

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

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Cross-Border Tools for Chinese Investors to Recover in Brazilian Insolvencies and Against Fraud

Brazil has been welcoming more investment from China, but the recent wave of insolvencies and financial distress in Brazil has caused concern from investors, especially if fraud is uncovered. Brazil's insolvency landscape is difficult to navigate, but investors can gain the upper hand with an assertive, multijurisdictional approach.

Brazil is seeking more investment from China as relations between the two countries warm up. Almost half of China's current investments in South America are in Brazil, and Brazil's president has made efforts to encourage further investment, including signing 15 bilateral agreements worth around US \$10 billion earlier in 2023.

2023 has been a shaky year in the Brazilian market, which has seen a growing wave of insolvencies and financial distress sparked by the Americanas fraud and tighter global financial conditions. This could impact the health of Chinese investments, threatening investors' bottom lines. It could also bring to light instances of corporate fraud and misconduct in Brazil that would mire Chinese investors in an even more complicated situation, making recovery of their investments a distant prospect.

Chinese investors may despair at the problems in Brazil's insolvency landscape, from the long completion times to the limited number of specialized courts to deal with the complexities of insolvency proceedings. However, new developments in Brazil are expanding the creditor toolkit. International creditors can gain the upper hand with a more assertive, multijurisdictional approach.

Strategies for Creditors to Boost Monetization

Since a new bankruptcy law was enacted, several tools became available in Brazil for international creditors looking to improve their leverage, such as creditor-driven recovery

plans or the deployment of tools to pierce the corporate veil.

These tools can be enhanced by leveraging resources outside of Brazil, especially when there are contacts with offshore jurisdictions, such as offshore bonds or assets belonging to the debtor company or the domicile of key directors or officers. These resources can include:

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- **Bringing proceedings offshore.** Brazilian companies often hold share interests through holding companies located in offshore jurisdictions, including the Cayman Islands and the British Virgin Islands. Chinese creditors can obtain information in those places through judicial proceedings oftentimes without having to notify the debtor in question. Many jurisdictions also offer powerful freezing orders that can be applied worldwide.
- **Conducting a worldwide asset tracing campaign.** Tracing assets to identify the worldwide assets related to the debtor company or other relevant targets can not only provide creditors with a clearer picture of what to target, but can also be relevant for claims against third parties for damages, or negotiation. Potential targets can include enforcing against overseas receivables and IP.

As Chinese creditors risk facing Brazilian debtor companies in distress or mired in allegations of fraud and misconduct, new tools are available in Brazil to help them improve their positions. When combined with an aggressive multijurisdictional strategy, creditors can build the leverage needed to reach a favorable resolution and recovery.

About Kobre & Kim

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

- We help clients with interests in Brazil through our team in São Paulo that routinely acts in complex, cross-border insolvency, asset tracing and recovery.
- Our team of former U.S. and other government investigative lawyers, offshore-based attorneys, and Chinese-speaking lawyers in Shanghai and Hong Kong has deep experience tracing, freezing and recovering misappropriated assets hidden in cross-border and offshore structures.
- Our deep experience coordinating judgment enforcement and monetization strategies across jurisdictions, often involving assets and adversaries in Brazil and other Latin American countries, with lawyers admitted across the U.S., South America, Asia, EMEA and key offshore financial centers.