

Restructuring across borders

March 2022 Update

We have recently updated the suite of factsheets in our Restructuring Across Borders collection. Developed by our market-leading Global Restructuring Group, “Restructuring Across Borders” (**RAB**) is a free and easy-to-use resource that provides information and guidance on key practical aspects of restructuring and insolvency proceedings in more than 35 jurisdictions around the world. The complete list of jurisdictions included in the collection is set out below.

Each factsheet has been updated in 2022 to reflect recent developments in restructuring and insolvency laws in the relevant jurisdiction. The key points to note in this round of updates are:

- the addition of seven new factsheets to the collection, these being:
 - **Austria**;
 - **Greece**;
 - **Republic of Ireland**;
 - **Japan**;
 - **Portugal**;
 - **Turkey**; and
 - **Vietnam**.
- the inclusion of details and information related to a number of new restructuring and/or insolvency tools introduced into law since the previous updates. These include:
 - in the **Netherlands**, the entry into force of the Dutch Act on Court Confirmation of Extrajudicial Restructuring Plans, including, in particular, the new Dutch scheme (the “WHOA”). For more information on this procedure specifically, please see our alert here;
 - in **Australia**, the introduction of the “Small Business Restructuring Plan” (or “SBRP”) into the Corporations Act. The SBRP provides an avenue for small businesses that are in financial distress to pursue an out-of-court restructuring of their debts;
 - in **Belgium**, a pre-packaged insolvency procedure (the “Pre-pack”) has recently been introduced into Belgian law. The purpose of the Pre-pack procedure is to confidentially test the possibility of a court-supervised consensual agreement or collective reorganisation plan with the debtor’s most important creditors whilst “in the shadow” of formal insolvency proceedings;
 - in **India**, the IB Code has been amended to introduce a new pre-packaged insolvency resolution process framework for micro, small and medium enterprises. This process is a debtor-in-possession regime as opposed to the primary creditor-in-control model for the corporate insolvency resolution process in India;
 - in **Slovakia**, an early protection mechanism has been introduced under Temporary Protection Act No. 421/2020 Coll. This temporary protection of businesses (*dočasná ochrana*) was initially adopted as a response to the COVID-19 pandemic, however, this instrument is now permanently available to businesses in financial difficulties; and
 - in **Italy**, the government enacted a law decree which, among other things, introduced two brand new proceedings for the management of crisis and insolvency, called *composizione negoziata della crisi* and *concordato semplificato per la liquidazione del patrimonio*;

– the inclusion of further details related to the recent updates to Annexes A and B of the European Insolvency Regulation, including updates to the Annexes following notifications to the Commission of recent changes to the national insolvency laws of, among others, the **Netherlands, Italy, Poland, Germany, Hungary** and **Austria**. Those notifications, regarding new types of insolvency proceedings and insolvency practitioners in the relevant jurisdictions, resulted in amendments to Annexes A and B of the Regulation that came into force on 9 January 2022. For more information about cross-border recognition of insolvency and restructuring proceedings (particularly post-Brexit), please see our publication [here](#);

– the inclusion of details regarding continuing developments in the area of cross-border insolvency cooperation between the courts of the **Hong Kong SAR** and of the mainland of the **People's Republic of China** (noting that PRC is a civil law jurisdiction). In May 2021 the Supreme People's Court of the PRC and the Government of the Hong Kong SAR signed a record of meeting, providing a framework for the mutual recognition of and assistance to insolvency proceedings between the PRC and Hong Kong. The framework seeks to facilitate applications by: (i) Hong Kong liquidators or provisional liquidators to the Intermediate People's Courts in certain pilot areas of the PRC for the recognition of insolvency and restructuring proceedings in Hong Kong (collective insolvency proceedings, i.e. compulsory winding-up, creditors' voluntary winding-up and schemes of arrangement); and, conversely, (ii) bankruptcy administrators from the PRC to the High Court of Hong Kong for recognition of bankruptcy and reorganisation proceedings in the PRC;

– the revision of the structure of the **French** factsheet to address multiple key concepts newly introduced into French law by the recently-enacted Ordinance n° 2021-1193, which came into force on 1 October 2021, and which transposes Directive (EU) 2019/1023 on restructuring and insolvency; and

