



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

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# Political Strategies in Monetizing Sovereign Arbitration Awards

**Winning an arbitration award against a sovereign state is often the start of a lengthy and costly enforcement campaign. International investors and companies should not be afraid to deploy more creative approaches - a recent Kobre & Kim victory demonstrates how unorthodox lawful tools can bring sovereign debtors to the negotiating table.**

For international investors and companies, winning an arbitration award against a sovereign state is no guarantee of payment. Many discover that a favorable award marks just the beginning of a lengthy, globe-spanning enforcement campaign, made more difficult by a sovereign's unique powers and privileges including state immunity and indirect asset holding structures.

To make a greater impact on the enforcement process, award holders should not be afraid to take a stand against their sovereign debtors by using more creative approaches. As a recent Kobre & Kim victory demonstrates, this approach can use lawful tools in a cross-border context to put legitimate pressure on the sovereign debtor and bring them to the negotiating table.

### Using Legal Tools to Balance the Playing Field against a Sovereign State

A multinational fuel supplier sought to enforce a very substantial arbitration award and U.S. court judgment against a Caribbean country after the country failed to pay for certain fuel shipments. Kobre & Kim was brought in to design and implement a campaign to cause an efficient resolution. This included securing the seizure of the country's multimillion-dollar credit with a competing fuel supplier in Texas.

On top of the cross-border litigation, the team architected a carefully timed lobbying campaign to persuade a key international finance institution to condition future aid to the country on their resolution of this dispute as a part of an assessment of the state's creditworthiness. This simultaneous two-pronged strategy - combining legal enforcement

efforts with a lawful targeted political campaign - caused the country to resolve the dispute on highly favorable terms for the client within 18 months after the award was handed down.

### Don't Shy Away from Outside-the-Box Strategies

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As the case shows, aggressive and creative strategies can pay dividends by accelerating enforcement timelines, saving creditors time and money, and managing collections risk. This includes deploying strategies targeting unconventional vulnerabilities around the world, including:

1. **Alternate Pathways.** Investors should pursue strategies that have an outsized impact, such as 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 and seizing state-owned real property used for commercial, rather than diplomatic, purposes. The focus should not only be on assets but looking to strike alliances or impact relationships with other government and quasi-government bodies, such as the IMF and World Bank. All these creative strategies that improve the prospects of recovery can also increase the sale value of the claims.
2. **Sovereign Wealth.** 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. The structure and purpose of the fund can determine whether the fund's assets are considered property of the sovereign itself and whether they are exempt from sovereign immunity. Steps can be taken to put such funds in jeopardy.
3. **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, 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. This could increase both the recoverability and value of bondholders' claim.

Arbitration awards against sovereigns can be steeply discounted due to enforcement challenges and risk without creative and efficient pathways to payment. Every case is different. A well-designed campaign that utilizes both in-court and out-of-court options can bring a recalcitrant sovereign debtor to the negotiating table and accelerate a favorable settlement using lawful means.

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#### About Kobre & Kim

Kobre & Kim is a conflict-free global law firm focused on disputes and investigations, often involving fraud and misconduct. The firm:

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