



Pathways for Global Bondholders to Effectively Oppose Unjust UK Restructuring Plans

English courts have been welcoming to delinquent global bond issuers, particularly due to the ability to cram down dissenting creditors. However, as recent court decisions show, the tide may be turning – creditors who take swift and forceful action can find a path to success, even against the biggest industry players.

May 18, 2023

England has become a forum of choice for delinquent global bond issuers seeking to restructure their debt. This is due to increasingly debtor-friendly restructuring rules, particularly those enabling a cram down of dissenting creditors.

There are ways for bondholders to resist cram down strategies from even the biggest bond issuers, whether in the English courts or by litigating issues in offshore jurisdictions of incorporation. Swift, muscular and creative opposition can make a material difference:

- Concentrate efforts on organizing as a single ad hoc group so that efforts and resources can be focused and centralized.

- Neutralize the company's "ambush" advantage by mobilizing swiftly.

- Participate – preferably as a cohort – in all convening and other meetings, and increase the volume with which the company hears the opposition voice.

- Focus on:

 - Possible breach of duties by individuals and decision-makers.

 - The company's description of its financial peril and accounts inaccuracies.

 - The subjective inadequacies of the company's valuation.

 - Lawful ways to create proceedings in other jurisdictions, such as the (often) Offshore jurisdiction of incorporation.

Accomplishing these goals requires the fortitude and independence to take firm positions against major financial institutions and other industry players.

Global bondholders now have better prospects of moving the needle in England. A [recent decision](#) of the English courts shows that it can and will halt a restructuring plan that disadvantages bondholders. This is the second such occasion on which the court has applied the brakes.

In one of the most recent cases, the court did not like the fact that the directors threatened to place the company into formal insolvency if the court did not give its' sanction by a particular date. Holding a gun to the judge's head proved to be a bad idea. Nor did the court like the company's subjective choice as to which creditors should be viewed as "essential." Similar criticisms were leveled by the High Court in [another recent case](#), also rejecting a restructuring plan.

Taken together, pathways are opening up for global bondholders to challenge restructuring plans. By deploying swift, muscular and creative strategies – even against major institutions – they can see greater chances of success at protecting their interests.

About Kobre & Kim

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

- Regularly works with other law firms as special counsel in contentious, multijurisdictional insolvency matters that involve competing stakeholders.

- Has significant experience acting on behalf of creditors to develop and implement offensive enforcement and asset tracing/recovery strategies to monetize high-value claims – efforts which are strengthened by the team's in-depth understanding of the defensive litigation strategies that debtors are likely to deploy.

- Offers deep experience coordinating judgment enforcement and monetization strategies across jurisdictions, often involving assets and adversaries in the PRC and other Asian countries, with lawyers admitted across the U.S., South America, Asia, EMEA and key offshore financial centers.

