One of the main challenges in commercial litigation in transition countries arises after the court proceedings have concluded, and a party seeks to enforce the court’s decision. Enforcement processes are slow, and success is uneven. This article discusses the findings of the recent EBRD Enforcement Agents Assessment, which examined the functioning of enforcement agencies in the Commonwealth of Independent States, Georgia and Mongolia. It identifies legal and institutional problems, as well as recent improvements in the enforcement systems, in the region.
A healthy investment climate requires that businesses trust the courts to protect their legal interests. But just as important is their confidence in being able to enforce court decisions and recover judgment debt. A lack of effective enforcement mechanisms has a corrosive effect on the investment climate and the rule of law, deterring local and foreign investment. In the countries where the EBRD invests, poor enforcement of court decisions is a substantial problem.

The EBRD’s Judicial Decisions Assessment 2011-2012 found poor implementation of decisions to be the most problematic of seven areas studied, outranking even corruption. The Business Environment and Enterprise Performance Surveys (BEEPS), conducted by the EBRD and the World Bank, has shown that most business respondents in the region believe court decisions are implemented only “seldom” or “sometimes”, while a substantial minority believed they are “never” enforced.

The EBRD has also heard directly from governments about the problems they face in implementing court decisions, and the Bank’s dialogue with the business community in the EBRD region has echoed these concerns.

In response, the EBRD, through its Legal Transition Programme, is devoting greater attention to the role of enforcement agents. In 2013, as part of these efforts, the Bank initiated its first study of the law and practice surrounding the role of enforcement agents in the EBRD region. Analytical assessments have been a pillar of the LTP’s legal reform work in its various sectors, providing a firm evidentiary foundation for its policy dialogue on legal reform with governments in the region. This article sets out the key results of the EBRD Enforcement Agents Assessment 2013 (the Assessment).
Chart 1. Regulation and function of enforcement agents in the CIS, Georgia and Mongolia
A lack of effective enforcement mechanisms has a corrosive effect on the investment climate and the rule of law.

The EBRD Enforcement Agents Assessment 2013

The Assessment studied the regulation and functioning of enforcement agents in 13 countries, comprising the Commonwealth of Independent States, Georgia and Mongolia. The objectives of the Assessment were to provide investors (including the Bank) with an insight into how enforcement agents work in practice, and to provide data which can be used to encourage and assist reform in the area. A comparative perspective was considered to be a useful method of highlighting common difficulties and thematic issues, as well as policy responses. The study was based primarily on information derived from a survey sent to government agencies responsible for the enforcement of court decisions, as well as law firms, in each country. Information was also obtained through a desktop review of legislation and publicly available information on enforcement of court decisions, and discussions with government officials, lawyers and businesses in the region. The survey contained 64 questions, directed at seven dimensions of the functioning of enforcement agents (see Box 1). The survey questions focused on the enforcement of court decisions dealing with business disputes.

The role of enforcement agents is not the subject of extensive regulation at international law, or of standard-setting amongst international organisations. At the European level, standards exist in the form of the Council of Europe’s Recommendation (2003) 17 of the Committee of Ministers on the question of enforcement, adopted on 9 September 2003. More recently, the European Commission on the Efficiency of Justice (CEPEJ) has developed guidance to assist members in improving their enforcement systems. These were taken into account in developing the seven dimensions studied in the Assessment and the various considerations pertaining to each of them.

A tentative scoring system was used, based on the considerations in Box 1. Assigning values to the strength of the various dimensions was considered useful in order to underscore important reform challenges and highlight broad differences and similarities between countries. Scores are not presented as a categorical grading of the efficiency of each country’s enforcement system, although we believe they provide a good indication of the overall position.

Results of the review

The results of the Assessment in each of the 13 countries examined are set out in Chart 1. The most positive picture emerges in Georgia, which has a well-developed state enforcement service running alongside a private system, both of which enjoy a high level of public trust. Moldova’s exclusively private system also

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Chart 1. Regulation and function of enforcement agents in the CIS, Georgia and Mongolia (continued)

Source: EBRD Enforcement Agents Assessment 2013.
Note: The country diagrams depict the score given to the dimensions reviewed. The extremity of each axis represents an optimum score of 100 per cent, reflecting strong standards and high efficiency in relation to the relevant dimension. The larger the web, the better the position. The final diagram depicts the regional average for all dimensions. See Box 1 for an explanation of each dimension.
The EBRD, through its Legal Transition Programme, is devoting greater attention to the role of enforcement agents. Presented well, generating competition between agents for new cases, which appears to drive better performance. State enforcement systems in Armenia and Russia showed good results, particularly in the use of innovations in access to information. Kazakhstan – which, like Georgia, has a hybrid public-private system – performed strongly in the private stream, but not as well in the public system. The most challenging situation overall is found in Turkmenistan (lack of transparency) and Tajikistan (limited resources, lack of training). The results are broadly consistent with the EBRD Judicial Decisions Assessment 2011-2012, where the implementation of judicial decisions was found to be easiest in Georgia – with Russia and Armenia also performing well – and most difficult in Tajikistan. The Assessment revealed different levels of efficiency and capacity in the countries reviewed, which partly reflect their respective levels of economic and legal development. A number of underlying themes emerge from a review of the individual dimensions and their interrelationships. These are discussed below.

