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STATUTORY INSTRUMENTS

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**2005 No. 1788**

**The Community Interest Company Regulations 2005**

**PART 6**

**Restrictions on distributions and interest**

**Declaration of dividends**

**17.—**(1) A relevant company may declare a dividend to its members only —

- (a) to the extent that its memorandum and articles permit it to do so;
- (b) if an ordinary or special resolution of the company’s members has approved the declaration of the dividend; and
- (c) if the declaration of the dividend does not cause —
  - (i) the total amount of dividend declared on any of the company’s shares for the financial year for which it is declared to exceed the maximum dividend per share for that financial year; or
  - (ii) the total amount of all the dividends declared on shares in the relevant company for the financial year for which it is declared to exceed the maximum aggregate dividend for that financial year.

(2) Paragraph (1)(c) does not apply to a dividend if, or to the extent that, it is an exempt dividend.

(3) A dividend declared on a share in a relevant company is an exempt dividend if one of the conditions specified in paragraph (4) and one of the conditions specified in paragraph (5) is satisfied in respect of it.

(4) The conditions specified in this paragraph are—

- (a) that the dividend is declared on a share which is held by an asset-locked body (but this condition is not satisfied in respect of a share which the directors recommending the dividend are aware is being held on trust for a person who is not an asset-locked body);
- (b) that the dividend is declared on a share which is held on behalf of an asset-locked body (or is believed by the directors recommending the dividend to be so held).

(5) The conditions specified in this paragraph are—

- (a) that the Regulator has consented to the declaration of the dividend;
- (b) that the asset-locked body by or on behalf of which the share on which the dividend is declared is held (or on behalf of which the directors declaring the dividend believe that it is held) is named in the memorandum or articles of the company as a possible recipient of the assets of the company.

(6) If a relevant company has made the substitutions prescribed in regulation 9(2), references to “asset-locked body” in this article shall have effect as if there were substituted for them references to “charitable body”, with the meaning prescribed in regulation 9(1).

### **Maximum dividend per share**

**18.**—(1) The maximum dividend per share for a financial year is the dividend which a relevant company declares on a share when the total amount of dividend declared on that share for that year (when expressed as a percentage of the paid up value of the share) equals that share's applicable share dividend cap.

(2) The applicable share dividend cap of a share in a relevant company is the share dividend cap which had effect in relation to that share at the time that the share was issued or the company became a community interest company, whichever is the later.

(3) Where the expression of the applicable dividend cap includes reference to a rate or figure determined by any person other than the company, the Regulator or the Secretary of State, the maximum dividend per share for any financial year shall be calculated by reference to that rate or figure as it had effect at the beginning of the first day of that financial year.

### **Maximum aggregate dividend**

**19.** The maximum aggregate dividend for a financial year of a relevant company is declared when the total amount of all dividends declared on its shares for that year, less the amount of any exempt dividends, equals (when expressed as a percentage of the relevant company's distributable profits) the aggregate dividend cap which had effect in relation to that company on the first day of the financial year in respect of which the dividends are declared.

### **Carrying forward of unused dividend capacity from previous financial years**

**20.**—(1) Notwithstanding regulation 17(1)(c)(i), but subject to regulation 17(1)(c)(ii), the total amount of dividends declared on a share in a relevant company for a financial year may, subject to the company's articles, include the whole or any part of the share's unused dividend capacity.

(2) For the purposes of this regulation, a share's unused dividend capacity is A minus B where—

A is the aggregate of any sums by which, for any of the four financial years immediately preceding the financial year for which a dividend is to be declared under this regulation, the total amount of dividend declared and paid on the share for that financial year was less than the maximum dividend per share for that financial year; and

B is any part of A which has already been distributed by way of a dividend declared and paid for a previous financial year.

### **The interest cap**

**21.**—(1) This regulation applies to debentures issued by, and debts of, a community interest company in respect of which—

(a) a performance-related rate of interest is payable; and

(b) the agreement to pay interest at a performance-related rate was entered into by the company on or after the date on which it became a community interest company.

(2) In connection with debentures and debts of the kind specified in paragraph (1), a community interest company shall not be liable to pay, and shall not pay, interest at a higher rate than the applicable interest cap.

(3) The applicable interest cap is the interest cap which had effect at the time that the agreement to pay interest at a performance-related rate was made.

(4) Where the expression of the interest cap includes reference to a rate or figure determined by any person other than the company, the Regulator or the Secretary of State, the interest payable on any debt or debenture to which the interest cap applies shall be calculated by reference to that rate

or figure as it had effect at the beginning of the first day of the financial year in which the interest became due.

