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DRAFT STATUTORY INSTRUMENTS

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**2017 No.**

**The Risk Transformation Regulations 2017**

**PART 4**

**Protected Cell Companies**

**CHAPTER 16**

**Mergers and Divisions**

**Meaning of “transfer scheme”, “transferor” and “transferee”**

**170.**—(1) A scheme is a transfer scheme for the purposes of this Chapter if it falls within Case 1, 2 or 3.

(2) Case 1 is that the scheme results in the transfer of one or more cells from one protected cell company to another protected cell company.

(3) Case 2 is that the scheme results in the transfer of the following from a protected cell company to another person—

- (a) all of the assets held by the protected cell company on behalf of a cell;
- (b) all of the liabilities incurred by the protected cell company on behalf of that cell;
- (c) all of the liabilities of the protected cell company which are attributable to the cell; and
- (d) all of the investments issued by the protected cell company on behalf of that cell;

and the scheme is not a Case 1 transfer scheme.

(4) Case 3 is that the scheme results in the transfer of—

- (a) some or all of the assets of a person to a protected cell company, to be held by the protected cell company on behalf of a cell;
- (b) some or all of the liabilities of a person to the protected cell company, to be treated as liabilities incurred by the protected cell company on behalf of that cell; and
- (c) some or all of the investments issued by that person to the protected cell company, to be treated as investments issued by the protected cell company on behalf of that cell,

and the scheme is not a Case 1 transfer scheme.

(5) In this Chapter—

“the transferor” is the person transferring the cell, assets, liabilities or investments (as the case may be); and

“the transferee” is the person to whom the cell, assets, liabilities or investments (as the case may be) are transferred.

**Meaning of “reference date”**

171. In this Chapter, the “reference date” means the date chosen by a person in accordance with paragraph (2) of regulation 173.

**Meaning of “affected parties”**

172.—(1) In this Chapter, “affected parties” means—

- (a) in a Case 1 transfer scheme—
  - (i) the FCA;
  - (ii) the PRA;
  - (iii) an undertaking from whom the transferor has assumed a risk on behalf of a relevant cell;
  - (iv) all investors holding investments issued by the transferor on behalf of a relevant cell;
  - (v) any other person to whom the transferor has incurred a liability on behalf of a relevant cell; and
  - (vi) so far as the transferor is aware, any other person to whom the transferor has incurred a liability which is attributable to a relevant cell;
- (b) in a Case 2 transfer scheme—
  - (i) the FCA;
  - (ii) the PRA;
  - (iii) an undertaking from whom the transferor has assumed a risk on behalf of a relevant cell;
  - (iv) all investors holding investments issued by the transferor on behalf of a relevant cell;
  - (v) any other person to whom the transferor has incurred a liability on behalf of a relevant cell;
  - (vi) so far as the transferor is aware, any other person to whom the transferor has incurred a liability which is attributable to a relevant cell; and
  - (vii) any person to whom the transferee has a liability or to whom the transferee has issued an investment;
- (c) in a Case 3 transfer scheme—
  - (i) the FCA;
  - (ii) the PRA;
  - (iii) any person to whom the transferor has a liability, or to whom the transferor has issued an investment, which is to be transferred to the transferee as a result of the transfer scheme;
  - (iv) any undertaking from whom the transferee has assumed a risk on behalf of a relevant cell;
  - (v) all investors holding investments issued by the transferee on behalf of a relevant cell;
  - (vi) any other person to whom the transferee has incurred a liability on behalf of a relevant cell; and
  - (vii) so far as the transferee is aware, any other person to whom the transferee has incurred a liability which is attributable to a relevant cell.

(2) In this regulation, a “relevant cell” is the cell to which the transfer scheme relates and any other cell which has entered into enforceable arrangements with that cell.

### Requirements on applicants

**173.**—(1) A person must comply with the following requirements before making an application under regulation 174 (fast track transfers) or regulation 175 (transfers sanctioned by court order).

(2) The person who proposes to make the application must decide on a date (by virtue of regulation 171, this date is known as the “reference date”).

