Title: Procedural Tools in the United States to Assist in the Enforcement & Recognition of Foreign Arbitral Awards

ABSTRACT:

(1) Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions can be used to attach property (vessels, bunkers, bank accounts, etc.) of debtors in the United States for both security and the satisfaction of a judgment where the debtors are not otherwise found for purposes of jurisdiction and service. Rule B attachment can be used in conjunction with foreign arbitral proceedings.

(2) 28 U.S.C. § 1782 can be a useful tool to determine where a judgment debtor’s assets may lie.

(3) Recent case law prohibits use of ex parte procedures to obtain a judgment against a foreign sovereign for an International Convention on the Settlement of Investment Disputes (“ICSID”) arbitral award. In Mobil Cerro Negro, Ltd. v. Bolivarian Rep. of Venezuela, 2017 WL 2945603 (2d Cir. July 11, 2017), the Second Circuit Court of Appeals reversed the United States District Court for the Southern District of New York, and held that the Foreign Sovereign Immunities Act (“FSIA”) “provides the sole source of jurisdiction – subject matter and personal – for federal courts over actions brought to enforce ICSID awards against foreign sovereigns.”