then have to determine how they will initiate the lawsuit, collect evidence, secure assets, and enforce foreign judgments. These various options and techniques are discussed in this chapter.

8.1 Potential Claims and Remedies

A number of claims and remedies exist in the civil proceedings context, including proprietary claims for assets and actions in tort, actions based on invalidity or breach of contract, and illicit or unjust enrichment.

8.1.1 Proprietary (Ownership) Claims

Cause of Action
In most jurisdictions, misappropriated assets and bribes paid to government officials may be claimed by the jurisdiction seeking redress as the legitimate and true owner. Three examples of civil actions to claim ownership of assets in corruption cases are presented in box 8.1.

BOX 8.1 Case Examples of Proprietary (Ownership) Claims


In December 2007, the London High Court of Justice held that Nigeria was the true owner of three residential properties in London and of the credit balances of certain bank accounts. The properties and funds were officially held by two companies incorporated in the Seychelles and the Virgin Islands. These companies were controlled by Diepreye Alamieyeseigha, the governor of Nigeria’s Bayelsa State from May 1999 until his impeachment and dismissal in September 2005.

In separate proceedings in Nigeria, the two companies, represented by Alamieyeseigha, pleaded guilty to money laundering charges related to bribes obtained for the awarding of government contracts.

Based on this Nigerian proceeding and other circumstantial evidence, the London High Court inferred that the bank balances and real estate investments held by the two companies controlled by Alamieyeseigha were bribes and secret profits to be returned to the government of Nigeria as the legitimate owner of those assets.

Case 2: Kartika Ratna Thahir v. Pertamina (1992–94)

Pertamina—an Indonesian state-owned enterprise whose principal business was the exploration, processing, and marketing of oil and natural gas—sought to recover bribes paid to Pertamina executive Haji Ahmad Thahir by contractors

(continued next page)
hoped for better contractual terms and preferential treatment. The bribes were
deposited by the executive into a bank in Singapore. Pertamina learned about
the bank accounts (owned jointly by Thahir and his wife Kartika Rana Thahir) in
Singapore after the death of the executive and brought an action in Singapore
claiming to be entitled to the funds.

The court of first instance ruled that the bribes and all earned interest were held
by the executive as a constructive trustee. The court of appeal upheld the ruling
and confirmed that a fiduciary who accepted a bribe in breach of his or her duty
held that bribe "in trust for the person to whom the duty was owed." As a result,
Pertamina was entitled to a proprietary claim to the money in Singapore.

**Case 3: Attorney General of Hong Kong v. Reid (1994)**

In this case, the Independent Commission against Corruption of Hong Kong SAR,
China, sought to recover properties purchased in New Zealand by a former pros-
ecutor, Warwick Reid. The purchases were made with bribes received in exchange
for not prosecuting certain offenders. Two properties had been assigned to Reid
and his wife, and one had been assigned to his solicitor. The judge ruled that
these properties, as far as they represented bribes accepted by Reid, were held
in trust for the Crown. As the Court explained it,

When a bribe is accepted by a fiduciary in breach of his duty, he holds that
bribe in trust for the person to whom the duty was owed. If the property
representing the bribe decreases in value, the fiduciary must pay the differ-
ence between that value and the initial amount of the bribe because he
should not have accepted the bribe or incurred the risk of loss. If the prop-
erty increases in value, the fiduciary is not entitled to any surplus in excess
of the initial value of the bribe because he is not allowed by any means to
make a profit out of a breach of duty.

This case is still considered one of the leading common law authorities on the use
of constructive trusts to recover bribery proceeds from an unfaithful fiduciary.

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**Remedies**

A court will consider the return or restitution of assets to their legitimate owner through
a variety of available proprietary remedies. These remedies have significant advantages
over compensation or contractual remedies in that the claimant’s rights are not in com-
petition with those of other creditors, and civil procedures frequently allow courts to
issue seizure and restraint orders even if the claimant does not demonstrate a risk of
dissipation. If the proceeds of corruption were invested, the claimant may also be enti-
tled to recover interest or profits earned by the defendant, as demonstrated by the Per-
tamina and Attorney General of Hong Kong SAR, China, cases discussed in box 8.1.