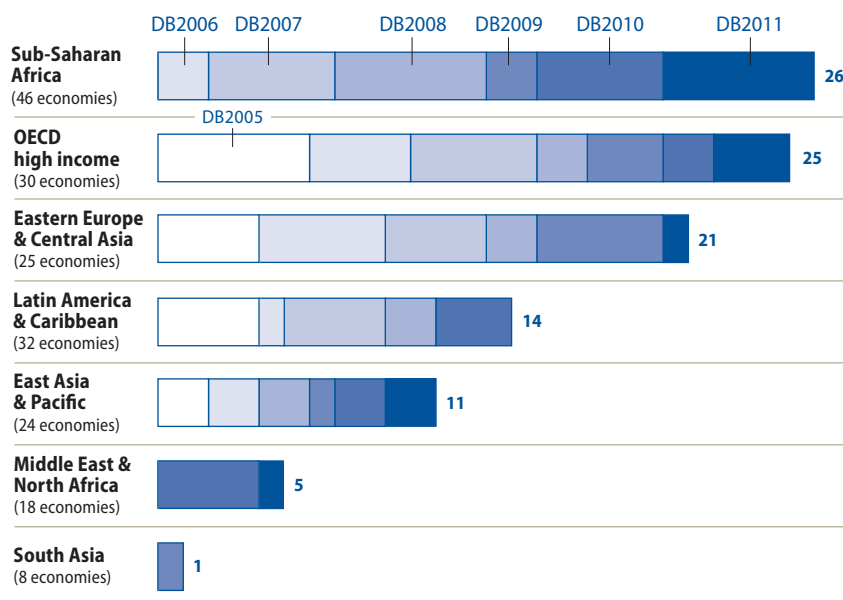
#### BUT A PICKUP IN PACE IN 2 REGIONS

Efforts to reduce delays in the judicial system have also been slow to get off the ground in the Middle East and North Africa and in Latin America and the Caribbean. But the pace has recently picked up. *Doing Business* recorded 5 major reforms to improve court efficiency in the Middle East and North Africa in the

FIGURE 10.3

#### Pace of reform in enforcing contracts picks up in Sub-Saharan Africa

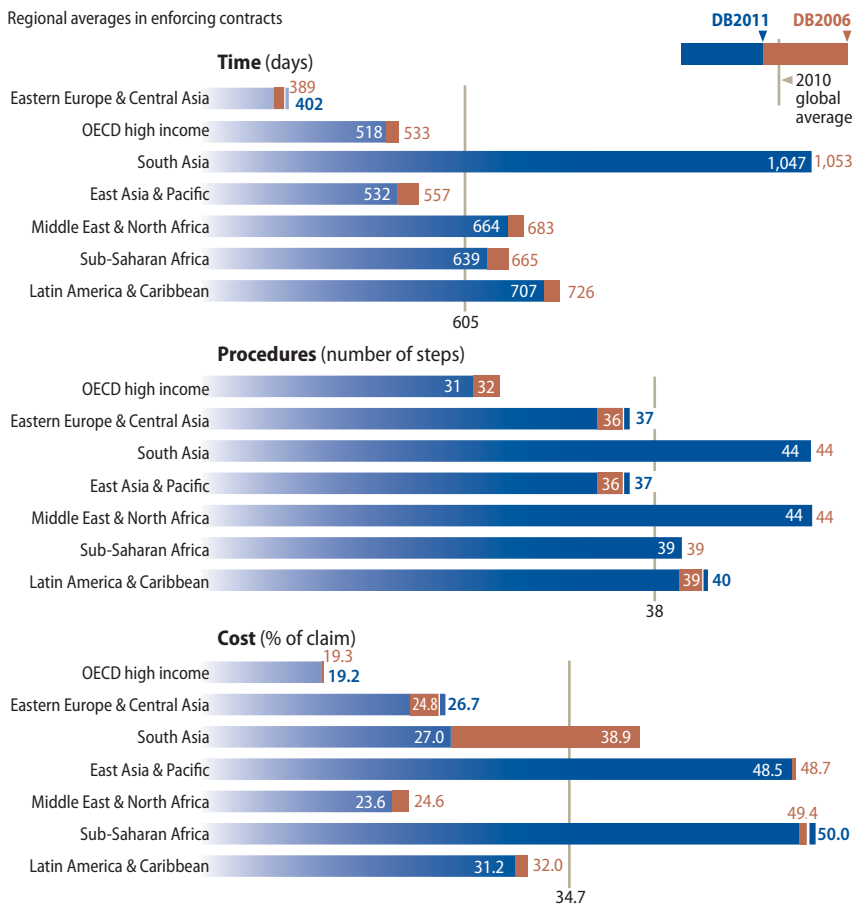
Number of *Doing Business* reforms making it easier to enforce contracts by *Doing Business* report year



Note: A *Doing Business* reform is counted as 1 reform per reforming economy per year. The data sample for DB2005 (2004) includes 155 economies. Twenty-eight more were added in subsequent years.

