

Draft Regulations laid before Parliament under sections 22B and 429(1), (2) and (4) of, and paragraph 26(2) of Schedule 2 to, the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No. 0000

FINANCIAL SERVICES AND MARKETS

The Risk Transformation Regulations 2017

Made - - - - ***

Coming into force - - ***

CONTENTS

PART 1

General

- | | | |
|----|---------------------------|---|
| 1. | Citation and commencement | 7 |
| 2. | Interpretation | 7 |

PART 2

Authorisation and supervision of insurance risk transformation

- | | | |
|----|--|----|
| 3. | Amendment of FSMA | 9 |
| 4. | Amendment of the Regulated Activities Order | 9 |
| 5. | Amendment of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 | 10 |
| 6. | Disapplication of Part 12 of FSMA | 10 |
| 7. | Transformer vehicles which are not Solvency 2 special purpose vehicles | 10 |

PART 3

Public offers of investments by transformer vehicles

- | | | |
|-----|---|----|
| 8. | Application | 11 |
| 9. | Prohibition on offering investments to the public | 11 |
| 10. | Restraining order | 11 |

PART 4

Protected Cell Companies

CHAPTER 1

Overview

- | | | |
|-----|----------|----|
| 11. | Overview | 12 |
|-----|----------|----|

CHAPTER 2

Registration

SECTION 1

Obtaining registration

12.	Method of forming a protected cell company	12
13.	Application to register a protected cell company	12
14.	The name of a protected cell company	13
15.	Particulars of directors	14
16.	Instrument of incorporation: requirements	14
17.	Instrument of incorporation: model articles	15
18.	Requirements for registration	15
19.	Representations against refusal of registration	16
20.	Registration and certificates of incorporation	16
21.	Registration: notification to appropriate registrar	16
22.	Effect of registration	16

SECTION 2

Amendments to registration

23.	Restriction on certain amendments to instrument of incorporation	17
24.	FCA's approval for certain amendments to instrument of incorporation	17
25.	Procedure when refusing approval of proposed amendment	18

SECTION 3

The register

26.	Register of protected cell companies	18
27.	Registered numbers	18
28.	Information on register	18
29.	Delivery of documents to the FCA	19
30.	Keeping of records by the FCA	19
31.	Inspection of records kept by the FCA	20
32.	Provision of information for publication on European e-Justice portal	20
33.	Interconnected registers	21
34.	Documents relating to Welsh protected cell companies	21
35.	FCA's notice to resolve inconsistency on the register	21
36.	Rectification of the register under court order	21

CHAPTER 3

Structure of a protected cell company

37.	The core	22
38.	The cells	22
39.	Assets and liabilities	22
40.	Liabilities which are not incurred on behalf of a part	23
41.	Segregation within a protected cell company	23
42.	Company records	23
43.	Misapplied property	24
44.	Set-off: modification of insolvency legislation	24

CHAPTER 4

Operation of a protected cell company

45.	Objects of a protected cell company	24
46.	Offence of carrying out other activities	25

47.	Creation of a cell	25
48.	Company seal	25
49.	Execution of contracts	25
50.	Execution of documents	25
51.	Execution of deeds by attorney	26
52.	Official seal for share certificates	26
53.	Contracts between parts of a protected cell company	26

CHAPTER 5

Dealings with third parties

54.	Name and other particulars to appear in correspondence	26
55.	Contracts	27
56.	Terms implied into contracts	27
57.	Reliance on the register	27
58.	Capacity of protected cell company	28

CHAPTER 6

Directors

59.	Requirement for a director	29
60.	Directors' duties	29
61.	Offence of failing to comply with certain duties	29
62.	Directors' powers	29
63.	Appointment	30
64.	Removal	30
65.	Notification to the FCA	30
66.	Invalidity of certain transactions involving directors	30
67.	Inspection of directors' service contracts	31

CHAPTER 7

Shares and shareholders

SECTION 1

Shares

68.	Meaning of "class of shares"	32
69.	Types of shares	32
70.	Nature of shares	32
71.	Rights attaching to shares	32
72.	Changes to rights attaching to shares	33
73.	Amendments to the instrument of incorporation	33
74.	Prohibition on bearer shares	33
75.	Compensation	33
76.	Restraint and ratification by shareholders	33
77.	Contravention of regulation 69(4) or 71(3)	34

SECTION 2

Issue, allotment and alteration of share capital

78.	Nominal value	34
79.	Numbering of shares	34
80.	Power of directors to allot shares	34
81.	Sub-division or consolidation of shares	35
82.	Acquisition and redemption of shares issued by a cell	35

83.	Acquisition and redemption of shares issued by the core	35
84.	Penalty for contravention of this Section	36
SECTION 3		
<i>Share certificates</i>		
85.	Share certificates	36
86.	Contents of share certificate	36
87.	Evidence of title	37
SECTION 4		
<i>Register of shareholders</i>		
88.	The register of shareholders	37
89.	Contents of the register	37
90.	Location	38
91.	Index	38
92.	Inspection	38
93.	Power of court to rectify the register	39
SECTION 5		
<i>Share transfers</i>		
94.	General	39
95.	Meaning of “transfer documents”	39
96.	Transfers	40
97.	Certification of transfer	40
98.	Joint shareholdings	40
SECTION 6		
<i>Distributions</i>		
99.	Meaning of “distribution”	41
100.	Distributions to holders of shares in a cell	41
101.	Distributions to holders of shares in the core	41
SECTION 7		
<i>Annual General Meetings</i>		
102.	Requirement to hold an annual general meeting	41
103.	Election to dispense with annual general meetings	42
SECTION 8		
<i>Further requirements of the first company law directive</i>		
104.	Contracts between the protected cell company and shareholders	42
105.	Information on capital subscribed	42
CHAPTER 8		
<i>Shareholder resolutions</i>		
106.	Application	42
107.	Resolutions	43
108.	Shareholders acting informally (the <i>Duomatic</i> principle)	43
109.	Written resolutions	43
110.	Calling a shareholders’ meeting	44
111.	Directors’ duty to call meetings required by members	44

112.	Notice required of meeting	44
113.	Accidental failure to give notice of resolution or meeting	45
114.	Procedure at general meetings	45
115.	Representation of corporations	45
116.	Proxies	46
117.	Records of meetings	46
118.	Inspection of records	46
CHAPTER 9		
Property of the protected cell company		
119.	Transfer of assets between cells	47
120.	Transfer of assets from a cell to core	47
121.	Prohibition on holding shares in parent or subsidiary	47
CHAPTER 10		
Debentures (debt securities)		
122.	Scope	48
123.	Transfers by a cell to a debenture holder	48
124.	Perpetual debentures	48
125.	Enforcement of contract to subscribe for debentures	48
126.	Debentures to bearer (Scotland)	48
127.	Liability of trustees of debentures	48
CHAPTER 11		
Public offers of securities		
128.	Meaning of “securities”	49
129.	Prohibition on offering securities to the public	49
130.	Meaning of “offer to the public”	49
131.	Restraining order	50
132.	Remedial orders	50
133.	Validity of allotment etc not affected	50
CHAPTER 12		
Reports and accounts		
134.	Interpretation: accounting reference date, accounting periods, accounts and reports	51
135.	Reports	51
136.	Accounts	52
137.	The UK accounting framework	52
138.	Approval and signing of reports and accounts	53
139.	Publication of report and accounts	53
140.	Default in sending out copies of report and accounts: offences	54
141.	Revision of the report and accounts	54
CHAPTER 13		
Auditors		
142.	Eligibility	54
143.	Acting whilst ineligible	54
144.	Requirement for audited accounts	55
145.	Appointment of auditors	55
146.	Partnerships	55
147.	Disapplication of rules made under section 340 of FSMA.	56

148.	Auditor's report on protected cell company's accounts	56
149.	Signature of auditor's report	56
150.	Duties of auditor	57
151.	Auditor's rights	57
152.	Offences in connection with auditor's report	57
153.	Offence of misleading auditors	58
154.	Remuneration	58
155.	Removal	58
156.	Rights on removal or non-reappointment	59
157.	Resignation	59
158.	Meeting of shareholders or creditors	60
159.	Statement by an auditor ceasing to hold office	60
160.	Offence: auditor failing to comply with regulation 159	61
CHAPTER 14		
Insolvency		
161.	Insolvency of a cell	61
162.	Insolvency of the core	62
163.	Further disapplication of insolvency proceedings	62
164.	Company Directors Disqualification Act 1986	62
CHAPTER 15		
Mergers and Divisions		
165.	Meaning of "transfer scheme", "transferor" and "transferee"	62
166.	Application for order sanctioning transfer scheme	63
167.	Requirements on applicants	63
168.	Right to participate in proceedings and court sanction	64
169.	Effect of court order sanctioning the transfer scheme	64
CHAPTER 16		
Dissolution		
170.	Dissolution of a cell: procedure	66
171.	Dissolution of a cell: effect on property and liabilities	67
172.	Dissolution of a protected cell company	67
173.	Restoration: applications to court	68
174.	Restoration: who may apply	68
175.	Restoration: when an application may be made	69
176.	Decision on application for restoration	69
177.	Effect of court order for restoration	69
CHAPTER 17		
Offences		
178.	Offences by a body corporate	70
179.	Jurisdiction and procedure in respect of offences	70
CHAPTER 18		
Miscellaneous		
180.	Time period for giving notice to FCA	70
181.	Imposition of further requirements by the PRA or FCA	70

PART 5
Consequential amendments to legislation

182. Consequential amendments to legislation.	71
---	----

SCHEDULE 1 — Welsh equivalents of English words and expressions	71
SCHEDULE 2 — Administration and liquidation of cells: modification of insolvency legislation	71
SCHEDULE 3 — Administration and liquidation of the core: modification of insolvency legislation	74
SCHEDULE 4 — Consequential amendments to legislation	79
PART 1 — Consequential amendments to primary legislation	79
PART 2 — Consequential amendments to secondary legislation	79

In the opinion of the Treasury, one of the effects of these Regulations is that an activity which is not a regulated activity, within the meaning of the Financial Services and Markets Act 2000, will become a regulated activity.

In the opinion of the Treasury, one of the effects of these Regulations is that an activity will become a PRA-regulated activity within the meaning of the Financial Services and Markets Act 2000.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with sections 22B and 429(1), (2) and (4) of, and paragraph 26(2) of Schedule 2 to, the Financial Services and Markets Act 2000.

The Treasury, in exercise of the powers conferred by sections 22(1) and (5), 22A, 55C, 284A, 426 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000, make the following Regulations:

PART 1

General

Citation and commencement

- 1.—(1) These Regulations may be cited as the Risk Transformation Regulations 2017.
- (2) These Regulations come into force on [X] 2017.

Interpretation

- 2.—(1) In these Regulations—
“appropriate registrar” means—
 - (a) the registrar of companies for England and Wales if a protected cell company’s instrument of incorporation states that its registered office is situated in England and Wales (or Wales);
 - (b) the registrar of companies for Scotland if a protected cell company’s instrument of incorporation states that its registered office is situated in Scotland;

(c) the registrar of companies for Northern Ireland if a protected cell company's instrument of incorporation states that its registered office is situated in Northern Ireland;

“debenture” includes debenture stock, bonds and any other securities;

“Delegated Act” means Commission Delegated Regulation (EU) 2015/35 of 10th October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

“firm” has the meaning given in section 1173(1) of the Companies Act 2006;

“first company law directive” means Directive 2009/101/EC of the European Parliament and of the Council on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent;

“FSMA” means the Financial Services and Markets Act 2000;

“fully funded requirement” means the requirement imposed on a transformer vehicle by Articles 319 and 326 of the Delegated Act, or the equivalent requirement set out in rules made by the PRA(a), that the transformer vehicle must be fully funded;

“general meeting” means a meeting of the persons holding voting shares issued on behalf of the core of the protected cell company;

“holding company” has the meaning given in section 1159 of the Companies Act 2006;

“Implementing Technical Standard” means Commission Implementing Regulation (EU) 2015/462 of 19th March 2015 laying down implementing technical standards with regard to the procedures for supervisory approval to establish special purpose vehicles, for the cooperation and exchange of information between supervisory authorities regarding special purpose vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Parliament and of the Council;

“insolvency legislation” means—

- (a) the Insolvency Act 1986;
- (b) the Insolvency (Northern Ireland) Order 1989;
- (c) Part 24 of FSMA (insolvency); and
- (d) all subordinate legislation made under the Insolvency Act 1986, Part 24 of FSMA or the Insolvency (Northern Ireland) Order 1989;

“non-voting share” means a share which is not a voting share;

“officer” includes a director or manager;

“parent undertaking” has the meaning given by section 1162 of the Companies Act 2006;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“share” means a share in the share capital of the part of the protected cell company on whose behalf of share was issued;

“share certificate” means documentary evidence of title to a share;

“special purpose vehicle” has the meaning given by Article 13(26) of the Solvency 2 Directive(b);

“subsidiary” has the meaning given by section 1159 of the Companies Act 2006;

“subsidiary undertaking” has the meaning given by section 1162 of the Companies Act 2006;

(a) Articles 319 and 326 of the Delegated Act apply to transformer vehicles which are special purpose vehicles within the meaning given by Article 13(26) of the Solvency 2 Directive. Regulation 7 imposes an obligation on the PRA to make equivalent rules for transformer vehicles which are not special purpose vehicles.

(b) “Solvency 2 Directive” is defined by section 425 of, and paragraph 3 of Schedule 3 to, FSMA. It refers to Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

“voting share” means a share which confers the right to vote on a written resolution of the protected cell company or at a meeting of shareholders;

“working day” has the meaning given in section 1173(1) of the Companies Act 2006.

(2) A reference in these Regulations to a part of a protected cell company is a reference to the core or a cell of the protected cell company (see regulations 37 and 38).

(3) Where these Regulations refer to the Welsh equivalent of a word or expression, the Welsh equivalent of that word or expression is set out in Table 4 in Schedule 1.

PART 2

Authorisation and supervision of insurance risk transformation

Amendment of FSMA

3.—(1) FSMA is amended as follows.

(2) In Schedule 6 (threshold conditions)—

(a) in Part 1D (Part 4A permission: conditions for which the PRA is responsible in relation to insurers etc), in paragraph 4A (introduction), after sub-paragraph (4), insert—

“(5) If the person concerned (“C”) carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity relating to an assumption of risk falling within article 13A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the threshold conditions which are relevant to the discharge by the PRA of its functions in relation to C are the conditions set out in paragraphs 4B to 4F, subject to sub-paragraph (6).

(6) Paragraphs 4B to 4F have effect in relation to persons of the kind specified by sub-paragraph (5) as if—

- (a) the persons are special purpose vehicles within the meaning given by Article 13(26) of the Solvency 2 Directive; and
- (b) the persons are not reinsurance undertakings within the meaning given by Article 13(4) of the Solvency 2 Directive.”;

(b) in Part 1E (Part 4A permission: conditions for which the PRA is responsible in relation to other PRA-authorized persons), in paragraph 5A (introduction)—

- (i) at the end of sub-paragraph (b), omit “or”;
- (ii) at the end of sub-paragraph (c), insert “or”; and
- (iii) after sub-paragraph (c), insert—

“(d) an assumption of risk falling within article 13A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.

Amendment of the Regulated Activities Order

4.—(1) The Regulated Activities Order is amended as follows.

(2) After article 12A (information society services and managers of UCITS and AIFs) insert—

“Transformer vehicles: insurance risk transformation

12B. A transformer vehicle does not carry on an activity of a kind specified by article 10 by assuming a risk from an undertaking, provided the assumption of the risk is a specified

kind of activity falling within article 13A (transformer vehicles: insurance risk transformation).”(a).

(3) After article 13 (application of sections 327 and 332 of FSMA) insert—

“CHAPTER 3A

Insurance risk transformation

Transformer vehicles: insurance risk transformation

13A.—(1) It is a specified kind of activity for a transformer vehicle to assume a risk from an undertaking where—

- (a) the undertaking assumes a risk under a contract of insurance (“the underlying risk”); and
- (b) the assumption of risk by the transformer vehicle has the legal or economic effect of transferring some or all of the underlying risk to the transformer vehicle.”.

(4) After article 19 (risk-management) insert—

“**Transformer vehicles: insurance risk transformation**

19A. A transformer vehicle does not carry on an activity of a kind specified by article 14 by assuming a risk from an undertaking, provided the assumption of the risk is a specified kind of activity falling within article 13A (transformer vehicles: insurance risk transformation.”.

Amendment of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013

5. In the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 in article 2, after paragraph (c) insert—

- “(ca) the activity carried out by a transformer vehicle when it assumes a risk from an undertaking, as specified by article 13A of the Regulated Activities Order;”.

