

DOING BUSINESS (2018) – PAKISTAN

Karachi

Enforcing Contracts

Introduction

1. This briefing paper considers the current position of the DB topic of Enforcing Contracts in Pakistan.
2. Specific commentary is made herein only to data relating to Karachi and its associated district courts in various locations in Sindh (referred to collectively as the ‘Karachi District Court’).
3. Pakistan ranks 141 overall out of 190 countries, as measured by the Doing Business 2017 report with a Distance to Frontier (DTF) of 51.77%¹.
4. In relation to Enforcing Contracts, Pakistan ranks 157/190 in 2017 with a DTF of 43.49%.
5. The DB data (2017) for Karachi District Court shows attainment of 44.36% against the three respective indicators (Time for disposing of claims, cost of claim, and quality of judicial processes index).
6. In relation to various elements of the quality of judicial processes index, Karachi District Court scores six out of a possible 18 points.
7. The reasons for this comparative low score of Karachi District Court may be explained by the following factors:
 - Lengthy time to dispose of claims – data shows an average of 1,096 days to resolve a simple commercial matter.
 - Case management is lacking in a sufficient range of tools to assist the court and the parties to efficiently handle claims (Karachi District Court scores 1.5/6)²:
 - Existing procedural standards enshrined to ensure disposal of claims are not complied with in more than 50% of issued proceedings.

¹ The Distance to Frontier score captures the gap between an economy’s performance and 100 – a measure of best practice.

² Comparison may be made here with the Shanghai People’s Court (PC) in China which scores 5.5/6 in relation to Case Management and 14.518 on the Quality of Judicial Processes Index (DB 2017 Enforcing Contracts: China). The Shanghai PC disposes of simple contract claims in an average of 406 days.

- This is accompanied by an absence of control over the frequency in which parties may seek to adjourn a stage in proceedings.
 - Court time cannot be maximized and used efficiently as pre-trial conferences or electronic case management tools to assist judges and court staff are not used.
- The absence of a dedicated commercial court division or bench – it is noteworthy that 99/190 economies covered by the DB report operate a specialized commercial jurisdiction within their existing civil court or can deploy a dedicated body of specialized commercial judges.
 - Under-utilization of mediation processes – there is a longstanding commitment³ to ADR on the part of the Karachi High Court but this has yet to extend fully to the Karachi District Court.
8. The balance of this paper highlights both short-term solutions (to be considered capable of implementation within 100 days) and long-term goals to improve and to benefit the Karachi District Court with the aim of increasing its DTF score.

Table A - Steps to be considered to improve the DTF score of Karachi District Court within 100 days

It is suggested that measures are considered and adopted to allow long-term goals to be introduced within the course of one year.

Indicator	Suggested measure
Case management procedures to establish timetable for disposal of claims	KDC to consider stricter application of civil procedure rules to fix timetable for disposal of claim from filing to hearing of claim and the adoption of judicial performance standards to measure enhanced timetabling of proceedings to increase above 50% the observance of time standards.

³ The presence of the National Center for Dispute Resolution (formerly the Karachi Center for Dispute Resolution) is noted.

Case management of claims which have not been subject to prosecution by plaintiff	KDC to consider method (in line with introduction of civil procedure timetable above) to case manage claims where plaintiff has failed to prosecute claim with striking out for failure to progress.
Proposal to establish a specialist commercial division within KDC	Consideration of the proposal to train and develop a commercial specialism within district courts to enable streaming and disposal of contractual disputes in increased time.
Guidance to litigants/court users/KDC staff	Consideration of providing specific guidance on KDC website to explain civil procedure for enforcing contracts through courts; these should include direct access to relevant or illustrative civil judgments of KDC (as utilized for other categories of KDC cases on website) and extension of electronic case management tools to lawyers.
Expanding automated court systems	Review of existing electronic case management tools to determine their utilization beyond the judges of the KDC to lawyers and court users.
Extending mediation to certain types of civil disputes dealt with by the KDC	Consideration of whether ADR might be extended widely to cases falling within the remit of KDC – potentially on a trial basis for certain categories of claim and the suitability of existing mediation resources to this end.

Table B – Long-term goals to be attained to improve the DTF score of Karachi District Court within one year

Goal	Task
Development and introduction of civil procedure rules for the KDC	Prepare draft civil procedure rules (New CPR) specifically for the KDC which focus on the timely case management of a claim - from filing to hearing and delivering for approval by Parliament.

Training and induction of a specialized core of district judges for KDC	Commencing training of district judges in accordance with the aims and methodology of the New CPR.
Examination of extent of unprosecuted claims	Consideration of reducing claims by way of giving notice to and striking out in accordance with the New CPR those claims which have not been actively prosecuted by plaintiffs/claimants.
Extending coverage of electronic case management tools	Introducing case management tools to allow filing, payment of court fees, and completion of litigation stages and assist the KDC and its district judges/court staff in managing new claims. Ensure that the following four reports can be generated about the KDC: (i) timing of disposal of claims report; (ii) clearance rate report; (iii) age of pending cases report; and (iv) single case progress report
Extending ADR to simple contractual claims	Introducing pilot ADR in the form of mediation to claims filed from target date to assess suitability of existing ADR methods to extend to simple contractual claims.