Abstract

This paper builds on the experience gained during five years of participation in the 'Asia-Pacific Economic Cooperation (APEC) Ease of Doing Business (EoDB) Project on Enforcing Contracts' (the 'Project'). The Project was aimed at improving the legal environment for enforcing contracts in ten different economies in the Asia-Pacific region from 2011 to 2015. This paper outlines key aspects of the Project including the World Bank Doing Business indicator, which was used as a benchmark for the Project, and analyses the progress made by APEC and other target economies during the five-year period. It further provides an overview of recommendations suggested to improve the enforcing contract environment in those economies, which were provided by local and Korean legal experts as well as the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL). The paper further takes note of reforms captured in the Doing Business reports and illustrates reforms implemented by the target economies following the Project.

The objective of this paper is to set forth challenges and lessons learned during the Project. By doing so, it hopes to provide some guidance on continuation of the Project and for carrying out similar technical assistance and capacity building activities for law

Making it easier to enforce contracts in the Asia-Pacific region: recommendations and challenges*

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** The views expressed in this paper are solely those of the author in his individual capacity and do not in any way represent the views of the United Nations or the United Nations Commission on International Trade Law.
reform. For that purpose, it examines the appropriateness of using the Doing Business indicators for the Project and the role of champion economies in the Project. It further suggests ways to implement reforms to promote arbitration as an alternative means of resolving commercial disputes. Lastly, the paper illustrates some key challenges in carrying out judicial and arbitration reforms. It concludes by highlighting the importance of contract enforcement for economic development and sustainable growth and the critical role that target economies play in implementing reforms suggested during the Project.

Keyword: enforcing contracts, Asia–Pacific Economic Cooperation (APEC), Doing Business indicator, United Nations Commission on International Trade Law (UNCITRAL), judicial reform, arbitration, international transactions, technical assistance to law reform

<Contents>

I. Introduction

II. APEC Ease of Doing Business initiative and progress made

1. APEC EoDB Action Plan
2. Doing Business indicator on enforcing contracts
3. Progress made by APEC economies in enforcing contracts
4. Progress made by target economies in enforcing contracts

III. Recommendations to make it easier to enforce contracts

1. Reforms highlighted in the Doing Business reports
2. Judicial reforms suggested during the Project
3. Legislative reforms based on UNCITRAL texts

IV. Challenges in providing technical assistance to law reform

1. The Doing Business indicators – Drawing the wrong sword?
2. Redefining the role of the ‘champion’ economy – A ‘partner’ economy?
3. Arbitration as the alternative for commercial disputes
4. Real world, real challenges

V. Conclusion
I. Introduction

Contracts form the basis of everyday business transactions. For example, a contract is signed when a firm obtains a loan from a bank, purchases equipment for its operation and sells its manufactured goods over the Internet. While the notion of a contract may differ according to legal tradition, it is generally understood as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable by law.\(^1\) In other words, it is a promise; the performance of which the law recognizes and the breach of which the law provides a remedy for. In most instances, there will be no need for the parties to enforce the terms and conditions of the contract, as parties usually perform their obligations therein in good faith.

However, disputes relating to contracts are inevitable, for example, when there is default by one of the parties and the other party wants to enforce the terms of the contract. Such disputes lead to increased risks and transaction costs. One of the key functions of a contract is to bring legal certainty by preventing disputes and resolving them when they arise. In general, businesses prefer to avoid disputes as much as possible and when they do arise, to resolve them as soon as possible in an effective and constructive manner. Consequently, it is no surprise that contracts usually include some sort of a clause to deal with the resolution of disputes arising from it.

There are various means for resolving disputes: negotiation, mediation, arbitration and, of course, resorting to courts. These means differ in the way the parties participate in the process, the extent of involvement of a third party and the binding nature of the final result. Courts are usually considered the last recourse, because an adversarial proceeding could harm and even end a commercial relationship with the other party. Alternative dispute resolution (ADR) provides a more flexible means of resolving disputes and can be employed privately and informally so that parties can maintain their business relationship.\(^2\) As commercial disputes often require certain expertise for their resolution, ADR allows those better equipped to be involved either as a third-party or an expert.

\(^1\) As defined in Black’s Law Dictionary available at http://thelawdictionary.org/contract/ (last accessed 14 January 2017)

Contracts provide the mechanism to resolve disputes both in substance and in procedure. As a legal framework, contracts reduce risks when parties engage in business transactions. This is why contracts are important. They become more significant in international transactions in which parties are located in remote locations, goods or services are to be delivered in another and there is a wide range of possibly applicable laws. Such importance has led to a number of international legal instruments on the topic as well as an abundant amount of material with regard to drafting and negotiating international commercial contracts.

Disputes arising out of international contracts also require a different treatment. Local courts are not always perceived as being impartial when foreign parties are involved. Moreover, the uncertainty about local law and disparities in domestic legislation usually hinder parties from utilizing the domestic judicial process. This is especially so when the judicial system is not easy to access and requires proceedings to be in a foreign language. Backlogs and delays in courts could prolong the dispute leading to excessive risks and costs.

According to the “2015 International Arbitration Survey: Improvements and Innovations in International Arbitration” (the ‘Survey’), 90% of respondents indicated that international arbitration was the preferred method of resolving cross-border disputes, either as a stand-alone method (56%) or together with other forms of ADR (34%). It was further noted that the enforceability of the arbitral award, avoidance of specific legal systems/national courts and flexibility were considered most valuable features of international arbitration.

ADR means are not without their disadvantages. They could delay the ultimate resolution if an amicable solution is not reached. Parties may eventually have to resort to courts to enforce an arbitral award or an agreement resulting from mediation. It could become costlier. According to the Survey, ‘cost of arbitration’ was a key concern followed by lack of effective sanctions during the arbitral process, lack of insight into arbitrators’ efficiency and lack of speed.


5) Ibid., p. 6.

6) Ibid., p. 7.
Against this background, this paper builds on the experience gained during the five years of participation in the “Asia-Pacific Economic Cooperation (APEC)7) Ease of Doing Business (EoDB) Project on Enforcing Contracts” (the ‘Project’). The Project was an undertaking by the Korean Ministry of Justice aimed at improving the legal environment for enforcing contracts in APEC as well as non-APEC economies from 2011 to 2015. Chapter II provides background information about the Project and progress made by APEC as well as target economies in the area of enforcing contracts over the five-year period. Chapter III summarizes and analyses the wide range of suggestions made during the Project, which can be broadly categorized as those aimed at improving the judicial efficiency and those aimed at resolving disputes out-of-court. Chapter IV draws from lessons learned during the five years of the Project and sets forth some key challenges in implementing reforms to improve the enforcing contract environment. The paper concludes by sharing some thoughts on the possible roadmap for the Project as well as other similar technical assistance and capacity building activities for law reform.

II. APEC Ease of Doing Business initiative and progress made

1. APEC EoDB Action Plan

In November 2009, APEC launched the EoDB Action Plan (2010-2015) to improve and reform the business environment in the Asia-Pacific region in five priority areas (starting a business, getting credit, enforcing contracts, trading across borders and dealing with permits) under the auspices of its Economic Committee.8) So-called champion economies

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7) APEC was established in 1989 to further enhance economic growth and prosperity for the region and to strengthen the Asia-Pacific community. APEC currently has 21 members, most with a coastline on the Pacific Ocean. In 2014, they accounted for approximately 39% of the world’s population, approximately 57% of the global GDP and about 49 % of world trade (see APEC Policy Support Unit, “APEC in Charts 2015” (November 2015) available at http://publications.apec.org/publication-detail.php?pub_id=1675 (last accessed on 14 January 2017). APEC’s members are referred to as member ‘economies’ because the APEC cooperative process is predominantly concerned with trade and economic issues. Members engage with one another as economic entities and therefore, the criterion for membership is that the member is a separate ‘economy’, rather than a ‘state’. As a result, membership includes not only the People’s Republic of China, but also Hong Kong, which is a Special Administrative Region of China, and Chinese Taipei. Additional information about APEC is available at http://www.apec.org/ (last accessed on 14 January 2017).

8) APEC, Joint Ministerial Statement – 21st Ministerial Meeting (Singapore) (November 2009), Doc. No. 2009/AMM
were selected to lead the work programmes in each of the five priority areas with the ultimate goal of making it 25% cheaper, faster and easier to do business in the APEC region by 2015. Accordingly, champion economies conducted capacity building activities tailored to the needs of other economies, in the form of diagnostic studies, workshops and guided visits. They were aimed at suggesting customized and practical recommendations for reforms. In addition, there were two APEC-wide stocktaking workshops that assessed progress and shared best practices.

The Republic of Korea was chosen as the champion economy in enforcing contracts as it had ranked fifth in that area in the 2010 Doing Business report. Over the five-year span (2011-2015), the following ten economies (hereinafter referred to as ‘target economies’) were selected for the Project (in alphabetical order): Brunei Darussalam, Indonesia, Mexico, Myanmar, Peru, Philippines, Saudi Arabia, Sri Lanka, Thailand and Vietnam. While economies with a lower ranking in the Doing Business indicator on enforcing contracts were obvious candidates for the Project, target economies were selected mainly based on the respective government’s willingness to undertake joint activities and aspiration for reform.

The Project took the form of preliminary research of the relevant laws, regulations and practice, after which visits were organized to the respective economies to gather and verify

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9) The following is the list of champion economies with the respective priority areas: (i) New Zealand and the United States – Starting a Business; (ii) Japan – Getting Credit; (iii) Republic of Korea – Enforcing Contracts; (iv) Hong Kong (only for Phase 1 in 2010) and Singapore – Trading across Borders; and (v) Singapore – Dealing with Permits.


11) Workshops were organized on the margins of the Economic Committee meetings to present the status of progress in accomplishing the EoDB objective, to share experiences and best practices and to discuss possible future work. The first Stocktake Workshop was held in Moscow (February 2012) and the second Stocktake Workshop in Beijing (August 2014).


Making it easier to enforce contracts in the Asia-Pacific region: recommendations and challenges

Information as well as to identify resource persons. Workshops were held in the target economies involving local stakeholders including government officials, judges, private attorneys, legal practitioners as well as those from the academia. Following those workshops, a more in-depth survey was conducted which led to customized and concrete recommendations. These recommendations were presented during a wrap-up seminar held annually in Seoul, which was attended by a number of high-level government officials from target and other economies.

The Secretariat of the United Nations Commission on International Trade Law (UNCITRAL or the ‘Commission’) has been supporting the Project since 2011. The Secretariat’s contribution focused on illustrating distinct aspects of contracts in international transactions and the possible use of arbitration and other ADR means to resolve disputes arising from contracts. As the Project focused on economies where it was difficult to enforce contracts through courts, promotion of ADR was a key aspect. In that context, attention of the target economies was drawn to the existence of international legal standards for legislative reform and the Secretariat’s suggestions supplemented recommendations made by local and Korean legal experts, which focused more on judicial reforms.

Joint efforts between the Korean government and the UNCITRAL Secretariat received positive responses from APEC as well as the Commission. In 2014, the APEC Ministers welcomed the joint efforts to build awareness of private international law instruments to facilitate cross-border trade and investment, enhance ease of doing business and foster effective enforcement of contracts and efficient settlement of business disputes.

14) UNCITRAL is an inter-governmental body established by the United Nations General Assembly in 1966 with the mandate of harmonizing international trade law by preparing legislative standards in various fields of commercial law. However, the work does not end with the preparation and adoption of such instruments. Support activities to ensure the effective implementation and use of UNCITRAL texts constitute an important pillar of UNCITRAL’s work. See United Nations, A Guide to UNCITRAL (2013) available at http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf (last accessed on 14 January 2017).