Disapplication of Part 12 of FSMA

6. Part 12 of FSMA (control over authorised persons) does not apply in relation to a person who decides to acquire or increase control, or reduce or cease control, over a transformer vehicle carrying out the activity specified in article 13A of the Regulated Activities Order.

Transformer vehicles which are not Solvency 2 special purpose vehicles

7.—(1) In this regulation, a “non-Solvency 2 transformer vehicle” means a transformer vehicle which is authorised under Part 4A of FSMA in relation to the activity specified in article 13A of the Regulated Activities Order, but which is not a special purpose vehicle.

(2) The PRA must make rules under Part 9A of FSMA (rules and guidance) which impose requirements on non-Solvency 2 transformer vehicles which are equivalent to the requirements imposed by directly applicable regulations made under paragraphs (2) and (2a) of Article 211 of the Solvency 2 Directive on special purpose vehicles authorised for the purposes of that Article.

(a) A transformer vehicle carrying on the activity specified in article 13A of the Regulated Activities Order is not a reinsurance undertaking for the purposes of the Solvency 2 Directive and does not require authorisation in accordance with Article 14 of that Directive.

PART 3

Public offers of investments by transformer vehicles

Application

8. This Part applies to a transformer vehicle which is not a protected cell company incorporated under Part 4 (protected cell companies).

Prohibition on offering investments to the public

9.—(1) A transformer vehicle must not offer to the public any investments issued by the transformer vehicle.

(2) An offer to the public includes an offer to any section of the public, however selected.

(3) An offer is not to be regarded as an offer to the public if—

- (a) it is an offer made solely to qualified investors within the meaning given by section 86(7) of FSMA and it can be properly regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in investments issued by the transformer vehicle becoming available to persons other than those receiving the offer; or
- (b) it is a private concern of the person receiving it and the person making it.

(4) An offer is to be regarded (unless the contrary is proved) as being a private concern of the person receiving it and the person making it if it is made to a person already connected with the transformer vehicle and, where it is made on terms allowing that person to renounce the person's rights, the rights may only be renounced in favour of another person already connected with the transformer vehicle.

(5) For the purposes of this regulation, "person already connected with a transformer vehicle" means—

- (a) a person holding an investment issued by the transformer vehicle; or
- (b) a trustee (acting in the capacity as trustee) of a trust of which the principal beneficiary is a person within sub-paragraph (a).

Restraining order

10.—(1) The court may make an order under this regulation if it appears to the court on an application under this regulation that a transformer vehicle is proposing to act in contravention of regulation 9.

(2) An order under this regulation is an order restraining the transformer vehicle from contravening that regulation.

(3) An application for an order under this regulation may be made by—

- (a) the FCA;
- (b) a person holding investments issued by the transformer vehicle; or
- (c) a creditor of the transformer vehicle.

PART 4
Protected Cell Companies
CHAPTER 1
Overview

Overview

11.—(1) This Part enables the creation of a type of body corporate called a protected cell company.

(2) A protected cell company may only be used to carry out the activities mentioned in regulation 45, namely the activities mentioned in section 284A(2) of FSMA (transformer vehicles) and any incidental, consequential and supplemental activities.

(3) A protected cell company is comprised of a core and any number of cells.

(4) The core administers the protected cell company and the cells are used to segregate different transactions.

(5) The core and the cells do not have legal personality distinct from the protected cell company, but are nevertheless segregated from each other.

(6) Protected cell companies are private companies limited by shares which are governed by the provisions of this Part rather than the Companies Act 2006.

CHAPTER 2

Registration

SECTION 1

Obtaining registration

Method of forming a protected cell company

12. 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 13; and
- (b) complying with the requirements for registration set out in regulation 18.

Application to register a protected cell company

13.—(1) An application to register a protected cell company may only be made to the PRA.

(2) When the PRA receives an application under paragraph (1), the PRA must forward it to the FCA without delay.

(3) 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 15; and
- (f) the names of the person or persons who are, on registration, to hold voting shares issued on behalf of the core of the protected cell company.

(4) The application must contain or be accompanied by—

- (a) the proposed instrument of incorporation;
- (b) 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;

- (c) a statement signed by each person who is, on registration, to hold voting shares issued on behalf of the core of the protected cell company that the person consents to holding those shares;
 - (d) an application made to the PRA under section 55A(1) of FSMA for permission for the proposed protected cell company to carry out the activity specified in article 13A (transformer vehicles: insurance risk transformation) of the Regulated Activities Order.
- (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 this regulation must be set out in such form and verified in such manner as the FCA may reasonably direct.
- (7) When the FCA receives an application, the FCA must notify the appropriate registrar of the name of the proposed protected cell company.

The name of a protected cell company

- 14.—**(1) A protected cell company’s name must include one of the following expressions—
- “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 their Welsh equivalents)—
 - (i) “unlimited” or “public limited company”;
 - (ii) “insurance”, “insurer”, “insured”, “reinsurance”, “reinsurer”, “reinsured” or “re”;
 - (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 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

15.—(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

16.—(1) The instrument of incorporation of a protected cell company—

(a) must contain the statements set out in paragraph (2);

(b) must contain provision as to the matters specified in paragraph (3); and

(c) must not contain a statement to the effect that the protected cell company is a public company.

(2) The statements referred to in 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 section 284A(2) of FSMA and any incidental, supplemental or consequential activities;
 - (d) the protected cell company is comprised of a core and one or more cells;
 - (e) the core administers the protected cell company;
 - (f) the cells are used to segregate different transactions;
 - (g) the cells are segregated from each other and from the core;
 - (h) 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;
 - (i) the protected cell company may issue non-voting and voting shares on behalf of the core;
 - (j) the protected cell company may issue non-voting shares on behalf of a cell, but not voting shares;
 - (k) 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.
- (3) The matters mentioned 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) the rights attaching to shares issued on behalf of the core and the cells;
 - (g) the maximum and minimum sizes of the voting share capital in the core;
 - (h) the classes of shares which may be issued on behalf of the core and the cells;
 - (i) if the protected cell company is to have a company seal, the form, custody and use of the seal;
 - (j) 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
 - (k) the currency in which the accounts of the protected cell company must be prepared.

Instrument of incorporation: model articles

17. 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, except to the extent that it would contravene a requirement of this Part.

Requirements for registration

- 18.—(1) The FCA must register a protected cell company if—
- (a) the application for registration satisfies the requirements of regulation 13;
 - (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 (see regulation 14);
 - (d) the protected cell company's instrument of incorporation satisfies the requirements of regulation 16;
 - (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 issued on behalf of the core of the protected cell company; and

- (g) the PRA is satisfied that it will, on the registration of the proposed protected cell company, give permission under Part 4A of FSMA for the protected cell company to carry out the activity specified in article 13A (transformer vehicles: insurance risk transformation) of the Regulated Activities Order.

(2) For the purposes of determining whether the protected cell company's instrument of incorporation satisfies the requirements of regulation 16, the FCA may rely on a statement signed by the solicitor for the applicant confirming that the instrument of incorporation satisfies the requirements of regulation 16.

Representations against refusal of registration

19.—(1) If the FCA proposes to refuse an application made under regulation 13 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.

Registration and certificates of incorporation

20.—(1) If the FCA determines that the requirements of regulation 18 as to registration are satisfied, the FCA must—

- (a) inform the PRA without delay; and
 - (b) 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 18 as to registration are satisfied.
- (7) The FCA may issue duplicate certificates at any time after registration.

Registration: notification to appropriate registrar

21. When the FCA determines an application made under regulation 13 to register a protected cell company, the FCA must notify the appropriate registrar of the outcome of the application.

Effect of registration

22.—(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 issued on behalf of 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 issued on behalf of the core of the protected cell company become the holders of those shares.
- (7) The shares referred to in paragraph (6) are deemed to be 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.

SECTION 2

Amendments to registration

Restriction on certain amendments to instrument of incorporation

23. A protected cell company may not amend a statement included in its instrument of incorporation by virtue of paragraph (2) of regulation 16.

FCA's approval for certain amendments to instrument of incorporation

24.—(1) A protected cell company must give written notice to the FCA of a proposed amendment to the protected cell company's instrument of incorporation.

(2) Notice under paragraph (1) must be accompanied by—

- (a) the proposed amendment; and
- (b) a draft of the protected cell company's instrument of incorporation as amended by the proposed amendment.

(3) The FCA must approve the proposed amendment unless the proposed amendment will affect the protected cell company's compliance with the requirements of regulations 14 and 16.

(4) For the purposes of determining whether the proposed amendment will affect the protected cell company's compliance with the requirements of regulation 16, the FCA may rely on a statement signed by the solicitor for the protected cell company confirming that the proposed amendment does not affect the protected cell company's compliance with regulation 16.

(5) Effect must not be given to any proposed amendment to the protected cell company's instrument of incorporation unless—

- (a) the FCA has given its approval to the proposal by notice in writing; or
- (b) the FCA has failed to give the protected cell company a warning notice within a period of two months beginning with the date on which written notice referred to in paragraph (1) was given to the FCA.

Procedure when refusing approval of proposed amendment

25.—(1) If the FCA proposes to refuse approval, it must give the protected cell company a warning notice.

(2) To be valid, the warning notice must be received by the protected cell company within a period of two months beginning with the date on which written notice was given to the FCA in accordance with regulation 24(1).

(3) If the FCA decides to refuse approval—

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

SECTION 3

The register

Register of protected cell companies

26.—(1) The FCA must maintain a register of protected cell companies.

(2) The FCA must—

- (a) keep the register in electronic form; and
- (b) publish the register on its website.

Registered numbers

27.—(1) The FCA must allocate to every protected cell company a number, which is to be known as the protected cell company's registered number.

(2) Protected cell companies' registered numbers must be in such form as the FCA may determine from time to time, and may consist of one or more sequences of numbers or letters.

(3) The FCA may, upon adopting a new form of registered number, make such changes to existing registered numbers as appear to it to be necessary.

(4) A change to a protected cell company's registered number has effect from the date on which the protected cell company is notified by the FCA of the change.

Information on register

28.—(1) The following information must be recorded on the register in relation to every protected cell company—

- (a) the protected cell company's name;
- (b) any names by which the protected cell company was previously known;
- (c) the protected cell company's registered number;
- (d) the date of the protected cell company's registration;
- (e) the address of the protected cell company's registered office;
- (f) if an alternative inspection location has been notified to the FCA under regulation 67(3), the alternative inspection location;
- (g) the protected cell company's instrument of incorporation as at the date of incorporation;
- (h) any amendments to the protected cell company's instrument of incorporation which have been approved by the FCA under regulation 24;
- (i) the protected cell company's instrument of incorporation, as amended by any amendments approved by the FCA under regulation 24;
- (j) the names or numbers of all the cells which have been created by the protected cell company;

- (k) in respect of each cell, the date on which it was created;
- (l) if a cell has been dissolved, the date on which it was dissolved;
- (m) the names of the directors of the protected cell company;
- (n) the date on which each director was appointed;
- (o) whether each director has the authority to act alone or jointly with another director, and if the director may only act jointly with another director, the name of that other director;
- (p) if a director was removed from office, the date on which the director was removed;
- (q) the information provided by the protected cell company in accordance with regulation 89(5)(b) (single members) and 105 (information on capital subscribed);
- (r) the annual accounts of the protected cell company;
- (s) any order made under regulation 168 or 169 (in relation to mergers and divisions);
- (t) anything that must be registered as a result of a court order made under regulation 36;
- (u) whether an administration order or winding up order has been made in respect of any part of the protected cell company;
- (v) if an administration order or winding up order has been made in respect of any part of the protected cell company, any document which is provided by the administrator or liquidator to the FCA in accordance with a requirement imposed on the administrator or liquidator by the insolvency legislation (as modified by regulations 161 and 162); and
- (w) whether the protected cell company has been dissolved and, if so, the date of dissolution;
- (x) any notice given to the FCA in accordance with section 1013(6) of the Companies Act 2006 (crown disclaimer of property vesting as *bona vacantia*) as applied by regulation 172(9) (dissolution of a protected cell company).

(2) For the purposes of paragraph (1), the FCA may rely on information provided by the protected cell company.

Delivery of documents to the FCA

29. Where these Regulations require a person to deliver a document to the FCA to be recorded on the register, the person—

- (a) may deliver the document by electronic means; and
- (b) subject to paragraph (a), must deliver the document in such form as the FCA may from time to time require.

Keeping of records by the FCA

30.—(1) The FCA must put in place procedures to ensure that any change to the information referred to in regulation 28(1) is normally recorded on the register within a period of 21 days beginning with the day when the FCA receives notice of the change.

(2) But paragraph (1) does not apply to the protected cell company's annual accounts.

(3) The originals of documents delivered in hard copy form to the FCA to be recorded on the register must be kept for a period of three years beginning with the date they are received by the FCA, after which they may be destroyed provided the information contained in them has been recorded on the register.

(4) The FCA is under no obligation to keep documents delivered in electronic form, provided the information contained in them has been recorded on the register.

(5) Where a protected cell company has been dissolved, the FCA may, at any time after a period of six years beginning with the date of dissolution, direct that any records in its custody relating to the protected cell company be removed to the Public Records Office.

(6) Where records are removed to the Public Records Office in accordance with a direction under paragraph (5), the records in respect of which the direction is given must be disposed of in accordance with the enactments relating to that Office and the rules made under them.

(7) Paragraphs (5) and (6) do not extend to Scotland.

Inspection of records kept by the FCA

31.—(1) Where information in the register has a chronological order, the FCA must ensure that it can be accessed in chronological order.

(2) The FCA must on request provide a copy of the whole or part of a document or particular recorded on the register.

(3) The request may be made in hard copy form or by electronic means.

(4) The FCA must comply with a request made to have the document or particular provided in hard copy form or by electronic means.

(5) The FCA may satisfy the obligation to provide a document or particular by electronic means in response to a request made by electronic means by ensuring that—

(a) the document or particular may be downloaded from its website; and

(b) sending the person making the request a message referring the person to its website.

(6) Where the FCA provides a hard copy of a document or particular, it must be certified as a “true copy” unless the person requesting it dispenses with certification.

(7) Where the FCA provides an electronic copy of a document or particular, it must not be certified as a “true copy” unless the applicant requests certification.

(8) Where the FCA certifies an electronic copy as a “true copy”, it must do so with an advanced electronic signature falling within the meaning given by Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures.

(9) The FCA may charge a fee for the provision of any document or particular recorded on its register provided the fee does not exceed the administrative cost of providing it.

(10) Where the information available on the FCA’s website is illegible or unavailable, a person may inspect any copies of documents retained by the FCA in which the information is recorded.

(11) No process for compelling the production of a document kept by the FCA under these regulations is to issue from any court except with permission of the court.

(12) Where the FCA provides a certified copy of a document recorded on the register, the certified copy is deemed to be an accurate record of the contents of the original document and is in all legal proceedings admissible—

(a) as evidence of equal validity to the original document; and

(b) as evidence (in Scotland, sufficient evidence) of any fact stated in the original document of which direct oral evidence would be admissible.

Provision of information for publication on European e-Justice portal

32.—(1) The FCA must provide the information required by Article 3a(1) of the first company law directive for publication on the European e-Justice portal in accordance with the portal’s rules and technical requirements.

(2) In this regulation—

(a) the “European e-Justice portal” means the single European electronic access point for legal information, judicial and administrative institutions, registers, databases and other services referred to in the first company law directive; and

(b) the references to the first company law directive and Article 3a(1) of that directive are references to that directive, and that provision, as amended from time to time.

Interconnected registers

33. [Tbc]

Documents relating to Welsh protected cell companies

34.—(1) This regulation applies to any document which is delivered to the FCA under these Regulations and relates to a protected cell company or proposed protected cell company whose instrument of incorporation states that the registered office is situated in Wales.

(2) A document may be in Welsh, but must be accompanied by a certified English translation of the document.

(3) Where the document is in English, the protected cell company may also deliver a certified Welsh translation of the document.

(4) [Further provision made be required in relation to Welsh protected cell companies].

FCA's notice to resolve inconsistency on the register

35.—(1) Where it appears to the FCA that the information contained in a document delivered to the FCA is inconsistent with other information on the register, the FCA may give notice to the protected cell company to which the document relates—

- (a) stating in what respects the information contained in it appears to be inconsistent with other information on the register; and
- (b) requiring the protected cell company to resolve the inconsistency.

(2) The notice must—

- (a) state the date on which it is issued; and
- (b) require the delivery to the FCA, within 14 days of that date, of such replacement or additional documents as may be required to resolve the inconsistency.

Rectification of the register under court order

36.—(1) The FCA must remove from the register any material—

- (a) that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the protected cell company; or
- (b) that a court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged,

and that the court directs should be removed from the register.

(2) The court order must specify what is to be removed from the register and indicate where it is on the register.