(3) Within a period of 10 working days beginning with the reference date, a notice stating that the person proposes to make the application must be—

(a) published—

(i) in the London, Edinburgh and Belfast Gazettes;

(ii) in two national newspapers in the United Kingdom; and

(iii) in a national newspaper in each of the countries or territories in which a person who was an affected party on the reference date is located; and

(b) sent to all the persons who were affected parties on the reference date.

(4) The applicant must provide the following documents free of charge and without delay to the FCA, the PRA and any other person who requests them—

(a) a statement setting out the terms of the proposed transfer scheme; and

(b) a copy of the proposed application.

### Application for fast track transfer

**174.**—(1) An application may be made to the FCA for a fast track transfer where—

(a) the transfer scheme falls entirely within Case 1 or entirely within Case 2;

(b) in the case of a transfer scheme falling within Case 2—

(i) the transferee is a private company limited by shares and registered under the Companies Act 2006; and

(ii) the directors of the transferee are permitted by the transferee’s articles of association to do all the things necessary for the transferee to enter into and complete the transfer scheme;

(c) the applicant has complied with the requirements of regulation 173;

(d) all the affected parties have given their written consent to the transfer scheme;

(e) the transferee has permission under Part 4A of FSMA(1) to carry out the activity specified in article 13A of the Regulated Activities Order; and

(f) the application is made before the end of a period of 30 working days beginning with the reference date.

(2) The application may be made by—

(a) the transferor;

(b) the transferee;

(c) if the core of the transferor is in administration or liquidation, the administrator or liquidator of the core; or

(d) any combination of the above persons.

(3) An application must be accompanied by—

(a) a statement made by or on behalf of the transferor and transferee consenting to the transfer;

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(1) Part 4A was inserted by section 11 of the Financial Services Act 2012.

- (b) a statement made by the solicitor or counsel for the applicant verifying that the requirements of paragraph (1) are satisfied in relation to the transfer scheme; and
  - (c) a statement made by the solicitor or counsel for the applicant setting out the changes which will need to be made to the information contained on the FCA's register as a result of the transfer scheme or, if no such changes are required, stating that fact.
- (4) Where the FCA considers that the application complies with the requirements of this regulation, the FCA must—
- (a) register the application; and
  - (b) notify the applicant and the PRA accordingly.
- (5) For the purposes of deciding whether the application complies with the requirements of this regulation, the FCA may rely on the statement made by the solicitor or counsel for the applicant in accordance with paragraph (3)(b) .
- (6) The notification under paragraph (4)(b) must state the time and date when the application was registered.
- (7) When the applicant receives notification under paragraph (4)(b), the applicant must do the following without delay—
- (a) inform the transferor (except where applicant is the transferor);
  - (b) inform the transferee (except where the applicant is the transferee);
  - (c) publish a notice confirming that the transfer scheme has taken effect in—
    - (i) the London, Edinburgh and Belfast Gazettes;
    - (ii) two national newspapers in the United Kingdom; and
    - (iii) a national newspaper in each of the countries or territories in which a person who was an affected party on the reference date is located; and
  - (d) send a notice confirming that the transfer scheme has taken effect to—
    - (i) all the persons who were affected parties on the reference date; and
    - (ii) if the applicant is aware that any other person has become an affected party since the reference date, that other person.
- (8) The notice referred to in sub-paragraphs (c) and (d) of paragraph (7) must state the time and date when the transfer scheme was registered.

### **Application for court order sanctioning transfer scheme**

- 175.**—(1) An application may be made to the court for an order sanctioning a transfer scheme.
- (2) An application may be made by—
- (a) the transferor;
  - (b) the transferee;
  - (c) where the transferor is a protected cell company and the core of the protected cell company is in administration or liquidation, the administrator or liquidator; or
  - (d) any combination of the above persons.
- (3) “Court” means—
- (a) the High Court; or
  - (b) in Scotland, the Court of Session.
- (4) The following are entitled to be heard on an application—
- (a) the FCA;

- (b) the PRA; and
  - (c) any person who alleges that they would be adversely affected by the transfer scheme.
- (5) The court may make an order sanctioning a transfer scheme provided it is appropriate to sanction the scheme in all the circumstances of the case.
- (6) The court may not determine an application—
- (a) where the applicant has failed to comply with the requirements in paragraphs (3) and (4) of regulation 173; and
  - (b) until after the end of a period of 15 working days beginning with the day the FCA and PRA were given the documents mentioned in paragraph (4) of regulation 173 (or if the FCA and PRA were given the documents on different dates, the later of the two dates).
- (7) But the court may waive the requirements of the following provisions in such circumstances and subject to such conditions as the court considers appropriate—
- (a) sub-paragraphs (ii) and (iii) of regulation 173(3)(a); and
  - (b) paragraph (4) of regulation 173 in relation to any person other than the FCA and the PRA.

