



PRIME POLICY REPORT

CONTRACT ENFORCEMENT AND BUSINESS CLIMATE

NOVEMBER 2016



Policy Research Institute of Market Economy (PRIME) is a public policy think tank striving for an open, free and prosperous Pakistan by creating and expanding a constituency for protective function of the state and freedom of the market. PRIME was established in Islamabad in 2013, and since then, it has published on a wide range of issues including trade, tax policy, housing, trade, public debt and energy crisis. PRIME is co-publisher of Economic Freedom of the World Report and a partner with International Property Rights Alliance.

PRIME Policy Report is a monthly publication that provides actionable intelligence at both micro and macro levels of the economy. Each report is segmented into: Business Climate Review, Market Analysis and bird-eye view of major Economic Indicators. It is a one stop information hub for business leaders, SMEs, Corporations, trade commissioners, MNCs, Institutions and Individuals aspiring to understand the policy dynamics, business prospects and interpretations of key economic indicators.

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Published by: Policy Research Institute of Market Economy (PRIME)
November 2016
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NOTE FROM THE EDITOR

This month has been all about National Debt at PRIME. While there are some that believe that Pakistan can sustain the growing levels of government borrowing, according to our keynote speaker at the Third National Debt Conference by PRIME, Dr. Ashfaque Hasan Khan, external debt is likely to peak to \$110 billion by 2020 - which will not be sustainable given our exports performance, dwindling FDI and declining remittances. I have also shared concerns over the recent SEZ Amendment Bill 2016, highlighted the need for unilateral trade liberalization in place of FTAs and stressed that there should be a level playing field for all sectors of the industry.

The market analysis delves into how the inefficient contract enforcement mechanism affects the overall economy and business environment. It presents an overview of the mechanism itself and the major issues related to policy as well as implementation. Simultaneously, detailed reforms are proposed for each problem.

Like last month, the macroeconomic picture of Pakistan seems somewhat bleak. Indicators such as external trade, Foreign Direct Investment and Large Scale Manufacturing growth are declining. If the trend continues, the consequences may be damaging for Pakistan's economic development.



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Business Climate Review

by Ali Salman

Business Climate Review sums up important developments spanning entire federal government economic governance over last month. It discusses possible consequences of decisions, policies and regulations announced by the federal cabinet, regulators and Federal Board of Revenue for business climate of Pakistan. The analysis is based on this idea that economic freedom is good for business climate and any law that increases arbitrariness, red-tape and size of government is counterproductive. Also, we believe that government should not choose winners and losers by legalizing exemptions or favors.

The Business Case Against Free Trade

According to a news item (The News, 5th October), Federal Commerce Minister Khurram Dastgir Khan has held business community responsible for the slow pace of trade liberalization. He said, "business community remains resistant to free-flowing trade and fortified against imports." Mr. Khan also urged the business community to support the upcoming FTAs with Turkey and Thailand. It is obvious why industrialists would resist trade liberalization- they fear losing out their market share. There is no easy answer. While business owners have the legitimate reservations given the situation of electricity and tax policy, and other concerns, we cannot continue supporting them through trade protectionism. Trade liberalization is the only way forward.

In 2015, PRIME published a study arguing for unilateral trade liberalization. This study presented the Nike- Just do it version of trade liberalization policy. FTA with one country can give that country an extra advantage over countries with which we do not have FTAs. That is why we recommend adopting unilateral trade liberalization-developing a uniform customs

duty regime. The Minister is well advised to take practical measures to move towards trade liberalization instead of hiding behind the resistance offered by business community.

A Law that Strangulates Business should be Repealed

On October 5, The News published a short report about export hurdles that not only portrays the hurdles in our trade regime but also points to solutions. For certain export industries, the government has a scheme of zero rated imports, which allows industrial units to import raw materials without paying any duties as long as they can show that the materials have been consumed in export oriented products. However, there is a quota on these imports which forces the industrial units to seek permission from the government each time. Not that they would do so, especially the large number of small units, but they resort to other means.

This has also created a new industry, commercial importers, who would often import after heavy under invoicing and earn super profits by selling these materials directly to industrial units. The businessman is always

one step ahead of the bureaucrat. When the government slapped a ban on use of Telegraphic Transfer for import, the importers established links with third parties in other countries which will buy on their behalf and pack under new invoices. This is a direct result of an inefficient and wasteful law called DTRE. An immediate repeal of this law is called for to make the life of industrial exporters easy and make our formal economy grow.

Leather Industry Demands (Un)fair Treatment

The leather industry demands a level playing field. Not by asking for removal of any protection measures for other industries but by asking for similar incentives it claims other sectors, like textile, enjoy. According to a news item (The News, Oct 11), leather industry has demanded what we would refer as corporate welfare in the form of more subsidies. However, this has only induced more inefficient practices in the industry. This is not to suggest that government should not have a supportive industrial policy. However contours of such a policy should be based on encouraging innovation, productivity and competitiveness instead of more protection, through subsidies and rebates.

More Powers to Special Economic Zones

The Senate of Pakistan has recently passed SEZ Amendment Bill 2016. While removing certain anomalies, which earlier required the industrial units set up inside the zones pay heavy custom duties before they could sell in "Pakistan." The amendments will allow the units to sell their produce in the domestic market.

Pakistan has established more than 90 special industrial zones to date, where the colonization rate is hardly 50 percent. Industrial zones can even be presented a case of transfer of industry

industry instead of harbinger of new investment. CPEC also promises 28 new industrial zones. A comprehensive study is needed before launching new industrial zones to determine the causes of under-utilization of these zones that may be factored into the policies that will govern them.

Public Debt - Old Topic, New Challenges

Public Debt is not a new topic. What is new is the pace with which current government has accumulated external debt. According to a news item (Express Tribune, 28th Oct), PMLN government has accumulated 26.8 billion dollars external debt, half of it was raised to repay the previous debt.

According to Dr. Ashfaq Hassan Khan, who was keynote speaker at PRIME Third National Debt Conference, external debt is likely to peak to \$110 billion by 2020, which will not be sustainable given our exports performance, dwindling FDI and declining remittances. The public debt spiral creates a debt overhang, which creates challenge for growth by rationing of domestic credit available. This also forces the government to impose more taxes to increase debt service, which also hampers businesses. The households instead of saving or spending privately are forced to pay for the loans they never contracted. This takes the form of losing purchasing power and a shift in income as a result of higher inflation when government resorts to printing money. Public debt, when excessive and illegitimate, makes governments, and eventually countries, hostage to creditors and ultimately destroys free enterprise.

MARKET ANALYSIS

Contract Enforcement and Business Climate

A proficient contract enforcement mechanism is one of the most critical factors behind a well-functioning and business friendly market system. It enhances the confidence of the investors by assuring that their contractual rights will be upheld by the courts in an efficient, predictable and cost effective manner. In a well-organised dispute resolution environment, businesses rely on new and innovative entrepreneurs. As a result, it not only makes businesses more competent but it also eliminates the barriers for new entrants to enter the market.

One of the most chronic problems which businessmen are facing in Pakistan is that the system of enforcing contracts does not fulfil the modern-day requirements of the commercial world. In the Doing Business Index of the World Bank, which showcases ease of doing business in a country, Pakistan is ranked 157th (out of 189 countries) in the area of enforcing contracts.

The duration of enforcing contracts in Pakistan is highly unpredictable which is in fact quite dangerous for small businesses which lack resources to stay in business while awaiting the outcome of a prolong court dispute. Enforcement of contracts through local courts is

expensive and the quality of judicial practices is also not up to the mark.

So what are the factors behind this inefficient contract enforcement mechanism in the country? How has Pakistan performed over-time in this area as compared to other regional economies? And, what can Pakistan learn from other economies which have successfully made their contract enforcement system efficient and reliable? This analysis will answer these critical questions.

