forms of expertise enjoy an excellent reputation with financing parties and are heavily relied on in restructuring situations. In the German restructuring environment, all refinancing, bridge-financing and prolongation of maturities are only granted upon a mutual consent on a *Sanierungsgutachten nach IDW S6*.

Germany also shows an augmented rate of bond financings, bondholder activities and has a modern law on bond issues; the latest law reform on the *Schuldverschreibungsgesetz* (German Law on Debentures) was implemented as recently as 2008.

However, not everything is perfect. Despite intense discussions, the German legislator has still fallen short of creating a regime that deals with the restructuring and insolvency of groups of companies.

Conclusion

As much as the UK will be missed with its pragmatic approach to restructurings, its innovativeness and as a driver of legislative reforms in the field of restructuring and insolvency, the Brexit vote has already heralded the changing of the guard. Germany provides for a very modern and highly developed environment for the restructuring of businesses. It will be an even more modern environment once a pre-insolvency regime is implemented. This could make it the most attractive place for restructurings in the EU.

Note

1 See: www.doingbusiness.org/rankings.

Russia: Unified federal register of data on bankruptcy

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In June and July 2016, several important amendments (the 'Amendments') to the Federal Law No 127-FZ of 26 October 2002 'On Insolvency (Bankruptcy)' (the 'Insolvency Law') entered into effect in Russia.

According to the Amendments, only after the preliminary payment has been done can information on insolvency proceedings be included into the Unified Federal Register of Data on Bankruptcy (the 'Register') and published in an official mass media publication, which at the moment is the Russian business newspaper *Kommersant*.

Article 28 (2) of the Insolvency Law defines the Register as a federal information resource, which forms an integral part of the Unified Federal Register of Information on Facts of Activities of Legal Entities. In accordance with the Insolvency Law and Annex 2 to the Order of the Ministry of Economic Development of the Russian Federation No 178, dated 5 April 2013, the Register shall publish, in particular, information on:

- the commencement of insolvency proceedings such as observations, financial rehabilitation and external administration;
- the acknowledgment of a debtor as bankrupt;
- the commencement of bankruptcy (liquidation);
- the appointment or dismissal of trustees;
- the intention of third parties to pay the indebtedness of the debtor; and/or
- auctions on sale of debtors' assets and their results, organisers of auctions, operators of internet auctions.

It is important to note that under the Insolvency Law the operator of the Register checks reliability of all data on a debtor prior to its inclusion into the Register by way of comparison of that data with the information contained in the comprehensives state registers of legal entities and individual businessmen. Therefore, the creditors and controlling authorities treat the Register as a trustworthy source of information.

The Insolvency Law stipulates: (1) the procedure for forming and keeping the Register; (2) the procedure and the terms for inclusion of the information specified

above into the Register; and (3) that its publication on the internet shall not impede prompt and unrestricted access to the information of any interested person.

In order to guarantee the rights of creditors, the trustees are obliged – within ten days after a particular insolvency proceeding is finalised – to publish in the Register their reports disclosing, inter alia, information on the trustee and the debtor with all their relevant registration details, the court where the bankruptcy case has been resolved, claims to invalidate transactions performed by the debtor, the value of the debtors' assets, and expenses related to the insolvency proceeding. The trustees also need to inform in the Register if there have been signs of deliberate or fictitious bankruptcy found.

The creditors and other interested parties use the Register and the *Kommersant* newspaper as an important instrument of information on the status of insolvency proceedings and their results. Based on the Amendments, information in the Register shall be deemed as open to the public, and subject to publication on the internet. The Amendments stipulate that the data contained in the Register can be used, transferred and/or distributed without restriction.

However, based on the same Amendments, the data will be freely accessible solely if its publication is prepaid.

Although in accordance with the Insolvency Law the price for inclusion of the information into the Register cannot be increased more than once per year, and such an increase is limited by the index of consumer price growth over the previous year, the problem with prepayment still exists and it may be considered as an obstacle to access data on a bankruptcy case.

Under the Insolvency Law, normally the trustees are in charge of including all relevant information in the Register and therefore they need to make the prepayment for submission of data to the Register and its publication in *Kommersant*. Considering the volume of information subject to disclosure, the related prepayment may be significant. In this case, the trustees may have the prepayment compensated out of the debtors' assets. However, from our point of view, it does not seem logical to decrease the debtors' assets, which in the majority of bankruptcy cases cannot cover more than ten per cent of the creditors' claims.

If a debtor does not have assets sufficient to compensate the prepayment for inclusion of information into the Register and its publication in *Kommersant*, then the creditor who initiated the insolvency proceed has to compensate such an expense.

Consequently the creditor whose financial interests have already suffered as a result of the debtors default needs to carry the burden of the insolvency proceeding. In case of a voluntary insolvency started by a debtor who has insufficient assets to compensate the prepayment, the trustee will be obliged to pay such expenses.

As a result, the trustees and the creditors are very unhappy with the current situation and they are making attempts to decrease the payments. Not long ago the State Duma (the lower chamber of the Russian Parliament) reviewed the draft law proposing to abolish the publication on information related to insolvency, at least the requirement to publish the information in the *Kommersant* newspaper. The authors of the draft law, supported by the trustees, affirmed that the publication of the Register on the internet would have been sufficient for distributing information on insolvency cases among all interested parties. However, the State Duma rejected the draft law in its first reading under the claim that not all regions of Russia are covered with internet services.

We think it would be a logical solution to amend the Insolvency Law in a way to transfer the burden of expenses related to insolvency only to the debtors and their shareholders and beneficiary owners.

There is one more important aspect to note: according to the Insolvency Law and related normative acts, the date on which information about the beginning of the insolvency proceedings against a particular debtor is published serves as a starting point for calculating a 30-day period within which the creditors are obliged to file their claims with the trustee. However, the dates of such publications in the Register and the *Kommersant* newspaper may differ. The lack of clarity leads to originating disputes if a trustee stops including claims into the creditors' register of a debtor based on the date of the earliest publication. According to the existing court practice, the judges in such disputes are ordered to accept the latest date for calculation of the limitation period. However, we strongly believe that such a position of the Russian courts needs to be clearly expressed in the Insolvency Law, therefore respective amendments should be introduced.