

Enforcing Contracts Questionnaire – Thailand

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Dear Contributor,

We would like to thank you for your participation in the *Doing Business* project. Your expertise in the field of Enforcing Contracts in Thailand is essential to the success of the *Doing Business* report, one of the four flagship publications of the World Bank Group that benchmarks business regulations in 189 economies worldwide. The Enforcing Contracts indicator, which measures the time and cost to resolve a standardized commercial dispute as well as a series of good practices for the judiciary, is one of the 11 indicator sets published by the *Doing Business* report.

The report attracts much attention around the world. The latest edition, *Doing Business 2015: Going Beyond Efficiency*, received over 4,000 media citations within two weeks of its publication on October 29, 2014. The coverage spanned major global, regional and local media outlets, from print and broadcast to the web. The *Doing Business* website had over 800,000 page views and more than 54,000 downloads in the two weeks following the report's launch.

Governments worldwide read the report with interest every year, and your contribution makes it possible for the *Doing Business* project to disseminate the regulatory best practices that continue to inspire their regulatory reform efforts. Since 2009, economies worldwide have implemented 81 reforms making it easier to resolve a standardized commercial dispute through the courts. In 2013/14, 15 economies implemented such reforms. Most implemented electronic filing of the initial complaint to streamline contract enforcement.

We are honored to be able to count on your expertise for *Doing Business 2016*. Please do the following in completing the questionnaire:

- Review the assumptions of the case study before updating last year's information in the questionnaire.
- Describe in detail any reform that has affected the process of enforcing contracts since June 1, 2014.
- Please prioritize responses to the new questions in **Section 4**.
- Be sure to update your name and address if necessary, so that we can mail you a complimentary copy of the report.
- Kindly return the questionnaire to Christian De la Medina at DBEnforcingContracts@worldbank.org.

We thank you again for your invaluable contribution to the work of the World Bank Group.

Sincerely,

Christian De la Medina

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Primary Contributor Information: Please check the box next to the information you **do not** want us to **publish**.

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Additional Contributor(s): If there are more people whom you would like us to acknowledge, kindly send us an e-mail.

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Please e-mail me an electronic copy of the report and my certificate of appreciation, rather than mailing me a paper copy.

Referrals: Please help us expand our list of contributors by referring us to other experts in the private or public sector (lawyers, notaries, public officials or any expert on this field) who can respond to the questionnaire.

First name	Last name	Position	Firm	Address	Phone	E-mail
[]	[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]	[]	[]

The Enforcing Contracts indicator looks into the efficiency of the judicial system in resolving commercial disputes by measuring the time and cost involved in resolving a standardized case study like the one described below. As of this year's report, the Enforcing Contracts indicator also explores additional areas of research, as explained in greater detail in Section 4, below.

1. Case Study Assumptions

Two domestic companies - Seller and Buyer - conclude a contract for the sale of some custom-made goods. Further to such contract, Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, custom-made furniture. Upon delivery of the goods, Buyer alleges that the goods are of inadequate quality, and refuses to pay. Seller insists that the goods are of adequate quality and demands payment of the contract price. Since the goods were custom-made for Buyer, Seller cannot sell them to a third party. Following Buyer's refusal to pay, Seller sues Buyer. The court decides 100% in favor of Seller, and orders Buyer to pay the contract price.

1. Both Seller and Buyer are domestic companies, located in Bangkok.
2. Seller sues Buyer to recover the amount due under the contract. The value of the claim is: THB 333,304.
3. The court deciding the case is located in Bangkok and is the first instance court with jurisdiction over commercial claims of THB 333,304.
4. Seller fears that Buyer may dissipate assets, move assets out of the jurisdiction or become insolvent. Therefore, if such a procedure is allowed before the competent court, Seller requests and obtains attachment of Buyer's movable assets (office equipment or vehicles) prior to obtaining a judgment.
5. Buyer opposes the claim, which is then disputed on the merits. An opinion on the quality of the goods delivered by Seller is required and is given by an expert during the court proceedings:
 - a. If it is standard practice in your country (as in most common law countries) for Seller and Buyer to call their own expert witnesses, then each party calls one expert witness to provide an opinion on the quality of the goods delivered by Seller.
 - b. If it is standard practice in your country (as in most civil law countries) for the judge to appoint an independent expert to provide an opinion on the quality of the goods delivered by Seller, then the judge does so. It is assumed that no opposing expert testimony is provided.
6. Judgment is 100% in favor of Seller. Buyer is required to pay the agreed contract price to Seller.
7. Buyer does not appeal the judgment.
8. Seller decides to start enforcing the judgment when the time period allocated by law for appeal expires. It is assumed that Buyer has no money in his bank accounts. As a result, Buyer's movable assets (office equipment or vehicles) are attached and stored in preparation for a public sale.
9. A public sale is organized, advertised and held to sell Buyer's movable assets. The assets are sold and the value of the claim is entirely recovered by Seller.