15) APEC, Joint Ministerial Statement - 26th Ministerial Meeting (Beijing, China) (November 2014), Doc. No. 2014/AMM/JMS, para. 48 available at http://www.apec.org/~/media/Files/MinisterialStatements/Annual/2014/2014_AMM_JointMinisterialStatement.pdf (last accessed on 14 January 2017). During the Second Structural Reform Ministerial Meeting, the Ministers recognized the importance of work to develop model legal instruments and commended work in this area in collaboration with UNCITRAL and the Hague Conference on Private International Law. The Ministers agreed that the development of international legal instruments and their adoption would create a more conducive climate for cross-border trade and investment, thus facilitating economic growth. It was also noted that the use of those instruments provided greater legal certainty in cross border transactions, harmonization of finance and dispute resolution systems, closer
Commission, most recently in July 2016, welcomed its Secretariat’s efforts to expand cooperation with the Korean government to other areas of the EoDB initiative and expressed support for the Secretariat’s aim to cooperate more closely with APEC and its member economies to improve the business environment in the Asia-Pacific region and to promote UNCITRAL texts.16)

Recognizing the importance and value of the EoDB Action Plan, APEC agreed in 2015 to the EoDB Implementation Plan (or the Second EoDB Action Plan), which will continue to focus on the existing five priority areas, run for a period of three years (2016-2018) with an APEC-wide target of 10% improvement by 2018.17) The EoDB Implementation Plan aims to build upon existing EoDB efforts, to carry out additional tailored capacity building activities and to identify possible areas of collaboration with other international organizations, including UNCITRAL, the World Bank, the World Economic Forum, and the Hague Conference among others.18)

2. Doing Business indicator on enforcing contracts

To help monitor and assess progress in quantifiable terms, the EoDB initiative utilizes the World Bank’s Doing Business indicators as the basis for the 25% improvement target.19) First published in 2003, the annual Doing Business reports capture quantitative data on the regulatory constraints affecting businesses, especially small and medium-size domestic firms throughout their lifecycle.20) The 2017 Doing Business report presents data of 190 economies

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18) See supra note 10, Attachment B for a summary of the proposed EoDB Implementation Plan.


20) The Doing Business reports are published annually during the preceding fall and reflect data collected through July of the previous year. For example, the 2017 Doing Business report was published in October 2016 reflecting data collected through July 2016.
in 10 areas (starting a business, dealing with construction permits, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency).\textsuperscript{21)}

Until 2010, the Doing Business reports ranked the economies in each of the indicators, evaluating the conduciveness of the regulatory environment to the operation of businesses. A drawback was that the regulatory performance of an economy was measured only in relation to the performance of others in relative terms. To overcome this drawback, the ‘distance to frontier’ (DtF) measure was introduced in the 2012 Doing Business report to show the distance of each economy to the ‘frontier,’ which represents the highest performance observed on each of the indicators or its components.\textsuperscript{22)} Since then, the Doing Business reports have presented two aggregate measures: the relative EoDB ranking and the absolute DtF score.\textsuperscript{23)} The latter makes it possible to compare how an economy has changed over the years.

The Doing Business indicator on enforcing contracts measured the efficiency of the judicial system by collecting data on the time\textsuperscript{24)} and cost\textsuperscript{25)} required for resolving a commercial dispute through a local first-instance court.\textsuperscript{26)} While data is provided separately for the time and cost, the two components are interrelated because the longer it takes the higher the cost. Differences within APEC economies are striking, as it is more than five times faster to enforce a contract in Singapore (164 days) compared with the Philippines (842 days) and eleven times cheaper in Korea (12.7% of the claim) compared with Indonesia (115.7% of the claim).\textsuperscript{27)}


\textsuperscript{23)} The DtF measure is the basis of computing all rankings starting from the 2015 Doing Business report.

\textsuperscript{24)} Time (recorded in calendar days) is counted from when the plaintiff decides to file the lawsuit until payment. This includes both the days when actions take place and the waiting periods in between. The average duration of three different stages is recorded: the completion of service of process, the issuance of judgment and the recovery of the claim value through a public sale.

\textsuperscript{25)} Cost (recorded as a percentage of the claim) includes court costs, enforcement costs and average attorney fees.

The following table shows how long and how much it takes to enforce a contract in APEC economies in comparison with other regions.

![Chart 1. Enforcing contracts in APEC economies](chart.png)

Till the 2015 Doing Business report, the ‘number of procedures’ was the third component of the enforcing contract indicator. This posed a number of questions, as it was not necessarily feasible to compute each procedure on a step-by-step basis. For example, in certain economies, more than one procedure could be done at once while it would still be counted as multiple steps for data purposes. In other economies, certain procedures were simply unknown in their legal tradition. Therefore, the 2016 Doing Business report introduced the ‘quality of judicial processes’ index replacing the number of procedures component to better ensure the relevance of the indicator. This index evaluates whether

[27] Supra note 21.
[28] The chart is based on the 2016 Doing Business report (see infra note 30). SA refers to South Asia; EU to the European Union and EAP to East Asia and the Pacific. The regional average refers to the APEC average.
[29] The procedural steps traced the chronology of a commercial dispute before a relevant court. A procedure was defined as any interaction, required by law or commonly used in practice, between the parties or between them and the court. This included steps to file and serve the case, steps for trial and judgment and steps necessary to enforce the judgment. One procedure was subtracted if the economies had specialized commercial courts or allowed electronic filing.
an economy has adopted a series of good practices that promote quality and efficiency in the court system with respect to court structure and proceedings (0-5 points), case management (0-6 points), court automation (0-4 points) and alternative dispute resolution (0-3 points).

Consideration of ADR aspects reflects and reinforces the views expressed by UNCITRAL throughout the Project that the possible use of ADR needs to be taken into account when assessing the environment for enforcing contracts. It should, however, be noted that the underlying case scenario remains to be a domestic dispute. While the introduction of the ADR index is definitely an improvement, data being collected is quite preliminary and may not be sufficient to urge further reforms. For example, with the recent enactment of a modern arbitration law, Myanmar may have gained an additional 1.5 points; however, this gain doesn’t necessarily translate into the reforms being complete nor having a direct impact on the doing business environment. In fact, data on how many disputes are resolved through ADR, how long it takes and how much it costs, including enforcement through courts, are not readily available. The confidential and private nature of the process may be the reason; however, having readily available data similar to that of the enforcing contract indicator would be useful to urge reforms. Fortunately, arbitration institutions established in the target economies have begun to gather more viable data on those aspects.

Data on enforcing contracts is collected through a study of civil procedure codes and court regulations as well as questionnaires completed by contributors (local litigation lawyers and judges) based on a hypothetical case scenario. The case scenario is based on certain assumptions and does not necessarily reflect reality involving the wide range of.

31) The indicator records several aspects, including whether there is a specialized commercial court or division and whether a small claims court or simplified procedure for small claims is available.
32) The indicator records, for example, whether there are regulations setting time standards for key court events and whether electronic case management is available.
33) The indicator covers such aspects as whether the initial complaint can be filed electronically, whether process can be served electronically and whether the court fees can be paid electronically.
34) The ADR index consists of six components: (i) consolidated legislative framework governing domestic commercial arbitration; (ii) limitations on the arbitrability of commercial disputes; (iii) enforcement of arbitration agreements by local courts; (iv) recognition of mediation or conciliation as means of resolving disputes; (v) consolidated legislative framework governing mediation/conciliation; and (vi) financial incentives for attempting mediation or conciliation. Each component is worth 0.5 points. Higher values are deemed to be associated with greater availability of mechanisms of ADR.
35) See infra note 37.
36) See chapter III, section 3, 2).
37) Assumptions of the case scenario are as follows:
contracts or different types of commercial transactions. The case scenario only deals with a
dispute among domestic parties, which is resolved in the court of first instance at the
economy’s largest business city. As such, it doesn’t consider international transactions, ADR,
situations in other regions of that economy that may be dramatically different (either
positively or negatively) or the full range of possible judicial proceedings, including
appeals. Considering that one of APEC’s objectives is to facilitate trade in the region, the
case scenario might not be so appropriate for EoDB purposes. In fact, the indicator does not
capture the distinct characteristics of international transactions where: (i) parties are located
in different jurisdictions; (ii) parties may hesitate to bring a case to a court in another
jurisdiction and may prefer resolving disputes outside courts; (iii) questions about the
applicable substantive law may arise; and (iv) issues that need to be resolved are quite
complex requiring expertise for their resolution.

The case scenario assumes that the value of the claim is 200% of the economy’s income
per capita or 5,000 USD, whichever is greater. This is to provide a standardized case
scenario applicable in all economies regardless of their stage of economic development.
Indeed, there was great discrepancy in the hypothetical value of the claim in the ten target
economies ranging from 3,800 USD (or 4,649,000 MMK) in Myanmar (adjusted to 5,000
USD) to 71,100 USD (or 96,952 BND) in Brunei Darussalam. This raised a number of
questions during the Project. While the adjustment to the 5,000 USD figure in Myanmar
and Vietnam (see table 1 below) avoids circumstances where the value of the claim would
be too low and unreasonable for the parties to resort to court, the economic situation in the

- The value of the claim equals 200% of the economy’s income per capita or 5,000 USD, whichever is greater.
- The dispute concerns a lawful sale transaction between a seller (S) and a buyer (B) located in the economy’s
  largest business city.
- S sells goods worth 200% of the economy’s income per capita or 5,000 USD to B, after which S delivers
  the goods to B. B refuses to pay on the grounds that the goods were not of adequate quality.
- S (the plaintiff) sues B (the defendant) to recover the sales price. B opposes stating that the quality of
  the goods is not adequate. The claim is disputed on the merits.
- The court with jurisdiction over commercial cases worth 200% of income per capita or 5,000 USD decides
  the dispute.
- S attaches B’s movable assets (for example, office equipment and vehicles) before obtaining a judgment
  because of the fear that B may become insolvent.
- An expert opinion is given on the quality of the delivered goods.
- The judge decides that the goods are of adequate quality. The judge rules 100% in favour of S and that
  B must pay the agreed price. B does not appeal and the judgment becomes final.
- S takes all required steps for prompt enforcement of the judgment. The money is successfully collected
  through a public sale of B’s movable assets.
economy’s largest business city (Yangon and Ho Chi Minh respectively) may still be quite different from that of the overall economy. In the five economies where the value of claim in the case scenario was approximately 5,000 USD (Indonesia, Myanmar, Philippines, Sri Lanka and Vietnam), the cost for enforcing contracts was 115.7%, 51.5%, 31.0%, 22.8%, 29.0% of the claim respectively, illustrating that it would not make much sense economically for a party to bring a case to court.

<table>
<thead>
<tr>
<th>Economy</th>
<th>Court</th>
<th>Claim value in USD (estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>Bandar Seri Begawan Intermediate Court</td>
<td>BND 96,952 $71,100</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Jakarta District Court &amp; Surabaya District Court</td>
<td>IDR 70,425,574 $5,298</td>
</tr>
<tr>
<td>Mexico</td>
<td>Mexico City First Instance Oral Civil Court &amp; Monterrey First Instance Oral Civil Court</td>
<td>MXN 257,674 $13,650</td>
</tr>
<tr>
<td>Myanmar</td>
<td>Lahta Township Court</td>
<td>MMK 4,649,000 $3,837 adj. $5,000</td>
</tr>
<tr>
<td>Peru</td>
<td>Lima Magistrates Court</td>
<td>PEN 34,746 $10,275</td>
</tr>
<tr>
<td>Philippines</td>
<td>Quezon City Metropolitan Trial Court</td>
<td>PHP 281,513 $6,028</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>Riyadh Board of Grievances, Commercial Circuit</td>
<td>SAR 193,907 $51,707</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>Colombo District Court</td>
<td>LKR 823,548 $5,658</td>
</tr>
<tr>
<td>Thailand</td>
<td>Bangkok Civil Court</td>
<td>THB 333,304 $9,619</td>
</tr>
<tr>
<td>Vietnam</td>
<td>People’s Court of Ho Chi Minh City, District Level Court</td>
<td>VND 109,734,390 $4,919 adj. $5,000</td>
</tr>
</tbody>
</table>

Table 1. The court and the value of claim according to the case scenario for each economy38).

In this context, an alternative would be to use the threshold amount for small claims when economies have in place a small claims court or similar procedure. While this would be a departure from the ‘standardized’ case scenario, such thresholds are likely to better reflect the circumstances in the respective economy. For example, in the Philippines, claims up to 200,000 PHP39) and in Thailand, claims up to 300,000 BHT40) fall within the

38) Table 1 is based on information contained in the 2016 Doing Business report (supra note 30). The estimates in USD were calculated on the basis of exchange rates of 31 August 2016.
jurisdiction of small claims courts, both figures slightly lower than the value of claim according to the case scenario.

Despite these limitations,\(^{41}\) the Doing Business indicator on enforcing contracts provides a useful benchmark for comparison purposes. In the 2017 Doing Business report,\(^ {42}\) the frontier for the time component was set by Singapore with 164 days. In comparison, it took 1,715 days in Guinea-Bissau and Suriname. The frontier for the cost component was set by Iceland with 9% of the claim. In comparison, it cost almost 8,000 USD to enforce a contract with a value of 5,000 USD in Timor-Leste (163.2%). No economy has yet attained the frontier for the quality of the judicial processes index but Australia obtained the highest score of 15.5. In contrast, Iraq obtained the lowest score of 2.5. As to the three components combined, the Republic of Korea has the highest DtF score of 84.15 followed closely by Singapore (83.61). The lowest ranked, Timor-Leste, scored 6.13.

