The economic impact of unresolved low-value commercial disputes

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Prepared for the International Chamber of Commerce

3 November 2025

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Oxera Consulting LLP is a Limited Liability Partnership registered in England no. OC392464, registered office: Park Central, 40/41 Park End Street, Oxford, OX1 1JD, UK, with an additional office in London located at 200 Aldersgate, 14th Floor, London, EC1A 4HD, UK; in Belgium, no. 0651 990 151, branch office: Spectrum, Boulevard Bischoffsheim 12–21, 1000 Brussels, Belgium; and in Italy, REA no. RM - 1530473, branch office: Rome located at Via delle Quattro Fontane 15, 00187, Rome, Italy, with an additional office in Milan located at Piazzale Biancamano 8, 20121 Milan, Italy; and in Spain, CIF W0306516F, branch office: LOOM Azca, Plaza Pablo Ruiz Picasso 11, Planta 1, 28020 Madrid, Spain.

Foreword from John Denton AO, Secretary General of the International Chamber of Commerce

Every day, millions of small and medium-sized enterprises (SMEs) power the global economy—driving trade, innovation, and opportunity. Yet when commercial relationships falter, too many of these businesses hit a wall. For an SME, the cost of pursuing justice often outweighs the value of the claim itself. Instead of seeking redress, they walk away—quietly absorbing losses that weaken their own prospects and the economies that depend on them.

The International Chamber of Commerce (ICC) is proud to once again partner with Oxera to shine a light on this overlooked barrier to growth. This study provides the first comprehensive framework linking unresolved low-value commercial disputes to a wider drag on economic performance. Its message is unambiguous—when small firms cannot enforce their contracts, the ripple effects extend far beyond the courtroom, eroding trust, constraining investment and suppressing productivity.

At ICC, our mission is clear: to make business work for everyone, every day, everywhere. Exposing the hidden costs of inaccessible justice is part of that effort. By quantifying the economic toll of unresolved disputes, this report calls for concrete action to close the justice gap for SMEs and to build a trading system that works for all participants—not just those with deep pockets.

Ensuring that SMEs have access to effective dispute resolution is one of the most direct ways to unlock growth. It would strengthen supply chains, attract investment to developing markets and fuel innovation worldwide. With 65 million businesses in developing countries facing a US$5.2 trillion financing gap, reducing friction in dispute resolution is a practical step to restore confidence and mobilise capital where it is needed most.[1]

Emerging technologies, including artificial intelligence, now offer the means to transform access to justice: delivering dispute resolution that

[1] International Finance Corporation (IFC), 'MSME Finance: Micro, Small and Medium-sized Enterprises (MSMEs) are vital to economic growth, job creation, provision of goods and services, and poverty alleviation in emerging markets', last accessed 3 November 2025. The IFC estimates that 65 million businesses in developing countries face an unmet financing need of approximately $5.2 trillion annually.

is fast, affordable, and inclusive. These innovations make reform both urgent and achievable.

This report is, above all, a call to action. The cost of inaction is measured not just in lost contracts—but in lost jobs, lost trust and lost opportunity. It is time to remove this invisible drag on global prosperity and ensure that access to justice is a foundation of trade, not a privilege.

Foreword from the ADB[2]

Micro, small, and medium-sized enterprises (MSMEs) are the backbone of Asia and the Pacific's economic resilience. They represent over 95% of all businesses, employ more than half of the workforce, and generate nearly a third of economic output across 24 emerging economies.[3] Enabling their full participation in domestic and global markets is vital for inclusive, resilient and sustainable development in Asian Development Bank (ADB) developing member countries.

Yet systemic barriers continue to hold MSMEs back—none more critical than the inability to resolve commercial disputes quickly, affordably, and effectively. This Oxera study, commissioned by the International Chamber of Commerce (ICC), uncovers the staggering economic costs of unresolved low-value disputes. For many MSMEs, including in ADB developing member countries, the cost of formal dispute resolution often exceeds the claim itself, resulting in financial losses, wasted management time, and eroded trust in business relationships.

Improving the efficiency, accessibility, and affordability of commercial dispute resolution, especially for MSMEs, is not merely a legal issue—it is an economic imperative. Accessible, affordable and effective dispute resolution unlocks productivity, deepens investment, strengthens supply chains and enables economic dynamism.

Addressing these challenges requires innovative and scalable solutions that level the playing field, reduce barriers to justice and enable MSMEs to thrive in a rapidly evolving global economy. In this regard, ADB, through its Law and Policy Reform Program,[4] is honoured to partner with ICC to support the development of an innovative online dispute resolution (ODR) platform tailored for MSMEs. The collaboration combines ICC's expertise in international commercial practice with ADB's commitment to private sector growth and inclusive development,

[2] The views expressed in this publication are those of the author and do not necessarily reflect the views and policies of the Asian Development Bank (ADB) or its Board of Governors or the governments they represent.
[3] Asian Development Bank (2024), 'Asia Small and Medium-Sized Enterprise Monitor 2024', November.
[4] Asian Development Bank, 'Law and Policy Reform Program', last accessed 28 October.

to ensure that MSMEs gain access to fast, affordable and reliable mechanisms for resolving disputes.

ADB remains committed to advancing legal innovation, promoting access to justice, and creating an enabling environment where MSMEs can realise their full potential. Through collaborative efforts such as ICC's ODR platform, we can help transform MSMEs as engines of inclusive, resilient, and sustainable growth across Asia and the Pacific and beyond.

THOMAS M. CLARK

General Counsel

Asian Development Bank

03 November 2025

Executive Summary

Commercial disputes which fail to reach a resolution impose substantial and far-reaching costs on businesses and economies. The direct losses to businesses, incurred through attempts at resolution and write-offs, represent only the tip of the iceberg. Beneath this lies a much larger set of significant economic consequences, constraining business growth, deterring investment and innovation, and weakening market performance. These consequences are felt most keenly in developing countries, where dispute values are frequently lower than the cost of pursuing resolution, and a lack of affordable resolution options represents a barrier to accessing justice.

This report, commissioned by the International Chamber of Commerce (ICC), is the first to set out a comprehensive framework linking a lack of resolution for low-value commercial disputes to wider economic outcomes. In this setting, we define a low-value commercial dispute as a dispute with low monetary value where the expected costs of resolution exceed the expected value of the claim.[5] This is particularly relevant to small and medium-sized enterprises (SMEs)[6] given that they typically transact on a smaller scale, meaning dispute costs are more likely to represent a greater proportion of the claim itself. Drawing together economic theory, empirical evidence, and case studies, it demonstrates how disputes—particularly those that remain unresolved—create a chain of economic effects that extend well beyond the parties involved.

At the firm level, the costs of disputes are well documented. Businesses face direct financial losses through write-offs, legal fees and administrative expenses, as well as indirect costs from management time diverted to dealing with disputes and their wider consequences. Late payments—which can be seen as a common symptom of commercial disputes, reflecting underlying disagreements between businesses over contract terms, performance, or obligations—are a worldwide problem, costing US$1 trillion every year in bad debt write-

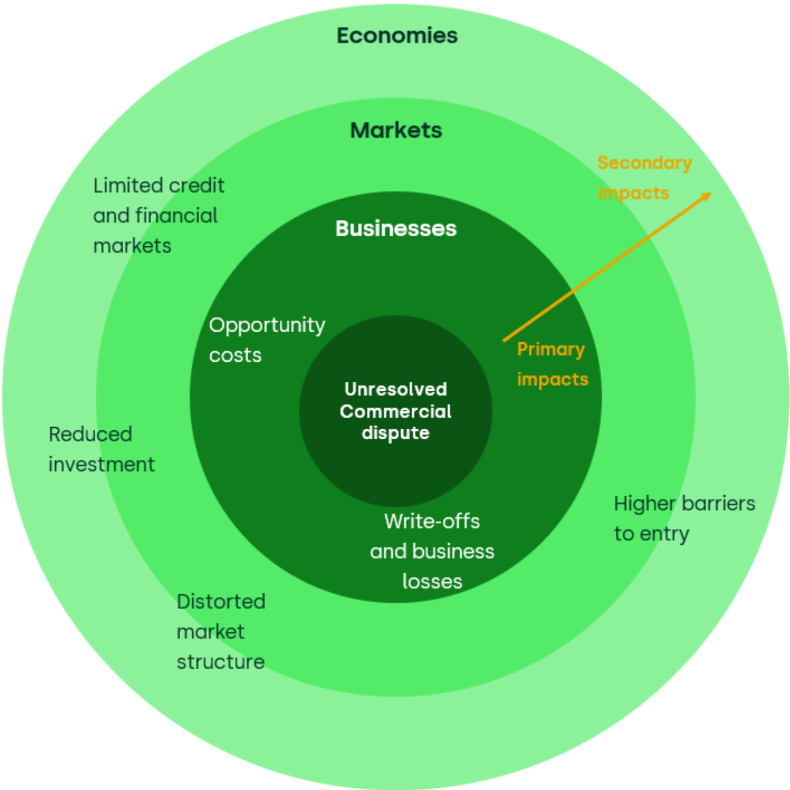
[5] We have chosen not to impose a specific monetary threshold to define a low-value commercial dispute. Rather than anchoring the definition to a fixed claim value—which may not reflect the scale of typical SME disputes across different economies—this approach allows for a broad and inclusive assessment of the types of disputes faced by SMEs in different economies, without excluding cases based on a threshold cut-off. See Box 2.2 for further information.
[6] SMEs are businesses whose employee numbers and revenues fall below defined thresholds, which vary by country according to factors such as economic structure and level of development. For example, in the UK, an SME is defined as a business with fewer than 250 employees and either an annual turnover of up to US$59 million or a balance sheet total of up to US$51 million, while in Nigeria, an SME is defined as a business with an asset base between US$3,400 and US$340,000 and between 11 and 100 employees.

