This article examines the enforcement of court decisions in Mongolia through the prism of recent efforts to improve the legislative framework and the institutional capacity of the Mongolian enforcement agency. The EBRD is collaborating with the Mongolian authorities in their response to these challenges.
As in many transition countries, in Mongolia the non-enforcement of court decisions remains a key obstacle to investor confidence. Litigants and lawyers attest to lengthy delays, a large number of unenforced judgments and debtors who hide assets and evade court orders. Research shows that strong institutions are especially important in managing a resources boom, such as that presently being experienced in Mongolia. Commodity-rich countries with weak institutions are at risk of being caught in an "institutional trap", which is characterised by a vicious cycle of weak institutions and a lack of incentives for improving them. This underscores the importance of Mongolia building strong institutions, including in relation to the implementation of court decisions.

The General Executive Agency of Court Decisions (the Agency) is the Mongolian government bailiff service, which has been responsible for the enforcement of court decision since 1996. The Agency has powers to search for, seize and sell at auction the assets of judgment debtors, in accordance with the Law on Enforcement of Court Decisions (the Enforcement Law). The Agency’s staff of 270 has a very large workload, and although the enforcement rate has improved marginally in recent times, each year sees over fifty per cent of court decisions remaining unenforced (see Chart 1). While limited resources are certainly one factor affecting the Agency’s capacity, legislative and institutional issues play a significant role.

In February 2013, in response to a request from the Mongolian authorities, the EBRD undertook an assessment of the organisational and institutional needs of the Agency, and critically reviewed the Enforcement Law and other legislation affecting the enforcement of judgments, focusing in particular on enforcement of judgment debt in commercial cases. In September 2013 the Bank submitted a report (the report) to the Agency on legislative reform and institutional
In Mongolia the non-enforcement of court decisions remains a key obstacle to investor confidence.

Improving the legal framework

(a) Limiting appeals
The Mongolian enforcement system is plagued by a large number of appeals brought by judgment debtors at various stages of the enforcement process. Limitations on the rights to challenge the enforcement process need to be clarified and strengthened in several ways. First, appeals to courts should only be available once the existing administrative dispute resolution process – which involves a simple and relatively quick process of submitting a complaint to the Chief Enforcement Office – has been exhausted. Second, a large number of appeals relating to valuations are made under section 34.5 of the Enforcement Law. Many of these appeals also ask the court to reconsider the validity of the underlying enforcement order, and can result in the entire enforcement process starting again. The ambiguity in the legislation – stemming from section 143, which seems to confer an open-ended right of appeal to a court – needs to be addressed. In addition, the report recommended that courts be given express powers to strike out vexatious claims and to award costs against those who bring them.

(b) Accrual of interest
Currently, while interest on a substantive legal claim can be awarded by a court and included in the court’s judgment, such interest ceases to accrue on the date the decision is handed down. The Civil Procedure Code does not recognise the accrual of interest on unpaid judgment debt (s63.1.1). Thus, there is no financial incentive for voluntary compliance with court orders. The report recommended that the Civil Procedure Code be amended to provide that interest continue to accrue from the date the court’s decision comes into force and cease to accrue when the judgment debt is satisfied. This would discourage dilatory practices by debtors. Interest would be fixed at an easily identifiable default rate. At the same time, in cases where a debtor issues an appeal against the Agency in relation to a step in the enforcement process, and such an appeal is upheld, no interest would accrue during the period of the delay caused by the Agency.

(c) Agency access to registries
Under the current regulatory regime bailiffs do not have direct access to key registers which record details of ownership rights that are needed by bailiffs seeking to identify and seize assets. These include, for example, the General Authority for State Registration (GSAR) established under the Ministry of Justice, the Land Registration Office (LRO) and the Mineral Resources Authority (MRA). To obtain access to these registers, bailiffs must file a written application, like any other citizen. Easy access to this information would speed up the process of obtaining information on judgment debtors’ property. This is currently possible in the case of the movable property register under the Ministry of Transport. Recommendations were made to provide the Agency with expedited access to these electronic registers, through appropriate amendments to the Enforcement Law.

