

Summary: Intervention & Options

Department /Agency: Office of the Regulator of Community Interest Companies	Title: Impact Assessment of the consultation on the dividend and performance interest caps
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Stage: Consultation	Version: 2	Date: 23 January 2009
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Related Publications: Enterprise for Communities: Proposals for a Community Interest Company March 2003; Report on the public consultation and the government's intention (Oct 2003)*

Available to view or download at:

<http://www.cicregulator.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Information is required to gain greater understanding of the impact of the legislative restrictions on distributions and interest paid in respect of community interest companies. The responses to the consultation will inform the Regulator's decision on whether a change to the 'caps' is appropriate.

There have been a number of public debates on the subject within the Third Sector since the legislation came into force over three years ago. As there are now a significant number of community interest companies in operation, a review taking account of experience to date would be timely.

What are the policy objectives and the intended effects?

The legislation creating community interest companies (CICs) was introduced on 1 July 2005. The provisions on limits to distributions are intended to ensure that private investors or financiers in community interest companies would not receive a disproportionate rate of return, and that whenever it has distributable profits, the majority of those profits would either be re-invested in the business or used in some other way for the benefit of the community, rather than being distributed in the form of dividends to private investors.

What policy options have been considered? Please justify any preferred option.

(i) Option 1: Do Nothing. If this option was chosen the Third Sector would not have the reassurance that the 'caps' are set at the optimum level to achieve the balance needed by CICs to attract finance whilst protecting community assets.

(ii) Option 2: Consult to gather information to inform the Regulator's decision as to whether a change to the dividend, or performance interest, caps is required. This is the preferred option, as it is in line with good regulatory practice and will provide the information and supporting evidence to make an informed decision.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed in three years.

Ministerial / Chief Executive* Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister/Chief Executive*:

.....Date:

* for Non-Ministerial Public Bodies and other agencies / non-legislative proposals

Summary: Analysis & Evidence

Policy Option: 2

Description: Proposal to introduce a change to the dividend and performance interest caps.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' A decision either way would result in no additional regulatory cost as there is no change to the legislation. The change being considered is to the level of any cap or the way it is expressed.
	One-off (Transition) Yrs		
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 0
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off Yrs		
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0		Total Benefit (PV) £ 0
Other key non-monetised benefits by 'main affected groups' Financiers would be attracted to invest in CICs with a reasonable risk/ reward ratio and the Third Sector would be reassured that assets are adequately protected for a community purpose. This is likely to increase the number of CICs.			

Key Assumptions/Sensitivities/Risks 1. We believe that CICs on the register remain active, with an average growth rate of 27%. 2. We believe that CICs will remain an attractive corporate vehicle for social enterprise and retain their distinctive characteristics from other companies (as at 28 February 2009 there are 2,507 live CICs).

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?		United Kingdom		
On what date will the policy be implemented?		N/A		
Which organisation(s) will enforce the policy?		CIC Regulator		
What is the total annual cost of enforcement for these organisations?		£ 0 (no increase)		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)		
Increase of	£ 0	Decrease of	£ 0	Net Impact £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 1	Description: Do Nothing
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' This would result in no additional regulatory cost as there is no change to the legislation.	
	One-off (Transition) Yrs		
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0	Total Cost (PV)	£ 0
Other key non-monetised costs by 'main affected groups' Given the public debate, if the perceived risk/reward ratio for financiers creates a barrier to attracting finance then it is likely to decrease the number of applications to become a CIC limited by shares and may impact on the growth of CIC more generally.			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'	
	One-off Yrs		
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0	Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups' There is no discernible benefit to the 'Do Nothing' option.			

Key Assumptions/Sensitivities/Risks 1. We believe that CICs on the register remain active, with an average growth rate of 27%. 2. We believe that CICs will remain an attractive corporate vehicle for social enterprise and retain their distinctive characteristics from other companies (as at 28 February 2009 there are 2,507 live CICs).

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Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
Net Impact		£ 0	

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

1. Introduction

1.1. This Impact Assessment accompanies the consultation document, which requests information and evidence of the impact on community interest companies (CICs) in the UK of the current restrictions on distributions and interest paid. The information will inform the Regulator's decision on whether to change the level of any cap or the way it is expressed.