(3) The court must not make an order for the removal of anything the registration of which has the legal consequences specified in paragraph (4) unless satisfied—

- (a) that the presence of the material on the register has caused, or may cause, damage to the protected cell company; and
- (b) that the protected cell company's interest in removing the material outweighs any interest of other persons in the material continuing to appear on the register.

(4) The legal consequences mentioned in paragraph (3) are legal consequences for the protected cell company as regards—

- (a) its formation;
- (b) an amendment to its instrument of incorporation;
- (c) the creation or dissolution of a cell;
- (d) its dissolution.

(5) Where a court makes an order for removal under paragraph (3), the court may make such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register.

(6) The court's powers also include a power to order that any of the following be included on the register—

- (a) a copy of the order;
- (b) a note of such matters as may be determined by the court.

CHAPTER 3

Structure of a protected cell company

The core

37.—(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.

The cells

38.—(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 enter into contracts, hold property and issue investments for the purposes of carrying out the activity specified in article 13A (transformer vehicles: insurance risk transformation) of the Regulated Activities Order.

(4) For that purpose, the protected cell company may, on behalf of the cells, carry out such functions as are conferred on the cells by the protected cell company's instrument of incorporation.

Assets and liabilities

39.—(1) Assets, and interests in and rights over assets, which are held by a protected cell company must be held on behalf of a part of the protected cell company.

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

Liabilities which are not incurred on behalf of a part

40. A liability 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 is most closely related.

Segregation within a protected cell company

41.—(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 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 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 property held by the protected cell company on behalf of a part of the protected cell company is to be treated as property belonging exclusively to that part of the protected cell company;
- (b) an asset held by the protected cell company on behalf of a part of the protected cell company is to be treated as an asset belonging exclusively to that part of the protected cell company;
- (c) a debt or liability 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 debt or liability (as the case may be) of that part of the protected cell company;
- (d) 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 subparagraph (c);
- (e) the property 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
- (f) a protected cell company may sue or be sued in respect of a part of the protected cell company.

Company records

42.—(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 which are incurred on behalf of, or which are attributable to, each part of the protected cell company from the liabilities that 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.

Misapplied property

43.—(1) Where a protected cell company holds property, or an interest in or a right over property, on behalf of a part of the protected cell company (“part A”) which is recorded in the records of the protected cell company as an asset held on behalf of another part of the protected cell company (“part B”)—

- (a) the protected cell company must make arrangements to ensure that the property, interest or right (as the case may be) is held on behalf of part B; and
- (b) part A holds the property, interest or right (as the case may be) on trust for the benefit of part B until the transfer takes effect.

(2) For the purposes of the trust referred to in paragraph (1), parts A and B are to be treated as if they were distinct legal persons.

(3) Where—

- (a) a person has a claim against a protected cell company and the claim relates to a part of the protected cell company (“part C”);
- (b) the person obtains property, or an interest in or right over property, from the protected cell company in full or partial satisfaction of the claim; and
- (c) the property, interest or right (as the case may be) was held by the protected cell company on behalf of a part of the protected cell company other than part C,

then the person holds the property, interest or right (as the case may be) on trust for the benefit of that other part of the protected cell company.

Set-off: modification of insolvency legislation

44. Where a protected cell company is, in respect of a part of the protected cell company, a creditor of a person specified in the first column of Table 1, the enactments specified in the second column of Table 1 apply to the protected cell company as if the part had legal personality distinct from the protected cell company and all the other parts of the protected cell company.

Table 1

<i>Type of person</i>	<i>Enactments</i>
Individual in bankruptcy.	Section 323 (mutual credits and set-off) of the Insolvency Act 1986. Article [X] of the Insolvency (Northern Ireland) Order 1989.
Company in administration.	Rule 2.85 (mutual credits and set-off) of the Insolvency Rules 1986. Rule [X] of the Insolvency (Scotland) Rules 1986. Rule [X] of the Insolvency (Northern Ireland) Rules 1991.
Company in liquidation.	Rule 4.90 (mutual credits and set-off) of the Insolvency Rules 1986. Rule [X] of the Insolvency (Scotland) Rules 1986. Rule [X] of the Insolvency (Northern Ireland) Rules 1991.

CHAPTER 4

Operation of a protected cell company

Objects of a protected cell company

45.—(1) The objects of a protected cell company are the carrying out of—

- (a) the activities mentioned in section 284A(2) of FSMA (transformer vehicles); and
- (b) any activity which is incidental to, consequential on, or supplemental to, any of the activities mentioned in section 284A(2) of FSMA.

(2) A protected cell company may not carry out any other kind of activity.

Offence of carrying out other activities

46.—(1) A protected cell company that contravenes the prohibition in regulation 45(2) is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or—
 - (i) in England and Wales, a fine, or both;
 - (ii) in Scotland or Northern Ireland, a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(2) In proceedings for an offence under paragraph (1) it is a defence for the accused to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Creation of a cell

47.—(1) A protected cell company must notify the FCA when it creates a cell.

(2) The notification must state—

- (a) the name or number of the cell; and
- (b) the date on which it was created.

(3) A protected cell company may not create a cell if the core of the protected cell company is in administration or liquidation (see regulation 162).

Company seal

48.—(1) A protected cell company may have a common seal, but need not have one.

(2) A protected cell company which has a common seal must have its name engraved in legible characters on the seal.

(3) This regulation does not form part of the law of Scotland.

Execution of contracts

49.—(1) A contract may be made—

- (a) by a protected cell company by writing under its common seal; or
- (b) on behalf of a protected cell company by any person acting under its authority (whether express or implied).

(2) Any formalities required by law in the case of a contract made by an individual also apply to a contract made by or on behalf of a protected cell company.

Execution of documents

50.—(1) Where a protected cell company has a common seal, the protected cell company may execute a document by affixing its common seal.

(2) A document that is signed by at least one director and expressed (in whatever form of words) to be executed by the protected cell company has the same effect as if executed under the common seal of the protected cell company.

(3) A document executed by a protected cell company which makes it clear on its face that it is intended by the person or persons making it to be a deed—

- (a) has effect, on delivery, as a deed; and
- (b) is to be presumed, unless the contrary intention is proved, to be delivered upon its being executed.

(4) In favour of a purchaser—

- (a) a document is deemed to be executed by the protected cell company if it purports to be signed by at least one director or, in the case of a director which is a body corporate, it purports to be executed by that director;
 - (b) if the document makes it clear on its face that it is intended by the person making it to be a deed, the document is deemed to have been delivered upon its being executed.
- (5) In paragraph (4), “purchaser” means a purchaser in good faith for valuable consideration and includes—
- (a) an undertaking from whom the protected cell company has assumed a risk on behalf of a cell; and
 - (b) an investor to whom the protected cell company has issued an investment on behalf of a cell.

Execution of deeds by attorney

51.—(1) Under the law of England and Wales, or Northern Ireland, a protected cell company may, by an instrument executed as a deed, empower any person, either generally or in respect of specific matters, as its attorney to execute deeds on its behalf.

(2) A deed executed by such an attorney on behalf of the protected cell company has effect as if the deed were executed by the protected cell company.

Official seal for share certificates

52.—(1) This regulation applies where a protected cell company has a common seal.

(2) The protected cell company may have, for use for sealing shares issued by a part of the protected cell company and for sealing documents creating or evidencing such shares, an official seal with a facsimile of its official seal with the addition on its face of the word “securities”.

(3) Such an official seal has the same effect as the company’s common seal when affixed to a document.

Contracts between parts of a protected cell company

53.—(1) A contract is void if it purports to be a contract between two or more parts of a protected cell company.

(2) A protected cell company may enter into a contract with another person on behalf of two or more parts of the protected cell company, but the protected cell company may not enforce a term that requires the protected cell company (on behalf of one part) to confer a benefit on the protected cell company (on behalf of another part).

(3) In the application of section 1(1) of the Contracts (Rights of Third Parties) Act 1999 to a term mentioned in paragraph (2), references to “third party” are to be treated as excluding the parts of the protected cell company.

CHAPTER 5

Dealings with third parties

Name and other particulars to appear in correspondence

54.—(1) A protected cell company must disclose the particulars specified in paragraph (2)—

- (a) in all letters and e-mails sent by the protected cell company;
- (b) in all other documents issued by the protected cell company; and
- (c) on its website.

(2) The particulars of a protected cell company mentioned in paragraph (1) are—

- (a) its name;

- (b) its registered number;
 - (c) its registered office;
 - (d) the fact that it is a protected cell company registered by the FCA under the Risk Transformation Regulations 2017; and
 - (e) the fact that the assets and liabilities of the core and cells of the protected cell company are segregated in accordance with the Risk Transformation Regulations 2017.
- (3) The particulars must be disclosed in characters that can be read with the naked eye.

Contracts

55.—(1) Where a protected cell company enters into a contract, the protected cell company must ensure that the contract states clearly and unambiguously—

- (a) whether the protected cell company enters into the contract on behalf of the core or a cell; and
- (b) if the protected cell company enters into the contract on behalf of a cell, the cell’s name or number.

(2) Where a protected cell company enters into a contract on behalf of two or more parts of the protected cell company, the protected cell company must ensure that the contract states clearly and unambiguously which rights and obligations of the protected cell company relate to each part.

Terms implied into contracts

56.—(1) This regulation applies where—

- (a) a protected cell company enters into a contract with a person; and
- (b) the person may assert a right under the contract against the protected cell company in respect of a part of the protected cell company (“part A”).

(2) The following terms are implied into the contract—

- (a) the person may only assert that right in respect of part A;
- (b) the person waives any right that the person may have to make a claim which—
 - (i) arises under the law of a country or territory other than the United Kingdom; and
 - (ii) entitles the person to assert that right in respect of any part of the protected cell company other than part A;
- (c) if the person obtains property, or an interest in or right over property, from the protected cell company by asserting that right in respect of a part of the protected cell company other than part A, then the person—
 - (i) will transfer the property, interest or right (as the case may be) to the protected cell company to hold on behalf of that other part without delay; and
 - (ii) holds the property, interest or right (as the case may be) on trust for the benefit of that other part until the transfer takes effect.

(3) A provision, whether contained in the instrument of incorporation, a contract or otherwise, is void to the extent that it purports to waive or limit the effect of the implied terms referred to in paragraph (2).

Reliance on the register

57.—(1) A protected cell company may only rely against another person (“P”) on an event which must be notified to the FCA to be recorded on the register where—

- (a) the event has been recorded on the register published by the FCA on its website; or
- (b) the protected cell company shows that P knew of the event at the material time.

(2) If the material time falls—

- (a) on or before the 15th day after the date that the event was recorded in the register published by the FCA on its website; or
 - (b) where the 15th day was not a working day, on or before the next day that was,
- then the protected cell company is not entitled to rely on the happening of the event as against P if P shows that P was unavoidably prevented from knowing of the event at that time.

Capacity of protected cell company

58.—(1) The validity of an act done by a protected cell company cannot be called into question on the ground of lack of capacity by reason of anything in the enactments and documents specified in paragraph (7) (“the relevant documents”).

(2) A party to a transaction with a protected cell company is not bound to enquire—

- (a) as to whether the transaction is permitted by the relevant documents; or
- (b) as to any limitation on the powers of the directors deriving from the relevant documents.

(3) But sub-paragraph (b) of paragraph (2) does not apply if the party is not dealing in good faith.

(4) In favour of a person dealing in good faith, the following powers are deemed to have been exercised free of any limitation in the relevant documents—

- (a) the powers of the directors to bind the protected cell company or authorise others to do so; and
- (b) the power of the protected cell company in a general meeting to bind the protected cell company or authorise others to do so.

(5) For the purposes of this regulation—

- (a) a person deals with a protected cell company if the person is a party to a transaction or other act to which the protected cell company is a party;
- (b) a person acts in good faith unless—
 - (i) the person has actual knowledge that the protected cell company did not have the power to do the relevant act; or
 - (ii) the person deliberately fails to make enquiries in circumstances where a reasonable and honest person would have done so; and

(c) a person is presumed to have acted in good faith unless the contrary is proved.

(6) This regulation does not affect—

- (a) the right of a person holding a share issued on behalf of the core of the protected cell company to bring proceedings to restrain the protected cell company from doing an act which would be beyond the protected cell company’s capacity (see regulation 76(1));
- (b) the duty on the directors to observe any limitation on their powers; or
- (c) any liability incurred by the directors or any other person by reason of the directors exceeding their powers.

(7) In this regulation, the “relevant documents” are—

- (a) these Regulations;
- (b) the Delegated Act;
- (c) the Implementing Technical Standard;
- (d) rules made under FSMA;
- (e) the protected cell company’s instrument of incorporation;
- (f) written resolutions of the persons holding voting shares issued on behalf of the core of the protected cell company; and
- (g) resolutions passed in general meeting.

CHAPTER 6

Directors

Requirement for a director

59. A protected cell company must have at least one director.

Directors' duties

60.—(1) The provisions of the Companies Act 2006 specified in the first column of Table 2 apply to the directors of a protected cell company as they apply to the directors of a company incorporated under the Companies Act 2006 with the modification specified in the second column of Table 2.

Table 2

<i>Provision of Companies Act 2006</i>	<i>Modification</i>
Sections 170 and 171.	
Section 172.	In subsection (1)(f), the need to act fairly as between members of the company is to be assessed for each part of the protected cell company separately.
Sections 173 to 179, and 182 to 187.	

(2) The directors of a protected cell company also owe a duty to ensure that the protected cell company complies with the provisions of this Part.

(3) Duties owed by each of the directors of the protected cell company are owed to the protected cell company and each part of the protected cell company.

Offence of failing to comply with certain duties

61.—(1) A director of a protected cell company commits an offence if the director fails to ensure that the protected cell company complies with the requirements of—

- (a) regulation 42(1) (keeping of company records);
- (b) regulation 54 (name and other particulars to appear on correspondence); or
- (c) regulation 55 (contracts).

(2) A director of a protected cell company commits an offence if the director knowingly or recklessly causes records kept by the protected cell company in accordance with regulation 42(1) to be inaccurate at any time.

(3) In proceedings for an offence under paragraph (1), it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(4) A person guilty of an offence under paragraph (1) or (2) is liable—

- (a) on conviction on indictment, to a fine; or
- (b) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

Directors' powers

62.—(1) The directors have such powers as—

- (a) are necessary to fulfil their duties; or
- (b) are conferred upon them by the protected cell company's instrument of incorporation.

(2) Those powers extend to each part of the protected cell company, except to the extent the instrument of incorporation provides otherwise.

Appointment

63.—(1) If the protected cell company holds annual general meetings, an appointment of a director of a protected cell company must be made—

- (a) by the protected cell company in an annual general meeting; or
- (b) by the directors to fill any vacancy until the next annual general meeting.

(2) If a protected cell company does not hold annual general meetings, the director (if there is only one director) or directors (if there is more than one director) of the protected cell company may appoint a person as a director.

(3) An act of a director is valid notwithstanding any defect which may be discovered in the director's appointment after the date of the director's appointment.

Removal

64.—(1) The directors of a protected cell company must convene a general meeting without delay if—

- (a) one or more persons holding shares issued on behalf of the core of the protected cell company gives notice to the protected cell company that a meeting must be held;
- (b) the notice is signed by the person or persons giving notice;
- (c) the person or persons giving notice hold at least 10% of the paid-up voting shares issued on behalf of the core of the protected cell company; and
- (d) the notice states that the object of the meeting is to consider the removal of a director.

(2) A protected cell company may remove a director of the protected cell company by—

- (a) a written resolution of the persons holding voting shares issued on behalf of the core of the protected cell company; or
- (b) a resolution passed in a general meeting by a simple majority of the total voting rights of those shareholders who are entitled to vote on the resolution at the meeting.

(3) This regulation does not—

- (a) deprive a person of compensation or damages payable in respect of the termination of the person's appointment as a director; or
- (b) exclude any power to remove a person as a director which exists apart from this regulation.

Notification to the FCA

65.—(1) The protected cell company must notify the FCA if a director is appointed or removed.

(2) Where a director is appointed, the notification must be accompanied by the particulars referred to in regulation 15 for the director.

Invalidity of certain transactions involving directors

66.—(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 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 58(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 58(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 D’s spouse, civil partner, child, stepchild, employee or partner;
- (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.

Inspection of directors’ service contracts

67.—(1) Where a protected cell company enters into a written contract of service with a director, the protected cell company must keep a copy of that contract and any variation to that contract.

(2) Where a protected cell company enters into an oral contract of service with a director, the protected cell company must keep a written memorandum setting out the terms of the contract and any variation to those terms.

(3) All copies and memoranda kept by a protected cell company in accordance with paragraph (1) or (2) must be kept at the same place, which must be either—

- (a) the protected cell company's head office; or
- (b) a place that—
 - (i) is situated in the part of the United Kingdom in which the company is registered; and
 - (ii) has been notified to the FCA as being the protected cell company's alternative inspection location.