(d) Access to bank accounts
Similarly, bailiffs require prompt and effective access to information about bank accounts held

Chart 1. Rates of enforcement of court decisions by the Mongolian Enforcement Agency, 2008-12

<table>
<thead>
<tr>
<th>Year</th>
<th>Total cases</th>
<th>Successfully completed</th>
<th>Open cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td></td>
<td></td>
<td></td>
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<td>2009</td>
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<td>2010</td>
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<td>2011</td>
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<td></td>
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<tr>
<td>2012</td>
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</table>

Source: General Executive Agency of Court Decisions, Mongolia.
The Mongolian enforcement system is plagued by a large number of appeals brought by judgment debtors at various stages of the enforcement process. Presently, access to such information is frequently denied on the basis of confidentiality rules set out in the banking legislation. Discussions with banks and financial institutions suggested that the legal position was unclear at best, and institutions feared breaking the law by cooperating with bailiffs. The report recommended that the Banking Law be revised to expressly allow bailiffs access to appropriate information. Furthermore, banks and other financial institutions should have an obligation to cooperate with the Agency, and in particular to provide the relevant information promptly when required. It was also suggested that failure to provide the information within 24 hours of being requested should give rise to the possibility of penalties being imposed by the Bank of Mongolia.

The report suggested that, in order to safeguard public confidence in confidentiality of information, the Agency be required to prepare a formal written request to the relevant institution, signed by the CEO of either the Ulaanbaatar City office, or the relevant provincial (Aimag) office, of the Agency, according to the location of the matter. This formal request would be required to indicate the court case number, the enforcement order date and the number issued by the bailiff, as well as the name of the defendant/debtor. The form of request for information would need to be capable of being served on all banks and financial institutions operating in Mongolia.

**(e) Issues with mining licences**

There is a need to establish procedures for bailiffs to seize and sell mining licences. This is not currently possible. First, the Mining Law does not expressly allow for the transfer of a mining licence, as licences are granted to specific entities and individuals which satisfy certain institutional requirements. This problem could be overcome by amending the Mining Law to permit the transfer of licences, subject to the Mineral Resources Agency approving or confirming the transferee’s eligibility to hold a licence. Amending the Mining Law in this way could also facilitate the pledging and realisation of mining licences outside the context of enforcing judicial decisions. Amendments could also confirm the Agency’s right to seize and sell mining licences at auction in accordance with the usual auction practices.

**(f) Improving the auction procedures**

The current rules concerning the auction procedure for seized property are very restrictive in three important respects. First, they require that the reserve price be no lower than the creditor’s claim under the court’s judgment, plus enforcement costs. Second, the property cannot be sold unless the reserve price is reached. Third, the rules require more than one bid in order for the auction to be valid. These arrangements are not sufficiently flexible to take into account weak demand.

The report recommended that article 177(4) of the Civil Code be amended so that property being auctioned can be sold at the best offered price. If the price offered is not sufficient to cover the costs related to organising the auction and meeting the creditor’s demand, the creditor would have the right to take possession of the property, in which case the debtor’s obligation would be considered satisfied. In addition, the report suggested that article 197 of the Civil Code be amended to provide that an auction with a single bidder be considered valid. Of course all efforts must always be made to advertise an auction with sufficient notice and in an appropriate manner so as to attract a large pool of bidders.

**Strengthening the Agency**

While the legislative concerns identified above certainly contribute to the difficulties experienced by judgment creditors in obtaining payment, they do not tell the whole story. Institutional impediments at the Agency must also be taken into account. In large measure these are connected to the historically low levels of material and human resources available to the Agency. Low salaries and limited facilities and equipment make a bailiff’s job very difficult, particularly in remote areas. For example, in the Dornod Aimag, in far eastern Mongolia, the Agency has only two vehicles, neither of which is presently in running order.

Nonetheless, despite the material constraints, certain institutional changes could be made, and these could make a big difference to strengthening certain aspects of enforcing judgments.

**(a) Training**

The Agency does not have a systematic programme of training, which results in an uneven level of professional skills in its staff. In each of the past two years the Agency has organised its own, ad hoc, training, in cooperation with other government agencies and departments. However, with no international
Low salaries and limited facilities and equipment make a bailiff’s job very difficult, particularly in remote areas.

Training is particularly needed to develop professional skills in seizing real and movable property, including livestock, and similar skills in seizing intangible property, such as securities. In addition, greater understanding is needed in relation to dealing with issues of joint ownership of property and third party interests. Training also needs to take into account the profile of enforcement case files, and the different enforcement practices, techniques and skills required of different case types. The vast majority of cases relate to civil court cases, but significant numbers of cases concern child support payments and criminal matters (see Chart 2).

