

SCHEDULE 3

Regulation 167

Administration and liquidation of the core: modification of insolvency legislation

Meaning of “relevant office holder”

1. In this Schedule, “relevant office holder” means—

- (a) an administrator;
- (b) a liquidator;
- (c) a provisional liquidator; or
- (d) a special manager.

Duties and powers of a relevant office holder appointed in respect of the core

2.—(1) The appointment of a relevant office holder in respect of the core, and the powers and duties of the relevant office holder, are confined to—

- (a) the core;
- (b) the business and affairs of the core; and
- (c) the property held by the protected cell company on behalf of the core,

except to the extent that sub-paragraphs (2) to (8) provide otherwise.

(2) An administrator or liquidator appointed in respect of the core of a protected cell company has the following duties in relation to a cell of the protected cell company which is not in administration or liquidation—

- (a) a duty to ensure the protected cell company dissolves the cell in accordance with regulation 178;
- (b) if the administrator or liquidator considers that there is no realistic prospect of being able to carry out the duty referred to in sub-paragraph (a) in respect of the cell, a duty to enter into a transfer scheme in respect of the cell, or the assets and liabilities held by the protected cell company on behalf of the cell and the investments issued on the cell's behalf; or
- (c) if the administrator or liquidator considers that there is no realistic prospect of being able to carry out the duties referred to in sub-paragraphs (a) and (b) in respect of the cell, a duty to apply to the court for a winding-up order in respect of the cell.

(3) But sub-paragraph (2) does not apply where—

- (a) the core of a protected cell company is in administration;
- (b) an objective of the administration is to rescue the core as a going concern; and
- (c) the administrator thinks that it is reasonably practicable to achieve that objective.

(4) An administrator or liquidator appointed in respect of the core of a protected cell company may exercise the powers mentioned in sub-paragraph (5)—

- (a) in relation to a cell of the protected cell company which is not in administration or liquidation; or
- (b) in relation to a cell of the protected cell company which is in administration or liquidation provided the administrator or liquidator of the cell consents to the exercise of the power.

(5) The powers referred to in sub-paragraph (4) are—

- (a) a power to fulfil a requirement imposed on the protected cell company by an enactment;
- (b) a power to fulfil an obligation incurred by the protected cell company on behalf of a cell or which is attributable to a cell;

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- (c) a power to enter into a transfer scheme in respect of a cell, or the assets and liabilities held by the protected cell company on behalf of the cell and the investments issued on the cell's behalf;
 - (d) a power to apply to court for a winding-up order in respect of a cell;
 - (e) a power to dissolve a cell in accordance with regulation 178;
 - (f) a power to do anything necessary or expedient to comply with a duty imposed on the administrator or liquidator by sub-paragraph (2).
- (6) Where a protected cell company has no cells, an administrator or liquidator of the core also has the power to dissolve the protected cell company in accordance with regulation 180.
- (7) Where this paragraph imposes a duty, or confers a power, on an administrator or liquidator, that duty or power is to be treated as if it were imposed or conferred on the administrator or liquidator by—
- (a) the Insolvency Act 1986 where the protected cell company has its registered office in England and Wales (or Wales) or Scotland;
 - (b) the Insolvency (Northern Ireland) Order 1989 where the protected cell company has its registered office in Northern Ireland.
- (8) In this paragraph, “transfer scheme” means a transfer scheme within the meaning given by regulation 170.

General application of the insolvency legislation

3. The insolvency legislation applies to the core as if—
- (a) the core is a body corporate with distinct legal personality;
 - (b) the core was incorporated when the protected cell company was incorporated;
 - (c) the core is registered in the part of the United Kingdom in which the protected cell company has its registered office;
 - (d) the registered office of the cell is the registered office of the protected cell company;
 - (e) the registered name of the core is “the core of” followed by the name of the protected cell company;
 - (f) the registrar of companies is the FCA;
 - (g) a person who is or was a director, shadow director, officer, employee or agent of the protected cell company is or was a director, shadow director, officer, employee or agent of the core (as the case may be);
 - (h) shares issued by the protected cell company on behalf of the core are shares issued by the core;
 - (i) the core's property, assets, liabilities, debts and creditors are determined in accordance with regulation 48(6);
 - (j) things done by the protected cell company on behalf of the core are things done by the core;
 - (k) things done to the protected cell company in respect of the core are things done to the core;
 - (l) judgments or orders made against the protected cell company in respect of the core are judgments or orders made against the core;
 - (m) the books, papers, records, registers and other documents of the protected cell company are, insofar as they relate to the core, books, papers, records, registers and documents of the core; and

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- (n) an associate of the protected cell company (within the meaning given by section 435 of the Insolvency Act 1986 or Article 4 of the Insolvency (Northern Ireland) Order 1989) is an associate of the core.

Jurisdiction within the United Kingdom

4.—(1) This paragraph specifies which court in the United Kingdom has jurisdiction in relation to the administration or winding up of the core of a protected cell company.

(2) Her Majesty's High Court of Justice in England has jurisdiction where the registered office of a protected cell company is located in England and Wales (or Wales).

(3) The Court of Session has jurisdiction where the registered office of a protected cell company is located in Scotland.

(4) Her Majesty's High Court of Justice in Northern Ireland has jurisdiction where the registered office of a protected cell company is located in Northern Ireland.