(4) Every copy and memorandum kept in accordance with paragraph (1) or (2) must be open to inspection by a person holding shares issued on behalf of the core of the protected cell company.

(5) If any such inspection is refused, the court may by order compel an immediate inspection of the copy or memorandum concerned.

(6) Every copy and memorandum kept in accordance with paragraph (1) or (2) must—

- (a) be made available for inspection by the protected cell company at the protected cell company's annual general meeting; or
- (b) if the protected cell company does not hold annual general meetings, sent on request to any person holding shares issued on behalf of the core of the protected cell company within a period of 10 days beginning with receipt of the request.

CHAPTER 7

Shares and shareholders

SECTION 1

Shares

Meaning of “class of shares”

68. In this Part, shares are of one class if the rights attached to them are in all respects uniform.

Types of shares

69.—(1) A protected cell company may issue voting shares on behalf of the core of the protected cell company.

(2) A protected cell company may issue non-voting shares on behalf of a part of the protected cell company.

(3) A protected cell company may issue more than one class of shares on behalf of a part of the protected cell company.

(4) A protected cell company may not issue shares other than in the ways described in paragraphs (1) to (3).

Nature of shares

70.—(1) Only a share issued on behalf of the core of a protected cell company is to be treated as a share in the protected cell company.

(2) A share issued on behalf of a cell of a protected cell company is to be treated as a share in that cell.

(3) A share is personal property (or, in Scotland, moveable property) and is not in the nature of real estate (or heritage).

Rights attaching to shares

71.—(1) The rights which attach to voting shares or a class of voting shares issued on behalf of the core are—

- (a) the right, in accordance with the instrument of incorporation, to participate in or receive profits or income which are payable by the protected cell company on behalf of the core;
- (b) the right, in accordance with the instrument of incorporation, to vote on a written resolution of shareholders (or shareholders of that class) or at any general meeting (or any relevant class meeting); and
- (c) such other rights as may be provided for, in relation to shares of that class, in the protected cell company's instrument of incorporation.

(2) The rights which attach to a non-voting share or a class of non-voting shares are such rights as may be provided for, in relation to non-voting shares or non-voting shares of that class, in the protected cell company's instrument of incorporation.

(3) A share issued on behalf of a part of a protected cell company may not confer any rights in relation to another part of the protected cell company or the property held by the protected cell company on behalf of that other part.

Changes to rights attaching to shares

72. A right attaching to a share may only be varied with the consent of the person holding the share.

Amendments to the instrument of incorporation

73.—(1) A protected cell company may only amend its instrument of incorporation if the proposed amendment is approved—

- (a) by written resolution of the persons holding voting shares issued on behalf of the core of the protected cell company; or
- (b) by a resolution passed in a general meeting by a simple majority of the total voting rights of those shareholders who are entitled to vote on the resolution at the meeting.

(2) But paragraph (1) does not prevent the protected cell company's instrument of incorporation requiring a higher majority or unanimity.

Prohibition on bearer shares

74.—(1) A protected cell company may not issue a bearer share.

(2) A bearer share is a share evidenced by a share certificate, or by any other documentary evidence of title for which provision is made in the protected cell company's instrument of incorporation, which indicates—

- (a) that the holder of the document is entitled to the shares specified in it; and
- (b) that no entry will be made on the register of shareholders identifying the holder of those shares.

Compensation

75. A person is not debarred from obtaining damages or other compensation from a protected cell company by reason only of holding or having held shares issued on behalf of a part of the protected cell company.

Restraint and ratification by shareholders

76.—(1) A person holding voting shares issued on behalf of the core of a protected cell company may bring proceedings to restrain the protected cell company from doing an act which would, but for regulation 58(1), be beyond the protected cell company's capacity.

(2) But no proceedings may be brought under paragraph (1) in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the protected cell company.

(3) The following action by the directors of a protected cell company may only be ratified by a resolution of persons holding voting shares issued on behalf of the core of the protected cell company—

- (a) action which would, but for regulation 58(1), be beyond the protected cell company's capacity;
- (b) action which is within the protected cell company's capacity but is beyond the powers of the directors to bind the protected cell company or authorise others to do so.

(4) A resolution ratifying such action does not affect any liability incurred by the directors or any other person, and relief from any such liability requires agreement by a separate resolution of the persons holding voting shares issued on behalf of the core of the protected cell company.

Contravention of regulation 69(4) or 71(3)

77.—(1) A provision, whether contained in the instrument of incorporation, a contract or otherwise, is void to the extent that it is inconsistent with regulation 69(4) or 71(3).

(2) An application of assets, or agreement to apply assets, in contravention of regulation 71(3) is void.

SECTION 2

Issue, allotment and alteration of share capital

Nominal value

78.—(1) A share issued on behalf of a part of a protected cell company must have a fixed nominal value.

(2) An allotment of a share that does not have a fixed nominal value is void.

(3) Shares issued on behalf of a part of a protected cell company may be denominated in any currency and different classes of shares may be denominated in different currencies.

Numbering of shares

79.—(1) Each share issued on behalf of a part of protected cell company must be distinguished by its appropriate number, except in the following circumstances.

(2) A share issued on behalf of a part of a protected cell company need not have a distinguishing number provided—

- (a) all the shares issued on behalf of that part are fully paid up and rank *pari passu* for all purposes; or
- (b) all the shares issued on behalf of that part and belonging to the same class as that share are fully paid up and rank *pari passu* for all purposes.

Power of directors to allot shares

80.—(1) The directors of a protected cell company may exercise any power of the protected cell company to—

- (a) allot shares issued on behalf of a part of the protected cell company; or
- (b) grant rights to subscribe for or to convert any security issued into such shares.

(2) Paragraph (1) applies except to the extent that the protected cell company's instrument of incorporation provides otherwise.

(3) A share may not be allotted at a discount to its nominal value.

(4) If a share issued on behalf of a part of a protected cell company is allotted in contravention of paragraph (3), the allottee is liable to pay to the protected cell company on behalf of that part an amount equal to the amount of the discount.

Sub-division or consolidation of shares

81.—(1) A protected cell company may—

- (a) sub-divide all or any of the shares issued on behalf of a part of the protected cell company into shares of a smaller nominal amount than the existing shares issued on behalf of that part; or
- (b) consolidate and divide all or any of the shares issued on behalf of a part of the protected cell company into shares of a larger nominal amount than the existing shares issued on behalf of that part.

(2) In any sub-division, or consolidation and division, of shares, the proportion between the amount paid and the amount (if any) unpaid on each resulting share must be the same as it was in the case of the share from which that share is derived.

(3) A protected cell company may only exercise a power under paragraph (1) if—

- (a) the protected cell company's instrument of incorporation does not contain provision prohibiting the sub-division, or consolidation and division; and
- (b) the persons holding the shares affected by the sub-division, or consolidation and division, consent.

Acquisition and redemption of shares issued by a cell

82.—(1) Where a protected cell company issues a share on behalf of a cell, the protected cell company may not redeem or acquire the share on behalf of the core or any other cell.

(2) A share issued on behalf of a cell of a protected cell company may only be redeemed or acquired by the protected cell company on behalf of that cell if—

- (a) Condition A is satisfied; and
- (b) either Condition B or Condition C is satisfied.

(3) Condition A is that the redemption or acquisition is funded by assets held on behalf of the cell.

(4) Condition B is that—

- (a) the protected cell company is assuming a risk from an undertaking on behalf of the cell;
- (b) the redemption or acquisition is in accordance with the agreement made between that undertaking and protected cell company on behalf of the cell; and
- (c) the protected cell company will satisfy the fully funded requirement in relation to the cell after the redemption or acquisition.

(5) Condition C is that—

- (a) the protected cell company previously assumed a risk or risks from an undertaking, or risks from a succession of undertakings, on behalf of the cell;
- (b) the protected cell company is no longer assuming that risk or those risks; and
- (c) the protected cell company has incurred no liability (including a contingent or prospective liability) to the undertaking or undertakings on behalf of the cell.

(6) The redemption or acquisition of a share by a protected cell company in breach of paragraph (1) or (2) is void.

(7) Where a protected cell company redeems or acquires a share issued on behalf of a cell, the protected cell company must cancel that share.

Acquisition and redemption of shares issued by the core

83.—(1) Where a protected cell company issues a share on behalf of the core, the protected cell company—

- (a) may not redeem or acquire the share on behalf of a cell; and

- (b) may only redeem or acquire the share on behalf of the core if the protected cell company has no cells.
- (2) The redemption or acquisition of a share by a protected cell company in breach of paragraph (1) is void.
- (3) Where a protected cell company redeems or acquires a share issued on behalf of the core, the protected cell company must cancel that share.

Penalty for contravention of this Section

84.—(1) If a protected cell company contravenes any of the provisions of this Section it commits an offence.

- (2) A person guilty of an offence under this regulation is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

SECTION 3

Share certificates

Share certificates

85.—(1) A protected cell company must prepare share certificates in accordance with this regulation except where—

- (a) the protected cell company’s instrument of incorporation states that share certificates will not be issued and contains provisions as to other procedures for evidencing a person’s entitlement to shares; or
- (b) a person has indicated to the protected cell company in writing that the person does not wish to receive a share certificate.

(2) A protected cell company must prepare share certificates in respect of—

- (a) any new shares issued on behalf of the core or a cell;
- (b) shares transferred by a transferor to the transferee;
- (c) shares retained by a person transferring part of a shareholding to a transferee;
- (d) shares for which a certificate has already been issued but where it appears to the protected cell company that the share certificate needs to be replaced as a result of it having been lost, stolen, destroyed or having become damaged or worn out.

(3) A protected cell company must exercise due diligence and take all reasonable steps to ensure that share certificates prepared in accordance with paragraph (1) are ready for delivery as soon as reasonably practicable.

(4) Certificates need to be prepared in the circumstances referred to in sub-paragraphs (c) and (d) of paragraph (2) only if the protected cell company has received—

- (a) a request for a new certificate;
- (b) the old certificate (if there is one);
- (c) such indemnity as the protected cell company may require; and
- (d) such reasonable sum as the protected cell company may require in respect of the expenses incurred by it in complying with the request.

Contents of share certificate

86.—(1) Each share certificate prepared by a protected cell company must state—

- (a) whether the shares are issued on behalf of the core or a cell of the protected cell company;
- (b) if the shares are issued on behalf of a cell, the name or number of the cell;
- (c) whether the shares are voting shares or non-voting shares;
- (d) the number of shares to which title is evidenced by the share certificate;
- (e) where the share belongs to a particular class of shares, the class of shares to which title is evidenced by the share certificate; and
- (f) the name of the holder.

(2) Where, in respect of any class of shares, the rights that attach to shares of that class are expressed in two denominations, the reference in paragraph (1)(d) to the number of shares is a reference to—

$$N + \frac{n}{p}$$

where—

N is the relevant number of the larger denomination shares of the class in question;

n is the relevant number of the smaller denomination shares of the class in question;

p is the number of smaller denomination shares of the class in question that are equivalent to one larger denomination share of that class.

Evidence of title

87. A share certificate specifying any shares held by a person is, unless the contrary is shown, sufficient evidence of that person's title to the shares provided the share certificate is—

- (a) issued under the common seal of the protected cell company;
- (b) in England and Wales, and Northern Ireland, authenticated in accordance with regulation 52; or
- (c) in Scotland, subscribed by the protected cell company in accordance with the Requirements of Writing (Scotland) Act 1995.

SECTION 4

Register of shareholders

The register of shareholders

88.—(1) A protected cell company must keep a register of persons who hold shares issued by the protected cell company.

(2) The register of shareholders is, unless the contrary is shown, evidence of any matter which is recorded in the register in accordance with this Part.

(3) A protected cell company must exercise all due diligence and take all reasonable steps to ensure that the information contained in the register is complete and up to date.

Contents of the register

89.—(1) The register must be divided into separate parts for shares issued on behalf of the core and each of the cells of the protected cell company.

(2) A protected cell company must enter into the appropriate part of the register the names of all the persons holding shares issued on behalf of the core and each of the cells of the protected cell company.

(3) Against each entry of a person's name into a part of the register, the protected cell company must indicate—

- (a) the person's address;
 - (b) the date the entry was made in the register; and
 - (c) in relation to the part of the register in question, a statement of the aggregate number of shares held by that person, distinguishing the share by its number (if it has one) and, if the share belongs to a particular class of shares, by its class.
- (4) Where the aggregate number of shares includes shares to which there are attached rights expressed in two denominations, the aggregate number of shares is to be taken to be—

$$N + \frac{n}{p}$$

where—

N is the relevant number of larger denomination shares of that class;

n is the relevant number of smaller domination shares of that class; and

p is the number of smaller denomination shares of that class that are equivalent to one larger denomination share of that class.

- (5) Where all the shares issued on behalf of the core of a protected cell company are held by one person, then—
- (a) that fact must be recorded in the register; and
 - (b) the FCA must be notified of that fact.
- (6) In the case of a protected cell company registered in England and Wales, or Northern Ireland, notice given to the protected cell company of any trust of shares (whether express, implied or constructive) is not to be recorded on the register.

Location

90. The register of shareholders of a protected cell company must be kept available for inspection—

- (a) at its head office; or
- (b) where an alternative inspection location has been notified to the FCA under regulation 67(3)(b), at the alternative inspection location.

Index

91.—(1) A protected cell company must keep an index of the names of the persons holding shares issued by the protected cell company.

(2) The index must contain cross-references to all of the entries of that person's name in the register.

(3) The index must be kept at the same place as the register.

(4) Where a protected cell company amends the register, the index must be updated within a period of 14 days beginning with the day the register is amended.

Inspection

92.—(1) The register of shareholders and the index must be open to the inspection of any person holding a share issued by a protected cell company.

(2) A protected cell company must, on the request of a person holding a share issued by the protected cell company, send the shareholder a copy of all of the entries in the register which relate to that shareholder.

(3) If the copy can be sent electronically, the copy must be sent free of charge.

(4) If an inspection required under this regulation is refused, or a copy so required is not sent, the court may by order compel an immediate inspection of the register and index, or direct that the copy required by the shareholder be sent.

Power of court to rectify the register

93.—(1) An application to the court may be made under this regulation if—

- (a) the name of a person is, without sufficient cause, entered into or omitted from a part of the register of shareholders;
- (b) default is made as to the details contained in any entry on the register in respect of a person's holding of shares;
- (c) default is made or unnecessary delay takes place in amending the register so as to reflect the fact that a person has ceased to be a shareholder.

(2) An application may be made by the protected cell company, a shareholder or by the person aggrieved.

(3) On such an application, the court may—

- (a) refuse the application;
- (b) order rectification of the register; or
- (c) decide any question necessary or expedient to be decided for rectification of the register of shareholders including, in particular, any question relating to the right of a person who is a party to the application to have the person's name entered in or omitted from the register.

SECTION 5

Share transfers

General

94. The instrument of incorporation of a protected cell company may contain provision as to share transfers in respect of any matter for which provision is not made by this Part.

Meaning of “transfer documents”

95.—(1) In this Section, “transfer documents” means—

- (a) one or more of the documents falling within Category 1;
- (b) one or more of the documents falling within Category 2; and
- (c) such other evidence (if any) as the protected cell company may require to prove the right of the transferor to transfer the shares in question.

(2) The following documents fall within Category 1—

- (a) a stock transfer form within the meaning of the Stock Transfer Act 1963 or the Stock Transfer (Northern Ireland) Act 1963 which complies with the requirements of the relevant Act as to the execution and contents of a stock transfer;
- (b) an order made by the court under regulation 169(1) for the transfer of shares;
- (c) any other instrument of transfer as is authorised by, and completed and executed in accordance with, any requirement in the protected cell company's instrument of incorporation;

(3) The following documents fall within Category 2—

- (a) a share certificate relating to the shares in question;
- (b) if the shares in question fall within sub-paragraph (a) or (b) of regulation 85(1), such evidence of title to those shares as is required by the protected cell company's instrument of incorporation.

Transfers

- 96.**—(1) A protected cell company may not register a transfer of shares unless—
- (a) the transfer documents relating to the transfer have been delivered to the protected cell company; or
 - (b) title to the shares has been transmitted by operation of law.
- (2) Where transfer documents relating to a share transfer are delivered to a protected cell company, the protected cell company must—
- (a) register the transfer; and
 - (b) amend the register of shareholders and index accordingly.
- (3) But a protected cell company may refuse to register a transfer of shares where—
- (a) a person holding shares issued on behalf of a part of the protected cell company is required to hold more than a specified number of shares issued on behalf of that part and the transfer would result in the transferor breaching that requirement; or
 - (b) the transfer would contravene a provision of the protected cell company’s instrument of incorporation or a provision of law (including any law that is for the time being in force in a country or territory outside of the United Kingdom).
- (4) A protected cell company—
- (a) may only refuse to register a transfer pursuant to sub-paragraph (a) or (b) of paragraph (3) during the period of 21 days commencing with the date the transfer documents are delivered to the protected cell company; and
 - (b) must give the transferee written notice of a refusal to register a transfer of shares, unless the giving of such a notice would contravene a provision of law (including any law that is for the time being in force in a country or territory outside of the United Kingdom).
- (5) A transfer of shares by the personal representative of a deceased person is valid as if the personal representative had been the holder of the deceased person’s shares at the time of the execution of the instrument of transfer.