(b) Organisational structure
The Agency is organised as a single state entity with jurisdiction for both criminal and civil matters, with separate criminal and civil divisions. The criminal division of the Agency tends to dominate, in terms of both resources and prestige. In terms of prestige, enforcement agents working in the criminal division wear uniforms and have ranks with military equivalents, culminating in “general”, which carries a high status in Mongolian society. The Ministry of Justice has been considering a proposal to formally split the Agency’s two divisions into separate entities. This idea has a lot to recommend it. It could strengthen the effectiveness of each new organisation by instituting distinct areas of work and specialisation of functions, which could contribute to more timely and effective enforcement of court decisions. However, having separate bodies could erode economies of scale, which might disproportionately affect remote areas, which are served by a small number of bailiffs, each responsible for entire regions. Special allowances would need to be made for such areas.

(c) A role for private enforcement officers?
An important reform question is whether the enforcement of civil court decisions should remain under a state body or should be managed (wholly or partly) by a private entity or entities, perhaps under the supervision of the Ministry of Justice or the Judiciary. The reform experience of a number of transition countries indicates that there is merit in allowing the private sector a role in the enforcement of court decisions. It can be questioned, philosophically, whether the state should have a role in enforcing the result of a private dispute between private parties. The limited academic literature on this issue expresses support for some level of private bailiff function in relation to the enforcement of civil matters, in order to provide competition and incentives for good performance. Equally, there are some types of enforcement matters which would not be profitable, and therefore the state would need to retain a role in ensuring the provision of services. This is also likely to be the case generally in the Aimags. Accordingly, the introduction of private operators in the Mongolian context would need to be approached cautiously.

Chart 2. Case profile of Mongolian enforcement notices, 2012

33,031 enforcement notices were issued in 2012

- Civil court cases: 47%
- Child support payments: 33%
- Criminal cases: 19%
- Administrative cases: 1%

Source: General Executive Agency of Court Decisions, Mongolia.
(d) Performance evaluation
The Agency does not have established criteria for evaluating the performance of bailiffs, and in the civil division there is no structured process, nor are there any criteria, for assessing bailiffs for promotion and other professional reward. The report suggested that criteria be established, and that statistical data, as well as qualitative dimensions, be incorporated into the evaluation process. This would assist the Agency to review individual performance, and to analyse how case mix and geographical considerations affect the performance of bailiffs. Certain types of matters are more challenging than others, which may affect the opportunity for bailiffs handling these matters to earn bonuses (see below) or other reward. These factors may also affect professional motivation. As a response to these issues, a formal matter allocation system may need to be developed, which incorporates rotation through different categories of matter. Rotation within an Aimag and between Aimags might be more difficult to manage due to the small number of bailiffs assigned to each Aimag.

(e) The bonus system
The present bonus system is an economic incentive established under the Enforcement Law. It is paid by the judgment creditor to the Agency as a percentage of the amount recovered from the defendant. There is a consensus among officials at the Agency that the bonus system has been ineffective as a motivational tool for enforcement agents. This is because a large percentage of the bonuses collected is applied to financing the Agency’s regular operational and maintenance costs, which depletes the amount available for distribution to enforcement agents as incentive awards. There is no suggestion that the present arrangements are extra-legal; the application of bonus funds for general budgetary purposes has been sanctioned by a government decree. However, the remaining funds are insufficient to satisfy bailiffs’ expectations. A new approach is needed in creating incentives, which could embrace non-monetary incentives, such as additional leave. A further complication is that the paying of bonuses to bailiffs, who are public servants, has attracted public criticism; the suggestion is that public employees should not receive additional benefits in reward for merely doing their job. This has perhaps dampened official enthusiasm for rectifying the problems with the bonus system. If this is the case, it may be another argument in favour of allowing the private sector a role in the enforcement of judgments.

Conclusion
Bailiffs and enforcement agents have, until recently, received relatively little attention from international organisations that support development in the justice sector. In Mongolia, while donors were quick to commence engagement with the courts after the fall of communism, the Agency received no outside support until the early 2000s. However, this is an area that is now beginning to receive greater prominence in transition countries. In Mongolia an EBRD project to assist the Agency to implement institutional reforms, and to work with the government on the suggested legislative amendments, is expected to commence in 2014.