1.2. Annex A provides a worked example of dividend calculations.

2. Background

2.1. In October 2004, a consultation¹ was issued on the draft Community Interest Company Regulations, which set out proposals for a single dividend cap and a cap on returns provided by performance related loans, debt and debentures with "equity-like" characteristics (as the return/interest varies according to the company's financial performance).

2.2. In response to the consultation in October 2004 HMG decided to revise the draft Regulations so that as well as there being a limit on the amount of dividend that can be paid out on each share, there would also be an "aggregate dividend cap" which limits the proportion of a community interest company's distributable profits that can be paid in dividends in a given year.

2.3. This was to ensure that private investors in community interest companies would not receive a disproportionate rate of return, and that whenever it has distributable profits, the majority of those profits would either be re-invested in the business or used in some other way for the benefit of the community, rather than being distributed in the form of dividends to private investors.

2.4. The Act and the Regulations reflect the need to strike the right balance between attracting investment and preserving the assets for community benefit while providing the flexibility for the limits to be reviewed and changed in the light of experience and changes in the market.

2.5. The Community Interest Company Regulations ('the Regulations') came into force on 1 July 2005.

2.6. Under Part 6, regulation 22(3) of the Regulations, the Regulator may, with the approval of the Secretary of State, set a new share dividend cap, aggregated dividend cap, or interest cap.

2.7. Under Part 6, regulation 22(4)(b) and regulation 22 (5) to (7) of the Community Interest Regulations 2005 ('the Regulations'), any change to the level of any cap or the way it is expressed is subject:

- to the share dividend cap being expressed as a percentage of the paid up value of the shares to which it applies;
- the aggregated dividend cap being expressed as a percentage of distributable profits; and

¹ "Consultation on draft Regulations for Community Interest Companies" (October 2004) available at www.berr.gov.uk/files/file14630.pdf

- the interest cap being expressed as a percentage of the average amount of debt, or the sum outstanding on a debenture, during the 12 month period immediately preceding the date on which the interest on that debt or debenture becomes due (determined in accordance with Schedule 4 of the Regulations).

2.8. Under Part 6, regulation 22(4)(a) of the Regulations, a new cap set by the Regulator will not take effect less than three months after it is published in the London Gazette.

2.9. During the last year the limits imposed by the caps have been the subject of debate both in meetings and the press.

3. Options

3.1. For the purpose of this Impact Assessment, the costs and benefits analysis covers the following options:

- Option A: Do Nothing.
- Option B: Consult to inform the Regulator's decision on whether to change the share dividend cap, aggregated dividend cap, or performance related interest cap.

3.2. Consultees are invited to offer views on the treatment of costs and benefits. The deadline for responses to the consultation is 19 June 2009.

4. Who is being consulted

4.1. The consultation is part of a process to call for evidence from organisations and individuals who would have an interest in, or would be affected by, a change in the general levels of the caps on dividend payments and performance related interest paid, and their experience to date. We expect that the consultation will principally be of interest to social enterprises and those who finance social enterprises by way of equity (shares) or the financing of debt (loans).

5. Risks and benefits

5.1. The benefits and risks of the caps on dividends and performance related interest were addressed in the documents listed below. In summary the 'caps':

Benefits

- Strike a balance between maximising access to finance and maintaining the credibility of the asset lock.
- Are responsive to market conditions as they are linked to the Bank of England base rate.
- Do not affect the ability of CICs to use their assets in the normal course of business.
- Sufficient flexibility through provisions of the Community Interest Company Regulations 2005 to be reviewed and changed, if needed.

Risks

- If pitched too low they could damage the ability of CICs to access finance.
- If pitched too high they may deter social investors and social entrepreneurs.
- If changed they may not be able to maintain the balance between encouraging investment and preserving assets for community benefit.

1. 'Proposals for a Community Interest Company' (March 2003)
<http://berr.ecgroup.net/Publications/BusinessLaw/CommunityInterestCompanies.aspx>
2. Report on the public consultation and the government's intention (Oct 2003)
<http://berr.ecgroup.net/Publications/BusinessLaw/CommunityInterestCompanies.aspx>
3. 'Consultation on draft Regulations for Community Interest Companies' (October 2004)
www.berr.gov.uk/files/file14630.pdf
2. 'The Community Interest Company Regulations 20005' Consultation Response.
www.berr.gov.uk/files/file14631.pdf.

