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## STATUTORY INSTRUMENTS

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# 2017 No. 1212

## The Risk Transformation Regulations 2017

### PART 4

#### Protected Cell Companies

#### CHAPTER 5

#### Operation of a protected cell company

#### Objects of a protected cell company

- 57.**—(1) The objects of a protected cell company are the carrying on of—
- (a) the activity referred to in section 284A(2)(a) (transformer vehicles) of FSMA to the extent that the activity is a specified kind of activity falling within Article 13A of the Regulated Activities Order;
  - (b) the activities referred to in section 284A(2)(b) of FSMA; and
  - (c) any activity which is incidental to, consequential on, or supplemental to, any of the activities mentioned in sub-paragraphs (a) or (b).
- (2) A protected cell company may not carry out any other kind of activity.

#### Offence of carrying on other activities

- 58.**—(1) A protected cell company that contravenes the prohibition in regulation 57(2) is guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or—
    - (i) in England and Wales, a fine, or both;
    - (ii) in Scotland or Northern Ireland, a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) In proceedings for an offence under paragraph (1), it is a defence for the accused to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.

#### Creation of a cell

- 59.**—(1) The time and date on which a cell is created by the protected cell company is to be determined in accordance with the provisions of the protected cell company's instrument of incorporation.
- (2) A protected cell company must notify the FCA when it creates a cell.
  - (3) The notification must state—
    - (a) the name or number of the cell; and

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(b) the time and date when the cell was created.

(4) A protected cell company may not create a cell if the core of the protected cell company is in administration or liquidation (see regulation 167).

(5) This regulation does not apply when a cell is deemed to have been created as a result of a Case 1 transfer scheme (within the meaning given by regulation 170).

#### **Assumption of risk: notification to PRA**

**60.**—(1) Where a protected cell company assumes a risk from an undertaking, the protected cell company must notify the PRA.

(2) The notification must be sent to the PRA within a period of 5 working days beginning with the day the protected cell company assumed the risk.

(3) Rules made under section 137G (the PRA's general rules) of FSMA <sup>M1</sup> may specify—

- (a) the form in which such a notification is to be made;
- (b) the information to be included with such a notification; and
- (c) the form in which any such information is to be provided.

#### **Marginal Citations**

**M1** Section 137G was inserted by section 24 of the Financial Services Act 2012.

#### **Company seal: England and Wales, and Northern Ireland**

**61.**—(1) A protected cell company may have a common seal.

(2) A protected cell company which has a common seal must have its name engraved in legible characters on the seal.

(3) This regulation does not form part of the law of Scotland.

#### **Contracts: England and Wales, and Northern Ireland**

**62.**—(1) The following provisions have effect under the law of England and Wales, or Northern Ireland, with respect to contracts made by a protected cell company.

(2) A contract may be made—

- (a) by a protected cell company by writing under its common seal; or
- (b) on behalf of a protected cell company by any person acting under its authority (whether express or implied).

(3) Any formalities required by law in the case of a contract made by an individual also apply to a contract made by or on behalf of a protected cell company.

#### **Execution of documents: England and Wales, and Northern Ireland**

**63.**—(1) The following provisions have effect under the law of England and Wales, or Northern Ireland, with respect to the execution of a document by a protected cell company.

(2) Where a protected cell company has a common seal, the protected cell company may execute a document by affixing its common seal to the document.

(3) A document that is signed by at least one director and expressed (in whatever form of words) to be executed by the protected cell company has the same effect as if executed under the common seal of the protected cell company.

(4) A document executed by a protected cell company which makes it clear on its face that it is intended by the person or persons making it to be a deed—

- (a) has effect, on delivery, as a deed; and
- (b) is to be presumed, unless the contrary intention is proved, to be delivered upon its being executed.

(5) In favour of a purchaser—

- (a) a document is deemed to be executed by the protected cell company if it purports to be signed by at least one director or, in the case of a director which is a body corporate, it purports to be executed by that director;
- (b) if the document makes it clear on its face that it is intended by the person making it to be a deed, the document is deemed to have been delivered upon its being executed.

(6) In paragraph (5), “purchaser” means a purchaser in good faith for valuable consideration and includes—

- (a) an undertaking from whom the protected cell company has assumed a risk on behalf of a cell; and
- (b) a person to whom the protected cell company has issued an investment on behalf of a cell.

#### **Execution of documents: Scotland**

**64.**—(1) The following provisions form part of the law of Scotland only.

(2) Notwithstanding the provisions of any enactment, a protected cell company need not have a company seal.

(3) For the purposes of any enactment—

- (a) providing for a document to be executed by a protected cell company by affixing its common seal; or
- (b) referring (in whatever terms) to a document so executed,

a document signed, subscribed or, in the case of an electronic document, authenticated by or on behalf of the protected cell company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 <sup>M2</sup> has effect as if so executed.

#### **Marginal Citations**

**M2** 1995 c. 7.

#### **Execution of deeds by attorney: England and Wales, and Northern Ireland**

**65.**—(1) Under the law of England and Wales, or Northern Ireland, a protected cell company may, by an instrument executed as a deed, empower any person, either generally or in respect of specific matters, as its attorney to execute deeds on its behalf.

(2) A deed executed by such an attorney on behalf of the protected cell company has effect as if the deed were executed by the protected cell company.

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### **Official seal for share certificates**

66.—(1) This regulation applies where a protected cell company has a common seal.

(2) The protected cell company may have, for use for sealing shares issued by the protected cell company and for sealing documents creating or evidencing such shares, an official seal with a facsimile of its official seal with the addition on its face of the word “securities”.

(3) Such an official seal has the same effect as the company's common seal when affixed to a document.

### **Alternative inspection location**

67.—(1) A protected cell company may have an alternative inspection location.

(2) A protected cell company's alternative inspection location must be located in the same part of the United Kingdom as the protected cell company's registered office.

(3) Where a protected cell company decides to have an alternative inspection location, the protected cell company must notify the FCA.

(4) The notification referred to in paragraph (3) must state the address of the alternative inspection location.

(5) Where a protected cell company has notified the FCA of an alternative inspection location under paragraph (3), the protected cell company must notify the FCA of any change of address of its alternative inspection location.

(6) If a protected cell company—

(a) has notified the FCA of an alternative inspection location under paragraph (3);

(b) but subsequently decides to keep the documents and records relating to the protected cell company at its registered office,

the protected cell company must notify the FCA.

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)