Certification of transfer

- 97.**—(1) Where, in respect of a transfer of shares, a protected cell company certifies that it has received the transfer documents, that certification is to be taken as a representation by the protected cell company to any person acting in reliance on the certification that there has been produced to the protected cell company sufficient evidence to show that the transferor has title to the shares in the absence of proof to the contrary.
- (2) A certification is made by a protected cell company if the instrument of transfer—
- (a) bears the words “ certificate lodged” or words to the like effect; and
 - (b) is signed by a person acting under authority (whether express or implied) given by the protected cell company to issue and sign such certificates.
- (3) But a certificate is not to be taken as a representation that the transferor has any title to the shares in question.
- (4) Where a person acts in reliance on a false certification by a protected cell company which is made negligently or fraudulently, the protected cell company is liable to pay that person out of assets held on behalf of the core any damages that the person has sustained.

Joint shareholdings

- 98.** On the death of any one of the joint holders of a share, the survivors are to be the only persons recognised by the protected cell company as having any title to or any interest in those shares.

SECTION 6
Distributions

Meaning of “distribution”

99. In regulations 100 and 101, “distribution” means every description of a distribution of an asset to a shareholder, except for the redemption or acquisition of shares held by that shareholder in accordance with regulation 82 or 83.

Distributions to holders of shares in a cell

100.—(1) A protected cell company may only make a distribution to a person holding a share issued on behalf of a cell where—

- (a) Condition A is satisfied; and
 - (b) either Condition B or Condition C is satisfied.
- (2) Condition A is that the distribution is made from assets held on behalf of the cell.
- (3) Condition B is that—
- (a) the protected cell company is assuming a risk from an undertaking on behalf of the cell;
 - (b) the distribution is in accordance with the agreement made between that undertaking and the protected cell company on behalf of the cell; and
 - (c) the protected cell company will satisfy the fully funded requirement in relation to the cell after the distribution.
- (4) Condition C is that—
- (a) the protected cell company has previously assumed a risk or risks from an undertaking, or risks from a succession of undertakings, on behalf of the cell;
 - (b) the protected cell company is no longer assuming that risk or those risks; and
 - (c) the protected cell company has incurred no liability (including a contingent or prospective liability) to the undertaking or undertakings on behalf of the cell.
- (5) A distribution in contravention of paragraph (1) is void.

Distributions to holders of shares in the core

101.—(1) A protected cell company may not distribute an asset held on behalf of a cell to a person holding a share issued on behalf of the core.

(2) A protected cell company may only distribute an asset held on behalf of the core to a person holding a share issued on behalf of the core if the protected cell company has no cells.

(3) A distribution in breach of paragraph (1) or (2) is void.

SECTION 7
Annual General Meetings

Requirement to hold an annual general meeting

102.—(1) A protected cell company must hold annual general meetings in accordance with this regulation unless the protected cell company elects to dispense with annual general meetings in accordance with regulation 103.

(2) A protected cell company must hold its first annual general meeting within a period of 18 months beginning with the date it is first authorised to carry out the activity specified in article 13A (transformer vehicles: insurance risk transformation) of the Regulated Activities Order.

(3) A protected cell company must hold an annual general meeting in each calendar year after the year in which it holds its first annual general meeting, provided no more than 15 months elapse between the date of one annual general meeting and the date of the next annual general meeting.

Election to dispense with annual general meetings

103.—(1) The directors of a protected cell company may elect to dispense with the holding of annual general meetings by giving 60 days' written notice to all persons holding shares issued on behalf of the core of the protected cell company.

(2) Where the directors of a protected cell company elect to dispense with annual general meetings, they may terminate that election by giving written notice to all persons holding shares issued on behalf of the core of the protected cell company.

(3) An election has effect for the year in which it is made and all subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

(4) Where an election is terminated—

- (a) the protected cell company must hold an annual general meeting within a period of 12 months beginning with the date on which the notice of termination is given; and
- (b) paragraph (3) of regulation 102 applies with the reference to “first annual meeting” being treated as a reference to the annual general meeting held in accordance with sub-paragraph (a).

SECTION 8

Further requirements of the first company law directive

Contracts between the protected cell company and shareholders

104. A contract between a protected cell company and another person must be in writing or recorded in the minutes of the protected cell company where—

- (a) that person holds all the shares issued on behalf of the core of the protected cell company; and
- (b) the contract does not relate to the current business of the protected cell company or was concluded under unusual conditions.

Information on capital subscribed

105.—(1) If the protected cell company's instrument of incorporation specifies an amount of authorised capital in relation to any part of the protected cell company, the protected cell company must notify the FCA of the amount of capital subscribed in relation to that part, unless an increase in the capital subscribed necessitates an amendment to the instrument of incorporation.

(2) The information referred to in paragraph (1) must be provided at least once a year.

CHAPTER 8

Shareholder resolutions

Application

106. 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

107.—(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 109 (written resolutions); or
- (b) at a general meeting (see regulations 110 to 116).

(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; and
- (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.

Shareholders acting informally (the *Duomatic* principle)

108.—(1) An 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

109.—(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

110.—(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

111.—(1) Directors required under regulation 110(3) to call a general meeting must—

- (a) call the meeting within a period of 21 days beginning with the date on which they become subject to the requirement; and
- (b) hold the meeting within 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

112.—(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 1985).
- (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—
- (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

113.—(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

114.—(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 117 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

115.—(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

116.—(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

117.—(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

118.—(1) The records referred to in regulation 117 relating to the previous ten years must be kept available for inspection—

- (a) at the protected cell company's registered office; or
- (b) at the alternative inspection location referred to in regulation 67(3).

(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).

CHAPTER 9

Property of the protected cell company

Transfer of assets between cells

119.—(1) Where a protected cell company holds an asset on behalf of a cell, the protected cell company may only make arrangements to hold that asset on behalf of another cell if the arrangements are made pursuant to—

- (a) a contract which the protected cell company had entered into on behalf of the cells in question;
 - (b) regulation 43 (misapplied property); or
 - (c) an order of the court.
- (2) Arrangements made in contravention of paragraph (1) are void.

Transfer of assets from a cell to core

120.—(1) Where a protected cell company holds an asset on behalf of a cell, it may only make arrangements to hold that asset on behalf of the core where—

- (a) the arrangements are made pursuant to a contract which the protected cell company has entered into on behalf of the cell and the core;
 - (b) the arrangements are made pursuant to regulation 43;
 - (c) the asset vests in the core in accordance with regulation 171(1)(b) (dissolution of a cell: effect on property and liabilities);
 - (d) the following conditions are satisfied—
 - (i) the protected cell company previously assumed a risk or risks from an undertaking, or risks from a succession of undertakings, on behalf of the cell;
 - (ii) the protected cell company is no longer assuming that risk or those risks;
 - (iii) the protected cell company has incurred no liability (including a contingent or prospective liability) to the undertaking or undertakings on behalf of the cell; and
 - (iv) all the investors holding investments issued on behalf of the cell have been paid in full; or
 - (e) the arrangements are made pursuant to an order of the court.
- (2) Arrangements made in contravention of paragraph (1) are void.

Prohibition on holding shares in parent or subsidiary

121.—(1) A protected cell company may not hold shares in a company which is—

- (a) the protected cell company's holding company; or
- (b) a subsidiary of the protected cell company.

(2) An allotment or transfer of shares issued on behalf of the core or a cell of a protected cell company to a subsidiary of a protected cell company is void.

CHAPTER 10

Debentures (debt securities)

Scope

122. This Chapter applies to debentures issued on behalf of a cell of a protected cell company.

Transfers by a cell to a debenture holder

123.—(1) A protected cell company may only transfer property held by the protected cell company to the holder of a debenture issued on behalf of the cell where—

- (a) Condition A is satisfied; and
 - (b) Condition B or Condition C is satisfied.
- (2) Condition A is that the property is held by the protected cell company on behalf of the cell.
- (3) Condition B is that—
- (a) the protected cell company is assuming a risk from an undertaking on behalf of the cell;
 - (b) the transfer is in accordance with the agreement made between that undertaking and protected cell company on behalf of the cell; and
 - (c) the protected cell company will satisfy the fully funded requirement in relation to the cell after the transfer.
- (4) Condition C is that—
- (a) the protected cell company previously assumed a risk or risks from an undertaking, or risks from a succession of undertakings, on behalf of the cell;
 - (b) the protected cell company is no longer assuming that risk or those risks; and
 - (c) the protected cell company has incurred no liability (including a contingent or prospective liability) to the undertaking or undertakings on behalf of the cell.
- (5) A transfer in contravention of paragraph (1) is void.

Perpetual debentures

124. A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are made redeemable only—

- (a) on the happening of a contingency (however remote); or
 - (b) on the expiration of a period (however long),
- any rule of equity notwithstanding.

Enforcement of contract to subscribe for debentures

125. A contract on behalf of a cell of a protected cell company to take up and pay for debentures may be enforced by an order for specific performance.

Debentures to bearer (Scotland)

126. Notwithstanding anything in the statute of the Scots Parliament of 1696, chapter 25, debentures to bearer issued in Scotland are valid and binding according to their terms.

Liability of trustees of debentures

127.—(1) A provision contained in—

- (a) a trust deed for securing an issue of debentures; or
- (b) any contract with the holders of debentures, secured by a trust deed,

is void insofar as it would have the effect of exempting a trustee (“T”) of the deed from, or indemnifying T against, liability for breach of trust where T fails to show the degree of care and diligence required of T as trustee, having regard to the provisions of the trust deed conferring on T any powers, authorities or discretions.

(2) Paragraph (1) does not invalidate—

- (a) a release otherwise validly given in respect of anything done or omitted to be done by T before the giving of the release;
- (b) any provision enabling such a release to be given—
 - (i) on being agreed to by a majority of not less than 75% in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

CHAPTER 11

Public offers of securities

Meaning of “securities”

128. In this Chapter, “securities” means shares or debentures.

Prohibition on offering securities to the public

129.—(1) A protected cell company must not—

- (a) offer to the public any securities issued on behalf of any part of the protected cell company; or
- (b) allot or agree to allot any securities issued on behalf of any part of the protected cell company with a view to their being offered to the public.

(2) Unless the contrary is proved, an allotment or agreement to allot securities is presumed to be made with a view to their being offered to the public if an offer of the securities (or any of them) to the public is made—

- (a) within a period of six months beginning with the date of the allotment or agreement to allot; or
- (b) before the receipt by the protected cell company of the whole of the consideration to be received by it in respect of the securities.

Meaning of “offer to the public”

130.—(1) This regulation explains what is meant in regulation 129 by an offer of securities to the public.

(2) An offer to the public includes an offer to any section of the public, however selected.

(3) An offer is not to be regarded as an offer to the public if—

- (a) it is an offer made solely to qualified investors within the meaning given by section 86(7) of FSMA and it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in securities issued by the protected cell company becoming available to persons other than those receiving the offer; or
- (b) it is a private concern of the person receiving it and the person making it.

(4) An offer is to be regarded (unless the contrary is proved) as being a private concern of the person receiving it and the person making it if it is made to a person already connected with the protected cell company and, where it is made on terms allowing that person to renounce the person’s rights, the rights may only be renounced in favour of another person already connected with the protected cell company.

(5) For the purposes of this regulation, “person already connected with the protected cell company” means—

- (a) a person holding securities issued on behalf of the part of the protected cell company to which the offer relates; or
- (b) a trustee (acting in the capacity as trustee) of a trust of which the principal beneficiary is a person within sub-paragraph (a).

Restraining order

131.—(1) The court may make an order under this regulation if it appears to the court on an application under this regulation that a protected cell company is proposing to act in contravention of regulation 129.

(2) An order under this regulation is an order restraining the protected cell company from contravening that regulation.

(3) An application for an order under this regulation may be made by—

- (a) the FCA;
- (b) a person holding securities issued by the protected cell company; or
- (c) a creditor of the protected cell company.

Remedial orders

132.—(1) A “remedial order” is an order for the purpose of putting a person affected by anything done in contravention of regulation 129 in the position the person would have been in if it had not been done.

(2) The court may make a remedial order under this regulation if it appears to the court on an application under this regulation that a protected cell company has acted in contravention of regulation 129.

(3) The following provisions are without prejudice to the generality of the power to make a remedial order.

(4) Where a protected cell company has—

- (a) allotted securities pursuant to an offer to the public; or
- (b) allotted or agreed to allot securities with a view to their being offered to the public,

a remedial order may require any person knowingly concerned in the contravention of regulation 129 to offer to purchase any of those securities at such price and on such other terms as the court thinks fit.

(5) A remedial order may be made—

- (a) against any person knowingly concerned in the contravention, whether or not the person is an officer of the protected cell company;
- (b) notwithstanding anything in the protected cell company’s instrument of incorporation (which includes, for this purpose, the terms on which any securities are allotted or held);
- (c) whether or not the holder of the securities subject to the order is the person to whom the protected cell company allotted or agreed to allot them.

(6) Where a remedial order is made in respect of a part of a protected cell company, the court may provide for the reduction of that part’s capital accordingly.

Validity of allotment etc not affected

133. Nothing in this Chapter affects the validity of any allotment or sale of securities or of any agreement to allot or sell securities.

CHAPTER 12
Reports and accounts

Interpretation: accounting reference date, accounting periods, accounts and reports

134.—(1) A protected cell company has accounting reference dates for each year after the year in which it is incorporated.

(2) In each year, the accounting reference date is the anniversary of the date of the protected cell company's incorporation.

(3) The first annual accounting period of a protected cell company begins on the date of its incorporation and ends on its first accounting reference date.

(4) Each subsequent annual accounting period begins immediately after the end of the preceding annual accounting period and ends on the next accounting reference date.

(5) An annual report is a report for an annual accounting period of a protected cell company.

Reports

135.—(1) The directors of a protected cell company must prepare annual reports for the protected cell company.

(2) A report must state—

- (a) the names of the persons who were directors at any time during the annual accounting period to which the report relates;
- (b) the amount (if any) which the directors recommend should be paid by way of dividend on the shares issued on behalf of the core;
- (c) that, in the case of each person who was a director at the time the report was approved—
 - (i) so far as that person is aware, there is no relevant audit information of which the protected cell company's auditor is unaware; and
 - (ii) the person has taken all the steps that the person ought to have taken as a director in order to become aware of any relevant audit information and to establish that the protected cell company's auditor is aware of that information.

(3) The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 apply to the preparation of the report as they apply to the preparation of a report by a company (within the meaning of those Regulations) [with any necessary modifications/with the following modifications—Tbc]

(4) "Relevant audit information" means information needed by the protected cell company's auditor in connection with preparing the auditor's report.

(5) A director ("D") is regarded as having taken all the steps that D ought to have taken as a director in order to do the things mentioned in paragraph (2)(c)(ii) if D has—

- (a) made such enquiries of D's fellow directors and of the protected cell company's auditors for that purpose; and
- (b) taken such other steps (if any) for that purpose,

as are required by D's duty as a director of the protected cell company to exercise reasonable care, skill and diligence.

(6) Where a report containing the statement required by this regulation is approved but the statement is false, every director of the protected cell company who—

- (a) knew that the statement was false, or was reckless as to whether it was false; and
- (b) failed to take reasonable steps to prevent the report from being approved,

commits an offence.

(7) A person guilty of an offence under paragraph (6) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both;
- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding twelve months, or to a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or both.

Accounts

136.—(1) An annual report must, in respect of the annual accounting period to which it relates, contain the accounts of the protected cell company.

(2) The directors of a protected cell company must ensure that the accounts give a true and fair view of the assets, liabilities, financial position and profit and loss of the protected cell company.

(3) The accounts for the protected cell company must be prepared in accordance with either of the following accounting frameworks—

- (a) the UK accounting framework set out in regulation 137; or
- (b) the international accounting standards adopted from time to time by the European Commission in accordance with EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

(4) The accounts must state which accounting framework is used.

(5) The accounting framework chosen for the accounts for the first annual accounting period must be used for the accounts for all subsequent annual accounting periods.

(6) The directors must prepare notes to the accounts.

