

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

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What a Landmark Ruling Against Spain Means for Investors in Disputes with Sovereigns

International investors who win arbitral awards against sovereign states and entities often find they are just beginning a lengthy, globe-spanning enforcement litigation, exacerbated by a sovereign's unique powers. Award holders should leverage international treaty protections to take a bold stand, as Kobre & Kim's recent landmark win against the Kingdom of Spain demonstrates.

As more international investors take their disputes against EU sovereign states and entities to arbitration forums, many are disappointed that a favorable award is not the end of their troubles but rather the beginning of a lengthy, globe-spanning enforcement litigation. This is made more difficult by a sovereign's unique powers and privileges in most jurisdictions, including state immunity.

To speed up the enforcement process, award holders should not be afraid to take a stand against their sovereign debtor using international treaty protections. By deploying bold in-court tactics and coordinated global strategies, award holders can succeed with awards and judgments previously thought too tough or too large to enforce.

A Landmark Win For Award Holders

In May 2023, the Commercial Court (High Court) in London dismissed the Kingdom of Spain's challenge to the recognition of an ICSID arbitration award (the Antin Award).

The judge accepted the arguments of the claimant investors, represented by Kobre & Kim, dismissing all of Spain's grounds to set aside an order to pay approximately EUR €120 million for breaches of the Energy Charter Treaty (ECT) despite Spain's arguments asserting state immunity and its reliance on European Court of Justice rulings that the ECT's dispute resolution mechanism is incompatible with EU law.

The ruling from the London Court puts an end to the long debate over whether the European Court of Justice decisions in *Achmea* and *Komstroy* somehow trump Spain's international treaty obligations in the ECT and the ICSID convention, at least outside of the EU.

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By extension, other EU states who are party to the ECT and the ICSID Convention can expect the same outcome if they seek to rely on the same arguments that Spain put forward. As well as clarifying how the sovereign immunity legislation in England should be understood, the reasoning in the London ruling should also assist investors in the context of enforcement against EU states under the New York Convention where the *Achmea* and *Komstroy* arguments are deployed in an attempt to resist enforcement in common law countries.

Other Strategies for Sovereign Creditors to Consider

In many successful recoveries against sovereign debtors, the legal process is but one element of an effective strategy to ensure a sovereign judgment or award debtor settles the same, as we have explained:

1. **Focus on Outcomes, Not Asset Values.** Award holders should focus their resources on strategies that are most likely to cause the sovereign debtor to agree to (and follow through on) a settlement of the debt.
2. **Preserve Assets with Interim Applications.** Where available, discovery, charge orders, third party debt orders, or the appointment of a post-judgment receiver in key jurisdictions can be key to preserving the value of assets that either have not yet matured or need to be managed by a third party.
3. **Remember: A Settlement is Not the Finish Line.** 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. Thinking ahead to the next default will help protect a hard-won victory.

About Kobre & Kim

Kobre & Kim is a conflict-free global 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.