

# **Two for One: How Leveraging Small Claims Procedures Can Improve Both Judicial Efficiency and Access to Justice**

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# What are small claims procedures?

## DEFINITION



Small claims procedures are aimed at resolving civil and commercial disputes below a certain value threshold and are therefore designed to be simpler, quicker and cheaper than the general procedure.



# Elements of the small claims procedure that can be simplified



# The business (environment) case for small claims procedures

The availability of a small claims procedure/court raises an economy's performance score under the Doing Business indicator "Enforcing Contracts". They enable SMEs that cannot afford in-house counsel to approach the court directly to defend their business interests by:



- **User-friendly forms** for filing the claim guide lay persons in structuring a lawsuit and ensure that nothing of importance is omitted. Forms also help organize claims in ways that make them easier for judges to follow.
- **E-filing** can contribute to cost savings; litigants do not need to physically access the court or mail paper copies. From the courts' perspective, it streamlines procedures and facilitates the electronic storage of documents.
- **Court guidance to non-represented litigants** is a feature of many small claims procedures. In some countries, court clerks are even trained to record oral claims
- **A proactive court/judge** can take initiative in managing the case and exercise more control, especially in the process of collecting evidence



# Goals of small claims procedures

Policy makers introduce small claims procedures to further two principal goals:



- **Access to justice:** Small claims procedures ensure that justice services are within reach for litigants without sufficient financial resources by evening the playing field between those that can afford legal services and those that cannot.
- **Efficiency of justice:** Small claims procedures can ensure that cases are resolved quickly and in a manner that economizes the resources of the justice system leaving the courts with enough time and resources to give more attention to complex litigation.



# Small claims procedures further institutional trust

Improving access to and efficiency of justice services can help to build public trust in institutions. The key drivers of trust in government are:



- **Responsiveness** (availability, access, timeliness, and quality) of public services.
- **Reliability** (the capacity of institutions to respond effectively, to anticipate needs, and thereby minimize uncertainty) of public services.

Institutional trust serves as a basis of a government's legitimacy and is essential to ensuring peaceful governance (OECD 2019).



# How do small claims procedures improve access to justice?



Unmet legal needs are estimated to affect 5 billion people worldwide. This justice gap is often linked to minor claims where parties cannot afford a lawyer or the cost of going to court exceeds the value of the claim. To address these challenges, small claims procedures:

- **Limit the role of lawyers.** To level the playing field, small claims procedures may restrict the use of legal representation or put a cap on the amount of recoverable legal expenses.
- **Reduce court fees** or calibrate them based on litigants' financial means.
- **Restrict the use of expert assessments and oral witness testimony.** Expert assessments and bringing numerous witnesses in person for questioning are time consuming and expensive activities. To reduce these costs and to save time, judges may be granted the discretion to accept only crucial evidence or simplify evidence collection.



# How do small claims procedures improve efficiency?



Well-designed small claims procedures can help save time and effort. This contributes to judicial efficiency by:

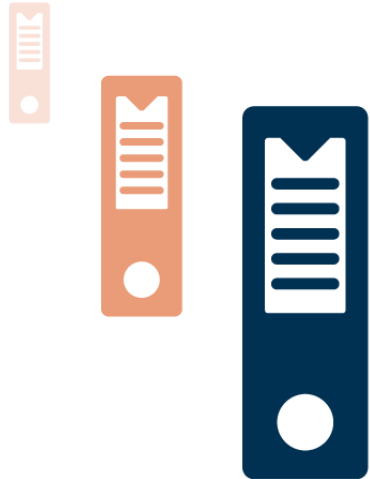
- **Short timelines** for key procedural steps.
- **Omitting or simplifying stages of the procedure** such as the hearing or the pre-trial phase.
- **Shortening the judgment** thus saving judicial time devoted to drafting.
- **Limiting appeal**, e.g. by excluding the factual findings of the court from appeal.

These efficiency gains reduce the overall caseload and enable judges to dedicate more time and attention to complex litigation.





# Lessons learned



- **Limited availability of data can cause problem identification issues.** Client countries are encouraged to ensure that meaningful data can be collected for 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 can be mitigated by engaging stakeholders early in the process through consultations on reform options, and clarifying the policy, social, and legal considerations behind reforms and ensuring that they are tailored to the local context.
- **Provide targeted training to judicial personnel and raise public awareness.** Key personnel in the judiciary should be trained on the new procedures. It is equally important to ensure that beneficiaries, citizens and businesses, are aware of the new procedures.
- **Small claims procedures need to be flexible.** Not all small claims are simple. The procedures should be flexible and allow the parties and/or the court to opt out.



# Small claims as a test-run for modernizing key court processes



- **The COVID-19 pandemic changed the nature of justice operations.** The pandemic led to enhanced uses of technology such as electronic exchanges between court and parties and reduced reliance on physical hearings.
- **Role of paper hearings.** Decisions made on the basis of written submissions alone; used extensively in small claims.
- **Role of online hearings.** Were first employed for evidence collection in criminal proceedings but are currently being introduced across the board. Entail use of both commercially available platforms and court's own ones.
- **Good practices.** Australia, Canada, Singapore, United Kingdom. Some solutions were specific to small claims, others cover many other types of disputes.
- **Digital divide** should always be factored into such solutions.



# Thank you

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