“DOING BUSINESS” AT THE COURTS – TESTING A NEW TOOL KIT FOR IMPROVING COURT SERVICES TO THE BUSINESS COMMUNITY

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An accessible and efficient justice system is essential for sustained economic growth. Specialized courts, and in particular commercial courts, play an important role in ensuring effectiveness in the resolution of commercial disputes. This note seeks to outline the key features of an assessment tool that has been developed and used by the Bank to help the Abu Dhabi Judicial Department (ADJD) assess how court services related to commercial cases are being delivered and assess capacity and other impediments that may hinder more effective services, as well as provide targeted recommendations for improvements that are reflective of internationally accepted good practice standards and the local environment. Based on its success in Abu Dhabi, the tool kit is now being refined for implementation in Cairo and will continue to inform future Bank engagements with justice sector institutions.

BACKGROUND

The effectiveness of the judicial system is important for fostering a good business climate, attracting foreign direct investment, securing tax revenues, and supporting economic growth. Research has shown that weak contract enforcement raises the cost of borrowing, shortens loan maturities, and negatively affects investment and GDP. Weak enforcement systems have also been linked to late payments, which can lead to liquidity issues for companies and increase insolvency.

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3 Bae and Goyal (2009); Laeven and Majnoni (2003a).
4 Bianco, Jappelli, and Pagano (2002); Laeven and Majnoni (2003b); Djankov et al. (2008).
5 Intrum Justitia (2013).

Generally a court is considered well-functioning when it effectively and efficiently provides services to its users. To do so, the system must be independent, accessible, and provide timely decisions that are also reasonably predictable. Mechanisms for effective enforcement of court decisions that adequately protect individual rights, including property rights, must be in place and perceived as being procedurally fair.
Specialized commercial courts – or special commercial benches – play an important role in ensuring the courts are meeting the users’ needs and expectations for effective resolution of commercial disputes and contract enforcement.\(^6\) Studies from around the globe have shown that specialization can be helpful in improving the processing of cases that are more complex, cases that require specialized expertise (e.g., bankruptcy disputes), or cases that must be handled differently to better reflect the needs of a particular court user group (e.g., the business community). The same studies, however, have also pointed to a number of drawbacks to creating specialized courts. For example, special attention to, and the allocation of additional resources for, handling business cases can lead to the perception that a court is providing preferential services to the business community as opposed to serving all its users. Additionally, in cases where the establishment of these courts was not justified by the volume of the caseload or by particular court users’ needs, questions arose whether the court could have spent its resources more wisely and in a better way to serve a wider group of users. As a result, when considering the establishment of specialized courts or benches, courts and governments should carefully assess the users’ needs, case volumes, and how the current handling of commercial cases enables or hinders the provision of effective services, as well as the impact that specialization will have on the court’s resources and services.

**A TOOL-KIT FOR COMPREHENSIVE, SYSTEMATIC ASSESSMENT OF COMMERCIAL CASE PROCESSING TO BETTER MEET COURT USER NEEDS**

Around the globe, governments and courts have taken steps to increase procedural efficiency in commercial cases. These have included improving case management practices, introducing and enhancing court automation, supporting enabling legislation and often establishing separate specialized commercial courts or benches, albeit sometimes without having a justifiable workload. To ensure that the courts are in fact meeting the particular needs of their users, including those of the business community, while also upholding judicial quality, reform efforts should be assessed, improved and expanded upon, if need be, to better meet the needs of court users. To assist countries and courts to further improve commercial case processing and address the needs of the business community in a more targeted manner, a team from the World Bank’s Justice Reform Group developed a four-step methodology to conduct comprehensive reviews of court operations related to commercial cases, including an assessment of the business community’s service needs. Combining a set of tested methodologies that had been successfully applied and refined in other countries, but mostly used separately, we developed a new tool kit specifically adjusted to the needs of one of our long time clients, the ADJD.