offs.[7] For SMEs in developing countries, direct resolution costs can exceed the value of the claim.[8] The lack of affordable resolution for low-value commercial disputes ultimately leads to a pragmatic decision not to pursue recovery.

However, the greater harm comes from the impact of these unresolved disputes on the wider economy. When businesses routinely absorb losses rather than enforce contracts, trust in commercial relationships erodes and uncertainty, risk and the cost of conducting business increase. Investment slows, access to credit tightens, and markets become less dynamic as firms retreat to dealing with trusted partners only. In the aggregate, this creates structural inefficiencies that suppress productivity and growth, especially in economies where dispute resolution mechanisms are less accessible. Figure 1.1 summarises the expected primary and secondary impacts in economies where low-value disputes often remain unresolved.

[7] A study of over 3,000 SMEs across 11 countries found that 7.5% of invoices are written off as bad debt, equating to US$1 trillion a year. See Plum Consulting (2017), 'The domino effect: the impact of late payments', December.
[8] World Bank data shows that the average cost of court proceedings exceeds the value of the claim itself in Cambodia, Papua New Guinea and Timor-Leste. See World Bank, 'Doing Business, Enforcing contracts,' last accessed 24 September.

Figure 1.1 Framework for assessing the impact of unresolved commercial disputes on businesses, markets and economies



Note: Opportunity cost, explored further in section 3.1.2, refers to the value-adding activities that a business forgoes when time and resources are diverted to dealing with a commercial dispute. In practice, this often means management attention spent chasing late payments, negotiating informally, or otherwise addressing the dispute rather than pursuing productive business activities.
Source: Oxera.

The implications are particularly acute for developing countries and for SMEs, where limited access to affordable and efficient resolution mechanisms means that a large share of disputes remains unresolved. This not only raises the cost of doing business but also restricts participation in global value chains and stifles innovation.

The evidence assembled here underscores an important conclusion: improving the efficiency, accessibility and affordability of dispute resolution, particularly for SMEs, is not only a matter of legal reform—it is an economic imperative. By broadening access to cost-effective resolution mechanisms, economies can unlock productivity, deepen investment, and enable businesses of all sizes to operate with greater confidence.

1 Introduction

Effective commercial relationships are a cornerstone of healthy economies. Every day, countless transactions between firms depend on mutual trust and clear expectations about performance, delivery, and payment. When these expectations are not met, disputes arise—a natural feature of any complex market system.

What is less well understood is what happens when these disputes are not resolved. While policy discussions[9] often focus on access to justice and the performance of legal systems, the economic consequences of unresolved disputes have received far less attention. Most existing studies examine the costs of disputes that are resolved through courts or formal mechanisms.[10] Much less is known about the wider, often invisible, effects of disputes that remain unresolved due to dispute resolution being too costly, impractical or inaccessible.

This gap in evidence is particularly important at a time when global trade dynamics are shifting. While some major economies are pursuing policies that favour domestic production and impose new tariffs, international supply chains remain deeply interconnected. As businesses—especially small and medium-sized enterprises (SMEs)—operate in complex networks of suppliers and clients, the ability to resolve disputes efficiently becomes critical to sustaining business confidence, financial stability and investment. Understanding the economic implications of low-value disputes is therefore key to improving business practices and fostering inclusive economic development.

In this context, the International Chamber of Commerce (ICC) commissioned Oxera to take a first step towards filling this evidence gap by developing a structured framework for understanding the economic impacts of unresolved low-value commercial disputes. This report draws on economic theory, existing literature and original case

[9] For example, a recent paper studied the design of efficient judicial dispute resolution systems for business-to-business commercial disputes in a digital world. See Eidenmueller, K., McLaughlin, C. and Eidenmueller, H. (2024), 'Expanding the Shadow of the Law: Designing Efficient Judicial Dispute Resolution Systems in a Digital World — An Empirical Investigation', *Harvard Negotiation Law Review*, **29**:2.
[10] For example, the World Justice Project produced a statistical analysis of dispute resolution costs, as a percentage of GDP, for a broad sample of countries across the global economy. See World Justice Project (2023), 'WJP Justice Data Graphical Report', pp. 61–62.

studies to explore the channels through which such disputes affect both individual businesses and the wider economy.[11]

As one of the first studies to examine this issue systematically, the report is intended to lay the groundwork for future research that can build on this framework and move towards quantifying the scale of global impacts of unresolved low-value disputes.

The remainder of the report is structured as follows.

- **Section 2** sets out the framework for understanding how commercial disputes arise, what constitutes a low-value dispute, and the costs that businesses face when deciding whether to pursue resolution.

- **Section 3** explores the consequences of failing to resolve disputes, tracing both the *primary impacts* on businesses and the *secondary impacts* on investment, credit markets, and market structure.

- **Section 4** concludes with reflections on the broader economic implications and the importance of accessible, efficient dispute resolution systems.

[11] The case studies in this report are based on interviews conducted with SMEs in July and August 2025 on behalf of ICC and shared with Oxera in an anonymised format.

2 Framework of commercial disputes

Business transactions create economic value, but when businesses have limited access to dispute resolution or operate within weak judicial systems, these relationships are disrupted—resulting in economic losses and market inefficiencies. This section considers the role of contract adherence in sustaining commercial confidence, and reviews the mechanisms (and their costs) that businesses rely on when disputes occur. For practitioners from the global disputes community, much of this contextual discussion may already be familiar. If so, we recommend proceeding directly to section 3, which presents a framework for assessing the impact of unresolved commercial disputes on businesses, and on the wider markets in which they operate.

Figure 2.1 Section overview

Source: Oxera.

2.1 Transactions, contract adherence, and commercial disputes

Transactions are the heartbeat of economic activity. When two businesses agree to exchange goods or services, both do so because they expect to be better off—the seller gains revenue while the buyer obtains a product or service that supports their own production or consumption. When scaled up to the level of markets and economies, these gains translate into greater output and economic growth.

The smooth functioning of transactions depends on trust and enforceability. Contracts emerge in this context as a tool to formalise expectations, allocate risk, and provide a framework that makes co-operation credible even when uncertainty or incentives to renege exist.

Effective contract adherence and enforcement[12] is therefore fundamental to economic performance, allowing businesses to commit confidently to agreements and unlocking the full value of trade.

While effective contract adherence makes it easier for businesses to credibly commit to future actions, it does not eliminate disputes altogether. One reason disputes may arise is due to contract incompleteness. No agreement can anticipate every possible contingency, and it would be unrealistic to attempt to cover all foreseeable scenarios. As a result, gaps and ambiguities often remain, creating room for differences in interpretation.

In addition, when mechanisms to enforce contracts are weak, disputes can also stem from opportunism. Changing circumstances may make it more profitable for one party to breach an agreement—for instance, if a supplier's costs rise above the buyer's benefits. Where breaches go largely unpunished or damages are insufficient, the incentive to renege increases. In such environments, commercial disputes become not just a by-product of imperfect contracts, but a predictable response to weak contract adherence.

Box 2.1 The importance of contract adherence in different types of transactions

Credible contract adherence becomes crucial for certain classes of transactions. We list a few examples below.

Transactions involving deferred payments

Many business relationships rely on ongoing transactions involving deferred payment or trade credit. Around 80% of global trade is financed through trade credit,[13] illustrating how dependent markets are on trust and enforceable contracts. A 2025 European Union survey of SMEs found that payment delays were the most significant problem for 16% of SMEs and

[12] Contract adherence refers to compliance with and faithful performance of a contract by the parties involved, whereas enforcement involves the effective intervention of a court or other legal authority when disputes arise concerning the contract's execution. Both aspects are important for business transactions and well-functioning economies. In an environment where contract enforcement is strong and effective, contract adherence is likely to be stronger given the deterrent effect of enforcement.
[13] World Trade Organization (2016), 'Trade finance and SMEs. Bridging the gaps in provision'.

a highly significant problem for 39%,[14] highlighting the economic friction caused when obligations are not enforced.

