



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

Unsecured creditors in the U.S. often face immense difficulties in recovering assets within Chapter 11 cases, but non-U.S. jurisdictions such as the People's Republic of China might be a way out. Below, our Insolvency and Judgment Enforcement team explains the legal tools at one's disposal when attempting to monetize claims in China to service Chapter 11 creditors in the U.S.

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In U.S. Chapter 11 cases, when unsecured creditors face difficult prospects for recovering on their claims, creative, non-traditional asset sources often offer the best hope.

Creditor committees often have difficulty pursuing value from estate assets, which are either shrouded in multiple layers of secured debt, or subject to quick Section 363 sales or pre-negotiated plans that principally benefit senior lenders.

By contrast, assets based in the People's Republic of China (PRC) can present surprising asset recovery opportunities for creditor committees. Chances are good that Chapter 11 debtors (or their affiliates) hold unrealized claims or judgments in the world's second largest global economy.

There are several tools creditor committees can employ to realize value from claims or judgments against a Chinese entity:

1. Use discovery tools to galvanize cross-border recovery efforts

As part of its standard due diligence, a creditor committee should request information from the debtor-company about its interests in claims and judgments against foreign entities. If the debtor will not share this information voluntarily, the committee can pursue it through Rule 2004 discovery. This discovery may help identify any U.S. assets of the foreign targets, which could also become sources of recovery to monetize claims or judgments.

2. Don't let foreign claims slip away

If the debtor-company pursues a Section 363 sale of its operating assets, the creditor committee should push to have claims and judgments against Chinese or other foreign entities excluded from the sale, and left within the bankruptcy estate. Even if unsecured creditors are considered "out of money," the committee may still be able to have those assets set aside and preserved for the benefit of unsecured creditors. Secured creditors may lack the appetite to monetize illiquid assets, and so may consent to unsecured creditors seeking their value. The committee can then have those claims and judgments transferred to a litigation or liquidation trust to monetize the assets.

3. Start planning the monetization strategy

Once a creditor committee spots a claimable asset in the PRC, it must 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. (Kobre & Kim's Offshore Asset Recovery Team provides more insight into monetizing creditor claims against PRC entities [here](#).)

5. Consider selling claims or judgments against Chinese entities

Alternatively, the creditor committee may consider marketing and selling claims or judgments against Chinese or other foreign entities to recover funds for unsecured creditors. When considering this option, 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.

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Recovering against a Chinese entity (even a recalcitrant one) is not an impossible task. There are a range of options at a 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 securing monetization.

About Kobre & Kim's Insolvency and Judgment Enforcement Team

Kobre & Kim is a global Am Law 200 law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct.

Regularly working with other law firms as special counsel, our insolvency disputes and judgment enforcement team often litigates in contentious, multijurisdictional insolvency matters that involve competing stakeholders. The team 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.

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