

**Kobre & Kim's Cross-Border
Disputes Team**

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Cross-Border Strategies for Latin American Parties Facing Chinese Investment Risks

As Chinese investment in Latin America grows, so do legal risks for Latin American companies. Cross-border strategies such as using Hong Kong arbitration, offshore insolvency tools, and targeting decision-makers can help improve outcomes in disputes with Chinese entities.

Economic ties between Brazilian and Chinese businesses are deepening at an unprecedented pace. Chinese companies are expanding their investments beyond resource extraction to broader sectors, including infrastructure, energy, data, tech, and retail. As this commercial activity grows, so does the likelihood of disputes.

Even if a Latin American party wins a case against a Chinese company, enforcing the resulting award or judgment can be difficult. Structural and procedural hurdles in China often block the enforcement of foreign judgments and insolvency actions. As Chinese investment expands across sectors and regions, Latin American companies and investors should consider cross-border strategies to increase their odds of successful enforcement.

Alternate Pathways to a Favorable Resolution

China has not adopted the UNCITRAL Model Law on Cross-Border and rarely recognizes foreign judgments or insolvency proceedings. Recognition typically depends on a narrow view of “reciprocity” or bilateral treaties. However, as of September 2023, Chinese courts have acknowledged insolvency proceedings from jurisdictions such as the U.S., Germany, Singapore, and Japan, indicating limited but increasing cross-border cooperation.

Latin American companies and investors involved in or anticipating a dispute with Chinese companies should consider strategies across multiple jurisdictions, including offshore, that can provide them with options and leverage:

- 1. Obtain Recognition of Insolvency Proceedings in China via Hong Kong.** Winding-up orders entered in Hong Kong, where Hong Kong is a debtor’s “center of main interest,” can be recognized in mainland China. A groundbreaking 2021 cross-border protocol for recognizing Hong Kong insolvency proceedings in three cities in China—Shanghai, Xiamen and Shenzhen—has been established. The Hong Kong court and parties have already requested the assistance of mainland courts based on the agreement.

2. **Using Hong Kong Arbitration for Dispute Resolution.** Growing links between Hong Kong and mainland China, including through two legal agreements reached in 2019 and 2020, open pathways for investors to get speedy interim relief (such as property and evidence preservation) in China. For example, in 2022, the China International Commercial Court (CICC) announced that it would extend its jurisdiction to arbitrations administered by the Hong Kong International Arbitration Centre, allowing creditors to seek interim measures directly from the CICC.
3. **Utilize BVI and Cayman Pressure on the Company.** Many Chinese companies utilize corporate structures and assets in offshore jurisdictions, including the British Virgin Islands and the Cayman Islands. Latin American companies and investors should leverage offshore judicial tools. For instance, parties can petition to wind up companies incorporated offshore and seek, in some circumstances, the appointment of a provisional liquidator to take control of the company's assets, records, and management. The offshore liquidators can then take steps to enforce legal claims they may have against Chinese subsidiaries or affiliates by suing in China, creating judgment debts that can be used to wind up those affiliates to recover value.
4. **Focus on Decision Makers.** In many jurisdictions, directors and senior management of a company (or third parties such as accountants and auditors) are required to provide information regarding the company's assets and financial affairs to shareholders or parties to a dispute involving the company. An examination order can be highly effective.

As economic ties between China and Latin America grow, so do opportunities for business. But when disputes arise, Latin American companies can face challenges navigating China's complex legal system. To avoid long and costly conflicts, a coordinated cross-border strategy—especially using tools available in Hong Kong, BVI, and Cayman—can help strengthen their position and improve outcomes.

About Kobre & Kim

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

- Helps clients realize value from their claims, developing investigative, enforcement and asset tracing/recovery plans in the pre-dispute stage, to maximize future monetization.
- Often works with other law firms as special counsel in matters beyond their geographic reach to enforce high-value judgments and arbitration awards worldwide with our integrated team of Hong Kong solicitors and Solicitor Advocates, offshore lawyers, US lawyers, and UK solicitors and barristers (including King's Counsel).
- Maintains our independence as advocates ready to litigate against virtually any institution by avoiding repeat client relationships, and the conflicts of interest that come with them.