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Capacity Building: Lessons Learned from the APEC- EoDB Project

Submitted by: UNCITRAL



**Seminar on Use of International Instruments to
Strengthen Contract Enforcement in Supply Chain
Finance for Global Businesses Including Micro,
Small, and Medium Enterprises
Nha Trang, Viet Nam
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UNCITRAL United Nations Commission on International Trade Law



Capacity building: Lessons learned from the APEC-EoDB project

Jae Sung LEE
UNCITRAL Secretariat
Legal Officer, International Trade Law Division
Office of Legal Affairs, United Nations

APEC Ease of Doing Business Project on Enforcing Contracts

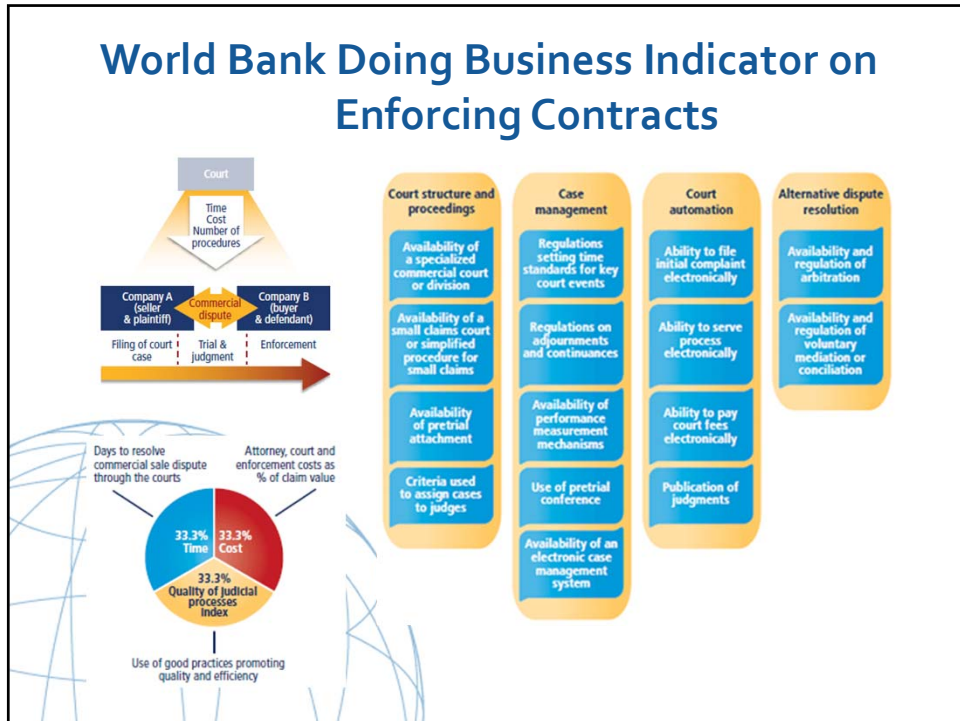
- APEC EoDB Action Plan (2010-2015)
 - Five priority areas (starting a business, getting credit, enforcing contracts, trading across borders and dealing with permits)
 - Making it 25% cheaper, faster and easier to do business by 2015
 - Champion economy: Korea
 - Second EoDB Action Plan (EoDB Implementation Plan, 2016-2018) – 10% improvement by 2018
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UNCITRAL's cooperation with Korea on APEC EoDB Project

- Enforcing contracts: Indonesia, Peru (2011), Thailand, Philippines (2012), Vietnam, *Saudi Arabia*, Brunei Darussalam (2013), Mexico, *Myanmar* (2014), *Sri Lanka*, Thailand (2015), Malaysia (2016)
- Getting credit: New Zealand, Singapore (2016)
- Preliminary research of the relevant laws, regulations and practice → Visits to gather and verify information and to identify resource persons → Local workshops → Wrap-up seminars to present customized and concrete recommendations
- UNCITRAL – focus on international aspects and ADR

Relevance of UNCITRAL and APEC EoDB

- UNCITRAL texts provide the basic legal framework for doing business, including enforcing contracts, getting credit, trading across borders and starting a business.
- The Commission expressed support for closer cooperation with APEC and expanding the project further building up on the enforcing contract experience.
- APEC Joint Ministerial Statement (Nov. 2014): "welcomes the joint efforts of the Economic Committee and ... UNCITRAL 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."



Recommendations to improve the environment

- Multi-dimensional approach: perspectives of local and foreign experts as well as international organizations
- Reforms highlighted in the Doing Business Reports
- Judicial reforms to reduce time and cost
- Legislative reforms based on international legal standards

Progress made by APEC economies

Figure 24: Time for Enforcing Contracts

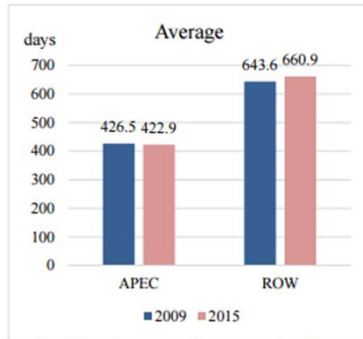
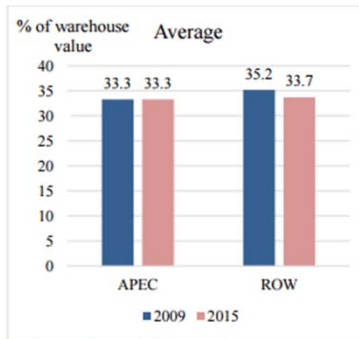


Figure 25: Cost of Enforcing Contracts (% of claim)



Source: World Bank – Doing Business; APEC Secretariat, Policy Support Unit calculations

