
DRAFT STATUTORY INSTRUMENTS

2017 No.

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 8

Directors

Invalidity of certain transactions involving directors

- 89.**—(1) This regulation applies where—
- (a) a protected cell company enters into a transaction;
 - (b) the parties to the transaction include a director of the protected cell company or an associate of such a director; and
 - (c) the directors of the protected cell company (whether or not acting as a board) exceed their powers under the protected cell company’s instrument of incorporation in connection with the transaction.
- (2) The transaction referred to in paragraph (1)(a) is voidable at the instance of the protected cell company.
- (3) Whether or not the transaction is avoided, the director or associate referred to in paragraph (1)(b) and any other director who authorised the transaction is liable—
- (a) to account to the protected cell company for any gain which the director or associate made, directly or indirectly, from the transaction; and
 - (b) to indemnify the protected cell company for any loss or damage resulting from the transaction.
- (4) The transaction ceases to be voidable if—
- (a) restitution of the money or other asset which was the subject matter of the transaction is no longer possible;
 - (b) the protected cell company is indemnified for any loss or damage resulting from the transaction;
 - (c) avoidance would affect rights acquired by a person acting in good faith, for value and without actual notice of the fact that the directors exceeded their powers; or
 - (d) the transaction is ratified by a resolution of the persons holding voting shares issued on behalf of the core of the protected cell company.
- (5) An associate of a director is not liable under paragraph (3) if the associate did not know at the time that the protected cell company entered into the transaction that the directors had exceeded their powers.
- (6) This regulation does not affect—

- (a) the operation of any other enactment or rule of law by virtue of which the transaction may be called into question or any liability to the protected cell company which may arise; or
- (b) the operation of regulation 81(4) in relation to any party to the transaction who is not a director or associate falling within paragraph (3).

(7) Where a transaction is—

- (a) voidable by virtue of this regulation; and
- (b) valid by virtue of regulation 81(4) in relation to a party to a transaction who is not a director or associate falling within paragraph (3),

the court may make an order affirming, severing or setting aside the transaction on such terms as are just.

(8) For the purposes of this regulation, a person (“P”) is an associate of a director (“D”) in the following cases—

- (a) if D is an individual, then P is—
 - (i) D’s spouse, civil partner, child or stepchild;
 - (ii) D’s employee; or
 - (iii) D’s partner in a partnership;
- (b) if D is a body corporate, then P is—
 - (i) a director of D;
 - (ii) a subsidiary undertaking of D;
 - (iii) a director of a subsidiary undertaking of D;
- (c) P is a body corporate of which D is also a director.

(9) In this regulation, “subsidiary undertaking” has the meaning given by section 1162 of the Companies Act 2006.