3. Progress made by APEC economies in enforcing contracts

APEC economies have generally done well in the overall Doing Business rankings. The 2017 Doing Business report shows that five of the top ten ranked economies are APEC members (New Zealand, Singapore, Hong Kong, Republic of Korea and United States).\(^ {43}\) In enforcing contracts, four of the top ten ranked economies are APEC members (Republic of Korea, Singapore, Australia and China) and five other APEC members (Russia, New Zealand, Chinese Taipei, United States and Hong Kong) are ranked in the top thirty. The rankings shifted quite heavily in the 2016 Doing Business report, which was mainly due to the change in the methodology.\(^ {44}\) For example, Hong Kong, Japan, Malaysia, Thailand and Vietnam’s ranking dropped noticeably because they had scored well on the ‘number of procedures’ component, which was discontinued (see table 2 below).\(^ {45}\)

The final assessment of the EoDB initiative prepared by the APEC Policy Support Unit, which used the 2010 Doing Business report as the benchmark, shows that APEC economies have made continuous progress in the five priority areas from 2009 to 2015.\(^ {46}\) The

\(^{41}\) See chapter IV, section 1 for further discussion.
\(^{42}\) See supra note 21.
\(^{43}\) Supra note 21, p. 7
\(^{44}\) Supra note 30.
\(^{45}\) See chapter IV, section 1 for further discussion.
\(^{46}\) APEC Policy Support Unit, “APEC’s Ease of Doing Business - Final Assessment 2009-2015: A collaborative
combined improvement in average values was 14.6%, owning to strong improvements in starting a business of 47.4%.\textsuperscript{47) To the contrary, a marginal 1.4% improvement was recorded in trading across borders and 0.4% in enforcing contracts.\textsuperscript{48) To meet the initial 25% target set in the 2010 EoDB Action Plan, it would have required a reduction of 103 days in time and of 8% in cost.\textsuperscript{49)}

In terms of the time component, there was an improvement of 0.8% in APEC economies as the average time improved from 426.5 days in 2009 to 422.9 days in 2015.\textsuperscript{50) Compared to 2010, five APEC economies (Indonesia, Malaysia, Mexico, Peru and Thailand) reduced the time by an average of 65.2 days, while it became longer in five APEC economies (China, Hong Kong, Russia, United States and Vietnam) by an average of 75.4 days (see table 2 below).

In terms of the cost component, there was no change in the average cost, which remained at 33% of the claim.\textsuperscript{51) Compared to 2010, there has been an increase in the cost component in ten of the 21 APEC economies, with only Indonesia and Mexico making cuts in costs (see table 2 below).

In short, improvements in enforcing contracts have been slow and difficult. The 2016 Doing Business report noted that the smallest improvement over the past 12 years was in the area of enforcing contracts, where reforms are relatively uncommon because reforming a judicial system can be a long and complicated task.\textsuperscript{52) The final assessment by the APEC Policy Support Unit also shares that understanding by stating that the lack of progress could be explained by two main factors: (i) the complexity of introducing reforms in the judiciary system, which usually requires several layers of approval in the executive as well as the legislative branch and (ii) institutional factors that guarantee the independence of the judiciary, in which an initiative from the executive or the legislative branch may be seen as an undue interference.\textsuperscript{53)}
<table>
<thead>
<tr>
<th>Year</th>
<th>EoDB Ranking</th>
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<tbody>
<tr>
<td></td>
<td>Distance to Frontier (2015 and 2016)</td>
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<tr>
<td></td>
<td>Time/Cost/Procedure (till 2015) or Judicial quality (only for 2016)</td>
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<td>Australia</td>
<td>16</td>
<td>17</td>
<td>15</td>
<td>14</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
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53) Supra note 46, pp. 1-2 and 30.
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Table 2. Analysis of the components and rankings of APEC economies in enforcing contracts

4. Progress made by target economies in enforcing contracts

Table 3 below reflects how the ten target economies have performed in the area of enforcing contracts from 2010 to 2016. The average time required for enforcing a contract in the nine target economies reduced by 2.2% (614 days to 600 days) but the average cost increased by 1.2%. The table shows that five of the nine target economies made progress in reducing the time component (Indonesia, Mexico, Peru, Saudi Arabia, Thailand). Four others remained unchanged. On the other hand, the time to enforce a contract in Vietnam increased from 295 days to 400 days. In terms of cost, only Indonesia recorded a decrease and five others remained unchanged. To the contrary, the cost for enforcing a contract increased in Mexico, Philippines, Thailand and Vietnam.

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54) The table reflects the data in the respective Doing Business reports. For comparison purposes, adjustments made subsequently to the database were not taken into account.
55) Myanmar is excluded because it was only included from the 2014 Doing Business report.
In order to evaluate whether the Project had a positive impact, a comparison should be made between the data when the Project took place and the current data.

Five of the ten target economies improved their ranking and the DIF score after the Project, averaging an improvement of 33 rankings. Brunei’s ranking improved from 158th to 93rd, Mexico from 71st to 40th, Peru from 110th to 63rd, Saudi Arabia from 124th to 105th

56) The table reflects data in the respective Doing Business reports. For comparison purposes, adjustments made subsequently to the database were not taken into account. The highlighted cell indicates the ranking of the economy when the Project was undertaken in that economy.
and Sri Lanka from 165th to 163rd. However, apart from Saudi Arabia, which reduced the time component from 635 to 575 days and Mexico, which also reduced the time from 400 to 340.7 days, the improvements in ranking are mainly attributed to the change in methodology in the 2016 Doing Business report. Only minimal changes in the time and cost component have been recorded since the Project.

Myanmar’s ranking remains the same since the Project with minor changes reflecting the change in methodology and the total number of economies surveyed.

The ranking of four target economies fell on average 22 rankings. Despite improvements in both time and cost components, Indonesia’s ranking dropped from 154th to 166th due to steady and unreasonable high cost (115.7% of the claim). The drop in the rankings of the Philippines (from 112th to 136th) and Vietnam (from 44th to 69th) is due to the change in methodology in the 2016 Doing Business report as no or minimal change had been recorded both in time and cost. Thailand’s ranking dropped from 24th to 51st. The increase in cost from 12.3% to 19.5% of the claim presumably had a negative impact on its ranking. Except for Indonesia, all three had scored well in the previous number of procedures component and therefore the change in methodology might have had a negative impact on their rankings.

III. Recommendations to make it easier to enforce contracts

1. Reforms highlighted in the Doing Business reports

The Doing Business reports have highlighted examples of reforms undertaken by economies to improve their ranking in enforcing contracts, with the recent reports highlighting more practical reforms. For example, Malaysia had continuously implemented reforms since 2009 with the introduction of a case management system, re-organization of

57) Supra note 30.
the commercial division of the Kuala Lumpur High Court, expansion of training and monitoring of judges as well as of its e-court system. This had resulted in the reduction of days required for enforcing a contract from 585 days in the 2012 Doing Business report to 425 days in the 2017 Doing Business report. The following lists some examples highlighted in the Doing Business reports.

Among others, Mexico and New Zealand have implemented reforms to streamline and expedite the judicial process by imposing strict deadlines and limiting appeals. Case management for timely and organized flow of the process was highlighted as improving efficiency, addressing delays and enhancing predictability. Early court intervention, establishing time frames for meaningful events such as the filing of a plea or the submission of the final judgment, creating realistic schedules and expectations that events will occur as scheduled, introducing early options for settlement and developing mechanisms to control frivolous adjournments were mentioned in that context. The 2016 Doing Business report indicates that pre-trial conferences, whereby contentious issues are narrowed down, expectations of the parties are managed and a timetable established with additional possibility of a settlement, is available in 87 economies.

Australia, Russian Federation and others have introduced e-filing, a key feature of an effective judicial process. Some economies, including Saudi Arabia, began with a computerized case management system, usually a pre-condition for e-filing. Electronic case management also allows for electronic servicing, improved management of caseload, e-payments and on-line auctions for public sales of assets, which have been evidenced in Croatia and Romania. It also provides access to certain information adding to transparency. The experiences of Korea and Singapore as pioneers in this field were highlighted numerously in the Doing Business reports.

Establishment of commercial courts and small claims courts was also highlighted as


60) Supra note 30, pp. 93-94.

61) Republic of Korea launched an electronic case filing system in 2010 that allows electronic document submission, registration, service notification and access to court documents. Singapore introduced an 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 to hold certain hearings by videoconference.
positive reforms, as dedicated systems for commercial and small claim cases can make a big difference in the effectiveness of a judiciary.\textsuperscript{62} According to the 2016 Doing Business report, 97 of the 183 economies surveyed had commercial courts or chambers,\textsuperscript{63} which has become a global trend regardless of the level of economic development. 128 economies have either a stand-alone small claims court or a simplified procedure for small claims.\textsuperscript{64} Adjustments in the monetary jurisdiction of courts, for example, in the Czech Republic and South Africa, can be understood in the same context.

Publication of judgements was occasionally mentioned in the Doing Business reports. While publication of judgments does not have a direct effect on improving the time and cost of a case, businesses and their attorneys can better understand how courts would interpret the law as well as contractual clauses leading to a more efficient preparation of their cases.\textsuperscript{65} The 2012 Doing Business report noted that 122 economies ranging from Australia to Uruguay made judgments publicly available.

2. Judicial reforms suggested during the Project

Local and Korean legal experts participated in the Project by providing a diagnostic analysis of each economy and making policy recommendations. Local law firms and individuals with expertise and experience presented the perspectives of domestic users of the judicial system, whereas Korean law firms and professors provided the perspectives of a potential foreign investor or a trading partner. The latter also provided a comparison with the Korean enforcing contract environment. This provided for a multi-dimensional approach, resulting in a wide range of recommendations for reform. Nonetheless, the Project could have benefitted from more direct input from small and medium-size businesses on how they perceived the judicial system.\textsuperscript{66}


\textsuperscript{63} Supra note 30, p. 92.

\textsuperscript{64} Ibid., p. 93.

The following table provides a list of local and Korean legal experts that submitted reports to the Project and made presentations during the wrap-up seminars in Seoul.

<table>
<thead>
<tr>
<th>Year</th>
<th>Economy</th>
<th>Experts</th>
</tr>
</thead>
</table>
| 2011 | Indonesia | - Hua L Adolf and others<sup>68</sup>  
- Kim & Chang<sup>69</sup> |
|  
| Peru | - Estudio Muñiz, Ramírez, Pérez-Taiman & Olaya Abogados<sup>70</sup>  
- Heemoon Jo (Hankuk University of Foreign Studies)<sup>71</sup>  
- Sanguk Ha (Hankuk University of Foreign Studies)<sup>72</sup> |
| 2012 | Philippines | - Sycip Salazar Hernandez & Gatmaitan<sup>73</sup>  
- Kim & Chang<sup>74</sup> |
|  
| Thailand | - Weerawong, Chinnavat & Peangpanor Ltd.<sup>75</sup>  
- Kim & Chang<sup>76</sup> |
|  
| Indonesia | - An An Chandrawulan and Efa Laela Fakhriah<sup>77</sup> |

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<sup>66</sup> The Doing Business reports do not survey businesses for two reasons. The first relates to the frequency with which businesses engage in the transactions captured by the indicators, which is generally low. The second reason is that the Doing Business questionnaires gather mostly legal information, which businesses are unlikely to be fully familiar with. See supra note 21, pp. 19-20.

<sup>67</sup> Reports submitted to the Korean Ministry of the Justice for the Project are all accessible at http://www.prism.go.kr (last accessed on 14 January 2017).

<sup>68</sup> Hikmahanto Juwana, Hua L Adolf, Harjo Winoto and Handayani, “Diagnostic Study of Enforcing Contracts in Indonesia - A Study on World Bank’s Data and Probable Solutions to Reduce Time and Cost of Contract Enforcement” (October 2011).

<sup>69</sup> Sang Kil Park, Hye Kwang Lee, Jun Ki Park and Sae Uk Kim, “Facilitating Enforcing Contracts in Indonesia” (November 2011) and powerpoint presentation by Jun Ki Park.

<sup>70</sup> Nelson Ramírez Jiménez, “Report for the South Korean Ministry of Justice on the fulfillment of contracts in Peru” (December 2012).

<sup>71</sup> Hee Moon Jo, “Judicial Reform in Latin America: Comparative approach based on World Bank Enforcing Contract Data” (December 2011).

<sup>72</sup> Sang Uk Ha, “A Pragmatic Approach to Enforcing Contracts in Peru and Korea” (December 2011).


<sup>74</sup> Sang Kil Park, Sae Uk Kim and Soojin Eom, “Facilitating Enforcing Contracts in the Philippines” (October 2012) and powerpoint presentation by Saek Kim and Soojin Eom.

