

BUILDING SOCIETIES ACT
(Cap. 42:03)

**BUILDING SOCIETIES (CONVERSION)
REGULATIONS, 2014**
(Published on 31st October, 2014)

ARRANGEMENT OF REGULATIONS

REGULATION

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SCHEDULES

IN EXERCISE of the powers conferred on the President by section 82 of the Building Societies Act, the following Regulations are hereby made —

- Citation **1.** These Regulations may be cited as the Building Societies (Conversion) Regulations, 2014.
- Interpretation **2.** In these Regulations, unless the context otherwise requires —
“conversion statement” means a statement issued by a society at the time of conversion;
“distribution of funds” means a distribution of funds of the society or the conferral of right in relation to shares, if any, of a successor company proposed to be made to, or upon members of a society as a result of the conversion;
“notice of redemption” means a notice, in writing, served either by a —
 (a) member on a society; or
 (b) society on a member,
relating to the redemption or intended redemption of any share, whether in accordance with the Act or society’s rules; and
“qualifying day” means the day set out by the Registrar and specified in the conversion statement as such.
- Conditions for conversion **3.** The conditions to be met for a conversion in accordance with section 67A (3) of the Act shall comply with the requirements specified in Schedule 1.

4. (1) A society shall serve a notice of redemption on every member of the society at the beginning of the conversion.

Notice of redemption

(2) A member who has served a notice of redemption on the society prior to the qualifying day, shall not be entitled to receive a distribution of funds or the conferral of rights to shares in a successor company:

Provided that the notice of redemption shall lapse before the commencement of the 60 day period.

5. (1) The distribution of funds shall only be made to members who have held shares in the society throughout a period of one year prior to the qualifying day.

Entitlement to distribution of funds

(2) Any society which distributes funds contrary to subregulation (1) shall be guilty of an offence and shall be liable to a fine not exceeding P1000.

Approval of conversion statement

6. The Registrar shall approve the conversion statement in the form set out in Schedule 2.

SCHEDULE 1

Part I

Conditions of Conversion (regulation 3)

1. A society which desires to convert into a company shall send a conversion statement concerning —

(a) such matters as are listed in Part II of this Schedule; and

(b) such other matters as may be required by the Registrar in a particular conversion: to its members who are entitled to vote in a special resolution as provided for in section 67A (2) (a).

2. The conversion statement shall be sent so as to reach members no later than 14 days, or such longer periods as the society's rules may require, before —

(a) the meeting where the special resolution is to be passed; or

(b) where proxy voting is permitted, such earlier date as may be specified by the society's rules as the final date for the receipt of instruments appointing proxies to vote at the meeting;

but no statement may be sent unless its contents have been approved by the Registrar in accordance with regulation 6.

3. Upon compliance with the requirements of subsection 67A (2) (a), a society shall apply to the Registrar for approval of the society's conversion into a company.

4. Where a society seeks to obtain approval for a conversion, it shall publish a notice of the application in the *Gazette* and in one or two newspapers if the Registrar so directs.

The notice shall —

(a) state that any interested party may make presentations to the Registrar with respect to the application if they so desire;

(b) specify a date, determined by the Registrar, before which written representations or notice of a person's intention to make oral representation shall be received by the Registrar; and

(c) specify the date, determined by the Registrar, on which he intends to hear oral presentations.

5. (1) The Registrar shall —

(a) determine the time and place at which oral presentations may be made;

(b) give notice of that determination to the society and to a person or persons who gave notice of their intention to make oral presentations; and

(c) send copies of written representations to the society.

(2) The society may comment on the written presentations, at a hearing or in writing, before the expiration of a period specified in a notice to the society.

6. The Registrar may not approve the conversion of a society into a company if he considers that —

(a) some information material for members' decision about the conversion was not made available to all members eligible to vote;

(b) the vote on the special resolution approving the conversion, was not passed by a majority of members eligible to vote; or

(c) some relevant requirements of the Act or society's rules were not fulfilled;

(d) the equity of the society is not fairly distributed; or

(e) there is a substantial risk that the successor company will not qualify for a banking licence under Part II of the Banking Act (Cap. 46:04).