Transactions involving warranties

Warranties play an important role in assuring product quality. Where they are not effectively upheld, their value as a market signal is weakened. Evidence from China's automobile market shows that stronger warranty compliance, following regional regulatory changes, led to higher vehicle sales in areas where warranties were credibly offered.[15]

Transactions requiring specific investments

In sectors where suppliers make investments tailored to a specific buyer—such as in the automotive and computer manufacturing industries, where over 95% of inputs are customised[16]—contract adherence is critical. Without credible adherence, suppliers face a risk of 'hold-up' once investments are sunk,[17] discouraging customised production and reducing efficiency.

2.2 Low-value disputes

Whenever a business becomes involved in a dispute, it faces a decision whether to pursue resolution, and if so how. A key factor in the business decision-making process is the cost of pursuing resolution, which will vary depending on the types of formal resolution mechanisms that are available (as explained further in section 2.3) and the efficiency of the judicial systems. In particular, businesses find themselves in a position where they have to weigh the costs of pursuing resolution against the benefits from resolving the dispute. In some instances, the value of the dispute will be lower than the cost of pursuing resolution, leading **businesses to conclude that pursuing resolution is not worthwhile—leaving the dispute unresolved.** Even in these cases, firms still bear

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[14] European Union (2025), 'Startups, scaleups and entrepreneurship', July, last accessed 24 September.
[15] Sun, Q. and Wu, F. (2016), 'Warranty regulation and consumer demand: evidence from China's automobile market', *Journal of Regulatory Economics*, Springer, **49**:2, pp.152–71.
[16] Nunn, N. (2007), 'Relationship-specificity, incomplete contracts, and the pattern of trade'.
[17] The term 'hold up problem' was first developed by British-American economist Oliver Hart in 1995. It refers to situations where it is difficult to write complete contracts. When one party has made a prior commitment to a relationship with another party, the latter can 'hold up' the former for the value of that commitment. It is argued that the possibility of hold-up can lead to underinvestment in relationship-specific investments and hence to inefficiency.

significant costs, which can broadly be grouped into two categories explored in more detail in section 3.1:

- **write-offs and business losses** on the value of the disputed contract;
- **opportunity cost**, such as management time and resources diverted away from productive or value-adding activities.

In this report, we define **a low-value dispute as a dispute with a low monetary value and where the expected costs of resolution exceed the expected value of the claim.** In such cases, pursuing resolution is unlikely to make financial sense: even if a business succeeds in recovering the claim, the costs incurred in the process would leave it worse off overall. These costs tend to fall more heavily on smaller businesses. Larger businesses are often able to spread legal expenses across a wider asset base, benefit from economies of scale in managing disputes, and employ in-house legal teams. In contrast, smaller businesses, face higher relative costs and typically transact on a smaller scale, meaning dispute costs are more likely to represent a greater proportion of the claim itself. The burden on smaller businesses, together with the scale of resolution costs, underpins our definition of low-value disputes in this report.

Box 2.2 Monetary thresholds of low-value disputes

In the literature, and across different economies, monetary thresholds have often been used to identify low-value disputes. These thresholds vary considerably. For example, a World Bank study from 2017 showed that the upper limit for official small-claims procedures was €600 in Germany (around 2% of per capita GDP) but €15,000 in Portugal (around 88% of per capita GDP). Similarly, the World Bank's Doing Business study standardised cases at either US$5,000 or 200% of per-capita income, whichever was greater,[18] while its successor, Business Ready, used a much larger benchmark equal to 20 times an economy's gross national income (GNI) per capita or US$20,000, whichever is greater.[19, 20]

[18] World Bank, 'Enforcing Contracts FAQs', last accessed 24 September.
[19] World Bank (2024), 'B-Ready Methodology Handbook', Second Edition, October, p. 551.
[20] World Bank (2024), 'B-Ready Methodology Handbook', Second Edition, October.

While setting a fixed monetary threshold can provide a convenient benchmark, it risks failing to capture the full range of disputes faced by businesses across the global economy, particularly for SMEs. This is because what constitutes a low-value dispute is context-specific and will vary between countries depending on factors such as business size, sector, and jurisdiction. The cases where the expected cost of resolution outweigh the potential recovery are most common among SMEs given they are more likely to be involved in lower-value transactions (in comparison with the values of contracts that large businesses deliver). As such, the lack of, or low access to, affordable resolution mechanisms becomes a particularly significant friction in the context of low-value disputes.

Given that the expected cost of resolution is often a key factor in determining whether a dispute is pursued or left unresolved, the next section outlines the main financial costs businesses face when seeking to resolve a dispute.

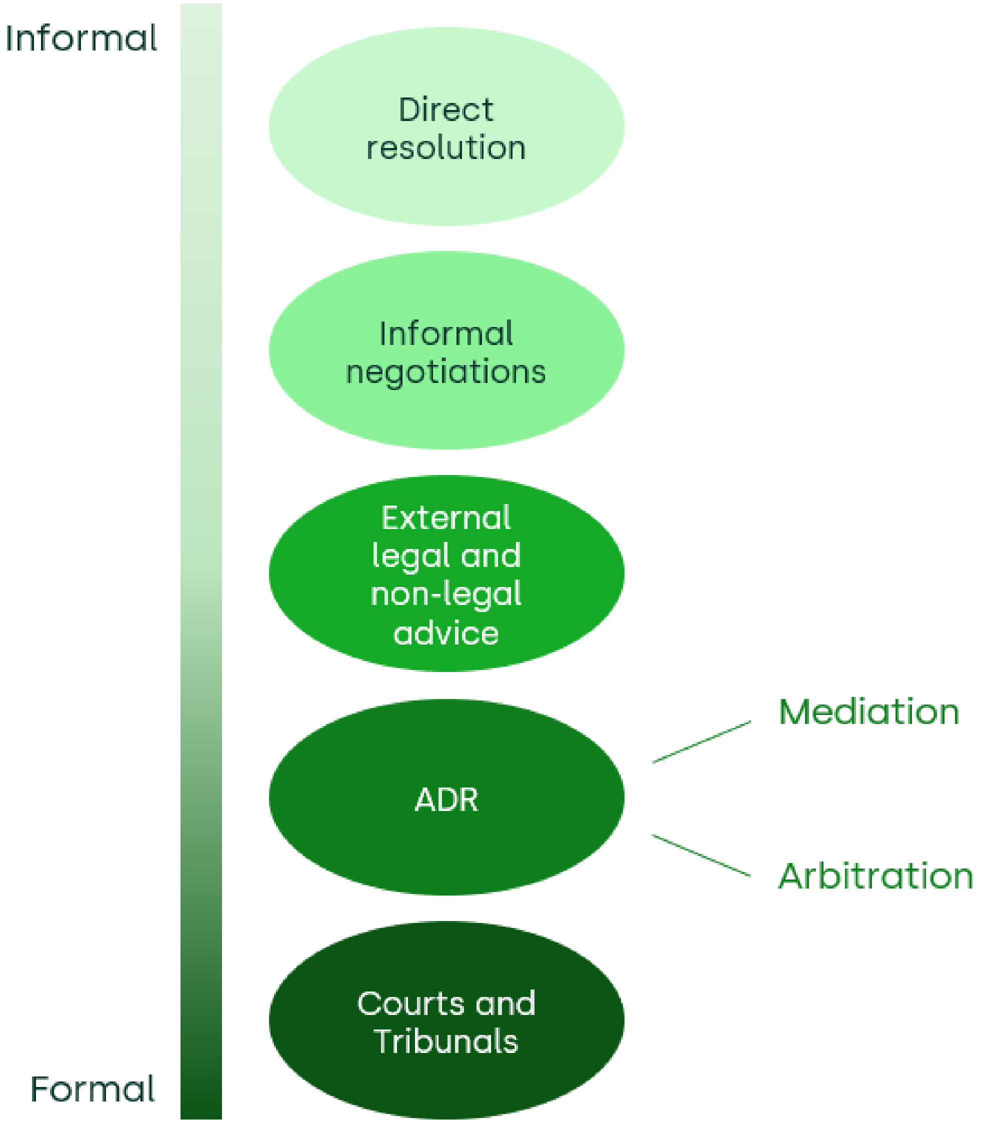
2.3 Resolution mechanisms and their expected costs

When faced with a commercial dispute, businesses encounter a spectrum of resolution mechanisms through which they may seek redress. This spectrum, illustrated in Figure 2.2, ranges from direct resolution through to court proceedings. In the remaining of Section 2, we outline how costs vary across each stage along this spectrum.

