

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

MAY 23, 2024

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US Dollar Noteholders Can Fast-Track a Favorable Recovery Against Brazilian and Latin American Note Issuers

International creditors are facing a shrinking pool of available capital for repayment on their claims in Brazil and Latin America. As Brazilian and other Latin American 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. A team of Kobre & Kim global disputes lawyers unpacks these strategies below.

Many Brazilian and other Latin American companies that borrow in US dollars struggle to handle a growing mountain of debt. As international creditors eye a shrinking pool of capital available for repayment, US dollar noteholders may be left at the back of the line relative to onshore creditors.

There are many reasons for this: US dollar notes are often governed by New York law and suits enforcing the notes must be brought in New York. Any New York judgment would need to subsequently be recognized in Brazil or another Latin American jurisdiction where assets are located, which could take years. Investors also do not hold the US dollar notes directly, so to take action, the US dollar noteholders have historically needed to band together with at least 25% of the issuance and instruct the notes trustee to enforce.

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 bringing legal action in New York through a trustee has been reduced due to a recent decision handed down by the New York Supreme Court. Only months ago, the court ruled that bondholders can sue issuers unilaterally without first forming unwieldy groups to instruct a bond trustee, as long as they are authorized by the relevant clearinghouse. This means noteholders can make and quickly execute strategic decisions on their own and benefit from pre-judgment and post-judgment relief available to them under New York law.

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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 qualify as a foreign “extrajudicial executive title.” This might permit them to collect on the debt due through a “fast-track” enforcement action.
3. **Leapfrog to Operating Assets.** Even if other creditors have structurally superior claims, US dollar noteholders may be able to reach onshore assets more directly by bringing claims on intercompany receivables through a receiver. After issuing notes, issuers typically on-lend the proceeds from the issuance to operating entities onshore, giving rise to intra-group receivables. If noteholders obtain a judgment against the issuer, they can put in place a receiver with direct recourse against those onshore assets through the intercompany claims owed by the onshore operating entities.

With debt mounting among many Brazilian and Latin American companies, there are ways for US dollar 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.