<sup>75</sup> Weerawong Chittmittrapap, “Diagnostic Study on Enforcing Contracts in Thailand” (September 2012).

<sup>76</sup> Sang Kil Park, Sae Uk Kim and Jihyun Nam, “Facilitating Enforcing Contracts in Thailand” (October 2012) and powerpoint presentation by Sae Uk Kim and Jihyun Nam.

<sup>77</sup> An An Chandrawulan and Efa Laela Fakhriah, “Diagnostic study on small claims court in Indonesia: Incorporation into Civil Procedure Law in Indonesia” (June 2012).
## Table 4. List of local and Korean legal experts contributing to the Project

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<td>- bizconsult Law LLC[78]</td>
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<td></td>
<td>- Bae, Kim &amp; Lee LLC[79]</td>
</tr>
<tr>
<td></td>
<td>Brunei Darussalam</td>
<td>- Ahmad Isa &amp; Partners[80]</td>
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<tr>
<td></td>
<td></td>
<td>- Bae, Kim &amp; Lee LLC[81]</td>
</tr>
<tr>
<td></td>
<td>Saudi Arabia</td>
<td>- Mohammed Al-Ghamdi Law Firm in association with Fulbright &amp; Jaworski LL[82]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Yulchon LLC[83]</td>
</tr>
<tr>
<td></td>
<td>Philippines</td>
<td>- Francisco Ed. Lim[84]</td>
</tr>
<tr>
<td>2014</td>
<td>Mexico</td>
<td>- Gonzalez Calvillo Abogados[85]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Paz, Horowitz, Robalino, Garces Law Firm[86]</td>
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<tr>
<td></td>
<td>Myanmar</td>
<td>- U Nyein Kyaw[87]</td>
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<td>- Kim &amp; Chang[88]</td>
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<td>2015</td>
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<td>Sri Lanka</td>
<td>- Harsha Cabral[91]</td>
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<tr>
<td></td>
<td>Philippines</td>
<td>- Sycip Salazar Hernandez &amp; Gatmaitan[93]</td>
</tr>
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</table>

79) Bae, Kim & Lee, “Research on dispute resolution and starting a business in Vietnam in support of the APEC EoDB Action Plan” (in Korean) (October 2013) and powerpoint presentation by Wook Yoo.
80) Nava Palaniandy and Lisa Yee Peng Tan, “Diagnostic study on enforcing contracts in Brunei Darussalam” (October 2013).
81) Bae, Kim & Lee, “Research on dispute resolution and starting a business in Brunei in support of the APEC EoDB Action Plan” (in Korean) (October 2013) and powerpoint presentation by Chan Ho Lee.
83) Yulchon LLC, “Facilitating Contract Enforcement and Starting New Business in the Kingdom of Saudi Arabia” (October 2010) and powerpoint presentation by Stephen Suk-joon Pak and Tong-chan Shin.
86) Sangwook Ha, “Strategies to strengthen enforcing contracts in Mexico” (December 2014).
87) U Nyein Kyaw, “Enforcing Contracts in Myanmar” (October 2014)
88) Sang Kil Park, Gene Lee and Young Lee Byun, “Facilitating Enforcing Contracts in Myanmar” (December 2014) and powerpoint presentation by Gene Lee.
90) Yulchon LLC, “Facilitating Contract Enforcement in Thailand” (December 2015) and powerpoint presentation by Jae Hyung Woo.
The starting point of almost all of the studies was an analysis of the status quo in each jurisdiction. Some raised questions about the assumptions used in the Doing Business report arguing that it did not reflect an ordinary case of enforcing a contract in that jurisdiction.\(^{94}\) A number of studies also stated that the data reflected in the Doing Business report was inaccurate and even flawed.\(^{95}\) While such arguments sometimes proved useful in rectifying incorrect data, it also distracted the discussions (see chapter IV, section 1 below).

The broadest yet difficult reform suggested was with regard to the overarching legislative framework. It was found that some of the recommendations discussed below could only be implemented through the revision of basic acts like the civil procedure code. Therefore, studies often cited the need to update and revise relevant civil procedure laws and regulations.\(^{96}\) It was noted that in Indonesia, there was a need to untangle multiple and complicated rules that govern the judicial procedure and to bring coherence among the relevant provisions.\(^{97}\) In Peru, the revision of the substantive law governing commercial transactions was suggested.\(^{98}\) In general, it was recommended that the underlying procedural law needed to address admissibility of certain documents in courts,\(^{99}\) to allow judges to render default judgment and interim relief\(^{100}\) and to provide for expedited enforcement procedure including an accelerated transfer of ownership.\(^{101}\)

One category of recommendations focused on streamlining and simplifying the judicial process. Imposing a strict timeline\(^{102}\) and preparing guidelines to ensure its implementatio n\(^{103}\) were often mentioned. The need to introduce a simplified and accelerated procedure,\(^{104}\) to remove excessive requirements during the pre-trial stage\(^{105}\) and to avoid delays due to long intervals between hearings\(^{106}\) were also underscored. As the servicing posed a

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94) *Supra* notes 68, 72 and 75.
95) *Supra* notes 72, 75, 80 and 86.
96) *Supra* notes 68 and 91.
97) *Supra* note 68.
98) *Supra* note 70.
99) *Supra* note 91.
100) *Supra* note 83.
101) *Supra* note 89.
102) *Supra* notes 68, 76, 74, 88, 90 and 91.
103) *Supra* notes 84, 90 and 92.
104) *Supra* note 68, 70, 76, 75 and 85.
105) *Supra* note 91.
106) *Supra* notes 83, 91 and 92.
number of difficulties resulting in additional delays, simplified and alternative service modes including by electronic means were suggested in almost all target economies.\textsuperscript{107)}

A number of studies highlighted the need to utilize preparatory, preliminary or case management conferences prior to the trial, which would have the effect of limiting new submissions during trial.\textsuperscript{108)} Other suggestions focused on providing judges more flexibility to avoid unnecessary procedures,\textsuperscript{109)} to render default judgements in case of defendant’s absence or non-response\textsuperscript{110)} and to allow for speedy disposals.\textsuperscript{111)} On the other hand, it was also pointed out that there was a need to restrict the leniency of the judges, as that could lead to more delay.\textsuperscript{112)} It was also suggested that standard forms should be prepared for use in litigation.\textsuperscript{113)}

Another category of recommendations was with regard to the judicial infrastructure. One aspect was that there was a need to train judges in commercial matters to increase their expertise and competence.\textsuperscript{114)} Another suggestion was to establish research divisions to support judges handling commercial matters.\textsuperscript{115)} The need to increase the number of judges\textsuperscript{116)} and to fill existing vacancies\textsuperscript{117)} was mentioned. Other suggestions included restructuring of the courts,\textsuperscript{118)} reassessing the role of juror in commercial cases,\textsuperscript{119)} providing adequate remuneration for judges\textsuperscript{120)} and implementing a caseload monitoring system.\textsuperscript{121)} Lastly, the benefits of making judgement publicly available and providing a database of case law was emphasized.\textsuperscript{122)}

Yet another category of recommendations related to the establishment or expansion of specialized commercial courts or chambers.\textsuperscript{123)} Small claims court or petty cash procedure

\textsuperscript{107)} Supra notes 68, 69, 71, 72, 76, 74, 79, 86, 88 and 90.
\textsuperscript{108)} Supra notes 69, 71, 75, 76, 79, 80, 81 and 88.
\textsuperscript{109)} Supra note 75.
\textsuperscript{110)} Supra note 76.
\textsuperscript{111)} Supra note 80.
\textsuperscript{112)} Supra note 73.
\textsuperscript{113)} Supra notes 69 and 74.
\textsuperscript{114)} Supra notes 68, 72, 73, 78, 84 and 91.
\textsuperscript{115)} Supra note 75.
\textsuperscript{116)} Supra notes 68, 72,78, 80 and 81.
\textsuperscript{117)} Supra notes 73 and 84.
\textsuperscript{118)} Supra note 73.
\textsuperscript{119)} Ibid.
\textsuperscript{120)} Supra note 68.
\textsuperscript{121)} Supra note 91.
\textsuperscript{122)} Supra notes 74, 76, 83, 90 and 91.
were also found to be useful in improving the judicial efficiency.\textsuperscript{124} In relation, suggestions were made to adjust the ceiling amount for small claims\textsuperscript{125} and to establish clear rules of procedure for such cases.\textsuperscript{126}

A general recommendation in all target economies was to make better use of information and communication technology.\textsuperscript{127} The need to allow for electronic submissions, notices and payments\textsuperscript{128} as well as electronic case management\textsuperscript{129} was constantly emphasized. Sharing of the Korean experience in establishing and operating the e-court system had greatly influenced such recommendations.\textsuperscript{130}

Tactical delays by parties and attorney were pointed out as a cause of delay in courts and the need for rules on contempt of court or code of ethics for attorneys was mentioned.\textsuperscript{131} Also introducing measures to prevent or discourage frivolous claims including appeals\textsuperscript{132} and means for courts to control abusive adjournment\textsuperscript{133} was suggested. In Mexico and Peru, the need to address delays caused by parties raising disputes about the competency of the judiciary through an administrative justice system was raised.\textsuperscript{134}

As to address the high cost of enforcing a contract in the target economies, guidelines and regulations on attorney fees\textsuperscript{135} and the possibility of self-representation by parties were suggested.\textsuperscript{136} Inclusion of attorney’s fees in the recoverable costs was suggested as a way to minimize the cost relating to judicial proceedings.\textsuperscript{137}

Increasing the use of ADR within and outside the judicial process was often suggested.\textsuperscript{138}

\textsuperscript{123} Supra notes 69, 70, 74, 75, 80, 88, 89 and 92.
\textsuperscript{124} Supra notes 68, 69, 71, 75, 79, 81, 88 and 89.
\textsuperscript{125} Supra note 74.
\textsuperscript{126} Supra note 73.
\textsuperscript{127} Supra notes 78, 79, 88, 89, 90, 91 and 92.
\textsuperscript{128} Supra notes 71, 72, 74, 75, 76, 81, 85, 89 and 90.
\textsuperscript{129} Supra notes 81 and 88.
\textsuperscript{131} Supra note 68.
\textsuperscript{132} Supra notes 70 and 89.
\textsuperscript{133} Supra notes 74, 75, 89 and 91.
\textsuperscript{134} Supra notes 70 and 86.
\textsuperscript{135} Supra notes 68, 69, 79 and 86.
\textsuperscript{136} Supra note 86.
\textsuperscript{137} Supra notes 69, 78, 79 and 83.
\textsuperscript{138} Supra notes 73, 75, 80, 81, 83, 84 and 90.
On the other hand, target economies that compel mandatory mediation prior to trial have often experienced added delays, which called for a more strategic use of ADR. In that context, the possibility of refunding court costs when a case is settled out of court and sanctions for parties refusing to mediate was suggested.

Quite a handful of the suggestions related to the enforcement of the judgement, which posed a number of practical questions for the target economies. In general, it was noted that the process should be simplified with a strict timeline and less documents. Introduction of private bailiffs and extrajudicial foreclosure with some monitoring by courts were suggested, both with a caveat that they should not add to the enforcement costs.

One of the difficulties posed during enforcement of the judgment was identifying assets for recovery and suggestions were made to address fraudulent acts by debtors to conceal assets including through criminal punishment. Suggestions were made that for low-value monetary claims, a more simplified enforcement mechanism should be available including possible attachment of salary. The need to allow for provisional enforcement as well as injunctive relief and for mediation in the enforcement stage was mentioned. Almost all studies by Korean experts noted the need to impose post-judgment statutory interest at higher than market rate to urge voluntary payment by debtors. It should, however, be noted that imposing such interests may be contrary to the public policy in some target economies. Lastly, the need to restrict appeals at the enforcement stage and to recognize and enforce foreign court judgments was cited.

Recommendations provided to target economies during the Project were based on best

139) Supra notes 69, 71, 75 and 79.
140) Supra note 79.
141) Supra note 70.
142) Supra notes 68, 78 and 89.
143) Supra note 76.
144) Supra note 70.
145) Supra notes 71, 72 and 81.
146) Supra notes 70 and 72.
147) Supra notes 74, 88 and 90.
148) Supra note 80.
149) Supra notes 69, 71, 79 and 82.
150) Supra notes 81 and 89.
151) Supra notes 74, 76, 79, 81, 81, 88 and 92.
152) Supra note 79.
153) Supra notes 83 and 91.
practices to reduce time and cost. It is interesting to find that the recommendations made during the Project are now mostly captured in quality of judicial processes index in the enforcing contract indicator (see chapter II, section 2 above), which highlights the relevance of the Project.