(7) The notes must provide information on—

- (a) the nature and business purpose of any off-balance sheet arrangements;
- (b) the financial impact of any off-balance sheet arrangements;
- (c) directors' remuneration;
- (d) advances and credits granted by the core to a director; and
- (e) guarantees of any kind entered into by a protected cell company on behalf of a director.

(8) The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 apply to the preparation of the notes to the accounts in accordance with paragraphs (6) and (7) as they apply to the preparation of the notes to the accounts of a company (within the meaning of those Regulations) [with any necessary modifications/with the following modifications—Tbc].

(9) A copy of the auditor's report must form part of the annual report.

The UK accounting framework

137.—(1) This regulation specifies the UK accounting framework which may be used to prepare the accounts of a protected cell company (see regulation 136(3)).

(2) The accounts must state—

- (a) the name of the protected cell company;
- (b) the registered number of the protected cell company;
- (c) that the protected cell company is a protected cell company incorporated under the Risk Transformation Regulations 2017; and

- (d) whether the registered office is situated in England and Wales (or Wales), Scotland or Northern Ireland; and
 - (e) whether any part of the protected cell company is in administration or liquidation.
- (3) The accounts must—
- (a) comprise a balance sheet and a profit and loss account for the protected cell company;
 - (b) in respect of the balance sheet, distinguish the assets and liabilities held for each part of the protected cell company from the assets and liabilities held for all the other parts; and
 - (c) in respect of the profit and loss account, distinguish the profit or loss of each part of the protected cell company from the profit or loss of all the other parts.
- (4) The balance sheet must give a true and fair view of the state of affairs of the protected cell company as at the last day of the annual accounting period to which the accounts relate.
- (5) A profit and loss account must give a true and fair view of the profit or loss of the protected cell company as at the last day of the annual accounting period of the protected cell company.
- (6) The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 apply to the preparation of accounts in respect of a protected cell company as they apply to the preparation of the accounts of a company (within the meaning of those Regulations) [with any necessary modifications/with the following modifications Tbc].
- (7) If compliance with the requirements of paragraphs (2) to (6) is insufficient to comply with the requirement to give a true and fair view, the necessary additional information must be given in the accounts or a note to the accounts.
- (8) If, in special circumstances, compliance with paragraphs (2) to (6) is inconsistent with the requirement to give a true and fair view, the directors must depart from those provisions to the extent necessary to give a true and fair view.

Approval and signing of reports and accounts

138.—(1) A protected cell company’s annual report must be approved by the board of directors and signed on behalf of the board by a director of the protected cell company.

(2) If the annual report does not comply with the requirements of these Regulations, every director of the protected cell company who—

- (a) knew that they did not comply, or was reckless as to whether they complied; and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report and accounts from being approved,

commits an offence.

(3) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

Publication of report and accounts

139.—(1) A protected cell company must send a copy of the annual report to—

- (a) every person holding shares issued on behalf of the core of the protected cell company;
- (b) the FCA; and
- (c) the PRA.

(2) The matters referred to in paragraph (1) must be done before the expiry of a period of 9 months beginning with the accounting reference date falling at the end of the annual accounting period to which the report and accounts relate.

Default in sending out copies of report and accounts: offences

- 140.**—(1) If default is made in complying with regulation 139, an offence is committed by—
- (a) the protected cell company; and
 - (b) every officer of the protected cell company who is in default.
- (2) A person guilty of an offence under this regulation is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

Revision of the report and accounts

- 141.**—(1) If it appears to the directors of a protected cell company that a report or accounts does not comply with the requirements of regulations 135 to 137 they may prepare a revised report or accounts.
- (2) The revisions must be confined to—
- (a) the correction of anything in the annual report which did not comply with regulations 135 to 137; and
 - (b) the making of any necessary consequential amendments.

CHAPTER 13

Auditors

Eligibility

- 142.**—(1) No person may act as an auditor of a protected cell company if the person is ineligible for appointment to that office.
- (2) A person is ineligible for appointment as an auditor of a protected cell company if—
- (a) the person is not eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006; or
 - (b) the person is—
 - (i) an officer or employee of the protected cell company;
 - (ii) a partner of the protected cell company; or
 - (iii) a partnership of which the protected cell company is a partner.
- (3) For the purposes of paragraph (2) an auditor of a protected cell company is not to be regarded as an officer or an employee of the protected cell company.
- (4) If an auditor of a protected cell company becomes ineligible for appointment to the office, the auditor must—
- (a) vacate that office; and
 - (b) give notice in writing to the protected cell company that the auditor has vacated the office by reason of ineligibility.

Acting whilst ineligible

- 143.**—(1) A person who acts as an auditor of a protected cell company whilst ineligible for appointment to that office or who fails to give the notice required by regulation 142(4) is guilty of an offence and liable—
- (a) on conviction on indictment, to a fine;

- (b) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

(2) In the case of continued contravention, the person is liable on a second or subsequent summary conviction to a fine not exceeding £100 in respect of each day on which the contravention is continued.

(3) In proceedings against a person for an offence under this regulation, it is a defence for the person to show that the person did not know and had no reason to believe that the person was, or had become, ineligible for appointment.

Requirement for audited accounts

144. A protected cell company's accounts for an annual accounting period must be audited in accordance with this Chapter.

Appointment of auditors

145.—(1) A protected cell company must appoint an auditor.

(2) If a protected cell company holds annual general meetings—

- (a) the first auditor may be appointed by the directors of the protected cell company at any time before the first relevant annual general meeting;
- (b) an auditor appointed in accordance with sub-paragraph (a) holds office until the conclusion of the first relevant annual general meeting;
- (c) the protected cell company must appoint an auditor at the first and all subsequent relevant annual general meetings; and
- (d) an auditor appointed in accordance with sub-paragraph (c) holds office from the conclusion of the relevant annual general meeting at which the auditor was appointed until the conclusion of the next relevant annual general meeting.

(3) If a protected cell company does not hold annual general meetings, the directors must appoint an auditor of the protected cell company.

(4) The directors of a protected cell company, or the persons holding voting shares issued on behalf of the core of a protected cell company in general meeting, may fill a casual vacancy in the office of auditor.

(5) While such a vacancy continues, any surviving or continuing auditor may continue to act.

(6) The FCA may, in any event, appoint a person to fill any vacancy in the office of auditor of a protected cell company.

(7) In this regulation, a “relevant annual general meeting” is an annual general meeting of the persons holding shares issued on behalf of the core of a protected cell at which an annual report is laid.

Partnerships

146.—(1) This regulation applies where a partnership is appointed as the auditor of a protected cell company.

(2) Where the partnership is not a legal person, the appointment is, unless the contrary intention appears, an appointment of the partnership as such and not of the partners.

(3) Where the partnership ceases, the appointment is to be treated as extending to—

- (a) any partnership which succeeds to the practice of that partnership and is eligible for appointment; and
- (b) any person who succeeds to that practice having previously carried it on in partnership and who is eligible for appointment.

- (4) For these purposes—
- (a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and
 - (b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if the partnership or person succeeds to the whole or substantially the whole of the business of the former partnership.

(5) Where the partnership ceases and no person succeeds to the appointment under paragraph (3), the appointment may, with the consent of the protected cell company, be treated as extending to a partnership or other person eligible for appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the protected cell company as comprising the appointment.

Disapplication of rules made under section 340 of FSMA.

147. Rules made under section 340 of FSMA (appointment of auditors) do not apply in relation to protected cell companies.

Auditor's report on protected cell company's accounts

148.—(1) A protected cell company's auditor must make a report to the holders of shares issued on behalf of the core of the protected cell company on all accounts of the protected cell company of which copies are, during the auditor's tenure of office, sent out to the holders of those shares under regulation 139.

- (2) The auditor's report must include—
- (a) an introduction identifying the accounts that are the subject of the audit and the financial reporting framework that has been applied in their preparation; and
 - (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.
- (3) The report must state clearly whether, in the auditor's opinion, the accounts—
- (a) give a true and fair view—
 - (i) in the case of the balance sheet, of the state of affairs of the protected cell company; and
 - (ii) in the case of the profit and loss account, of the profit or loss of the protected cell company,for the annual accounting period to which the accounts relate.
 - (b) have been properly prepared in accordance with the relevant financial reporting framework; and
 - (c) have been prepared in accordance with the requirements of this Part.
- (4) The auditor's report—
- (a) must be either unqualified or qualified; and
 - (b) must include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the report.

Signature of auditor's report

- 149.—**(1) The auditor's report must state the name of the auditor and be signed and dated.
- (2) Where the auditor is an individual, the report must be signed by the auditor.
- (3) Where the auditor is a firm, the report must be signed by the senior statutory auditor in the auditor's own name, for and on behalf of the auditor.

(4) The senior statutory auditor is not, by reason of being named or identified as the senior statutory auditor or by reason of having signed the auditor's report, subject to any civil liability to which the senior statutory auditor would not otherwise be subject.

(5) In this regulation, "senior statutory auditor" has the meaning given in section 504 of the Companies Act 2006.

Duties of auditor

150.—(1) A protected cell company's auditor must, in preparing the auditor's report, carry out such investigations as will enable the auditor to form an opinion as to—

- (a) whether adequate accounting records have been kept by the protected cell company; and
- (b) whether the protected cell company's accounts are in agreement with the accounting records.

(2) If the auditor is of the opinion—

- (a) that adequate accounting records have not been kept; or
- (b) that the protected cell company's accounts are not in agreement with the accounting records,

the auditor must state that fact in the auditor's report.

(3) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor must state that fact in the auditor's report.

Auditor's rights

151.—(1) An auditor of a protected cell company has a right of access at all times to the protected cell company's books, accounts and records and is entitled to require from the officers of the protected cell company such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.

(2) An auditor is entitled—

- (a) to receive all such notices of, and other communications relating to, a general meeting of the protected cell company;
- (b) to attend a general meeting; and
- (c) to be heard at any such general meeting which the auditor attends on any part of the business of the meeting which concerns the auditor.

(3) If the auditor is a firm, the right to attend and be heard at a meeting is exercisable by an individual authorised by the firm to act as its representative at the meeting.

Offences in connection with auditor's report

152.—(1) A person to whom this regulation applies commits an offence if the person knowingly or recklessly causes a report under regulation 148 (auditor's report on protected cell company's accounts) to include any matter that is misleading, false or deceptive in a material particular.

(2) A person to whom this regulation applies commits an offence if the person knowingly or recklessly causes such a report to omit a statement required by—

- (a) regulation 150(2)(b) (statement that protected cell company's accounts do not agree with accounting records); or
- (b) regulation 150(3) (statement that necessary information and explanations not obtained).

(3) This regulation applies to—

- (a) where the auditor is an individual, that individual and any employee or agent of the individual who is eligible for appointment as auditor of the protected cell company;

- (b) where the auditor is a firm, any director, member, employee or agent of the firm who is eligible for appointment as auditor of the protected cell company.
- (4) A person guilty of an offence under this regulation is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

Offence of misleading auditors

153.—(1) A person commits an offence who knowingly or recklessly makes a statement to an auditor of a protected cell company which—

- (a) conveys or purports to convey any information or explanation which the auditor requires, or is entitled to require, as the auditor of the protected cell company; and
- (b) is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under paragraph (1) is liable—
 - (a) on conviction on indictment, to imprisonment for a term which does not exceed two years or to a fine, or both;
 - (b) on summary conviction, to imprisonment to a term which does not exceed three months or—
 - (i) in England and Wales, to a fine, or both;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum, or both.

(3) A person who fails to comply with a requirement under regulation 151(1) without delay commits an offence unless it was not reasonably practicable for the person to provide the required information or explanations.

(4) A person guilty of an offence under paragraph (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Nothing in this section affects any right of an auditor to apply for an injunction (in Scotland an interdict or an order for specific performance) to enforce any of the auditor's rights under regulation 151.

Remuneration

154.—(1) The remuneration of an auditor who is appointed by the protected cell company in a general meeting must be fixed by the protected cell company in a general meeting or in such manner as the protected cell company in a general meeting may decide.

(2) The remuneration of an auditor who is appointed by the directors or the FCA must, as the case may be, be fixed by the directors or the FCA.

(3) Where an auditor is appointed by the FCA, the auditor's remuneration is to be paid by the protected cell company and not the FCA.

Removal

155.—(1) A protected cell company may remove an auditor from office notwithstanding anything in the agreement between the protected cell company and the auditor.

(2) The right referred to in paragraph (1) may only be exercised by a resolution passed at a general meeting.

(3) When such a resolution is passed, the protected cell company must notify the FCA and PRA before the expiry of a period of 14 days beginning with the day on which the resolution was passed.

(4) Nothing in this regulation deprives a person removed from office as an auditor of compensation or damages payable in respect of the termination of the person's appointment as auditor.

Rights on removal or non-reappointment

156.—(1) A resolution at a general meeting of the protected cell company—

- (a) removing an auditor before the expiration of the auditor's period of office; or
- (b) appointing as auditor a person other than the retiring auditor,

is not effective unless notice of the intention to move it has been given to the protected cell company before the beginning of a period of 28 days ending on the day of the general meeting.

(2) On receipt of such a notice, the protected cell company must without delay send a copy of it to the person proposed to be removed or, as the case may be, the person proposed to be appointed and the retiring auditor.

(3) The person proposed to be removed or, as the case may be, the person proposed to be appointed and the retiring auditor, may—

- (a) make representations in writing to the protected cell company with respect to the intended resolution, provided the representations do not exceed a reasonable length; and
- (b) request their notification to the persons holding shares issued on behalf of the core of the protected cell company.

(4) The protected cell company must—

- (a) in any notice of the resolution given to the persons holding shares issued on behalf of the core of the protected cell company, state the fact that the representations have been made; and
- (b) send a copy of the representations to everyone holding shares issued on behalf of the core of the protected cell company.

(5) If a copy of any such representations is not sent out as required, the auditor may require that the representations be read out at the meeting.

(6) The court may, on the application of the protected cell company, order that—

- (a) the steps specified in paragraph (4) may be dispensed with; or
- (b) the representations are not to be read out at the general meeting,

if the court is satisfied that the rights conferred by paragraph (4) or (5) are being used to secure publicity for a defamatory matter.

(7) If the court makes an order referred to in paragraph (6), the court may also order that the costs of the application be paid in whole or in part by the auditor (whether or not the auditor is a party to the application).

Resignation

157.—(1) An auditor of a protected cell company may resign by depositing a notice in writing to that effect at the protected cell company's registered office.

(2) Such a notice is ineffective unless it is accompanied by a statement required by regulation 159.

(3) An effective notice of resignation brings the auditor's term of office to an end on the date on which the notice is deposited or on such later date as may be specified in the notice.

(4) The protected cell company must send a copy of the notice to the FCA and PRA within a period of 14 days beginning with the day the notice is deposited.

Meeting of shareholders or creditors

158.—(1) This regulation applies where the notice deposited by the auditor is accompanied by a statement of circumstances which the auditor considers ought to be brought to the attention of any person (“a relevant person”) who—

- (a) holds shares issued by the protected cell company; or
- (b) is a creditor of the protected cell company.

(2) An auditor may deposit with the notice a signed requisition that a meeting of relevant persons be convened without delay for the purposes of receiving and considering such explanation of the circumstances connected with the resignation as the auditor may wish to make.

(3) The protected cell company must proceed to convene such a meeting within a period of 21 days beginning with the day the notice was deposited.

(4) The meeting must take place within a period of 28 days beginning with the day on which notice convening the meeting is given to the relevant persons.

(5) The auditor may ask the protected cell company to circulate to the relevant persons a statement in writing (not exceeding a reasonable length) of the circumstances connected with the auditor’s resignation.

(6) The protected cell company must—

- (a) in any notice given of the meeting, state the fact that a statement has been made; and
- (b) send a copy of the statement to all relevant persons.

(7) But paragraph (6) does not apply if the statement is received too late by the protected cell company.

(8) If a copy of the statement is not sent out in accordance with paragraph (6), the auditor may require that the statement be read out at the meeting.

(9) The court may, on the application of the protected cell company, order that—

- (a) the steps specified in paragraph (6) may be dispensed with; or
- (b) the representations are not to be read out at the general meeting,

if the court is satisfied that the rights conferred by paragraph (6) or (8) are being used to secure publicity for defamatory matter.

(10) If the court makes an order referred to in paragraph (9), the court may also order that the costs of the application be paid in whole or in part by the auditor (whether or not the auditor is a party to the application).

Statement by an auditor ceasing to hold office

159.—(1) Where an auditor ceases to hold office for any reason, the auditor must deposit at the registered office of the protected cell company a statement of any circumstances connected with the auditor’s ceasing to hold office which the auditor considers should be brought to the attention of any person (“a relevant person”) who—

- (a) holds a share issued by the protected cell company; or
- (b) is a creditor of the protected cell company.

(2) Alternatively, if the auditor considers that there are no such circumstances, the auditor must deposit a statement that there are none.

