

SCHEDULE 2

Regulation 166

Administration and liquidation of cells: modification of insolvency legislation

Duties and powers confined to the cell

1.—(1) The appointment of a relevant office holder in respect of a cell, and the powers and duties of the relevant office holder, are confined to—

- (a) the cell;
- (b) the business and affairs of the cell; and
- (c) the property held by the protected cell company on behalf of the cell.

(2) In sub-paragraph (1), a “relevant office holder” means—

- (a) an administrator;
- (b) a liquidator;
- (c) a provisional liquidator; or
- (d) a special manager.

General application of the insolvency legislation

2. The insolvency legislation applies to a cell as if—

- (a) the cell is a body corporate with distinct legal personality;
- (b) the cell was incorporated on its creation;
- (c) the cell is registered in the part of the United Kingdom in which the protected cell company has its registered office;
- (d) the registered office of the cell is the registered office of the protected cell company;
- (e) the registered name of the cell is the name or number of the cell followed by “of” and the name of the protected cell company;
- (f) the registrar of companies is the FCA;
- (g) a person who is or was a director, shadow director, officer, employee or agent of the protected cell company is or was a director, shadow director, officer, employee or agent of the cell (as the case may be);
- (h) shares issued by the protected cell company on behalf of the cell are shares issued by the cell;
- (i) the cell’s property, assets, liabilities, debts and creditors are determined in accordance with regulation 48(6);
- (j) arrangements made between the cell and another cell in accordance with regulations 68 and 69 are contracts entered into between the cell and the protected cell company acting on behalf of that other cell;
- (k) things done by the protected cell company on behalf of the cell are things done by the cell;
- (l) things done to the protected cell company in respect of the cell are things done to the cell;
- (m) judgments or orders made against the protected cell company in respect of the cell are judgments or orders made against the cell;
- (n) the books, papers, records, registers and other documents of the protected cell company are, insofar as they relate to the cell, books, papers, records, registers and documents of the cell; and

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- (o) an associate of the protected cell company (within the meaning given by section 435 of the Insolvency Act 1986(1) or Article 4 of the Insolvency (Northern Ireland) Order 1989) is an associate of the cell.

Jurisdiction within the United Kingdom

3.—(1) This paragraph specifies which court in the United Kingdom has jurisdiction in relation to the administration or winding up of a cell of a protected cell company.

(2) Her Majesty’s High Court of Justice in England has jurisdiction where the registered office of a protected cell company is located in England and Wales (or Wales).

(3) The Court of Session has jurisdiction where the registered office of a protected cell company is located in Scotland.

(4) Her Majesty’s High Court of Justice in Northern Ireland has jurisdiction where the registered office of a protected cell company is located in Northern Ireland.

Restrictions on applying for winding up

4. A person holding an investment issued on behalf of any cell of a protected cell company may not apply for—

- (a) the winding up of a cell; or
- (b) the appointment of a provisional liquidator in respect of a cell.

Appointment of administrator

5.—(1) Only the court may appoint an administrator of a cell.

(2) Where a person makes an application to court for the administration of a cell, the person must file with the court notice of the existence of any insolvency proceedings in relation to the protected cell company or the cell anywhere in the world as soon as the person becomes aware of them.

(3) The duty imposed by sub-paragraph (2) ceases on the making of an administration order.

Giving of notice

6. In the insolvency legislation—

- (a) a requirement that a company give notice of, or file, something is to be treated as a requirement that the protected cell company give notice of, or file, that thing on behalf of the cell; and
- (b) any requirement to give notice of something on the company’s website is to be ignored.

Part 24 of FSMA: references to “regulated activities” and “PRA-authorized person”

7. If the protected cell company has (or had) permission to carry on a regulated activity under Part 4A (permission to carry on regulated activities) of FSMA, then Part 24 (insolvency) of FSMA applies to the cell as if the cell has (or had) that permission.

