



Kobre & Kim's Claim Monetization & Dilution Team



Ilona Groark
Hong Kong
ilona.groark@kobrekim.com



Jason J. Kang
Shanghai / Hong Kong
jason.kang@kobrekim.com



John Han
Hong Kong
john.han@kobrekim.com



**Merrick Ricardo
Watson**
BVI
merrick.watson@kobrekim.com



Paul Hughes
Dubai
paul.hughes@kobrekim.com



Timothy de Swardt
BVI
timothy.deswardt@kobrekim.com

MARCH 22, 2023

Bringing a Global Perspective to Challenge Offshore Awards Successfully

Judgment or award debtors often hold assets in notoriously enforcement-friendly offshore jurisdictions such as the BVI, meaning that when cornered by a creditor, debtors may find few - if any - avenues to challenge the claim against them. However, as a recent Kobre & Kim victory in the BVI demonstrates, a deep familiarity of offshore law and an ability to apply it to principles of foreign law can help debtors snatch victory from the jaws of defeat.

Judgment or award debtors that get cornered by their creditors in creditor-friendly, pro-enforcement offshore jurisdictions such as the British Virgin Islands (BVI) may find few if any, legal avenues to contest the claims against them.

A recent Kobre & Kim victory in the BVI, however, demonstrates that savvy parties, through a deep familiarity with offshore law and an ability to apply it to principles of foreign law across Asia Pacific and beyond, can defy conventional wisdom and snatch victory from the jaws of defeat.

Background

The client, an investor with global business interests, became embroiled in a dispute related to the acquisition of a Thai energy company, resulting in three arbitration awards against them totaling over US \$80 million. The client engaged Kobre & Kim after the BVI Commercial Court recognized and enforced those awards in November 2021.

The pro-enforcement environment in the BVI meant that lawfully defending against these aggressive enforcement efforts would be no small feat for the client. The normal New York Convention grounds were limited in this situation, and the authoritative case law from the United Kingdom's Privy Council supported enforcement and made public policy defenses notoriously difficult.

The Decision

**Victor D. V.
Clementino**

São Paulo

victor.clementino@kobrekim.com

Kobre & Kim convinced the court to consider the public policy of a foreign jurisdiction—a friendly nation to partly or fully set aside an enforcement order based on international comity. We argued that the award of compound interest given by the tribunal violated Thai law, and the court should refuse to enforce the compound interest aspects of the awards in the BVI.

In a [January 2023 decision released to the public in March 2023](#), the Eastern Caribbean Supreme Court agreed with this argument, saving the client millions of dollars in interest.

Judgment or award debtors often hold assets or are based in offshore jurisdictions such as the BVI, which is notorious for being a creditor- and enforcement-friendly environments. When an aggressive creditor corners them in this sort of jurisdiction, integrated global teams that can combine offshore legal expertise with law from relevant key onshore jurisdictions around the world can invoke power public policy defenses and open up invisible routes to success – even when all hope seems lost.

About Kobre & Kim

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

Our Offshore enforcement 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.