

Kluwer Mediation Blog

“Doing Business 2012”: Good Perspectives for Mediation?

Rafal Morek (DWF LLP) · Wednesday, November 9th, 2011

While the world becomes ever faster-paced, litigating business disputes are unchangeably slow. The recently published World Bank’s [“Doing Business 2012: Doing Business in a More Transparent World”](#) report shows that state court procedures in most countries remain lengthy, costly and complicated. Although this is not good news for anyone, as a side effect, the flaws of a court system fuel mediation and other ADR, and contribute to their further growth.

The “Doing Business 2012” report assesses regulations affecting domestic firms in 183 economies and ranks the economies in 10 areas of business regulation, such as [starting a business](#), [trading across borders](#) and [enforcing contracts](#). This year’s report data, which was published in late October, cover regulations measured from June 2010 through May 2011.

The ease with which contracts can be enforced varies dramatically across economies. The methodology applied in the World Bank’s report measures it mainly with respect to three criteria: time, cost and complexity of relevant local court procedures.

The **time** required to enforce a standardized commercial contract ranges from approximately five months in Singapore (150 days) to five years in Suriname (1,715 days). The average period for all OECD high income countries amounts to 518 days.

The **litigation costs** range from less than 10 percent of the contract value in Iceland (8.2%), Luxemburg (9.7%), and Norway (9.9%) to more than 100 percent in such countries as Indonesia (122.7%), Mozambique (142.5%), and Congo (151.8%).

In general, the top ten jurisdictions with the most efficient court systems are: Luxemburg, South Korea, Iceland, Norway, Hong Kong, France, The United States, Germany, Austria and New Zealand. However, even in those countries, litigation is costly (average for OECD high income countries is 19.7% of the contract value), and mediation may bring substantial savings. On the other end of the list: Bangladesh, Angola, India and Timor-Leste are four countries singled out where reforms are most needed.

It will be interesting to learn how some presently implemented mediation-related regulations may change the current situation. An example is Italy, where commercial cases last at present an average of 53 months (nearly 4.5 years), with their recent

mandatory mediation scheme.

The “Doing Business” report is focused on efficiency of local state court systems. Arguably it should also take into account the state of ADR regulations and practice. Perhaps its future editions will include a section on ADR.

For now, however, an interesting supplement to the report can be found in another World Bank periodical publication “[Viewpoint: Public Policy for the Private Sector](#)”. Its latest edition (No. 329, October 2011) publishes a comprehensive study by *Inessa Love*, a senior economist in the World Bank’s Development Research Group. Her article summarizes the findings of the literature on the effectiveness of ADR mechanisms as an alternative to traditional litigation. Even though the evidence on the costs and time savings of ADR programs for parties in a dispute is growing and broadly reported in this feature, the author observes that “*there is insufficient empirical research about the efficacy and success of ADR as compared to traditional litigation.*” She concludes that IFC and the World Bank could play an important part in filling some of the key gaps in this regard. No doubt, this is a plausible conclusion. More thorough and comprehensive empirical research on the benefits of mediation would be more than welcome.

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