

THE IMPACT OF BREXIT ON ENGLISH SCHEMES OF ARRANGEMENT FOR FOREIGN COMPANIES

What is a Scheme of Arrangement (SoA)?

A SoA is a process regulated under Part 26 of the Companies Act 2006¹ whereby a company can make an arrangement with its creditors or members to pay back part or all of its debts. This procedure can be used by insolvent or solvent companies.

The scheme must be approved by creditors comprising a majority in number, representing at least 75% of the value and it will be bound on all creditors, even if they vote against it or chose not to vote.

How is the process of a SoA?

1. Making an application

The Scheme of Arrangement's procedure begins with an application at Companies Court (CC), which can be promoted by any of the following:²

- ✓ Any creditor of the company;
- ✓ The company itself;
- ✓ Any member of the company;
- ✓ If the company is in administration, the administrator;
- ✓ If the company is being wound up, the liquidator;

2. CC verifies whether the SoA meets the necessary legal requirements.

Creditors must act in good faith during the proceedings, and the terms of the agreement (SoA) must be reasonable to an honest and intelligent person.

3. Deliver a copy of the Soa at the Registrar of Companies.

If the SOA is sanctioned, the court's order must be then submitted for registration at the Registrar of Companies and once registered, it will be enforceable.³

¹ <https://www.legislation.gov.uk/ukpga/2006/46/contents>

² [Section 896 Companies Act 2006](#)

³ [Section 899 Companies Act 2006](#)

Can a foreign company use an English SoA after Brexit?

Yes it can,⁴ provided it has sufficient connection with England and Wales.

The concept of "sufficient connection" has been interpreted in a broad sense by the British courts.

The UK courts have sanctioned SoAs agreed by foreign companies using the following non-exhaustive criteria when:

- ✓ A clause of exclusive submission to the British courts has been agreed by the counterparts.
- ✓ Credits affected by the SoA are subject to the English Courts.
- ✓ The debtor has an establishment within the UK.
- ✓ Most creditors are domiciled within the UK.
- ✓ The foreign company has assets under English jurisdiction.

Why foreign companies can be interested in applying to a SoA under UK jurisdiction?

- i. Speediness of English courts.
- ii. The SoA provides flexibility with a high degree of procedural and commercial certainty for all involved, including creditors.
- iii. Once the SoA is approved it will be binding on all creditors.

Written by Laura Gallego Herráez

⁴ Interestingly, UK schemes of arrangement were outside of the European Regulation on Insolvency Proceedings even pre-Brexit due to the UK's lack of notification to the European Commission, which proceeding the UK deemed to be included in the [Regulation \(EU\) 2015/848 of the European parliament and of the council of 20 may 2015 on insolvency proceeding](#) (EIR).