
DRAFT STATUTORY INSTRUMENTS

2017 No.

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 6

Arrangements and contracts between cells

Creation of arrangements between cells

68.—(1) Where a protected cell company enters into a contract with an undertaking to assume a risk on behalf of a cell (“cell A”), the protected cell company may make arrangements between cell A and another cell of the protected cell company (“cell B”) to discharge some or all of any actual liability arising out of the assumption of risk under that contract.

(2) The protected cell company may only make those arrangements during the period—

- (a) beginning when the protected cell company enters into the contract; and
- (b) ending when it is no longer possible for the undertaking to make a claim under the contract or, if the undertaking has made a claim under the contract, to revise the amount payable in respect of the claim under the terms of the contract.

(3) The arrangements may only enable the protected cell company to discharge some or all of the actual liability referred to in paragraph (1) by—

- (a) moving assets held by the protected cell company on behalf of cell A to cell B before the actual liability arises; and
- (b) if the actual liability arises, moving assets held by the protected cell company on behalf of cell B to cell A in order to discharge some or all of that actual liability.

(4) The arrangements must include full details of—

- (a) the circumstances in which assets may be moved between the cells;
- (b) the timing of any movement of assets when those circumstances arise; and
- (c) the amount of assets to be moved or the method by which that amount is to be determined.

(5) In this regulation, “actual liability” means a liability which is not a contingent liability.

Creation of arrangements between cells: procedure

69.—(1) The protected cell company may only make arrangements between cells in accordance with regulation 68 if the following conditions are satisfied—

- (a) the protected cell company’s instrument of incorporation must permit the protected cell company to make the arrangements;
- (b) the arrangements must be approved by a written resolution of the directors of the protected cell company before they are made;

- (c) the written resolution must set out the matters referred to in paragraph (4) of regulation 68;
 - (d) the following persons must have given their prior written consent to the arrangements—
 - (i) the undertaking from whom the protected cell company assumed the risk to which the arrangements relate; and
 - (ii) all persons holding investments issued by the protected cell company on behalf of either cell.
- (2) Where a protected cell company makes the arrangements, the protected cell company must—
- (a) notify the PRA before the end of a period of 5 working days beginning with the day the arrangements are made;
 - (b) keep the written resolution of the directors approving the arrangements with the records of the protected cell company at its registered office or at any alternative inspection location notified to the FCA in accordance with regulation 67;
 - (c) send a copy of the written resolution of the directors approving the arrangements to the FCA; and
 - (d) notify any person to whom the protected cell company proposes to issue or allot an investment on behalf of either cell after the arrangements have been made that the cells are party to arrangements of the kind referred to in regulation 68(1).
- (3) Rules made under section 137G (the PRA's general rules) of FSMA may specify—
- (a) the form in which a notification under paragraph (2)(a) 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.

Arrangements between cells: amendment and cancellation

- 70.**—(1) Where a protected cell company makes arrangements between cells in accordance with regulations 68 and 69, the protected cell company may amend or cancel those arrangements—
- (a) in accordance with the terms of those arrangements; or
 - (b) provided the conditions mentioned in paragraph (2) are satisfied.
- (2) The conditions referred to in paragraph (1)(b) are that—
- (a) the protected cell company's instrument of incorporation must permit the protected cell company to amend or cancel the arrangements;
 - (b) the amendment or cancellation must be approved by a written resolution of the directors of the protected cell company before they are amended or cancelled;
 - (c) in the case of an amendment—
 - (i) the written resolution of the directors must set out the matters referred to in paragraph (4) of regulation 68 in relation to the amended arrangements; and
 - (ii) the amended arrangements must continue to comply with the requirements of paragraph (4) of regulation 68; and
 - (d) the following persons must have given their prior written consent to the amendment or cancellation—
 - (i) the undertaking from whom the protected cell company assumed the risk to which the arrangements relate; and
 - (ii) all persons holding investments issued by the protected cell company on behalf of either cell.

(3) Where a protected cell company amends or cancels the arrangements, the protected cell company must notify the PRA before the end of a period of 5 working days beginning with the day the arrangements are amended or cancelled.

(4) Where a protected cell company amends or cancels the arrangements other than in accordance with the terms of those arrangements, the protected cell company must—

- (a) keep the written resolution of the directors approving the amendment or cancellation with the records of the protected cell company at its registered office or at an alternative inspection location notified to the FCA in accordance with regulation 67; and
- (b) send a copy of the written resolution of the directors approving the amendment or cancellation to the FCA.

(5) Rules made under section 137G of FSMA may specify—

- (a) the form in which a notification under paragraph (3) 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.

(6) Regulation 69(2)(d) ceases to apply to arrangements which have been cancelled in accordance with this regulation.

Arrangements between cells: enforcement

71.—(1) This regulation applies where a protected cell company makes enforceable arrangements between cells.

(2) The following persons may bring proceedings against the protected cell company for an order requiring the protected cell company to give effect to the arrangements—

- (a) the undertaking from whom the protected cell company assumed the risk to which the arrangements relate; and
- (b) any person holding investments issued by the protected cell company on behalf of either cell.

(3) The protected cell company may apply to court for directions as to what the protected cell company must do or refrain from doing in order to give effect to the arrangements.

(4) Where a person brings proceedings referred to in paragraph (2) or the protected cell company makes an application referred to in paragraph (3), the court may make any such order as the court sees fit (including an order for service of the application on any person who appears to the court to have an interest in the matter).

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

Arrangements between cells: records and accounts

72.—(1) Where a protected cell company makes enforceable arrangements between cells, the protected cell company must record the arrangements in the records and accounts kept by the protected cell company in accordance with regulation 46.

(2) For the purposes of recording the arrangements in the protected cell company’s accounts, the records in the accounts must be made as if—

- (a) the cells have distinct legal personality; and
- (b) the arrangements take effect by virtue of a contract agreed between the cells.

(3) But where a protected cell company—

- (a) prepares accounts in accordance with Part 15 (accounts and reports) of the Companies Act 2006, as applied by regulation 163; and

- (b) those accounts do not distinguish between the assets, liabilities, profits or losses of the different parts of the protected cell company,

then the arrangements may be disregarded except to the extent necessary to give a true and fair view of the assets, liabilities, profits and losses of the protected cell company.

Inspection of directors' resolutions

73.—(1) An undertaking from whom a protected cell company has assumed a risk on behalf of a cell, or a person to whom a protected cell company has issued an investment on behalf of a cell, may—

- (a) inspect any written resolution of the directors of the protected cell company relating to arrangements made between that cell and another cell, or amending or cancelling any such arrangements; and
- (b) require a copy of any such written resolution on payment of a fee (which may not exceed the administrative cost to the protected cell company of providing the copy).

Contracts between parts of a protected cell company

74.—(1) Where a protected cell company enters into a contract which purports to create rights and obligations between two or more cells, or two or more cells of a protected cell company purport to enter into a contract creating rights and obligations between the cells, the rights and obligations between the cells—

- (a) take effect as arrangements made between the cells, provided the requirements of—
 - (i) regulations 68 and 69; or
 - (ii) where applicable, regulation 70,
are satisfied; and
- (b) have no other effect as between the cells.

(2) Where a protected cell company enters into a contract which purports to create rights and obligations between the core and a cell, or the core and a cell of a protected cell company purport to enter into a contract creating rights and obligations between the core and the cell, the rights and obligations between the core and the cell have no effect as between the core and the cell.

(3) This regulation does not prevent a protected cell company from entering into a contract with a person on behalf of two or more parts of the protected cell company.