3. Legislative reforms based on UNCITRAL texts

As mentioned in the introduction, disputes involving contracts need not necessarily be resolved through courts and can be resolved through ADR. Contracts that need to be enforced are not necessarily limited to those concluded between parties in the same country. Moreover, contracts are no longer concluded only in writing but through various other means. While reforms may focus on improving the environment for domestic businesses, such reforms cannot disregard the vast amount of international transactions involving foreign parties in the current global economy.

All these aspects need to be taken into account in undertaking reforms to make it easier to enforce contracts. The starting point is establishing the relevant legislative framework for ADR (in particular, arbitration), for international contracts and for electronic commerce. This is why a number of international legal standards prepared by UNCITRAL providing a harmonized approach as well as useful guidance were relevant to the Project. This section outlines the relevant UNCITRAL instruments recommended during the Project as forming the basis for legislative reform as well as their status of adoption by the target economies.

A. Dispute resolution – Convention on the Recognition and Enforcement of Foreign Arbitral Awards

With respect to dispute resolution, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), often referred to as the New York Convention, and the UNCITRAL Model Law on International Commercial Arbitration (the ‘Model Arbitration Law’) were of focus. Reference was also made to the UNCITRAL

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154) Instruments prepared or adopted by UNCITRAL are negotiated with universal participation and reflect balance of national, regional, economic and legal interests. They are drafted with a view to ensuring compatibility with the various legal traditions. While they take various forms, most often used are conventions, model laws and legislative guides.
Model Law on International Commercial Conciliation\textsuperscript{155} and the UNCITRAL Arbitration Rules.\textsuperscript{156}

The New York Convention provides common legislative standards for the recognition of arbitration agreements as well as recognition and enforcement of foreign and non-domestic arbitral awards. The Convention ensures that foreign and non-domestic arbitral awards are not discriminated. It further obligates Parties to guarantee that awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny parties’ access to court in contravention of their agreement to arbitrate.\textsuperscript{157}

The New York Convention has been adopted almost universally with 156 Parties.\textsuperscript{158} Papua New Guinea is the only State not party to the Convention among APEC members\textsuperscript{159} and all ten target economies had either ratified or acceded to the Convention with Myanmar being the latest.\textsuperscript{160} During the Project, attention was drawn to the obligation under the New York Convention: (i) that respective courts need to ensure that arbitral agreements are recognized; (ii) that foreign arbitral awards are recognized and enforced; and (iii) that reasons for refusing recognition and enforcement are to be limited in accordance with the New York Convention. Emphasis was put on ensuring that courts


\textsuperscript{159} UNCITRAL hosted the 2015 UNCITRAL South Pacific Seminar “Rule-based trade: a legal roadmap for the South Pacific” in Port Moresby on 24-25 September 2015 in cooperation with the International Legal Affairs Division of the Korean Ministry of Justice to promote UNCITRAL texts in the field of arbitration, sales laws as well as electronic commerce. It was followed by the 2016 South Pacific Seminar “Access to Justice for Better Trade in Pacific Small-Island Developing States” in Port Moresby on 20-21 September 2016 focusing more specifically on international commercial arbitration. Both events aimed at supporting Papua New Guinea to become a Party to the New York Convention.

were aware of the obligations set forth in the New York Convention and on streamlining the enforcement process to provide for a time- and cost-effective mechanism.

There have been very few examples where the courts in the target economies applied the New York Convention and only a limited number of cases have been reported officially. The seemingly few cases that are accessible are included in articles or reports by foreign attorneys and law firms with practice in the target economy.161) This lack of cases may be due to a number of different reasons, but it is likely that the inefficiency of the judiciary as reflected in the Doing Business reports discouraged parties from pursuing arbitration in the first place if the award were to be eventually enforced in the target economies.

B. Dispute resolution – UNCITRAL Model Law on International Commercial Arbitration and enactments by target economies

The Model Arbitration Law was originally adopted in 1985 and revised with some amendments in 2006. The Model Law establishes a unified legal framework for the fair and efficient settlement of international commercial disputes covering all stages of the arbitral process.162) The 2006 amendments reflected practice in international trade and modern means of contracting with regard to the form of arbitration agreement (article 7) and the granting of interim measures (article 17).

The Model Arbitration Law has been enacted in some 72 States in a total of 102 jurisdictions around the world.163) Arbitration laws are considered enactments of the Model Arbitration Law when it is evident that the Model Arbitration Law was used as the basis with few modifications. This usually means that the bulk of the provisions have been adopted and that the domestic law does not contain any provision incompatible with the underlying principles of the Model Arbitration Law. In enacting arbitration laws, States consider a number of different aspects, for example, whether to fully respect party

autonomy and flexibility of the arbitral procedure or to regulate the process based on notions such as public policy.

Of the 21 APEC members, seventeen have adopted the Model Arbitration Law with China, Indonesia, Papua New Guinea and Vietnam lagging behind. Those that have adopted the Model Arbitration Law have performed better in both the overall Doing Business ranking and the enforcing contract ranking. This exemplifies that economies with a modern legislative framework for arbitration usually have the support of an efficient judicial process, complementing each other. Economies with an integrated system of courts and ADR tend to have a more reliable judiciary supporting the economy as a whole.164)

Four of the ten target economies (Indonesia, Myanmar, Saudi Arabia and Vietnam) had not adopted the Model Arbitration Law. Therefore, one of the recommendations during the Project was to update any outdated or almost obsolete legislation (for example, 1944 Arbitration Act of Myanmar and 1999 Law No. 30 on Arbitration and Alternative Dispute Resolution of Indonesia). Myanmar proceeded with legislative reforms resulting in a new Arbitration Law (Union Law No. 5/2016) adopted on 5 January 2016.165) Comments by UNCTITRAL to ensure that the revised legislation was in line with the Model Arbitration Law were conveyed to the Union Attorney General’s Office and the Supreme Court that prepared the draft bill and thereafter to the Union Parliament (Pyidaungsu Hluttaw). Those comments were duly reflected in the new law. On the contrary, there has been little progress in Indonesia and a bill is yet to be proposed. Considering the long delays at the Indonesian House of Representatives (Dewan Perwakilan Rakyat), it doesn’t seem likely that circumstances will soon change.

In 2010, Vietnam enacted the Law on Commercial Arbitration (No. 54/2010/QH12)(the ‘LAC’), which took effect on 1 January 2011, replacing the 2003 Ordinance on Commercial Arbitration (No. 08-2003-PL-UBTVQH11).166) To provide guidance on the implementation of the LAC, two additional texts were adopted: (i) Decree 63/2011/ND-CP of 28 July 2011,


which took effect on 20 September 2011 and (ii) Resolution No. 01/2014/NQ/HDP (Guidelines for the Law on Commercial Arbitration)\(^\text{167}\) of the Judges Council of the Supreme People’s Court, which took effect on 2 July 2014. Despite these efforts and arguments by commentators that the LAC is an adoption of the Model Arbitration Law,\(^\text{168}\) there is room for improvement.\(^\text{169}\)

The same applies to Saudi Arabia, which enacted a new arbitration law (Royal Decree No. M/34) in 2012 replacing the 1983 Arbitration Regulation (Royal Decree No. M/46).\(^\text{170}\) The aim was to alleviate many of the concerns about the old Regulation and to strengthen confidence about the possible use of arbitration, particularly for foreign investors. As a number of commentators have put it, the new law is largely modelled on or inspired by the Model Arbitration Law,\(^\text{171}\) but cannot be considered its enactment, mainly because a number of provisions are subject to the application of Sharia principles. Therefore, it is unclear how the law would operate and how courts would interpret the various provisions. Also, courts are given broad means to intervene in the arbitration process. One would have to wait for the implementing regulation as well as the Saudi court’s interpretation of the law to make a better assessment. However, on-going judicial reforms both in infrastructure and relevant legislation (for example, Royal Decree No. M/53 on enforcement) and the establishment of the Saudi Centre for Commercial Arbitration (SCCA) since the Project seem to be in the positive direction.

Six of the ten target economies have adopted the Model Arbitration Law in their domestic legislation, yet in various forms.


\(^{170}\) The new Law was published on 8 June 2012 in the Official Gazette of the Kingdom of Saudi Arabia “Umm Al-Qura” and came into force on 9 July 2012.

Brunei Darussalam adopted a dualist regime consisting of the Arbitration Order (2009)\textsuperscript{172} and the International Arbitration Order (2009)\textsuperscript{173} replacing the 1994 Arbitration Act.\textsuperscript{174} The 1985 version of the Model Arbitration Law was incorporated in its entirety into the International Arbitration Order except for the articles in chapter VIII (Recognition and Enforcement). Provisions on interim measures based on the 2006 version of the Model Arbitration Law were incorporated into the main body of the International Arbitration Order.\textsuperscript{175}

In Mexico, the arbitration statute is provided in Book V, Title IV (articles 1415 to 1480) of the Mexican Code of Commerce (Código de Comercio),\textsuperscript{176} which was amended in 2011 to reflect the 2006 amendments to the Model Arbitration Law. Of particular interest are the new provisions on court assistance in commercial settlements and arbitration (articles 1464 to 1480).

Peru revised its 1996 Arbitration Law in 2008 (Decreto Legislativo Que Norma El Arbitraje 1071) taking into account the 2006 amendments to the Model Arbitration Law.\textsuperscript{177} While Peru had previously adopted a dualist approach, the 2008 Decree takes a monist approach applying to both domestic and international arbitration with a handful of provisions applying only to international arbitration.\textsuperscript{178} In fact, the purpose section of the 2008 Decree states that there is no longer the need to differentiate between domestic and international arbitration.

There are a number of laws and regulations that govern arbitration in the Philippines: (i) articles 2028 to 2046 of the Civil Code (1949); (ii) Arbitration Act (Republic Act No. 876 of 1953); (iii) Alternative Dispute Resolution Act (Republic Act No. 9285 of 2004) (the ‘ADR

\textsuperscript{176} The text is available in Spanish at http://www.diputados.gob.mx/LeyesBiblio/pdf/3_070416.pdf (last accessed on 14 January 2017).
\textsuperscript{177} The text is available in Spanish at http://www.justiciaviva.org.pe/nuevos/2008/julio/03/1071.pdf (last accessed on 14 January 2017).
\textsuperscript{178} For example, articles 13(7), 22(1), 47(9) and 57 of Decree Law No. 1071 of 2008.
(iv) Implementing Rules and Regulations of the ADR Act (2009); and (v) Special Rules of Court on Alternative Dispute Resolution (2009). Some participants in the Project stated that the current legal framework was too complicated for users and even attorneys had difficulties in identifying which provisions were applicable. The 1985 version of the Model Arbitration Law was incorporated through section 19 of the ADR Act, which states that international commercial arbitration shall be governed by the Model Arbitration Law. Sections 20 to 31 of the ADR Act supplement the provisions of the Model Arbitration Law. The 2006 amendments to the Model Law are reflected in the 2009 Implementing Rules and Regulations of the ADR Act. While a number of improvements had been made since the 1953 Arbitration Act, it would be advisable to have in place a consolidated legislative framework that would govern international arbitration and to introduce some of the key principles of the Model Arbitration Law to the domestic arbitration framework as well.

Despite being the oldest legislation in the six target economies that have adopted the Model Arbitration Law, the Arbitration Act of Sri Lanka (No. 11, 1995) provides a modern legislative framework for arbitration. However, surveys during the Project showed that arbitration was not so often used in Colombo to resolve commercial disputes, mainly because arbitration, in practice, was conducted in a manner not so different from litigation. A number of arbitrators, who were former judges, applied the same rigid process as court proceedings, which often led to delays. Considering that it takes approximately four years to enforce a contract in Sri Lanka according to the 2017 Doing Business report, Sri Lanka should make efforts to promote arbitration as an alternative to the judicial process. Efforts by the Sri Lankan Ministry of Justice to establish an International Arbitration Centre in addition to the existing Sri Lankan National Arbitration Centre (SLNAC) and the Institute for the Development of Commercial Law and Practice (ICLP) Arbitration Centre is a positive sign.

Thailand’s Arbitration Act BE 2545 of 2002 replaced the previous 1987 Act and is viewed as a straightforward enactment of the Model Arbitration Law. Nonetheless, the Thai
government had been criticized for its unfriendly attitude toward arbitration, especially those involving government agencies. In 2009, the Thai Cabinet issued a Resolution in response to Walter Bau,\(^{183}\) prohibiting the inclusion of arbitration clauses in all contracts entered into by the public sector unless approved by the Cabinet on a case-by-case basis. This was an expansion of the former Resolution in 2004, which placed a restriction on arbitration clauses in concession agreements.

