
STATUTORY INSTRUMENTS

2017 No. 1212

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 10

Shareholder resolutions

Application

134. The provisions of this Chapter apply—

- (a) to the persons holding voting shares issued on behalf of the core of the protected cell company; and
- (b) with any necessary modifications, to the persons holding a class of such shares.

Resolutions

135.—(1) A resolution of the persons holding voting shares issued on behalf of the core of a protected cell company must be passed—

- (a) as a written resolution in accordance with regulation 137 (written resolutions); or
- (b) at a general meeting (see regulations 138 to 144).

(2) For the purposes of this Chapter—

- (a) a resolution may be properly moved at a meeting unless—
 - (i) it would, if passed, be ineffective (whether by reason of inconsistency with an enactment, the protected cell company's instrument of incorporation or otherwise);
 - (ii) it is defamatory of any person; or
 - (iii) it is frivolous or vexatious;
- (b) a resolution, notice or any other document may be sent in hard copy form or electronic form;
- (c) where a resolution must be sent to more than one person, the same copy may be sent to some or all of those persons in turn; and
- (d) where a request or a document which is sent to a protected cell company must be authenticated, the request or document must be authenticated in accordance with section 1146 (requirement of authentication) of the Companies Act 2006 (which applies for these purposes with the reference to a company's articles in subsection (4) being treated as a reference to the protected cell company's instrument of incorporation).

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Shareholders acting informally (the *Duomatic* principle)

136.—(1) Any enactment or rule of law relating to a matter specified in paragraph (3) applies to voting shares issued on behalf of the core of the protected cell company as it applies to shares issued by a company registered under the Companies Act 2006.

(2) Nothing in this Chapter affects an enactment or rule of law relating to a matter specified in paragraph (3).

(3) The matters mentioned in paragraphs (1) and (2) are—

- (a) things done by the shareholders otherwise than by passing a resolution;
- (b) circumstances in which a shareholders' resolution is or is not treated as having been passed;
- (c) cases in which a person is precluded from alleging that a shareholders' resolution has not been duly passed.

Written resolutions

137.—(1) The following persons may propose a written resolution—

- (a) the directors of the protected cell company;
- (b) a person holding voting shares issued on behalf of the core of the protected cell company.

(2) A written resolution must state a period of time, beginning with the circulation date, after which it will lapse.

(3) Where the directors propose a written resolution, the protected cell company must send the resolution to all of the shareholders eligible to vote on it.

(4) Where a shareholder proposes a written resolution, the protected cell company must send the resolution to all the shareholders eligible to vote on it, provided that—

- (a) the written resolution may properly be moved at a meeting of shareholders; and
- (b) the protected cell company has received requests to do so from persons representing not less than 5% of the total voting rights of those shareholders who are eligible to vote on the written resolution.

(5) The requests referred to in paragraph (4)(b) must identify the resolution and must be authenticated by the person or persons making it.

(6) The person proposing the written resolution may also require the protected cell company to circulate with the written resolution a statement of not more than 1,000 words on the subject matter of the resolution.

(7) A person is deemed to have agreed to a written resolution where the protected cell company receives an authenticated document—

- (a) identifying the resolution to which it relates; and
- (b) indicating the person's agreement to the resolution.

(8) Agreement to a written resolution may not be revoked.

(9) A written resolution must be passed—

- (a) by a simple majority of the total voting rights of those shareholders who would be entitled to vote on the resolution on the date it is sent or submitted to the shareholders (or if copies are sent or submitted on different days, on the first of those days); and
- (b) before the resolution lapses.

(10) But paragraph (9)(a) does not prevent the protected cell company's instrument of incorporation requiring a higher majority or unanimity.

Calling a shareholders' meeting

138.—(1) The directors of a protected cell company may call a general meeting.

(2) The persons holding voting shares issued on behalf of the core of a protected cell company may require the directors to call a general meeting.

(3) The directors are required to call a general meeting once the protected cell company has received requests to do so from persons representing at least 5% of the voting shares issued on behalf of the core of the protected cell company.

(4) A request—

- (a) must state the general nature of the business to be dealt with at the meeting; and
- (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.

(5) A request must be authenticated by the person or persons making it.

Directors' duty to call meetings required by members

139.—(1) Directors required under regulation 138(3) to call a general meeting must—

- (a) call the meeting before the end of a period of 21 days beginning with the date on which they become subject to the requirement; and
- (b) hold the meeting before the end of a period of 28 days beginning with the date of the notice convening the meeting.

(2) If the requests received by the protected cell company identify a resolution to be moved at the meeting, notice of the meeting must include notice of the resolution.

(3) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this regulation.

