
STATUTORY INSTRUMENTS

2017 No. 1212

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 3

Structure of a protected cell company

The core

- 42.**—(1) A protected cell company must have a core.
- (2) The core—
- (a) is part of the protected cell company; and
 - (b) does not have legal personality distinct from the protected cell company.
- (3) The purpose of the core is to administer the protected cell company.
- (4) For that purpose, the protected cell company may, on behalf of the core, carry out such functions as are conferred on the core by the protected cell company's instrument of incorporation.
- (5) The instrument of incorporation may, amongst other things, enable the protected cell company to do the following things on behalf of the core—
- (a) hold property;
 - (b) lease premises;
 - (c) enter into contracts, including contracts of employment and contracts for the provision of services;
 - (d) issue voting and non-voting shares;
 - (e) borrow money;
 - (f) incur liabilities.
- (6) But a protected cell company may not assume a risk from an undertaking on behalf of the core.

The cells

- 43.**—(1) The protected cell company may have one or more cells.
- (2) A cell—
- (a) is part of the protected cell company; and
 - (b) does not have legal personality distinct from the protected cell company.
- (3) The purpose of the cells is to—
- (a) assume risk from undertakings;

- (b) issue investments to investors to fund the protected cell company's exposure to the risks it has assumed;
 - (c) hold the proceeds of the sale of those investments;
 - (d) where permitted by the protected cell company's instrument of incorporation, enter into arrangements between cells (see regulations 68 to 74); and
 - (e) carry out any other functions conferred on the cells by the protected cell company's instrument of incorporation.
- (4) A protected cell company may carry out the activity referred to in paragraph (3)(c) by using a trustee or nominee.
- (5) Where a protected cell company uses a cell which is not a member of a group of cells to assume risk from an undertaking under a contractual arrangement, the protected cell company may not, during the time it is exposed to that risk, use that cell to assume risk from another undertaking or under a separate contractual arrangement.
- (6) Where a protected cell company uses one or more cells which are members of a group of cells to assume risk from an undertaking under a contractual arrangement, the protected cell company—
- (a) may not, during the time it is exposed to that risk, use any cell in that group of cells to assume risk from another undertaking or under a separate contractual arrangement;
 - (b) may use different cells in the group to carry out different activities (for example one cell may be used to assume risk and another cell may be used to issue investments to investors).
- (7) A protected cell company may use different cells in a group of cells to assume risk under successive separate contractual arrangements.

Assets, liabilities and obligations

44.—(1) Assets which are held by a protected cell company must be held on behalf of a part of the protected cell company.

(2) Liabilities or obligations incurred by a protected cell company must be incurred on behalf of a part of the protected cell company.

Liabilities and obligations which are not incurred on behalf of a part

45. A liability or obligation of the protected cell company which is not incurred by the protected cell company on behalf of a part of the protected cell company is to be treated as being attributable to the part of the protected cell company to which the liability or obligation is most closely related.

Records and accounts of assets, liabilities and obligations

46.—(1) A protected cell company must at all times keep records and accounts which distinguish—

- (a) the assets held on behalf of each part of the protected cell company from the assets held on behalf of the other parts of the protected cell company; and
- (b) the liabilities and obligations which are incurred on behalf of, or which are attributable to, each part of the protected cell company from the liabilities and obligations which are incurred on behalf of, or which are attributable to, the other parts of the protected cell company.

(2) A protected cell company must ensure that the records and accounts kept by the protected cell company in accordance with paragraph (1) are accurate at all times.

Assets to be held in accordance with records and accounts

47.—(1) A protected cell company must at all times hold its assets in accordance with the protected cell company’s records and accounts kept in accordance with regulation 46.

(2) Where a protected cell company holds an asset on behalf of a part (“part A”) of the protected cell company which is recorded in the records and accounts as an asset held on behalf of another part (“part B”) of the protected cell company—

- (a) the protected cell company must move the asset from part A to part B; and
- (b) part A holds the asset on trust for the benefit of part B until the movement takes effect.

(3) For the purposes of the trust referred to in paragraph (2), parts A and B are to be treated as if they are distinct legal persons.

Segregation within a protected cell company

48.—(1) The assets held by a protected cell company on behalf of a part of the protected cell company may not be used to discharge—

- (a) a liability or obligation incurred on behalf of, or attributable to, another part of the protected cell company; or
- (b) a claim brought in respect of another part of the protected cell company.

(2) A liability or obligation incurred on behalf of, or attributable to, a part of a protected cell company is to be discharged solely out of the assets held by the protected cell company on behalf of that part.

(3) A claim which a person has against a protected cell company in respect of a part of the protected cell company may not be set off or netted against a claim which the protected cell company has against that person in respect of another part of the protected cell company.

(4) A provision, whether contained in the instrument of incorporation, a contract or otherwise, is void to the extent that it is inconsistent with paragraphs (1) to (3).

(5) An application of assets, or agreement to apply assets, in contravention of paragraphs (1) to (3) is void.

(6) Notwithstanding the fact that the parts of a protected cell company are not legal persons distinct from the protected cell company—

- (a) the assets held by the protected cell company on behalf of a part of the protected cell company are to be treated as assets belonging exclusively to that part of the protected cell company;
- (b) a liability or obligation incurred by the protected cell company on behalf of, or which is attributable to, a part of the protected cell company is to be treated as a liability or obligation of that part of the protected cell company;
- (c) a creditor of a protected cell company is to be treated as a creditor of that part of the protected cell company which is treated as being indebted to the creditor by virtue of sub-paragraph (b);
- (d) the property held by a protected cell company on behalf of a part of the protected cell company may be subject to orders of the court as if the part were a distinct legal person; and
- (e) a protected cell company may sue or be sued in respect of a part of the protected cell company.

Third parties circumventing segregation

49. Where—

- (a) a person has a claim against a protected cell company;
- (b) the claim relates to a part of the protected cell company (“part A”);
- (c) the person obtains property from the protected cell company in full or partial satisfaction of the claim; and
- (d) the property was held by the protected cell company on behalf of a part of the protected cell company other than part A (“part B”),

then the person holds the property on trust for the benefit of part B.

Set-off: modification of insolvency legislation

50.—(1) This regulation applies where—

- (a) a protected cell company has a liability (“liability A”) to a person which was incurred on behalf of, or which is attributable to, a part of the protected cell company; and
- (b) that person has a liability (“liability B”) to the protected cell company in respect of a different part of the protected cell company.

(2) Nothing in the insolvency legislation enables the netting or setting off against each other of liability A and liability B.