5.2. The Regulator's decision (supported by the consultation responses and other related evidence) would provide reassurance that the dividend and performance related interest caps provide adequate protection of the assets for community benefit, whilst still attracting adequate investment. If the Regulator were to take no action to review the evidence the necessary reassurance would not be provided.

6. Population and growth of community interest companies (CICs)

- 6.1. As at 28 February 2009, 2,607 applications to be a CIC were approved and 2,507 remain live on the public register.
- 6.2. The average number of applications approved per month to date for 2008-09 was 86 up by 21% on last year indicating that the CIC legal form remains an attractive model.
- 6.3. 1,836 CICs (73%) are companies limited by guarantee and 671 CICs (27%) are limited by shares.
- 6.4. Year on year the growth of CICs limited by shares has remained steady averaging 27% of the total on the register.
- 6.5. A breakdown of the growth of community interest companies since 1 July 2005

	Received	Approved	Live on Public Register
2005-06	260	208	208
2006-07	729	637	637
2007-08	873	814	776
2008-09	1038	948	886
Total	2900	2607	2507

7. Rationale for the dividend and performance related interest caps

- 7.1. Together with the community interest test, the principle of reinvesting profits so they are used to benefit the community is central to the CIC concept.
- 7.2. As they grow, most companies raise equity by issuing shares. Equity shareholders provide risk capital and expect a corresponding return on their investment, enjoying a share of profits in the form of dividends on shares.
- 7.3. CICs are not able to adopt the same approach to equity as other companies, since unrestricted distribution of CICs' profits to investor shareholders would clearly be incompatible with a lock on profits and assets. However, to enable CICs the scope to grow they need access to a range of sources of finance, and the model needs to be appropriate for growing and large companies, as well as small.
- 7.4. The dividend caps strikes a balance between encouraging people to invest in CICs and the principle that the assets and profits of a CIC should be devoted to the benefit of the community. This

helps to ensure that the dividends are not disproportionate to the amount invested and the profits made by the company.

8. The three elements of the dividend cap

8.1. The restriction on distributions (the dividend cap), as required by Part 6, regulations 17 to 20 of the Community Interest Company Regulations 2005, has three elements:

- The maximum dividend per share limits the amount of dividend that can be paid on any given share. Currently, the limit is 5% above the Bank of England base lending rate. This figure reflected the findings of the Bank of England report on the Financing of Social Enterprises 2003, which suggested that banks typically charge 2-4% over base rate for loans and overdrafts to social enterprises. The figure of 5% over base rate allows a small premium for the additional risk of equity compared to loans.
- The maximum aggregate dividend limits the total dividend declared in terms of the profits available for distribution. Currently, the limit is 35% of the distributable profits.
- The ability to carry forward unused dividend capacity from year to year to a limited extent. Currently the limit is 5 years.

8.2. The Bank of England's base lending rate (also referred to as the Repo Rate) is available from its website (www.bankofengland.co.uk), which also gives details of what the rate has been in the past.

8.3. It should be noted that these caps set maximums. They should not be taken as in any sense suggesting that those who invest in community interest companies are entitled to a particular rate of return on their investment. The caps should also not be seen as limiting companies' discretion as to whether or not to pay dividends at all, or whether to pay a dividend in any given year. Finally, there is no reason why a company should not restrict distributions to lower amounts than would be permitted under the caps in its memorandum and articles of association, or share prospectus, or offer documents. If the company has, for example, issued fixed rate preference shares, the dividend on those shares will be subject to the caps but if the caps allow a higher rate this does not entitle the shareholders to receive that higher rate.

9. The rationale for the performance related interest cap

9.1. Community interest companies need to be able to raise debt i.e. loans and bonds in the commercial markets on the same terms as other companies. Lenders will assess the risk to their investment, and will set interest rates, in the usual way. The transparency of the CIC form should help lenders to understand the risks and result in fair prices for debt finance.