**Box 1. Dimensions studied in the EBRD Enforcement Agents Assessment 2013**

**Resources and framework**
Do enforcement agents have adequate resources? Are the qualified and trained? What is a bailiff’s salary as a percentage of the average wage? Is there a clear procedure? [Not scored]

**Searching for assets**
Do enforcement agents have good access to property registries and information on bank accounts? Are debtors and third parties required to cooperate? How often do agents succeed in finding assets (rarely, sometimes, often, usually)?

**Seizure of assets**
How are assets selected for seizure? What protections are provided to debtors? Must notice of seizure be given to debtors? Can there be reasonable use of force? How often do agents succeed in seizing assets (rarely, sometimes, often, usually)?

**Sale of assets**
Are auctions used to good effect? Is property fairly valued? Are sales well advertised? How often is good value obtained (rarely, sometimes, often, usually)?

**Speed of enforcement**
What is the typical speed of enforcement? Are rights of appeal clearly delineated? Are there penalties on debtors for obstruction or non-compliance? What is the average time taken to complete enforcement?

**Cost and fees**
Are costs borne by the debtor? Are they reasonable? Does interest continue to accrue on judgment debt until payment is made? Can debtors appeal unreasonably incurred costs?

**Supervision and integrity issues**
Is there a supervisory body? Are there professional standards of conduct and complaint mechanisms? Does the government monitor and report on enforcement processes? Is there public access to information about enforcement results and other statistics?

Source: EBRD Enforcement Agents Assessment 2013.

The resources available to enforcement agents vary substantially between countries. Several metrics were used as proxies to gauge resources available. One was the number of people per enforcement agent in the country (see Chart 2). In Russia, there is one enforcement agent for every 1810 residents; in the Kyrgyz Republic, the figure is one agent for every 28,608 residents. Another dataset was the number of cases per enforcement agent, expressed as a weekly figure (Chart 2). A comparison of these data indicates that a higher number of enforcement agents will not always correlate with lower caseloads. For example, in Georgia there are 29,000 people per enforcement agent, yet the number of cases per agent per week (11) is lower than in some countries with proportionately many more agents. This discrepancy is an indication of how efficiently resources are used, and perhaps of a greater culture of compliance in Georgia, fostered by an efficient enforcement system posing a credible “threat” deterring non-compliance.

Another metric employed to gauge resources was to compare the typical salary of an enforcement officer with the average annual wage (see Chart 3). In Georgia the average salary

...
Focus section: Enforcing court decisions: evolving law and practice

The most positive picture emerges in Georgia, which has a well-developed state enforcement service running alongside a private system. However, the salary of state agents is twice the average salary in the country, while in Russia state agent salaries are slightly less than half of the average wage. This affects the attractiveness of working in the profession and the profile of applicants seeking to become enforcement agents. In Ukraine, where agent salaries are approximately 80 per cent of the average wage, there are over 1000 vacancies for positions in the enforcement service, which represents nearly 14 per cent of the total target number of agents. Paradoxically, in Azerbaijan, where agent salaries are well above the average wage, nearly 20 per cent of bailiff positions are vacant, apparently reflecting the low status of the profession in the country.

Procedure

While procedural structures vary between countries, most include the following key steps:

- The enforcement process is initiated by the judgment creditor.
- A court issues a writ of execution.
- The enforcement matter is allocated to an enforcement agent.

Chart 2. Population (000s) per enforcement agent (EA); number of cases per agent per week

### Chart 2.

<table>
<thead>
<tr>
<th>Country</th>
<th>Population (000s)</th>
<th>Number of cases per agent per week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belarus</td>
<td>20</td>
<td>30</td>
</tr>
<tr>
<td>Kyrgyz Rep.</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Georgia</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Moldova</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Mongolia</td>
<td>2.5</td>
<td>2.5</td>
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<tr>
<td>Kazakhstan</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Armenia</td>
<td>0.5</td>
<td>0.5</td>
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<tr>
<td>Ukraine</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Russia</td>
<td>0.05</td>
<td>0.05</td>
</tr>
</tbody>
</table>

Source: EBRD Enforcement Agents Assessment 2013.

Note: Data were not available for Tajikistan or Turkmenistan. For Georgia, Kazakhstan and Moldova figures refer to all agents, both state and private. For Belarus figures for cases per week (second column) refer only to agents enforcing commercial decisions.

Chart 3. Enforcement agents’ salary as a percentage of average wages

### Chart 3.

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>150</td>
</tr>
<tr>
<td>Belarus</td>
<td>120</td>
</tr>
<tr>
<td>Armenia</td>
<td>100</td>
</tr>
<tr>
<td>Moldova</td>
<td>125</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>100</td>
</tr>
<tr>
<td>Mongolia</td>
<td>90</td>
</tr>
<tr>
<td>Ukraine</td>
<td>80</td>
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<tr>
<td>Kazakhstan</td>
<td>60</td>
</tr>
<tr>
<td>Kyrgyz Rep.</td>
<td>50</td>
</tr>
<tr>
<td>Russia</td>
<td>35</td>
</tr>
</tbody>
</table>

Source: EBRD Enforcement Agents Assessment 2013.

Note: Data were not available for Turkmenistan. The chart does not reflect any additional pay to enforcement agents through various bonus schemes out of the enforcement fee. For Georgia and Kazakhstan figures reflect only state agents.
The EBRD Assessment revealed different levels of efficiency and capacity in the countries reviewed, which partly reflect their respective levels of economic and legal development.

