



Kobre & Kim's Cross-Border Disputes Team

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Enforcing Claims Against Sovereign Debtors in the Middle East

Commercial parties worldwide have long struggled to enforce cross-border arbitration awards and judgments in the Middle East. However, recent decisions of the UAE courts have signaled that the tides may be turning more in creditors' favor, which can inform how they may approach enforcement against a sovereign debtor. Below, our team explains recent updates advancing cross-border judgment enforcement efforts in the region.

Commercial parties worldwide have long struggled to enforce cross-border arbitration awards and judgments in the Middle East. These difficulties can be compounded when the debtor in question is a sovereign state or state-owned entity (SOE), given their unique privileges, including state immunity and indirect asset-holding structures.

This issue is likely to become more prevalent over the coming years, given two recent trends:

- Many more Middle East-based investors are pursuing claims and seeking damages and other remedies against states and SOEs based on bilateral and multilateral investment treaties. For example, the Middle East and North Africa region accounted for 7% of new investor-state arbitrations commenced at the International Center for Settlement of Investment Disputes (ICSID) last year, with close to 50 claims initiated between 2018 and 2023; and
- The continued flows of capital to financial centers in the region, including the DIFC in Dubai, ADGM in Abu Dhabi, QFC in Doha, and KAFD in Riyadh, where domiciled investors can often benefit from the country's bilateral and multilateral investment treaty protections.

Where a Sovereign Debtor does not voluntarily settle the award or judgment, investors are typically required to recognize and enforce the award or judgment in the place where the Sovereign Debtor has commercial assets.

Recent decisions of the UAE courts have signaled that the tides may be turning more in creditors' favor, which can inform how they may approach enforcement against a sovereign

debtor. For instance, in May 2024, as part of a global campaign spearheaded by Kobre & Kim, the Dubai Court of Cassation issued a judgment unwinding a debtor's transfer of shares to a family member to monetize a claim originating in the UK. This was one of the first foreign judgments to be enforced onshore in the UAE under the new enforcement regime.

In addition to domestic courts signaling their increasing willingness to enforce cross-border judgments and awards, aggressive and creative strategies can pay dividends by accelerating enforcement timelines, saving creditors time and money, and managing collections risks. This includes deploying strategies targeting unconventional vulnerabilities around the world, including:

1. **Alternate Pathways.** Investors should pursue strategies that have an outsized impact, such as applying for judicial discovery to identify the worldwide assets of a sovereign, pursuing assets of state-owned companies as the state's "alter ego," and identifying and seizing state-owned real property used for commercial, rather than diplomatic, purposes. The focus should not only be on assets but also on striking alliances or impacting relationships with other government and quasi-government bodies, such as the IMF and World Bank. All these creative strategies that improve the prospects of recovery can also increase the sale value of the claims.
2. **Sovereign Wealth.** An increasing number of sovereigns hold significant pools of liquid assets outside their borders in sovereign wealth funds, often reachable in creditor-friendly jurisdictions with a favorable legal landscape for enforcement. The structure and purpose of the fund can determine whether the fund's assets are considered property of the sovereign itself and whether they are exempt from sovereign immunity. Steps can be taken to put such funds in jeopardy.
3. **Future Receivables or Third-Party Debts.** When the sovereign is owed money from contracts or unrelated legal claims, a court-appointed receiver may allow creditors to take control of future receivables, preserving them for monetization while shielding them from competing creditors. Various jurisdictions' laws allow receiverships to gather receivables as they accrue over time before passing them along to the creditor. Similar principles allow receivers to collect debts owed to the debtor by third parties. This could increase both the recoverability and value of bondholders' claims.

Recent efforts indicate that Middle Eastern courts are generally becoming more receptive toward foreign enforcement. A well-designed campaign that utilizes both in-court and out-of-court options can bring a recalcitrant sovereign debtor to the negotiating table, accelerate a favorable settlement, and maximize recovery.

About Kobre & Kim

Kobre & Kim is a conflict-free global law firm focused on disputes and investigations, often involving fraud and misconduct. The firm:

- Acts on behalf of creditors to monetize high-value claims, debt, judgments and arbitration awards, with most of our matters involving claims with face values of US \$100 million to several billion USD.
- Has extensive experience handling claim, award and judgment enforcement matters against sovereign governments and related entities, and understands the unique issues and opportunities in such enforcement campaigns.
- Is able to act in jurisdictions across North and South America, EMEA, Asia, and key offshore financial centers in cases involving closely coordinated, cross-border proceedings.