The recognition, enforcement, and collection of a judgment are the last steps in civil proceedings. Yet in cases involving asset recovery, those final steps should be considered at the start, given the challenges of enforcing court orders obtained outside the jurisdiction where the assets are located. Many practitioners would say that a judgment that is not enforceable is not worth the paper on which it is written, and that only judgments that can be executed—that is, translated into action—are meaningful.

But formal enforcement may not be necessary in every case, since consent—agreement to pay—makes it unnecessary. In certain cases, when a civil case is settled by agreement of the parties, an award of damages could be obtained without formal enforcement because the adverse party will have agreed to pay from assets located there or elsewhere.1 It is also possible that an opposing party will agree to pay some portion of the foreign judgment, in consideration of that party’s estimate of the winning state party’s chances of enforcing the foreign judgment. In the absence of some kind of agreement, however, formal enforcement will be the only option to achieve collection. This chapter examines the recognition and enforcement of civil judgments in the jurisdiction where assets are located. It also addresses the challenges of collecting judgments.

A. The Recognition and Enforcement of Civil Judgments in an International Context

The claimant will most likely need to enforce his judgment in the country where the assets sought are located. It consists of two steps: first, recognition, and then enforcement. The “recognition” of a judgment means that another court accepts it, without hearing evidence and engaging in an independent decision-making process, and then issues its own judgment stating substantially the same conclusion and terms. “Enforcement” means execution of judgments, that is, collection of the assets or the amount awarded to the plaintiff.

If the judgment and the assets are in the same jurisdiction, there is no need for recognition, because it is a “domestic” rather than “foreign” judgment.2 In general, recognition

1. See box 3.4, in chapter 3, concerning the Alcoa case (settled out of court).
2. In such cases, only enforcement needs to occur. See, for example, box 3.2, in chapter 3, concerning Zambia’s successful civil suit against Chiluba in the United Kingdom.
and enforcement of a foreign judgment in a civil matter is a sensitive area, traditionally considered linked to national sovereignty.

Where a judgment creditor (here, the plaintiff state) seeks to enforce a judgment through access to local assets of the judgment debtor, recognition must precede the enforcement of the judgment against the assets. International cooperation by way of multilateral or regional conventions tries to resolve those issues. But whereas international cooperation is widely developed in criminal law, its scope in civil law is still limited. This section gives a brief overview of existing international and regional cooperation for the recognition and enforcement of foreign judgments in civil matters. It will then focus on the procedural law governing the matter.

1. International Cooperation Regarding the Recognition and Enforcement of Foreign Civil Asset Recovery Judgments

There is no treaty with a global reach that governs the enforcement of foreign civil judgments.\(^3\) Civil judgments can be enforced between jurisdictions through processes such as reciprocal enforcement of judgments (sometimes called “comity”) and related laws. To resolve the international cooperation issue in terms of enforcement, states have created a patchwork, signing multilateral and bilateral treaties and sometimes offering regional responses.

Multilateral Conventions to Enforce Civil Judgments for Asset Recovery

Certain conventions deal with the enforcement of foreign judgments in civil matters:

- **The 1971 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.** The convention is a multilateral treaty governing the mutual recognition and enforcement of judicial decisions rendered in civil or commercial matters. Article 4 provides that a decision rendered in one of the contracting states shall be entitled to recognition and enforcement in another contracting state, provided that it was given by a court that had jurisdiction and is no longer subject to review in the state of origin. Article 5 provides the grounds for refusal of the enforcement of a court decision, such as public policy arguments, fraud, and *res judicata*. To be enforceable in the state addressed, a decision must be enforceable in the state of origin; there can be no review of the merits of the decision rendered by the court of origin.\(^4\) As of today very few states are signatories to the convention, which limits its scope. An ongoing project known as the “Judgments Project” might bring interesting outcomes. Under the Hague Conference on Private International Law, the Council of General Affairs and Policy, composed of all members, established

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3. In contrast to court judgments, an exception is the New York Arbitration Convention, which governs the recognition and enforcement of foreign arbitral awards.

a working group to prepare a “Judgments Project” that will include proposals on the recognition and enforcement of judgments, including jurisdictional filters.  