Box 2. Public and private enforcement systems

Public enforcement only
Armenia
Russia
Azerbaijan
Tajikistan
Belarus
Turkmenistan
Mongolia
Ukraine
Kyrgyz Republic
Uzbekistan

Private enforcement only
Moldova

Public and private
Georgia (private 20%)
Kazakhstan (private 5%)

Source: EBRD Enforcement Agents Assessment 2013.

agent by the responsible body (in private systems the creditor can choose the agent).

Notice is given to the debtor to comply with the writ of execution.

If the debtor does not comply a search is conducted for assets to seize or attach.

Seized property is sold either at auction or directly.

An amount is retained to cover enforcement costs.

Sale proceeds are paid to the creditor in satisfaction of the judgment debt, with any remainder remitted to the debtor.

Across the countries reviewed, the overall procedural frameworks – and indeed the Russian language version of the relevant laws which exists in most of the former Soviet Republics – are very similar, reflecting the region’s recent history. High-level differences in the enforcement processes are discussed further below, in relation to search, seizure and sale.

Public and private systems
The main structural difference in the enforcement frameworks across the target region is the distinction between those countries (the majority) which have only government enforcement agents, and the three countries which recognise private enforcement agents (see Box 2). In Georgia – which introduced private bailiffs in 2009 – it is estimated that private enforcement agents now account for approximately 20 per cent of enforcement work in the country. Private enforcement agents are precluded from working on matters where the state is a party, and where the relevant sum sought to be realised is more than lari 500,000 (£220,000). Kazakhstan introduced private bailiffs in 2011, which currently handle only five per cent of enforcement cases. The government’s target is for the private sector to ultimately account for half of all enforcement actions. Moldova’s exclusively private enforcement system commenced operation in 2010. In some countries the private sector plays an indirect role in the enforcement of judgments. For example, in Russia judgment debt can be sold in a manner akin to factoring; it is sold at a discount to private firms which are then responsible for collecting the debt. In Uzbekistan it was reported that private firms often assist state bailiffs in the performance of their duties. However, private bailiffs are not recognised as such under the laws of these particular countries.

One of the major conclusions of the Assessment project was that the three private enforcement systems in the region are functioning well. The two highest-ranked countries in the review are Georgia and Moldova. Kazakhstan ranks less highly overall, however lawyers attest that Kazakhstan’s small but growing private enforcement sector generally performs to a high standard. Competition and greater incentives appear to be driving better performance in this country, underpinned by enhanced training and organisation.

Training and specialisation
Generally, the level of formal professional training of enforcement agents in the region is low. In most countries some level of initial training is provided to enforcement agents on commencement of employment, although the extent of the training varies markedly. In Moldova agents are required to undergo a one-year apprenticeship at an enforcement agent’s office. By contrast, in Mongolia new agents undertake an apprenticeship of only two weeks. Ongoing training for enforcement agents is relatively
One of the major conclusions of the EBRD assessment project was that the three private enforcement systems in the region are functioning well. Rare, and occurs systematically only in Armenia, Georgia, Kazakhstan (private) and Moldova.

In relation to specialisation, most enforcement agencies have separate sections dealing with enforcement of civil and criminal judgments, with the latter including matters involving custodial sentences. However, enforcement agencies tend not to promote specialisation through formal internal structures. There are some exceptions, such as Mongolia, where the agency has a debt liquidation department comprising 24 bailiffs who deal with the enforcement of judgments involving banks and non-bank financial institutions. In the Kyrgyz Republic a commercial unit of the bailiff service is attached to the Interregional Bishkek Court. Generally, however, specialisation is informal, and is facilitated (if at all) through the system of allocating agents to new matters. For example, in Georgia’s state system, cases are allocated first on a territorial basis, then at the discretion of the head of the local office, who takes into account the skill sets of available agents. In the private systems creditors are able to choose the agent they wish to use, creating an impetus for specialisation in particular types of enforcement matter.

Searching for assets

The Assessment found that searching for assets poses the greatest difficulty for enforcement agents in the region. Lawyers in half of the assessed jurisdictions indicated that enforcement agents succeed in finding sufficient assets for seizure and sale only “rarely” or “sometimes” (see Table 1). There are two principal reasons for the difficulties in searching for assets. One is that debtors fail to cooperate in the enforcement process, or indeed actively hinder it by hiding assets. The other is limitations on agents’ access to relevant databases of registered property and bank accounts.

In most assessed countries there is a formal legal obligation on the debtor to cooperate with enforcement officers and to provide information. For example, in Georgia, the debtor must provide an enforcement agent with a list of his or her property, including receivables, property held by third parties and claims against third parties, within five days of the writ of execution being issued. Similar obligations apply to debtors in Armenia, Kazakhstan, Moldova, Russia and Ukraine. Violation is a criminal or administrative offence, carrying penalties including fines or even imprisonment.

Legal obligations on debtors to cooperate with bailiffs extend to legal entities, such that directors and employees of a debtor firm would be required to comply. However, in practice it appears that debtors often do not cooperate, or actively seek to frustrate the enforcement process, by moving or hiding property, or siphoning money from bank accounts.