In Section 1, we begin with an overview of contract enforcement mechanism in Pakistan and its comparison with other regional economies. Section II will highlight some of the reasons behind inefficiencies in the system and it will also highlight certain reforms which can be helpful in making the mechanism up to the mark.

Structure of the analysis



Overview of Pakistan's Contract Enforcement Mechanism

World Bank's data reveals that in Pakistan it takes 1071 days from filing of a lawsuit until the enforcement of judgement. The enforcement of contract costs around 20.5 percent of the value of a claim. There are around 46 procedures¹ involved in the whole process and in terms of quality of judicial processes, which is based upon "court structure and proceedings, case management, court automation and alternative dispute resolution", Pakistan's score is 5.7 out of 18.²

As per the most recent data of World Bank, Pakistan is ranked 157th out of 189 countries. Figure 1 depicts how Pakistan is ranked currently amongst other regional economies.

Since the efficiency of enforcing contracts is greatly influenced by the time, cost and the quality of judicial processes, therefore, it is important to look into these factors and understand how they have changed overtime so that the areas with potential for improvement can be identified.

Figure 1: Enforcing Contracts in Pakistan and Other Regional Economies

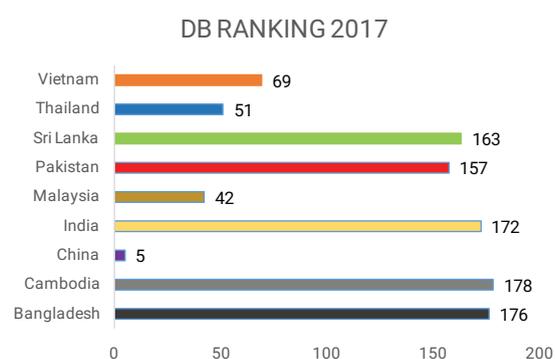


Table 1 gives a historical reflection of different aspects of enforcing contracts in the country. The second row of the table depicts the Distance to Frontier (DTF) score. While the ranking of Enforcing Contracts compares different economies with one another, the DTF indicates where a country stands in terms of regulatory environment as compared to the best performer in the entire sample of 189 countries. The distance to frontier ranges from 0 to 100,

Table 1: Historical Perspective of Enforcing Contracts in Pakistan

Indicator	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
DTF (EC) *	28.8	28.8	27.09	27.09	27.09	27.09	24.96	40.32	45.34	45.44***	43.49
Time (Days)	572	572	634.4	634.4	634.4	634.4	712.4	1071.2	1071.2	1071.2	1071.2
Cost (% of claim)	15.5	15.5	15.5	15.5	15.5	15.5	15.5	20.5	20.5	20.5	20.5
Procedures	46	46	46	46	46	46	46	46	46	...	...
Jud. Quality**	...	...	...	...	...	...	...	...	...	7	5.7

* Distance to Frontier-Enforcing Contracts

** DTF for 2016 is measured on the basis of revised ranking of Doing Business Index

*** Quality of Judicial Processes Index

¹ World Bank is not reporting the number of procedures since 2015.

² Closer to 18 means country has adopted good practices in its court system.

where 0 reflects the worst performance while 100 represents the frontier.

The DTF has been clearly improving over-time for contract enforcement mechanism in Pakistan, however, it is still 57 percentage points away from the frontier - which is constructed on the basis of the best performances across all economies and across time.

According to World Bank data, it took around 572 days on an average to enforce a contract in 2007 but the same process now takes 1071 days. The cost of enforcing a contract which was 15.5 percent of the total value of claim in 2007 has now reached to 20.5 percent. In terms of quality of judicial processes, our current score came down to 5.7 out of 18 as compared to 6.7 in 2016.

Figure 2 shows that time taken in terms of enforcing contracts in Pakistan remained relatively lower than India and Sri Lanka since 2004. Initially Malaysia and Pakistan were at the same stage in terms of time, however, Malaysia has been outperforming Pakistan since 2009. Currently, enforcing of contracts takes 425 days in Malaysia whereas, it takes 1071 days in Pakistan.

In terms of cost of enforcing contracts, Pakistan is doing better than many other regional economies. As shown in Figure 3, in comparison to the sample of six regional economies, cost of enforcing contracts in Pakistan is only relatively higher than China.

In terms of quality of judicial processes index, Pakistan's performance remained relatively below the average and even it came down to 5.7 (out of 18) in 2017 as compared to 7 in 2016.³

Figure 2: Duration of Enforcing Contracts (Days)

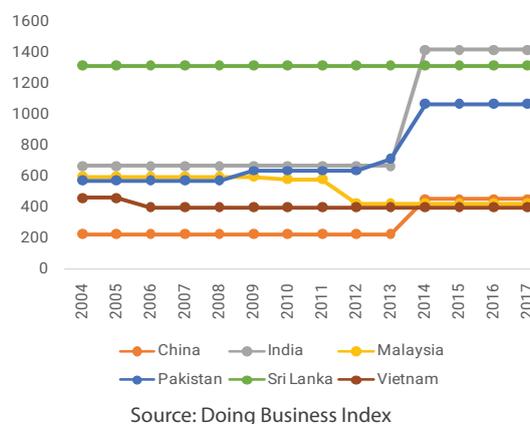


Figure 3: Cost of Enforcing Contracts (Cost as % of claim)

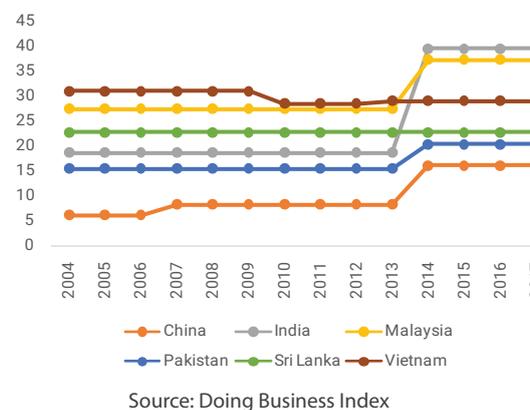
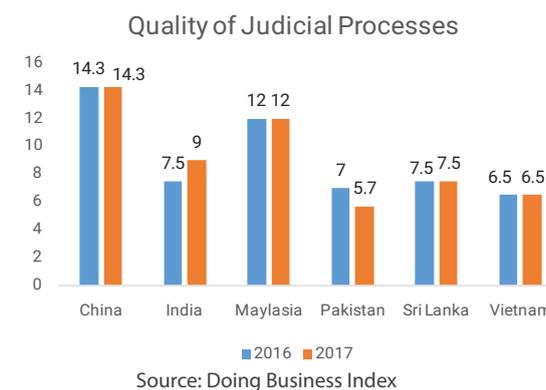


Figure 4: Quality of Judicial Practices in Asian Economies



⁴ Quality of Judicial Processes Index ranges from 0 to 18 where 18 is the highest i.e. closer to 18 means better judicial process system.

Comparison with the regional economies and the historical data of the country reveals that the inefficiencies in the enforcement of contracts largely arises due to prolonged delays in the resolution of contractual disputes and also due to poor quality of judicial practices. The next section will highlight some of the major reasons behind prolonged delays in the enforcement of contracts and poor quality of judicial practices. It will also highlight certain judicial reforms which can be helpful in overcoming these issues.

Major Pitfalls in Contract Enforcement Mechanism

1. Prolonged Delays

“Justice delayed is justice denied”
William E. Gladstone

The actual duration of contract enforcement mechanism in Pakistan is highly unpredictable. This unpredictability in the duration of contract enforcement is one of the major pitfalls behind the inefficient contract enforcement mechanism prevailing in the country. Anyone who has experienced the resolution of contracts through local courts knows the destructive impacts of delayed justice.