However, arbitration has gained more ground in Thailand. The increasing number of reported cases and the Thai court’s attitude to arbitration is more encouraging. The 2015 Resolution issued by the Cabinet supports the notion that Thailand is becoming more arbitration-friendly, as Cabinet approval for arbitration clauses is now required for only three types of contracts: public-private partnerships, concession agreements and contracts that require Cabinet approval under the Royal Decree 2005.\(^{184}\)


International sale of goods requires a number of supporting contracts to ensure its performance, with connections to various legal systems. In this regard, the United Nations Convention on Contracts for the International Sale of Goods (the ‘CISG’) provides uniform and fair rules applicable to international sale of goods.\(^{185}\) The objective of the CISG is well reflected in its preamble, which states that the “adoption of uniform rules which govern contracts for the international sale of goods and which take into account the different social, economic and legal systems, would contribute to the removal of legal barriers in international trade and promote the development of international trade.”

A question often posed in enforcing a contract cross-border is the law applicable. Unless the parties had agreed on the governing law in their contract, it would eventually have to be determined through the application of private international law rules. The CISG effectively facilitates international trade by avoiding recourse to such rules.\(^{186}\)

\(^{183}\) Werner Schneider acting in his capacity as insolvency administrator of Walter Bau Ag (in liquidation) v. the Kingdom of Thailand (1 July 2009). The award is available at http://www.italaw.com/sites/default/files/case-documents/ita0067.pdf (last accessed on 14 January 2017).


By providing substantive rules on the formation of the contract, on the obligations of the parties to the contract, on the remedies for breach, and additional rules regulating passing of risk, anticipatory breach of contract, damages and exemption from performance of the contract, the CISG provides legal certainty. However, the CISG does not govern consumer transactions, sales of services and sales of certain types of goods (article 2). The validity of a contract and the effect of a contract on the property in the goods sold also fall outside the scope of the CISG.

Sales contracts form the backbone of international trade and the CISG has achieved a broad adoption with 85 States parties. More importantly, thirteen of the fifteen leading economies in merchandise trade are parties to the CISG (United Kingdom and Hong Kong are not). This shows a correlation between the adoption of the CISG and involvement in international sale of goods. Furthermore, the CISG is being increasingly used as a blueprint for domestic contract law reform, particularly in developing economies.

Of the nineteen APEC economies, thirteen economies are parties to the CISG and they rank significantly higher in the overall Doing Business ranking as well as in the enforcing contracts ranking (see table 5 below). Among the remaining six economies, five (Philippines, 186) A court or an arbitral tribunal dealing with the issue is asked to look into whether the CISG is applicable by directly applying the CISG's own rules of application (article 1(1)), since the uniform substantive law of the CISG is understood to prevail over any rules of private international law that might apply.
189) Whether the CISG applies to Hong Kong is not clear. Hong Kong became a Special Administrative Region of the People’s Republic of China in July 1997. In June 1997, the Chinese government deposited a diplomatic note with the Secretary-General of the United Nations referring to Hong Kong as a Special Administrative Region that “will enjoy a high degree of autonomy” and announcing that the 126 multilateral treaties contained in the annex to that diplomatic note will apply to Hong Kong. The CISG, contrary to the New York Convention, was not listed in the annex. Therefore, the general view is that pending the filing of a suitable CISG-related depositary instrument by China, the courts are unlikely to regard the CISG as in effect in Hong Kong. See Ulrich Schroeter, “The Status of Hong Kong and Macao under the United Nations Convention on Contracts for the International Sale of Goods”, Pace International Law Review, Vol. 16, Issue 2 (Fall 2004), pp. 307-332 and Fan Yang “Hong Kong’s Adoption of the CISG: Why do we need it now?”, Towards Uniformity: The 2nd Annual MAA Schlechtriem CISG Conference (March 2010). See also Société Logiac v. Société CTT-Marketing Ltd, Cour de cassation, Chambre civile 1ère (France) Appeal No. 04-17726 (2 April 2008). Abstract (in English) available at [http://www.uncitral.org/clout/clout_data/fra/clout_case_1030_leg-2729.html](http://www.uncitral.org/clout/clout_data/fra/clout_case_1030_leg-2729.html)
190) Hong Kong and Chinese Taipei are not considered for this purpose.
Brunei Darussalam, Indonesia, Malaysia and Thailand) are members of the Association of Southeast Asian Nations (ASEAN), which also include Cambodia, Laos, Myanmar, Singapore and Vietnam. With the formulation of the ASEAN Economic Community (AEC) to further regional integration and given the diversity of legal systems among members, having one common law, especially governing sale of goods, is quite obvious. Adoption of the CISG by ASEAN members would be a positive step towards addressing the divergence within those States and will undoubtedly contribute to the promotion of trade among ASEAN members and with their trading partners. Most of ASEAN’s top five trade partners (China, EU, Japan, United States and Republic of Korea) are parties to the CISG. There is no need for ASEAN to reinvent the wheel by drafting a sales law that will work only in the ASEAN context. CISG is adaptable and could easily provide a uniform platform in trading blocs like ASEAN.\textsuperscript{191) It is encouraging that Vietnam has taken that first step by becoming a party to the CISG on 18 December 2015 (effective date: 1 January 2017). Among ASEAN members, Singapore is the only other party to the CISG.

<table>
<thead>
<tr>
<th>APEC Economies</th>
<th>2017 Enforcing Contracts Ranking (Distance to Frontier score)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Korea</td>
<td>1 (84.15)</td>
</tr>
<tr>
<td>Singapore</td>
<td>2 (83.61)</td>
</tr>
<tr>
<td>Australia</td>
<td>3 (79.72)</td>
</tr>
<tr>
<td>China</td>
<td>5 (77.98)</td>
</tr>
<tr>
<td>Russia</td>
<td>12 (74.96)</td>
</tr>
<tr>
<td>New Zealand</td>
<td>13 (74.25)</td>
</tr>
<tr>
<td>Chinese Taipei</td>
<td>14 (73.49)</td>
</tr>
<tr>
<td>United States</td>
<td>20 (72.61)</td>
</tr>
<tr>
<td>Hong Kong, China</td>
<td>21 (72.57)</td>
</tr>
<tr>
<td>Mexico</td>
<td>40 (67.01)</td>
</tr>
<tr>
<td>Malaysia</td>
<td>42 (66.61)</td>
</tr>
<tr>
<td>Japan</td>
<td>48 (65.26)</td>
</tr>
<tr>
<td>Thailand</td>
<td>51 (64.54)</td>
</tr>
<tr>
<td>Chile</td>
<td>56 (62.81)</td>
</tr>
<tr>
<td>Peru</td>
<td>63 (60.70)</td>
</tr>
<tr>
<td>Vietnam</td>
<td>69 (60.22)</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>93 (57.25)</td>
</tr>
</tbody>
</table>

\textsuperscript{191) Bruno Zeller, “Facilitating Regional Economic Integration: ASEAN, ATIGA and the CISG” in Towards Uniformity: The 2nd Annual MAA Schlechtriem CISG Conference (March 2010), Hong Kong.
Table 5. APEC economies and the CISG\(^{192}\)

Among the ten target economies, only three are parties to the CISG (Mexico, Peru and Vietnam) and they have outperformed the remaining seven by a considerable margin (see table 3 above). Five of the remaining seven economies are ASEAN members (Brunei Darussalam, Indonesia, Myanmar, Philippines and Thailand) and they were urged to consider becoming a party to the CISG based on the same reasons mentioned above. Activities to promote the possible benefits of becoming a party to the CISG, especially to businesses engaged in trade, would have to continue as well as capacity building activities to arouse the interest of the relevant government officials and to acquaint them with the operation of the CISG. The Project has shown a general lack of understanding about the CISG in the target economies. In this aspect, the UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods could provide guidance.\(^{193}\)

**D. UNCITRAL texts on electronic commerce**

Another aspect highlighted during the Project was UNCITRAL’s texts on electronic commerce. The use of information and communication technology is essential for economic development. And in an era of digital economy, the use of electronic means for various purposes from contract negotiations to filing a notice of arbitration has become unavoidable. Outdated contract laws with requirements based on paper-based notions such as ‘writing’ or ‘original’ could hinder the use of electronic means and could lead to further disputes (for example, whether or not a click on an ‘I agree’ box after logging in to a website would constitute an acceptance). As discussed in chapter III, section 2, the use of

\(^{192}\) The table reflects the data in the 2017 Doing Business report (see supra note 21). States parties to the CISG are highlighted. Non-states are in italics (see supra note 190).

information and communication technology to expedite the judicial process also require a legislative framework facilitating such use.

UNCITRAL has been a pioneer in developing legal standards on electronic commerce beginning as early as the 1980s and texts adopted by UNCITRAL have influenced a great number of jurisdictions. UNCITRAL texts have been widely adopted, paving the way to wider use electronic commerce in support of trade worldwide. These texts include: the 1996 UNCITRAL Model Law on Electronic Commerce (MLEC); the 2001 UNCITRAL Model Law on Electronic Signatures (MLES); and the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005) (the ‘Electronic Communications Convention’).

The MLEC, adopted on 12 June 1996 (additional article 5 bis adopted in 1998), facilitates commerce conducted using electronic means by providing legislators with a set of internationally acceptable rules aimed at removing legal obstacles and increasing legal predictability for electronic commerce. The MLEC was the first legislative text to adopt the fundamental principles of non-discrimination, technological neutrality, and functional equivalence that are widely regarded as the founding elements of modern electronic commerce law.

The increased use of electronic authentication techniques as substitutes for handwritten signatures and other traditional authentication procedures suggested the need for a specific legal framework to reduce uncertainty. The MLES, adopted on 5 July 2001, aims to enable and facilitate the use of electronic signatures by establishing criteria of technical reliability for the equivalence between handwritten and electronic signatures.

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197) The principle of non-discrimination ensures that a document would not be denied legal effect, validity or enforceability solely on the grounds that it is in electronic form. The principle of technological neutrality mandates the adoption of provisions that are neutral with respect to technology used. In light of technological advances, neutral rules aim at accommodating any future development without further legislative work. The functional equivalence principle lays out criteria under which electronic communications may be considered equivalent to paper-based communications. In particular, it sets out the specific requirements that electronic communications need to meet in order to fulfil the same purposes and functions that certain notions have in the traditional paper-based system.
The Electronic Communications Convention, adopted on 23 November 2005, is the only existing treaty on the use of electronic communications in international contracts. The Convention builds upon the MLEC and the MLES and aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents. Certain formal requirements contained in widely adopted international trade law treaties, such as the New York Convention and the CISG, and the same requirements in domestic law, may pose obstacles to the use of electronic communications. The Electronic Communications Convention is an enabling treaty whose effect is to remove those formal obstacles by establishing equivalence between electronic and written form. The Convention updates certain provisions in the Model Laws in light of recent practice. Thus, it can also function as model legislative provisions for States that have yet to adopt basic provisions on electronic commerce.

The adoption of legislation based on UNCITRAL texts on e-commerce would provide economies with a comprehensive framework for the use of electronic transactions in commercial operations. The recently concluded Trans-Pacific-Partnership, in chapter 14, includes a reference to the MLEC and Electronic Communications Convention.198)

The focus during the Project was to draw the attention of the economies to the above-mentioned instruments. The MLEC has been adopted in fifteen of the 21 APEC economies (Chile, Indonesia, Japan, Papua New Guinea, Peru and Russia have not) and in seven of the ten target economies (Indonesia, Myanmar and Peru have not).199) The Electronic Communications Convention entered into force in 1 March 2013 and has seven Parties (Congo, Dominican Republic, Honduras, Montenegro, Russia, Singapore and Sri Lanka) as well as thirteen other signatories, including China, Philippines, Republic of Korea and Saudi Arabia. As Australia,200) Thailand201) and the United States202) have also declared


201) The Nation, “ICT Ministry Amending Act – Move aimed at spurring online business and preparing
their intention to accede to the Convention, the recommendation was for target economies to consider doing the same, or to at least to update their domestic e-commerce law based on the provisions of the Convention.

The adoption of the Convention would give ultimate legal certainty to cross-border trade conducted with electronic means when parties are not located in the same State. These are strong and valid arguments in favour of the adoption of the Electronic Communications Convention. It is encouraging to see that Sri Lanka became a party to the Convention in July 2015 following the UNCITRAL South Asia Seminar (September 2014) and the Project in Colombo (January 2015), both events highlighting the significance of that text.

