



Maximizing Recovery Against a Sanctioned Sovereign

Investors in Russian and other sovereign debt rightfully consider the eventual enforcement of their investments, a task that has become more challenging when sanctions are involved. Below, our Claim Monetization & Dilution team shares some creative ways distressed debt holders can move against sovereign assets and maximize their return.

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As bond prices plummet and their underlying economies experience severe strain, investors in Russian and other sovereign debt face an uphill battle to enforce a claim against any sovereign entity – particularly so when sanctions are involved. But there are creative ways for distressed debt holders to unlock hidden value in these investments.

To put maximum pressure on sovereign assets, nontraditional cross-border enforcement strategies may go further in maximizing the returns on these investments.

1. Tap Into Sovereign Wealth Funds - Even Under Sanctions

An increasing number of sovereigns hold significant pools of liquid assets outside their borders in sovereign wealth funds, often in creditor-friendly jurisdictions with a favorable legal landscape for enforcement.

Investors in sovereign debt may be able to access assets held in sovereign wealth funds depending on the structure and purpose of the fund, which can determine whether the funds' assets are considered property of the sovereign itself and whether they are exempt from sovereign immunity. Where the sovereign's assets are subject to sanctions, those sanctions might prohibit a creditor from taking control of the assets, for example, but not from obtaining a freezing order over those assets.

Under some regimes, investors can obtain a government license to seize the sovereign's assets notwithstanding the sanctions. Indeed, our clients have successfully obtained licenses from the U.S. Office of Foreign Assets Control (OFAC) that have allowed them to seize assets of sanctioned states located around the world.

2. Make Lemonade Out of Future Receivables

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 now, preserving them for monetization while shielding them from competing creditors.

The laws of various jurisdictions allow for receiverships to gather receivables as they accrue over time before passing them along to the creditor. Investors pursuing such a measure could increase both the recoverability of their judgment and, ultimately, the value of their claim.

3. Remember: You Don't Have to Cross the Finish Line

Investors should not shy away from common – but still effective – strategies against a sovereign debtor, including 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 state-owned real property used for commercial, rather than diplomatic, purposes.

Still, investors don't need to pursue their claim all the way through full recovery on a judgment. Through creative strategies that improve the prospects of recovery, including the above, investors increase the value of their claims, allowing them to trade out at a substantial – and speedier – return. Throughout this process, investors should make tactical recoveries to keep their entire endeavor cash flow positive.

When evaluating investment opportunities presented by the plummeting prices of Russia's sovereign bonds (as well as other distressed sovereign debt), savvy distressed debt investors rightfully consider the eventual enforceability of their investments. For those willing to take the extra step, the deployment of nontraditional cross-border strategies can raise the value of their claims and maximize their ultimate returns.

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About Kobre & Kim's Claim Monetization Team

Kobre & Kim is a global Am Law 200 law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct.

Our global Claim Monetization team helps clients realize value from their claims, developing investigative, enforcement and asset tracing/recovery plans in the pre-dispute stage to maximize future monetization, including against sovereigns. Our integrated team, of former U.S. government lawyers, Hong Kong solicitors, UK solicitors and barristers (including King's Counsel) and offshore lawyers, includes Russian speakers and uniquely positions us to drive cross-border proceedings — advocating directly for our clients or closely leading local counsel in jurisdictions around the world.

Our team also has deep experience with U.S. foreign policy, national security and economic controls, regularly interfacing with U.S. regulatory agencies that impose such controls, such as the Office of Foreign Assets Control (OFAC), the DOJ and the Department of Commerce.