According to Article 9 of the constitution expeditious justice is a fundamental right of every citizen. Article 37 (d) of the constitution also states that swift justice is the fundamental responsibility of the state. Having said that, if the government or the judiciary cannot provide expeditious justice then it will be considered as a failure of its constitutional obligations. Following are some of the major reason behind prolonged delays in the enforcement of contracts.

1.1 Complexity of Judicial Procedures

Complex judicial procedures, along with lack of time limits for the implementation of each procedure, is one of the major factors behind prolonged delays in the resolution of contractual disputes. According to World Bank’s data, from filing of a law suit until the final judgement, there are around 46 procedures involved in the enforcement of a contract.

1.2 Lack of Judges

There is a lack of judges in the competent courts which is also a major factor behind slower execution of commercial disputes in the country.

According to recently available data, there are around 4,200 judges for a population 195.4 million population of Pakistan. It means that there is only one judge for 46,523 persons in the country.

Moreover, the working strength of judges is below the sanctioned strength. Table 2 depicts the details of working and sanctioned strength of judges at High Courts and also at the District Judiciary levels.

The table 2 illustrates that there is a huge number of positions vacant at the district level which has led to a high backlog of pending cases at the district level (as shown by Figure 5)

During 2014, there were total 1.7 million pending cases with a highest share of district judiciary. District courts in Punjab alone contribute to 1.1 million pending cases.

Figure 5 shows the distribution of pending cases across the country at different judicial levels.

⁷ Foreign Direct Investment Strategy 2013-17. Board of Investment.

⁸ Rana, S. 2016 Pakistan approves massive tax exemptions for Gwadar port operators. Express Tribune. Accessed on 8th August, 2016.

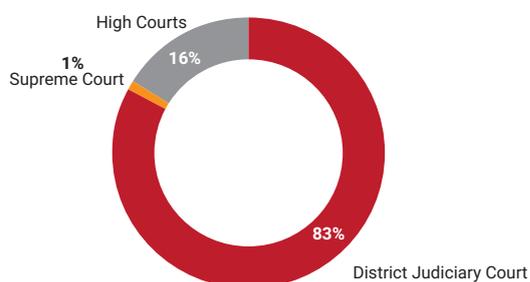
⁹ This is no clearer than from the fact that an entire military arm is set up for protecting Chinese investors working under CPEC projects across the country.

Table 2: Difference between the Sanctioned and Working Strength of Judges

	Punjab		Sindh		KPK		Balochistan	
	Sanctioned	Working	Sanctioned	Working	Sanctioned	Working	Sanctioned	Working
High Court	60	57	40	31	19	18	10	7
Dist. & Session Judges	36	36	27	26	25	24	13	17
Add. Dist. & Session Judges	607	341	115	79	103	73	34	28
Civil Judges/ Magistrates	1651	826	235	162	299	197	114	71
Senior Civil Judges	36	36	103	80	25	24	13	12

Source: Judicial Statistics of Pakistan 2014

Figure 5: Pendency of cases in competent courts



Source: Judicial Statistics of Pakistan 2014

ii. Disputed parties usually take adjournments as a delaying tactic to delay the judicial process. Since there is no limit on the adjournments, parties can prolong the process of court hearings by taking adjournments from the judge. Therefore, it is recommended that a case should not be adjourned for a period of more than 7 days and not more than two adjournments should be granted for each stage of the case. Moreover, provisions of the law, under which adjournments are granted, should be properly enforced.

1.3 Reform Proposal for Swift Enforcement of Contract

i. For the expeditious of commercial disputes is highly recommended that case time limits should be introduced at each stage of the case.

iii. Number of judges should be increased, at least up to the sanctioned levels, to reduce the burden of cases on the judges. Furthermore, most of the time a judge of the competent court is looking after several other departments. For instance, a civil judge sometimes acts as a magistrate which puts extra load on the judges. Therefore, new judges should be hired to look after different kinds of cases.

¹⁰ Ibid.

¹¹ Land of investment: Pakistan turning into Chinese economy. Shafaqna.com.

iv. Since, court strikes play a major role in the delay of justice therefore, it is recommended that: 1) Modes of strikes/protests should be introduced and such type of modes should be used which do not cause any delay in the proceedings of courts. For instance, black ribbons can be worn on arms as a symbol of protest; & 2) A person or a committee should be established, under the existing hierarchy of bar associations, to call strikes.

v. E-Systems should be introduced in the courts which would be helpful in the speedier resolution of commercial disputes. There are several examples where e-court system enhanced the efficiency of contract enforcement mechanism in different countries. Korea introduced an e-court system which aims to minimize the use of paper and information is treated digitally. This computerization has made the judicial system transparent enough, encouraging more people to trust the system. The e-court system expedited the judicial process where a judge can adjudicate up to 3000 cases in a year. In contrast to this, a Judge on average is disposing up to 645 cases in a year in Pakistan. Some of the characteristics of Korea's e-court system are presented in Box 1.

Malaysia is also successfully implementing an e-court system with the cost of \$43 million. Since this type of system can save up to \$221 per e-filing, Pakistan can also implement such type of project and can save approximately up to around \$1 billion in a year.⁴

Rawanda, Tanzania and many other countries are successfully implementing the e-court system. The World Bank data also reveals that globally the contract enforcement is faster in those countries having an e-filing system.⁵

Box 1: Korea's E-Court System

E-filing was introduced to ensure faster and better processing.

Judges can adjudicate up to 3000 cases a year, manage up to 400 cases in a month and can hear 400 pleas per month.

It gives **24/7 access** to court documents.

It **saves up to \$221** per e-filing.

It has **reduced the cost of enforcement** because of "re-reduction in the use of paper, the time spent in court, cheaper service of process, lower transportation costs, easier archiving of documents, and easier payment of fees."

2. Summoning of a Defendant

As per the Civil Procedure Code 1908 (CPC), courts generally utilise three modes of summons i.e.

1) Personal service⁶ in which an officer of the court delivers summons of the court to the defendant.

2) Service by affixation⁷ in which the process server is required to affix the copy of the summons at the outer door of a place where the defendant resides or works.

3) Substituted service⁸ in which the court uses other possible measures to send the summons such as: through fax, telephone, telegram, courier, newspaper publication etc. Since court has to utilise all these modes one by one, it can

⁴ The calculation (\$1 billion) is based on the assumption that if Pakistan implement a same project which Malaysia has implemented with a cost of \$ 43 million. If it helps in saving \$221 per e-filing, as it saved in Korea, then it will result into an overall saving of \$1 billion in a year. That is, \$ 221 multiplied by total number of cases in Pakistan in a year.

⁵ "Improving Court Efficiency: The Republic Of Korea's E-Court Experience" written by Julien Vilquin and Erica Bosio.

⁶ Rules 12, 16 and 18.

⁷ Rule 17.

⁸ Rule 20.

take around 5 to 6 months.

2.1 Reform Proposal for Improving the Summoning Procedures

It is recommended that:

1. The competent court should utilise all the means of summoning simultaneously.
2. Advance technology can be used for summoning. For instance, since most of the commercial entities have web presence, therefore, an email with read receipt can be sent to the defendant. When the defendant opens the email, the receipt then confirms that he has seen/read the email and it records the time. The record of the email can be presented before the court as a proof that the defendant has received the summons.
3. After the confirmation that the defendant has received the summons, there must be a time limit of fifteen days within which the defendant should submit his written statement, or other application etc. to raise a preliminary objection before the judge.

3. Inefficient Alternate Dispute Resolution Mechanism in Pakistan

Due to speedier process with relatively lower costs, the Alternate Dispute Resolution Mechanisms, such as Arbitration and Mediation are usually considered as more efficient, reliable and predictable than the litigation. However, the state of ADR mechanisms are not very encouraging in Pakistan, mainly due to the lack of trained staff.

