



Kobre & Kim's Cross-Border Disputes Team

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Chinese Investors Can Use Cross-Border Tools to Stand Up to Sovereign Debtors

As Chinese private investors become more prominent in sovereign-related investments through acquisitions, joint ventures, and infrastructure projects, enforcement litigation is made more difficult by a sovereign's unique power and privileges. As we explain below, investors should deploy aggressive cross-border enforcement strategies if they want to ensure a sovereign debtor agrees to a settlement.

As geopolitical tensions pressure sovereign debt, more investors are taking their disputes against sovereign states and entities to arbitration and judicial forums. There is a world of difference between demanding payment of a defaulted debt, judgment, or award from a sovereign and seeing the sovereign pay up. Meanwhile, Chinese private investors have become more prominent in sovereign-related investments through acquisitions, joint ventures, and infrastructure projects in Europe, Africa, and Latin America. These investments increase the claimants' likelihood of facing challenges abroad, leading to globe-spanning enforcement litigation made more difficult by a sovereign's unique powers and privileges.

Investors and other claimants should not be afraid to stand up to sovereign debtors with aggressive non-traditional strategies. The legal process is but one element of an effective strategy to ensure a sovereign award debtor agrees to a settlement:

1. **Focus on Outcomes, Not Assets.** Given the protections of sovereign immunity, creditors cannot always rely on conventional asset recovery solutions. Award holders should focus their resources on strategies most likely to cause the sovereign debtor to agree to (and follow through on) a debt settlement. They can also consider going beyond assets to pressure a sovereign debtor, such as striking alliances or impacting relationships with other government and quasi-government bodies, such as the World Bank, considering assistance to the country.
2. **Preserve Assets with Interim Applications.** Where available, discovery, charge orders, third-party debt orders, or the appointment of a post-judgment receiver in key jurisdictions can be key to preserving the value of assets that have not yet matured or need to be managed by a third party. The mere act of seeking to appoint a receiver can also apply considerable pressure on a sovereign debtor to settle, given common cross-default terms in other debt and the prospect of future capital raises.

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3. **Remember: A Settlement is Not the Finish Line.** A sovereign that incurred a large bond, loan, judgment, or award liability may be just as willing to renege on a settlement agreement. Crafting a settlement agreement that protects against these risks is key to securing a substantial return on one's investment. When the sovereign insists on deferring payments over time, creditors should consider security, consent judgments, choice of law and forum, and contractual receivers. Thinking ahead to the next default will help protect a hard-won victory.

For Chinese investors hoping a sovereign debtor will pay without a costly and lengthy fight, an unconventional cross-border enforcement strategy may increase their chances of achieving an acceptable settlement and significant return.

About Kobre & Kim

Kobre & Kim is a conflict-free global law firm focused on disputes and investigations, often involving fraud and misconduct. The firm:

- Acts on behalf of creditors to monetize high-value judgments and arbitration awards. Most of our matters involve awards and judgments with face values of US \$100 million to several billion USD.
- Often works with other law firms as special counsel in cases beyond their geographic reach to enforce high-value judgments and arbitration awards around the world with our integrated team of former U.S. government lawyers, Hong Kong solicitors, UK solicitors, and barristers (including King's Counsel) and offshore lawyers.
- Has extensive experience handling arbitration award and judgment enforcement matters against sovereign governments and related entities and understands the unique issues and opportunities in such enforcement campaigns.
- Can act in jurisdictions across North and South America, EMEA, Asia, and key offshore financial centers in cases involving closely coordinated, cross-border proceedings.