7. (1) The Registrar shall direct the society to take such steps as will, within a period fixed by him, ensure compliance with all the requirements or, as the case may be, remove the risk referred to in paragraph 6 (e).

(2) The registrar shall approve the conversion once he is satisfied that the society has complied with all the requirements or removed the risk as the case may be.

PART II

1. Any conversion statement sent to members of a society under paragraph 1 of Part I of this Schedule, shall include particulars in relation to the following matters —

- (a) a factual statement of the options for the future conduct of the society's business as considered by the society's Board in deciding to recommend the conversion and the reasons why the Board recommended the conversion on the terms proposed;
- (b) the consequences of the conversion for employees and all members of the society;
- (c) the name, head office address and the principal objects of the successor company;
- (d) details of the protective provisions provided for in section 67B of the Act and the related provisions to be included in the constitution of the successor company;
- (e) the intended range and relative importance of the successor company's activities following the conversion;
- (f) the most recent audited financial position of the society and its subsidiaries;
- (g) the main features of the financial record of the society and its subsidiaries for each of the last three financial years in respect of which audited information relating to that record has been published;
- (h) the changes proposed, if any, in the ownership of the society's subsidiaries;
- (i) any post-conversion changes in the factors relevant to the determination by the successor company, compared with the society, of interest rates and other charges to be paid or charged on retail deposits and loans including, but not limited to, the need for the successor company to provide for dividends to be paid to its shareholders;
- (j) the future financial prospects of the society following conversion into a company;
- (k) the interest of the directors and other officers of the society in the conversion;
- (l) compensation payable to the society's directors and officers, if any, in respect of the conversion and the manner in which remuneration of directors and officers will alter as a result of the conversion;
- (m) the distribution of funds, if any, proposed to be made to members of the society as a result of the conversion;
- (n) any benefits proposed to be conferred upon members of the society and any other person in connection with the conversion;
- (o) the amount of the society's reserves ascertained by an appropriate expert at the most recent practicable date, and no more than six months prior to the date of the conversion statement;
- (p) in relation to any expert report included, whether that expert has given his written consent to its inclusion, and whether that consent continues to be in effect, where an expert shall mean, any "person who holds himself out to be of a profession or calling that gives authority to a statement made by him and includes an accountant or valuer but does not include a person acting in his capacity as a director or officer of the society;
- (q) any rights to be conferred on members, employees, directors or officers of the society to acquire or receive shares in the successor company in priority to or on terms not available to, other investors;

- (r) any change in the terms on which investments of members of the society will be held as deposits;
- (s) any changes in the handling of complaints, and the system in place when the society converts into a company;
- (t) the estimated total costs and expenses of the conversion;
- (u) any adverse effect that the conversion may have on any contractual arrangements that the society has, or that the successor company will have;
- (v) a statement of responsibility by the directors of the society and the successor company for the content of the conversion statement;
- (w) a statement that the conversion statement has been approved by the Registrar; and
- (x) any matter which may be relevant to communicate to the shareholder.

2. Where particulars are required to be stated of any matter which is not ascertainable at the time when the statement is made, there shall be substituted for that matter a forecast thereof and the fact that the particulars given in the statement relate to a forecast shall be specified in the statement and so shall particulars of —

- (a) the person making the forecast;
- (b) the persons, if any, consulted for the purposes of the forecast by its makers; and
- (c) the facts and assumptions on which it is based.

3. Where particulars are required to be stated of any matter in which is not applicable or relevant to a particular conversion, the conversion statement in relation to such conversion shall include an explanation as to why such matter is not applicable or relevant to that conversion.

SCHEDULE 2

Approval of Conversion Statement by Registrar
(regulation 6)

BUILDING SOCIETIES ACT
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The Registrar, in exercise of the powers conferred to him by regulation 6 and in considering that the conversion statement of the Society is in conformity with the applicable provisions of the Act and appears to be factually consistent with the declarations of responsibility by the

directors of the society and of.....Company
(name of the successor company)

HEREBY APPROVES the conversion statement of.....Society.
(name of the society)

.....
Registrar

MADE this 9th day of October, 2014.

LT. GEN. SERETSE KHAMA IAN KHAMA,
President of the Republic of Botswana.