

Protection of creditors and allocation of liabilities

1164. (1) A creditor of any of the companies involved in a division who—

(a) at the date of publication of the notice under section 1157 (1)(b) is entitled to any debt or claim against the company, and

(b) can credibly demonstrate that the proposed division would be likely to put the satisfaction of that debt or claim at risk and that no adequate safe-guards have been obtained from the company or a successor company,

shall be entitled to object to the confirmation by the court of the division.

(2) If the court deems it necessary in order to secure the adequate protection of creditors of any of the companies involved in the division it may—

(a) determine a list of creditors entitled to object and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the confirmation,

(b) where a creditor entered on the list whose debt or claim is not discharged or has not terminated does not consent to the confirmation, the court may, if it thinks fit, dispense with the consent of that creditor, on either—

(i) the company securing payment of his or her debt or claim by appropriating, as the court may direct, the following amount:

(I) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(II) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court;

(ii) a successor company, on behalf of the company liable for the debt or claim, securing payment of the debt or claim.

(3) If, having regard to any special circumstances of the case it thinks proper so to do, the court may direct that subsection (2) shall not apply as regards any class of creditors.

(4) Without prejudice to subsection (5), where—

(a) a liability of the transferor company is not allocated by the common draft terms of division, and

(b) it is not possible, by reference to an interpretation of those terms, to determine the manner in which it is to be allocated,

the liability shall become, jointly and severally, the liability of the successor companies.

(5) If provision is not made by the common draft terms of division for the allocation of a liability incurred by, or which otherwise becomes attached to, the transferor company on or after the date of those draft terms then, subject to any provision the court may make in an order under section 1166, the liability shall become, jointly and severally, the liability of the successor companies.

(6) References in this section to a debt or claim having terminated are references to the debt or claim ceasing to be enforceable or to its otherwise determining.