With a vision to become one of the leading courts of excellence, the ADJD established a special business court in 2008 that has since experienced a tripling of its workload. Faced with a rapidly growing economy and an increasingly complex and globalizing business environment, the ADJD still managed to process most cases in a timely manner. Performance data, however, began to decline, especially for major commercial cases. The need for a broader range of alternative court services and options grew and a special subnational Doing Business report indicated that there was room for improvement.

In 2012, and to address these issues, the ADJD requested that the Bank review how business cases were being handled at the specialized commercial courts and provide recommendations for improvements. Based on the Bank’s knowledge of the local court environment and country context, and the progress already achieved by the ADJD in processing commercial cases, the methodology and data collection instruments were carefully adjusted and applied in all commercial courts of the Emirate.

**COMPONENTS OF THE COMMERCIAL CASE ASSESSMENT TOOLKIT**

The methodology developed and used in the courts in Abu Dhabi included four major components that were intended to provide a holistic understanding of the way in which commercial case services are provided and enable the team to provide targeted short-, medium-, and long-term recommendations addressing the local needs of the courts and their users instead of cookie-cutter solutions. The four components were as follows:

1. **Review of the current legal framework governing commercial case processing and court rules in light of international good practice options and standards.** As a first step, the expert team reviewed the current legislation, including relevant procedural codes, regulations and court rules for processing commercial cases to identify legislative and

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rule impediments to efficient processing and access to the courts. This review covered all processing steps from initial reconciliation (a mandatory ADR service) to first filing through issuance of judgments and final enforcement actions, as well as all considerations, such as fees, representation, and translation, that impact processing and user access. The results were analyzed and compared to international good practices, including those that govern electronic signatures, notice delivery, enforcement options using electronic media, and fee structures and alternative processing options, such as ADR and small claims courts. This review was essential for not only identifying legal impediments, but also pointing out opportunities where the courts may improve case processing and user services by simply introducing different or additional internal rules. This review enabled the team to better understand how the local legal environment impedes efficient workflow and service delivery, whether all options legally available are efficiently used, and to develop more targeted recommendations and options for improving case processing and user access with and without changes to the formal laws.

2. Conduct a work environment and workflow assessment of the current processes from initial filing through final enforcement as applied at the court with a special focus on internal efficiency and service delivery. As agreed upon with the client, the review included all types of commercials cases, major and minor, that were within the jurisdiction of the specialized commercial court. (In other jurisdictions, where a significant backlog exists and resources and data access allow, focusing initially on processing of particular high volume case types may be needed.) This second step was comprised of a comprehensive review of the actual work environment and workflow assessment. A detailed, on-site review - or case walk-through – was conducted at each location that handles commercial cases, capturing set-up, staffing, IT, and the physical environment for all processes, actions, and decisions that users, court staff, managers, and judges have to actually complete for a commercial case from initial case registration through final enforcement action. Because of the local variations in internal administrative processes or physical set-up and support, which can influence user access and court operations, these walk-throughs were conducted at each commercial court location - an aspect that must be taken into consideration when implementing the tool elsewhere. Building upon the legal review, this component provided the team with the on-the-ground view of how the law is being applied and the internal, administrative processes that have been developed and used over time, as well as a realistic perspective of what courts’ users and staff go through when processing a commercial case.

3. Interviews with judges, court staff, managers and court users. As the third step, and in parallel with the workflow analysis, the expert team conducted interviews with judges and staff across various responsibility levels in the ADJD’s multiple departments and in all court locations. Interviews were also conducted with external stakeholders, such as business lawyers. These interviews were essential for clarifying any problematic issues or ambiguities that arose throughout the assessments, validating observations and findings from the previous two steps, and better understanding what would be realistic strategies for improving commercial case handling and services. Interviews with the business community were essential to understanding user needs and perceptions of court operations, shortcomings, and alternative processing and service options.

