

# Zeamarine – what creditors need to know under German law

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## Introduction

### Effects of court bankruptcy measures

### Background of Zeamarine bankruptcy measures – what is known so far?

### What industry actors should do

## Introduction

On 17 and 18 February 2020 the Bremen Local Court designated a provisional bankruptcy administrator responsible for the assets of the following companies belonging to the Zeamarine group:

- Zeamarine Bremen GmbH & Co KG (commercial register HRA 26791 HB);
- Zeamarine Germany GmbH & Co KG (commercial register HRA 26785 HB); and
- Zeamarine Chartering GmbH (commercial register HRB 33664 HB).

As of 25 February 2020, no further announcements have been published in respect of these or seemingly other companies belonging to the Zeamarine group. The operation of the other Zeamarine companies, therefore, remains legally unaffected by the abovementioned bankruptcy orders.

## Effects of court bankruptcy measures

The court ordered that the responsible provisional bankruptcy administrator must be involved when dealing with any of the three Zeamarine companies for which bankruptcy proceedings are now pending. The provisional bankruptcy administrator appointed in this case is what is commonly legally referred to as a 'weak' provisional bankruptcy administrator. The court did not impose a general prohibition on making dispositions. Nevertheless, all dispositions by any of the three Zeamarine companies henceforth require the consent of the provisional bankruptcy administrator to become effective (Section 21(2)(2) of the Insolvency Code).

To clarify, while applications for bankruptcy proceedings are now pending before the court in Bremen in respect of the three Zeamarine companies, they have not yet been officially opened. The court must still decide on the further course. In this case, it is understood that it will do so after negotiations with the main creditors of the three Zeamarine companies for which bankruptcy proceedings are pending.

## Background of Zeamarine bankruptcy measures – what is known so far?

The measures seem to be part of a long-term restructuring strategy of the Zeamarine group. From what has been published in the news, it seems that Zeamarine aims to continue operations and make use of the instruments provided by German bankruptcy law to settle all outstanding debts. It appears that the Zeamarine companies specifically requested the court in Bremen to undertake bankruptcy proceedings by making use of these instruments.

The overall idea is similar, for example, to that of Chapter 11 proceedings in the United States. It is possible that instead of an insolvency administrator, a managing administrator (a *sachwalter*) will be appointed by the court to temporarily supervise the management of the three Zeamarine companies, which will generally remain in charge. In addition, German bankruptcy law allows supplemental measures to strengthen management in an attempt to preserve companies affected, commonly called the protection shield (Section 271b of the Insolvency Code).

Whether making use of these instruments will be ordered by the competent court mainly depends on the negotiations with the main creditors. In the end, the decision is at the discretion of the court. If discussions fail, normal insolvency proceedings are usually opened.

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Interestingly, when a debtor requests to make use of these instruments, the courts regularly refrain from:

- imposing a general prohibition on making dispositions; or
- ordering that all of the debtor's dispositions are effective only with the consent of a provisional bankruptcy administrator, unless the application by the debtor "obviously lacks prospect of success" (Section 271a of the Insolvency Code).

Likewise, the court will appoint a provisional *sachwalter* instead of a provisional bankruptcy administrator.

As stated above, neither happened in the Zeamarine case. The court restricted transactions of the three Zeamarine companies and appointed a provisional bankruptcy administrator instead of a *sachwalter*. However, it would be premature to conclude that the three Zeamarine companies for which bankruptcy proceedings are now pending will be unsuccessful with their request.

### **What industry actors should do**

All actors in the maritime industry should check whether they have any dealings or outstanding claims against any of the three Zeamarine companies for which bankruptcy proceedings are now pending.

If bankruptcy proceedings are eventually opened, an insolvency administrator is generally entitled to claw back transactions and payments made by the debtor for whom bankruptcy proceedings are opened. Outstanding claims, if unsecured, would usually become insolvency claims that can be registered with the (then) insolvency administrator. Creditors will receive a quota of their claims. Quotas from 5% to 10% are not uncommon.

The effects of insolvency proceedings on ship arrest should also be considered by industry players. While seagoing vessels are protected from arrest during insolvency proceedings under insolvency law, case law suggests that this protection is less clear cut during preliminary insolvency proceedings (for further details please see "[Are vessels protected from arrest during preliminary insolvency proceedings?](#)" and "[No more protection of vessels from arrest during preliminary insolvency proceedings?](#)").

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