Definitions: for the purpose of this questionnaire, the terms below carry the following meaning:

1. Competent court means the court in Bangkok with jurisdiction over commercial disputes similar to the one described in the assumptions of the standardized case. If more than one court is competent, competent court means the court that is most likely to determine the outcome of the standardized case.

2. Expert witness means a witness with the required qualifications or experience to give an opinion on whether the goods delivered are of adequate quality. Expert opinion is required and provided prior to judgment.

Please provide your responses to the following sections taking into account the case study assumptions provided above. For your convenience, last year's answers are included in this questionnaire where available. Please note that they represent a unified answer based on all the answers we received from various contributors.

2. Reform Update

	Answer
Have there been any reforms since June 1st, 2014 in domestic commercial litigation (e.g. amendments to the civil procedural rules or to the case management system, implementation of e-filing, implementation of mediation, substantial changes in arbitration law, creation of a new commercial court, or appointment of new judges or reorganization of the judicial system)?	-Click to Select-
If relevant, please describe the reform(s). Please include information on the date of adoption, publication and enforcement of the new law(s) or regulation(s).	
Are any such reforms expected to be implemented between now and June 1st, 2015? If so, please describe.	

3. Competent Court

	Answer	If you answered "No", please specify
Does the Bangkok Civil Court have jurisdiction over the case described in Section 1, given the value of the claim set at THB 333,304?	-Click to Select-	

If the competent court has changed, please answer all questions in Sections 4, 5 and 6 assuming that the new court would hear the case.

4. New Index on Court Structure & Court Efficiency

This year, *Doing Business* is collecting new data that will be integrated into the Enforcing Contracts indicator set, alongside the data on the time and cost necessary to resolve a standardized commercial dispute. The new data will explore the overall judicial infrastructure, the level of automation in the court system, the availability of alternative dispute resolution mechanisms and the availability of case management.

Since this is a new data set, it is extremely important for us to obtain answers to the questions below. Therefore, we would be grateful if you would give these questions priority before updating the existing data in Sections 5 and 6.

If any of your answers are the result of a reform that came into effect after June 1, 2014 kindly mention it in the “Additional Information” section. Furthermore, when answering the questions below kindly indicate the name, reference and date of publication of the relevant law, when applicable.

4.1 Court Structure & Functioning

Specialized Commercial Court		
	Answer	
In Bangkok, is there a court or division of a court dedicated solely to hearing commercial cases?	-Click to Select-	
If "Yes", what is the name of this court or division?		
If "Yes", what is the jurisdictional threshold (minimum claim value) for cases to be heard by this court?		
Small Claims Court		
	Answer	
In Bangkok, is there a small claims court or a fast-track procedure for small claims?	-Click to Select-	
<i>A small claims court is a court with limited jurisdiction to hear cases with relatively small amounts of money. These courts usually have relaxed rules of civil procedure, relaxed rules of evidence and are characterized by the use of plain language.</i>		
If "Yes", what is the name of this court or division?		
If "Yes", what is the law establishing such court or fast-track procedure?		
If "Yes", what is the maximum monetary amount for cases to be heard by this court?		
If "Yes", is self-representation allowed before this court?		
Pre-Trial Attachment		
	Answer	Additional information
Assuming that the plaintiff fears that the defendant may dissipate assets, move assets out of the jurisdiction or become insolvent, would the plaintiff be allowed to request and obtain attachment of the defendant's <u>movable</u> assets (office equipment or vehicles) prior to obtaining a judgment?	-Click to Select-	
If "Yes", does the debtor retain possession of the goods? If the debtor does not retain possession, kindly mention who does.	-Click to Select-	
Assignment of Cases		
	Answer	Additional information
Are new cases assigned randomly to judges within the Bangkok Civil Court? If "No", in your answer please specify how cases are assigned.	-Click to Select-	
Applicable Procedural Rules		
	Answer	
When were the procedural rules that apply to the standardized case last modified?		