A problem identified in Belarus, Georgia, Russia and Turkmenistan was the ability of debtors to open parallel accounts in different names into which they transfer funds. In Russia courts were said to be reluctant to grant freeze orders on bank accounts until a judgment had entered into legal force, which occurs several weeks after it is handed down. In the procedural laws of the countries studied this “grace period” is designed to afford parties a window of time in which to appeal the decision, before they are bound to comply with it. However, debtors can abuse this by using

<table>
<thead>
<tr>
<th>Country</th>
<th>How often do agents succeed in finding assets?</th>
<th>Country</th>
<th>How often do agents succeed in finding assets?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>Often</td>
<td>Mongolia</td>
<td>Sometimes</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>Rarely</td>
<td>Russia</td>
<td>Sometimes</td>
</tr>
<tr>
<td>Belarus</td>
<td>Often</td>
<td>Tajikistan</td>
<td>Rarely</td>
</tr>
<tr>
<td>Georgia</td>
<td>Usually</td>
<td>Turkmenistan</td>
<td>Often</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>Sometimes</td>
<td>Ukraine</td>
<td>Sometimes</td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
<td>Often</td>
<td>Uzbekistan</td>
<td>Often</td>
</tr>
<tr>
<td>Moldova</td>
<td>Usually</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: EBRD Enforcement Agents Assessment 2013.
Searching for assets poses the greatest difficulty for enforcement agents in the region.

A related problem is tunnelling, whereby assets are sold or transferred to a third party after legal proceedings are initiated but before enforcement proceedings commence. The law in this area does not always provide for “claw-back” of assets, as it does in insolvency law. Consequently, claimants must seek to obtain freeze orders from courts at the commencement of litigation to secure their potential judgment moneys. However, as was noted in the EBRD Judicial Decisions Assessment 2011-2012, such orders are not always possible or readily granted; judges are reluctant to deprive a person of the use of their funds or property before the merits of a case are determined. This may be due to the relatively high standard of proof required for convictions. In some cases, as reported in Ukraine, the amount of the fines is so insignificant that it is not an effective deterrent.

Access to property registries and bank accounts

The search for assets usually entails enquiries of banks, and of state registries of land, securities, movable property (usually vehicles) and state collateral registries, as well as other databases (see Table 2). Access to registries – either directly or through requests – is available in all countries, but with varying degrees of efficiency. Some countries’ enforcement systems do not link well with regulation governing registries, leaving enforcement agents in little better position than the general public in seeking information. Thus, in Mongolia, enforcement agents have no special rights to access information from the General Authority for State Registration, the Land Registration Office or the Mineral Resources Authority. In order to obtain access, agents must file a formal written application, in the same manner as any other private citizen, which delays the enforcement process. Similar problems were identified in the Kyrgyz Republic. Other countries confer enhanced access rights on enforcement agents, but many still impose a system of official paper-based requests, which can create delays (for example, Azerbaijan, Belarus, Kyrgyz Republic and Tajikistan).

Enforcement agents’ access to information about bank accounts is often frustrated by banking and privacy laws. In the Kyrgyz Republic a court must specifically order a bank to disclose information about a debtor’s accounts; otherwise banking confidentiality laws apply. Obtaining such an order entails separate court proceedings, resulting in delays. In Azerbaijan agents are said to spend a lot of time going from bank to bank inquiring about accounts of debtors. The position is much better in Russia, where enforcement agents can obtain access to information about private bank accounts through a system of enquiry set up with the tax authorities, as a matter of policy. While enforcement agents should not be able to trawl through the particulars of debtors’ accounts, they should be able to identify if a debtor has an account and whether sufficient funds exist in the account to cover the debt.

Electronic request systems greatly facilitate efficient access to both property registries and bank accounts. In Armenia an automated electronic tool has recently been created, through which enforcement officers can send requests for information to all state property registries.

Table 2. Registers and databases most commonly accessed by enforcement agents in searching for assets

| Register of immovable property | Visa and passport office |
| Register of legal entities/enterprises | Register of pledges of movable property |
| Tax service | Central depositary/registers of shareholders |
| Register of citizens | Commercial banks’ databases |
| Road police | Notaries’ databases |
| Customs authority | Mining register (common only in Mongolia) |
| National/social insurance service | |

Source: EBRD Enforcement Agents Assessment 2013.
Incentive payments are seen as a stimulus to the enforcement process, potentially reducing the high turnover of public enforcement agents and encouraging greater professionalism.

registers. Similarly, Armenian enforcement agents can send a request to all commercial banks and deposit-taking institutions through a special electronic channel provided by the Central Bank of Armenia, which is operated jointly by the Central Bank and the Ministry of Justice. Georgia is working to establish a similar system. Both of these systems could serve as useful models for other countries.

**Seizure of assets**

While searching for assets is difficult, the Assessment revealed that, once they are found, the actual seizure of assets does not present major difficulties (see Table 3).

Once assets have been identified, the first question to arise is which of the assets found should be seized. Some countries, such as Georgia, Belarus and Mongolia, afford enforcement agents discretion, however most prescribe an order. Cash is usually to be seized first, with other assets only seized where cash is unavailing or insufficient. Next to be seized should be other movable property, with real estate seized in the last instance. Many jurisdictions prescribe separate orders of seizure for natural persons and businesses; for the latter, seizure commences with assets that are not involved in the production process.