#### **Effect of fast track transfer**

**176.**—(1) A transfer scheme falling within regulation 174 takes effect on its registration by the FCA in accordance with paragraph (4)(a) of that regulation.

- (2) Where the transfer scheme falls within Case 1, the following occur as a result of registration—
- (a) the cell ceases to be a part of the transferor (and in relation to the transferor is deemed to be dissolved);
  - (b) the cell becomes a part of the transferee (and in relation to the transferee is deemed to be created);
  - (c) all of the assets held by the transferor on behalf of the cell are vested in the transferee and are deemed to be held by the transferee on behalf of the cell;
  - (d) all of the liabilities or obligations incurred by the transferor on behalf of the cell become liabilities or obligations of the transferee and are deemed to be liabilities or obligations incurred by the transferee on behalf of the cell;
  - (e) all of the liabilities or obligations of the transferor which are attributable to the cell become liabilities or obligations of the transferee and are deemed to be liabilities or obligations attributable to the cell;
  - (f) where the transferor has, on behalf of the cell, entered into a contract with the transferee then, to the extent that the transferor was acting on behalf of the cell, regulation 74 applies to the contract after the transfer with the following modifications—
    - (i) the contract is to be treated as if it were made between the cell and the part of the transferee on whose behalf the transferee was acting when it entered into the contract; and
    - (ii) for the purposes of determining whether the requirements of regulation 69 or, where applicable, regulation 70 are satisfied in relation to the contract, the contract is to be treated as if it were made on the registration of the transfer scheme by the FCA;
  - (g) where the transferor has, on behalf of the cell, entered into a contract with a person who is not the transferee then, to the extent that the transferor was acting on behalf of the cell, the contract is deemed to be novated to the transferee so that references to the transferor in the contract are (unless the context otherwise requires) read after the transfer as references to the transferee;

- (h) where the cell has entered into enforceable arrangements with another cell of the transferor, then—
    - (i) where both cells are being transferred to the transferee at the same time, the enforceable arrangements take effect after the transfer as enforceable arrangements made between those cells by the transferee in accordance with these Regulations;
    - (ii) in all other cases, the arrangements take effect after the transfer as if the terms of the arrangements are set out in a contract made between—
      - (aa) the protected cell company on behalf of the other cell; and
      - (bb) the transferee on behalf of the cell being transferred;
  - (i) all of the investments issued by the transferor on behalf of the cell are deemed to be investments issued by the transferee on behalf of the cell;
  - (j) where the investments concerned are shares, they are deemed to have been issued and allotted by the transferee in accordance with the requirements of this Part;
  - (k) things done by the transferor on behalf of the cell are deemed to have been done by the transferee on behalf of the cell; and
  - (l) things done to the transferor in respect of the cell are deemed to have been done to the transferee in respect of the cell.
- (3) Where the transfer scheme falls within Case 2, then the following occur as a result of registration—
- (a) all of the assets held by the transferor on behalf of the cell are vested in the transferee;
  - (b) all of the liabilities or obligations incurred by the transferor on behalf of the cell become liabilities or obligations of the transferee;
  - (c) all of the liabilities or obligations of the transferor which are attributable to the cell become liabilities or obligations of the transferee;
  - (d) where the transferor has entered into a contract with the transferee on behalf of the cell then, to the extent that the transferor was acting on behalf of the cell, the terms of the contract cease to have effect after the transfer;
  - (e) where the transferor has, on behalf of the cell, entered into a contract with a person who is not the transferee then, to the extent that the transferor was acting on behalf of the cell, the contract is deemed to be novated to the transferee so that references to the transferor in the contract are (unless the context otherwise requires) read after the transfer as references to the transferee;
  - (f) where the cell has entered into enforceable arrangements with another cell of the transferor, those arrangements take effect after the transfer as if the terms of the arrangements are set out in a contract made between the protected cell company on behalf of the other cell and the transferee;
  - (g) all of the investments issued by the transferor on behalf of the cell are deemed to be investments issued by the transferee;
  - (h) things done by the transferor on behalf of the cell are deemed to have been done by the transferee;
  - (i) things done to the transferor in respect of the cell are deemed to have been done to the transferee; and
  - (j) the cell is deemed to be dissolved.
- (4) Where the investments referred to in paragraph (3)(g) are shares, then Chapter 3 (allotment of equity securities: existing shareholders' right of pre-emption) and Chapter 5 (payment for shares)