Restriction on applying for winding up

5. A person holding an investment issued on behalf of a cell of a protected cell company may not apply for—

- (a) the winding up of the core; or
- (b) the appointment of a provisional liquidator in respect of the core.

Appointment of administrator

6.—(1) Only the court may appoint an administrator of the core.

(2) Where a person makes an application to court for the administration of the core, the person must file with the court notice of the existence of any insolvency proceedings in relation to the protected cell company or the core anywhere in the world as soon as the person becomes aware of them.

(3) The duty imposed by sub-paragraph (2) ceases on the making of an administration order.

Giving notice

7. In the insolvency legislation, a requirement that a company give notice of, or file, something is to be treated as a requirement that the protected cell company give notice of, or file, that thing on behalf of the core.

Dissolution

8. References in the insolvency legislation to the dissolution of the company are to be treated as references to dissolution of the protected cell company, but a protected cell company may only be dissolved where the protected cell company has no cells.

Part 24 of FSMA: references to “regulated activities” and “PRA-authorised person”

9. If the protected cell company has (or had) permission to carry on a regulated activity under Part 4A (permission to carry on regulated activities) of FSMA, then Part 24 (insolvency) of FSMA applies to the core as if the core has (or had) that permission.

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Further modification to specific provisions of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989

10.—(1) The provisions of the Insolvency Act 1986 specified in the first column of Table 8 and the provisions of the Insolvency (Northern Ireland) Order 1989 specified in the second column of Table 8 apply to the core with the modifications specified in the fourth column of Table 8.

Table 8

<i>Insolvency Act 1986</i>	<i>Insolvency (Northern Ireland) Order 1989</i>	<i>Subject Matter</i>	<i>Modification</i>
Section 76	Article 63	Liability of past directors and shareholders	These provisions apply where a protected cell company has made a payment (“the relevant payment” for the purposes of these provisions) to redeem or acquire shares issued on behalf of the core in breach of the requirements of regulation 107. The reference to the directors who signed the statement made in accordance with section 714(1) to (3) of the Companies Act 2006 for the purposes of the redemption or purchase is to be treated as a reference to the directors who authorised the redemption or purchase.
Section 103	Article 89	Cesser of directors' powers	Ignore these provisions.
Section 124	Article 104	Application for winding up	An administrator of the core may also present a petition for the winding up of the core.
Section 216	Article 180	Restriction on re-use of names	Treat references to the name of the liquidating company as references to the name of the protected cell company.
Section 222	Article 186	Inability to pay debts: unpaid creditor for £750 or more	The written demand must be served on the core by leaving it at the protected cell company's registered office or in such manner as the court may approve or direct.
Section 223	Article 187	Inability to pay debts: debt remaining unsatisfied after action brought	Ignore these provisions.
Paragraph 45 of Schedule B1 MI	Paragraph 46 of Schedule B1	Publicity	These paragraphs apply to all business documents issued by or on behalf of the protected cell company and all of the protected cell company's websites.
Paragraph 61 of Schedule B1	Paragraph 62 of Schedule B1	Administrator's general powers (removal and	Ignore these paragraphs.

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		appointment of directors)	
Paragraph 69 of Schedule B1	Paragraph 70 of Schedule B1	Administrator as agent	An administrator of the core acts as agent for the protected cell company (on behalf of the core).
Paragraph 74 of Schedule B1 M2	Paragraph 75 of Schedule B1	Challenge to administrator's conduct	These paragraphs apply to a person who is a creditor or shareholder in respect of the core of the protected cell company or any cell of the protected cell company to which the administrator's powers extend.
Paragraph 75 of Schedule B1	Paragraph 76 of Schedule B1	Misfeasance	In sub-paragraphs (2) to (5), references to the company are to be treated as including, where appropriate, references to a cell of the protected cell company.
Paragraph 83 of Schedule B1	Paragraph 84 of Schedule B1	Moving from administration to liquidation	Ignore these paragraphs.
Paragraph 84 of Schedule B1 M3	Paragraph 85 of Schedule B1	Moving from administration to dissolution	The notice given under sub-paragraph (1) must also state that the protected cell company has no cells.

Marginal Citations

- M1** Paragraph 45 was inserted by S.I. 2008/1897.
- M2** Paragraph 74 was amended by S.I. 2007/2974, S.I. 2008/948 and section 126 of and Schedule 9 to the Small Business, Enterprise and Employment Act 2015.
- M3** Paragraph 84 was amended by section 126 of and Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

Further modifications to subordinate legislation

11.—(1) The provisions of any subordinate legislation made under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 apply to the core with the following modifications.

(2) Any provision of subordinate legislation prescribing the circumstances in which a person may act in the ways specified in section 216(3) of the Insolvency Act 1986 ^{M4} or Article 180(3) of the Insolvency (Northern Ireland) Order 1989 ^{M5} where the whole or substantially the whole of the business of a company is acquired from that company is to be ignored.

(3) The provisions of the subordinate legislation apply with any other necessary modifications.

Marginal Citations

- M4** See rules 22.4 and 22.5 of the Insolvency (England and Wales) Rules 2016 and rule 4.80 of the Insolvency (Scotland) Rules 1986.
- M5** See rule 4.238 of the Insolvency Rules (Northern Ireland) 1991.

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Changes and effects yet to be applied to :

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