**Protected items**

All countries impose limitations on the assets that can be seized from individuals. These limitations prevent bailiffs from taking items which are necessary to support the debtor’s basic livelihood. This is similar to the principle that applies in personal bankruptcy. Protected items include salary in the amount of the minimum wage, professional tools and basic equipment necessary for a person to make a living, and minimum food and fuel. In Belarus, not more than 50 per cent of a debtor’s salary can be taken – this is also the case in most other jurisdictions – and not more than 20 per cent of a pension. In a number of countries the prescription is very detailed. For example, legislation in Georgia regulates small agricultural assets: a debtor may choose to keep one milk cow, or two pigs, sheep or goats, if they are necessary for feeding debtors and their families.

**Notice of seizure**

A period of notice is usually given to the debtor before assets are seized, typically through service of the writ of execution. Where there are grounds to suspect that debtors will attempt to move or hide particular assets, some jurisdictions (Armenia, Belarus and Russia) allow agents to enter a debtor’s premises without a court order and seize assets. However, this requires the involvement of the police or a witness. To enter third party premises or a residence the enforcement agent will usually need a court order. In Ukraine enforcement agents can obtain ex parte orders, allowing them to enter premises to seize property, including premises of a third party. Such applications are said to be determined relatively quickly, without any requirement for a hearing.

**Use of force**

If a debtor physically resists the seizure of property, enforcement agents can employ or enlist force. In some countries, such as Kazakhstan and Russia, specialised units within the enforcement agency are entitled to use force. In Armenia and Azerbaijan enforcement officers are themselves authorised to use
Effective supervision of state and private enforcement agents is crucial in establishing public trust in the profession.

Force, including weapons, as a last resort. In other countries enforcement agents must request the involvement of officers from the ministry of internal affairs or the police. In most countries a separate court order is required to effect the eviction of a debtor from residential premises. In Tajikistan enforcement against the residence of the debtor is prohibited, except for enforcing mortgage rights. Evictions are particularly problematic in the Kyrgyz Republic, where the court order will invariably specify the particular person to be evicted; it is common in practice for other persons (friends and relatives of the debtor) to appear at the premises, who cannot be evicted unless they also become subject to an eviction order.

Enforcement against government bodies and state assets
It might be thought that the enforcement of court decisions against government bodies would be easier than against private parties, as the state should be expected to comply expeditiously with orders of its own courts. In Belarus this was indeed reported to be the case. Yet in many countries enforcement against the state is more difficult than against private parties. Enforcement problems are often linked to public sector budget legislation, which regulates the kinds of payments that can be made from line item budgets. In some instances no provision is made for payments to be made in satisfaction of judgment debt, with the result that the state body is effectively prohibited from complying with the court’s judgment. In other cases it is unclear from which sources of government funds the payment should be made. The situation in Mongolia illustrates these problems: if the funds available in the account of the debtor agency are insufficient the agency must seek an additional allocation from the state budget, which is often not forthcoming until the following year (if at all). In Moldova the enforcement law affords state agencies an additional six months to comply with court orders for payment, apparently recognising the budgetary problems that can arise, but also thereby formalising the preferential treatment of government over private debtors.

An interesting solution introduced in Armenia in 2006 sees the obligations of the state as a judgment debtor substituted for interest-bearing bills of exchange. This applies in any case where the judgment debt is not covered by a relevant budget line. In Georgia a dedicated unit within the enforcement agency deals with enforcement against government entities. Enforcement actions should be completed within one
month of their commencement, which reflects the higher expectations the public should have of government compliance. In Russia, where budgetary problems have previously posed significant barriers to enforcement, state treasury officials are now responsible for enforcement against state agencies, and requests for payment are directed to the Ministry of Finance, treasury departments of municipalities or departments of the federal treasury. This has achieved better outcomes.

Special problems arise in Ukraine, where the law presently prohibits enforcement against the property of any business in which the state holds a stake of 25 per cent or more. Moreover, enforcement cannot be effected against over-indebted energy suppliers listed in a government register, or against privatised coal mining businesses for the first three years following sale.

**Sale of assets**

The Assessment concluded that the sale of seized assets was the second-most problematic area for enforcement agents in the region reviewed (see Box 3, below). The rules regarding the sale of seized property are complex. Their ultimate economic objectives are to liquidate assets, realise maximum value, satisfy the judgment debt and return as much excess as possible to the debtor. Yet there is a certain tension between the objective of high success rates in selling assets and doing so for good value, as higher prices will limit bidders. And the interest of debtors (maximum value), creditors (debt value) and bailiffs (recouping fees) are not well-aligned.

Enforcement agents’ effectiveness in realising value through the sale of seized property is perceived to be low, with respondents in most countries indicating that agents only “sometimes” or “rarely” obtain good value (see Table 4). However, the set of cases where there was a “failure to sell assets for good value” includes instances where assets were not sold at all, possibly because the rules promoting high-value sales are too strict. Another factor that must be considered is that seized assets are often impugned in some way, whether physically (for example, seized vehicles sold without keys and papers) or socially (in some countries a certain stigma is associated with purchasing seized goods). Accordingly, it is usually appropriate to consider some discount against the usual market price of the relevant assets.

