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Achieving High Returns from Sovereign & States Disputes

A global economic downturn in 2023 will put sovereign debt under pressure, but it also presents an opportunity for creditors and investors to drive extraordinary returns. We explain how deploying creative cross-border strategies can overcome even the toughest sovereign debtors.

By using cross-border strategies that go beyond traditional litigation tactics that the sovereign will expect, it is possible to reap high returns on outstanding judgments previously thought too tough or too large to enforce.

1. Focus on Outcomes, Not Assets

Executing against a sovereign's assets can be a long and messy affair that plays out in courts, the press, and the government. Given the protections offered by sovereign immunity, creditors cannot always rely on conventional asset recovery solutions to generate a significant return on investment within a reasonable period of time – especially for large judgments.

Investors should focus their resources on strategies that are most likely to cause the sovereign debtor to agree to (and follow through on) an acceptable settlement. In deciding which sovereign assets to pursue, consider (1) the monetary value of the asset and (2) whether the asset's seizure is likely to have a chilling effect on an essential stream of revenue or goods.

Consider also going beyond finding and seizing assets to pressure a sovereign entity to settle, such as raising concerns with other governments considering striking trade agreements or providing economic assistance to the country, or reaching out to human rights organizations and rating agencies.

2. Preserve “Young” Assets with a Receivership

A receivership is a powerful tool that can assist creditors to recover funds in case of a debtor's default. When it comes to a judgment enforcement campaign, however, the appointment of a post-judgment receiver is an oft-overlooked tool that can preserve the value of certain assets while also applying additional pressure on the sovereign debtor to settle.

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While receiverships or their equivalent are not available as an enforcement tool in all countries, when available receiverships can be a powerful tool within a monetization strategy against sovereigns. A receivership can be key to preserving the value of assets that either have not yet matured or need to be managed by a third party (such as an ongoing business) to continue to produce value. The mere act of seeking to appoint a receiver can also apply considerable pressure on a sovereign debtor to settle, given the many efficiencies of a post-judgment receiver which range from discovery and seizure to generally running a day-to-day business.

3. Remember: A Settlement Is Not the Finish Line

A sovereign's agreement to settle is not the end of the fight. A sovereign that incurred a large liability from breaching a contract or expropriating assets may be just as willing to renege on a settlement agreement. If not properly protected, the creditor may find themselves in a worse situation than before, because the sovereign will have bought itself more time to hide and restructure its assets.

Crafting a settlement agreement that protects against these risks is key to securing a substantial return on one's investment. In circumstances where the sovereign insists on paying the settlement amount over a period of time, creditors should consider negotiating forms of security or consent judgments. Thinking ahead to the next default will help protect a hard-won victory.

Investors and creditors can increase their chances of achieving both an acceptable settlement and significant return on their claim with an unconventional judgment enforcement strategy against a sovereign debtor.

About Kobre & Kim

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, often involving fraud and misconduct.

The firm's team:

- Acts on behalf of creditors to monetize high-value judgments and arbitration awards, with most of our matters involving awards and judgments with face values of US \$100 million+ to several billion USD.
- Has extensive experience handling arbitration 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.