
STATUTORY INSTRUMENTS

2017 No. 1212

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 2

Registration

SECTION 1

Obtaining registration

Method of forming a protected cell company

- 13.** A protected cell company is formed under this Part by a person—
- (a) applying to the PRA for registration of a protected cell company in accordance with regulation 14; and
 - (b) complying with the requirements for registration set out in regulation 21.

Application to register a protected cell company

- 14.—**(1) An application to register a protected cell company may only be made to the PRA.
- (2) The application must state—
- (a) that the applicant wishes to form a protected cell company;
 - (b) the name of the proposed protected cell company;
 - (c) the address of the proposed protected cell company's registered office;
 - (d) the names of the proposed directors of the protected cell company;
 - (e) for each proposed director, the particulars set out in regulation 18; and
 - (f) the names of the persons who are, on registration, to hold voting shares in the core of the protected cell company.
- (3) The application must contain or be accompanied by—
- (a) an application made in accordance with regulation 15 (application for permission to carry out a regulated activity);
 - (b) the proposed instrument of incorporation;
 - (c) a statement signed by each person who is to become a director of the protected cell company that the person consents to being a director; and
 - (d) a statement signed by each person who will, on registration, hold voting shares in the core of the protected cell company that the person consents to holding those shares.

(4) When the PRA receives an application under paragraph (1), the PRA must forward the application, and any documents received in accordance with paragraph (3), to the FCA without delay.

(5) At any time after receiving an application and before determining it, the FCA may require the applicant to provide such additional information as it may reasonably require.

(6) Any information to be provided to the FCA under paragraph (5) must be set out in such form and verified in such manner as the FCA may reasonably direct.

Application for permission to carry out a regulated activity

15.—(1) A person applying to register a protected cell company must make an application under section 55A (application for permission) of FSMA(1) for permission for the proposed protected cell company to carry out a regulated activity.

(2) That regulated activity must be, or include, the activity specified in article 13A (transformer vehicles: insurance risk transformation) of the Regulated Activities Order.

(3) Where an application is made in accordance with paragraphs (1) and (2)—

- (a) the application is to be treated for the purposes of FSMA as an application made by the applicant on behalf of the proposed protected cell company;
- (b) the PRA must decide whether it will, if the proposed protected cell company is registered by the FCA (see regulation 21), give the proposed protected cell company permission under section 55F (giving permission: the PRA) of FSMA(2);
- (c) the FCA may only register the proposed protected cell company if the PRA has decided that it will, if the proposed protected cell company is registered by the FCA, give the proposed protected cell company permission under section 55F of FSMA to carry out a regulated activity which is, or includes, the activity specified in Article 13A of the Regulated Activities Order (see regulation 21); and
- (d) if the FCA registers the proposed protected cell company, the PRA must, without delay, give the protected cell company permission under section 55F of FSMA in accordance with its decision.

(4) The provisions of FSMA apply to such an application, but the provisions specified in the first column of Table 1(3) apply with the modifications specified in the second column of Table 1(4).

Table 1

<i>Provision of FSMA</i>	<i>Modification</i>
Section 55A (application for permission)	<p>For subsections (1) and (2) substitute—</p> <p>“(1) An application for permission to carry on one or more regulated activities may be made to the appropriate regulator on behalf of a proposed protected cell company by a person applying to register the protected cell company under Part 4 of the Risk Transformation Regulations 2017.</p> <p>(2) The “appropriate regulator”, in relation to such an application, means the PRA.”</p>

(1) Section 55A was inserted by section 11 of the Financial Services Act 2012.

(2) Section 55F was inserted by section 11 of the Financial Services Act 2012.

(3) All the provisions specified in the first column of Table 1, with the exception of section 390, were inserted into FSMA by section 11 of the Financial Services Act 2012. There are amendments to those provisions which are not relevant to these Regulations.

(4) Note also the effect of regulation 7 on the PRA’s discretion under section 55F(4)(a) of FSMA.