IV. Challenges in providing technical assistance to law reform

Chapter II provided a summary of the five-year Project and progress made based on data contained in at least seven Doing Business reports. Chapter III analysed the recommendations made during the Project to make it easier to enforce contracts in the target economies based on more than twenty expert reports. The objective of this paper, however, is not to provide an executive summary of the Project or to conclude that there is a one-size-fit-all solution for making it easier to enforce contracts. Instead, the paper hopes to draw some useful conclusions in carrying out similar technical assistance and capacity building activities for law reform. Governments, inter-governmental organizations as well as non-governmental organizations are increasingly involved in supporting legal reform activities but there is limited guidance on how to carry out such reforms. Therefore, this chapter takes a look back at the five years of the Project and identifies lessons learned.


and challenges faced with the aim of providing some insights not only for the continuation of the Project but also for similar legal reform initiatives.

1. The Doing Business indicators – Drawing the wrong sword?

A key challenge in legislative or judicial reform is the lack of awareness about the need itself. Relevant stakeholders often tend to prefer the status quo, take the situation for granted and do not expect much to change even when reforms are put forward. Therefore, alerting the need for reform is, in most cases, the first and the most important step. When confronted with controversial rankings and figures that compare the status quo with other jurisdictions, it is usually sufficiently alarming. However, caution should be exercised in making direct comparisons, as this might be considered improper and possibly offend local stakeholders despite good intentions. A similar challenge faced in undertaking technical assistance activities to law reform is that it is difficult to measure the progress of those activities. There are increasing calls for capacity building activities to be more result-oriented in light of diminishing resources available. For the reasons mentioned above, the Doing Business indicators proved useful. For the low-ranking economies, the indicators provided an opportunity for local stakeholders to confront the reality in comparison with other economies. The indicators also provided a useful benchmark to record progress. Nonetheless, the use of the Doing Business indicators posed some challenges as discussed below.

A criticism that was repeated was that the data and figures were incorrect and did not reflect the situation on the ground. In fact, some local participants expressed strong concerns and doubts about the accuracy of the data and many wasted hours making that point. It is true that the underlying data of the Doing Business reports are not updated as often as it should be. Tables 2 and 3 show that data for a number of economies remained unchanged since the 2011 Doing Business report. For example, the data for Brunei Darussalam, Canada, Chile, Chinese Taipei, Papua New Guinea, Singapore and Sri Lanka remained unchanged for five years. Tables 2 and 3 also indicate that updating of the data is conducted only in a small number of economies every year. Accordingly, the Doing Business reports may not be suitable for recording progress made by the economies during a short period, as recent reforms are unlikely to be captured. APEC also noted that there was an issue of potential under-reporting of progress measured in the Doing Business reports, as they do not always accurately reflect changes in the enabling environment for
Making it easier to enforce contracts in the Asia-Pacific region: recommendations and challenges

373

In fact, a number of reforms highlighted during the APEC Economic Committee workshops and meetings were not reflected in the 2017 Doing Business report.

Another concern was that the case scenario did not reflect a genuine commercial dispute in the relevant economies. As illustrated in chapter II, section 2, the use of a standardized and simplified scenario is inevitable for comparison purposes and need not necessarily reflect the full complexities of contract enforcement. However, if the likeliness of a seller going to court for a claim is almost none, then it becomes questionable. The addition of the 5,000 USD threshold was definitely an improvement. However, there is also the discrepancy that arises between using the income per capita of the entire economy and basing the case scenario in the economy’s largest business city. In the target economies of the Project, the income per capita of largest business cities was significantly higher than that of the entire economy, making the 5,000 USD threshold almost meaningless.

Another concern was with regard to the reliability of the source of information. The Doing Business reports are said to rely on four main sources of information: the relevant laws and regulations, the respondents or contributors, the government of economies covered and the World Bank Group regional staff. The data is collected through several rounds of interaction with respondents involving both private sector practitioners and government officials through responses to questionnaires, conference calls, written correspondence and visits by the World Bank team. The variety of sources of information demonstrates an attempt to ensure objectiveness. However, the two components (time and cost) of the enforcing contract indicator are likely to be based on less objective, rather subjective assessments by contributors from the economies. What deserves particular attention is that more than half (54%) of the economies’ data were based on less than 5 responses, raising further questions about the trustworthiness of the data. This is more

205) Supra note 10, Attachment B, II. Background.
206) Supra note 21, pp. 274-346. The list of contributors is also available at http://www.doingbusiness.org/contributors/doing-business (last accessed on 14 January 2017).
208) For example, the 2017 Doing Business report on enforcing contracts was based on inputs from 1,599 contributors, which is on average 7 respondents per economy. A file containing a breakdown of contributors for each topic can be found at http://www.doingbusiness.org/contributors/doing-business (last accessed on 14 January 2017).
so as those responses: (i) might be based on individual experience and judgment about the judiciary than based on the case scenario; (ii) might be influenced by the contributor’s relationship with the government both positively and negatively; and (iii) are usually provided by law firms with the certain level of language proficiency but not necessarily with the client pool that fits the case scenario. Some law firms that were interviewed during the Project hesitated to make any negative comments about the judiciary, as they were afraid that they could be unduly penalized for doing so. It was also found that cases matching the case scenario were usually handled by local law firms and attorneys: smaller in size, with litigation focus, less proficient in English and less likely to be able to contribute to the questionnaire.

Attention is drawn to these drawbacks not to simply criticize the methodology but to emphasize the need to preserve the reliability of the Doing Business report as a benchmark for reform. Therefore, it is suggested that relevant data is collected more frequently and broadly and verified to the extent possible.209) In a way, the Project provided the opportunity for both government representatives and the World Bank team to collect and verify relevant data. Information about recent reforms not necessarily captured in the Doing Business reports was gathered. Government officials were able to share their views about the underlying data, particularly where recent reform efforts had shown a positive impact (for example, Indonesia, Mexico, Saudi Arabia, Thailand and Vietnam). The Project clearly showed the need to involve both the public and private sectors in verifying information against what was stated in the laws and in conducting follow-up inquiries to ensure that all relevant information was captured.

Finally, it should be noted that the rankings provided in the Doing Business reports are relative in nature and may change due to the number of economies surveyed and the methodology used. Tables 2 and 3 show that the rankings have fluctuated severely, whereas the underlying data and the DI scores remained the same. Some economies improved their ranking without any substantive improvements in the time and cost component (for example, Singapore from 12th to 1st in 2015, Australia making a gradual improvement from 16th in 2011 to 3rd in 2017 and Brunei Darussalam from 159th in 2011 and 93rd in 2017). After the introduction of the quality of judicial process index in the 2016

209) According to the 2017 Doing Business report, the World Bank team received 111 queries from governments. In addition, the team held multiple videoconferences with government representatives in 46 economies and in-person meetings with government representatives in 34 economies. See supra note 21, p. 117.
Making it easier to enforce contracts in the Asia-Pacific region: recommendations and challenges

Doing Business report, some economies dropped drastically in their rankings (for example, Hong Kong dropped from 6th to 22nd, Thailand from 25th to 57th, Vietnam from 30th to 74th and Philippines from 124th to 140th), whereas the ranking of Chinese Taipei improved from 93rd to 16th.

This demonstrates that while the enforcing contract indicator could be a departure point for the Project and similar reform activities, improving the ranking of the economies should not be the expected arrival point. As an indicator, it should only form the basis of discussion to urge reforms and the Project should focus more on substantive reforms and not on rankings. It is unfortunate that the local experts spent excessive time and effort for probing and questioning data provided by the World Bank.210)

Nevertheless, the Doing Business indicators played an important role in the Project in urging target economies to consider reforms. This fact should not be disregarded. The indicators are one of few surveys that provide a global comparison of data across 190 economies, including with respect to judicial efficiency. The World Economic Forum Global Competitiveness Report211) and the International Institute for Management Development (IMD) World Competitiveness Yearbook212) provide comparison among economies but do not cover as many economies nor areas like enforcing contracts. The FDI Regulations Database213) contained an indicator on arbitrating and mediating disputes, which analysed aspects of domestic and international arbitration regime, measured the strength of the legal framework for ADR, rules for the arbitration process, and the extent to which the judiciary supports and facilitates arbitration (average length of arbitration in OECD region: 48 weeks). However, the database has not been updated since 2012.

2. Redefining the role of the ‘champion’ economy – A ‘partner’ economy?

The Republic of Korea was chosen as the champion economy in the EoDB initiative owing to its high ranking in the area of enforcing contracts and its Ministry of Justice volunteered to carry out the Project over the last five years. Korea is the only champion

210) See, for example, supra notes 68, 72, 75, 80 and 86.
economy to have conducted diagnostic studies and a wrap-up workshop annually during the entire first EoDB Action Plan period. For the Second EoDB Action Plan (2016-2018), Korea and Hong Kong have volunteered as champion economies in the area of enforcing contracts. It is therefore time to re-think the role of the champion economies in the EoDB initiative and to ask what is truly expected of them, particularly in the area of enforcing contracts.

In general, the activities of the champion economies should not be construed as development assistance or as imposing the experience of the champion economy on the target economy. Instead, respect for existing laws and regulations governing court procedure as well as contracts in the target economy should form the basis. More importantly, the legal tradition of the target economy must be respected. Accordingly, conducting an accurate survey of the legal environment including the underlying reasons for delay and excessive costs in contract enforcement would be first on the to-do list.

As noted several times in this paper, the prerequisite for any activity would be the willingness of the target economy to use the opportunity to initiate or further its reforms. In baseball terms, the role of the champion economy would be similar to that of a table setter, with the initial leadoff being taken by the target economy. Once the leadoff hitter is identified, the role of the champion economy would then be to provide a setting where all relevant stakeholders in the target economy can come together to discuss the current situation, agree on the need for reform, identify the underlying issues and prepare a concrete blueprint for action, both long- and short-term. During the Project, it proved useful to share practices of other economies including those of the champion economy. Also useful was obtaining input and resources from international and regional organizations engaged in relevant technical assistance activities. Possible donors willing to assist with implementation of reforms could also be engaged. In gathering different views, perspectives of foreign businesses and investors should also be considered as improvements in the doing business environment would not only benefit domestic businesses but also promote trade and investment.

Once tailored, concrete and practical recommendations are derived from the process, it should be presented to policy makers who can make decisions and allocate adequate resources to implement those recommendations. Providing this opportunity in a
non-domestic setting was helpful, especially when a number of different approaches and experiences of other economies were presented for comparison purposes.

The role of the champion economy should not end there. It should continue to conduct follow-up activities to monitor development and to further encourage target economies to carry out reforms. Of more importance might be to provide capacity building opportunities for government officials, judges and practitioners in target economies to facilitate reforms.

Target economies should not be the sole beneficiary and in that sense, the terms ‘champion’ and ‘target’ economy are misleading as they imply a one-way process. Through sharing of experiences, the champion economies can also review their enforcing contract environment and identify possible problems that they may face. While champion economies may have a higher ranking in enforcing contracts, they might be performing poorly in other areas and can benefit from the experience of the target economy. The term ‘partner economies’ would better characterize the relationship of the economies that take part in the EoDB initiative.

In summary, the role of the champion economies should be characterized as a coordinator and facilitator of reforms in the target economy, having due regard to the local legal tradition. The first step would be to engage with not only local but also foreign stakeholders to identify possible areas of reform.

3. Arbitration as the alternative for commercial disputes

The Project has shown that courts in the target economies fall short of the expectations of parties to commercial disputes. Judicial reforms illustrated and suggested in chapter III, sections 1 and 2, usually take time and resources to implement and businesses cannot wait for reforms. This requires the target economies to explore alternatives.

The Project has confirmed that there is enthusiasm in the Asia-Pacific region and beyond to reform the legislative framework for arbitration and other ADR means. The legal framework is the cornerstone for promoting arbitration as an effective mechanism to resolve commercial disputes. While arbitration laws have taken various forms, most have been

215) The following are examples of States in the Asia-Pacific region that have amended their arbitration laws since 2012: Maldives (2013), Bhutan (2013), Democratic People’s Republic of Korea (2014), Bahrain (2015), India (2015), Republic of Korea (2016). In addition, there are a number of proposed enactments under consideration, for example in Mongolia and in Kazakhstan.
based on the Model Arbitration Law\textsuperscript{216}) and thus, the goal of harmonization has been achieved to a certain extent. However, enactment of the law is merely a starting point for reforms. For example, it cannot be said that Myanmar has completed its arbitration reforms simply because it had enacted a modern legislation.

First, arbitration practice has to develop based on the arbitration law. There has to be cases where parties resolve their disputes with the assistance of an arbitrator. There has to be examples where parties are able to retain their business relationship with the other party and at the same time, resolve their dispute in a cost- and time-effective manner. There has to be news that awards rendered by the arbitral tribunal were recognized and enforced by courts.