9.2. Subject to its memorandum and articles of association, CICs have the same borrowing powers as any other company and generally will be able to borrow and pay normal commercial rates of interest to lenders.

9.3. The interest cap refers to the somewhat rare circumstances where the interest payable on debts or debentures is linked to the performance of the CIC. Such debt is regarded as similar to equity shares (it is sometimes referred to as "debt with equity characteristics" or "quasi-equity") and the ability to pay uncapped interest on such debt would circumvent the dividend cap.

9.4. The Act and Regulations therefore provide that payment of such performance related interest should be subject to a cap. The cap is expressed in terms of a percentage rate on the average amount outstanding on any given loan, or debenture (debt).

9.5. It will be the rate in force at the date the agreement for payment of the interest was made, or, for existing debt, the date the company became a CIC. The rate for a particular debt is fixed for the life of that debt and will not change if the rate generally is changed. It can, however, fluctuate if the Bank of England rate changes (Bank of England base lending rate plus a fixed percentage).

10. The elements of the performance related interest cap

10.1. The initial interest cap is fixed by Part 6, regulation 21 of the Regulations at “4 percentage points higher than the Bank of England base lending rate”. This figure reflects the finding in the Bank of England report.

10.2. If, for example, the agreement is made when the cap is “Bank of England base lending rate at the time is 3%”, the cap will be 7%. If the Bank of England Base Rate subsequently rises to 5%, the rate for that debt will rise to 9%.

10.3. The rate applicable to any interest payment is that in force on the first day of the financial year in which the interest is due and the amount is calculated on the average amount of the debt, as defined in the Regulations, in the 12 months ending on the day before the payment is due.

10.4. If, for example, the company borrowed £100,000, the interest was agreed at 10% of the company turnover, the debt remained at £100,000 all year and the turnover was £130,000 the lender would be entitled under the agreement to £13,000 interest. If, however, the interest cap was 8% the interest payment would be restricted to £8,000.

10.5. It should be noted that if the contractual rate is lower than the interest cap rate this does not entitle the lender to receive the higher cap rate.

SPECIFIC IMPACT TESTS

11. Issues of Equality and Fairness

11.1. After initial screening as to the potential impact of the Regulator’s proposed action on race, disability and gender equality it has been decided that there will be no impact on minority groups in terms of numbers affected or the seriousness of the any likely impact or both.

12. Small Firms Impact Test

12.1. There is no change in the policy or the nature or number of businesses affected by this proposal to that intended originally by the Community Interest Company Regulations 2005. The proposal uses the flexibility for the dividend and performance related interest limits to be reviewed and if necessary changed in the light of experience and changes in the market, as provided for by the existing legislation. We do not believe there will be impact on small businesses.

13. Enforcement and actions

13.1. The existing provision in the Companies (Audit, Investigation and Community Interest) Act 2004 and the Community Interest Company Regulations 2005 apply. There are no new burdens and hence no new implications in these proposals.

14. Competition Assessment

14.1. There is no change in the policy or the nature or number of businesses affected by this consultation to that intended originally by the Community Interest Company Regulations 2005. The Act and the Regulations reflect the need to strike the right balance between attracting investment and preserving the assets for community benefit while providing the flexibility for the limits to be reviewed and changed in the light of experience and changes in the market. We have fully considered the questions posed in the Office of Fair Trading competition assessment test and conclude that as there is no market share or cost issue and no new penalties, or restrictions, are being proposed then any decision made by the Regulator in this context does not raise competition concerns.

*Related Publications: ‘Consultation on draft Regulations for Community Interest Companies’ (October 2004) and ‘The Community Interest Company Regulations 2005’ Consultation Response’.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Annex A: Worked Examples of Dividend Calculations

1. Example 1

A CIC has a number of shareholders, all of them individuals who have invested in the company in order to acquire shares. The size of the different shareholders' holdings varies, but between them, they hold 1,000 shares. Each share has a paid up value of £5, and all the shareholders are entitled to receive a dividend, in proportion to the number of shares they hold, when a dividend is declared.

