

EQUITABLE GROWTH, FINANCE & INSTITUTIONS NOTES

Two For One: How Leveraging Small Claims Procedures Can Improve Judicial Efficiency and Access to Justice

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Introduction

People often argue about little things in both their personal and their business relationships. From a legal perspective, low-value monetary disputes are known as small claims. The monetary threshold for a claim to be qualified as “small” is generally determined by the economic conditions of a country, but it can also reflect a policy choice to subject a subset of the overall demand for court services to specific procedural rules. According to a [study](#) on small claims procedures in European Union (EU) jurisdictions, the thresholds in EU Member States are between 3 percent and 39 percent of gross domestic product per capita (Harley and Said 2017a).

Given the frequency of small claims (e.g., in [Bosnia and Herzegovina](#), they represent more than 70 percent of all civil cases [Osmanovic-Pasic, Panzardi, and Petkova 2019]), if they are not resolved quickly and efficiently, they can inundate the justice system, drain limited judicial resources, and generate case backlogs, while ruining personal relationships and frustrating business operations. Conversely, some small claims cases do not even get to have their day in court because litigation is too costly for many ordinary citizens. This means that access to justice is hindered. Therefore, unresolved small claims can exacerbate inefficiency in court processes and contribute to a lack of access to justice. Societies cannot afford to let a growing body of minor disputes clog justice systems, stall economic activity, and fuel social tensions. Thus, an increasing number of countries are designing special rules for such disputes; these are often known as small claims, simplified, or fast-track procedures. Some jurisdictions have even established specialized small claims courts. Essentially, small claims procedures are designed to ensure that disputes below a certain monetary amount are [resolved through simpler, quicker, and cheaper processes compared to general procedures \(Svircev, Senderayi, and Petkova 2020a\)](#).

Currently, as many as 132 economies have either a stand-alone small claims court or a simplified procedure for small claims. [The World Bank’s Doing Business team recognizes the following:](#)

As the form of justice most likely to be encountered by the general public, small claims courts or simplified procedures for small claims play a special part in building public trust and confidence in the judicial system. They help meet the modern objectives of efficiency and cost-effectiveness by providing a mechanism for quick and inexpensive resolution of legal disputes involving small sums of money. In addition, they tend to reduce backlogs and caseloads in higher courts. (“Enforcing Contracts, Good Practices,” para. 6).

The Business (Environment) Case for Small Claims Procedures

The existence of a small claims court or simplified procedures for small claims raises an economy's performance score under the Doing Business indicator of "Enforcing Contracts." This is because well-functioning small claims procedures are synonymous with efficiency and predictability, which are important for the business environment. A firm's daily business operations and financial outlook can be adversely affected by [lingering uncertainty caused by disputes that are stuck in the court system](#) (Petkova 2020). Therefore, a small claims system that facilitates the swift resolution of disputes can have direct and powerful effects on levels of investment and economic activity. The assurance that day-to-day commercial disputes can be resolved swiftly and at a low cost reduces economic risks and increases investors' confidence. Such assurance is [particularly important for microenterprises and for small and medium enterprises](#) that cannot afford in-house counsel and would therefore benefit from being able to approach the court directly to defend their business interests (Harley and Said 2017b). To facilitate this process, effective small claims procedures have certain features that enable self-representation. These features include user-friendly forms, electronic filing, judges and court staff providing guidance to litigants, and the court's proactive role in determining the facts.