Source: *Doing Business* database.

FIGURE 10.4  
Fastest courts in Eastern Europe and Central Asia



past 2 years. Some solutions involved introducing computer-aided case management systems. Jordan and West Bank and Gaza introduced software featuring online access to court records and automated notification and case tracking. Algeria and Saudi Arabia are also developing automated case management systems. Saudi Arabia's will allow electronic filing and automatic assignment of court dates as well as keep a log of all proceedings.

In Latin America and the Caribbean improvements have speeded up contract enforcement by an average of 3 weeks since 2004. In the past several years such economies as Brazil, Colombia and Peru have aimed to increase procedural efficiency and reduce backlogs. Brazil has been pioneering change at the federal level. Since 2006 it has

limited recourse to interlocutory appeals, eliminated the need for a separate enforcement procedure and introduced electronic filing of certain documents in court. Brazil's superior court has scanned 231,000 paper proceedings since 2007, saving 108 million sheets of paper. This spares 1,836 hectares of forest—covering the equivalent of more than 300 soccer fields—annually.<sup>12</sup>

#### WHAT HAS WORKED?

In the past 7 years *Doing Business* recorded 103 reforms to improve court efficiency. Few have been successful, and many have been slow to show impact. Court reform takes time to show results. As the courts and users become accustomed to the new system, efficiency can continue to improve for years after the

change. In the past year, thanks to previous years' reforms to improve efficiency, Botswana, Mali, Rwanda and West Bank and Gaza reduced the time to file and try a case by 40 days on average (table 10.4).

#### SPECIALIZING FOR SPEED

Introducing specialized courts has been a popular improvement. A specialized commercial procedure can be established by setting up a dedicated stand-alone court, a specialized commercial section within existing courts or specialized judges within a general civil court. Economies with stand-alone commercial courts include Sierra Leone, Sri Lanka and Tanzania. Those with commercial divisions within high courts include Ireland, Kenya, Nigeria, Uganda and the United Kingdom. In some economies the specialized commercial courts decide only cases relating to bankruptcy, securities, maritime transport or intellectual property while general commercial cases remain with the ordinary courts. This is the case in such economies as Algeria, Indonesia, the Slovak Republic, Thailand and Uruguay. Specialized courts, besides offering the benefits of specialization, also generally resolve commercial disputes faster.

Several economies have recently introduced reforms increasing court specialization. Jordan set up commercial divisions in its courts of first instance and its conciliation courts in 2008, assigning judges to hear solely commercial cases. In Mauritius a specialized commercial division in the supreme court began hearing cases in 2009. Burkina Faso and Guinea-Bissau established dedicated commercial courts the same year. Syria plans to follow suit. If creating specialized courts yields satisfied users, it can embolden governments to try broader judicial reforms.

#### INTRODUCING TECHNOLOGY

Using technology to track court processes can make managing cases easier while increasing transparency and limiting opportunities for corruption in the judiciary. Automated court processes

## BOX 10.1

**Civil conflict and the courts**

War and civil strife in a country disrupt the judicial system by destroying court buildings and records and driving qualified professionals out of the country. Uncertainty about the legitimacy of the courts often discourages their use. Fragile states commonly face broad strikes in the judiciary. Chad and Zimbabwe have contended with judges' strikes for higher salaries in recent years. Burundi had to overcome a lawyers' strike in 2006. In West Bank and Gaza increased security threats against judges triggered a strike by all courts in 2005.

During a conflict, informal economic activity increases. Once the conflict ends, a key issue is how to efficiently resolve disputes over property.<sup>1</sup> Rebuilding the judiciary can take years, and legal professionals may be in short supply. Chad has only about 150 practicing lawyers, and in 2009 it had only 6 new law graduates. Liberia has only about 300 practicing lawyers for a population of 3.4 million, and some have little legal training. But judges are being trained, courts equipped with new resources and legal academies given the support they need.