<i>Provision of FSMA</i>	<i>Modification</i>
	Ignore subsection (3).
Section 55B (the threshold conditions)	In subsection (3), treat the references to giving permission, imposing a requirement or giving consent as including references to making a decision to do any of those things on the registration of the proposed protected cell company.
Section 55F (giving permission: the PRA)	In subsection (2), treat the reference to “the applicant” as a reference to “the protected cell company”. The PRA may not give permission under subsection (2) until the FCA has registered the protected cell company.
Section 55L (imposition of requirements by FCA)	For subsection (1) substitute— “(1) Where a person has applied, on behalf of a proposed protected cell company, to the PRA for a Part 4A permission, the FCA may, on the registration of the protected cell company, impose on the protected cell company such requirements, taking effect on or after the giving of permission, as the FCA considers appropriate.”
Section 55M (imposition of requirements by PRA)	For subsection (1) substitute— “(1) Where a person has applied, on behalf of a proposed protected cell company, for a Part 4A permission, the PRA may, on the registration of the protected cell company, impose on the protected cell company such requirements, taking effect on or after the giving of permission, as the PRA considers appropriate.”
Section 55R (persons connected with an applicant)	In subsection (1), treat the reference to the “applicant” as a reference to the proposed protected cell company.
Section 55U (applications under this Part)	For subsection (1)(a) substitute— “(a) contain a statement by the applicant of the regulated activity or regulated activities for which permission is sought on behalf of the proposed protected cell company, and”
Section 55V (determination of applications)	Treat references to the determination of an application as references to the decision made by the PRA as to what action the PRA will take under section 55F of FSMA if the FCA registers the proposed protected cell company. After subsection (4) insert— “(4A) Subsection (4B) applies where the PRA decides that it will, if the FCA decides to register the proposed protected cell company, give the proposed protected cell company permission under section 55F to carry out a regulated activity which is, or regulated activities which include, the activity specified in Article 13A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. (4B) The PRA must give the applicant written notice stating the activities which the proposed protected cell company will be

<i>Provision of FSMA</i>	<i>Modification</i>
	<p>given permission under section 55F to carry out if the FCA decides to register the proposed protected cell company.</p> <p>(4C) Where the PRA gives written notice under subsection (4B), a copy must be sent to the FCA without delay.”</p>
Section 55X (determination of applications: warning notices and decision notices)	<p>In subsection (1), in paragraphs (a) and (b), after “Part 4A permission” insert “if the protected cell company is registered by the FCA,”.</p> <p>The FCA or PRA need not give a warning notice under subsection (1) in the circumstances specified in paragraph (a), (b) or (e) of that subsection if the applicant has consented to the proposed exercise of power referred to in that paragraph.</p> <p>The PRA must give a copy of any warning notice given under subsection (1) to the FCA without delay.</p> <p>In subsection (2), ignore the reference to subsection (3).</p> <p>Ignore subsection (3).</p> <p>In subsection (4), in paragraphs (a) and (b), after “Part 4A permission” insert “if the protected cell company is registered by the FCA,”.</p> <p>The FCA or PRA need not give a decision notice under subsection (4) in the circumstances specified in paragraph (a), (b) or (e) of that subsection if the applicant has consented to the exercise of power referred to in that paragraph. Where the applicant consents to an exercise of power referred to in paragraph (a) or (b), the PRA must notify the FCA without delay.</p>
Section 55Z3 (right to refer matters to the tribunal)	<p>In subsection (1), treat the reference to the determination of an application as a reference to the decision made by the PRA as to what action the PRA will take under section 55F of FSMA if the FCA registers the proposed protected cell company.</p> <p>In subsection (2), treat the reference to the exercise of an own-initiative requirement power as a decision to exercise that power if the proposed protected cell company is registered.</p>
Section 390 (final notices)(5)	Where the PRA gives a final notice under this section, the PRA must send a copy of the final notice to the FCA without delay.

Applications for approval of persons

16.—(1) Where a person makes an application to the PRA in accordance with paragraphs (1) and (2) of regulation 15, the person may also make an application under section 59 (approval for particular arrangements) of FSMA(6).

(2) The application is to be treated for the purposes of FSMA as an application made by the applicant on behalf of the proposed protected cell company.

(5) Section 390 has been amended by section 37 of and Schedule 9 to the Financial Services Act 2012 and [S.I. 2010/22](#).

(6) Section 59 has been amended by sections 14 and 15 of and Schedule 5 to the Financial Services Act 2012, [S.I. 2012/1906](#), sections 18 and 35 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013, [S.I. 2013/1773](#), and section 21 of and Schedule 4 to the Bank of England and Financial Services Act 2016.

