

NAVIGATING ASIA PACIFIC'S FRAGMENTED AND EVOLVING RESTRUCTURING AND INSOLVENCY LAWS

10 October 2018 | Australia, Asia Pacific
News

Asia Pacific economies continue to move from strength to strength, with the region proving increasingly attractive to investors. But with increased growth and investment and related debt financing comes the potential for financial distress and business failure, leading investors to grapple with the complicated patchwork of restructuring and insolvency laws across various jurisdictions.

Herbert Smith Freehills offers insight into the complicated legal systems across Asia Pacific with the launch of its second edition of its Guide to Restructuring, Turnaround and Insolvency in Asia Pacific.

The guide examines 18 Asia Pacific jurisdictions and provides an overview of the legal framework in each, while addressing the key issues that should be considered when dealing with distressed corporations in those jurisdictions.

"Over recent years, the economies of Asia Pacific have led global growth," said Herbert Smith Freehills partner [Gareth Thomas](#).

"This increased investment has in some cases inevitably led to financial distress and business failure. Whilst financial distress is painful for corporates and their stakeholders, it can also create opportunities for special situations, distressed debt and private equity investors. Investors at all stages of the economic cycle therefore need to understand the legal systems, processes and nuances of the various Asia Pacific markets before making investment decisions."

"Whilst there has been robust growth in recent years, the outlook for the region in coming years is less certain," said Herbert Smith Freehills partner [Paul Apáthy](#).

"The statutory regimes in countries like India, Singapore and Australia have undergone significant change over recent years, and even in those jurisdictions that have not undergone change we are seeing an increasing appetite for reform."

"The changing legal and regulatory regimes can also force investors and lenders to face up to previously disguised losses. This is particularly evident in India where recent legal and regulatory changes have unleashed an avalanche of insolvency and restructuring, due to the huge volume of non-performing loans that had accumulated over many years."

Herbert Smith Freehills' new debtor-creditor friendliness spectrum was created to provide a high level comparison of the relative importance given to protecting the rights of different stakeholders across 18 jurisdictions. It was designed to provide insight for newcomers the restructuring and insolvency regimes in the Asia Pacific region. Whilst the comparison is high level and indicative (and focuses on the laws themselves, rather than their application in practice), it does provide an interesting insight as to the relative treatment of stakeholders.

For a full copy of the report, please click [here](#).

NOTES ON THE GUIDE

The Guide to Restructuring, Turnaround and Insolvency in Asia Pacific has been described as a valuable tool for lenders, alternate capital providers and investors and addresses key practical issues when working across a number of different jurisdictions. The information in the guide is presented in a concise and easily accessible manner and aims to answer questions clients frequently ask us.

Due to the increasing interest from investors in the sub-continent belt (including Bangladesh, Myanmar, Pakistan and Sri Lanka) this edition of the guide includes four new chapters addressing the changing restructuring, turnaround and insolvency landscape in these jurisdictions.

The jurisdictions now covered in the second edition of the guide are Australia, Bangladesh, China, Hong Kong, India, Indonesia, Japan, Malaysia, Myanmar, New Zealand, Pakistan, Philippines, Singapore, South Korea, Sri Lanka, 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
- the recognition of foreign restructuring and insolvency procedures.

NOTES FOR EDITORS

1. Operating from 27 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, technology and financial services.
www.herbertsmithfreehills.com
2. Herbert Smith Freehills has some 1,500 lawyers in Asia Pacific, advising clients on complex corporate, disputes and finance matters, currently from offices in Bangkok, Beijing, Hong Kong, Jakarta*, Kuala Lumpur, Seoul, Shanghai, Singapore and Tokyo, and in Australia, from Brisbane, Melbourne, Perth and Sydney.
3. With more than 30 years' experience in the region, Herbert Smith Freehills has one of the largest international law practices in Southeast Asia. Our team comprises some 200 lawyers, working across the every ASEAN country, from four of the region's most important business centres – Singapore, Jakarta*, Bangkok and Kuala Lumpur.

**In Jakarta, Herbert Smith Freehills' international counsel practise alongside our affiliate firm, Hiswara Bunjamin & Tandjung, one of Indonesia's leading commercial and corporate law firms.*