4.2 Case Management

Time Standards for Civil Cases, Adjournments and Continuances		
	Answer	Additional information
In Thailand are there any laws or regulations setting overall time standards for key court events in the life of a civil case? If "Yes", please indicate the name and year of publication of the law or regulation.	-Click to Select-	
If "Yes", which of these key events have specific deadlines set by law?	<input type="checkbox"/> Service of process <input type="checkbox"/> First hearing <input type="checkbox"/> Filing of the statement of defense <input type="checkbox"/> Completion of the evidence process <input type="checkbox"/> Deadline to submit final judgment <input type="checkbox"/> Other, please explain	
Are these time standards respected in more than 50% of the cases?	-Click to Select-	
Does the law also regulate the maximum number of adjournments or continuances that can be granted?	-Click to Select-	
Are adjournments limited to unforeseen and exceptional circumstances? Please mark "No" if the judge has unlimited authority to grant continuances and can simply do so upon request of the parties, even if for no reason. If "No", please list the most common causes for adjournments.	-Click to Select-	
Are there rules in place to control and prevent frivolous adjournments?	-Click to Select-	
If there are rules in place, are they respected in more than 50% of the cases?	-Click to Select-	
Performance Measurement Mechanisms		
	Answer	Additional information
Are there reports that can be generated about the Bangkok Civil Court to monitor the court's performance, the progress of cases through the court and ensure compliance with the time standards mentioned above?	-Click to Select-	
If "Yes", which of the following reports are available? - A <i>time to disposition report</i> measures the time the court takes to dispose/adjudicate its cases. - A <i>clearance rate report</i> measures the number of cases resolved by the court vs. the number of incoming cases. - An <i>age of pending cases report</i> serves as a snapshot of all pending cases according to case-type, case-age, last action held and next action scheduled. - A <i>single case progress report</i> serves as a snapshot of the status of one single case.	<input type="checkbox"/> Time to disposition report <input type="checkbox"/> Clearance rate report <input type="checkbox"/> Age of pending cases report <input type="checkbox"/> Single case progress report	
Pre-Trial Conference		
	Answer	Additional information
Is a pre-trial conference part of the case management techniques used before the Bangkok Civil Court? A <i>pre-trial conference</i> is a meeting designed to narrow down contentious issues and evidentiary questions before the trial. Its purpose is to expedite the trial process while discouraging unnecessary pretrial motions or other delay tactics.	-Click to Select-	
If "Yes", which issues would be discussed and which actions would take place in such pre-trial conference?	<input type="checkbox"/> Scheduling, including time frame for filing motions and other documents with the court <input type="checkbox"/> Examination of case complexity and projected length of trial <input type="checkbox"/> Possibility of settlement or ADR <input type="checkbox"/> Exchange of witness list <input type="checkbox"/> Discovery timeline / agreement on evidence	

