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DECEMBER 12, 2024

Creditors Can Enhance Returns Amid Surge in Global Sovereign Debt

Creditors and investors in sovereign debt are riding a wave of new opportunities driving returns with global public debt projected to exceed US$100 trillion by the end of 2024, making it possible to reap higher returns on claims against sovereigns previously thought too difficult to enforce. As highlighted below, a well-thought-out strategy can increase returns and accelerate enforcement timelines.

Creditors and investors in sovereign debt are riding a wave of new opportunities driving returns with global public debt projected to exceed US$100 trillion by the end of 2024. It may be possible to reap higher returns on claims against sovereigns previously thought too difficult to enforce by using cross-border strategies that go beyond traditional litigation tactics that the sovereign will expect. A well-thought-out strategy can increase returns and accelerate enforcement timelines:

#1: Focus on Outcomes, Not Assets

Executing against a sovereign's assets can be a long and messy affair that plays out in courts, the press, and the government. Given the protections offered by sovereign immunity, creditors cannot always rely on conventional asset recovery solutions to generate a significant return on investment within a reasonable period – especially for large positions, judgments, or awards.

Investors should focus their resources on strategies most likely to cause the sovereign debtor to agree to (and follow through on) an acceptable resolution. In deciding which sovereign assets to pursue, consider both (1) the monetary value of the asset and (2) the impact of a seizure on streams of important revenue or goods.

Consider going beyond finding and seizing assets to finding other creative ways to achieve a resolution. You might consider raising concerns with strategic trade partners, those providing economic assistance to the sovereign debtor, or credit rating organizations.

#2: Preserve "Young" Assets with a Receivership

A receivership is a powerful tool that can assist creditors in recovering funds in case of a debtor's default. However, when it comes to a judgment enforcement campaign, the appointment of a post-judgment receiver is an oft-overlooked tool that can preserve the value of key assets while also creating additional pressure on the sovereign debtor.

While receiverships or their equivalent are not available as an enforcement tool in all countries, when available, a receivership can be key to preserving the value of assets that either have not yet matured or that need to be managed (such as an ongoing business) to produce value. The mere act of seeking to appoint a receiver can create immediate pressure, given the risks of discovery and seizure.

#3: Remember: A Settlement Is Not the Finish Line

A sovereign’s agreement to settle is not the end of the fight. Sovereigns that incurred a large liability from breaching a contract or expropriating assets are often just as willing to breach settlement agreements. If not properly protected, the creditor may find themselves worse off than without the settlement if the sovereign uses the time to hide or further restructure assets.

Crafting a settlement agreement that protects against these risks is key to securing a return in an asset realization or enforcement scenario. When the sovereign insists on paying the settlement amount over time, creditors should consider security held by third parties in enforcement-friendly jurisdictions or consent judgments. Thinking ahead to the next default will help protect a hard-won victory.

Investors and creditors can increase their chances of achieving acceptable settlement and a significant return on their claims by using an unconventional judgment enforcement strategy against a sovereign debtor.

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As sovereign debt dramatically escalates, recent updates advancing cross-border judgment enforcement efforts in different jurisdictions are opening newfound doors for claimants. For clients focused on collecting what is legally theirs, a clear understanding of aggressive enforcement strategies across jurisdictions can build the leverage needed to reach successful recoveries.

About Kobre & Kim

Kobre & Kim is a global law firm focusing on cross-border disputes and investigations, often involving fraud and misconduct. The firm:

- Formulates and executes cross-border strategies across global jurisdictions, including Brazil, BVI, Cayman, Cyprus, Delaware, Dubai, Hong Kong, Israel, Korea, the United States, and the PRC.
- Focuses on helping clients realize value from their claims, developing investigative, enforcement, and asset tracing/recovery strategies in the pre-dispute stage to maximize future monetization.
- Often works with other law firms to enforce high-value judgments, arbitration awards, and defaulted debt worldwide with our integrated team of former government prosecutors, Hong Kong solicitors, UK solicitors and barristers (including King's Counsel), and offshore lawyers.