The company's shares were all issued when the share dividend cap was Bank of England base lending rate plus 5 per cent, and on the first day of the CIC's first financial year (Year 1), Bank of England base lending rate was 4.5 per cent. In Year 1, the CIC makes distributable profits of £12,000. On the first day of Year 1, the statutory aggregate dividend cap was 35 per cent.

Calculation

The maximum dividend per share is the applicable share dividend cap multiplied by the paid up value of each share. The applicable share dividend cap is the share dividend cap in force at the beginning of the first day of Year 1, which was 9.5 per cent (i.e. 4.5 per cent + 5 per cent). The paid up value of each share is £5. The maximum dividend per share is therefore £5 x 9.5 per cent, or 47.5 pence. Given a total of 1,000 shares in issue, a dividend paid at this rate would result in an aggregate dividend (i.e. the total dividend to all shareholders) of £475 (i.e. 1,000 x 47.5 pence). This is well within the maximum aggregate dividend of £4,200 (i.e. £12,000 x 35 per cent).

The £475 can therefore be distributed among the shareholders by way of dividend according to the number of shares which each of them holds if the directors decide to recommend such a dividend and the shareholders approve their recommendation.

2. Example 2

All the facts are as for Example 1, except that the distributable profits for Year 1 are only £1,000.

Calculation

The maximum dividend per share is still 47.5 pence, but the maximum aggregate dividend is now only £350 (i.e. £1,000 x 35 per cent). If the maximum dividend per share is declared on all 1,000 shares, the aggregate dividend would be £475, which is £125 more than the maximum aggregate dividend. This is not permitted under the draft Regulations. Since the maximum aggregate dividend is £350, the largest dividend which can be declared on each share is 35 pence (i.e. £350 divided by 1,000 (the total number of shares)).

3. Example 3

At the end of Year 1, the CIC in Example 1 decides that it wishes, in future, to give half of its distributable profits to charity each year. It amends its articles to give effect to this policy and issues the charity which is to benefit from this distribution with a special share. The distribution will take the form of a dividend on the special share and the amended articles refer to the charity by name.

In the next financial year (Year 2), the CIC has distributable profits of £2,000. At the start of Year 2, Bank of England base lending rate is 5 per cent. The other facts are as for Example 1.

Calculation

Under the articles, an "exempt dividend" of £1,000 is paid to the named charity. There is no need to consider either the maximum dividend per share or the maximum aggregate dividend before paying this dividend (see draft Regulation 17(2) to (5)).

However, dividends payable to the individual investors are still subject to the dividend capping rules in the draft Regulations. The applicable share dividend cap is the share dividend cap in force at the beginning of the first day of Year 2, which was 10 per cent (i.e. 5 per cent + 5 per cent). The paid up value of each share is £5. The maximum dividend per share on the individual investors' shares is therefore £5 x 10 per cent, or 50 pence. Given a total of 1,000 shares in issue, a dividend paid at this rate would result in an aggregate dividend (i.e. the total dividend to all shareholders) of £500 (i.e. 1,000 x 50 pence).

The maximum aggregate dividend for Year 2 is £700 (i.e. £2,000 x 35 per cent), which is more than £500, so the maximum dividend per share can be paid to the individual investors if the directors decide to recommend such a dividend and the shareholders approve it. (Note that the £1,000 dividend paid to the charity is not included in the calculation of the maximum aggregate dividend and that, taking account of both the capped and the uncapped dividends, the company has paid out considerably more than 35 per cent (in fact, 75 per cent) of its distributable profits in dividends: before recommending such payments, the directors must satisfy themselves that such a recommendation is consistent with their duties to the company.)

4. Example 4

A CIC has 5,000 shares in issue, each with a paid up value of £4. It makes the following distributable profits:

Year 1 £2,000
Year 2 £5,000
Year 3 £1,000
Year 4 £15,000
Year 5 £10,000

In each of Years 1 to 5, the applicable share dividend cap is 10 per cent (so the maximum dividend per share is 40 pence) and the aggregate dividend cap is 35 per cent.

