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DRAFT STATUTORY INSTRUMENTS

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**2017 No.**

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 17

Dissolution

**Dissolution of a cell: procedure**

**178.**—(1) A protected cell company’s instrument of incorporation may contain provision for the dissolution of a cell, but that provision is subject to this regulation.

(2) A protected cell company must notify the following people (the “interested persons”) if it intends to dissolve a cell—

- (a) any undertaking from whom the protected cell company has assumed a risk on behalf of a relevant cell;
- (b) any investor who holds an investment issued on behalf of a relevant cell;
- (c) any other creditor of the protected cell company in respect of a relevant cell;
- (d) the FCA; and
- (e) the PRA.

(3) In paragraph (2), a “relevant cell” is—

- (a) the cell which the protected cell company intends to dissolve; and
- (b) any other cell which has entered into enforceable arrangements with that cell.

(4) But paragraph (2) does not apply where a cell is deemed to be dissolved as a consequence of a Case 1 transfer scheme or Case 2 transfer scheme (within the meaning given by regulation 170).

(5) The notification referred to in paragraph (2) must—

- (a) be in writing;
- (b) identify the cell which the protected cell company intends to dissolve;
- (c) state the date on which the notification is sent; and
- (d) state that if the recipient intends to object to the dissolution of the cell, then any objections must be received by the protected cell company within a period of two months beginning with the date when the notification was sent.

(6) The cell may only be dissolved in the following cases—

- (a) none of the interested persons object within the period referred to in paragraph (5)(d);
- (b) one or more of the interested persons objects within the period referred to in paragraph (5)(d) and those objections are subsequently withdrawn;

- (c) one or more of the interested persons objects within the period referred to in paragraph (5) (d) and—
    - (i) the FCA or PRA is not one of the interested persons who objects; and
    - (ii) the person or persons objecting have not commenced court proceedings against the protected cell company in respect of the cell, or put the cell into administration or liquidation, within the relevant period;
  - (d) the cell is deemed to be dissolved by virtue of—
    - (i) regulation 176(2)(a) or 176(3)(j); or
    - (ii) an order of the court made under regulation 175 or 177;
  - (e) the cell is put into administration and the cell is deemed to be dissolved at the end of administration (see paragraph 84 of Schedule B1 to the Insolvency Act 1986 and paragraph 85 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989, as applied by regulation 166);
  - (f) the cell is put into liquidation and the cell is dissolved after winding up (see sections 202 to 205 of the Insolvency Act 1986(1) and Articles 167 to 169 of the Insolvency (Northern Ireland) Order 1989, as applied by regulation 166);
  - (g) the court directs that the cell is to be dissolved.
- (7) In paragraph (6)(c), the “relevant period”—
- (a) begins with the date when notification is sent in accordance with paragraph (2) or, if notifications are sent on more than one date, the date when the last such notification is sent; and
  - (b) lasts for a period of 12 months or, if court proceedings are brought against the protected cell company in respect of the cell or an application is made to court for the administration or winding up of the cell, such other period as may be specified by the court.
- (8) For the purposes of paragraph (7)(b), the court may specify another period after the expiry of the 12 month period referred to in that paragraph, provided the cell has not been dissolved when the court specifies that period.
- (9) When a protected cell company dissolves a cell, it must notify the interested persons.
- (10) The notification referred to in paragraph (9) must—
- (a) be in writing;
  - (b) identify the cell which has been dissolved; and
  - (c) state the time and date when it was dissolved.

### **Dissolution of a cell: effect on property and liabilities**

**179.**—(1) Where a cell of a protected cell company is dissolved in accordance with regulation 178—

- (a) the protected cell company is released from all outstanding liabilities and obligations which were incurred on behalf of the cell or which are attributable to the cell;
- (b) any enforceable arrangements made between the cell and any other cell are deemed to be cancelled; and
- (c) any property of the protected cell company which is held on behalf of the cell is deemed to be moved to the core.

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(1) Sections 202, 204 and 205 were amended by section 126 of and Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c. 26). Section 204 was also amended by SSI 2016/141.

(2) A resolution of the protected cell company for the dissolution of a cell 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.

(3) Paragraph (1) is subject to regulations 181 to 185 (which are concerned with restoration).

### **Dissolution of a protected cell company**

**180.**—(1) A protected cell company may be dissolved in the following cases—

- (a) the protected cell company makes an application to the FCA for its dissolution;
- (b) the core of the protected cell company is put into administration and the protected cell company is dissolved at the end of administration (see paragraph 84 of Schedule B1 to the Insolvency Act 1986 and paragraph 85 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989, as applied by regulation 167);
- (c) the core of the protected cell company is put into liquidation and the protected cell company is dissolved after winding up (see sections 202 to 205 of the Insolvency Act 1986 and Articles 167 to 169 of the Insolvency (Northern Ireland) Order 1989 as applied by regulation 167).

(2) But a protected cell company may only be dissolved if the protected cell company has no cells.

(3) Where a protected cell company applies to the FCA for its dissolution, the application must contain, or be accompanied by, a statement made by the directors of the protected cell company, or by a majority of them, that the protected cell company has no cells.

(4) Where the FCA receives an application made under paragraph (1)(a) which contains, or is accompanied by, the statement referred to in paragraph (3), the FCA must publish a notice in the London, Edinburgh and Belfast Gazettes—

- (a) identifying the protected cell company;
- (b) stating that the FCA has received an application from the protected cell company for its dissolution; and
- (c) inviting any person to show cause as to why the protected cell company should not be dissolved.