(3) The provisions of FSMA apply to such an application, but the provisions specified in the first column of Table 2(7) apply with the modifications specified in the second column of Table 2.

Table 2

<i>Provision of FSMA</i>	<i>Modification</i>
Section 60 (applications for approval)	<p>In subsection (1), treat the reference to the authorised person concerned as a reference to the applicant on behalf of the proposed protected cell company.</p> <p>In the rest of the section, treat the references to the authorised person concerned as including references to the proposed protected cell company.</p>
Section 60A (vetting of candidate)	On the coming into force of paragraph 5 of Schedule 4 to the Bank of England and Financial Services Act 2016 ⁽⁸⁾ , references to an authorised person are to be treated as references to the applicant on behalf of the proposed protected cell company.
Section 61 (determination of applications)	In subsection (5), ignore paragraph (b).
Section 62 (applications for approval: procedure and right to refer to Tribunal)	<p>Subsection (2) does not apply where the regulator to which an application is made proposes to grant the application subject to conditions or for a limited period, and the applicant and the person in respect of whom the application has been made have consented to those conditions or that limited period.</p> <p>Subsection (3) does not apply where the regulator to which an application is made decides to grant the application subject to conditions or for a limited period, and the applicant and the person in respect of whom the application has been made have consented to those conditions or that limited period.</p> <p>In subsection (5), ignore paragraph (c).</p>
Section 62A (changes in responsibilities of senior managers)	An application made by the applicant on behalf of the proposed protected cell company is to be treated, for the purposes of subsection (1)(a), as an application made by the proposed protected cell company.
Section 63 (withdrawal of approvals)	On the coming into force of paragraph 8 of Schedule 4 to the Bank of England and Financial Services Act 2016, an application made by the applicant on behalf of the proposed protected cell company is to be treated, for the purposes of subsection (2A), as an application made by the proposed protected cell company.
Section 390 (final notices)	Where the PRA gives a final notice under this section, the PRA must send a copy of the final notice to the FCA without delay.

(7) Sections 60, 61 and 62 have been amended by sections 14 and 15 of and Schedules 4 and 5 to the Financial Services Act 2012, sections 20 to 23 of and schedule 4 to the Financial Services (Banking Reform) Act 2013, and section 21 of and Schedule 4 to the Bank of England and Financial Services Act 2016. Section 62A was inserted by section 24 of the Financial Services (Banking Reform) Act 2013 and amended by sections 21 and 23 of and Schedule 4 to the Bank of England and Financial Services Act 2016.

(8) [2016 c. 24](#).

The name of a protected cell company

17.—(1) A protected cell company's name must include one of the following expressions (or their Welsh equivalents)—

“protected cell company”;

“PCC Limited”;

“PCC Ltd”.

(2) No protected cell company may have a name that—

(a) is undesirable or misleading;

(b) includes any of the following words or expressions (or, where applicable, their Welsh equivalents)—

(i) “unlimited” or “public limited company”;

(ii) “insurance”, “insurer”, “insured”, “reinsurance”, “reinsurer”, “reinsured”;

(iii) European Economic Interest Grouping or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989;

(c) includes an abbreviation of any of the words or expressions referred to in sub-paragraph (b);

(d) is the same as the name of any other protected cell company registered by the FCA;

(e) is the same as the name of any other protected cell company which was registered by the FCA and then dissolved; or

(f) is the same as the name of any other company appearing on the appropriate registrar's index of company names.

(3) The following are to be disregarded for the purposes of determining whether one name is the same as another name—

(a) the definite article, where it is the first word of the name;

(b) the following words and expressions (or, where applicable, their Welsh equivalents) where they appear at the end of the name—

“company”;

“and company”;

“company limited”;

“limited”;

“unlimited”;

“public limited company”;

“protected cell company”;

“PCC Limited”;

“PCC Ltd”;

“European Economic Interest Grouping” or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989;

(c) abbreviations of the words and expressions referred to in sub-paragraph (b) where they appear at the end of the name; and

(d) type and case of letters, accents, spaces between letters and punctuation marks.

(4) For the purposes of determining whether one name is the same as another name, “and” and “&” are to be taken to be the same.