	<input type="checkbox"/> Jurisdiction and other procedural issues <input type="checkbox"/> Narrowing down contentious issues <input type="checkbox"/> Other, please explain				
Electronic Case Management System					
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%; text-align: center;">Answer</th> <th style="width: 50%; text-align: center;">Additional information</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">-Click to Select-</td> <td></td> </tr> </tbody> </table>	Answer	Additional information	-Click to Select-	
Answer	Additional information				
-Click to Select-					
Are there any electronic case management tools in place within the Bangkok Civil Court?					
If "Yes", which of the following actions can be performed by the judge through the electronic system?	<input type="checkbox"/> Access laws, regulations and case-law <input type="checkbox"/> Automatic generation of a hearing schedule for all cases on the judge's docket <input type="checkbox"/> Send notifications (e.g. emails) to lawyers <input type="checkbox"/> Track status of a case on the judge's docket <input type="checkbox"/> View and manage case documents (briefs, motions, etc.) <input type="checkbox"/> Assistance with judgment writing <input type="checkbox"/> Semi-automatic generation of court orders <input type="checkbox"/> View court orders and judgments in a particular case <input type="checkbox"/> Additional features, please explain				
If "Yes", which of the following actions can be performed by lawyers through the electronic system?	<input type="checkbox"/> Access laws, regulations and case-law <input type="checkbox"/> Access forms to be submitted to the court <input type="checkbox"/> Receive notifications (e.g. emails) <input type="checkbox"/> Track the status of a given case (future hearings, deadlines, etc.) <input type="checkbox"/> View and manage case documents (briefs, motions, etc.) <input type="checkbox"/> File briefs and documents with the court <input type="checkbox"/> Access court orders and decisions on a given case <input type="checkbox"/> Additional features, please explain				
If "Yes", does the electronic system allow any of the following?	<input type="checkbox"/> Random assignment of cases to judges <input type="checkbox"/> Generation of statistics and reports about the court <input type="checkbox"/> Transfer of cases amongst courts				

4.3 Court Automation

Electronic Filing		
	Answer	Additional information
Can the initial complaint be filed electronically through a dedicated platform within the Bangkok Civil Court? Please answer "No" if it can only be filed by e-mail or fax.	-Click to Select-	
When the initial complaint is filed electronically, must a hard copy be submitted as well?	-Click to Select-	
Are there other court documents that can be submitted electronically?	-Click to Select-	
Electronic Service of Process		
	Answer	Additional information
Is it possible to carry out service of process electronically for claims filed before the Bangkok Civil Court? If so, please specify how it is carried out (by e-mail, SMS/text, fax, etc.).	-Click to Select-	
Electronic Payment of Court Fees		
	Answer	Additional information
Can court fees be paid electronically within the Bangkok Civil Court?	-Click to Select-	
Publication of Judgments		
	Answer	Additional information
Are judgments rendered at all levels in commercial cases made available to the general public through publication in official gazettes, in newspapers or on the internet/court	-Click to Select-	

website? If judgments are published <u>exclusively</u> in the official gazette, please specify whether the gazette is available for free or whether it must be purchased. If judgments are published online, please include a link to the relevant website.		
Are judgments rendered in commercial cases at <u>the appellate and supreme court level</u> made available to the general public through publication in official gazettes, in newspapers or on the internet/court website? If judgments are published online, please include a link to the relevant website.	-Click to Select-	

4.4 Alternative Dispute Resolution

Arbitration		
	Answer	Additional information
In Thailand, is domestic commercial arbitration governed by a consolidated law or consolidated chapter/section of the applicable code of civil procedure encompassing substantially all aspects of arbitration? If "Yes", please indicate the name and year of publication of the law. If commercial arbitration is regulated through scattered provisions in different laws and legislative instruments, please mark "No".	-Click to Select-	
Are there any commercial disputes - aside from those that deal with public order or public policy - that cannot be submitted to arbitration in Thailand?	-Click to Select-	
Are valid arbitration clauses or agreements usually enforced by the courts in Thailand? Please answer "No" if courts would adjudicate a case despite the presence of a valid arbitration clause or agreement.	-Click to Select-	
In order to enforce a domestic arbitral award in Thailand, is it mandatory to undergo a separate and additional recognition procedure through the courts?	-Click to Select-	
Voluntary Mediation		
	Answer	Additional information
Is voluntary mediation available in Thailand? Please answer "Yes" only if the parties do not have to participate in the mediation process unless they want to.	-Click to Select-	
In Thailand, is mediation governed by a consolidated law or consolidated chapter/section of the applicable code of civil procedure encompassing substantially all aspects of mediation? If "Yes", please indicate the name and year of publication of the law. If mediation is regulated through scattered provisions in different laws and legislative instruments, please mark "No".	-Click to Select-	
Are there any institutions (including, when applicable, the courts) administering commercial mediation in Thailand?	-Click to Select-	
Are there financial incentives for parties to attempt mediation (i.e. if mediation is successful: refund of court filing fees, income tax credits, etc.).	-Click to Select-	
Are judges required to refer the parties to mediation?	-Click to Select-	
If parties settle through mediation, does the mediation agreement have the same legal power of a court order? Please answer "No" if the agreement has the same enforceability of a contract.	-Click to Select-	

5. Time estimates

The following section includes questions relating to time estimates for different stages of a commercial case. In light of your **experience with cases comparable to the standardized one**, please indicate the **number of calendar days** that would usually be necessary in practice to resolve the standardized case.