Before examining how costs vary across resolution mechanisms, we note that businesses can adopt proactive conflict management strategies to prevent disputes from emerging in the first place. This can include establishing internal policies and procedures for early dispute management that outline how potential issues are identified and addressed once they surface. Another approach is to draft effective dispute resolution clauses within contracts, ensuring that the chosen mechanisms are tailored to contain and resolve disputes efficiently when they do occur.[21]

[21] International Chamber of Commerce (2023), 'Effective conflict management', July.

Figure 2.2 Continuum of dispute resolution mechanisms



Source: Oxera.

Businesses involved in low-value disputes are likely to attempt to seek some form of **direct resolution** in a first attempt. This may simply involve picking up the phone to speak to a counterpart and reaching a timely conclusion. For smaller businesses reliant on long-term relationships that involve repeated interactions, there is likely to be an emphasis on preserving the relationship and finding a mutually acceptable solution. Depending on the nature of the dispute, the parties may therefore engage in **informal negotiations**, which may last over an extended period, in order to arrive at a point of agreement.

As the resolution mechanisms escalate, businesses may consider obtaining limited external **legal and non-legal advice** to help interpret the clauses and obligations specified in the contract. They may also engage advisers to communicate or negotiate with the other party on their behalf.

Whether resolution is achieved swiftly through direct resolution with limited interaction between the parties, or through longer informal negotiations, these approaches typically involve limited financial costs. Where limited external advice is sought, the expense is unlikely to be as costly as formal contract enforcement proceedings. The case study below, based on the experience of an SME in Singapore, illustrates this escalation playing out in practice. It describes a business that sought legal advice to reach a resolution when informal negotiations failed.

Box 2.3 Escalating resolution mechanisms in Singapore

A small digital services company entered into a contract with a local client to implement an IT solution. Following a delay to the delivery of the service, the client refused to pay the final instalment amounting to 20% of the total contract value.

The digital services provider believed it had a strong case based on the contractual terms and payment schedule. Despite the delay, the company had fulfilled its obligations and delivered the agreed service. Seeking to avoid legal escalation, the company first attempted to resolve the matter informally. After repeated efforts to convince the client to pay failed, it instructed legal counsel to issue formal notices. Two letters were sent, each escalating in tone and setting out potential next steps. It was only after the second letter that the client made the outstanding payment.

The entire process took six to nine months after the due date of the payment. Had the dispute remained unresolved, the company indicated that arbitration would have been its next course of action, as encouraged by government policy and considered an effective means of enforcement.

Source: Interviews conducted with SMEs from around the globe for ICC in July and August 2025.

As resolution mechanisms escalate further, businesses may consider more formal channels to resolution. Formal contract enforcement may be achieved by **alternative dispute resolution (ADR) mechanisms** such as **mediation** and **arbitration,** as well as **courts and tribunals.**

Alternative dispute resolution

Although ADR is an umbrella term covering a number of dispute resolution processes, for this report we reference **mediation** and **arbitration.** While both processes require agreement between the disputing parties, they differ in their underlying approach. Mediation is typically *interest-based*, in that it is in the parties' interest to find a mutually acceptable settlement that allows them to move forward. Arbitration, by contrast, takes a *rights-based* approach, involving a formal determination of legal right—such as the right to terminate a contract or a right to claim damages.

Mediation is designed to facilitate negotiation between parties. It is generally a voluntary and confidential process in which a neutral third party helps disputing businesses reach a mutually acceptable settlement. In some jurisdictions, however, SMEs may be required to engage in mediation, such as in the UK through the Small Claims Mediation Service. The Singapore Convention on Mediation[22] established a uniform framework for the recognition of mediated settlement agreements, thereby making such agreements internationally enforceable. There are currently 58 signatories to the Convention. Mediation typically involves lower costs than arbitration or litigation, as proceedings are shorter and procedural requirements are minimal. The main expenses usually relate to the mediator's fees, and, where applicable, external counsel, administrative or venue costs. Parties may still incur legal expenses if they seek advice during the process, but overall, mediation is typically viewed as a cost-effective formal resolution mechanism.

In contrast**, arbitration** is provided for in a contract and operates in a similar way to formal court proceedings—decisions are made by third-party adjudicators to resolve disputes in a legally binding way that aims to restore the winning party to the position in which it would have been if the breach had not occurred. In the vast majorities of cases, parties arbitrate because the contract itself includes an arbitration agreement. However, the parties may also arbitrate through mutual agreement at

[22] Singapore Convention of Mediation, 'Background to the Convention', last accessed 27 October.

the time of the dispute. The New York Convention provides the international framework for recognising and enforcing foreign arbitral awards, as well as referring disputes from national courts to arbitration. To date, 172 countries are signatories to the Convention, making it one of the most widely adopted instruments in international commercial law. In practice, the largest share of arbitration costs typically arises from party legal fees, followed by the fees of arbitrators and the administrative costs of the arbitration institution.

In recent years, a new mechanism for processing alternative dispute resolution has emerged—**Online Dispute Resolution (ODR)**. ODR refers to the use of digital technology to resolve legal conflicts without requiring parties to meet in person or attend a physical courtroom. It encompasses a range of tools and processes, from structured negotiation platforms and video hearings to AI-powered mediation systems.[23] ODR allows for asynchronous communication (where parties interact at different times), real-time virtual hearings, digital evidence submissions, and automated guidance on legal procedures.

ODR can provide a viable and potentially cheaper route to justice, particularly for SMEs in low-value disputes. For example, in the UK, an ODR service allows parties to input details online, settle disputes digitally through local County Courts, and access mediation services for claims of up to £10,000 (US$13,350). ODR platforms tend to significantly reduce many of the logistical expenses, such as travel, accommodation, or venue hire, associated with in-person ADR. Additionally, with ODR processes often streamlined and structured using online communication tools, the time required for mediators, arbitrators, or legal representatives can be lower. These factors taken together can make ODR especially relevant for sectors characterised by cross-border, low-value, high-volume transactions between internet users—such as e-commerce.

Uptake of ODR initiatives have been observed across the world economy, from Latvia,[24] to India,[25] to Brazil.[26] Despite the progress being

[23] AI-powered mediation systems can encompass a range of tools, including data analysis and insight generation using AI algorithms, or enhanced communication using AI-powered language processing tools that can assist in translating technical language into layman's terms. AI predictive analysis can also assess past mediation outcomes to predict resolutions based on the specifics of the current dispute. For more, see The Barrister Group (2024), 'Mediation and AI: Revolutionising Dispute Resolution in the Digital Age', 22 November, last accessed 27 October.
[24] Organisation for Economic Co-operation and Development (2024), 'Developing Effective Online Dispute Resolution in Latvia'.
[25] Chilka, A. (2024), 'Technology Meets Law: The Rise of Online Dispute Resolution in India', *Indian Journal of Law and Legal Research*, 15 February.
[26] International Bar Association, 'Online Dispute Resolution and means of negotiation', last accessed 27 October.

made and the possibility of offering quicker and more convenient access to justice, challenges remain to the widespread adoption of ODR. The Organisation for Economic Cooperation and Development (OECD) identified some of these challenges, including: (i) the ability to provide equal access to reliable digital infrastructure and technology; (ii) ensuring trust in digital platforms; (iii) the enforceability of online decisions across jurisdictions; (iv) the need to improve digital literacy among SMEs and other relevant stakeholders.[27]

Box 2.2 ADR costs

A historical 2012 European Union survey found that, for disputes between SMEs located in the same country, ADR represents a more cost-effective way to deal with disputes. Total direct expenses (including fees for the procedure, travel expenses, and the costs of lawyers) were equal to €11,500 for court proceedings, €5,500 for arbitration, and €3,000 for mediation. ADR procedures were also significantly faster, with a court proceeding taking on average 17.9 months, compared with 10 months for arbitration and 7.5 months for mediation.

These differences translated into a much higher level of business satisfaction with ADR. Among the surveyed businesses who had used either courts or ADR, only 24% reported being satisfied with the overall costs of the court system and only 21% reported being satisfied with the duration of the proceeding, whereas satisfaction rates for ADR were roughly double—at 50% and 51%, respectively.[28]

This survey has not been updated since, underscoring the evidence gaps in understanding the costs of formal contract enforcement. More recent data from ICC (2024) found that the arbitration proceedings it administered lasted an average of 26 months.[29] While not directly comparable given the scale

[27] Organisation for Economic Co-operation and Development (2024), 'OECD Online Dispute Resolution Framework', September.
[28] European Union (2012), 'Flash Eurobarometer 347, Business-to-Business Alternative Dispute Resolution in the EU Report', November, pp. 24–26 and 44–45.
[29] International Chamber of Commerce (2024), 'ICC Dispute Resolution 2024 Statistics', p. 15. In cases that concluded by way of final award in 2023, including where the proceedings were suspended by party agreement for any length of time, the average duration was 26 months and the median duration was 22 months.

and complexity of ICC cases, this highlights the nuanced and context-specific nature of ADR costs and timelines across jurisdictions and dispute types.

