
DRAFT STATUTORY INSTRUMENTS

2017 No.

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 9

Shares and shareholders

SECTION 2

Issue, allotment and alteration of share capital

Nominal value

100.—(1) A share issued on behalf of a part of a protected cell company must have a fixed nominal value.

(2) An allotment of a share that does not have a fixed nominal value is void.

(3) Shares issued on behalf of a part of a protected cell company may be denominated in any currency and different classes of shares may be denominated in different currencies.

Numbering of shares

101.—(1) Each share issued on behalf of a part of protected cell company must be distinguished by its appropriate number, except in the following circumstances.

(2) A share issued on behalf of a part of a protected cell company need not have a distinguishing number provided—

- (a) all the shares issued on behalf of that part are fully paid up and rank *pari passu* for all purposes; or
- (b) all the shares issued on behalf of that part and belonging to the same class as that share are fully paid up and rank *pari passu* for all purposes.

Power of directors to allot shares

102.—(1) The directors of a protected cell company may exercise any power of the protected cell company to—

- (a) allot shares issued on behalf of a part of the protected cell company; or
- (b) grant rights to subscribe for or to convert any security issued into such shares.

(2) Paragraph (1) applies except to the extent that the protected cell company's instrument of incorporation provides otherwise.

(3) A share may not be allotted at a discount to its nominal value.

(4) If a share issued on behalf of a part of a protected cell company is allotted in contravention of paragraph (3), the allottee is liable to pay to the protected cell company on behalf of that part an amount equal to the amount of the discount.

Sub-division or consolidation of shares

103.—(1) A protected cell company may—

- (a) sub-divide all or any of the shares issued on behalf of a part of the protected cell company into shares of a smaller nominal amount than the existing shares issued on behalf of that part; or
- (b) consolidate and divide all or any of the shares issued on behalf of a part of the protected cell company into shares of a larger nominal amount than the existing shares issued on behalf of that part.

(2) In any sub-division, or consolidation and division, of shares, the proportion between the amount paid and the amount (if any) unpaid on each resulting share must be the same as it was in the case of the share from which that share is derived.

(3) A protected cell company may only exercise a power under paragraph (1) if—

- (a) the protected cell company’s instrument of incorporation does not contain provision prohibiting the sub-division, or consolidation and division; and
- (b) the persons holding the shares affected by the sub-division, or consolidation and division, consent.

Redenomination of shares

104.—(1) In this regulation, “redenomination” means converting shares from having a fixed nominal value in one currency to having a fixed nominal value in another currency.

(2) A protected cell company may redenominate the shares, or any class of shares, issued on behalf of a part of the protected cell company.

(3) Before carrying out such a redenomination, the protected cell company must—

- (a) notify all of the persons holding the shares, or class of shares, issued on behalf of that part of the proposed redenomination; and
- (b) obtain their consent to the redenomination.

(4) The conversion must be made at an appropriate spot rate of exchange specified in the notification.

(5) The rate must be either—

- (a) a rate prevailing on a day specified in the notification; or
- (b) a rate determined by taking the arithmetic mean of the rates prevailing on each consecutive day of a period specified in the notification.

(6) The day or period specified for the purposes of paragraph (5) must be within the period of 28 days ending on the day on which consent is given (or the last such day if consent is given by different persons on different days).

(7) The notification may make the proposed redenomination subject to conditions which must be met before the redenomination takes effect.

(8) Redenomination in accordance with this regulation takes effect—

- (a) on the day on which consent is given (or the last such day if consent is given by different persons on different days); or
- (b) on such later date as may be determined in accordance with the notification.

(9) But consent to a notification is deemed to be withdrawn if the redenomination to which it relates has not taken effect by the end of the period of 28 days beginning on the day on which consent is given (or the last such day if consent is given by different persons on different days).

(10) A protected cell company's instrument of incorporation may prohibit or restrict the power conferred by this regulation.

Redenomination: supplementary

105.—(1) Where a share is redenominated, the new nominal value of that share is equal to—

$$\frac{rA}{N}$$

where—

“r” is the appropriate spot rate of exchange for converting the old nominal value to the new nominal value;

“A” is the sum total of the old nominal values of all the shares subject to redenomination;

“N” is the total number of shares being redenominated.