(5) On the expiry of a period of three months beginning with the date that the notice referred to in paragraph (4) was published in the London, Edinburgh and Belfast Gazettes, or the last such date if the notices are published on different dates, the FCA may—

- (a) notify the protected cell company that it intends to strike the protected cell company off the register;
- (b) record on its register of protected cell companies that the protected cell company is struck off the register; and
- (c) publish notice to that effect in the London, Edinburgh and Belfast Gazettes.

(6) If the FCA is aware that the protected cell company intends to acquire or redeem shares issued on behalf of the core, the FCA may postpone publication of the notices referred to in paragraph (5) for such period as appears to the FCA to be reasonable.

(7) On the publication of the notices referred to in paragraph (5)(c), or the last such notice if the notices are published on different dates, the protected cell company is dissolved.

(8) However—

- (a) the liability (if any) of every director of the protected cell company continues and may be enforced as if the protected cell company had not been dissolved; and
- (b) nothing in this regulation affects the power of the court to wind up the core or a cell of the protected cell company which has been struck off the register.

(9) All property and rights whatsoever vested in or held on trust for the protected cell company immediately before its dissolution (including leasehold property, but not including property held on trust for another person) are deemed to be *bona vacantia*.

(10) Sections 1012 to 1023 of the Companies Act 2006 (property of dissolved company)(2) apply to all such property and rights as they apply to the property and rights of a company incorporated under the Companies Act 2006, with the following modifications—

- (a) references to the restoration of the company are to be treated as references to the restoration of the protected cell company; and
- (b) references to the registrar are to be treated as references to the FCA.

### **Restoration: applications to court**

**181.**—(1) Where a cell of a protected cell company has been dissolved, an application may be made to the court to restore the cell.

(2) Where a protected cell company has been dissolved, an application may be made to the court to restore the protected cell company to the register.

(3) Where an application is made to restore a cell of a protected cell company and the protected cell company has been dissolved, then the application must be accompanied by an application to restore the protected cell company to the register.

(4) In this regulation, “court” means the High Court or, in Scotland, the Court of Session.

### **Restoration: who may apply**

**182.**—(1) An application under regulation 181(1) may be made by—

- (a) any person who would have been entitled to receive notice of the cell’s dissolution under regulation 178(2);
- (b) the protected cell company;
- (c) a director of the protected cell company;
- (d) a former administrator or liquidator of the cell; or
- (e) any other person appearing to have an interest in the matter.

(2) An application under regulation 181(2) may be made by—

- (a) a person who is entitled to make an application under regulation 181(1) for the restoration of a cell which formed part of the protected cell company;
- (b) a former director of the protected cell company;
- (c) a person who would, but for the dissolution of the protected cell company, have been—
  - (i) a creditor of the protected cell company; or
  - (ii) in a contractual relationship with the protected cell company;
- (d) a person with a potential legal claim against the protected cell company;
- (e) a person having an interest in land or other property—
  - (i) in which the protected cell company had a superior or derivative interest;
  - (ii) that was subject to rights vested in the protected cell company; or
  - (iii) that received the benefit of obligations owed by the protected cell company;
- (f) a person who held shares issued on behalf of the core of the protected cell company immediately prior to the dissolution of the protected cell company;

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(2) Section 1022 was amended by section 119 or and Schedule 5 to the Land Registration etc (Scotland) Act 2012 (2012 asp 5).

- (g) a former administrator or liquidator of the core of the protected cell company;
- (h) the FCA;
- (i) the PRA; or
- (j) any other person appearing to have an interest in the matter.

### **Restoration: when an application may be made**

**183.** An application to restore a cell or a protected cell company must be made within a period of six years beginning with the date when the cell or protected cell company (as the case may be) was dissolved.

### **Decision on application for restoration**

**184.**—(1) On an application under regulation 181(1), the court may order the restoration of a cell if—

- (a) the requirements of regulation 178 were not complied with in relation to the dissolution of the cell; or
- (b) the court considers it just to do so.

(2) On an application under regulation 181(2), the court may order the restoration of a protected cell company if—

- (a) the requirements of regulation 180 were not complied with in relation to the dissolution of the protected cell company; or
- (b) the court considers it just to do so.

(3) If the court orders the restoration of the cell or the protected cell company, the restoration takes effect on a copy of the court's order being delivered to the FCA.

(4) Where a protected cell company is restored to the register, the FCA must publish notice of the restoration of the protected cell company in the London, Edinburgh and Belfast Gazettes.

(5) The notices must state—

- (a) the name of the protected cell company;
- (b) the protected cell company's registered number; and
- (c) the date on which restoration took effect.

### **Effect of court order for restoration**

**185.**—(1) The general effect of an order restoring a cell or a protected cell company is that the cell or protected cell company (as the case may be) is deemed to have continued in existence as if it had not been dissolved.

(2) The court may give directions and make such provision as seems just for placing the cell or protected cell company and all other persons in the same position (as nearly as may be) as if the cell or protected cell company had not been dissolved.

(3) In particular, the court may give directions as to—

- (a) the delivery of documents to the FCA or PRA;
- (b) payment of the FCA's or PRA's costs in relation to the proceedings for restoration;
- (c) where property or a right previously vested in or held on trust for the protected cell company has vested as *bona vacantia*, the payment of the costs (in Scotland, the expenses) of the Crown representative—
  - (i) in dealing with the property during the period of dissolution; or

(ii) in connection with the proceedings on the application.

(4) In this regulation, the “Crown representative” means—

- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
- (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
- (c) in relation to property in Scotland, the Queen’s and Lord Treasurer’s Remembrancer;
- (d) in relation to other property, the Treasury Solicitor.

(5) Section 1034 of the Companies Act 2006 (effect of restoration where property has vested as *bona vacantia*) applies on the restoration of a protected cell company as it applies on the restoration of a company incorporated under the Companies Act 2006, but with the reference to section 1012 in subsection (1) being treated as a reference to regulation 180(9).