Court litigation

The costs, resources, and time required for litigation can far exceed the value of the original claim in low-value disputes, often making it an impractical and unattractive option for most businesses facing modest claims. Costs typically involve payments to external lawyers and solicitors, court filing fees, hearing fees, and in some jurisdictions fees for interim applications or appeals. Importantly, these costs must be paid regardless of the outcome, meaning that even a successful litigant may find the financial burden disproportionate to the value recovered.

Box 2.5 Court litigation costs

Various studies have sought to quantify the costs incurred when parties pursue resolution of a commercial dispute. The U.S. Chamber of the Institute for Legal Reform examined liability costs—a term used to describe the costs of claims, whether resolved through litigation or other resolution processes, across a sample of developed economies. It found that liability costs, as a share of GDP, ranged from 0.4% to 1.66%.[30] More recently, the World Justice Project estimated the costs of resolving legal problems using survey data across a broader sample of developed and developing economies, finding that these costs ranged from 0.1% to 3.8% of GDP.[31]

Having outlined the range of costs relating to traditional litigation and ADR that businesses may incur when faced with a commercial dispute, it is evident that, particularly for SMEs, these expected costs can accumulate rapidly and exceed the value of the disputed contract itself. In such cases, pursuing resolution ceases to be a financially viable

[30] US Chamber of the Institute for Legal Reform (2013), 'International comparisons of litigation costs', June.
[31] World Justice Project (2023), 'WJP Justice Data Graphical Report', pp. 62–63.

option: even if a business were successful in recovering the claim, the costs of doing so would leave it worse off overall.

The consequence is that many disputes remain unresolved. The effects of this extend beyond the individual businesses involved, with potential knock-on effects on the wider markets and economies in which they operate. The following section explores these broader implications.

3 The consequences of failing to resolve commercial disputes

Unresolved commercial disputes can cause significant harm, not only to the businesses involved but also across supply chains and the wider economy. The framework presented in Figure 3.1 illustrates how failure to resolve commercial disputes affects not just the businesses involved, but also more broadly the markets and economies in which they operate. Section 3.1 examines the primary business impacts, followed by a discussion of the wider impacts on economies in section 3.2.

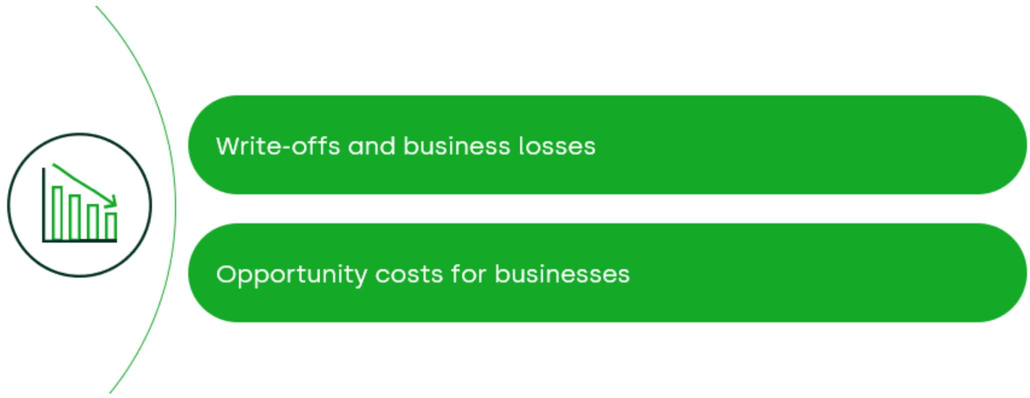
Figure 3.1 Framework for assessing the impact of unresolved commercial disputes on businesses, markets and economies

Note: Opportunity cost, explored further in section 3.1.2, refers to the value-adding activities that a business forgoes when time and resources are diverted to dealing with a commercial dispute. In practice, this often means management attention spent chasing late payments, negotiating informally, or otherwise addressing the dispute rather than pursuing productive business activities.
Source: Oxera.

3.1 Primary business impacts

When a commercial dispute arises, business financial performance is adversely affected. For many businesses, particularly smaller enterprises with limited cash reserves, these disputes directly affect the bottom line. Profitability is reduced, cash flow is disrupted, and valuable management time is diverted away from productive activity. Figure 3.2 below summarises the direct business impacts explored in this section.

Figure 3.2 Summary of primary business impacts



Source: Oxera.

Overall, the financial costs imposed on businesses involved in commercial disputes can be substantial. **Write-offs** and **business losses** from incomplete transactions may leave businesses without critical inputs, forcing them to renegotiate with new suppliers or make costly alternative arrangements. While the **opportunity cost**—time and resource that could have otherwise been spent on value-adding activities across the business—can be vast.

Box 3.1 Developing country SMEs' vulnerability to commercial disputes

SMEs play a particularly large role in developing countries, contributing up to 40% of GDP.[32] Across a sample of 24 developing member countries of the Asian Development Bank, MSMEs accounted for an average of 99% of all enterprises, 64% of the

[32] World Bank, 'Small and Medium Enterprises (SMEs) Finance', last accessed 3 October.

workforce, and 38% of a country's economic output.[33] Yet access to finance remains a critical constraint to MSME growth and is often cited as one of the biggest obstacles to scaling operations. Indeed, limited access to external finance restricts the ability to expand and invest, as well as heighten vulnerability when disputes arise.

Compared with larger businesses, SMEs are less likely to obtain bank loans and instead rely heavily on internal funds or informal sources, such as cash from friends and family, to launch and operate their enterprises.[34] The International Finance Corporation (IFC) estimates that 65 million businesses, or 40% of SMEs in developing countries, have an unmet financing need of US$5.2 trillion every year.[35] This financial fragility has direct implications for dispute resolution: with limited cash reserves and restricted access to credit, SMEs have a reduced capacity to absorb the costs of disputes—whether through write-offs, losses, or pursuing formal resolution. As a result, SMEs in developing economies are in an acutely fragile position when commercial disputes arise.[36]

In addition, access to affordable and effective dispute resolution mechanisms is often limited in developing economies. As a result, disputes are more likely to remain unresolved, amplifying financial and operational pressures on the affected firms as well as the markets in which they operate. Over time, this strain can weaken the broader economic environment, dampening investment, constraining the development of credit markets, and eroding business confidence—as discussed in section 3.2.

This self-reinforcing cycle perpetuates SME vulnerability in developing economies: weak access to finance increases exposure to disputes, while unresolved disputes further erode financial resilience and limit future growth potential.

[33] Asian Development Bank (2024), 'Asia Small and Medium-Sized Enterprise Monitor 2024', November.
[34] World Bank, 'Small and Medium Enterprises (SMEs) Finance', last accessed 3 October.
[35] World Bank, 'Small and Medium Enterprises (SMEs) Finance', last accessed 3 October.
[36] International Labour Organization (2021), 'A framework to support small firms in developing countries navigate crises and build resilience', p. 8.

3.1.1 Write-offs and business losses

The most immediate consequence of a commercial dispute remaining unresolved is the financial loss stemming from the transaction not being fully completed. This may mean that goods are not delivered as agreed, or that payments are withheld or only partially made. In such cases, if the parties fail to reach any form of resolution, the affected business must ultimately record a full or partial write-off of the contract value. A 2017 survey of over 3,000 companies across 11 countries found that 7.5% of invoices are eventually written off as bad debt, equating to US$1 trillion.[37]

While any form of loss is undesirable, many businesses accept write-offs as the least-damaging option available. The alternatives, such as pursuing recovery through formal or semi-formal dispute resolution, may involve costs greater than the disputed sum. Evidence from the World Bank's Business Ready Report highlights this dynamic. In several developing economies, including Cambodia, Papua New Guinea and Timor-Leste, the average cost of pursuing a standardised commercial claim through the courts exceeds the value of the claim itself.[38] In such environments, businesses must choose between absorbing the loss and moving on, or spending more than the claim is worth in an effort to enforce the original contract. Either path erodes profitability and undermines confidence in the business environment.