**Table 4. Perception of effectiveness of enforcement agents (EAs) in selling seized property for good value**

<table>
<thead>
<tr>
<th>Country</th>
<th>How often EAs obtain good value for seized assets</th>
<th>Country</th>
<th>How often EAs obtain good value for seized assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>Sometimes</td>
<td>Mongolia</td>
<td>Sometimes</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>Sometimes</td>
<td>Russia</td>
<td>Rarely</td>
</tr>
<tr>
<td>Belarus</td>
<td>Sometimes</td>
<td>Tajikistan</td>
<td>Sometimes</td>
</tr>
<tr>
<td>Georgia</td>
<td>Sometimes</td>
<td>Turkmenistan</td>
<td>N/a*</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>Rarely</td>
<td>Ukraine</td>
<td>Sometimes</td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
<td>Sometimes</td>
<td>Uzbekistan</td>
<td>Rarely</td>
</tr>
<tr>
<td>Moldova</td>
<td>Sometimes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: EBRD Enforcement Agents Assessment 2013.

*Note: No responses to this question were received from Turkmenistan.
Few countries publish reports on the operation of their enforcement agencies. They charged up to 15 per cent of the property price for their advice. Greater competition is needed in this field. Similar issues have been identified in several countries concerning the selection of consignment shops.

Having a reserve price does not just have positive effects; it can be an impediment to sale in depressed markets. In Mongolia property cannot be sold at auction unless the reserve price is reached: a bid just under the reserve cannot be accepted, and a new auction must be conducted. There is policy tension between the interests of the creditor, who may be inclined to realise the property even at a sub-optimal price, and those of the debtor, who will demand the highest possible price in order to maximise the excess above the debt, plus costs, which he or she is entitled to receive back.

**Auctions**

In most countries reviewed, higher-value property must be sold at an advertised auction. Armenia and Georgia have developed dedicated auction websites which have proved useful in generating interest in and value for auctioned property. Advertising requirements set minimum periods that must elapse between the advertisement and the auction, which in most countries is 10 days. It is important that auction rules be transparent, as auctions are vulnerable to rigging, through collusion between the enforcement agent, the auctioneer and the purchaser, resulting in property being sold at under the real market value. Advertising widely and requiring inspections of auction procedures, together with strong complaint mechanisms, are critical components in minimising such abuse. Online auctions have proved very effective in this regard. In Armenia all auctions take place on the website of a private company, Smart-Tech, which includes detailed descriptions and photographs of property being sold, as well as information on relevant legislation. This process has minimised the degree of contact between bidders and auctioneers, and has reduced the incidence of corruption, while at the same time facilitating the involvement of bidders from outside the capital. Similar systems exist in Russia and Kazakhstan, and such a system is under consideration in Moldova.

**Speed of enforcement**

The lengthy period of time involved in enforcing a court judgment remains a major concern in the minds of businesses and court users in the region. Overall, however, this issue ranked behind searching for assets and the sale of assets in assessments of the most problematic dimensions of enforcement (see Box 3).

Procedural legislation in most countries imposes time limits on various stages of the enforcement process, and sets the overall time frame, which is often two months (for example, in Azerbaijan, Kazakhstan, Kyrgyz Republic, Russia and Tajikistan).

In practice, enforcement takes much longer. In survey responses the typical average time taken to effect enforcement, from the date of court judgment to final recovery, ranged from four months in Georgia to 12 months in Ukraine. In Mongolia there were reports of cases where banks waited two to four years for the enforcement of some decisions. Views on typical enforcement duration tended to be impressionistic, as many variables affect time frames, such as case complexity and the behaviour of debtors. The speed of the enforcement system can potentially be gauged by reference to clearance rates, however government statistics often present only net data on cases entering and leaving the system each year: for example, a 50 per cent clearance rate in one year might include many old cases that have been backlogged from previous years. Specific data about the average time taken to enforce cases of particular kinds would be very useful, but unfortunately these data are not available.
Reports of corruption were encountered in many of the countries reviewed, and there were various means by which corruption was allegedly practised. The extent to which judgment debtors are able to file appeals against the various stages in the process is a factor that affects the duration of enforcement proceedings. Administrative and procedural law often grant wide rights of appeal, allowing any stage in the enforcement process to be challenged. Appeals can take months to resolve. The apparent ease of obtaining adjournments without a sound reason is a problem that affects civil litigation generally in the region; it also presents difficulties in the enforcement context. In this context many applications are made simply for more time to study a case file. In Armenia a large number of applications are made seeking court interpretations of enforcement orders, apparently in order to delay the enforcement process. In Mongolia appeals to courts are often filed against the valuation of property. In Russia, a staggering 222,337 appeals were filed in 2012 in relation to enforcement actions.

A key issue is whether appeals by judgment debtors against actions taken by enforcement agents suspend the enforcement process pending a final determination by a court. Ukrainian law expressly provides that the enforcement process is not halted by the filing of an appeal by a debtor unless the court otherwise orders. Similar rules exist in Armenia, Georgia, Moldova and (fortunately, given the huge number of appeals) Russia. In these countries the court has the power to suspend the proceedings if it deems it appropriate for a particular case. This is a sound approach.

### Costs and fees

Enforcement costs are largely borne by the debtor. They were highest in Kazakhstan, Kyrgyz Republic, Mongolia and Ukraine, where up to 10 per cent of the recovered debt can be levied or withheld from excess sale proceeds. The lowest-cost regimes were reported in Turkmenistan and Uzbekistan, where no enforcement fees are charged, either to the debtor or the creditor (although fines and criminal consequences can be expected for non-compliance). The amount of the fee in each of the countries studied, together with the basis for its calculation (either the value of the judgment debt or the amount actually recovered), is set out in Table 5. In terms of the basis of calculation, the latter method provides a greater incentive for enforcement agents to sell property for a higher value.

