



Kobre & Kim's Cross-Border Disputes Team

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Unlocking Superior Recoveries for US Dollar Noteholders Against Brazilian and Latin American Issuers

International creditors are facing a shrinking pool of available capital for repayment on their claims in Brazil and Latin America. As companies struggle to navigate ever-increasing amounts of debt, there are strategies US dollar noteholders can take to improve their position and fast-track a swift recovery.

Many Brazilian and Latin American companies with US dollar (“USD”) debt are struggling to repay amid rising interest rates. Brazilian logistics holding firm Simpar, for instance, is under investor pressure as its debt-driven M&A strategy falters, sending bond prices down over concerns about repayment. Meanwhile, Braskem, Brazil’s petrochemical giant, is in talks to sell its U.S. polypropylene plants—worth about US \$1 billion—to Unipar to cut debt, a move that could significantly impact USD noteholders.

For international creditors, the pool of available capital for repayment is shrinking—and USD noteholders often end up behind local creditors. This is partly because the notes are usually governed by New York law, requiring lawsuits to be filed in New York and any judgment to then be recognized in Brazil or elsewhere in Latin America – a process that can take years. On top of that, investors don’t hold the notes directly, meaning enforcement often requires coordination of at least 25% of noteholders to get the trustee to act.

But there are things USD noteholders can do to improve their position:

1. **Take the Fast Track in New York.** The high cost and collective action challenges to bring legal action in New York through a trustee have been reduced due to a recent decision handed down by the New York Supreme Court. Kobre & Kim, on behalf of an ad hoc group of bondholders, recently **secured a ruling** confirming that individual bondholders can sue issuers directly—without first assembling large groups to instruct a trustee—so long as they have authorization from the relevant clearinghouse. This means that noteholders can quickly execute decisions on their own and benefit from pre-judgment and post-judgment relief available to them under New York law.
2. **Bring the Fight to Brazil.** As mentioned, many notes issued by Brazilian companies have a New York forum clause. Still, the clause is often non-exclusive, meaning noteholders may be able, for example, to assert in Brazilian courts that the notes or their guarantees qualify as foreign “extrajudicial executive titles.” This might permit claimants to collect on the debt due through a “fast-track” enforcement action.

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3. **Leapfrog to Operating Assets.** Even if other creditors have structurally superior claims, USD noteholders may be able to reach onshore assets more directly by appointing a receiver over the issuer, who can then bring claims on intercompany receivables to take control of the onshore corporate structure. After issuing notes, issuers typically on-lend the proceeds from the issuance to operating entities onshore, giving rise to intra-group receivables. If noteholders secure a judgment against the issuer, they can appoint a receiver with direct access to onshore assets via the intercompany claims owed by local operating entities.

Amid mounting debt for Brazilian and Latin American companies, there are ways for USD noteholders to even the playing field. By considering creative, cross-border strategies, noteholders may be able to get a seat at the bargaining table and achieve a favorable recovery.

About Kobre & Kim

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

- We help clients with interests in Brazil through our team in São Paulo that routinely acts in complex, cross-border insolvencies and asset recovery campaigns.
- Our team of offshore-based attorneys and former government prosecutors has deep experience tracing, freezing, and recovering misappropriated assets hidden in cross-border and offshore structures.
- Our deep experience coordinating claim enforcement and monetization strategies across jurisdictions, often involving assets and adversaries in Brazil and other Latin American countries, with enforcement lawyers across key offshore financial centers, South America, Asia, EMEA and the U.S.
- We are able to maintain 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.