- **User-friendly forms help litigants and judges.** Forms that have simple explanations and examples are effective tools for guiding laypeople through the process of structuring a lawsuit, and help to ensure that nothing of importance is omitted. This saves time and resources that would otherwise be invested in follow-up correspondence between the court and the parties. Forms also help organize claims in ways that make them easier for judges to follow.
- **Electronic filing of legal documents is gaining traction in many legal systems.** Today, a growing share of citizens and businesses are tech savvy and mobile. Therefore, the ability to submit documents to the court electronically is not merely an efficiency consideration, it is also reflective of the modern way of doing business. From the court's perspective, e-filing can help to streamline procedures and facilitate the electronic storage of documents, thereby making it easier to search or browse through casefiles quickly and efficiently. For litigants who have access to technology, e-filing brings cost benefits, as they do not need to physically access the court or mail paper copies. However, any digitalization effort should consider the digital divide and provide suitable options for those who do not have access to technology. This may be the case for some microbusinesses and vulnerable groups that rely on small claims procedures.
- **Providing guidance to non-represented litigants.** In some countries, court clerks are trained to record oral claims (e.g., [Singapore](#)). This is particularly helpful for litigants who are illiterate or visually impaired, and for those who may not be comfortable completing the forms on their own. Judges can also provide guidance to the parties, especially if they are not represented by a lawyer. Such guidance may involve explaining procedures or ushering the parties through the process to ensure that the case is resolved quickly.
- **A proactive court/judge.** To facilitate small claims proceedings — so they are faster and more efficient — and to make hearings less formal, judges may depart from the somewhat passive role that the traditional adversarial civil procedure has conferred on them and take on a more active role. Instead of passively observing the competition between the parties, judges in small claims procedures can take initiative in managing the case and exercise more control. This active role is particularly pronounced in the process of collecting evidence. The judge can lead the hearing by asking questions to determine and understand the facts. For example, in [Singapore](#), [Estonia](#) and [California](#), judges are entitled to collect evidence on their own initiative; and in [England and Wales](#) and in [Portugal](#) witnesses can be questioned directly by the judge. When the court takes a proactive role in the resolution of small claims, the process can become less daunting for litigants.

Small Claims Procedures Can Improve Efficiency

Well-designed small claims procedures can help reduce the time and effort invested by the court in small claims cases. This contributes to judicial efficiency. Typically, key procedural steps in small claims cases have short timelines that expedite the review and resolution of a case. For example, in [Slovenia](#), the timeline to file written statements in the preparatory phase is eight days after receipt of the plea, compared to thirty days under the general procedure (Svircev, Senderayi, and Petkova 2020b). It is also worth noting that strict timelines can improve efficiency but may require more effort on the part of both judges and parties to meet the deadlines. That said, once incorporated into business processes, strict timelines encourage procedural discipline and prevent lengthy proceedings. To save the time and effort of users and justice service providers, entire stages of the procedure — for example, the pre-trial ([Serbia](#) [Svircev, Senderayi, and Petkova 2020b]) or even the main hearing ([Latvia](#) or [Singapore](#)) — can be omitted, simplified, conducted in writing, or by electronic means. Another tool that helps reduce the time and effort of judges is simplification of the judgment's content. Judges may be authorized to leave out detailed descriptions of the allegations in an effort to focus only on the established facts, the evidence presented, and the legal rules upon which the judgment is based. The circumstances under which the court's decision can be appealed can also be limited, further sparing judicial resources. Together, these measures help ensure that low-value cases spend a minimum amount of time in the court system, which in turn reduces the overall caseload and enables judges to dedicate more time and attention to complex litigation.

Small Claims Procedures Can Improve Access to Justice

Small claims procedures play an important role in improving access to justice. Currently, an estimated [1.5 billion people around the world cannot obtain justice for the legal problems they face \(World Justice Project 2019\)](#). Although this justice gap is often linked to claims of relatively low monetary value, such claims are potentially significant to microbusinesses, and to poor and vulnerable populations in particular, who may not be able to afford a lawyer or for whom the cost of bringing the case before the court exceeds the value of the claim. To address these challenges, robust small claims procedures attempt to:

- **Limit or eliminate the role of lawyers.** Legal representation is costly. Litigants' economic means usually determine the caliber of lawyer they can afford to engage, which can have a direct impact on the outcome of the case. Additionally, in general, the losing party is ultimately expected to bear the costs for his or her own lawyer and for the winning party's lawyer. To level the playing field, small claims procedures may restrict the use of legal representation, put a cap on the amount of legal expenses that are recoverable, or require the judge to take a more active role in the event of a power imbalance between parties. Some procedures may require the parties to appear in person, without a lawyer, and to make their case directly before the judge.
- **Reduce court fees associated with filing the claim.** Given the minimal pecuniary value of small claims, in some cases, the cost of bringing the case before the court is disproportionate to the value of the case. This reality can dissuade citizens and businesses from approaching the courts. To facilitate access to justice, effective small claims procedures require court fees that are lower than the fees for the general procedure. Also, such fees can vary depending on whether the claim is being filed by an individual or by a business entity. For example, in [Singapore](#), the court fee for individuals is five times lower than the fee for legal entities for a claim of the same value. Court fee scales can influence and regulate the behavior of litigants, including informing the decision of whether to bring a case before the court. Court fees should be calibrated in a way that ensures that the court system is accessible, while discouraging frivolous or vexatious claims that burden the courts.

- **Restrict the use of expert assessments and oral witness testimony.** Expert assessments are time consuming and expensive for litigants. Like lawyers' fees, expenses for collecting evidence are usually borne by the losing party. Expert assessments are also time consuming for the court because judges are expected to review and assess the expert opinion and, usually, to question the expert in an open hearing. Therefore, many small claims procedures do not allow expert assessments. In countries where expert assessments are permitted, they are simplified significantly. For example, in [Malta](#) and [Denmark](#) (Osmanovic-Pasic, Panzardi, and Petkova 2019), in an effort to enhance procedural efficiency, the court, rather than the parties, prepares the questions for the experts. Bringing numerous witnesses in person for questioning is similarly time consuming for the court and costly for litigants. To mitigate such costs and to save time, judges may be granted the discretion to strictly assess the proposed evidence and to question only the witnesses whose evidence is crucial to the case. In some cases, witnesses can be questioned by phone or video conference.

Improving access to justice and resolving cases quickly and inexpensively means delivering high-quality justice services to citizens, which can help build public trust in key justice institutions. A country's justice services are part of its overall public services, and existing literature notes that the responsiveness (availability, access, timeliness, and quality) and the reliability (the capacity of institutions to respond effectively, to anticipate needs, and thereby minimize uncertainty) of public services are [key drivers of trust in government](#) (OECD 2017). [Institutional trust serves as a basis of a government's legitimacy](#) and is essential to ensuring peaceful governance (OECD 2019).





Lessons Learned

The World Bank works with its counterparts to enhance their existing small claims procedures or to design new ones. For example, in [Bosnia and Herzegovina](#) (Osmanovic-Pasic, Panzardi, and Petkova 2019) and in [Serbia](#) (Svircev, Senderayi, and Petkova 2020b), the Bank conducted a comprehensive analysis of existing small claims procedures and provided actionable recommendations, based on international best practices, to optimize those procedures. The Bank can also provide targeted technical assistance and advisory services on (a) introducing electronic filing and the overall digitalization of judicial services, (b) designing guides for self-representation, and (c) providing recommendations on revisions to the structure of court fees. In supporting client countries to reform their small claims procedures, the Bank has identified the following lessons.

Limited availability of data can cause problem identification issues

The effective analysis of small claims procedures is often hindered by a lack of data. In countries that have stand-alone small claims courts, it is relatively easy to obtain information on caseloads, disposition times, the profile of the cases, and so on. However, in countries where small claims are processed by courts of general jurisdiction that use simplified procedures, the case management systems often do not differentiate between small claims and general civil cases. Therefore, it is difficult to determine the share of small claims relative to the overall caseload, the average processing time, whether the number of small claims cases or the speed of their resolution has increased or decreased over time, and how changes in the procedure affect caseload and processing times. To mitigate this challenge, client countries are encouraged to put the necessary mechanisms and systems in place to ensure that meaningful data can be collected and extracted to conduct a robust assessment of the small claims procedure.