The cost regime must be seen in the context of the need to provide adequate incentives for enforcement agents to perform to a high standard. In the three private systems, agents have incentives to seek higher prices through the higher percentages they receive from the amounts recovered. For private bailiffs in

<table>
<thead>
<tr>
<th>Country</th>
<th>Amount of fee (percentage of debt/ amount recovered)</th>
<th>Fee calculated from value of debt, or from actual recovered amount?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>5</td>
<td>Debt</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>7</td>
<td>Debt</td>
</tr>
<tr>
<td>Belarus</td>
<td>5</td>
<td>Recovery</td>
</tr>
<tr>
<td>Georgia</td>
<td>7</td>
<td>Debt</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>10</td>
<td>Recovery</td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
<td>10</td>
<td>Recovery</td>
</tr>
<tr>
<td>Moldova</td>
<td>3-5-10 (scale varying by amount recovered)</td>
<td>Recovery</td>
</tr>
<tr>
<td>Mongolia</td>
<td>10</td>
<td>Recovery</td>
</tr>
<tr>
<td>Russia</td>
<td>7</td>
<td>Debt</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>7</td>
<td>Debt</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>0</td>
<td>N/a*</td>
</tr>
<tr>
<td>Ukraine</td>
<td>10</td>
<td>Recovery</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>0; approx. US$ 500 fine</td>
<td>N/a*</td>
</tr>
</tbody>
</table>

Source: EBRD Enforcement Agents Assessment 2013.

* Note: No data on this question were available from Turkmenistan and Uzbekistan.
Efforts to reform the enforcement systems in the region must include – but also go beyond – legislative measures. Kazakhstan this can be up to 10 per cent of either the recovered debt or the actual sale price. This appears to account for a notable difference in the perceived success of private and public agents in the country. A leading Kazakh bank has expressed the view that the major problem affecting the public enforcement system is the absence of incentives for government enforcement agents, whose pay is not linked to their output. Incentive payments are seen as providing a stimulus to the enforcement process, potentially reducing the high turnover of public enforcement agents and helping to instil a greater level of professionalism in enforcement agents. At the same time, it was noted that private agents tend not to be as interested in smaller matters, as they do not consider the returns (even at 10 per cent) worthwhile. Accordingly, a role for state enforcement agents must always be considered in relation to cases which may not be attractive to private operators.

It is also important that the overall financial burden on the debtor for wilful non-compliance with court orders is significant, as this burden should affect debtors’ behaviour. In addition to enforcement fees and fines in appropriate cases, it is reasonable to expect a debtor to pay interest to the creditor in respect of the period during which the judgment debt has not been repaid. Surprisingly, in most countries interest ceases to accrue when the decision of the court is handed down. Only in Armenia, Belarus and Moldova does interest on judgment debt continue to accrue. In a number of countries it was noted that a separate action to recover interest in relation to the enforcement period could be brought, however in practice this rarely occurs, presumably because the cost involved in recovering the interest renders such action uneconomic. The principle should be that the debtor pays interest, at readily identifiable commercial rates, until the debt is extinguished.

**Supervision, complaints and integrity**

Effective supervision of state and private enforcement agents is crucial in establishing public trust in the profession. All surveyed countries have in place systems to monitor and control the enforcement process. In the state systems supervisory bodies are typically departments within ministries of justice or agencies of the ministries, led by a chief enforcement officer. Most enforcement agencies have also promulgated professional standards of conduct formally prohibiting conflicts of interest, the breach of which can lead to administrative or criminal sanctions. Private enforcement agents are also subject to supervision. In Kazakhstan private agents are supervised by regional collegiums (professional associations) and by the state enforcement agency. In Moldova all agents must be members of a country-wide union of enforcement agents, which is a self-regulatory organisation, reporting to the Ministry of Justice. In Georgia the Ministry of Justice supervises private agents.

**Chart 4. Number of complaints/appeals per enforcement agent in 2011**

Source: EBRD Enforcement Agents Assessment 2013.

Note: Columns indicate the number of complaints and appeals filed against the actions of enforcement agents. The data must be approached with caution as some countries’ data record a wider scope of complaints and appeals than others (for example, Russia records complaints about enforcement cases that are closed without success – many countries do not record such complaints).
**Complaints and appeals**

The need for enforcement of court judgments should ultimately be the exception, rather than the rule.

Data from most countries studied reveal the existence of a functioning complaints system, with regular appeals being brought against enforcement agents (see Chart 4). For example, in Kazakhstan 4023 appeals were brought against state bailiffs in 2012, of which 3247 were upheld (only 53 were brought against private bailiffs). Notably, most of these claims were said to have been from creditors concerning inaction on the part of enforcement agents. This is also common in Russia, where many complaints relate to agents who close enforcement proceedings due to a lack of identifiable assets. Breaches of the enforcement procedure – such as the failure to provide adequate notice, or issues relating to the valuation of property – is another major ground for complaints and appeals.

**Access to information**

Few countries publish reports on the operation of their enforcement agencies. In Armenia, Georgia, Russia and Ukraine, the enforcement agencies publish quarterly reports online. However, only Russia’s enforcement agency publishes detailed information and data about the number of complaints brought against bailiffs, the number of prosecutions for criminal conduct, and the overall success rate of enforcing court decisions. For the purposes of the Assessment, information was gathered from law firms, and from academic and other available sources. In the Assessment’s evaluation of the supervision and integrity safeguards, the level of transparency around such issues was taken into account, and was used as a proxy for the robustness of the system.

