

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

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Middle Eastern Investors Have Options to Protect Their Investments in China

Middle Eastern investors are increasingly looking to China for opportunities. However, if they enter into a dispute with Chinese companies, there may be unanticipated risks, even when investors obtain an overseas judgment or initiate overseas proceedings. To best prepare, investors should consider strategies that can increase their leverage and bring the disputes right to the company's doorstep.

Investments from the Middle East, especially Saudi Arabia, Qatar and the United Arab Emirates (UAE), into Mainland China are growing, expanding opportunities of high returns for private equity firms and other investors in the region. However, they need to pay attention to potential risks from disputes with Chinese companies.

Though investors may be able to win a judgment or initiate insolvency proceedings against the company overseas, they may face barriers getting the company to comply, especially given the intricacies of the Chinese legal system and the uncertainties surrounding its economic atmosphere. Investors should consider strategies to increase their leverage against Chinese companies and to bring the disputes to their doorstep.

Narrow Paths to Bring Overseas Proceedings to China Exist

Foreign judgments and insolvency proceedings are not easily recognized in Mainland China. Traditionally, Chinese courts could only recognize foreign judgments based on a narrow reading of "reciprocity" (namely, if a foreign court had actually enforced a Chinese judgment) or on bilateral treaties. Since 2022 Chinese courts have been slightly more welcoming towards recognizing foreign judgments.

However, Chinese courts still rarely recognize foreign insolvency proceedings, mainly because China has not adopted the UNCITRAL Model Law on Cross-border Insolvency. By

end of January 2023, Chinese courts only recognized foreign insolvency proceedings in [three cases](#).

To plan ahead and enable a successful navigation of the current Chinese legal landscape, Middle Eastern investors involved in or anticipating a dispute with Chinese companies should consider strategies across multiple jurisdictions – including offshore – that can provide them with options and leverage:

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1. **Get Earlier Relief Through Arbitration.** International arbitrations can often allow investors to reach a resolution to their disputes quicker, and with recent growing links between Hong Kong and mainland China – including through two legal agreements reached in 2019 and 2020 – this opens up a shortcut for investors to get speedy interim relief (such as property and evidence preservation) in China.

For example, the China International Commercial Court (CICC) announced in 2022 that it is extending its jurisdiction to significant arbitrations administered by the Hong Kong International Arbitration Centre (HKIAC), allowing creditors to seek interim measures directly with them. The HKIAC and Shenzhen Court of International Arbitration (SCIA) also recently [formalized](#) partnerships with the Dubai International Arbitration Centre (DIAC) respectively, smoothing a path for Middle Eastern investors to resolve their disputes directly in Hong Kong and China.

2. **Leverage Offshore Pressure Points.** With many Chinese companies hosting corporate structures and assets in offshore jurisdictions, including the British Virgin Islands and Cayman Islands, Middle Eastern investors should leverage the judicial tools available there to create further lawful pressure.

For instance, investors can wind up companies incorporated offshore, which if granted can lead to the appointment of a provisional liquidator to take control of the company's assets, records and management. The appointment of a liquidator can also help investors obtain information from key allies of the company, adding additional pressure. In addition, the offshore liquidators can take steps to enforce legal claims that the offshore companies may have against Chinese subsidiaries or affiliates.

3. **Obtain Recognition of Insolvency Proceedings in China via Hong Kong.** Insolvency proceedings established in overseas jurisdictions – including any winding up proceedings offshore – can be recognized in mainland China through Hong Kong, with the establishment of a groundbreaking 2021 cross-border protocol for the recognition of Hong Kong insolvency professionals in three jurisdictions in China. This can give investors access to recovery tools directly in mainland China.

This arrangement has already had an effect. Shortly after the establishment of the protocol, a [Hong Kong judge re-examined](#) the rationale behind a previous judgment rejecting a winding up petition, this time granting an application based on the likelihood that liquidators can be recognized in Shenzhen, China. More recently in 2023, a [Hong Kong court reaffirmed](#) its power to issue a letter of request to a Shanghai court to assist a Hong Kong liquidator.

Middle Eastern investors are finding increasing opportunities to invest in Chinese companies and businesses, but as disagreements inevitably arise, they may soon find themselves having to navigate the complexities of the Chinese legal system. For those looking to avoid a long and costly dispute, a coordinated cross-border strategy that leverages valuable tools available in key jurisdictions – especially through Hong Kong – can help investors improve their positions and chances of success.

About Kobre & Kim

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

- Focuses on helping clients realize value from their claims, developing investigative, enforcement and asset tracing/recovery plans in the pre-dispute stage, to maximize future monetization.
- Often works with other law firms as special counsel in cases beyond their geographic reach, including in Dubai, to enforce high-value judgments and arbitration awards around the world with our integrated team of former U.S. government lawyers, Hong Kong solicitors, UK solicitors and barristers (including King's Counsel) and offshore lawyers.
- Maintains our independence as advocates ready to litigate against virtually any institution by avoiding repeat client relationships, and the conflicts of interest that come with them.