Progress made by target economies

	2011	2012	2013	2014	2015	2016	2017
Brunei Darussalam	159	151	158	161	139	113	93
	540/36.6/58		540/36.6/47		540/36.6/7		540/36.6/8.5
Indonesia	154	156	144	147	172	170	166
	57/122.7/40		498/130.4/40		471/115.7/40		471/115.7/6.3
Mexico	81	81	76	71	57	41	40
	415/32.0/38		400/31.0/38		389/30.9/36.8		340.7/33.0/10.1
Myanmar	Not included in the Doing Business report			188	185	187	188
					1160/51.5/45		1160/51.5/3
Peru	110	111	115	105	100	69	63
	428/35.7/41		428/35.7/41		428/35.7/8.5		428/35.7/8.5
Philippines	118	112	111	114	124	140	136
	842/26.0/37		842/31.0/37		842/31.0/7.5		842/31.0/7.5
Saudi Arabia	140	138	124	127	108	86	105
	635/27.5/43		635/27.5/40		575/27.5/8		575/27.5/6.0
Sri Lanka	137	136	133	135	165	161	163
	1318/22.8/40		1318/22.8/7.5		1318/22.8/7.5		1318/22.8/7.5
Thailand	25	24	23	22	25	57	51
	479/12.3/36		440/15.0/36		440/19.5/6.5		440/19.5/7.5
Vietnam	31	30	44	46	47	74	69
	295/28.5/34		400/29.0/36		400/29.0/6.5		400/29.0/6.5

Time
2.2% ↓

Cost
1.2% ↑

Rankings
fell on
average 22

Failure??? Challenges!!!

- Improvements have been slow and difficult.
- The 2016 Doing Business report - the smallest improvement over the past 12 years in enforcing contracts, judicial reforms less uncommon because it can be long and complicated.
- APEC PSU
 - Complexity of introducing reforms in the judiciary system, which requires several layers of approval in the executive as well as the legislative branch
 - Institutional factors that guarantee the independence of the judiciary, perceived undue interference

The Doing Business indicator

- Raises awareness about the need for reform and provides a benchmark for measuring progress, but concerns about
 - Accuracy of the data
 - Source of information
 - Standardized case scenario
 - Relative ranking
- A departure point of discussion but not the final aim
- Global comparison (WEF Global Competitiveness Report, IMD World Competitiveness Report, FDI Regulations Database, US study)

Redefining the role of the champion economy

- Role of the champion economy in the APEC EoDB
- Should not be construed as development assistance or imposing of one's tradition or experience
- Willingness of the target economy to initiate reforms
- Presentation of concrete and practical recommendations to policy makers with decision-making authority and adequate resources
- Follow-up activities
- Need for coordination with relevant organizations with expertise and funding
- 'Partner' economies

Finding an alternative, practical solutions

- ADR as an alternative to judicial enforcement of contracts
- Establishment of relevant practice to build trust and confidence in the arbitration/ADR mechanism
- Foster a more arbitration-friendly environment, particularly in the judiciary and among the users
- Ensuring the advantages of arbitration, as a time and cost efficient mechanism to resolve disputes
- Building up of the arbitration infrastructure (arbitration institutions, relevant arbitration rules, training of arbitrators, practitioners and judges)

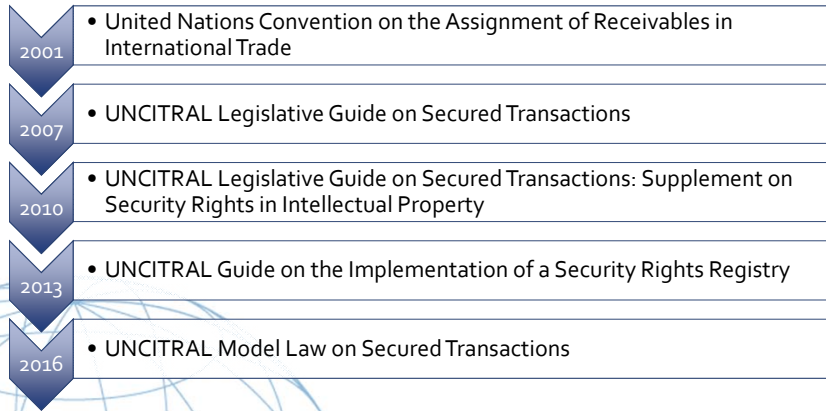
Real world, real challenges

- Tailored recommendations presented during the wrap-up seminar but almost no reforms !
 - Lack of will to reform
 - Need for a lead entity to initiate reforms
 - Need for comprehensive reforms and lack of coordination among relevant stakeholders
 - Lack of financial and human resources
 - Public perception about reforms

Concluding remarks

- ✓ Clarification of the needs for and objectives of the capacity building activities
- ✓ Identifying concrete problems and suggesting tailored reforms
- ✓ Sharing of information
- ✓ Reforms for improving the various aspects of the business environment
- ✓ **Strong will of the target economies to undertake reforms**

Legislative framework for access to credit

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- A vertical timeline with five blue downward-pointing arrowheads containing the years 2001, 2007, 2010, 2013, and 2016. Each arrowhead points to a white rounded rectangular box containing a bullet point describing a legislative instrument.
- 2001 • United Nations Convention on the Assignment of Receivables in International Trade
 - 2007 • UNCITRAL Legislative Guide on Secured Transactions
 - 2010 • UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property
 - 2013 • UNCITRAL Guide on the Implementation of a Security Rights Registry
 - 2016 • UNCITRAL Model Law on Secured Transactions

[Explanatory text] UNCITRAL, Hague Conference and Unidroit Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions (2011)

Thank You!

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UNCITRAL, please visit our web site
<http://www.uncitral.org>

E-mail: jaesung.lee@uncitral.org