Despite the challenges, postconflict economies are revitalizing their judiciaries. Burundi and Rwanda have enacted new civil procedure codes and reorganized their judiciaries since 2004. Before the new commercial courts were established in Kigali, Rwanda had to change its law to allow the hiring of non-Rwandese expatriate judges. In May 2008, 2 Mauritian judges were sworn in to help local judges run the new courts during the first 3 years of operation.<sup>2</sup> Sierra Leone is creating a new division of its high court for commercial cases, expected to start operating by the end of 2010, and is also working toward launching a fast-track commercial court. Liberia is creating a new commercial court. Timor-Leste is improving the internal organization of the district court of Dili, including by training and recruiting new judges.

1. Samuels (2006).

2. Hertveldt (2008).

can also prevent the loss, destruction or concealment of court records.<sup>13</sup> And allowing litigants to file complaints electronically in commercial cases, as the United Kingdom recently did, makes initiating a lawsuit faster. In Armenia the introduction of electronic case management has increased transparency. Public kiosks with touch screens located in court buildings make case information available to the public. But simply introducing information technology does not solve underlying procedural inefficiency. A thorough overhaul of court processes is also necessary.

Electronic systems also improve efficiency within the courts, making the work of judges and staff easier. In Egypt employees in the Alexandria and El Mansûra courts of first instance used to transcribe judges' handwritten decisions on typewriters. But thanks to court modernization efforts, now they can transcribe decisions directly into an electronic system, to be archived and promptly produced for docketing and

distribution.<sup>14</sup> In 2008 Moldova computerized its courts and introduced websites and audio recording equipment. Court administrators reported that the changes made the courts' work faster, easier and more efficient.<sup>15</sup> Bulgaria's supreme courts computerized their court records system in 2006, enabling litigants to access court documents and track a case to its completion.<sup>16</sup> All judgments of the supreme courts have been accessible online since October 2008.

**MANAGING CASES**

Judicial case management has proved to be effective in reducing procedural delays. It also helps in monitoring performance. Croatia is adopting an automated case management system that it expects will not only improve efficiency but also produce better statistical data for monitoring the performance of judges.<sup>17</sup>

Botswana introduced case management in its high court rules in 2008. The average duration of trials has since fallen from 912 days to 550. In 2006 Fiji ap-

pointed and trained a master to improve case management in the high court. In the country's magistrates' courts case management reportedly reduced the backlog of cases from 5 months to 2.5.<sup>18</sup>

Case management includes the possibility for a judge to conduct preparatory hearings to help the parties narrow the issues in dispute, to encourage them to settle and to fix procedural timelines and monitor compliance. In Norway preparatory meetings held in civil cases at the Midhordland district court led to settlement in more than 80% of cases.<sup>19</sup>

In the Slovak Republic the Bratislava district court keeps cases moving by allowing adjournments only when there is a compelling reason.<sup>20</sup> In Israel in 2009 the chief justice of the supreme court issued an official instruction requiring the courts to refuse adjournments and prevent delay tactics in all but the most serious situations. In Ireland the Dublin commercial court has the power to strike out cases or order fines for failure to follow the court's directions and timelines.<sup>21</sup>

**MEASURING PERFORMANCE**

Measuring the performance of courts and individual judges can increase efficiency. Assessments of a court's performance can help its personnel set concrete targets and aid in evaluating the court's progress toward its goals, in setting budgets and in motivating staff to improve performance.<sup>22</sup> What gets measured can range from user satisfaction to costs, timeliness and clearance rates.<sup>23</sup> Economies such as Australia, Singapore and the United States have been using tools to measure performance in the judicial sector since the late 1990s.<sup>24</sup> Others started more recently.

In 2005 the Netherlands introduced an innovative system that ties court performance to budget allocation. The new system measures the output of the courts—the number of cases resolved in each case category—and the Ministry of Justice then allocates a budget to each court on that basis. Any operating surplus can be added to a court's future budget, giving the court an incentive to



