

AS FINANCIAL DISTRESS INCREASES IN ASIA PACIFIC, NEW GUIDE HELPS COMPANIES AND LENDERS NAVIGATE THE LAW ACROSS BORDERS

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News

With global corporate defaults at their highest levels since the 2008 global financial crisis and economic conditions in Asia Pacific leading to a rise in financial restructuring and insolvencies, Herbert Smith Freehills has created a new guide to help companies and lenders navigate the various insolvency regimes in the region.

Released today, the *Restructuring, Turnaround and Insolvency in Asia Pacific Legal Guide* provides an overview of the laws on corporate restructuring, turnaround and insolvency in 14 major jurisdictions across the region, including Australia and China.

Herbert Smith Freehills Global Head of Finance John Nestel said the guide would be a valuable tool for lenders, alternate capital providers and investors increasingly working across a number of different jurisdictions during a time of challenging economic conditions.

“Corporates operating in the Asia Pacific region are experiencing lower commodity prices, rising non-performing loans, the slowdown in China's growth, a tightening of credit markets and impending debt maturities. These conditions are leading to a rise in restructurings and insolvencies and we expect this trend to continue.

“As a result, insolvency regimes will be put to the test and it is vital that lenders and companies understand the various regimes that exist in the markets in which they are operating. The legal frameworks for restructurings and insolvencies have been continuing to develop across the region, and in a number of countries these laws have been subject to major overhauls. The region has also become more integrated and it is common for restructurings and insolvencies to cross jurisdictional boundaries, requiring a significant amount of expertise and co-ordination,” Mr Nestel said.

The guide addresses key practical issues commonly encountered when dealing with companies in financial difficulties.

Herbert Smith Freehills Hong Kong-based partner Gareth Thomas said companies operating in Asia needed to be particularly aware of the complexity of insolvency and restructuring laws when operating across borders.

“As well as considering the legal frameworks that might apply to their operations, companies need to be sensitive to the differing economic factors at play across Asia,” Mr Thomas said.

"For instance, slower domestic growth, market volatility and overcapacity within some industries are forcing many companies in China to restructure to varying degrees. South Korea is another jurisdiction where we are expecting insolvencies to rise due to high debt levels and in Japan, restructuring may increase due to uncertainties surrounding the domestic economy."

The countries covered in the guide are Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, New Zealand, Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

For each jurisdiction the guide covers:

- a summary of each of the key formal restructuring and insolvency procedures;
- the methods by which secured creditors can enforce their security;
- common issues encountered in the lead up to a formal insolvency procedures, such as insolvent trading issues, statutory claw-back, and lender and director liability;
- priority of distributions in insolvency;
- the prevalence of restructuring techniques such as credit bidding, pre-packaged sales and debt-for equity swaps, as well as the ability of creditors to engage in debt trading; and
- recognition of foreign restructuring and insolvency procedures.

About Herbert Smith Freehills

Operating from over 26 offices across Asia Pacific, EMEA and North America, Herbert Smith Freehills is at the heart of the new global business landscape providing premium quality, full-service legal advice. We provide many of the world's most important organisations with access to market-leading dispute resolution, projects and transactional legal advice, combined with expertise in a number of global industry sectors, including energy, natural resources, infrastructure and financial services. www.herbertsmithfreehills.com

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