of Part 17 (a company's share capital) of the Companies Act 2006 do not apply to the transferee in relation to the transfer of the shares.

(5) Where property or a liability transferred in accordance with this regulation is governed by the law of any country or territory outside the United Kingdom, then the transferor must, if the transferee so requires, take all necessary steps for securing that the transfer is fully effective under the law of that country or territory.

(6) Registration of a transfer scheme in accordance with regulation 174 is to be treated as an instrument of transfer for the purposes of any enactment requiring the delivery of an instrument of transfer for the registration of property.

### **Effect of court order sanctioning transfer scheme**

177.—(1) If the court makes an order under regulation 175, it may by that or any subsequent order make such provision (if any) as it thinks fit—

- (a) for the transfer to the transferee of a cell forming part of the transferor;
- (b) for the transfer to the transferee of any property, liabilities or obligations of the transferor;
- (c) for the allotment or appropriation by the transferee of any shares or debentures issued by the transferor;
- (d) for the continuation by or against the transferee of any pending legal proceedings by or against the transferor;
- (e) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the transfer scheme;
- (f) for bringing the order to the attention of any person;
- (g) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the transfer scheme is fully and effectively carried out.

(2) Where the court makes an order under paragraph (1) in respect of a protected cell company, the order may specify the part of the protected cell company to which the order relates.

(3) An order under paragraph (1) may—

- (a) transfer property or liabilities whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to property which is held by the transferor as trustee;
- (c) make provision in relation to enforceable arrangements between cells;
- (d) make provision as to prospective or contingent rights or liabilities of the transferor, including provision as to the construction of instruments under which such rights or liabilities arise.

(4) Paragraph (3)(a) is to be taken to include the power to make the following provision in an order—

- (a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;
- (b) if the terms on which the transferor is entitled to property or is subject to liabilities include provision that has any of the effects specified in paragraph (5), for the transfer to take effect as if there were no such provision.

(5) The effects mentioned in paragraph (4)(b) are that a transfer of the property or liability in question—

- (a) requires a person's consent or concurrence; or
- (b) contravenes or interferes with an interest or right, or otherwise incurs a liability.

(6) Nothing in paragraph (4) is to be read as limiting the scope of paragraph (3).

(7) If an order under paragraph (1) transfers a cell from the transferor to transferee, then the order has the effect specified in paragraph (2) of regulation 176, except to the extent that the order provides otherwise.

(8) If an order under paragraph (1) makes provision for the transfer of property, liabilities or obligations, then the following occur as a result of the order—

- (a) the property is transferred to and vests in the transferee specified in the order; and
- (b) the liabilities or obligations are transferred to and become liabilities or obligations of the transferee specified in the order.

(9) But if any property or liability included in an order under paragraph (1) is governed by the law of any country or territory outside the United Kingdom, the order may require the transferor, if the transferee so requires, to take all necessary steps for securing that the transfer is fully effective under the law of that country or territory.

(10) Property transferred as a result of an order under paragraph (1) may, if the court so directs, vest free from any charge (or, in Scotland, security over property) which is (as a result of the transfer scheme) to cease to have effect.

(11) An order under paragraph (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of any enactment requiring the delivery of an instrument of transfer for the registration of property.

(12) The transferee must provide the FCA and PRA with two office copies of an order made under regulation 175 or 177 before the end of a period of 10 working days beginning with the making of the order, or such longer period as the FCA or PRA (as the case may be) directs.