(1) Section 435 was amended by section 261 and Schedule 27 to the Civil Partnership Act 2004 (c. 33), S.I. 2005/3129, S.I. 2009/1941 and S.I. 2016/1034.

Further modifications to specific provisions of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989

8.—(1) The provisions of the Insolvency Act 1986 specified in the first column of Table 7 and the provisions of the Insolvency (Northern Ireland) Order 1989 specified in the second column of Table 7 apply to a cell with the modifications specified in the fourth column of Table 7.

Table 7

<i>Insolvency Act 1986</i>	<i>Insolvency (Northern Ireland) Order 1989</i>	<i>Subject Matter</i>	<i>Modification</i>
Section 76(2)	Article 63	Liability of past directors and shareholders	These provisions apply where a protected cell company has made a payment (“the relevant payment” for the purposes of these provisions) to redeem or acquire shares issued on behalf of the cell in breach of the requirements of regulation 106. The reference to the directors who signed the statement made in accordance with section 714(1) to (3) of the Companies Act 2006 for the purposes of the redemption or purchase is to be treated as a reference to the directors who authorised the redemption or purchase.
Section 103	Article 89	Cesser of directors’ powers	Ignore these provisions.
Section 124(3)	Article 104(4)	Application for winding up	An administrator of the cell, or an administrator or liquidator of the core, may also present a petition for the winding up of a cell.
Section 216	Article 180	Restriction on re-use of names	Ignore these provisions.
Section 221(5)	Article 185	Winding up of unregistered companies	Where an administrator or liquidator of the core of the protected cell company applies for the winding up of a cell, the cell may be wound up if the court is satisfied that the application is made in the discharge of the duty imposed on the administrator or liquidator by paragraph 2(2)(c) of Schedule 3 to these Regulations in relation to the cell.
Section 222	Article 186	Inability to pay debts: unpaid	The written demand must be served on the cell by leaving it at the protected cell company’s

(2) Section 76 has been amended by S.I. 2009/1941 and S.I. 2011/1265.

(3) Section 124 has been amended by section 62 of the Criminal Justice Act 1988 (c. 33), section 60 of the Companies Act 1989 (c. 40), S.I. 2002/1240, section 1 of and Schedule 1 to the Insolvency Act 2000, section 109 of the Courts Act 2003 (c. 39), section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 45), S.I. 2006/2078, S.I. 2009/1941, S.I. 2013/496 and S.I. 2017/702.

(4) Article 104 has been amended by S.I. 2006/2078 and S.I. 2009/1941.

(5) Section 221 has been amended by S.I. 2002/1240 and S.I. 2009/1941.

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<i>Insolvency Act 1986</i>	<i>Insolvency (Northern Ireland) Order 1989</i>	<i>Subject Matter</i>	<i>Modification</i>
		creditor for £750 or more	registered office or in such manner as the court may approve or direct.
Section 223	Article 187	Inability to pay debts: debt remaining unsatisfied after action brought	Ignore these provisions.
Paragraph 61 of Schedule B1	Paragraph 62 of Schedule B1	Administrator's general powers (removal and appointment of directors)	Ignore these paragraphs.
Paragraph 69 of Schedule B1	Paragraph 70 of Schedule B1	Administrator as agent	An administrator of a cell acts as agent for the protected cell company (on behalf of the cell).
Paragraph 83 of Schedule B1(6)	Paragraph 84 of Schedule B1	Moving from administration to liquidation	Ignore these paragraphs.

Further modification to subordinate legislation

9. The provisions of any subordinate legislation made under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989⁽⁷⁾ apply to the cell with any necessary modifications.

(6) Paragraph 83 has been amended by sections 126 and 128 of and Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

(7) The key subordinate legislation made under these powers is the Insolvency (England and Wales) Rules 2016, the Insolvency (Scotland) Rules 1986 and the Insolvency (Northern Ireland) Rules 1991. The Insolvency (Scotland) Rules 1986 and the Insolvency Rules (Northern Ireland) 1991 are in the process of being updated and revised.