
STATUTORY INSTRUMENTS

2017 No. 1212

The Risk Transformation Regulations 2017

PART 4

Protected Cell Companies

CHAPTER 8

Directors

Requirement for a director

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

Directors' duties

83.—(1) The provisions of the Companies Act 2006 specified in the first column of Table 3 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 any modification specified in the second column of Table 3.

Table 3

<i>Provision of Companies Act 2006</i>	<i>Modification</i>
Sections 170 MI and 171	
Section 172	In subsection (1)(f), the reference to members is to be treated as a reference to shareholders, and the need to act fairly as between shareholders of the protected cell 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 the protected cell company to—
- (a) ensure that the protected cell company complies with the provisions of this Part; and
 - (b) act in accordance with any enforceable arrangements made between the cells of the protected cell company.
- (3) A director (“D”) does not breach a duty imposed on D by paragraph (2) if D—
- (a) acts in good faith; and
 - (b) exercises reasonable care, skill and diligence,
- in the discharge of that duty.

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(4) Paragraph (3)(b) is to be construed in accordance with section 174(2) (duty to exercise reasonable care, skill and diligence) of the Companies Act 2006.

Marginal Citations

M1 Section 170 was amended by section 89 of the [Small Business, Enterprise and Employment Act 2015](#) (c. 26).

Offence of failing to comply with certain duties

84.—(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 46(1) (company records of segregation);
- (b) regulation 77 (name and other particulars to appear on correspondence); or
- (c) regulation 78 (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 46(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

85.—(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 that the instrument of incorporation provides otherwise.

Appointment

86.—(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

87.—(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

88.—(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 18 for the director.

(3) A protected cell company must notify the FCA of any change to the particulars of any current director of the protected cell company.

Invalidity of certain transactions involving directors

89.—(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 referred to in paragraph (1)(a) 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—

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- (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 81(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 81(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—
 - (i) D's spouse, civil partner, child or stepchild;
 - (ii) D's employee; or
 - (iii) D's partner in a partnership;
- (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.

(9) In this regulation, “subsidiary undertaking” has the meaning given by section 1162 of the Companies Act 2006.

Inspection of directors' service contracts

90.—(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 the protected cell company's registered office or any alternative inspection location notified to the FCA under regulation 67.

(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, be sent on request to any person holding shares issued on behalf of the core of the protected cell company before the end of a period of 10 days beginning with the day on which the request is received.

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Changes and effects yet to be applied to :

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