Another positive feature of the Russian enforcement agency is its creation of an online public register of enforcement cases. The publicly available information includes the name of the debtor, the allocated case number, the type of enforcement action, the amount and type of the debt, and the responsible enforcement department and enforcement officer. Debtors are able to pay their debt through various payment services directly from this web site. It is possible to search for information about an individual debtor by name (including the names of legal entities) and to search matters by reference to various keywords. Although caution is needed in relation to privacy concerns, this is a laudable effort to increase transparency, and to facilitate the payment of debt. Data of this kind are of particular interest to credit rating agencies. Accordingly, the new system generates an additional pressure point for recalcitrant debtors by raising the prospect that non-compliance will affect their credit rating.

**Corruption**

Reports of corruption were encountered in many of the countries reviewed, and there were various means by which corruption was...
The EBRD will continue to support the efforts of transition countries to improve the mechanisms for enforcing the decisions of their courts.

allegedly practised. One common technique is reportedly for an agent to delay, or temporarily suspend, the arrest of property, so as to allow the debtor to hide it or otherwise frustrate the enforcement process. Another was for agents to delay enforcement in order to induce the creditor to offer a bribe to effect enforcement. In Belarus, Turkmenistan and Uzbekistan there were said to be no significant corruption issues. Perhaps in those countries the fear of government authority is a deterrent. Thorough supervision, investigation, and the publication of reports on alleged corruption must be stepped up in order to create a climate of accountability which deters potential bribe-takers and their “clients”.

Georgia’s state-wide anti-corruption efforts have included reforms that affect the enforcement agency. The planned new case management scheme envisages that different stages of the enforcement process will be under the control of different enforcement agents, thereby reducing opportunities for engaging in corrupt behaviour, and increasing the likelihood of such behaviour being detected. Further, only the agency’s mediation team will be allowed to have direct contact with stakeholders (debtors and creditors), thereby curtailing potential avenues for the occurrence of improper influence.

Lastly, some concerns were raised about the perceived immunity of government and municipal bodies from enforcement of court judgment. On its face, this presents as a serious integrity concern, as it suggests government interference in the enforcement process. However, the non-compliance of government bodies with court decisions can arise through budgetary problems of the kind mentioned earlier.

Conclusion

While the enforcement of court orders remains a significant challenge in many countries in the surveyed region, progress is being made. But reform efforts must continue. The most problematic area is searching for assets. Robust measures are required to prevent debtors from hiding assets, along with stiffer penalties for non-compliance with the enforcement process. Enforcement agents need better access to property registries and information about funds held in bank accounts. Technology offers efficient solutions to some of these problems.

Efforts to reform the enforcement systems in the region must include – but also go beyond – legislative measures (see Box 4). They must build the institutional capacity of enforcement agencies, such as systematic professional training. They must involve courts and judges having powers to limit spurious appeals and to penalise unreasonable behaviour. They must include the reform of registries of property ownership to make them both more comprehensive and accessible. And they should entail greater government attention to statistical data which can be used to measure efficiency and identify problems. Consideration should be given to the potential role of the private sector in providing enforcement services to the community.

The need for enforcement of court judgments should ultimately be the exception, rather than the rule. Enforcement of judgments would not be so problematic in the region if more judgment debtors voluntarily complied with court decisions. Policy must seek to instil a compliance culture in the population at large. In order for this to occur, however, a credible threat of effective enforcement must exist, as well as adverse financial consequences for non-compliance. These should include the accrual of interest on unpaid judgment debt, the obligation to pay costs, more significant fines, and the prospect of affecting the debtor’s credit rating. In this regard, Russia’s public database of enforcement cases may prove to be an effective catalyst for behavioural change. The EBRD will continue to support the efforts of transition countries to improve the mechanisms for enforcing the decisions of their courts. Better enforcement of court decisions can only improve the investment climate and advance the process of economic transition.
Notes

1 “Enforcement agent” is used in preference to the term “bailiff”, which in some countries is a “term of art”, carrying a narrower meaning connected specifically to court-supervised enforcement.

2 CIS member states are Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyz Republic, Moldova, Russia, Ukraine, Tajikistan, Turkmenistan and Uzbekistan.

3 Substantive responses were received from all government agencies except those of Tajikistan, Turkmenistan and Uzbekistan.

4 Article 14 of the International Covenant on Civil and Political Rights encompasses the right to have civil judgments implemented, as does article 6 of the European Convention on Human Rights (ECHR). Belarus, Moldova and Russia, the three countries covered by the Assessment which are party to the ECHR, have all been found to be in breach of article 6 by the European Court of Human Rights for failing to guarantee effective enforcement of court judgments. Businesses have been applicants in these proceedings.

5 https://wcd.coe.int/ViewDoc.jsp?id=65531.

6 European Commission on the Efficiency of Justice Guidelines for a better implementation of the existing Council of Europe’s Recommendation on Enforcement; adopted by the CEPEJ at its 14th plenary meeting, Strasbourg, 9-10 December 2009), at: https://wcd.coe.int/ViewDoc.jsp?id=5001


9 See Russian online database: http://www.fssprus.ru/iss/ip/.

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