

"A Wake-Up Call For U.S. Creditors To Challenge Fairness Of U.K. Solvent Schemes," Mealy's Litigation Report

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Foreign insurers and reinsurers with asbestos, environmental and other long-tail risks in the United States have increasingly used solvent schemes of arrangement as an alternative to liquidation or protracted run-off. These schemes, implemented under §425 of the United Kingdom's Companies Act 1985, have been an efficient and reliable means of finalizing all or part of a company's portfolio of business and returning capital to shareholders. If the necessary majority creditor approval is obtained and the scheme is sanctioned by the U.K. court, it becomes binding on all creditors. Claims submitted by a date certain, including estimates of currently unknown future liabilities known as incurred-but-not-reported losses or "IBNR", if allowed, are paid at present value. All other claims are forever extinguished.