

Common draft terms of division

1153. (1) Where a division is proposed to be entered into, the directors of the companies involved in the division shall draw up common draft terms of division and approve those terms in writing.

(2) The common draft terms of division shall state, at least—

(a) in relation to the transferor company—

(i) its name;

(ii) its registered office; and

(iii) its registered number;

(b) in relation to each of the successor companies—

(i) where any of those is an existing company, the particulars specified in subparagraphs (i) to (iii) of paragraph (a); or

(ii) where any of those is a new company yet to be formed, what is proposed as the particulars specified in subparagraphs (i) and (ii) of that paragraph;

(c) as to each of the companies involved in the division, whether it is a PLC, another type of company as defined in section 2 (1) or a body corporate to which section 1312 (1) relates;

(d) the proposed share exchange ratio and amount of any cash payment;

(e) the proposed terms relating to allotment of shares or other securities in the successor companies;

(f) the date from which the holding of shares or other securities in the successor companies will entitle the holders to participate in profits and any special conditions affecting that entitlement;

(g) the date from which the transactions of the transferor company are to be treated for accounting purposes as being those of any of the successor companies;

(h) the rights, if any, to be conferred by the successor companies on members of the transferor company enjoying special rights or on holders of securities other than shares representing the transferor company's capital, and the measures proposed concerning them;

(i) any special advantages granted to—

(i) any director of a company involved in the division; or

(ii) any person appointed under section 1155;

(j) the precise description and allocation of the assets and liabilities of the company being acquired that are to be transferred to each of the successor companies;

(k) the allocation of shares in the successor companies to the shareholders of the transferor company and the criteria on which such allocation is based;

(l) the dates of the financial statements, if any, of every company involved in the division which were used for the purpose of preparing the common draft terms of division.

(3) Where the division involves the formation of one or more new companies the common draft terms of division shall include or be accompanied by the constitution or draft constitution of each of the new companies.

(4) The common draft terms of division shall not provide for any shares in any of the successor companies to be exchanged for shares in the transferor company held either—

(a) by the successor companies themselves or their nominees on their behalf; or

(b) by the transferor company or its nominee on its behalf.

(5) Without prejudice to subsection (6), where—

(a) an asset 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 asset or the consideration therefor shall be allocated to the successor companies in proportion to the share of the net assets allocated to each of those companies under the common draft terms of division.

(6) If provision is not made by the common draft terms of division for the allocation of an asset acquired by, or otherwise becoming vested in, 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 asset or the consideration therefor shall be allocated in the manner specified in subsection (5).

(7) The common draft terms of division, as approved under subsection (1), shall be signed, on the same date, on behalf of each of the companies involved in the division by 2 directors of each such company (or, in the case of each of one or more of them having a sole director, by the sole director); the common draft terms shall bear the date of such signing.

(8) That date shall, for the purposes of this Chapter, be the date of the common draft terms of division.