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# Pursuing Assets of Sovereign Debtors

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## Overview of Presentation

- 1) What should you do in the 6 months leading up to the award?
- 2) How do you find seizable assets?
- 3) Do you really want to try to seize assets?
- 4) Do you have to find assets to monetize the award?



## 1) What Should You Do in the 6 Months Leading up to the Award?

### Do NOT:

1. Wait and see if award debtor will pay after the relevant period
2. Commission an asset search without judicial proceedings
3. Engage counsel in several jurisdictions

### Do:

1. Begin enforcement planning 6 months before award
2. Initiate judicial discovery, ideally at the time of registration
3. Plan to mount one significant assault at the right time.



## 2) How Do You Find Seizable Assets?

### Challenges

- Commercial assets are rarely owned directly by the sovereign nation
- Most countries do not allow an award against a parent company to be enforced against the assets of a subsidiary



### Go after vulnerable assets

- Owned by the award debtor and overlooked in asset protection structuring
- Beneficially owned by the award debtor even though the nominal ownership may be under a different entity

## 2) How Do You Find Seizable Assets?, *continued*

### Forward Tracing

- Look at where assets belonging to the sovereign debtor *used to be* historically; then, try to trace where the assets were moved.

### Backward Tracing

- Identify how the debtor uses assets *today*; then, trace back from the instances of current asset consumption to find the sources.



## 2) How Do You Find Seizable Assets?, *continued*

### Independent Asset Discovery Tools

- Public databases and records (land registries, ship/aircraft registries, company registries, court judgments/filings, shipping records)

### Judicial Discovery Tools

- Exequatur orders (e.g., France)
- Subpoenas to third party banks (e.g., U.S.)
- Third party disclosure orders and *Bankers Trust* orders (e.g., U.K.)
- *Norwich Pharmacal* orders

### 3) Do You Really Want to Seize Assets?

- **Caution:** the cost of seizing isolated assets can sometimes exceed their value
- Special obstacles in sovereign debt collections:
  - Complex sovereign immunity laws
    - i.e. Immunity from suit and execution
  - Separate legal entities holding the assets
    - Additional immunity issues and difficult ‘alter ego’ arguments



### 3) Do You Really Want to Seize Assets?, *continued*

#### *Freezing Assets*

- Freeze orders, Mareva injunctions and asset preservation orders

#### *Seizing Assets*

- Where the debtor maintains legal title:
  - Garnishment proceedings (civil law jurisdictions)
  - Turnover proceedings (New York)
  - Writs of control and execution (U.K.)
- Where the debtor has dissipated assets:
  - Clawback proceedings such as fraudulent conveyance claims
  - Involuntary insolvency proceedings





## 4) Do You Have to Find Assets to Monetize the Award?

Alternatives to direct seizure of debtor assets

- Encourage the debtor to settle
  - Initiate lower-risk proceedings against debtor's commercial counterparties
  - Discovering embezzled proceeds to attach as debtor property
- Selling the award to a distressed debt investor





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