

## Common draft terms of division

490. (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 are proposed as the particulars specified in subparagraphs (i) and (ii) of that paragraph;

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

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

(e) 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;

(f) 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;

(g) 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;

(h) any special advantages granted to—

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

(ii) any person appointed under section 492;

(i) the constitution of each of the successor companies;

(j) information on the evaluation of the assets and liabilities to be transferred to successor companies; and

(k) 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) The common draft terms of division may include such additional terms as are not inconsistent with this Chapter.

(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 503, the asset or the consideration therefor shall be allocated in the manner specified in subsection (5).

(7) The date of the common draft terms of division shall, for the purposes of this Chapter, be the date when the common draft terms of division are approved in writing under subsection (1) by the boards of directors of the companies involved in the division; where the dates on which those terms are so approved by each of the boards of directors are not the same, then, for the foregoing purposes, the date shall be the latest date on which those terms are so approved by a board of directors.