If you updated the competent court in Section 3, please provide time estimates for the new court below.

5.1. Filing and service

This section measures the time it would take between the moment Seller (the plaintiff) decides to sue and the moment Buyer (the defendant) is served in the Bangkok Civil Court (assuming that both parties are domiciled in Bangkok).

In your response, please include the number of days corresponding to the following steps, when applicable:

1. Final non-litigious summon by Seller (the plaintiff) to Buyer (the defendant) to comply with the sales agreement and pay the price specified in the contract, including:
 - a. time to prepare the summon (by an attorney, when applicable);
 - b. delivery of the summon;
 - c. deadline to respond to the summon.

2. Assuming that the final request is unsuccessful, preparation of a formal complaint, including:
 - a. time to schedule and meet with an attorney (when applicable);
 - b. time to prepare the complaint.

3. Filing the claim with the court and serving the defendant, including:
 - a. processing time at the court's registrar;
 - b. waiting periods between unsuccessful attempt(s) to serve the claim on the defendant, when it is a likely scenario.

	Last year (calendar days)	This year	New time estimate (and corresponding explanation)
Is last year's estimate still accurate?	60	-Click to Select-	
Answer			
a. How many attempts are usually necessary, in practice, to serve the initial complaint on the opposing party? If more than one, please explain the main reasons for delay.			
b. In your opinion, what is the main cause of delay between Seller's decision to sue and the moment process is served on Buyer (the defendant)?			<input type="checkbox"/> Difficulties in locating the defendant <input type="checkbox"/> Slow service by bailiff, attorney or other <input type="checkbox"/> Inefficient postal service <input type="checkbox"/> Obtaining information from registrar's office (date of hearing, pre-assessment of the complaint, etc.) <input type="checkbox"/> Other, please explain

5.2. Trial and judgment

This section measures the time it would take for the judgment to be rendered once the claim has been filed with the court and served on defendant.

In your response, please include the number of days corresponding to the following steps, when applicable:

1. Pre-trial hearing and first hearing (when applicable), including:
 - a. time to obtain pre-trial or trial date;
 - b. waiting period until pre-trial or trial is held;
 - c. waiting periods between submission of briefs.

2. Usual delays (if they happen in most cases), including:

- a. delays due to adjournments granted by the judge;
 - b. delays due to the absence of one of the parties resulting in adjournment;
 - c. delays due to procedural motions.
3. Expert opinion (once the briefs are submitted and the first hearing has been held, the judge decides that an expert opinion is needed), including:
- a. time to appoint an expert;
 - b. time for the expert to deliver his/her opinion.
4. Final hearing and judgment, including:
- a. waiting periods between hearings until the last hearing;
 - b. if a written judgment is necessary, time to draft and deliver judgment;
 - c. time until the right to appeal elapses.

	Last year (calendar days)	This year	New estimate (and corresponding explanation)
Is last year's estimate still accurate?	260	-Click to Select-	
			Answer
a. How long does it usually take, in practice, between the moment the case is filed and the moment the first hearing is held?			
b. How many hearings would be required, in practice, to resolve the standardized case study?			
c. When a trial or evidence hearing is postponed, or when more than one hearing would be necessary to resolve the standardized case, how long in practice would the parties have to wait for the next hearing to occur?			
d. How long in practice would an expert usually take to deliver his or her opinion?			
e. What is the time limit for appeal in Thailand?			
f. In your opinion, what is the main cause of delay during the Trial and Judgment period?		<input type="checkbox"/> Backlog of cases <input type="checkbox"/> Adjournments <input type="checkbox"/> Waiting periods between hearings <input type="checkbox"/> Limited availability of experts <input type="checkbox"/> Delays caused by the expert's activity <input type="checkbox"/> Other, please explain	

5.3 Enforcement of Judgment

This section measures the time it would take the plaintiff, once the appeal period has elapsed, to: (i) start enforcing the judgment; (ii) seize defendant's movable assets; (iii) organize a public sale with the seized assets; and (iv) recover the value of the claim?

