



## Cross-Border Tools to Aid Latin American Parties in Disputes with PRC Companies

**Economic and investment ties between Latin American and Chinese companies are continuing to strengthen. This brings unique risks if a dispute arises with the Chinese company - even a successful arbitration or litigation could run into the intricacies of the Chinese legal system that may create barriers to payment. Creative cross-border strategies may be needed for Latin American companies and investors to increase their leverage.**

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Deals and partnerships between Latin American and Chinese companies are growing as economic ties between the two regions continue to deepen. However, there are unique risks involved if a dispute arises with the Chinese company.

Even if a company or investor succeeds in an arbitration or litigation against a Chinese company, the Chinese legal system's intricacies may create barriers to getting the company to pay. Latin American companies and investors should consider cross-border strategies to increase their leverage.

### Alternate Pathways to Drive China-Based Counterparties to a Favorable Resolution

Non-Chinese judgments and insolvency proceedings are not easily recognized in Mainland China. Traditionally, Chinese courts only recognize foreign judgments based on a narrow reading of "reciprocity" (namely, if a foreign court had actually enforced a Chinese judgment) or through bilateral treaties. Chinese courts rarely recognize foreign insolvency proceedings, mainly because China has not adopted the UNCITRAL Model Law on Cross-border Insolvency. Chinese courts had only recognized foreign insolvency proceedings in three cases as of January 2023.

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:

**Using Hong Kong Arbitration for Dispute Resolution.** Recent 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, the China International Commercial Court (CICC) announced in 2022 that it is extending its jurisdiction to arbitrations administered by the Hong Kong International Arbitration Centre, allowing creditors to seek interim measures directly with the CICC.

**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 the recognition of 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.

**Utilize BVI and Cayman Pressure on the Company.** With many Chinese companies hosting corporate structures and assets in offshore jurisdictions, including the British Virgin Islands and the Cayman Islands, Latin American companies and investors should leverage these offshore judicial tools. For instance, parties can petition to wind up companies incorporated offshore, and if granted, this can lead to the appointment of appointing a provisional liquidator to take control of the company's assets, records, and management. In addition, the offshore liquidators can take steps to enforce legal claims that the offshore companies may have against Chinese subsidiaries or affiliates by suing in China.

**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.

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Growing economic ties between China and Latin America have created opportunities for cooperation between companies from the two regions. However, as disagreements inevitably arise, Latin American investors and companies may run into roadblocks due to the complexities of the Chinese legal system. For those looking to avoid a lengthy and costly dispute, a coordinated cross-border strategy that leverages valuable tools available in key jurisdictions – especially through Hong Kong – can help investors and companies improve their positions and chances of success.

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## About Kobre & Kim

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

- Focuses on helping 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 around the world with our integrated team of Hong Kong solicitors, UK solicitors and barristers (including King's Counsel) and offshore lawyers.

- 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.