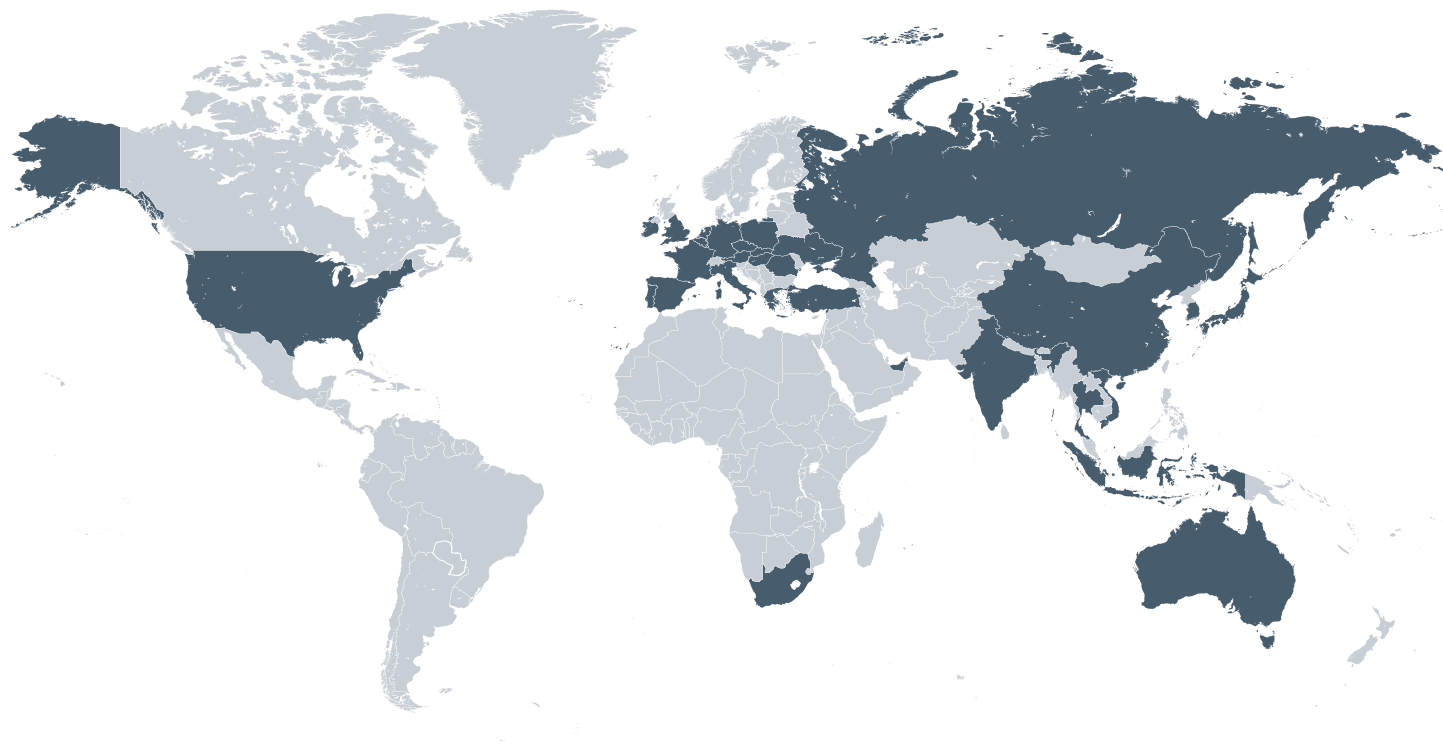
– the inclusion of further detail on security enforcement in the **BVI** factsheet to reflect the increased use of court-appointed receivers in the BVI. The BVI court has recently shown that it is willing to take a more flexible approach to such appointments, and this represents a potentially useful tool to protect the interests of unsecured creditors.



Jurisdictions covered by Restructuring Across Borders factsheets

The full list of jurisdictions included in the RAB collection is as follows:

- | | |
|-------------------------------|-------------------|
| 1. Australia | 20. Lux |
| 2. Austria | 21. Netherlands |
| 3. Belgium | 22. Poland |
| 4. BVI | 23. Portugal |
| 5. Cayman Islands | 24. Romania |
| 6. People's Republic of China | 25. Russia |
| 7. Czech Republic | 26. Singapore |
| 8. England and Wales | 27. Slovakia |
| 9. France | 28. South Africa |
| 10. Germany | 29. Spain |
| 11. Greece | 30. Thailand |
| 12. Hong Kong SAR | 31. Turkey |
| 13. Hungary | 32. UAE (ADGM) |
| 14. India | 33. UAE (DIFC) |
| 15. Indonesia | 34. UAE (Onshore) |
| 16. Ireland | 35. Ukraine |
| 17. Italy | 36. United States |
| 18. Japan | 37. Vietnam |
| 19. Korea | |



To access the full collection of Restructuring Across Borders factsheets, please [click here](#)

Key contacts

If you require advice on any of the matters raised in this bulletin or any of the factsheets, please contact any of our partners or your usual contact at Allen & Overy, or email rab@allenoververy.com.

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