There are mainly two types of ADR mechanisms in Pakistan.

- 1) Traditional ADR which is a centuries old system in which Panchayat or Jirga facilitates the resolution of disputes. This type of mechanism is helpful only in the resolution of simple cases and lacks the capacity to resolve complex commercial disputes.
- 2) The second type of ADR is based on public bodies such as Arbitration Councils, Union Councils and Conciliation Courts. Arbitration and Union Councils generally look after some family related issues. Whereas, Conciliation courts have a limited jurisdiction over civil or commercial cases.

However, these public bodies are generally ineffective in the resolution of commercial disputes as they are frequently dissolved. Moreover, no significant initiative has been taken by the successive governments for the capacity building of the members of these bodies.

Chambers of Commerce/trade organisations can also play a critical role in the resolution of commercial disputes.

However, as senior official of Islamabad Chambers of Commerce noted, there is a lack of trained staff in the chambers and also there is a lack of awareness among the businessmen regarding the effectiveness of ADR mechanism.

According to Saqib Jillani, "Although, arbitration is major form of out of court settlement yet the law of arbitration in Pakistan, which regulates arbitration proceedings, do not fulfil the requirement of modern day's fast commercial world".

3.1 Reform Proposals for ADR Mechanisms

Professional bodies should be established for the resolution of commercial disputes through ADR systems. After the establishment of such type of bodies it can be mentioned in the contracts that in case of any dispute, the case should first be taken to these bodies and then to the courts.

In this regard the reforms in the judicial system of Nigeria and Tonga can be considered as a case study. After successfully introducing the case management system, Tonga redrafted its Supreme Court Rules and included a provision for mediation. Mediators were properly trained and they were required to report to the court about the progress of the case. Beside this, the jurisdiction of Magistrate's Court civil cases was enhanced from \$1000 to \$10,000. It ultimately alleviated the burden on the higher judiciary. At the end of 2007 they also started introducing the computerised case management system and mediation in the magistrate's court.

As a result of these reforms the average time of enforcing contract came down to 250 in 2007 as opposed to 350 in 2006.⁹ World Bank noted that in Tonga, "Mediation usage continues to grow, freeing court resources. Most litigants now consent to it, and 8 in 10 reach settlements out of court."

Nigeria also established 5 mediation centres for the settlement of small disputes. These mediation centres have reviewed around 17000 cased within a year out of which 15950 ended up in friendly settlements. As a result of this fewer cases are now going to courts, which has successfully enhanced the efficiency of judicial system and average court delays have been reduced. For commercial cases in Nigeria, the average time to reach a decision after filing a

case dropped by 38%, from 730 days to 457 days. As a result, Nigeria moved from 105th to 66th rank.¹⁰

4. Frivolous Contract Enforcement Claims

Complicated legal system and significantly lower court fee incentivise people to file frivolous lawsuits against their competitors.

4.1 Reform Proposals to Discourage Frivolous lawsuits

1. Pre-trial screening methods should be introduced to identify the frivolous applications. A procedure/formula should be introduced for pre-trial scrutiny in which different questions can be asked in the start of the case. In this regard the case study of Ghana should be considered for the establishment of pre-trial screening methods.

In Ghana, pre-trial scrutiny is made mandatory for the courts and pre-trial conferences are conducted within 30 days of written arguments. World Bank's report¹¹ reveals that pre-trial scrutiny successfully reduced the case load, "between March 1, 2005 and July 31, 2006, of 403 cases referred to pre-trial conference, more than one in five (86) was resolved there, with 126 still pending.

With more than 200 cases being disposed of at trial or with default judgment, this amounts to a clearance rate of more than 40% for the total 665 cases filed within 17 months."

2. Case management systems should be upgraded and heavy fines should be imposed on the filer of frivolous application.

3. Compensation should be given to the other party in case of a frivolous application.

⁹ "Tonga: Enforcing contracts quickly, with help from the neighbors" authored by Anthony Ford and Oliver Lorenz, Publication: Celebrating Reforms (2008).

¹⁰ "Nigeria: Repairing a car with the engine running" authored by Sabine Hertveldt, Publication: Celebrating Reforms 2007.

¹¹ "Ghana: Establishment of commercial courts" authored by Sandra Cofie. Publication: Smart Lessons 2007

5. Lack of Specialised Courts

The legal system provides higher priority to the settlement of commercial disputes. Article 184 of the Court Rules of Sindh, for example, states that “commercial suits shall be heard in priority to all other suits, appearing on the board on that day”.

However, one cannot find an exclusive court or a division of court in place to hear commercial disputes in Pakistan. Moreover, commercial disputes are referred to civil judges who lack expertise in dealing with such type of complex matters. This is also one of the major reasons in the pendency of commercial disputes in different courts in Pakistan.

5.1 Reform Proposals regarding Establishment of Specialised Courts

1. It is recommended that new fast track specialised courts should be established in which trained staff is appointed in order to deal with complex commercial disputes. See case of Ghana in Box 2.

2. Another view is that more complex cases such as, the law suits related to intellectual property rights, should be separated from the cases related to contract enforcement. Specialised courts should be established to deal with such type of complex cases and it will automatically reduce the burden on the judges who are dealing with commercial disputes.

Box 2: Case of Ghana's Commercial Courts

Some years back Ghana was facing the same problems which Pakistan is facing today. The establishment of commercial courts in Ghana has done a great job in reducing the time of contract enforcement. In the Commercial Court Division of the High Court which is the official name of Ghana's Commercial Court six judges were appointed to hear the disputed of commercial nature in fully computerised court rooms. Some of the major judicial reforms introduced by Ghana are presented below.

Court Proceedings are made available to the participants within 72 hours of the hearing.

Deadlines for trial are made strict and the court ensures that from the first hearing it must be conducted on daily basis.

Adjournments are granted for good causes and a case cannot be adjourned more than 72 hours.

Pre-trial scrutiny is made mandatory for the courts and pre-trial conferences are conducted within 30 days of written arguments.

Mediation is also made mandatory where trained judges handle the mediation process.

As a result of these judicial reforms the average time of enforcing contracts in Ghana, from filing of a law suit till the enforcement of the judgement, as tracked by the Doing Business, reduced from 552 days to 487 days.

⁹ "Tonga: Enforcing contracts quickly, with help from the neighbors" authored by Anthony Ford and Oliver Lorenz, Publication: Celebrating Reforms (2008).

¹⁰ "Nigeria: Repairing a car with the engine running" authored by Sabine Hertveldt, Publication: Celebrating Reforms 2007.

¹¹ "Ghana: Establishment of commercial courts" authored by Sandra Cofie. Publication: Smart Lessons 2007

Conclusion

Protection of contractual rights via an efficient judicial system attracts businesses to invest in the country. The presence of a law which can protect the rights of contracting parties and also its proper implementation are the fundamentals of an efficient and reliable contract enforcement mechanism.

The analysis presented here reveals that contract enforcement mechanism in Pakistan does not fulfil the modern-day requirements of commercial world. Enforcing contracts through local courts is quite expensive, its durations is highly unpredictable and the quality of judicial practices is not up to the mark.

In this area Pakistan is ranked 157th out of 189 countries in the Doing Business Index which also reflects that our judicial system is unable to provide ease of enforcing contracts in the country.

Complex and time consuming procedural requirements, lack of judicial staff, absence of commercial courts and lack of Alternate Dispute Resolution systems are some of the major reasons behind an inefficient contract enforcement mechanism in the country.

This analysis therefore presents certain measures which can be helpful in upgradation of the current system such as: increase in the number of judges, installation of e-case management systems in the courts, establishment of ADR systems and creation of commercial courts in the country.