Particulars of directors

- 18.—**(1) The particulars which must be provided in relation to a director are—
- (a) in the case of an individual, the individual's—
 - (i) name;
 - (ii) former name (if any);
 - (iii) usual residential address;
 - (iv) nationality;
 - (v) date of birth;
 - (b) in the case of a body corporate, the body corporate's—
 - (i) corporate or firm name;
 - (ii) registered or principal office;
 - (c) whether the director or proposed director has authority to act on behalf of the protected cell company alone or jointly with another director or proposed director; and
 - (d) if the director or proposed director only has authority to act jointly with another director or proposed director, the name of the other director or proposed director.
- (2) In paragraph (1)(a)—
- (a) a reference to an individual's name means the person's forename and surname, except that in the case of a peer or an individual usually known by a British title, the title may be stated instead of or in addition to the individual's forename and surname;
 - (b) the reference to an individual's former name does not include—
 - (i) in the case of a peer or an individual usually known by a British title, the name by which the individual was known before the adoption of or succession to the title;
 - (ii) a name which the individual changed or ceased to use before the individual attained the age of 18 years;
 - (iii) a name which the individual changed or ceased to use before a period of 20 years ending on the date the application to register a protected cell company is made to the PRA;
 - (iv) in the case of a married person, the name by which the person was known before marriage.

Instrument of incorporation: requirements

- 19.—**(1) The instrument of incorporation of a protected cell company must include—
- (a) the statements set out in paragraph (3); and
 - (b) provision as to the matters mentioned in paragraph (4).
- (2) The instrument of incorporation must not include—
- (a) anything that conflicts with a statement required by paragraph (1)(a); or
 - (b) a statement to the effect that the protected cell company is a public company.
- (3) The statements required by paragraph (1)(a) are that—
- (a) the company is a protected cell company registered by the Financial Conduct Authority under the Risk Transformation Regulations 2017;
 - (b) the registered office of the protected cell company is situated in England and Wales (or Wales), Scotland or Northern Ireland (as the case may be);

- (c) the objects of the protected cell company are the activities specified in regulation 57;
 - (d) the protected cell company is comprised of a core and the cells created by the protected cell company after its registration and authorisation;
 - (e) the core administers the protected cell company and the cells are used to assume risk from undertakings, issue investments to investors to fund the protected cell company's exposure to that risk, hold the proceeds of sale of those investments and, where permitted by the instrument of incorporation, enter into arrangements between cells (see regulation 68);
 - (f) the cells are segregated from each other and from the core;
 - (g) the assets held on behalf of a cell are treated as if they belong exclusively to that cell and shall not be used to discharge liabilities incurred on behalf of or attributable to the core or any other cell, and shall not be available for any such purpose;
 - (h) the protected cell company may issue non-voting and voting shares on behalf of the core;
 - (i) the protected cell company may issue non-voting shares on behalf of a cell, but not voting shares;
 - (j) the liability of a person holding a share issued by the protected cell company is limited to the amount (if any) unpaid on the share.
- (4) The matters referred to in paragraph (1)(b) are—
- (a) the name of the protected cell company;
 - (b) the address of the protected cell company's registered office;
 - (c) the procedure for creating and dissolving a cell;
 - (d) when the creation of a new cell takes effect;
 - (e) the way in which cells in the protected cell company are to be named or numbered;
 - (f) whether the protected cell company may make arrangements between cells and, if so, whether they may be amended or cancelled (see regulation 70);
 - (g) the rights attaching to shares issued on behalf of the core and the cells;
 - (h) the maximum and minimum sizes of the voting share capital in the core;
 - (i) the classes of shares which may be issued on behalf of the core and the cells;
 - (j) if the protected cell company is to have a company seal, the form, custody and use of the seal;
 - (k) the procedure for the appointment and removal of a director of the protected cell company (for which provision is not made in this Part); and
 - (l) the currency in which the accounts of the protected cell company must be prepared.
- (5) The way in which the cells of a protected cell company are given a name or number in accordance with the instrument of incorporation must not result in a cell having a name or number which would contravene the requirements of regulation 17(2) if it were the name of the protected cell company.

Instrument of incorporation: model articles

20. A protected cell company's instrument of incorporation may apply (with or without modification) all or any part of the model articles set out in the Companies (Model Articles) Regulations 2008(9), except to the extent that it would contravene a requirement of this Part.

(9) [S.I. 2008/3229](#), as amended by section 3 of the Mental Health (Discrimination) Act 2013 (c. 8).