Beyond these direct financial considerations, many businesses weigh the broader strategic cost of damaging ongoing relationships. For firms that rely on repeat transactions or long-term partnerships, the potential loss of a commercial relationship can represent a greater risk than the immediate financial shortfall. As a result, even when the expected recovery exceeds the cost of resolution, firms—particularly smaller ones—may opt to accept a small write-off in order to preserve trust, safeguard future trading opportunities, and maintain the stability of their supply chains. This illustrates that decisions around write-offs are not purely financial, but also reflect the value that businesses place on relationship continuity and reputation within their markets. This is illustrated in the below case study, based on the experience of an agricultural business in Vietnam.

[37] Plum Consulting (2017), 'The domino effect: the impact of late payments', December.
[38] World Bank, 'Doing Business, Enforcing contracts,' last accessed 24 September. In some countries, such as Cambodia, Papua New Guinea and Timor-Leste, the data gathered by the World Bank suggests that the cost of enforcing a contract is greater than 100% of the claim value. In these examples, a standardised case with a claim value of the greater of either 200% of the economy's income per capita or US$5,000 is used.

Box 3.2 Reluctance to escalate commercial disputes in Vietnam

A small agricultural company in Vietnam described operating within a prevailing culture of dispute avoidance. Seeking legal advice to resolve disputes is viewed as time-consuming and uncertain, with little confidence in successful outcomes. The business explained that the local way of doing business was to avoid any potential for disputes, with people doing business through personal relationships and with people they trust due to the ineffectiveness of the law to protect them.

While Vietnamese law is generally clear and well defined, weak enforcement means that formal contract resolution mechanisms are often considered inappropriate or even offensive in the local business culture.

When faced with a potential commercial dispute, the business explained that the first step is generally informal negotiation, discussing issues directly with the counterpart to reach a mutual resolution. Even when legal advice is sought to interpret contractual clauses, both parties usually prefer to settle through continued dialogue rather than escalate the matter formally. Saving face is considered extremely important in Vietnamese culture. The business explained that escalation often leads back to informal negotiations without getting professionals involved.

This culture of avoiding disputes, coupled with low confidence in escalation mechanisms, led the company to conclude that it would rather absorb the loss and accept a write off rather than initiate lengthy and uncertain resolution processes.

Source: Interviews conducted with SMEs from around the globe for ICC in July and August 2025.

3.1.2 Opportunity costs for businesses

While the tangible financial costs of commercial disputes—such as write-offs, legal fees, and court costs—can directly erode a business's bottom line, disputes also impose less-visible but equally significant burdens. These arise from the time, effort, and attention that owners and managers must divert to handling disputes. Framed as opportunity costs, these involve costs caused by opportunities lost as a result of time and resource spent on pursuing resolution: e.g. new sales, product development, client acquisition, or other value-creating activities that could drive growth.

Opportunity costs manifest across the full spectrum of dispute resolution mechanisms. In informal settings, business owners and managers may spend hours chasing late payments, negotiating with suppliers and other business partners, or attempting to reach compromise agreements. A recent survey by the UK's Department for Business and Trade found that businesses spent, on average, 86 hours chasing late payments, equating to 133 million hours of staff time across the economy each year. The study attempted to put a monetary value on the opportunity cost of late payments for businesses, finding costs of almost £7 billion a year for the economy.[39] Another study, focusing on SMEs across a sample of 11 countries, highlighted the significant variation in time spent chasing late payments—ranging from five days per dispute in Australia to up to 20 days in South Africa.[40] For SMEs, where owners and senior managers can be more directly involved in daily operations, the diversion of time and attention towards managing disputes rather than activities targeted at growing the business can be particularly damaging.

When businesses pursue formal channels, the burden of opportunity costs grows heavier. Preparing documentation for court filings, engaging lawyers, and managing administrative requirements can consume scarce resources and reduce capacity for core business operations. World Bank data shows that litigation claims equivalent to the greater of 200% of income per capita or US$5,000 can take several years from filing to judgment in many countries.[41] ADR, while often faster, is not always swift—arbitration in particular can take many months, if not years, before an award is reached. ICC reported that in 2024, the average length of its arbitration proceedings was 26 months.[42] For a small business, this extended diversion of time and resources

[39] Department for Business & Trade (2025), 'Late Payments Research – Estimating the total economic cost of late payments and their impact on the UK economy', July.
[40] Plum Consulting (2017), 'The domino effect: the impact of late payments', December.
[41] World Bank, 'Doing Business Enforcing Contracts', last accessed 24 September. For example, from the data gathered by the World Bank, the time to enforce contracts in Asia was estimated at 1,102 days. In comparison, in Europe & Central Asia, this figure was 496 days, and 774 days for Latin America & the Caribbean.
[42] International Chamber of Commerce (2024), 'ICC Dispute Resolution 2024 Statistics', p. 15. In cases that concluded by way of final award in 2023, including where the proceedings were suspended by party agreement for any length of time, the average duration was 26 months and the median duration was 22 months.

compounds the financial costs already outlined and can add another layer of strain.

The impact of these opportunity costs extends beyond the individual business. Time and resources diverted to resolving disputes are resources that could otherwise have been reinvested into productive activities. SMEs, in particular, rely on retained earnings to fund expansion, hire additional staff, develop new products, and adopt innovative technologies. If these funds are instead consumed by dispute resolution, potential investment in human and physical capital is delayed or forgone, dampening employment growth, slowing innovation, and reducing overall productivity. At a wider economic level, the cumulative effect can be substantial: widespread unresolved disputes reduce the efficiency of capital allocation, constrain the growth of SMEs, and depress the dynamism of sectors critical for economic development.

Framing opportunity costs in this way highlights that commercial disputes are not just a financial burden—they represent a diversion of scarce managerial and financial resources that could otherwise be harnessed to generate economic value. By improving access to efficient resolution mechanisms, lowering the cost of access to justice, and reducing the incidence of unresolved disputes, economies can begin to unlock these forgone opportunities, support investment, job creation, and long-term productivity growth.

Box 3.3 below presents a case study of a commercial dispute in India, showing how part of a contract value held in escrow and tied-up working capital can create both direct and opportunity costs for businesses.

Box 3.3 Costs to businesses involved in commercial disputes: case study from India

A small Indian manufacturer of building materials contracted with an international supplier recommended by a third-party liaison. Under the terms of the agreement, the supplier provided critical components worth approximately US$60,000–US$80,000.

Upon delivery, the manufacturer found the components to be defective. Due to language barriers and the cross-border nature of the transaction, initial communication with the supplier was conducted through the liaison who shared evidence of the product defects. This required substantial back-and-forth with the liaison to fully brief them on the matter. After finally responding to the manufacturer, the supplier did not accept the claim of defective delivery and refused to engage directly with the manufacturer. Despite continued communication through the liaison, there was little success.

As a result, the manufacturer proposed to send back the defective goods at their own expense, with the supplier placing 50% of the contract value in escrow. Once the supplier had the opportunity to inspect the goods, the pending amount was released and a replacement shipment was made.

Although a resolution was ultimately reached, it came at a significant cost to the Indian business. It had to pay for return shipping, and the process took three to four months to conclude. This delay tied up working capital, caused missed orders, and created operational strain, demonstrating how disputes impose meaningful financial and opportunity costs on small businesses.

Source: Interviews conducted with SMEs from around the globe for ICC in July and August 2025.

3.2 Secondary impacts

Perhaps even more important than the primary business impacts of unresolved commercial disputes are the secondary impacts, which extend beyond the immediate parties involved. While direct costs fall on the businesses engaged in a dispute, secondary impacts are felt across the wider market and economy. They arise when the existence of disputes, coupled with weak or costly contract enforcement, shapes the behaviour of other businesses—including those not directly involved in any given case. In an environment where businesses cannot access efficient judicial systems or rely on contract enforcement, the risk and uncertainty around doing business increase. In this way, secondary costs transform individual disputes from business-level challenges into systematic frictions that distort markets and weaken overall economic performance.

In this section, we characterise some of the broad categories of secondary impacts that can have a detrimental effect on an economy. These are summarised in Figure 3.3 below.

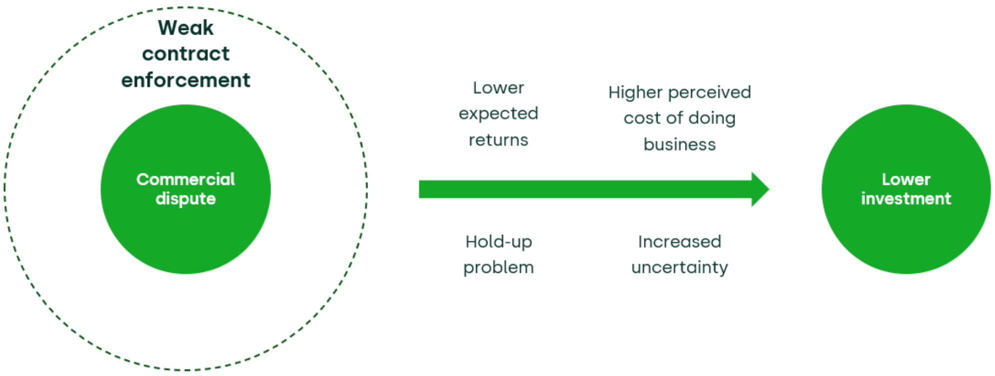
Figure 3.3 Summary of secondary impacts on markets and economies

Source: Oxera.

