

# Enforcing contracts in the Middle East

Richard Ward provides an overview of 'The World Bank Flagship Report – Doing Business 2017', with a focus on time, cost and procedural quality in the region.

**T**he World Bank annual reports on doing business are an important measure of the ease, or otherwise, of doing business throughout the world.

The report is based on various measurables:

- » Starting a business
- » Obtaining construction permits
- » Obtaining an electricity supply
- » Registering property
- » Obtaining credit
- » Protecting minority investors
- » Paying tax
- » Trading across borders
- » Resolving insolvency

It also very importantly measures efficiencies in the enforcement of contracts. In this article, I thought it would provide a useful perspective to consider the observations of the World Bank on the efficiencies or otherwise, of various Middle East legal systems in enforcing contracts.

## HOW ARE THE EFFICIENCIES OF A LEGAL SYSTEM MEASURED?

The basic principle taken by the World Bank is to measure the time, cost and procedural quality to resolve a standard commercial dispute

between two domestic businesses through the local first-instance courts. It will be readily appreciated that this is a vital issue for business.

The case study assumes a sale of goods dispute where the buyer alleges that the goods are of inadequate quality. The disputed issue of quality results in the case study assuming the appointment, by the first-instance judge, of an expert. This is a very sensible assumption as court appointed experts play a regular role in such disputes.

## TIME AND COST

In terms of time and cost the World Bank considers time from the date the claimant decides to file a lawsuit until payment. It assumes there is no appeal. It analyses time in three periods:

- » Time to file and serve the case
- » Time for trial and to obtain the judgment
- » Time for enforcement

As regards cost this is recorded as a percentage of the claim value and broken into three categories:

1. Court costs, including costs of the expert
2. Enforcement costs
3. Lawyers' fees

## PROCEDURAL QUALITY

*Procedural quality is broken into four elements:*

### 1. Court structure and proceedings

*This element of procedural quality focuses on whether:*

- » There is a specialised commercial court
- » There is a fast track small claims procedure
- » Pre-trial attachment is available to protect against disposal of assets
- » Cases are assigned randomly and in an automated fashion – it is seen as favourable if there is automatic and automated allocation presumably to avoid influenced



allocations to favourably inclined judges  
 » A women's testimony carries the same evidential weight as that of a male

## 2. Case management

This element of procedural quality has six components:

- » Are there procedural time standards?
- » Is there regulation of adjournments?
- » Do performance measurement reports of the courts' performance exist?
- » Are there pre-trial conferences?
- » Is there an electronic case management system for judges?
- » Is there an electronic case management system for lawyers?

## 3. Court automation

This element of procedural quality has four aspects, namely whether the following can be carried out electronically:

- » Filing of the initial complaint
- » Service of the initial complaint
- » Payment of court fees; and
- » Whether judgments are made available to the general public through publication in official gazettes or otherwise

## 4. ADR Index

ADR is an important factor for the World Bank annual reports, and includes arbitration, an important method of dispute resolution in the Middle East. ADR consists of six elements for analysis:

- » Whether commercial arbitration is governed by a consolidated law
- » Whether commercial disputes of all kinds (except for public order, public policy, bankruptcy, consumer rights, employment issues, and intellectual property) can be submitted to arbitration
- » Whether arbitration agreements are enforced by local courts in more than 50 percent of cases
- » Whether voluntary mediation or conciliation is a recognised way of resolving commercial disputes
- » Whether mediation and conciliation are governed by a consolidated law
- » Whether there are financial incentives for parties to attempt mediation or conciliation

## THE RESULTS

In terms of aggregating the various scores on the above elements of time, cost, and procedural quality, the results are as follows:

How the Middle East ranks against comparator economies on the ease of enforcing contracts

Country	Rank	Distance to frontier score (100)
United Arab Emirates	25	71.14
Oman	60	61.55
Iran, Islamic Republic	70	60
Saudi Arabia	105	55.07
Bahrain	110	54.53
<b>Regional Average (Middle East &amp; North Africa)</b>	<b>-</b>	<b>53.46</b>
Jordan	124	52.42
Iraq	138	48.94

Source: Doing Business 2017–World Bank Flagship Report–Economy profile Saudi Arabia

## LESSONS LEARNED

The UAE is ranked significantly higher than its comparator economies. A detailed analysis of its results shows that it scores well in all four categories (ADR, court automation, case management and court structure and proceedings).

Importantly, the UAE has made recent reforms facilitating contract enforcement by implementing electronic service of process, introducing a new case management office with the competent court and by further developing a service allowing litigants to file and track motions online.

Modernisation of systems improves rankings with Iran introducing electronic filing of documents, text message notification and electronic case management systems.

Saudi Arabia expanded the computerisation of its courts and introduced electronic filing.

The key differentiator between the various systems is that the low ranking ones tend to have little or no court automation or case management. Ministries of Justice would benefit from studying these reports and introducing reforms. 🇸🇦



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