- **The United Nations Convention Against Corruption (UNCAC).** UNCAC encourages cooperation for enforcement of civil decisions but does not include compulsory provisions. Under the chapter related to international cooperation, legal assistance between states is mandatory in criminal matters but is optional with regard to civil matters. UNCAC provides solely for assistance in civil and administrative proceedings, requiring that state parties permit civil suits by other state parties in their national courts and similarly, that state parties recognize judgments of other state party courts.

- **The Civil Law Convention on Corruption.** Within the Council of Europe, the signatories parties to the Civil Law Convention on Corruption are required to cooperate effectively in matters relating to civil proceedings in cases of corruption, especially concerning jurisdiction, recognition, and enforcement of foreign judgments (Article 13).

### Regional Approaches

The European Union (EU) and other European countries have adopted a well-defined regional approach to tackle the problem of recognition and enforcement of civil judgments rendered abroad.

To ensure the economic development of the EU, a mechanism to ensure that judgments of the courts in Europe are enforceable on a uniform basis was a logical necessity. The “Brussels regime,” as the EU approach is known, facilitates the free circulation of judgments and ensures access to justice by giving jurisdiction and enforcement of judgments to foreign judges within member states in civil matters.

- **The European Enforcement Order for uncontested claims.** The European Enforcement Order (EEO) is a certificate for uncontested claims that accompanies a judgment, a court settlement, or an authentic instrument and allows that judgment, settlement, or instrument to circulate freely in the EU. A creditor with an

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6. Civil Law Convention on Corruption, Article 13—International co-operation: “The Parties shall cooperate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgments and litigation costs, in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters to which they are Party, as well as with their internal law.” The convention is available at http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm.


8. The EEO was established by EC Regulation No. 804/2004 of April 21, 2004, and entered into force on October 21, 2005.
EEO can enforce a judgment in another European Union state without needing to undertake any other court proceedings or a declaration of enforceability in the member state.9

- **Council Regulation (EC) 1215/2012/EU of December 12, 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.**10 Based on mutual trust in the administration of justice, certain regulations recognized that a judgment rendered in any EU member state and enforceable in that state was enforceable in the other member states without any special procedure being required.11 These changes abolished the former *exequatur* procedure. As a result, it is not necessary to address a declaration of enforceability prior to enforcement in the member state. The principle of direct enforcement of civil judgments within the EU will be applied, and a judgment given by the courts of a member state will be treated as if it has been given in another member state. However, the person against whom enforcement is sought can apply for refusal of recognition or enforcement of a judgment if he considers that one of the grounds for refusal of recognition applies.

- **The Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.**12 The objective of the Lugano Convention is to ensure that judgments rendered in one contracting state are recognized in any other contracting state, without any special procedure required (box 8.1). The Lugano Convention is a parallel convention to the Brussels Regulation. The signatories are the members of the European Union and the European Free Trade Association members with the exception of Liechtenstein.13

Other Regional approaches tend to be more limited.

- **The Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards.** This convention establishes rules that address the recognition and enforcement of foreign judgments among its members. It applies only when there is an existing judgment or arbitral award rendered in

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9. Ibid. Article 3 of the regulation defines uncontested claims.
13. Switzerland, Iceland, Denmark, and Norway.
civil, commercial, or labor proceedings in one of the signatory countries. In such cases, the convention sets forth the requirements that must be met to establish the extraterritorial validity of such judgments and the procedures to recognize and enforce them. The convention is in force in the following countries (among others): Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.

- **Protocol of Las Leñas on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labor, and Administrative Matters.** The Protocol of Las Leñas applies to Mercosur member states, Bolivia, and Chile. It establishes a mechanism for circulation of civil judgments through central authorities. This mechanism gives victim states an alternative to the costly procedures of enforcing judgments abroad (by hiring local attorneys, etc.). This type of instrument may prove valuable, especially to facilitate the enforcement of judgments in favor of developing countries.