4. Review of court data (as available). As the fourth (concurrent) step, court case statistics and human resource data were requested and analyzed. In the case of Abu Dhabi, most case data were available from the newly implemented Case Management System (CMS)7 and could be validated against monthly statistical reports compiled by court clerks. Data from the past four years were analyzed to identify case volume and performance trends by location and major processing step, and to pinpoint bottlenecks and local variations in case performance and service delivery. This component also allowed the team to assess current data collection and reporting practices, capacities and mechanisms, and identify needed improvements.

ANALYSIS OF RESULTS AND INTERNATIONAL GOOD PRACTICE COMPARISON

The court data in combination with information from the legal framework review, interviews, 

7 Depending on the court’s resources and development stage such case management system can be paper-based or electronic. Where sufficiently detailed data are not available they may need to be collected from sample file reviews.
workflow assessment, and observations at different locations across the Emirate provided a rich set of information for analysis. As indicated, the legal framework review not only pointed to legislative impediments, but provided an important basis against which the detailed workflow process review could be matched and compared. Laws and internal rules define more or less broadly each processing and decision making activity. The laws may set time limits for completing processes and allowing or disallowing shortcuts, alternatives, and options for delaying actions. The workflow assessment and resulting recommendations had to: reflect the legal framework, indicating where actual processes are within the parameters of established rules; reflect where the law and rules are vague or conflicting, which may lead to non-standard or inefficient operations; reflect where a change in the laws or rules is needed in order to increase efficiency; and reflect the level of service or where there is sufficient flexibility to improve processes administratively.

To enable the client to visualize processing inefficiencies, workflow assessments and processing recommendations were not just described, but depicted on flow charts – one providing the “as-is” process used in the courts and another providing the suggested change option(s) or “to be” process.

Case volume and performance data by major case types and steps (i.e., reconciliation, filing, main hearing, judgment, filing, and completion of enforcement) for four years for each court location was analyzed in combination with case outcome information and data on human resource allocation. This allowed the team to identify bottlenecks at different processing stages and analyze contributing factors, such as variation in local process structures, human resource allocation, case volume and case mix, and case outcomes. The combined information provided valuable explanations for performance issues and potential solutions to overcome them. Such detailed case data may not always be available in other countries which will then necessitate using other data collection mechanisms such as a case file reviews.

Throughout the assessment process, and where gaps in performance or services were identified, the team was keen to explore with the client the factors contributing to such gaps, shortcomings or limitations. In order to develop meaningful recommendations the team researched and studied examples from other high performing courts that could provide a potential benchmark and solutions for reaching it. While international comparison of court performance is often rendered meaningless because legal frameworks, resources and court contexts generally differ, well matched international good performance examples allow the court to identify a new performance goal and options to achieve it. Similarly, performance differences among the same court types within a country show where good performance is achieved under similar circumstance and allow the identification of local good practices and solutions that can be further improved upon and replicated.

FINDINGS, ACTIONABLE RECOMMENDATIONS AND SOLUTIONS

The multi-method approach was designed to provide insight into efficiency and service gaps throughout the entire court case process. The resulting analysis indicates the following areas are in need of enhancement:

- Legislation and court rules
- Actual processes and decision making structures in each court location
- Physical and IT infrastructure at each processing step and location
- Human resource allocation
- User access and needs

EXAMPLE RECOMMENDATIONS

Improving ADR services:
- Explore offering mediation in commercial cases, not as a preregistration compulsory service but as a discretionary service for parties to utilize after sufficient evidence has been presented.

Improving monitoring and evaluation of the registration process:
- The Statistics Department should conduct regular meetings with managers and judges to discuss the analytical reports and their results and collect feedback on report improvements for the CMS system.

Use of experts and case performance:
- Develop clearer guidelines on content, requirements, and timelines for expert reports. Publish these guidelines and offer training for experts registered at the court.

Reducing postponement requests:
- Create a pilot program to establish process timelines using prior recommendations for creating such timelines and available CMS data.