Annexre: Enforcing Contracts Procedures

A. Filing and Service

1. Plaintiff's hiring of lawyer
2. Registration of court case
3. Court scrutiny of summons and complaint
4. Delivery of summons and complaint to person authorized to perform service of process on Defendant
5. First attempt at physical delivery
6. Second attempt at physical delivery
7. Application for substituted service
8. Court order regarding substituted service
9. Substituted service
10. Guarantees securing attached property
11. Pre-judgment attachment
12. Custody of assets attached prior to judgment
13. Report on pre-judgment attachment
14. Hearing on pre-judgment attachment

B. Trial and Judgment

1. Defendant's filing of defense or answer to Plaintiff's claim
2. Adjournments
3. Framing of issues
4. Plaintiff's appeal of court's interlocutory order
5. Summoning of (expert) witnesses
6. Adjournments
7. Trial (prevalent in common law)
8. Adjournments
9. Closing of the evidence period
10. Order for submission of final arguments
11. Judgment date
12. Notification of judgment in court
13. Writing of judgment
14. Plaintiff's receipt of a copy of written judgment
15. Appeal period
16. Reimbursement by Defendant of Plaintiff's court fees

C. Enforcement of Judgment

1. Plaintiff's advancement of enforcement fees
2. Attachment of enforcement order to judgment
3. Request to Defendant to comply voluntarily with judgment
4. Identification of Defendant's assets for attachment by court official or Defendant
5. Contestation of selection of assets identified for attachment
6. Plaintiff's identification of Defendant's assets for attachment
7. Attachment
8. Report on execution of attachment
9. Valuation or appraisal of attached movable goods
10. Enforcement disputes before court
11. Call for public auction
12. Sale through public auction
13. Judge's decision on bids
14. Distribution of proceeds
15. Reimbursement of Plaintiff's enforcement fees:
16. Payment

SNAPSHOT OF KEY ECONOMIC INDICATORS

Macroeconomic Retracting

First quarter of Fiscal Year 2017 depicts that some of the critical macroeconomic indicators, such as external trade, Foreign Direct Investment, Large Scale Manufacturing growth, are not on track, which may create hurdles in economic development in the country.

The trade deficit rocketed up to \$1.3 billion in the first quarter of Fiscal Year 2017 as compared to \$579 million in the same period of FY16. This is mainly because of 35 percent decline in the exports of services, whereas, the exports of goods declined by around 5 percent.

Foreign Direct Investment (FDI) witnessed a decline of 35 percent in the first quarter of FY17 as compared to the same time period in FY16. This decline in FDI is mainly driven by 53 percent decrease in the FDI from China and also due to 45 percent decline in FDI from USA.

The growth of Large Scale Manufacturing sector, which was around 5 percent in the first two months of FY14, decelerated to 1.9 percent in July to August FY17.

Pakistan's overall ranking has been improved in the Doing Business Index of World Bank, but there are still certain indicators which are increasing the cost of doing business in the country. Pakistan's ranking declined in the areas of Starting a Business in the country, Getting Electricity, Protecting Minority Investors, Paying Taxes, and also in Enforcing Contracts.

Table 1: Economic Snapshot

Particular	Reporting Period	Value
T-Bill		(%)
03-M	Oct-16	5.8
06-M	Oct-16	5.9
12-M	Oct-16	5.9
PIB 10-years	Oct-16	7.9
6-M Kibor	Oct-16	6.1
Discount Rate	Oct-16	5.8
Inflation	Oct-16	4.2
External Indicator		(\$ Bn)
Export	Sep-16	2.1
Import	Sep-16	3.9
Trade Deficit	Sep-16	-1.8
Home Remittances	Sep-16	1.6
Current Account	Sep-16	-161
FDI	Sep-16	137
Public Finance		(Rs. Bn)
Tax Collection	Jun-16	47
Direct Taxes	Jun-16	20
Indirect Taxes	Jun-16	27
Credit to Private Sector (Rs. Bn)	As of Sep-16	3,686
LSM Growth (%)	Aug-16	1.97
FX Reserves (\$ Bn)	04-Nov-16	24.2

Sources: SBP, Finance Ministry

Table 2: Key Targets and Projections

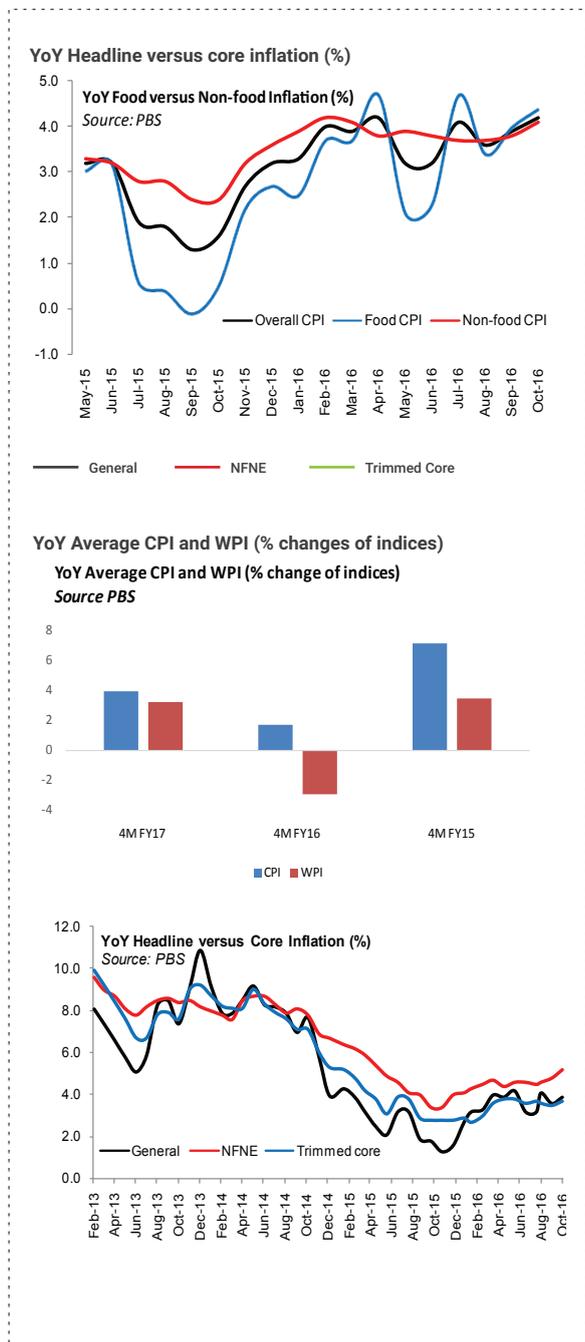
	Govt Target*	SBP Projection**	IMF Projection***	ADB Forecast****
	Percent			
Real GDP Growth	5.7	5.7	5	4.8
CPI- Full year average	6	4.5 - 5.5 % change	5.2	4.5
Export	n.a	n.a	4.1	n.a
Import	n.a	n.a % of GDP	9.9	n.a
Current a/c Balance	n.a	n.a	-1.8	-1.2
Fiscal Balance	-3.8	n.a	-3.8	-5.3
Remittances (\$ Bn)	n.a	n.a	20	n.a
Tax Revenue (Rs. Bn)	3,956	n.a	4,244	n.a

Sources: *Budget in Brief 2016-17, **Monetary Policy Statement, ***IMF Country Report (June 2016),
****Asian Development Outlook 2016