In the absence of an applicable convention, the recognition and enforcement of foreign civil judgments is largely dictated by the enforcing state's own procedural law. Countries can choose whether to recognize a foreign judgment or not, following their own procedures.

Provisional measures regarding the preservation of assets, such as worldwide freezing orders, are no exception. They are enforced as foreign civil judgments, as illustrated by the case described in box 8.1, concerning the enforceability in Switzerland of a worldwide freezing order.

### 2. Enforcement of Judgments as Part of the Legal Strategy in Foreign Civil Asset Recovery Cases

As with the choice of forum, procedural strategies come into play regarding the enforcement of civil judgments. As noted above, the likelihood of enforcement in the foreign court is one of the elements to consider in deciding where to initiate civil

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17. See Chapter 5 of the protocol.
States and other relevant entities that are victims of corruption wishing to recover stolen assets through civil actions will often be reluctant to initiate proceedings in the country where the corrupt act(s) took place, if those countries are not parties to international conventions regarding the enforcement and recognition of judgments (box 8.2). Additionally, some jurisdictions are more willing to enforce a judgment from certain countries than others because of due process concerns and requirements to respect public policies.
If the court asked to recognize the foreign judgment has doubts about whether that judgment was rendered by an impartial tribunal and in compliance with due process, that court is unlikely to recognize the foreign judgment. For example, if it is not clear that the defendants had notice and an opportunity to be heard at all stages, chances of recognition will be low. A similar result could be expected if a credible argument could be made that any kind of fraud tainted the foreign proceedings.

Defendants can be expected to, and will, make such arguments through competent counsel. Thus, these factors must be considered at the outset. Even though it may be relatively easy to obtain a judgment in one jurisdiction as compared to another, it may not be worth it if, for example, the courts in that country have a poor reputation for following the rule of law and respecting rights.

Even *ex ante* at the outset of a case, the likely difficulty of enforcing a judgment from one country may cause a court in another country to be more likely to assert jurisdiction rather than force the plaintiff to go obtain a judgment from that country. Courts are fundamentally concerned with fairness and may be reluctant to send a plaintiff off to another court where the ultimate result may thwart enforcement (box 8.3). The importance accorded to enforcement in civil asset recovery cases is also illustrated by the case in box 8.4.

### B. The Challenges of Collecting Civil Judgments

Once a civil judgment is obtained (domestically or in a foreign venue), recognized, and enforced by the foreign courts, it still has to be collected. A successful plaintiff may face unwilling defendants, and if that is the case, the collection process may be complex and costly. Efforts to collect a judgment may also be frustrated if the defendant has become insolvent during the litigation, or has secreted his assets,
or fraudulently transferred them to third persons. It can be an even more difficult process when a judgment issued by a court has to be collected on assets hidden in another jurisdiction. Some legal mechanisms exist for the collection of judgment debts, so-called execution procedures. That being said, the difficulty of enforcing a

18. It should be noticed, however, that insolvency procedures can also offer advantages in the Asset recovery process; see in chapter 9, “Using Insolvency or Similar Proceedings in Asset Recovery Cases”
civil debt (as compared to a criminal one) might represent a challenge and a significant cost in asset recovery cases.

1. The Role of Execution Procedures

Civil execution procedures are the coercive measures that a judgment creditor may take against his debtor to recover a claim established by an enforcement order or to recover his property. If a defendant pays the verdict voluntarily, execution is unnecessary.

By using execution procedures, however, plaintiffs may force unwilling defendants to pay their debts. Execution applies to both personal and real property. In bribery and money laundering cases, most of the wealth corruptly acquired is generally transferred abroad, making the process of locating and collecting assets particularly complicated and burdensome. Each country has its own legal system in place regarding how to execute a foreign judgment (box 8.5).