(3) The statement must be deposited—

- (a) in the case of resignation, along with the notice of resignation;
- (b) in the case of failure to seek re-appointment, before the commencement of a period of 14 days ending on the last day when a new auditor may be appointed; and
- (c) in any other case, not later than the end of a period of 14 days beginning with the date when the auditor ceases to hold office.

(4) If the statement is of circumstances which the auditor considers ought to be brought to the attention of relevant persons, the protected cell company must, within a period of 14 days beginning with the date the statement was deposited, either—

- (a) send a copy of the statement to the relevant persons; or
- (b) apply to the court.

(5) Where an application is made to the court, the protected cell company must notify the auditor.

(6) Unless the auditor receives notice of an application within a period of 21 days beginning with the day on which the auditor deposited the statement, the auditor must send a copy of the statement to the FCA and PRA without delay.

(7) If, on an application under paragraph (4)(b), the court considers that the auditor is using the statement to secure publicity for defamatory matter, the court—

- (a) must direct that copies of the statement are not to be sent out;
- (b) may give directions to the protected cell company for the purpose of bringing the order to the attention of the relevant persons; and
- (c) may order the auditor to pay all or part of the protected cell company's costs of the application (whether or not the auditor is a party to the application).

(8) If the court is not so satisfied, the protected cell company must—

- (a) send a copy of the statement to the relevant persons; and
- (b) notify the auditor of the court's decision,

within a period of 14 days beginning with the day on which the court makes its decision.

(9) The auditor must send a copy of the notice of the court's decision provided under paragraph (8)(b) to the FCA and PRA within a period of 7 days beginning with the day the auditor received the notice.

(10) Where notice of appeal is filed within a period of 14 days beginning with the day on which the court makes its decision, references in paragraphs (8) and (9) to the court's decision are to be construed as references to the final determination of withdrawal of that appeal, as the case may be.

Offence: auditor failing to comply with regulation 159

160.—(1) If a person ceasing to hold office as an auditor fails to comply with regulation 159, the person is guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

(2) In proceedings for an offence under paragraph (1), it is a defence for the person to show that the person took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

CHAPTER 14

Insolvency

Insolvency of a cell

161.—(1) A cell of a protected cell company may be—

- (a) put into administration under Schedule B1 (administration) of the Insolvency Act 1986 or Part [X] (administration) of the Insolvency (Northern Ireland) Order 1989 as if it were a company registered under the Companies Act 2006; or

- (b) wound up as if it were an unregistered company under Part 5 (unregistered companies) of the Insolvency Act 1986 or Part [X] (unregistered companies) of the Insolvency (Northern Ireland) Order 1989.

(2) For these purposes, the insolvency legislation applies to the cell with the modifications set out in Schedule 2.

Insolvency of the core

162.—(1) The core of a protected cell company may be—

- (a) put into administration under Schedule B1 (administration) of the Insolvency Act 1986 or Part [X] (administration) of the Insolvency (Northern Ireland) Order 1989 as if it were a company registered under the Companies Act 2006; or
- (b) wound up as if it were an unregistered company under Part 5 (unregistered companies) of the Insolvency Act 1986 or Part [X] (unregistered companies) of the Insolvency (Northern Ireland) Order 1989.

(2) For these purposes, the insolvency legislation applies to the core with the modifications set out in Schedule 3.

Further disapplication of insolvency proceedings

163.—(1) Except to the extent provided for in this Chapter—

- (a) a protected cell company may not propose a voluntary arrangement;
- (b) neither a protected cell company nor a part of a protected cell company may be placed into administration;
- (c) a receiver may not be appointed in respect of any property held by the protected cell company;
- (d) a protected cell company may not pass a resolution for the winding up of the protected cell company or any part of the protected cell company;
- (e) a winding up order may not be made against the protected cell company or any part of the protected cell company;
- (f) neither the protected cell nor a part of the protected cell company may be subject to any other process under the insolvency legislation which applies to a person who is insolvent or who is likely to become insolvent^(a).

(2) The reference in paragraph (1)(d) to winding up includes a reference to a members' voluntary liquidation under Part 4 of the Insolvency Act 1986 or Part [X] of the Insolvency (Northern Ireland) Order 1989.

Company Directors Disqualification Act 1986

164. [Tbc whether modifications are required].

CHAPTER 15

Mergers and Divisions

Meaning of “transfer scheme”, “transferor” and “transferee”

165.—(1) A scheme is a transfer scheme for the purposes of this Chapter if it falls within Cases 1, 2 or 3.

(a) Sections 376 to 379 of FSMA do not apply in any event as the protected cell company is not an “insurer” for the purposes of those sections.

(2) Case 1 is that the scheme results in the transfer of one or more cells from one protected cell company to another protected cell company.

(3) Case 2 is that the scheme results in the transfer of the following from a protected cell company to another person—

- (a) assets held on behalf of a part of the protected cell company;
- (b) liabilities incurred on behalf of, or attributable to, that part; and
- (c) investments issued on behalf of that part.

(4) Case 3 is that the scheme results in the transfer of the assets and liabilities of, and investments issued by, a person to a protected cell company.

(5) In this Chapter—

“the transferor” is the person transferring the cell, assets, liabilities or investments; and

“the transferee” is the person to whom the cell, assets, liabilities or investments are transferred.

Application for order sanctioning transfer scheme

166.—(1) An application may be made to the court for an order sanctioning a transfer scheme.

(2) An application may be made by—

- (a) the transferor;
- (b) the transferee;
- (c) where the transferor is a protected cell company, the administrator or liquidator of the core of the protected cell company; or
- (d) any combination of the above persons.

(3) “Court” means—

- (a) the High Court; or
- (b) in Scotland, the Court of Session.

Requirements on applicants

167.—(1) An applicant under regulation 166 must comply with the following requirements.

(2) A notice stating that the application has been made must be—

- (a) published—
 - (i) in the London, Edinburgh and Belfast Gazettes;
 - (ii) in two national newspapers in the United Kingdom; and
 - (iii) in a national newspaper in each of the countries or territories in which an affected party is located; and
- (b) sent to all the affected parties.

(3) The applicant must provide the following documents free of charge to the PRA and any other person who requests them—

- (a) a statement setting out the terms of the transfer scheme; and
- (b) a copy of the application.

(4) The court may not determine an application under regulation 166—

- (a) where the applicant has failed to comply with the requirements in paragraphs (2) and (3); and
- (b) until a period of 21 days has elapsed since the PRA was given the documents mentioned in paragraph (3).

(5) But the court may waive the requirements of the following provisions in such circumstances and subject to such conditions as the court considers appropriate—

- (a) sub-paragraphs (ii) and (iii) of paragraph (2)(a);
- (b) paragraph (3) in relation to any person other than the PRA.

(6) In this regulation, “affected parties” means the persons specified in the second column of Table 3 in relation to the transfer schemes described in the first column of Table 3.

Table 3

<i>Transfer scheme</i>	<i>Affected parties</i>
Case 1. Case 2 where the transfer relates to a cell of the transferor.	Any undertaking from whom the protected cell company assumed a risk on behalf of the cell and any investors holding investments issued on behalf of the cell.
Case 2 where the transfer relates to the core of the transferor.	All the persons to whom the transferor has incurred a liability on behalf of the core, or to whom the transferor has a liability which is attributable to the core. A reference to “liability” includes a prospective or contingent liability.
Case 3.	All the persons to whom the transferor has a liability. Where the transferee is acting on behalf of a cell, any other person to whom the transferee has incurred a liability on behalf of the cell, to whom the transferee has a liability which is attributable to the cell, or to whom the transferee has issued investments on behalf of the cell. A reference to “liability” includes a prospective or contingent liability.

(7) Whether or not a person is an affected party is to be assessed at the date the application is made to court under regulation 166.

Right to participate in proceedings and court sanction

168.—(1) The following are entitled to be heard on an application under regulation 166—

- (a) the PRA; and
- (b) any person who alleges that they would be adversely affected by the transfer scheme.

(2) The court may make an order sanctioning a transfer scheme provided it is appropriate to sanction the scheme in all the circumstances of the case.

Effect of court order sanctioning the transfer scheme

169.—(1) If the court makes an order under regulation 168, it may by that or any subsequent order make such provision (if any) as it thinks fit—

- (a) for the transfer to the transferee of a cell forming part of the transferor;
- (b) for the transfer to the transferee of any property or liabilities of the transferor;
- (c) for the allotment or appropriation by the transferee of any shares or debentures issued by the transferor;
- (d) for the continuation by or against the transferee of any pending legal proceedings by or against the transferor;

- (e) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the transfer scheme;
 - (f) for bringing the order to the attention of any person;
 - (g) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the transfer scheme is fully and effectively carried out.
- (2) Where the court makes an order under paragraph (1) in respect of a protected cell company, the order may specify to which part of the protected cell company the order relates.
- (3) An order under paragraph (1) may—
- (a) transfer property or liabilities whether or not the transferor otherwise has the capacity to effect the transfer in question;
 - (b) make provision in relation to property which is held by the transferor as trustee;
 - (c) make provision as to prospective or contingent rights or liabilities of the transferor, including provision as to the construction of instruments under which such rights or liabilities arise.
- (4) Paragraph (3)(a) is to be taken to include the power to make the following provision in an order—
- (a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;
 - (b) if the terms on which the transferor is entitled to property or is subject to liabilities include provision that has any of the effects specified in paragraph (5), for the transfer to take effect as if there were no such provision.
- (5) The effects mentioned in paragraph (4)(b) are that a transfer of the property or liability in question—
- (a) requires a person's consent or concurrence; or
 - (b) contravenes or interferes with a property or right, or otherwise incurs a liability.
- (6) Nothing in paragraph (4) is to be read as limiting the scope of paragraph (3).
- (7) If an order under paragraph (1) transfers a cell from the transferor to transferee, then the following occur as a result of the order—
- (a) the cell ceases to be a part of the transferor;
 - (b) the cell becomes a part of the transferee;
 - (c) all of the assets held on behalf of the cell by the transferor prior to the transfer are deemed to be assets held on behalf of the cell by the transferee;
 - (d) all of the liabilities incurred on behalf of the cell by the transferor, or attributable to the cell, prior to the transfer are deemed to be liabilities incurred on behalf of the cell by the transferee or attributable to the cell (as the case may be);
 - (e) all of the investments issued on behalf of the cell by the transferor prior to the transfer are deemed to be investments issued on behalf of the cell by the transferee.
- (8) If an order under paragraph (1) makes provision for the transfer of property or liabilities, then the following occur as a result of the order—
- (a) the property is transferred to and vests in the transferee specified in the order; and
 - (b) the liabilities are transferred to and become liabilities of the transferee specified in the order.
- (9) But if any property or liability included in an order under paragraph (1) is governed by the law of any country or territory outside the United Kingdom, the order may require the transferor, if the transferee so requires, to take all necessary steps for securing that the transfer is fully effective under the law of that country or territory.
- (10) Property transferred as a result of an order under paragraph (1) may, if the court so directs, vest free from any charge (or, in Scotland, security over property) which is (as a result of the transfer scheme) to cease to have effect.

(11) An order under paragraph (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of any enactment requiring the delivery of an instrument of transfer for the registration of property.

(12) The transferee must provide the FCA and PRA with two office copies of an order made under regulation 168 or 169 within a period of 10 days beginning with the making of the order, or such longer period as the PRA directs.

CHAPTER 16

Dissolution

Dissolution of a cell: procedure

170.—(1) A protected cell company’s instrument of incorporation may contain provision for the dissolution of a cell, but that provision is subject to this regulation.

(2) A protected cell company must notify the following people (the “interested persons”) if it intends to dissolve a cell—

- (a) any undertaking from whom the protected cell company assumed a risk on behalf of the cell;
- (b) any investor who holds an investment issued on behalf of the cell;
- (c) any other creditor (including a prospective or contingent creditor) of the protected cell company in respect of the cell; and
- (d) the PRA.

(3) The notification referred to in paragraph (2) must—

- (a) be in writing;
- (b) identify the cell which the protected cell company intends to dissolve;
- (c) state the date on which the notification is sent; and
- (d) state that if the recipient intends to object to the dissolution of the cell, then any objections must be received by the protected cell company within a period of two months beginning with the date when the notification was sent.

(4) The cell may only be dissolved in the following cases—

- (a) none of the interested persons object within the period referred to in paragraph (3)(d);
- (b) one or more of the interested persons objects within the period referred to in paragraph (3)(d) and those objections are subsequently withdrawn;
- (c) one or more of the interested persons objects within the period referred to in paragraph (3)(d) and—
 - (i) the PRA is not one of the interested persons who objects; and
 - (ii) the person or persons objecting have not commenced court proceedings against the protected cell company in respect of the cell, or put the cell into administration or liquidation, within the relevant period;
- (d) the cell is put into administration and the cell is deemed to be dissolved at the end of administration (see paragraph 84 of Schedule B1 to the Insolvency Act 1986 and Article [X] of the Insolvency (Northern Ireland) Order 1989 as applied by regulation 161);
- (e) the cell is put into liquidation and the cell is dissolved after winding up (see sections 202 to 205 of the Insolvency Act 1986 and Article [X] of the Insolvency (Northern Ireland) Order 1989 as applied by regulation 161);
- (f) the court directs that the cell is to be dissolved.

(5) In paragraph (4)(c), the “relevant period”—

- (a) begins with the date when notification is sent in accordance with paragraph (2) or, if notifications are sent on more than one date, the date when the last such notification is sent; and
- (b) lasts for a period of 12 months or, if court proceedings are brought against the protected cell company in respect of the cell or an application is made to court for the administration or winding up of the cell, such other period as may be specified by the court.

(6) For the purposes of paragraph (5)(b), the court may specify another period after the expiry of the 12 month period referred to in that paragraph, provided the cell has not been dissolved when the court specifies that period.

(7) When a protected cell company dissolves a cell, it must notify the interested persons.

(8) The notification referred to in paragraph (7) must—

- (a) be in writing;
- (b) identify the cell which has been dissolved; and
- (c) state the date on which it was dissolved.

Dissolution of a cell: effect on property and liabilities

171.—(1) Where a cell of a protected cell company is dissolved in accordance with regulation 170—

- (a) the protected cell company is released from all outstanding liabilities (including prospective and contingent liabilities) which were incurred on behalf of the cell or which are attributable to the cell; and
- (b) any property of the protected cell company which is held on behalf of the cell is deemed to be held on behalf of the core.

(2) A resolution of the protected cell company for the dissolution of a cell is to be treated as an instrument of transfer for the purposes of any enactment requiring the delivery of an instrument of transfer for the registration of property.

(3) Paragraph (1) is subject to regulations 173 to 177 (which are concerned with restoration).

Dissolution of a protected cell company

172.—(1) A protected cell company may be dissolved in the following cases—

- (a) the protected cell company makes an application to the FCA for its dissolution;
- (b) the core of the protected cell company is put into administration and the protected cell company is dissolved at the end of administration (see paragraph 84 of Schedule B1 to the Insolvency Act 1986 and Article [X] of the Insolvency (Northern Ireland) Order 1989 as applied by regulation 162);
- (c) the core of the protected cell company is put into liquidation and the protected cell company is dissolved after winding up (see sections 202 to 205 of the Insolvency Act 1986 and Article [X] of the Insolvency (Northern Ireland) Order 1989 as applied by regulation 162).

(2) But a protected cell company may only be dissolved if the protected cell company has no cells.

(3) Where a protected cell company applies to the FCA for its dissolution, the application must contain, or be accompanied by, a statement made by the directors of the protected cell company, or by a majority of them, that the protected cell company has no cells.

(4) Where the FCA receives an application made under paragraph (1)(a) which contains, or is accompanied by, the statement referred to in paragraph (3), the FCA must publish a notice in the London, Edinburgh and Belfast Gazettes—

- (a) identifying the protected cell company;

- (b) stating that the FCA has received an application from the protected cell company for its dissolution; and
- (c) inviting any person to show cause as to why the protected cell company should not be dissolved.

(5) On the expiry of a period of three months beginning with the date that the notice referred to in paragraph (4) was published in the London, Edinburgh and Belfast Gazettes, or the last such date if the notices are published on different dates, the FCA may—

- (a) record on its register of protected cell companies that the protected cell company is struck off the register; and
- (b) publish notice to that effect in the London, Edinburgh and Belfast Gazettes.

(6) On the publication of the notices referred to in paragraph (5)(b), or the last such notice if the notices are published on different dates, the protected cell company is dissolved.

(7) However—

- (a) the liability (if any) of every director of the protected cell company continues and may be enforced as if the protected cell company had not been dissolved; and
- (b) nothing in this regulation affects the power of the court to wind up the core or a cell of the protected cell company which has been struck off the register.

