

Insights



Andrew Stafford KC on How to Enforce Investor-State Arbitration Awards Against Recalcitrant Sovereign Entities

November 18, 2020

Publication: ***International Comparative Legal Guides***

Investors who win arbitration awards against sovereign entities often find themselves facing the fresh challenge of standing up against a sovereign state. Kobre & Kim's Andrew Stafford KC, who has deep experience enforcing against sovereign debtors, walks through how it can be done in a chapter first published in "Investor-State Arbitration 2021" by *International Comparative Legal Guides*.

Mr. Stafford explains that, although the techniques against sovereign debtors are the same as against commercial debtors on paper, the powers sovereign states possess complicate the picture. For example, state-owned companies may possess some assets that can be targeted, but they need to be proven to be alter egos of the state (which is no easy task). Choosing where to enforce awards or seize assets can also be challenging, although with some creative strategizing, unexpected opportunities to strike may appear – for example, the seizure of just one small ship led Venezuelan state-owned oil company PDVSA to settle.

Other complications include the task of mapping assets, sovereign immunity and a recalcitrant state's use of its own law enforcement powers to over-zealously investigate or prosecute the creditor. As such, Mr. Stafford advises investors to prepare collection strategies even before an award is rendered – the pressure of an unfavorable judgment followed immediately by a well-aimed collection effort can be formidable.

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