However, the confidential nature inherent in arbitration and the absence of statistical figures like those available in courts make it difficult to grasp how often arbitration is utilized. Some practitioners interviewed during the Project stated that there was absolutely no known arbitration case in their target economy. Some said there were quite a number of cases but were not able to give an estimate. What is certain is that there is lack of cases being reported. The few commentaries by practitioners are, in most cases, encouraging but some are critical of arbitration. The point is that efforts to compile data about the use of arbitration and case law need to be part of arbitration reform. These cases can then be shared more broadly through the New York Convention Guide website\textsuperscript{217}) allowing foreign parties to better understand how arbitration is conducted and perceived in the respective economy.

Second, for arbitration practice to develop, there has to be adequate infrastructure. This includes facilities for hearings and meetings, logistics for parties and the tribunal, adequate connectivity and in certain instances, safety and security for the parties as well as the tribunal. However, of more importance is the build-up of soft infrastructure. If there are no trained arbitrators to conduct proceedings, the law is meaningless. If there is no arbitral institution to administer and assist the process, the parties and the tribunal would find it difficult to proceed with arbitration. In fact, efforts to establish and to expand local arbitral institutions have been witnessed in the target economies (for example, Saudi Arabia, Sri Lanka, Thailand and Vietnam). While the UNCITRAL Arbitration Rules are readily available for the parties, local arbitral institutions may wish to prepare their own rules

\textsuperscript{216}) See chapter III, section 3, 2) for detailed information.
\textsuperscript{217}) Supra note 157.
better adapted to their legal tradition. Of utmost importance is raising the awareness of businesses that they can choose to arbitrate their commercial disputes, for example, through the inclusion of an arbitration clause in their contracts or by an agreement to arbitrate after the dispute has arisen.

All this calls for continued training of legal practitioners, potential arbitrators both legal and non-legal, academics and law students as well as potential users to reach a critical mass with a certain level of understanding about arbitration. Unlike hard infrastructure, developing soft infrastructure will take time and resources. This needs to be taken into account. Therefore, it is suggested that there is coordination among relevant government ministries, arbitral institutions, arbitrator associations, chamber of commerce, the bar and other professional associations as well as law schools to continue to build up the arbitration infrastructure, both hard and soft.

Lastly, arbitration reform cannot be complete without adequate involvement of the judiciary. This might be an irony, as arbitration is being suggested as an alternative to judicial proceedings. The underlying assumption of the Project is that there is room for improving the judicial efficiency in the target economies. Therefore, even if the role of courts in performing certain functions relation to arbitration (appointment and challenge of arbitrators, decision on the jurisdiction of the tribunal, ordering of interim measures and setting aside of an award) and the extent of their intervention are clearly set out in the arbitration law, the deficiency of courts as evidenced in the enforcing contract context would likely have a similar impact on the arbitration process. Furthermore, an arbitral award may need to be recognized and enforced by a court. Even if arbitration resolved the dispute in an efficient manner, that advantage could easily vanish if the enforcement procedure at the respective court is long and costly. Thus, it is suggested that the courts provide for an expedited and streamlined process for supporting arbitration and enforcing arbitral awards to ensure the effectiveness of arbitration. The judiciary plays an important role in fostering an arbitration-friendly environment and this requires training of judges to better understand the arbitration process and their expected role in that process. This should also be part of arbitration reform.

In summary, most of the target economies have in place the necessary legislative framework, which allows parties to resort to arbitration and other ADR means when faced with a dispute involving contracts. There are signs that arbitration practice is beginning to develop not only for international but also domestic disputes. The role of the courts in supporting and supervising arbitration would need to be further clarified along the way. Relevant infrastructure to support arbitration, including arbitral institutions and arbitration rules, would need to be prepared. When such efforts gain the trust and confidence of the users that arbitration is truly an effective means of resolving commercial disputes, it can then be said that reforms for cultivating a culture of arbitration have been successful.

4. Real world, real challenges

During the Project, wrap-up conferences were held every year to present tailored recommendations to high-level policymakers of the target economies. When these recommendations were received with appreciation and assurances were made to undertake certain suggested reforms, it seemed like a bright future awaited the target economies. Yet, as the Project has shown, it has been difficult for the target economies to push through with reforms.

The real challenge is that reforms to improve the enforcing contract environment are complex and involve a wide range of issues. Many of the suggested reforms require extensive financial and human resources. They take significant amount of time to implement. They involve various actors and require a comprehensive approach. For example, all three branches of the government need to be involved, as such reforms do not fall within the authority of one branch. The reforms need to engage the public and the private sectors as well as legal and non-legal professions. The same would apply to arbitration reform discussed in the previous section.

The difficulty, therefore, is identifying a lead entity to initiate and carry out these reforms. While government agencies tasked with regulatory reforms to improve the business environment were actively involved in other areas of the EoDB, they hesitated to undertake reforms concerning the judiciary. The courts in some target economies were not keen on pursuing reforms or did not they have sufficient human or financial resources. The Project has shown that it is the judiciary that must take the lead in judicial reforms and that such reforms can only be successful when there is support from both the executive and
the legislative branches. For arbitration reform, the lead entities have been generally the ministry of law or the attorney general’s chamber, but whether they would be suitable to take the lead in arbitration reforms would depend on a number of different circumstances.

Judicial and arbitration reforms obviously require extensive coordination and cooperation among relevant stakeholders. Such a mechanism was lacking in most of the target economies. During the Project, there were instances where institutions carrying out similar reforms were not aware of the other’s efforts and their representatives met for the first time during the local workshop. While the Project might have provided an opportunity for stakeholders to initiate coordination, such coordination needs to be maintained for any reform to be successful.

Finally, lack of resources in the target economies posed another challenge. It was often said that there were not enough judges to handle the caseload and that there were no financial resources to introduce case management. It was also found challenging to persuade those responsible for budget allocation about the urgency of such reforms and the benefits it will bring.

In summary, lack of will to reform, lack of coordination among stakeholders and lack of resources were three key challenges to the Project. Those challenges would need to be addressed in continuing with the Project or conducting similar reform activities, particularly in pursuing judicial reforms.

V. Conclusion

At this juncture, one might be tempted to ask whether the five-year Project was a success. In terms of figures as illustrated in chapter II, section 4, it is difficult to answer in the positive, as improvements were minimal. However, there was increased awareness about the need to undertake reforms that would make it easier to enforce contracts and upon conclusion of the Project, a number of reforms were undertaken in the target economies to improve the business environment. Just to name a few, Indonesia introduced a small claims court (Gugatan Sederhana) on 7 August 2015 through Supreme Court Regulation No. 2219). Thailand has expanded its case management system to introduce

219) Bernard H. Sihombing, “Indonesia: New Supreme Court Regulation: Small Claim Court” (29 February
e-filing, e-broadcast of auctions and e-payment. The Philippines has taken similar measures. With respect to recommendations made by the UNCITRAL Secretariat on adoption of international legal standards, there have been some positive developments: Sri Lanka ratified the Electronic Communications Convention on 7 July 2015 with entry into force on 1 February 2016,220) Vietnam acceded to the CISG on 18 December 2015 with entry into force on 1 January 2017221) and Myanmar revised its arbitration law based on the Model Arbitration Law on 5 January 2016.222) It can therefore be said that the Project had some positive impact.

Efficient contract enforcement is essential to economic development and sustainable growth.223) Economies with an efficient judiciary, on which parties can rely to enforce contractual obligations, provide a better business climate, foster innovation, attract foreign investment and are able to secure tax revenues. This is the basis upon which the World Bank Doing Business indicator on enforcing contracts captures certain data and the rationale for the Project. Quick and cost-efficient resolution of contractual disputes and enforcement of underlying obligations are far more important for small and medium-size businesses, which may not have the resources to undertake long and costly litigations. As often quoted by participants in the Project, “justice delayed is justice denied” and reforms should aim at increasing access to justice.

The paper has focused not only on judicial settlement of domestic contractual disputes
but also on the possible use of arbitration for disputes arising from international contracts. Nonetheless, judicial efficiency remains to be an important factor, as arbitration needs to be supported by the judiciary. Taking this into account, efforts to improve the judicial efficiency for enforcing contracts would also benefit and increase the efficiency of arbitration.

As mentioned in chapter IV, the key objective of this paper is to look back at the Project and to learn from it. By doing so, it hopes to provide some guidance on continuation of the Project and for carrying out similar technical assistance and capacity building activities for law reform. In that context, if the Project were to continue, focus should be on identifying concrete problems and suggesting tailored reforms rather than verifying the accuracy of data contained in the Doing Business reports. The Project should continue to aim at providing concrete and practical recommendations in relation to legislation, court procedure as well as relevant practice that would make it faster and less costly to enforce contracts in the target economy. Some possible future candidates for further cooperation within APEC could be Papua New Guinea, Chile, Japan and Malaysia. Yet as highlighted above, this should be subject to the interest of the respective economies in initiating such reforms. It may also be worth expanding to other priority areas of the EoDB initiative depending on the needs of the target economies and those of the Republic of Korea. This would ensure that the Project is of benefit not only to the target but also the champion economy. It is also suggested that information gathered over the last five years be shared more broadly in the APEC fora and beyond, as most of the suggested reforms can be applied elsewhere. For example, a workshop to share best practices and recent reforms would provide an opportunity for those target economies to present their developments since the Project and to reinitiate any reforms not yet undertaken.

APEC members, when adopting the Second EoDB Action Plan, recognized that the Doing Business metrics do not provide a comprehensive measurement of the underlying legal infrastructure required for a strong business environment. Hence, reforms should not be limited to those that are measured in the Doing Business indicators to achieve the progress desired.\(^{224}\) There was also consensus among APEC members that the Doing Business indicators should not solely drive reforms, but that deeper, more thoroughgoing reforms, as suggested by instruments of international organizations, should be considered. This would

\(^{224}\) Supra note 18, Attachment B, V. Objectives of Second APEC EoDB action plan.
not only improve Doing Business scores, but also have an enduring impact on economic growth and business environment.\textsuperscript{225)

As in all technical assistance and capacity building activities, the icing on the cake is left for those responsible for implementing reforms. The Project has identified a number of possible reforms to make it easier for businesses to enforce contracts in the target economies. Now it is the role of the target economies to implement them, hopefully with the support of all relevant stakeholders in the respective economy. \hfill ◯

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국문초록

아태지역에서의 계약분쟁해결법제 개선을 위한
방안 및 과제

이 재성
유엔국제상거래법위원회 법률담당관

이 글은 지난 2011년부터 2015년까지 아시아태평양경제협력체(APEC)의 기업환경개선사업의
일환으로 아태지역 10개국에서 시행한 계약분쟁해결법제 개선사업에 바탕을 둔다. 우선 동
사업의 시행 배경 및 취지를 살펴본 후, 동 사업의 근간을 이루는 월드뱅크(World Bank)의
기업환경지수 중 계약분쟁해결지수에 대해 알아본다. 나아가 매년 발간되는 기업환경지수
보고서에 기초하여 APEC 회원국 그리고 사업이 시행된 10개국에서 계약분쟁해결을 위한 여건이
지난 5년간 개선되었는지 살펴본다.

계약과 관련된 분쟁이 발생했을 경우 기업들이 이를 신속하고 효율적으로 해결할 수 있는
여건을 각국이 조성하도록 독려하는 것이 동 사업의 주된 목적이라고 하겠다. 이를 위해 현지,
한국 그리고 유엔 법률 전문가들이 각국의 사정에 맞춰 추진할 수 있는 권고사항들을 제시한 바,
이들을 종합적으로 정리해본다.

지난 5년의 사업 내용을 되돌아보면서 기업환경개선을 위한 법제개선, 특히 계약분쟁해결의
원활화라는 측면에서 요구되는 사법개혁을 지원하는 과정 속에서 직면하게 되는 현실적인
과제들을 이 글에서 제시하고자 한다. 기업환경지수의 활용 방안 나아가 개혁 주도 또는 지원국의
역할에 대해서도 고민해본다. 나아가, 효율적인 계약분쟁해 결을 도모하기 위해 중재 관련 법제
개선을 추진하는 과정에서 고려할 여려 요소들도 살펴본다. 계약분쟁해결제도의 개선과 지속적인
경제발전의 상관관계를 되받아 봅과 동시에 관련 개선을 추진함에 있어 각국의 확고한 의지가
무엇보다 중요하다는 점을 강조하며 이 글을 마무리한다.

주제어: 계약분쟁해결, 아시아태평양경제협력체, 월드뱅크 기업환경지수, 유엔국제상거래법위원회,
사법개혁, 중재, 국제거래, 법제개선 지원사업