(8) All property and rights whatsoever vested in or held on trust for the protected cell company immediately before its dissolution (including leasehold property, but not including property held on trust for another person) are deemed to be *bona vacantia*.

(9) Sections 1012 to 1023 of the Companies Act 2006 (property of dissolved company) apply to all such property and rights as they apply to the property and rights of a company incorporated under the Companies Act 2006, with the following modifications—

- (a) references to the restoration of the company are to be treated as references to the restoration of the protected cell company; and
- (b) references to the registrar are to be treated as references to the FCA.

Restoration: applications to court

173.—(1) Where a cell of a protected cell company has been dissolved, an application may be made to the court to restore the cell.

(2) Where a protected cell company has been dissolved, an application may be made to the court to restore the protected cell company to the register.

(3) Where an application is made to restore a cell of a protected cell company and the protected cell company has been dissolved, then the application must be accompanied by an application to restore the protected cell company to the register.

Restoration: who may apply

174.—(1) An application under regulation 173(1) may be made by—

- (a) any person who would have been entitled to receive notice of the cell's dissolution under regulation 170(2);
- (b) a director of the protected cell company;
- (c) the protected cell company;
- (d) a former administrator or liquidator of the cell;
- (e) the PRA; or
- (f) any other person appearing to have an interest in the matter.

(2) An application under regulation 173(2) may be made by—

- (a) a person who is entitled to make an application under regulation 173(1) for the restoration of a cell which formed part of the protected cell company;

- (b) a former director of the protected cell company;
- (c) a person who would, but for the dissolution of the protected cell company, have been—
 - (i) a creditor of the protected cell company; or
 - (ii) in a contractual relationship with the protected cell company;
- (d) a person with a potential legal claim against the protected cell company;
- (e) a person having an interest in land or other property—
 - (i) in which the protected cell company had a superior or derivative interest;
 - (ii) that was subject to rights vested in the protected cell company; or
 - (iii) that received the benefit of obligations owed by the protected cell company;
- (f) a person who held shares issued on behalf of the core of the protected cell company immediately prior to the dissolution of the protected cell company;
- (g) a former administrator or liquidator of the core of the protected cell company;
- (h) the PRA; or
- (i) any other person appearing to have an interest in the matter.

Restoration: when an application may be made

175. An application to restore a cell or a protected cell company must be made within a period of six years beginning with the date when the cell or protected cell company (as the case may be) was dissolved.

Decision on application for restoration

176.—(1) On an application under regulation 173(1), the court may order the restoration of a cell if—

- (a) the requirements of regulation 170 were not complied with in relation to the dissolution of the cell; or
- (b) the court considers it just to do so.

(2) On an application under regulation 173(2), the court may order the restoration of a protected cell company if—

- (a) the requirements of regulation 172 were not complied with in relation to the dissolution of the protected cell company; or
- (b) the court considers it just to do so.

(3) If the court orders the restoration of the cell or the protected cell company, the restoration takes effect on a copy of the court’s order being delivered to the FCA.

(4) Where a protected cell company is restored to the register, the FCA must publish notice of the restoration of the protected cell company in the London, Edinburgh and Belfast Gazettes.

(5) The notice must state—

- (a) the name of the protected cell company;
- (b) the protected cell company’s registered number; and
- (c) the date on which restoration took effect.

Effect of court order for restoration

177.—(1) The general effect of an order restoring a cell or a protected cell company is that the cell or protected cell company (as the case may be) is deemed to have continued in existence as if it had not been dissolved.

(2) The court may give directions and make such provision as seems just for placing the cell or protected cell company and all other persons in the same position (as nearly as may be) as if the cell or protected cell company had not been dissolved.

(3) In particular, the court may give directions as to—

- (a) the delivery of documents to the FCA or PRA;
- (b) payment of the FCA's or PRA's costs in relation to the proceedings for restoration;
- (c) where property or a right previously vested in or held on trust for the protected cell company has vested as *bona vacantia*, the payment of the costs (in Scotland, the expenses) of the Crown representative—
 - (i) in dealing with the property during the period of dissolution; or
 - (ii) in connection with the proceedings on the application.

(4) In this regulation, the "Crown representative" means—

- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
- (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
- (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
- (d) in relation to other property, the Treasury Solicitor.

(5) Section 1034 of the Companies Act 2006 (effect of restoration where property has vested as *bona vacantia*) applies on the restoration of a protected cell company as it applies on the restoration of a company incorporated under the Companies Act 2006, but with the reference to section 1012 in subsection (1) being treated as a reference to regulation 172(8).

CHAPTER 17

Offences

Offences by a body corporate

178. Section 400 of FSMA (offences by bodies corporate etc.) applies to an offence under these Regulations as it applies to an offence under FSMA.

Jurisdiction and procedure in respect of offences

179. Section 403 of FSMA (jurisdiction and procedure in respect of offences) applies to offences under these Regulations as it applies to offences under FSMA.

CHAPTER 18

Miscellaneous

Time period for giving notice to FCA

180.—(1) Where a provision of this Part requires a protected cell company to give notice of an event to the FCA, the notice must be given to the FCA within a period of 10 working days beginning with the day the event occurred.

(2) Paragraph (1) does not apply where a provision of this Part specifies a different period.

Imposition of further requirements by the PRA or FCA

181. Nothing in this Part is to be taken as preventing or restricting the PRA or FCA from imposing further requirements on a protected cell company in accordance with the powers conferred on the PRA or FCA (as the case may be) by or under FSMA.

PART 5

Consequential amendments to legislation

Consequential amendments to legislation.

182. Schedule 4 has effect.

Name

Two of the Lords Commissioners of Her Majesty's Treasury

Date

SCHEDULE 1

Regulation 2(3)

Welsh equivalents of English words and expressions

Table 4

Welsh equivalents of English words and expressions [Tbc]

<i>English</i>	<i>Welsh</i>
and company	a'r cwmni
company	cwmni
company limited	cwmni cyfyngedig cyhoeddus
insurance	
insured	
insurer	
limited	cyfyngedig
protected cell company	
public limited company	cwmni cyfyngedig cyhoeddus
re	
reinsurance	
reinsured	
reinsurer	
unlimited	anghyfyngedig

SCHEDULE 2

Regulation 161

Administration and liquidation of cells: modification of insolvency legislation

Duties and powers confined to the cell

1.—(1) The appointment of a relevant office holder in respect of a cell, and the powers and duties of the relevant office holder, are confined to the cell and its affairs, business and property.

(2) In sub-paragraph (1), a “relevant office holder” means—

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

General application of the insolvency legislation

2. The insolvency legislation applies to a cell as if—
- (a) the cell is a body corporate with distinct legal personality;
 - (b) 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 cell (as the case may be);
 - (c) the cell's property, assets, liabilities, debts and creditors are determined in accordance with regulation 41(6);
 - (d) shares issued by the protected cell company on behalf of the cell are shares issued by the cell;
 - (e) things done by the protected cell company on behalf of the cell are things done by the cell;
 - (f) things done to the protected cell company in respect of the cell are things done to the cell;
 - (g) the books, papers, records, registers and other documents of the protected cell company are, insofar as they relate to the cell, books, papers, records, registers and documents of the cell;
 - (h) an associate of the protected cell company (within the meaning given by section 435 of the Insolvency Act 1986 or Article [X] of the Insolvency (Northern Ireland) Order 1989) is an associate of the cell;
 - (i) the cell is registered in the part of the United Kingdom in which the protected cell company has its registered office; and
 - (j) the registrar of companies is the FCA.

Jurisdiction within the United Kingdom

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

Appointment of administrator: holder of floating charge

4.—(1) A holder of a floating charge created by the protected cell company on behalf of a cell may not appoint an administrator, or apply to the court to appoint an administrator, in respect of property held by the protected cell company on behalf of the cell.

(2) A person need not obtain the consent of a holder of a floating charge created by the protected cell company on behalf of a cell before appointing an administrator in respect of the property held by the protected cell company on behalf of the cell.

Giving of notice

5. In the insolvency legislation—
- (a) 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 cell;
 - (b) any requirement to give notice of something on the company's website is to be ignored.

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

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

Specific modifications to provisions of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989

7.—(1) The provisions of the Insolvency Act 1986 specified in the first column of Table 5 and the provisions of the Insolvency (Northern Ireland) Order 1989 specified in the second column of Table 5 apply to the cell with the modifications specified in the fourth column of Table 5.

(2) The third column of Table 5 gives a brief description of the subject matter of each provision and has no legal effect.

Table 5

<i>Insolvency Act 1986</i>	<i>Insolvency (Northern Ireland) Order 1989</i>	<i>Subject Matter</i>	<i>Modification</i>
Section 76	[Tbc]	Liability of past directors and shareholders	Section 76 applies where a protected cell company has made a payment (“the relevant payment” for the purposes of the section) to redeem or acquire shares issued on behalf of the cell in breach of the requirements of regulation 82. In subsection (2), treat paragraph (b) as referring to the directors who authorised the redemption or purchase.
Section 124		Application for winding up	The following persons may also present a petition for the winding up of a cell— — an administrator of the cell; — an administrator or liquidator of the core of the protected cell company. A person holding an investment issued by any part of the protected cell company may not present a petition for the winding up of the cell.
Section 216		Restriction on re-use of names	Ignore this section.
Section 221		Winding up of unregistered companies	Where an administrator or liquidator of the core of the protected cell company applies for the winding up of a cell, the cell may be wound up if the court is satisfied that the administrator or liquidator has no realistic prospect of complying with the duties specified in sub-paragraphs (a) and (b) of paragraph 2(4) of Schedule 3 to these Regulations in relation to the cell.
Section 222		Inability to pay debts: unpaid creditor for £750 or more	The written demand must be served on the cell by leaving it at the protected cell company’s registered office or in such manner as the court may approve or direct.

Section 223		Inability to pay debts: debt remaining unsatisfied after action brought	Ignore this section.
Paragraph 61 of Schedule B1		Administrator's general powers (removal and appointment of directors)	Ignore this paragraph.
Paragraph 64 of Schedule B1		Restriction on directors' powers	Sub-paragraph (1) is to be treated as prohibiting a protected cell company, or an officer of a protected cell company, from exercising a management power in relation to a cell in administration without the consent of the administrator.
Paragraph 69 of Schedule B1		Administrator as agent	An administrator of a cell acts as agent for the protected cell company (on behalf of the cell).
Paragraph 83 of Schedule B1		Moving from administration to liquidation	Ignore this paragraph.
Paragraph 97 of Schedule B1		Substitution of administrator appointed by company or directors	Ignore sub-paragraph (1)(b)

Specific modification of the Insolvency Rules 1986, the Insolvency (Scotland) Rules 1986 and the Insolvency (Northern Ireland) Rules 1991

8. [Tbc]

SCHEDULE 3

Regulation 162

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; and
 - (d) a special manager.

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

2.—(1) Subject to sub-paragraphs (2) to (5), 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 the core and its business, affairs and property.

(2) The insolvency legislation is to be treated as conferring a power on an administrator or liquidator appointed in respect of the core to do anything necessary or expedient to enable the protected cell company, or the administrator or liquidator acting on behalf of the protected cell company, to—

- (a) fulfil a requirement imposed on the protected cell company by an enactment;
- (b) fulfil an obligation that the protected cell company has incurred on behalf of a cell or which is attributable to a cell;
- (c) enter into a transfer scheme (within the meaning given by regulation 165) in respect of a cell, or the assets and liabilities of the cell and the investments issued on the cell's behalf;
- (d) apply to court for a winding up order in respect of a cell;
- (e) dissolve a cell in accordance with regulation 170;
- (f) dissolve the protected cell company in accordance with regulation 172.

(3) Sub-paragraph (4) applies unless—

- (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) Where this sub-paragraph applies, the insolvency legislation is to be treated as imposing the following duties on an administrator or liquidator appointed in respect of the core of a protected cell company—

- (a) a duty to ensure the protected cell company dissolves the cells of the protected cell company in accordance with regulation 170;
- (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 a cell, a duty to ensure that the protected cell company, or the administrator or liquidator acting on behalf of the protected cell company, enters into a transfer scheme (within the meaning given by regulation 165) in respect of the cell, or the assets and liabilities 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 a cell, a duty to apply to the court for a winding up order in respect of the cell.

(5) To the extent necessary to give effect to a power conferred or duty imposed on an administrator or liquidator by sub-paragraphs (2) to (4), the powers conferred on the administrator or liquidator by the insolvency legislation are to be treated as extending to the protected cell company and every part of it.

Powers of the directors

3.—(1) Where the core of a protected cell company is in administration or liquidation, the protected cell company or an officer of the protected cell company may not exercise a management power without the consent of the administrator or liquidator of the core (as the case may be).

(2) For the purposes of sub-paragraph (1)—

- (a) “management power” means a power which could be exercised so as to interfere with the exercise of the powers of the administrator or liquidator;
- (b) it is immaterial whether the power is conferred by an enactment or an instrument; and
- (c) consent may be general or specific.

General application of the insolvency legislation

4. The insolvency legislation applies to the core as if—
- (a) the core is a body corporate with distinct legal personality;
 - (b) 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);
 - (c) the core's property, assets, liabilities, debts and creditors are determined in accordance with regulation 41(6);
 - (d) shares issued by the protected cell company on behalf of the core are shares issued by the core;
 - (e) things done by the protected cell company on behalf of the core are things done by the core;
 - (f) things done to the protected cell company in respect of the core are things done to the core;
 - (g) 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;
 - (h) an associate of the protected cell company (within the meaning given by section 435 of the Insolvency Act 1986 or Article [X] of the Insolvency (Northern Ireland) Order 1989) is an associate of the core;
 - (i) the core is registered in the part of the United Kingdom in which the protected cell company has its registered office; and
 - (j) the registrar of companies is the FCA.

Jurisdiction within the United Kingdom

5.—(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.

Appointment of administrator: holder of floating charge

6.—(1) The holder of a floating charge created by the protected cell company on behalf of the core may not appoint an administrator, or apply to court to appoint an administrator, in respect of the property held by the protected cell company on behalf of the core.

(2) A person need not obtain the consent of a holder of a floating charge created by the protected cell company on behalf of the core before appointing an administrator in respect of property held by the protected cell company on behalf of the core.

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-authorized person”

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

Specific modification to 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 6 and the provisions of the Insolvency (Northern Ireland) Order 1989 specified in the second column of Table 6 apply to the core with the modifications specified in the fourth column of Table 6.

(2) The third column of Table 6 gives a brief description of the subject matter of each provision and has no legal effect.

Table 6

<i>Insolvency Act 1986</i>	<i>Insolvency (Northern Ireland) Order 1989</i>	<i>Subject Matter</i>	<i>Modification</i>
Section 76	[Tbc]	Liability of past directors and shareholders	Section 76 applies where a protected cell company has made a payment (“the relevant payment” for the purposes of the section) to redeem or acquire shares issued on behalf of the core in breach of the requirements of regulation 83. In subsection (2), treat paragraph (b) as referring to the directors who authorised the redemption or purchase.
Section 124		Application for winding up	The administrator of the core may also present a petition for the winding up of the core. A person holding an investment issued by any part of the protected cell company may not present a petition for the winding up of the core.
Section 216		Restriction on re-use of names	This section applies where the core has gone into liquidation, with references to the name of the liquidating company being treated as references to the name of the protected cell company.
Section 222		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		Inability to pay debts: debt remaining unsatisfied after action	Ignore this section.

		brought	
Paragraph 45 of Schedule B1		Publicity	This paragraph applies 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		Administrator's general powers (removal and appointment of directors)	Ignore this paragraph.
Paragraph 69 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		Challenge to administrator's conduct	This paragraph applies to the core and, to the extent that the powers of the administrator extend to another part of the protected cell company, that part.
Paragraph 75 of Schedule B1		Misfeasance	This paragraph applies to every part of the protected cell company.
Paragraph 83 of Schedule B1		Moving from administration to liquidation	Ignore this paragraph.
Paragraph 84 of Schedule B1		Moving from administration to dissolution	This paragraph only applies if the protected cell company has no cells.
Paragraph 97 of Schedule B1		Substitution of administrator appointed by company or directors	Ignore sub-paragraph (1)(b).

Specific modification of the Insolvency Rules 1986, the Insolvency (Scotland) Rules 1986 and the Insolvency (Northern Ireland) Rules 1991

11. [Tbc]

SCHEDULE 4

Regulation 182

Consequential amendments to legislation

PART 1

Consequential amendments to primary legislation

Companies Act 2006

1. In the Companies Act 2006, in section 1043 (unregistered companies), in subsection (1), after paragraph (d), insert—

“(e) protected cell companies incorporated under Part 4 of the Risk Transformation Regulations 2017.”.

PART 2

Consequential amendments to secondary legislation

[Tbc]

2. [Tbc]

EXPLANATORY NOTE

(This note is not part of these Regulations)

[Tbc]