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The assessment for the ADJD resulted in 178 tailored and action oriented recommendations for short-, medium- and long-term actions. Some recommendations require just minor adjustments that can be implemented within a few days, while others require additional data analysis to confirm findings as well as inclusive, cross-departmental discussion to better understand why certain processes may not function as well as they should. A few recommendations are based on changes in the law which would require the court to lobby the legislature, but most recommendations are essentially under the control of the court.

To assist the client in deciding on and developing a reasonable action plan, all recommendations include action steps and sample solutions. The recommendations were presented with likely time requirements and resource needs (i.e., human and material resources) were indicated where possible (in some instances further resource assessments would be needed). 

To assist in deciding upon action steps, all recommendations are further clustered so it is clear if a response will require legislative or rule changes, internal administrative adjustments, or changes to the case management system and other IT solutions. Furthermore, the recommendations are grouped by major case processing steps, which also correspond to main court units. This allows the managers of main court units to concentrate on improvement plans for each of their work areas.

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CLIENT ENGAGEMENT AND EARLY RESULTS

Any comprehensive assessment such as this one requires not just the client’s desire for information and assistance in actually improving a court service. It is also important to understand this type of assessment may be a drain on the client’s time and resources and, as such, will require their full support and engagement. For instance, data needs to be compiled and reviewed for clarification and validation, and staff, managers, judges, and court users on many levels need to be available for interviews, allow observations, and be ready to engage in a constructive dialogue about issues detected and possible solutions. As such, preparing the counterpart for these activities and managing expectations throughout the assessment process is a vital component without which a good assessment that leads to actual changes will not be possible.

In Abu Dhabi, we communicated engagement needs throughout the process and agreed on meeting and time requirements for each mission beforehand – but we could have done better and have learned valuable lessons (i.e., provide more detailed explanations on the type of data requested, set aside more time to review data and clarify definitions, summarize the purpose of the assessment and approach in a few short paragraphs to be sent to each counterpart before meeting with them, etc.) that we will reflect as we are further develop the tool kit.

Equally important was engaging with the client throughout the process and making sure that the team not only shared the initial findings, but also discussed all interim recommendations and possible solutions. This approach allowed the client to think through plausible improvements and discuss how change may be effected, as well as ensured that the ADJD’s management understood early on that the final recommendations would address each part of the process. Being available to the client throughout the assessment to discuss the findings and changes that may need to be implemented was also effective in driving the client to initiate changes even before the full assessment was completed. Examples of such immediate changes include the ADJD’s decision to completely revamp the mandatory pre-filing reconciliation process; issuing new guidelines for court fee waivers; posting performance data on its website; and reviewing its data collection and analysis capacities. Additionally, the website has become more user-friendly and transparent; it now allows court users to search online for case updates by simply entering the case number and to calculate court fees via an online tool when preparing to file a case.

Considering that a comprehensive assessment such as this one will result in a large number of significant change recommendations and possible solutions, it is important to present the final analysis and recommendations in a way that enables the client to easily understand what change is needed, why, what will be required, and when the change can be effected. With the exception of legislative changes which may be beyond the court’s direct control, options that allow the client to approach change in various ways should also be presented and the team should be available to discuss the various recommendations and possible solutions. Ensuring that the client fully understands how the recommendations were reached and why they were provided is essential to actually triggering change and enables the client to begin the process of change without delay. This includes support for communications with court users, such as business lawyers and the broader community, to ensure their needs are being met and that the court’s efforts to reflect their needs are recognized by the business community.

NEXT STEPS – A COMPREHENSIVE TOOL KIT

Requests for assistance to improve processing efficiency and overall court services are made by courts from many of the Bank’s client countries. Improvement to commercial case handling provides for a good entry point to engaging more broadly with justice sector institutions in an area where the Bank has a good competitive advantage. Using parts of the tool kit, including, for example, the data collection and interview forms utilized in Abu Dhabi, we are currently working with our IFC colleagues in Cairo to adjust the forms to the local context and develop the needed descriptive information to assist them and others in using these tools in other jurisdictions. The lessons learned there will again inform the refinement of the tool kit.

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