Requirements for registration

21.—(1) The FCA must register a protected cell company where all of the following conditions are satisfied—

- (a) the application for registration satisfies the requirements of regulation 14;
- (b) the registered office of the protected cell company is situated in the United Kingdom;
- (c) the name of the protected cell company is not prohibited by regulation 17;
- (d) the protected cell company's instrument of incorporation satisfies the requirements of regulation 19;
- (e) the protected cell company will have at least one director;
- (f) there is at least one person who will, on registration, hold voting shares in the core of the protected cell company;
- (g) the PRA has notified the FCA that the PRA will, if the FCA registers the proposed protected cell company, give the protected cell company permission under section 55F of FSMA to carry out the regulated activity referred to in Article 13A of the Regulated Activities Order; and
- (h) if a warning notice has been served by a regulator on the applicant under paragraph (a), (b) or (e) of section 55X(1) of FSMA, then one of the following conditions is satisfied—
 - (i) the applicant has consented to the proposed action to which the warning notice relates;
 - (ii) where the regulator is the FCA, the FCA has decided not to exercise the power referred to in paragraph (e) of section 55X(1) of FSMA; or
 - (iii) in any other case, the regulator has served a final notice on the applicant which relates to—
 - (aa) the proposed action to which the warning notice relates; or
 - (bb) action which the regulator has decided to take instead of, or in addition to, that proposed action.

(2) For the purposes of determining whether the protected cell company's instrument of incorporation satisfies the requirements of regulation 19, the FCA may rely on a statement signed by the solicitor or counsel for the applicant confirming that the instrument of incorporation satisfies the requirements of regulation 19.

Representations against refusal of registration

22.—(1) If the FCA proposes to refuse an application made under regulation 14 to register a protected cell company, it must give the applicant a warning notice.

(2) If the FCA decides to refuse the application—

- (a) the FCA must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

(3) Paragraphs (1) and (2) do not apply where the PRA has decided not to give the protected cell company permission to carry out the activity specified in Article 13A of the Regulated Activity Order.

Registration and certificates of incorporation

23.—(1) If the FCA determines that the requirements of regulation 21 as to registration are satisfied, the FCA must register the documents delivered to it.

(2) On registration, the FCA must issue a certificate that the protected cell company is incorporated.

(3) The certificate must state—

- (a) the name of the protected cell company;
- (b) the registered number of the protected cell company;
- (c) the date of incorporation;
- (d) that the protected cell company is a protected cell company incorporated under the Risk Transformation Regulations 2017; and
- (e) whether the registered office is situated in England and Wales (or Wales), Scotland or Northern Ireland.

(4) The certificate must not state that the protected cell company is a public company.

(5) The certificate must be signed on behalf of the FCA or authenticated by the FCA's company seal.

(6) The certificate is conclusive evidence that the requirements of regulation 21 as to registration are satisfied.

(7) The FCA may issue duplicate certificates at any time after registration.

(8) Where the FCA registers a protected cell company, the FCA must notify the PRA without delay.

Registration: notification to appropriate registrar

24. When the FCA registers a protected cell company under regulation 23, the FCA must notify the appropriate registrar of the name of the protected cell company.

Effect of registration

25.—(1) The registration of a protected cell company has the following effects from the date of incorporation.

(2) The following persons are a body corporate by the name stated in the certificate of incorporation—

- (a) the persons named in the application for registration as the persons who will, on registration, hold voting shares in the core of the protected cell company; and
- (b) such other persons as may from time to time hold shares issued on behalf of the core of the protected cell company.

(3) That body corporate is capable of exercising all the functions of an incorporated company.

(4) The registered office of the protected cell company is as stated in the application for registration.

(5) The persons named as proposed directors in the application for registration are appointed to that office.

(6) The persons named in the application for registration as the persons who will, on registration, hold voting shares in the core of the protected cell company become the holders of those shares.

(7) The shares referred to in paragraph (6) are deemed to have been issued by the protected cell company on behalf of the core.

(8) The provisions of the protected cell company's instrument of incorporation are binding on the following persons to the same extent as if there were covenants between them—

- (a) the protected cell company;

- (b) each person holding shares issued by the protected cell company on behalf of any part of the protected cell company.
- (9) All the persons mentioned in paragraph (8) (but no others) are to be taken to have notice of the provisions of the protected cell company's instrument of incorporation.