In your response, please include the number of days corresponding to the following steps, when applicable:

1. time to contact the relevant enforcement officer;
2. time to locate and identify the movable assets of the defendant;
3. time to obtain the necessary order from the court to attach and seize the assets;
4. time to organize the public sale of the defendant's movable assets and recover the value of the claim.

	Last year (calendar days)	This year	New time estimate (and corresponding explanation)
Is last year's estimate still accurate?	120	-Click to Select-	
			Answer
a. Is it required to obtain a copy of the decision to start			

enforcing the judgment (or is an oral judgment enough)?	
b. How long does it usually take, in practice, to seize the defendant's movable assets and organize a public sale?	
c. How many auctions are usually necessary to complete the sale of the seized goods?	
d. In your opinion, what is the main cause of delay during the Enforcement phase?	<input type="checkbox"/> Attaching the movable assets <input type="checkbox"/> Organization of the public auction <input type="checkbox"/> Waiting for the public sale to be held <input type="checkbox"/> Finding buyers for the goods <input type="checkbox"/> Other, please explain

6. Cost estimates

The following section includes questions relating to cost estimates for different stages of a commercial case. In answering these questions, please express the estimates as a percentage of the value of the claim which, for *Doing Business 2016*, amounts to THB 333,304 (see Section 1).

Indicate all costs and expenses that Seller (the plaintiff) would have to incur to obtain and enforce the judgment.

- a. We are interested in all costs and expenses Seller (the plaintiff) must advance, regardless of the costs that Seller can recover at the end, when he wins the case.
- b. Please include official costs only.

If you updated the competent court in Section 3, please update the fees as they would apply in the new court.

6.1 Attorney Fees

Please provide an estimate of the average attorney fees that would be charged by a local law firm to handle a case like the standardized scenario, taking into account the qualification and experience of the attorney required in your country for this case. Include the following:

- a. fees to handle the case up to judgment;
- b. fees for enforcement if a lawyer is commonly retained for this purpose;
- c. if applicable, value added tax or other taxes.

Examples of tasks that could be taken into account, if relevant:

- a. interview of the client;
- b. drafting of the statement of claim;
- c. preparation of the affidavit of documents;
- d. preparation of several motions;
- e. involvement in the pre-trial discussions;
- f. trial preparation;
- g. trial time (for one or more hearings);
- h. miscellaneous letters, phone calls, etc.

	Last year (% of the value of the claim)	This Year	New estimate (and corresponding explanation)
Is last year's estimate still accurate?	10.0	-Click to Select-	

6.2 Court fees (up to judgment only)

Please provide the approximate average cost that would be incurred by Seller (the plaintiff), bearing in mind the competent court for the standardized case.

	Last year (% of the value of the claim)	This Year	New estimate (and corresponding explanation)
Is last year's estimate still accurate?	2.0	-Click to Select-	
			Answer
a. In a case similar to the standardized case, what would be the fees to register the case (filing fees only)?			
b. What would be the fees for the issuance of the judgment?			
c. How much would a local expert charge if he or she had to work for 10 hours?			
d. What are other court fees that would need to be advanced by Seller?			

6.3 Enforcement fees

Please provide the approximate average cost that would be advanced by Seller (the plaintiff) for a case similar to the standardized case.

	Last year (% of the value of the claim)	This year	New estimate (and corresponding explanation)
Is last year's estimate still accurate?	3.0	-Click to Select-	
			Answer
a. What are the fees for the registration of judgment?			
b. What are the fees for the attachment order?			
c. What are the fees for the auction (publicity, tax, enforcement officer, etc)?			
d. Would Seller have to advance the fees for the organization of the public sale (or would the enforcement officer pay him or herself out of the proceeds of the public sale)?			
e. What are other enforcement fees that would need to be advanced by Seller?			

Thank you very much for completing the Enforcing Contracts questionnaire.

We sincerely appreciate your contribution to the *Doing Business* project.

The results will appear in the *Doing Business 2016* report and on our website: www.doingbusiness.org.

Your work will be gratefully acknowledged in both, if you wish.