The application of the aggregate dividend cap means that the maximum aggregate dividends for each year are:

Year 1 £700
Year 2 £1,750
Year 3 £350
Year 4 £5,250
Year 5 £3,500

Suppose that the company pays no dividend in Year 1. This means that there is 40 pence per share of unused dividend capacity in respect of Year 1. In Year 2, the company pays a dividend of 25 pence per share (in aggregate, £1,250). This means that there is a further 15 pence per share of unused dividend capacity in respect of Year 2. In Year 3, the company pays no dividend. This means that there is a further 40 pence per share of unused dividend capacity in respect of Year 3.

In Year 4, if the company paid the maximum dividend per share, the total amount of dividend paid would be £2,000. However, the directors and members decide that a larger dividend is justified, and would like to make use of some of the company's unused dividend capacity to pay as much as possible (i.e. up to the maximum aggregate dividend for of £5,250 for the year).

$$£5,250 - £2,000 = £3,250$$

The dividend per share which the company wants to pay in excess of the maximum dividend per share for Year 4 is 65 pence (£3,250 divided by 5,000 shares). This will use up all the unused dividend capacity from Years 1 and 2 and 10 pence per share of the unused dividend capacity from Year 3.

In Year 5, a dividend of 70 pence per share is declared (maximum dividend per share of 40 pence for Year 5 plus 30 pence per share of unused dividend capacity from Year 3, which equals, but does not exceed, the maximum aggregated dividend of £3,500).

Note, however, that even if profits for Year 6 to continue at levels similar to those of Years 4 and 5, there will be no possibility of paying a dividend of more than 40 pence per share, because all the unused dividend capacity has been used up.

5. What is meant by maximum dividend per share

5.1. The maximum dividend per share is fixed by reference to the “share dividend cap” in force at the time that the share was issued, or, if the share was already in existence on the date the company became a CIC, the cap applicable on that date.

5.2. The share dividend cap is expressed as a percentage of the paid up value of the share (the rate). The paid up value of the share is so much of the share’s nominal value as has been paid up and any premium paid on that share to the company. Thus if the company issued £1 shares fully paid at a premium of £2.50 a share the paid up value of those shares would be £3.50. This should not be confused with market value; if, for instance, the same share were purchased from an existing shareholder for £5 the paid up value would still remain at £3.50

5.3. The rate for a particular share is fixed for the life of that share and will not change if the rate generally is changed. It can, however, fluctuate if the Bank of England base lending rate changes.

5.4. For example if shares are issued when the share dividend cap is “Bank of England Base Rate plus 3%” and the Bank of England rate at the time is 4% the maximum dividend per share will be 7%. If the Bank of England Base Rate subsequently rises to 5% the rate for those shares will rise to 8%.

5.5. Where the rate is subject to this kind of fluctuation, the rate applicable to any dividend payment is that in force on the first day of the financial year in which the dividend is declared. This may not be the same as the rate when the dividend is actually declared. For example, if the financial year begins on 1 April when the rate is 7%, but the dividend is paid in October when the rate is 7.25% because the Bank of England has put its Base Rate up by 0.25% in the meantime.

5.6. If more than one dividend is declared in a financial year the total of all such dividends must not exceed the maximum dividend per share. For example, if the share dividend cap is 7% on the first day of the financial year the maximum amount of dividend that may be declared over the course of that financial year on a fully paid up £1 share is 7p. This may be paid either as a single dividend of 7p, or for example, an interim dividend of 3p and a subsequent final dividend of 4p.

6. What is meant by the maximum aggregated dividend

6.1. This element of the Cap is calculated by reference to the aggregate dividend cap in force at the first day of the financial year for which the dividend is declared and is a proportion of the company’s distributable profits for that year. Unlike the maximum dividend per share therefore, where the amount payable is fixed for the life of the particular share, the amount of the maximum aggregate dividend will vary from year to year in line with the distributable profits available.

6.2. For example if the cap is fixed at 25% and the distributable profits for the year are £2,000, the maximum aggregate dividend for all the company’s shares would $£2,000 \times 25\% = £500$.

6.3. However, for any particular share the dividend must not exceed the maximum dividend per share. So, for example, if a company issued 5000 fully paid shares, each with a value of £1, but the maximum dividend per share is 9%, the company will not be able to pay a dividend per share of more than $£1 \times 9\% = 9p$ per share. If 5000 shares are issued $5000 \times 9\% = £450$ in total, £50 short of the maximum aggregate dividend.