



Don't Overlook China in Difficult Chapter 11 Asset Recovery Efforts

Global unsecured creditors in particularly complicated Chapter 11 bankruptcy cases may be able to enhance their chances of recovery if they turn to creative, non-traditional asset sources. Contrary to popular belief, assets in China offer one such opportunity - we explain how below.

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Creative, non-traditional asset sources based outside of the U.S. sometimes offer the best chances of recovery when global unsecured creditors face difficult prospects for recovering on their claims in U.S. Chapter 11 bankruptcy cases,

For example, assets based in the People's Republic of China (PRC) can present surprising asset recovery opportunities. In many circumstances, Chapter 11 debtors (or their affiliates) may hold unrealized claims or judgments in the world's second-largest economy.

Creditors or creditor committees can deploy several tools to realize value from claims or judgments against a Chinese entity:

1. Use discovery tools to galvanize cross-border recovery efforts. A creditor or creditor committee should request information from the debtor-company about its interests in claims and judgments against foreign entities as part of the standard due diligence. If the debtor will not comply, the committee can pursue it through Rule 2004 discovery, which may help identify any U.S. assets of foreign targets that can be potential sources of recovery.

2. Don't let foreign claims slip away. If the debtor-company pursues a Section 363 asset sale, the creditor or creditor committee should push to have claims or judgments against Chinese or other foreign entities excluded from the sale. Even if unsecured creditors are considered "out of money," the committee may still be able to preserve those assets: secured creditors may lack the appetite to monetize illiquid assets and may consent to unsecured creditors pursuing their value.

3. Start planning the monetization strategy. Once a creditor committee spots a claimable asset in the PRC, it should tailor an aggressive strategy to monetize the claim. Such a strategy could include analyzing the targets' operations, shipments, bond interest payments, intellectual property and equity in subsidiaries, then filing strategic lawsuits against their affiliates in China.

4. Don't forget offshore structures. A Chinese entity may have a complicated corporate structure that includes holding companies registered in offshore jurisdictions such as the Cayman Islands or the British Virgin Islands (BVI). For instance, if a Chinese judgment debtor has a BVI subsidiary with significant, registered share capital, the creditor can try to recognize the judgment and appoint a receiver to collect payables outside of China.

5. Consider selling claims or judgments against Chinese entities. Alternatively, the creditor or creditor committee may consider marketing and selling claims or judgments against Chinese or other foreign entities to recover funds for unsecured creditors. Counsel with the experience and network to monetize these types of assets can conduct a present value analysis, identify suitable bidders, organize an auction/transaction and negotiate the terms of sale.

Recovering against a Chinese entity (even a recalcitrant one) is not an impossible task. There are a range of options at a creditor's or creditor committee's disposal to unlock value from claims and judgments against these entities, for unsecured creditors' benefit. Identifying, preserving and recovering these assets is a cat-and-mouse game in which experience, creativity and on-the-ground support in China and other foreign jurisdictions are essential to successful monetization.

About Kobre & Kim

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Our team:

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Regularly works with other law firms as special counsel in contentious, multijurisdictional insolvency matters that involve competing stakeholders.

Has significant experience acting on behalf of judgment creditors to develop and implement offensive enforcement and asset tracing/recovery strategies to monetize high-value judgments – efforts which are strengthened by the team’s in-depth understanding of the defensive litigation strategies that debtors are likely to deploy.

Offers deep experience coordinating judgment enforcement and monetization strategies across jurisdictions, often involving assets and adversaries in the PRC and other Asian countries, with lawyers admitted across the U.S., South America, Asia, EMEA and key offshore financial centers.