



## To Catch a Debtor: Seizing the Money

**Below is the third and final chapter of our Offshore Asset Recovery team's series on using offshore legal tools to monetize claims against debtors based in non-U.S. jurisdictions such as The People's Republic of China. Whereas Parts 1 and 2 respectively focused on "finding" (discovery) and "freezing" any assets in question, Part 3 delves into what to do in case the dispute is between managing parties of a joint venture.**

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*[Click here to read "Finding the Money," Part 1 of our "To Catch a Debtor" series.](#)*

*[Click here to read "Freezing the Money," Part 2 of our "To Catch a Debtor" series.](#)*

Businesses in the People's Republic of China tend to favor offshore jurisdictions such as The Cayman and British Virgin Islands (BVI) for setting up joint venture (JV) structures for a number of reasons, but a deadlock can ensue if partners enter into a dispute. Quite often, the party that is locked out is usually the one that provided the funding, thus leaving the other party – the one that is in charge of managing the JV's day-to-day affairs – with all the control.

We have previously discussed potential ways to track down a PRC-based debtor. The first step is "finding the money" through the use of offshore discovery actions. Once the assets have been located, the next challenge is "freezing the money" through such methods as standalone freezing injunctions or receiverships.

Finally, the following steps can be key to seizing the assets currently controlled by the "bad" partner in a JV:

### **"I am a majority investor in our JV entity. How can I use this to my advantage?"**

If the wronged party holds an overwhelming majority of the investment in the JV entity, they may be able to legitimately dilute or change control of the entity by taking advantage of provisions in the partnership's constitutional documents. Such provisions may be used to appoint an independent director to investigate possible allegations of fraud, which in turn can be invaluable in the quest to oust the fraudster, preserve the underlying assets and take back control.

### **"What can I do to ensure my assets won't be touched in the interim?"**

In Cayman and BVI, the appointment of a court-appointed receiver over the assets of the entity will remove control and prevent the "bad guy" from messing with the entity as you wait for a resolution. This is a powerful weapon in the offshore armoury, as the ability to apply for the receiver's appointment without giving any notice to the debtor can ensure the bad guy is not "tipped off."

In addition to a court-appointed receiver, you could also leverage a common type of structure used by the Chinese to personally hold assets – the WFOE. WFOEs, or Wholly Foreign-Owned Enterprises, are common Chinese vehicles and often structured using Cayman and/or BVI parent companies. By gaining control of a Cayman or BVI parent company in the WFOE structure, it might be possible to secure control of the Chinese operating entities where the assets sit (In both Cayman and BVI this can be achieved through a court-appointed receiver or a provisional liquidator). However, the processes for deploying these options differ between Cayman and BVI, and it is advisable to seek expert counsel before acting on a potential strategy.

A litany of offshore weapons exists that can be used to catch a PRC-based debtor at each step of the process. At the end of the day, the parties best positioned to navigate these waters will be those that can move aggressively within a multiparty, multijurisdictional context.

**About Kobre & Kim's International Judgment Enforcement & Offshore Asset Recovery Team**

# KOBRE & KIM

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, often involving fraud and misconduct.

Our offshore asset recovery team has an acute focus on complex, cross-border asset tracing and claim monetization. Comprised of English solicitors, barristers, King's Counsel, as well as Hong Kong solicitors, our team has deep experience tracing, freezing and recovering misappropriated assets hidden in offshore structures.

Our lawyers are qualified in key offshore jurisdictions, including the Cayman Islands and the British Virgin Islands, and have been successful in freezing assets through both judicial and non-judicial means to repatriate funds to victims. Frequently, the team works alongside our lawyers based in major onshore jurisdictions such as Hong Kong.

Our work has been featured on the cover of *The Wall Street Journal*, *Forbes* and other leading publications, and we are repeatedly recognized as one of the most highly-regarded offshore asset recovery firms in the world by leading rankings guides.