(2) A redenomination of shares does not affect—

(a) the rights and obligations of persons holding shares under the protected cell company's instrument of incorporation, including in particular—

(i) the entitlement to dividends (including the entitlement to dividends in a particular currency);

(ii) voting rights;

(iii) any liability in respect of amounts unpaid on shares; or

(b) any restrictions affecting such persons under the instrument of incorporation.

(3) For this purpose, the protected cell company's instrument of incorporation is deemed to include the terms on which the shares were allotted or held.

(4) Subject to paragraph (2), references to the old nominal value of the shares in any agreement, statement, deed, instrument or document, are (unless the context otherwise requires) to be read after the resolution takes effect as references to the new nominal value of the shares.

Acquisition and redemption of shares issued by a cell

106.—(1) Where a protected cell company issues a share on behalf of a cell, the protected cell company may not acquire or redeem the share on behalf of the core or any other cell.

(2) Where a cell is not a member of a group of cells, a share issued by the protected cell company on behalf of the cell may only be acquired or redeemed by the protected cell company on behalf of the cell if the following conditions are satisfied—

(a) the acquisition or redemption is funded by assets 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 acquisition or redemption (whether in the contract or otherwise).

(3) Where a cell (“the relevant cell”) is a member of a group of cells, a share issued by the protected cell company on behalf of the relevant cell may only be acquired or redeemed by the protected cell company on behalf of the relevant cell if the following conditions are satisfied —

- (a) the acquisition or redemption is funded by assets held by the protected cell company on behalf of the relevant cell;
 - (b) the protected cell company will, immediately after the acquisition or redemption, 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 acquisition or redemption (whether in the contract or otherwise).
- (4) The protected cell company may redeem or acquire a share for less than the share's nominal value.
- (5) Where a protected cell company acquires or redeems a share issued on behalf of a cell, the protected cell company must cancel that share.

Acquisition and redemption of shares issued by the core

107.—(1) Where a protected cell company issues a share on behalf of the core, the protected cell company—

- (a) may not acquire or redeem the share on behalf of a cell; and
- (b) may only acquire or redeem the share on behalf of the core if—
 - (i) the protected cell company has no cells; and
 - (ii) immediately after the acquisition or redemption, there is at least one voting share issued by the protected cell company on behalf of the core.

(2) But paragraph (1)(b)(ii) does not apply if the FCA has decided to strike the protected cell company off its register under regulation 180.

(3) Where a protected cell company acquires or redeems a share issued on behalf of the core, the protected cell company must cancel that share.

Consequences of unlawful acquisition or redemption

108.—(1) This regulation applies to an acquisition or redemption of a share issued on behalf of a part of a protected cell company which—

- (a) is funded by the protected cell company from assets held on behalf of a part (“part A”) of the protected cell company (which may either be the part on behalf of which the share was issued or another part); and
- (b) is in contravention of regulation 106 or 107.

(2) If at the time of the acquisition or redemption the person holding the share knew or had reasonable grounds for believing that it was acquired or redeemed in contravention of regulation 106 or 107, the person is liable—

- (a) to repay the amount for which the share was acquired or redeemed; or
- (b) in the case of an acquisition or redemption made otherwise than in cash, to pay the protected cell company a sum equal to the value of assets provided by the protected cell company for the acquisition or redemption at that time.

(3) This regulation is without prejudice to any obligation imposed apart from this regulation on a person to repay an amount to the protected cell company in respect of an acquisition or redemption which was made unlawfully.

(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.

(5) Where a person satisfies in full an obligation to make a payment to the protected cell company under paragraph (2) then—

- (a) any cancellation of the share under regulation 106(5) or 107(3) is deemed to have no effect; and
- (b) the person is deemed to hold the share which was acquired or redeemed as if no acquisition or redemption took place.

Penalty for contravention of this Section

109.—(1) If a protected cell company contravenes any of the provisions of this Section it commits an offence.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.