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**BOX 8.5**

**Overview of the Execution Procedures in the United States, the United Kingdom, France, and Germany**

- In the United States, execution of judgments for the payment of money is governed by Rule 69 of the Federal Rules of Civil Procedure. Once a foreign judgment is recognized in a U.S. court judgment, the U.S. Marshals Service can employ writs of execution to enforce judgments. A writ of execution is a court order, in the form of a final process designed to enforce a money judgment, directing an officer of the court to seize the property of a judgment debtor and transfer the proceeds over to the judgment creditor. When issuing a writ of execution, a court typically will order a sheriff or other similar official to take possession of property owned by a judgment debtor. Such property will often then be sold in a sheriff’s sale and the proceeds remunerated to the plaintiff in partial or full satisfaction of the judgment. It is generally considered preferable for the sheriff simply to take possession of money from the defendant’s bank account.

- In the United Kingdom, Part 5 of the Proceeds of Crime Act (POCA) of 2002 deals with the recovery of the proceeds of unlawful conduct through proceedings in the civil courts. The whole point is that the Crown does not have to show that the defendants have been convicted of any criminal offense in order to succeed. If the court is satisfied that any property is recoverable, the court must then make a recovery order. The recovery order must vest the recoverable property in a trustee for civil recovery. The functions of the trustee are (a) to secure the detention, custody, or preservation of any property vested in him by the recovery order; (b) in the case of property other than money, to realize the value of the property for the benefit of the enforcement authority. In performing his functions, the trustee acts on behalf of the enforcement authority and must comply with any directions given by the authority.

(continued next page)
In France, the collection of judgments is regulated by the Code of Civil Execution Procedures, which entered into force on June 1, 2012. Pursuant to this code, a petition has to be submitted through a motion to the executing judge (in French, the juge de l’execution), if the claim, because of its nature or amount, falls within the latter’s jurisdiction.

In Germany, upon receiving a declaration of enforceability, a garnishment petition for the defendant’s moveable assets located in Germany must be filed with the appropriate marshal. As for the immovable assets, a plaintiff can enforce a judgment against the debtor’s real property by applying to the local court that has jurisdiction in the matter and will order a sale by court order, forced administration, or registration of a forced mortgage.

Notes:
1. The following descriptions of the execution procedures are purposely simplified.
3. Proceeds of Crime Act 2002, Part 5 Civil recovery of the proceeds etc. of unlawful conduct, Chapter 2 Civil Recovery in the High Court or Court of Session.

In common law countries, in cases where the debtor resists the enforcement and collection of judicial orders, the debtors may expose themselves to contempt of court. Contempt of court is defined as any willful disobedience to, or disregard of, a court order that interferes with a judge’s ability to administer justice. Reluctant defendants or third parties (including banks or lawyers) who are notified may be held in contempt of court for failing to comply with such orders or decisions. Possible sanctions include fines, segregation of assets, or a term of imprisonment. Contempt of court is particularly relevant when assets are held offshore. In that context, justice cannot enforce a court order locally, but the defendants expose themselves to contempt of court sanctions. In the United States, for example, coercive civil contempt would most likely occur when a debtor fails to comply with a court order to repatriate money from a foreign trust. As a result, the judge can order imprisonment until the money arrives at the courthouse.19 The deterrent effect of contempt of court may turn it into a powerful weapon for the enforcement of judgments.

2. The Cost of Collection of Civil Judgments

The high cost of collection may be prohibitive for some developing countries, in view of the ultimate recovery of stolen assets that can be expected. Public authorities may sometimes be reluctant even to initiate civil proceedings, at first, because they anticipate

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A government hired the services of an offshore collection company to assist with the recovery of stolen assets. The government had initiated both criminal actions in its own courts and private civil litigation in the United Kingdom to recover assets stolen by corrupt government officials.

A government agency entered into a contract in which it granted the collection company the exclusive right to recover assets misappropriated by government officials. The company asked for a million dollars up-front, plus 20 percent to 50 percent of the recovered funds. Several years later, the government did not pay for services allegedly rendered by the collection agency. As a result, the company brought a claim in arbitration to collect fees for services that the government asserts were neither performed nor received.


complex and costly legal, including collection, processes. As a result, the role of collection agencies is often crucial in cases where the proceeds of transnational corruption are often hidden in foreign jurisdictions using vehicles designed to break the chain of ownership. Resorting to collection companies at the end of the asset recovery process is another cost in addition to legal representation fees, and it can be very costly, as illustrated in box 8.6.
