DRAFT STATUTORY INSTRUMENTS

2017 No.

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 11

Debentures (debt securities)

Debentures

147. A protected cell company may only issue debentures on behalf of a part of the protected cell company.

Transfers by a cell to a debenture holder

148.—(1) This regulation applies where a protected cell company transfers an asset held by the protected cell company to the holder of a debenture issued on behalf of a cell in full or partial satisfaction of any indebtedness arising under or acknowledged by the debenture.

(2) Where the cell is not a member of a group of cells, the protected cell company may only transfer the asset if the following conditions are satisfied—

(a) the asset is held by the protected cell company on behalf of the cell; and

(b) where the protected cell company has a liability to an undertaking arising under a contract made between the undertaking and the protected cell company acting on behalf of the cell, the undertaking has consented to the transfer (whether in the contract or otherwise).

(3) Where the cell ("the relevant cell") is a member of a group of cells, the protected cell company may only transfer the asset if the following conditions are satisfied—

(a) the asset is held by the protected cell company on behalf of the relevant cell;

(b) the protected cell company will, immediately after the transfer, hold sufficient assets on behalf of the relevant cell to enable the protected cell company to give effect to any enforceable arrangements made between the relevant cell and any other cell; and

(c) where the protected cell company has a liability to an undertaking arising under a contract made between the undertaking and the protected cell company acting on behalf of a cell in that group of cells, the undertaking has consented to the transfer (whether in the contract or otherwise).

Consequences of unlawful transfer

149.—(1) This regulation applies to a transfer, or a part of a transfer, which is made by a protected cell company—

(a) from assets held on behalf of a part ("part A") of the protected cell company;

(b) to a person holding a debenture issued by the protected cell company on behalf of a part of a protected cell company (either part A or another part); and

(c) in contravention of regulation 148.

(2) If at the time of the transfer the person knows or has reasonable grounds for believing that it is made in contravention of regulation 148, the person is liable—

(a) to repay the amount transferred (or that part of it, as the case may be) to the protected cell company; or

(b) in the case of a transfer made otherwise than in cash, to pay the protected cell company a sum equal to the value of the transfer (or part of it) at that time.

(3) This regulation is without prejudice to any obligation imposed apart from this regulation on a person to repay a transfer which was made unlawfully to that person.

(4) A payment made to a protected cell company in accordance with paragraph (2) must be held by the protected cell company on behalf of part A.

Perpetual debentures

150. A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are made redeemable only—

(a) on the happening of a contingency (however remote); or

(b) on the expiration of a period (however long),

any rule of equity notwithstanding.

Enforcement of contract to subscribe for debentures

151. A contract with a protected cell company to take up and pay for debentures may be enforced by an order for specific performance.

Debentures to bearer (Scotland)

152. Notwithstanding anything in the statute of the Scots Parliament of 1696, chapter 25, debentures to bearer issued in Scotland are valid and binding according to their terms.

Liability of trustees of debentures

153.—(1) A provision contained in—

(a) a trust deed for securing an issue of debentures by a protected cell company; or

(b) any contract with the holders of debentures issued by a protected cell company, secured by a trust deed,

is void insofar as it would have the effect of exempting a trustee ("T") of the deed from, or indemnifying T against, liability for breach of trust where T fails to show the degree of care and diligence required of T as trustee, having regard to the provisions of the trust deed conferring on T any powers, authorities or discretions.

(2) Paragraph (1) does not invalidate—

(a) a release otherwise validly given in respect of anything done or omitted to be done by T before the giving of the release;

(b) any provision enabling such a release to be given—

(i) on being agreed to by a majority of not less than 75% in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.