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Defensive and Counter-Offensive Strategies for High-Yield Debt Issuers and Private Borrowers

As global credit conditions continue to tighten, corporate issuers of high-yield debt and private borrowers - especially in emerging markets - are at risk of default, sparking a cascade of events that can spiral across borders and threaten their survival. We look at some creative and aggressive strategies debtors can deploy to limit their exposure and protect their bottom lines.

As global credit conditions continue to deteriorate, corporate issuers of high yield debt and private borrowers - especially those in emerging markets - are increasingly at risk of becoming embroiled in cross-border disputes. Panicked global creditors might preemptively pull credit lines or accelerate maturities, causing cascades of events that threaten the company's survival. Debtors and their advisors should consider deploying creative, aggressive and multijurisdictional strategies that can pre-empt problems, hasten resolution and protect their bottom lines.

These strategies may include:

- Conducting cross-border asset exposure and creditor stress tests to war game what an aggressive global creditor scenario may look like;
- Leveraging debtor-friendly insolvency law in different jurisdictions, including in offshore jurisdictions such as the Cayman Islands and British Virgin Islands;
- Launching defensive reputation strategies; and
- Pursuing defensive debtor-in-possession insolvencies and creative uses of cross-border recognition of moratoriums to stay proceedings and, through legitimate means, alter settlement dynamics that potentially save issuers years of litigation.

For distressed emerging market companies and their advisors, there are more options available around the world - both inside and outside the courtroom - to lawfully defend against creditor claims and protect their bottom lines than they may have initially realized.

About Kobre & Kim

This content provides information on legal issues and developments of interest to our clients and friends and should not be construed as legal advice on any matter, specific facts or circumstances. The distribution of our content is not intended to create, and receipt of it does not constitute, an attorney-client relationship.

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

Our team:

- Avoids repeat client relationships, and the conflicts of interest that come with them, to maintain our independence as advocates ready to litigate against virtually any institution;
- Leverages our significant experience acting on behalf of debtors and distressed institutions to develop and implement enforcement defense strategies to dilute and protect entities against aggressive claimants;
- Advocates directly, or works cooperatively with local counsel, in jurisdictions in the U.S., UK, EMEA, Asia, Latin America and key offshore financial centers.