Stakeholder anxiety should be addressed early on to ensure sufficient buy-in for the proposed reforms

Resistance to reforms is common, and especially when the reforms require substantive amendments to civil procedure. Some small claims procedures effectively limit or completely eliminate the role of lawyers. Such provisions can cause anxiety among lawyers, who may resist reforms that have a direct impact on their livelihood. Similarly, the strict timelines associated with small claims procedures require litigants and judges (and lawyers if they are involved) to invest more effort in ensuring that the prescribed deadlines are met. Although timeliness has positive efficiency implications, pressure to adhere to the timelines can also invoke resistance to the reforms. Finally, transitions from paper-based to fully electronic processes can result in resistance, especially among those who have limited or no access to technology. It is therefore important to ensure that e-filing and other electronic processes do not exclude those who lack access to technology. For all of these aspects, it is important to anticipate such resistance and to mitigate it by engaging stakeholders and beneficiaries early in the process. This can be done through extensive consultations on reform options, which can help clarify the underlying policy, social, and legal considerations behind the proposed reforms and ensure that they are adequately tailored to the local context. Such efforts will enhance the reforms' prospects for success.

Provide targeted training to judicial personnel and raise public awareness

It is important to ensure that key personnel in the judiciary are trained on the new procedures, and that they understand how their role in the process contributes to improving efficiency and access to justice. Such training cannot be a one-shot exercise and will need to be repeated periodically until widespread understanding of the procedures and good practices have been embedded in the system. It is also equally important to bring the beneficiaries — citizens and businesses — on board to ensure that they are aware of the new procedures and how to leverage them and engage with the courts. This can be done by rolling out public awareness campaigns and by developing [self-representation guides](#) and disseminating them to owners of small businesses and to vulnerable litigants (Harley, Panter, and Antonijevic 2017).



Small claims procedures need to be flexible

Small claims procedures are not one-size-fits-all and therefore need to be flexible. Not all small claims are simple: some may be small in monetary terms but extremely technical and complex in nature, and therefore may require an in-depth review using the “heavy artillery” of the general civil procedure. Thus, small claims procedures must have sufficient flexibility to allow the parties and the court the option of determining whether or not the case, regardless of its monetary value, should be reviewed using the small claims procedure.

Are small claims an opportunity to test-run the modernization of key court processes?

The COVID-19 pandemic has forced courts around the world to contend with unprecedented challenges. Prolonged lockdowns and states of emergency meant that only the most urgent cases were prioritized, which generated backlogs that are only expected to increase over time. Countries that fared well during the crisis were able to leverage technology to facilitate electronic exchanges between the court and the parties and to [conduct hearings remotely](#) by phone, video conference, or “paper hearings,” where “decisions are made on the basis of written submissions alone” (Susskind 2020, para 16.). These approaches have long been employed in small claims and are now finding their way into traditional justice procedures. Countries that successfully use technology in justice services include Australia, Canada, Estonia, Singapore, and the United Kingdom. The United Kingdom and British Columbia, Canada, have dedicated online solutions specifically for small claims through, respectively, the [Money Claim Online](#) and the [British Columbia Civil Resolution Tribunal](#). Singapore’s [case filing and online case management system](#) was initially launched just for small claims but was later expanded to cover other types of disputes as well. These developments demonstrate that small claims have the potential to act as a testing ground for innovative technological solutions in justice.

Although the digitalization of court processes is important and has numerous benefits, efforts to modernize court processes should always consider the digital divide and ensure that access remains universal. This is especially important for small claims, which are disproportionately important to microbusinesses and other vulnerable groups.

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Selected Examples of Small Claims Legislation

- Dubai, Dubai International Financial Centre (DIFC) Small Claims Tribunal, DIFC Courts Rules, [Part 53](#).
- EU small claims procedure, [Regulation \(EC\) No 861/2007 of the European Parliament and of the Council of 11 July 2007, Establishing a European Small Claims Procedure](#).
- Germany, [Code of Civil Procedure](#), Sections 495a and Section 511 (2), p. 1.
- Malta, [Small Claims Tribunal Act](#).
- Singapore, [Small Claims Tribunals Act](#).
- US, California, California Code of Civil Procedure, [Chapter 5.5—Small Claims Court](#).