Table 3: Balance of Payment Account - Key Items Only

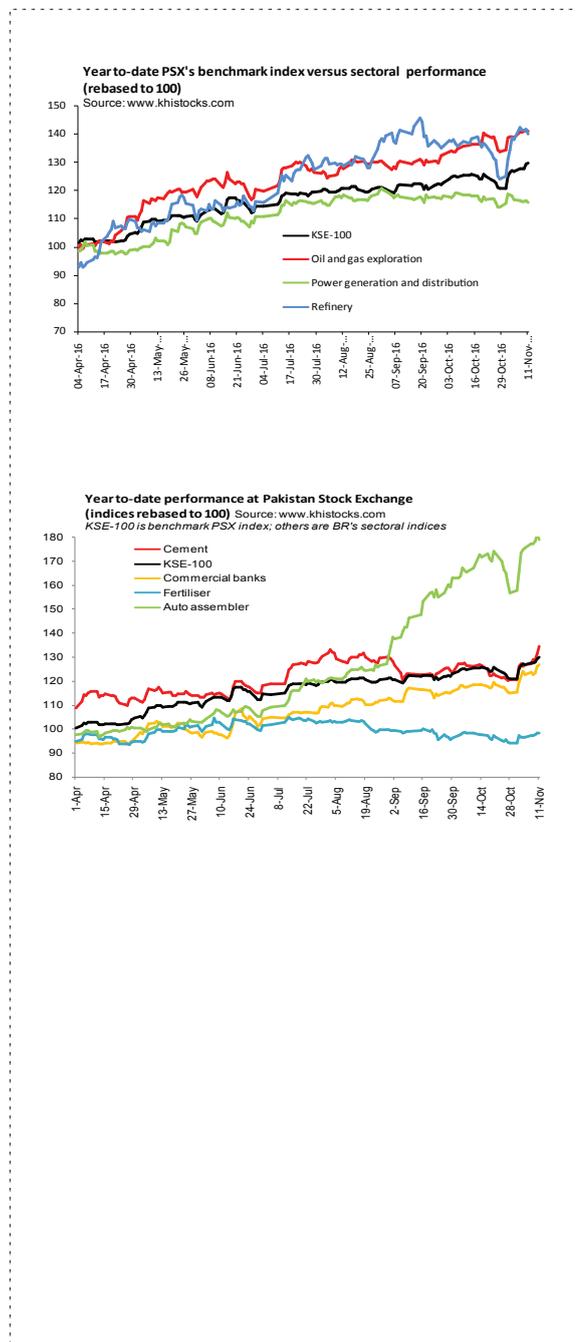
\$ (Mn)	FY16	FY15	% change
Current Account Balance	(1,368)	-759	n.a
Balance on Trade in Goods	-5,153	-4,752	
Exports of Goods FOB	5,042	5,313	-5%
Imports of Goods FOB	10,195	10,065	1%
Balance on Trade in Services	-925	-360	
Exports of services	1,137	1,744	-35%
CSF inflows	70	14	400%
Imports of services	2,062	2,104	-2%
Workers' Remittances	6,258	6,507	-4%
U.S.A	787	904	-13%
U.K	719	869	-17%
Saudi Arabia	1,793	1,905	-6%
UAE	1,415	1,482	-5%
Direct Investment in Pakistan	249	403	-38%
U.S.A	59	-62	n.a
U.K	22	40	-45%
Saudi Arabia	38	39	-3%
China	91	192	-53%
Portfolio Investment in Pakistan	28	(92)	n.a
Equity	28	(92)	n.a
Debt	n.a	n.a	n.a

Figure 1: Trends in Inflation



Source: PBS

Figure 2: Performance at Stock Market



Source: www.khistrocks.com
 KSE-100 is benchmark, PSX index, others are sectoral indices

Table 4: Key Export Categories: Percentage Change 3M FY17 over 3M FY16

Key Export Categories - Percentage Change					
Commodities (units)	Quantity (total)	Price (\$ Mn)	Price (% change)	Quantity (% change)	APR* (% change)
Total	n.a	4,675	-9%	n.a	n.a
Food (M.T)		634	-20%		n.a
Rice	497,640	243	-28%	-23%	-6%
Basmati	86,615	76	-40%	-31%	-13%
Non-Basmati	411,025	166	-21%	-21%	1%
Sugar	0	0	-100%	-100%	-100%
Textile	n.a	3,028	-6%	n.a	n.a
Raw cotton (M.T)	10,299	17	-69%	-71%	7%
Cotton yarn (M.T)	116,685	304	-21%	-6%	-15%
Cotton cloth (TH.SQM)	461,282	539	-4%	-13%	11%
Knitwear (TH.DOZ)	32,899	606	-4%	18%	-19%
Bedwear (M.T)	86,889	529	3%	8%	-5%
Towel (M.T)	39,735	178	-17%	-18%	2%
Readymade garments (TH.DOZ)	7,222	522	3%	-1%	4%
Art, silk & synthetic textile (TH.SQM)	22,432	50	-34%	-74%	151%
Petroleum products	n.a	3	-93%	n.a	n.a
Naphtha (M.T)	7,782	2	100%	100%	100%
Other manufacturing goods	n.a	754	-11%	n.a	n.a
Sports good	n.a	67	-10%	n.a	n.a
Football (TH.DOZ)	749	35	-11%	-4%	-7%
Gloves (TH.DOZ)	443	21	-20%	-26%	9%
Leather tanned (TH.SQM)	3,392	86	-12%	-26%	18%
Leather products	n.a	125	-9%	n.a	n.a
Leather garments (TH.DOZ)	221	809	-4%	-3%	-0.2%
Leather gloves (TH.DOZ)	1,172	41	-18%	-21%	4%
Footwear (TH.Paris)	2,588	26	-0.1%	0%	-0.4%
Surgical goods	n.a	75	-9%	n.a	n.a
Chemical & pharma products	n.a	205	-15%	n.a	n.a
Plastic material (M.T)	27,240	49	-6%	-34%	42%
Engineering goods (TH.NOS)	n.a	44	2%	n.a	n.a
Cement (M.T)	1,487,299	77	-12%	-3%	-9%
All other items	n.a	222	-4%	na	n.a

*ARP= Average Realised Price

Sources: PBS

Table 5: Key Import Categories: Percentage Change 3M FY17 over 3M FY16

Key Import Items - Percentage Change					
Commodities (units)	Quantity (total)	Price (\$ Mn)	Price (% change)	Quantity (% change)	APR* (% change)
Total		11,724	10%		
Food (M.T)	n.a	1,359	10%	n.a	n.a
Tea	57,916	134	11%	46%	-24%
Palm Oil	542,532	368	-16%	-20%	4.6%
Pulses	205,363	183	34%	-11%	49.9%
All other food items					
	n.a	495	30%	n.a	n.a
Machinery group	n.a	2,735	60%	n.a	n.a
Power generation	n.a	795	152%	n.a	n.a
Textile group	n.a	116	6%	n.a	n.a
Electrical	n.a	448	32%	n.a	n.a
Telecom	n.a	278	-11%	n.a	n.a
Transport group	n.a	692	8%	n.a	n.a
Road motor	n.a	572	27%	n.a	n.a
CBU Heavy vehicles	n.a	69	80%	n.a	n.a
CBU Motor cars	n.a	73	2%	n.a	n.a
CKD Heavy vehicles	n.a	75	30%	n.a	n.a
CKD Motor cars	n.a	158	26%	n.a	n.a
Other transport	n.a	67	98%	n.a	n.a
Petroleum group (M.T)	n.a	2,356	-5%	n.a	n.a
Petroleum products	4,934,776	1,500	4%	100%	-48%
Petroleum crude	2,042,937	562	-36%	49%	-57%
Textile group (M.T)	n.a	688	9%	n.a	n.a
Agriculture group	n.a	1,764	-1%	n.a	n.a
Metal group	n.a	929	4%	n.a	n.a
Iron and Steel (M.T)	768,948	445	0.1%	18%	-15%
Miscellaneous group	n.a	283	1%	n.a	n.a
All other items	n.a	917	-5%	n.a	n.a