3.2.1 Investment

The prevalence of commercial disputes, coupled with a wider environment of weak contract adherence, can act as a significant deterrent to business investment. The possibility of a commercial dispute that is likely to go unresolved represents a risk to business activity and a potential cost that may be incurred by the business. Figure 3.4 illustrates how investment is affected through the existence of commercial disputes and a wider environment of weak contract adherence.

Figure 3.4 Impact of an environment of unresolved commercial disputes on investment



Note: The hold-up problem occurs when a party in a relationship makes an investment that is specific to that relationship, but the other party can exploit their stronger bargaining position later to 'hold up' the investor for a larger share of the surplus from that investment.

Source: Oxera.

Where contract enforcement cannot be fully relied upon, the **uncertainty surrounding future transactions increases**, raising the perceived cost of doing business. The increased uncertainty around whether business deals will be respected are likely to decrease the amount of resources investors are willing to commit. This uncertainty undermines confidence in long-term commitments—e.g. investors may hesitate to finance expansion of new infrastructure, or suppliers may be reluctant to extend trade credit to acquire new machinery. Overall, this can weaken the incentive to invest, resulting in lower levels of capital formation, slower productivity growth, and weaker economic development compared with economies with robust systems of contract enforcement.[43]

The consequences extend beyond physical capital. Human capital formation can also be constrained, translating into impacts on the labour market. Businesses uncertain about the reliability of future revenues may be reluctant to hire additional workers. This can suppress job creation, limit skills development, and reduce opportunities for upward mobility. In the longer term, weaker employment prospects and underinvestment in human capital can create a self-reinforcing cycle, where both productivity and incomes lag behind economies with stronger contract adherence and a stronger environment for investment.

This impact on investment is particularly pronounced in sectors with transactions that rely on relationship-specific investments.[44] These industries depend on credible commitment to mitigate the 'hold-up'[45] problem, where suppliers incur costs that are only valuable within a specific buyer–seller relationship. In the absence of strong contract adherence, suppliers may be reluctant to undertake these critical investments. This is especially true in industries producing complex or customised products, where the upfront costs, technical expertise, and

[43] Mora-Sanguinetti, J. and Garcia-Posada, M. (2015), 'Does (average) size matter? Court enforcement, business demography and firm growth'. Koutroumpis, P. and Ravasan, F. (2020), 'Do court delays distort capital formation?'.

[44] A relationship-specific investment is an investment made by a business that holds significantly more value within a particular trading relationship than outside of it. In other words, it is an asset, such as customised machinery, specialised training, or tailored product design, that cannot be easily redeployed to alternative partners without losing much of its value.

[45] The term 'hold up problem' was first developed by British-American economist Oliver Hart in 1995. It refers to situations where it is difficult to write complete contracts. When one party has made a prior commitment to a relationship with another party, the latter can 'hold up' the former for the value of that commitment. It is argued that the possibility of hold-up can lead to underinvestment in relationship-specific investments and hence to inefficiency.

time required are substantial, and the risk of opportunistic behaviour by buyers is high. As a result, businesses may avoid or restrict investments in developing new production lines, specialised inputs, or customised solutions, limiting their ability to innovate or meet unique market demands. Over time, this reduced investment constrains not only the growth of individual businesses but also the advancement of entire sectors that depend on complex, high-investment processes—slowing productivity improvements, technological progress, and overall competitiveness.

Empirical studies have shown this problem to be significant. For example, one study exploited regional variation in trial duration in Italy to show that longer disputes lead to businesses being less likely to export customised inputs, and that this result was driven by businesses in industries where relationship-specific investments are most important.[46] This decreased likelihood of exporting customised inputs reduces the ability of businesses to participate in global value chains, which is a key driver of economic growth. Another study similarly found that countries with better contract enforcement tend to specialise in the production of complex goods, which more intensely require relationship-specific investments, and argues that 'contract enforcement explains more of the pattern of trade than physical capital and skilled labour combined'.[47] Since the sectors which most heavily rely on relationship-specific investments tend to be technologically advanced sectors which produce complex goods, ineffective contract enforcement not only reduces investment, but also creates barriers to innovation.

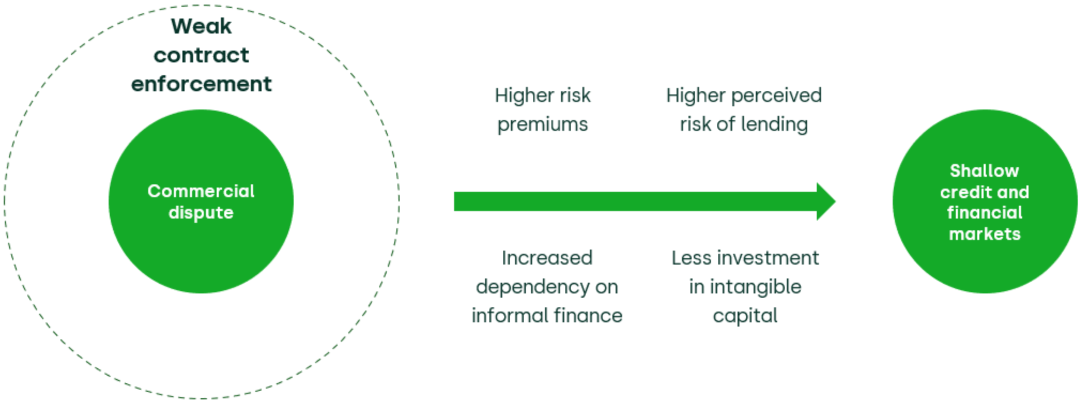
3.2.2 Credit and financial markets

Weak contract adherence and the prevalence of commercial disputes also have significant consequences for financial and credit markets. Lenders rely on the ability to enforce agreements in order to protect their claims, and when that enforcement is uncertain, **the perceived risk of lending will rise**. Traditional credit markets respond to this uncertainty by charging higher risk premiums on loans, raising interest rates, or demanding greater collateral to guard against default. While these practices increase the security for lenders, they simultaneously make borrowing more expensive and less accessible for businesses. Smaller enterprises are particularly disadvantaged, as they often lack substantial collateral and operate with narrower profit margins, leaving

[46] Accetturo, A., Linarello, A. and Petrella, A. (2017), 'Legal enforcement and global value chains: Micro evidence from Italian manufacturing firms'.
[47] Nunn, N. (2007), 'Relationship-specificity, incomplete contracts, and the pattern of trade'.

them more exposed to the costs of weak adherence. Figure 3.5 illustrates how the development of credit and financial markets are affected through the existence of unresolved commercial disputes and a wider environment of weak contract adherence.

Figure 3.5 Impact of an environment of unresolved commercial disputes on credit and financial markets



Source: Oxera.

In some cases, uncertainty surrounding contract enforcement does not simply increase the cost of borrowing but restricts access to credit altogether. Lenders may ration credit by withdrawing from certain sectors or refusing to extend loans to smaller business perceived as higher risk. This can prevent even otherwise profitable businesses with sound business prospects from obtaining financing, constraining expansion, reducing working capital, and discouraging investment in innovation. The overall result is that businesses become more dependent on internal cash flows or informal finance, both of which tend to be less reliable and more volatile.

The broader development of financial markets is also impeded when contracts cannot be enforced reliably. Sophisticated financial instruments—such as bonds, venture capital, or supply-chain financing—depend on the predictability of contractual adherence for repayment and investor protection. Weak enforcement environments hinder the emergence of these markets, leaving economies reliant on simpler, relationship-based lending arrangements. Suppliers often limit the extension of trade credit in such contexts, wary that unpaid invoices may not be recoverable. As a result, supply chains may operate on a more cash-intensive basis, raising liquidity pressures and reducing flexibility for businesses. Businesses may respond by investing less in intangible capital, such as intellectual property, and more in physical capital, which can be more easily used as collateral and thus improve access to finance. This is highly likely to shape the types of sectors that emerge in these economies.

Credit misallocation becomes more pronounced as lenders channel capital disproportionately towards low-risk but less-productive activities, holding back productivity growth and capital accumulation across the economy.