Notice required of meeting

140.—(1) A general meeting must be called by notice of at least 14 days.

(2) Paragraph (1) does not apply where—

- (a) the protected cell company's instrument of incorporation requires a longer period; or
- (b) the meeting is an adjourned meeting.

(3) Notice must be sent to—

- (a) every shareholder who is entitled to vote at the meeting;
- (b) any person who is entitled to a voting share in consequence of the death or bankruptcy of the person holding the voting share, provided the protected cell company has been notified of such an entitlement; and
- (c) every director.

(4) In sub-paragraph (b) of paragraph (3), the reference to bankruptcy includes—

- (a) the sequestration of the estate of a person; or
- (b) a person's estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 2016).

(5) Paragraph (3) has effect subject to—

- (a) any enactment; or
- (b) any provision of the protected cell company's instrument of incorporation.

(6) The notice must state—

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- (a) the time and date of the meeting;
- (b) the place of the meeting; and
- (c) the general nature of the business to be dealt with at the meeting.

Accidental failure to give notice of resolution or meeting

141.—(1) Where a protected cell company gives notice of a general meeting or a resolution to be moved at a general meeting, an accidental failure to give notice to a person is to be disregarded for the purposes of determining whether notice of the meeting or resolution (as the case may be) is duly given.

(2) Paragraph (1) has effect subject to any provision of the protected cell company's instrument of incorporation.

Procedure at general meetings

142.—(1) A person holding voting shares issued on behalf of the core of a protected cell company may be elected to chair a general meeting by a resolution passed by the persons holding voting shares, subject to any provision of the protected cell company's instrument of incorporation.

(2) On a vote on a resolution at a meeting on a show of hands, a declaration by the person chairing the meeting that the resolution—

- (a) has or has not passed; or
- (b) has passed with a particular majority,

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) An entry in respect of such a declaration in minutes of the meeting recorded in accordance with regulation 145 is also conclusive evidence of that fact without such proof.

(4) Where a resolution is passed at an adjourned meeting of shareholders, the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

Representation of corporations

143.—(1) If a corporation holds voting shares issued on behalf of the core of a protected cell company, the corporation may authorise a person to act as its representative at any meeting of shareholders.

(2) The representative is entitled to exercise (on behalf of the corporation) the same powers as the corporation could exercise if it were an individual holding those voting shares.

Proxies

144.—(1) A person holding voting shares issued on behalf of the core of a protected cell company is entitled to appoint a proxy to exercise all or any of the person's rights to attend, speak at, chair and vote at a general meeting.

(2) But a proxy must vote in accordance with any instructions given by the person appointing the proxy.

(3) Termination of a person's authority to act as a proxy does not affect—

- (a) the validity of anything the proxy does as chair of the meeting;
- (b) a vote given by the proxy,

unless the protected cell company receives notice of termination before the commencement of the meeting.

(4) Paragraph (3) has effect subject to any provision of the protected cell company's instrument of incorporation which requires notice of termination to be received by the protected cell company at a time which is earlier than the commencement of the meeting.

(5) But a provision of the protected cell company's instrument of incorporation is void insofar as it requires the appointment of a proxy or the termination of such an appointment to be notified to the protected cell company earlier than 48 hours before the time for holding the meeting or adjourned meeting.

(6) In calculating the period of 48 hours mentioned in paragraph (5), no account is to be taken of any part of a day that is not a working day.

Records of meetings

145.—(1) A protected cell company must keep records comprising—

- (a) copies of all resolutions passed at general meetings (including meetings of a sole shareholder); and
- (b) minutes of all proceedings at such meetings.

(2) The records must be kept for at least ten years from the date of the resolution or meeting (as the case may be).

(3) Where there is a record of a written resolution, the requirements of this Chapter as to the passing of the resolution are deemed to be complied with unless the contrary is proved.

(4) The minutes of proceedings at a meeting, if purporting to be signed by the chair of the meeting or the chair of the next meeting, are evidence (in Scotland, sufficient evidence) of the proceedings at the meeting.

(5) Where there is a record of proceedings at a meeting, then, until the contrary is proved—

- (a) the meeting is deemed duly held and convened;
- (b) all proceedings at the meeting are deemed to have duly taken place; and
- (c) all appointments at the meeting are deemed valid.

Inspection of records

146.—(1) The records referred to in regulation 145 must be kept available for inspection at the protected cell company's registered office or an alternative inspection location notified to the FCA in accordance with regulation 67.

(2) A person holding voting shares issued on behalf of the core of the protected cell company may—

- (a) inspect the records without charge; and
- (b) require a copy of any of the records on payment of a fee (which may not exceed the administrative cost to the protected cell company of providing the copy).

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)