n.a = not available; PBS does not release data *ARP= Average Realised Price

Sources: PBS

Figure 3: Trends in Exchange Rate

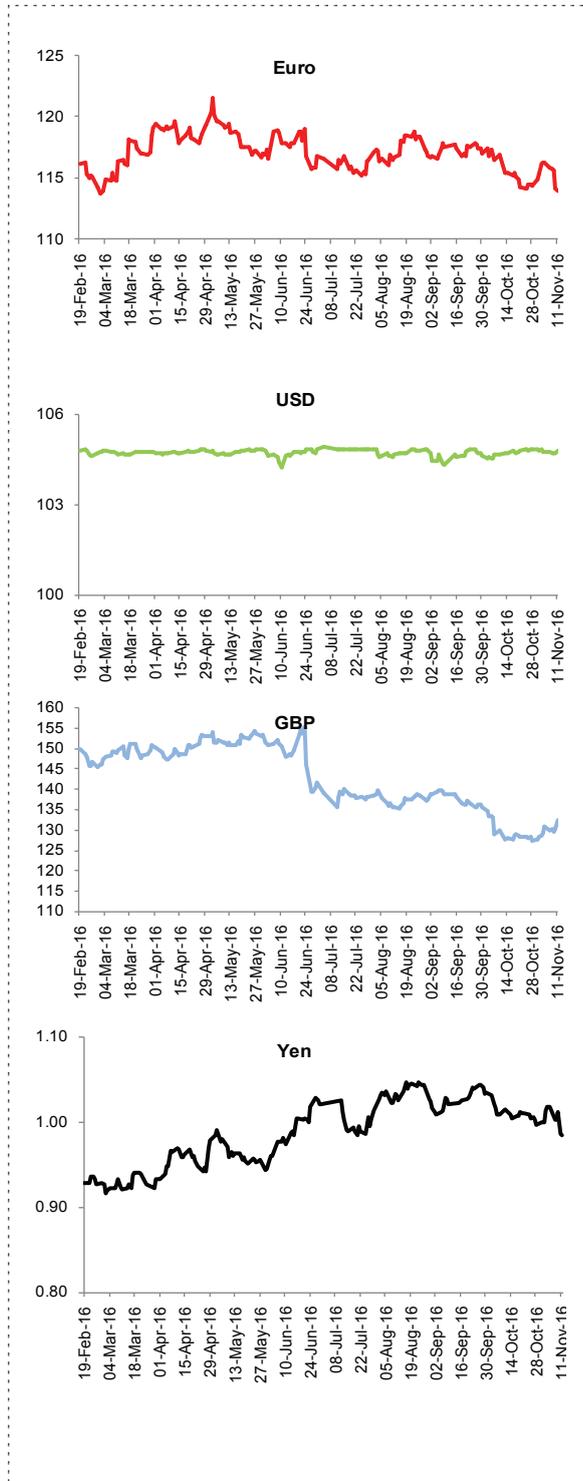


Figure 4: Key Commodities World Market

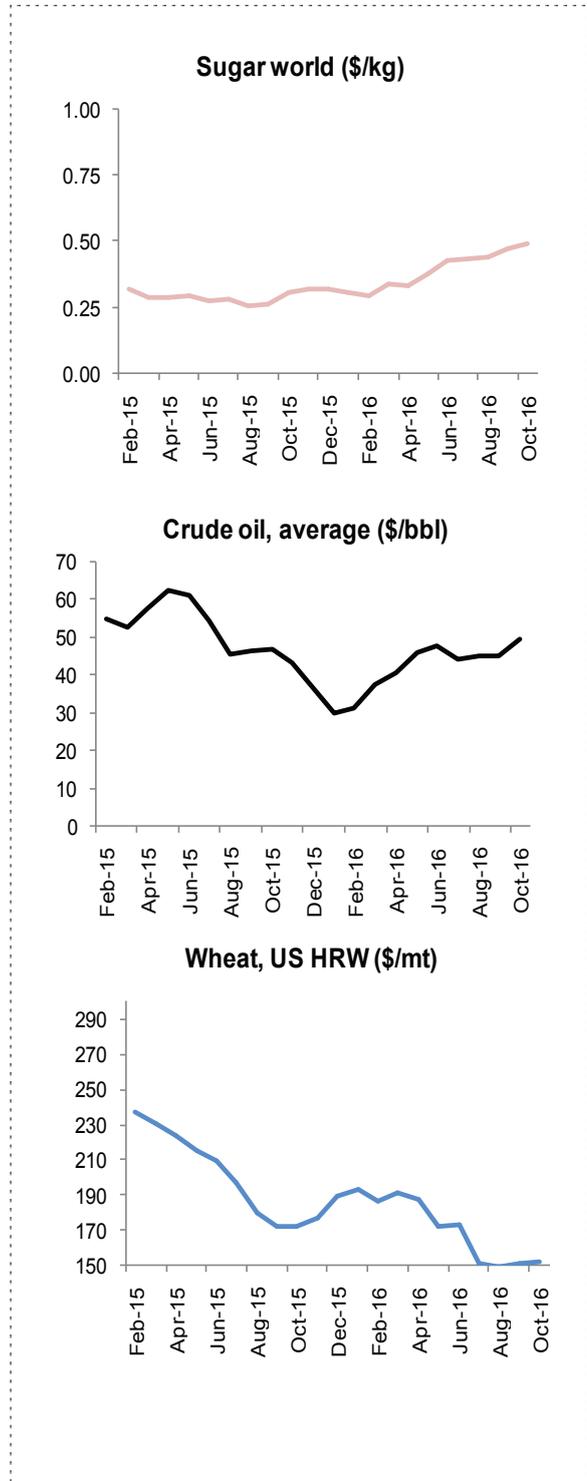


Figure 4: Key Commodities World Market

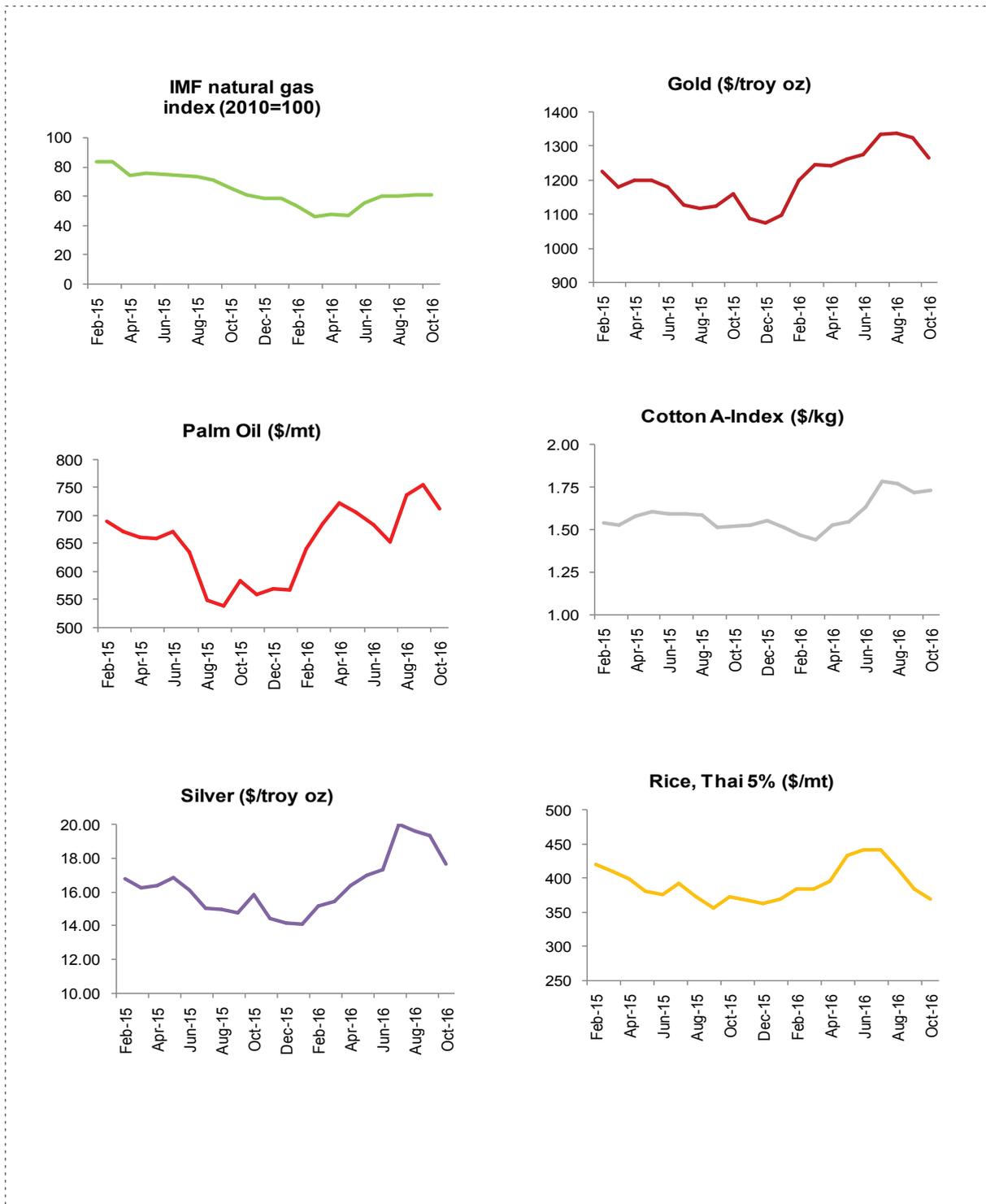


Table 6: Ease of Doing Business Index

Doing Business Rankings - Key Indices only								
	Starting a business	Dealing with construction permits	Getting electricity	Registering property	Getting credit	Trading across border	Paying taxes	Enforcing contracts
Pakistan	122	61	157	137	133	169	171	151
India	155	183	70	138	42	133	157	178
Bangladesh	117	118	189	185	133	172	86	188
Singapore	10	1	6	17	19	41	5	1
Vietnam	119	12	108	58	28	99	168	74
Turkey	94	98	36	52	79	62	61	36

Source: Doing Business

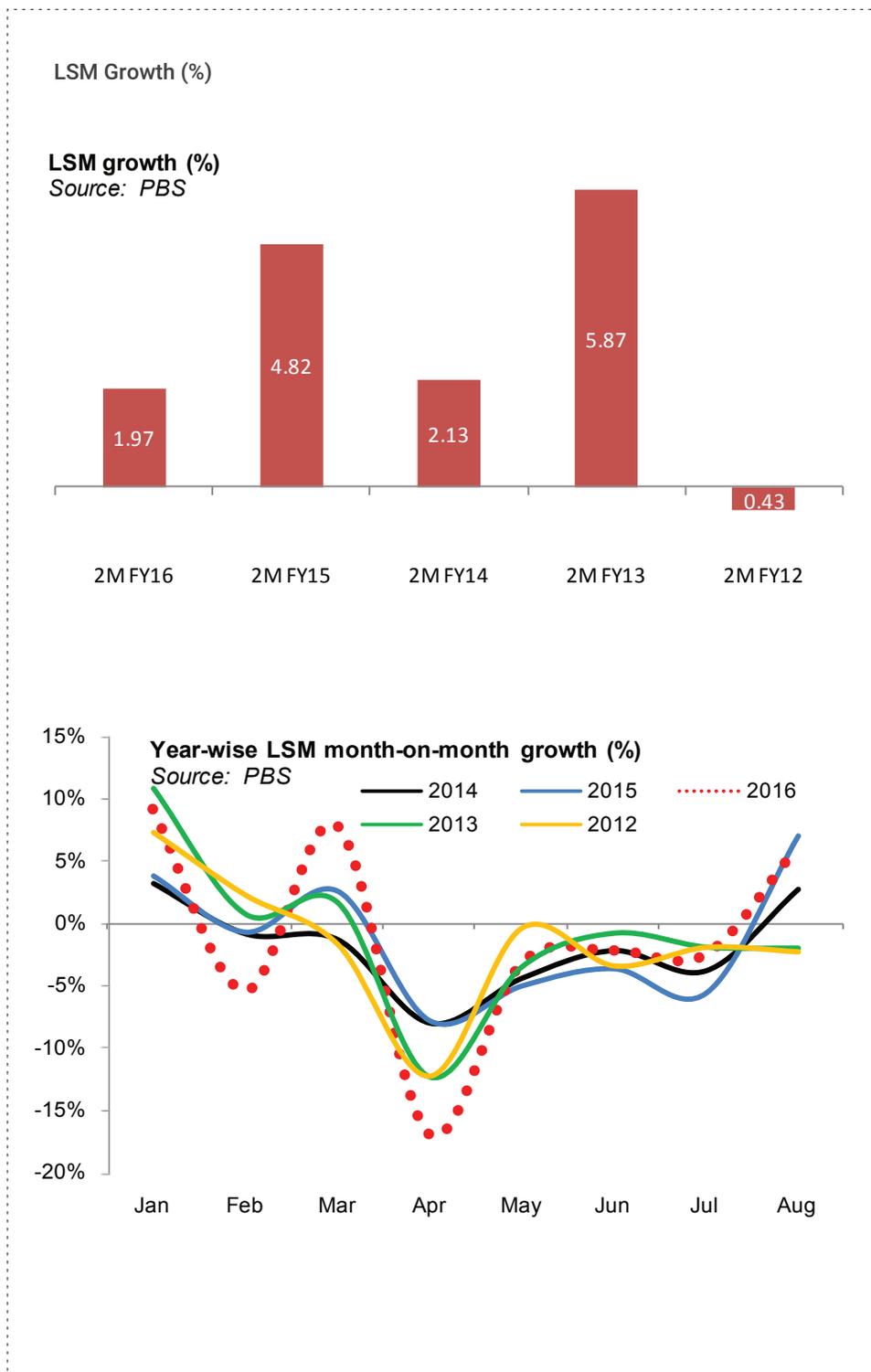
Performance of Large and Medium Scale Enterprises

Major LSM Drivers