TABLE 10.4

**Who makes enforcing contracts easy—and who does not?**

<b>Procedures (number of steps)</b>			
<b>Fewest</b>		<b>Most</b>	
Ireland	20	Guinea	50
Singapore	21	Kuwait	50
Hong Kong SAR, China	24	Belize	51
Rwanda	24	Iraq	51
Austria	25	Oman	51
Belgium	26	Timor-Leste	51
Luxembourg	26	Kosovo	53
Netherlands	26	Sudan	53
Czech Republic	27	Syrian Arab Republic	55
Iceland	27	Brunei Darussalam	58
<b>Time (days)</b>			
<b>Fastest</b>		<b>Slowest</b>	
Singapore	150	Timor-Leste	1,285
Uzbekistan	195	Slovenia	1,290
New Zealand	216	Sri Lanka	1,318
Belarus	225	Trinidad and Tobago	1,340
Bhutan	225	Colombia	1,346
Korea, Rep.	230	India	1,420
Rwanda	230	Bangladesh	1,442
Azerbaijan	237	Guatemala	1,459
Kyrgyz Republic	260	Afghanistan	1,642
Namibia	270	Suriname	1,715
<b>Cost (% of claim)</b>			
<b>Least</b>		<b>Most</b>	
Bhutan	0.1	Comoros	89.4
Iceland	8.2	Malawi	94.1
Luxembourg	9.7	Cambodia	102.7
Norway	9.9	Papua New Guinea	110.3
Korea, Rep.	10.3	Zimbabwe	113.1
China	11.1	Indonesia	122.7
Poland	12.0	Mozambique	142.5
Thailand	12.3	Sierra Leone	149.5
Slovenia	12.7	Congo, Dem. Rep.	151.8
Portugal	13.0	Timor-Leste	163.2

Source: Doing Business database.

improve its efficiency. Besides output, the Dutch system also evaluates judicial quality, which includes the quality of judicial decisions, the timeliness of proceedings, the degree to which court officials treat the parties in a case with due respect and the expertise, independence and impartiality of judges.<sup>25</sup>

Finland introduced quality benchmarks in a number of courts in 2006. These are used to measure the operational performance of courts, the quality

of decisions, the treatment of the parties, the promptness of the proceedings, the competence of the judge and the organization and management of adjudication.<sup>26</sup> Malaysia introduced a performance index for judges in 2009. The index, fixed by the judges themselves, is aimed at allowing them to assess and monitor their performance. The result: case disposal rates in Malaysian courts are already improving.

**WHAT ARE SOME RESULTS?**

Well-functioning courts help businesses expand their networks and markets. Without effective contract enforcement, people might well do business only with family, friends and others with whom they have established relationships.

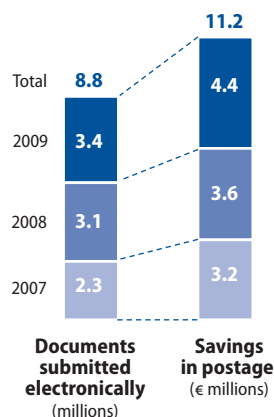
Successful court reforms increase efficiency and save time. That's the case in Rwanda. The commercial courts inaugurated in Kigali in May 2008 have completed more than 81.5% of the cases received. Because half the 6,806 cases that the Kigali commercial courts received and resolved in 2008–09 had been transferred from other courts, that means a big reduction in the case backlog.<sup>27</sup> The improved infrastructure of the new commercial courts also reduced delays in commercial dispute resolution. The registry, having mastered the new case registration system, now enters cases into the system swiftly. And time for service by bailiffs has decreased. Since 2008 the average time to resolve a commercial dispute has declined by nearly 3 months, from 310 days to 230.

In 2002 Pakistan implemented the Access to Justice Program to reduce delays in a number of pilot courts. The improvements cost \$350 million and focused on providing more training, such as in case management techniques. Research analyzing court data for 2001–03 shows that after the court reform, 25% more cases were decided in the affected districts.<sup>28</sup> In 1993 India introduced debt recovery tribunals, an expedited enforcement mechanism that bypasses normal court procedures. Research drawing on data for 2000–03 finds that introducing the tribunals reduced nonpayment of debt by 3–11% and made loans 1.4–2 percentage points cheaper.<sup>29</sup>

Extending the use of information and communication technology can reduce costs. In Austria a “data highway” for the courts that allows documents to be sent electronically has produced huge savings. In 2009 there were about 3.4 million electronic exchanges of documents related to summary proceedings

FIGURE 10.5

### Information technology in Austrian courts saved more than €11 million over 3 years



Source: Austrian Judicial System, <http://www.justiz.gv.at>.

(figure 10.5). The savings in postage alone amounted to €4.4 million. In Turkey the use of text messaging for legal notifications—such as to communicate the dates of court hearings—has allowed savings in postage of up to 7 million Turkish liras (about €3.3 million) a year. By early 2010 nearly 2,000 lawyers and 80,000 citizens in Turkey were using the system, and the numbers were growing by 500 a day.<sup>30</sup>

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