(5) Nothing in paragraph (2) shall be taken as releasing a community interest company from liability to pay, or as preventing a community interest company from paying—

- (a) interest which accrued before the company became a community interest company; or
- (b) arrears of interest which if it had been paid at the time it became due would not have breached paragraph (2).

### **Initial level and subsequent variation of dividend caps and interest cap**

22.—(1) Subject to paragraph (3)—

- (a) the share dividend cap shall be that percentage of the paid up value of a share in a relevant company which is 5 percentage points higher than the Bank of England's base lending rate;
- (b) the aggregate dividend cap shall be 35 per cent of a relevant company's distributable profits; and
- (c) the interest cap shall be that percentage of the average amount of a community interest company's debt, or the sum outstanding under a debenture issued by it, 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) which is 4 percentage points higher than the Bank of England's base lending rate.

(2) For the purposes of paragraph (1), the Bank of England's base lending rate is the base lending rate most recently set by the Monetary Policy Committee of the Bank of England in connection with its responsibilities under Part II of the Bank of England Act 1998.

(3) The Regulator may from time to time, with the approval of the Secretary of State, set a new share dividend cap, aggregate dividend cap, or interest cap.

(4) A new cap set under paragraph (3)—

- (a) shall not take effect from a date less than three months after it is published; and
- (b) subject to paragraphs (5) to (7), may result in a change to both the level of any cap and the way in which it is expressed.

(5) The share dividend cap must be expressed as a percentage of the paid up value of the shares to which it applies.

(6) The aggregate dividend cap must be expressed as a percentage of distributable profits.

(7) The interest cap must be expressed as a percentage of the average amount of a debt, or the sum outstanding under 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).

(8) The Secretary of State may from time to time require the Regulator to review any cap set under this regulation.

### **Distribution of assets on a winding up**

23.—(1) This regulation applies where—

- (a) a community interest company is wound up under the Insolvency Act 1986(1); and
- (b) some property of the company (the "residual assets") remains after satisfaction of the company's liabilities.

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(1) 1986 c. 45.

(2) Subject to paragraph (3), the residual assets shall be distributed to those members of the community interest company (if any) who are entitled to share in any distribution of assets on the winding up of the company according to their rights and interests in the company.

(3) No member shall receive under paragraph (2) an amount which exceeds the paid up value of the shares which he holds in the company.

(4) If any residual assets remain after any distribution to members under paragraph (2) (the “remaining residual assets”), they shall be distributed in accordance with paragraphs (5) and (6).

(5) If the memorandum or articles of the company specify an asset-locked body to which any remaining residual assets of the company should be distributed, then, unless either of the conditions specified in sub-paragraphs (b) and (c) of paragraph (6) is satisfied, the remaining residual assets shall be distributed to that asset-locked body in such proportions or amounts as the Regulator shall direct.

(6) If—

- (a) the memorandum and articles of the company do not specify an asset-locked body to which any remaining residual assets of the company should be distributed;
- (b) the Regulator is aware that the asset-locked body to which the memorandum or articles of the company specify that the remaining residual assets of the company should be distributed is itself in the process of being wound up; or
- (c) the Regulator—

- (i) has received representations from a member or director of the company stating, with reasons, that the asset-locked body to which the memorandum or articles of the company specify that the remaining residual assets of the company should be distributed is not an appropriate recipient of the company’s remaining residual assets; and

- (ii) has agreed with those representations,

then the remaining residual assets shall be distributed to such asset-locked bodies, and in such proportions or amounts, as the Regulator shall direct.

(7) In considering any direction to be made under this regulation, the Regulator must—

- (a) consult the directors and members of the company, to the extent that he considers it practicable and appropriate to do so; and
- (b) have regard to the desirability of distributing assets in accordance with any relevant provisions of the company’s memorandum and articles.

(8) The Regulator must give notice of any direction under this regulation to the company and the liquidator.

(9) This regulation has effect notwithstanding anything in the Insolvency Act 1986.

(10) This regulation has effect subject to the provisions of the Housing Act 1996<sup>(2)</sup> and the Housing (Scotland) Act 2001<sup>(3)</sup>.

(11) Any member or director of the company may appeal to the Appeal Officer against a direction of the Regulator made under this regulation.

### **Redemption and purchase of shares**

**24.** A relevant company may not distribute assets to its members by way of the redemption or purchase of the company’s own shares, unless the amount to be paid by the company in respect of any such share does not exceed the paid up value of the share.

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(2) 1996 c. 52.

(3) 2001 asp10.

### **Reduction of share capital**

**25.** A relevant company may not distribute assets to its members by way of a reduction of the company's share capital unless—

- (a) the reduction is made by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up; or
- (b) the amount to be paid by the company to members in paying off paid up share capital does not exceed the paid up value of their respective shares.