	Weight	Percentage change	
		3MFY17	3MFY16
Textile	20.91	(0.19)	0.65
Food, Beverages & Tobacco	12.37	(0.40)	4.82
Coke & Petroleum Products	5.51	(7.25)	2.06
Pharmaceuticals	3.26	5.26	8.14
Chemicals	1.72	(5.73)	14.82
Automobiles	4.61	3.6	46.07
Iron & Steel Products	5.39	12.91	(0.34)
Electronics	1.96	1.86	(1.92)
Leather Products	0.86	0.77	(0.45)
Paper & Board	2.31	1.11	(27.53)
Engineering Products	0.40	(17.00)	(18.93)
Rubber Products	0.26	4.39	10.07
Non-Metalic Mineral Products	5.36	13.69	8.3
Wood Products	0.59	(97.78)	24.63

Source: PBS

Performance of Large and Medium Scale Enterprises



Source: PBS

INDICATIVE TOPICS FOR PPR

01. Taxes
02. Credit Market
03. Capital Market
04. Investment Policy
05. Business Regulations
06. Civil Service Reforms
07. Research and Innovation
08. Tariffs and Trade Barriers
09. Inflation and Sound Money
10. State Owned Enterprises
11. Legal System and Property Rights
12. Human Capital, Labour Market and Regulations