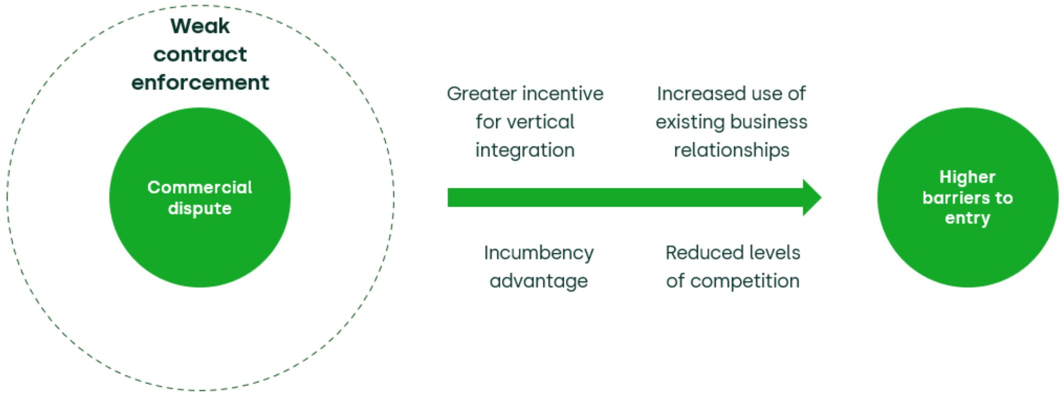
Various studies have sought to examine the links between weak contract enforcement, access to credit, and wider macroeconomic outcomes. One study, which examined firm-level data from a sample of European countries, found that the probability of obtaining credit was up to 40% higher in countries with more robust legal systems.[48] Another study, exploring the implications of credit market imperfections, found that situations of limited enforcement of financial contracts cause an inefficient allocation of resources, as small businesses with limited collateral find it difficult to access credit. It further argues that this friction increases macroeconomic volatility.[49]

3.2.3 Market structure and barriers to entry

The prevalence of commercial disputes that remain unresolved can have implications for how markets function. A central consequence is the creation of higher barriers to entry. In environments where businesses cannot rely on formal mechanisms to enforce agreements, established businesses often prefer to deal with trusted and well-known partners only. This reliance on reputation and repeated relationships limits the opportunities available to new or smaller business that lack established networks. Without access to formal enforcement as a safeguard, transacting with unfamiliar partners is perceived as too risky, and many potential market opportunities are forgone. As a result, the costs of entry rise, particularly in sectors that involve complex contracts, multi-stage production processes, or deferred payments.

[48] Moro, A., Maresch, D. and Ferrando, A. (2016), 'Creditor protection, judicial enforcement and credit access', July.
[49] Matsuyama, K. (2007), 'Aggregate implications of credit market imperfections', June.

Figure 3.6 Impact of an environment of unresolved commercial disputes on market structure and barriers to entry



Source: Oxera.

These barriers to entry directly impact competition. When new businesses are discouraged from entering, incumbents face less pressure to innovate, reduce costs, or improve the quality of their goods and services. Over time, markets can become more concentrated as a result, with entrenched businesses benefiting disproportionately from their ability to navigate disputes and withstand the risks of weak adherence. This lack of competitive pressure can allow inefficiencies to persist, with consumers potentially facing higher prices and fewer product improvements than in markets where adherence is strong and competition exists.

In such environments, informal substitutes for enforcement—such as trust, reputation, or relational contracting—often fill the gap left by weak courts. While these mechanisms can sustain some transactions, they inevitably restrict the pool of trading partners to those with whom a business already has close ties. For new entrants without established reputations, this creates a significant disadvantage, making it harder to build business relationships and gain market share. The reliance on informal enforcement therefore perpetuates an insider–outsider dynamic, where incumbents benefit while entrants struggle to establish themselves.

A further implication is the added incentive for businesses to have greater control of the full supply chain, from production and product inception to final delivery to the customer. By reducing the number of external parties with which businesses must engage, this reduces the potential number of disputes that may arise. To achieve this, businesses may look to acquire other businesses at different stages in the supply chain—known as vertical integration. This can result in well-established businesses further entrenching their positions in markets. While this can support incumbents in reducing costs, and improving supply chain coordination, it can further raise barriers for businesses at different stages of the supply chain to enter the market.

With the playing field tilted in favour of well-capitalised incumbents, this dynamic can further entrench market concentration and raises the risk of reduced dynamism. Over the long term, these dynamics can harm innovation and productivity growth, with fewer incentives for well-positioned incumbents to invest and drive product quality. Where contract adherence is weak, this competitive churn is muted, leading to slower technological progress and weaker economic development. Furthermore, the absence of a dynamic, competitive domestic market can undermine international competitiveness. Businesses operating in such economies may struggle to integrate into global value chains, limiting opportunities for growth and reinforcing the structural disadvantages of weak adherence.[50]

Box 3.4 Weak contract adherence may reduce visible disputes while increasing hidden economic costs

As described in this section, an environment of weak contract adherence may perpetuate an insider–outside dynamic where existing businesses operate and transact only with other trusted businesses, making it hard for new businesses to enter the market.

A consequence may be that businesses actively avoid transacting with other businesses that they perceive to be risky, because of the perception that it may result in a commercial dispute. In this environment, there may actually be fewer commercial disputes than would otherwise be expected. If a business only transacts with long-term business partners it

[50] The dynamic relationship between competition and long-term economic growth has been widely debated in the literature. At a theoretical level, arguments point in different directions. On one side, higher market concentration allows incumbents to earn larger profits, which can in turn fund greater investment in research and development (R&D), driving innovation and product quality. On the other, stronger competition pressures firms to manage costs, improve efficiency, and boost productivity. The balance often depends on the stage of economic development. For example, 'nascent industries' that lack economies of scale may initially benefit from protection, which fosters higher concentration. See Philippon, T. (2019), 'The Economics and Politics of Market Concentration', National Bureau of Economic Research, 12 January.

knows it can trust it is unlikely that many disputes will emerge to the level of needing expensive formal resolution procedures. The same is true if a business decides, due to a lack of confidence in the court system, not to engage in activities which require relationship-specific investments.

As a result, caution should be taken when simply looking at the number of direct costs in resolving a dispute in a given country, as this may be a bad proxy for the overall indirect costs of inefficient contract enforcement, which may be far higher.[51]

[51] See, for example, Williamson, O. (2010), 'Transaction costs economics: The natural progression', *The American Economic Review*, **100**:3, pp. 673–90. Williamson argues that when transactions involve relationship-specific investments and occur in environments with high transaction costs, they are more likely to occur in long-term contracts. See also Johnson, S., McMillan, M. and Woodruff, C. (2007), 'Courts and relational contracts', *Journal of Law, Economics and Organization*, **18**:1, pp. 221–77, who find that well-functioning courts encourage businesses to try out new suppliers. When contract enforcement is weak, businesses are inclined to stick with existing long-term trading partners.

4 Conclusion

The inability to effectively enforce contracts and the resulting prevalence of unresolved low-value commercial disputes have consequences for the businesses involved (primary impacts) as well as for the wider markets and economies in which they operate (secondary impacts). This report has traced both the primary channels through which disputes affect SMEs, and the secondary mechanisms through which they shape broader economic outcomes.

For SMEs across both developed and developing economies—the costs of pursuing resolution remain prohibitively high. At every point on the spectrum of dispute resolution, costs can be substantial. Full-scale litigation is often out of reach due to legal, court and administrative fees. ADR can provide faster and sometimes cheaper options, yet coverage is uneven and ADR alone cannot secure effective adherence. The rise of ODR provides a promising avenue to make low-value resolution more affordable and accessible for SMEs in a digital world, but ODR platforms remain novel for now.

The result is a difficult trade-off: accept significant losses or pursue recovery at a cost that risks outweighing the return. On top of this, businesses spend valuable time chasing payments, negotiating informally, and relying on relational contracting. For smaller businesses with limited reserves, these opportunity costs bite hardest. As a result, many businesses conclude that pursuing resolution would leave them worse off, and therefore leave the dispute unresolved.

The effects extend well beyond the business. Weak contract adherence raises the perceived cost of doing business, deterring investment in physical and human capital. Creditors demand higher risk premiums, constraining financial market development and leaving many businesses dependent on informal finance. Market structures shift towards concentration, as businesses prefer to transact with trusted partners only, creating insider–outsider dynamics that can stifle competition and raise barriers to entry.

The evidence underscores a vital conclusion: accessible, timely, and affordable dispute resolution is essential for businesses of all sizes—particularly SMEs. Affordable dispute resolution mechanisms protect individual businesses and underpin healthy market development, competitive economies, and sustainable growth.

oxera

Contact

Robert Catherall
Principal
+44 (0) 20 7776 6647
oxera.com