

Chapter 8

Obligations & Process



8.10 Conversion to a company

8.10.1 **G** Societies can pass a resolution to convert into a company. Societies can convert into companies limited by shares or companies limited by guarantee. Currently, the legislation does not allow societies to convert to a Charitable Incorporated Organisation; but a society can convert to a Scottish charitable incorporated organisation (see ■ RFCCBS 8.11.2).

8.10.2 **G** If a society converts itself into a company it will no longer be registered under the Act.

8.10.3 **G** The decision to convert to a company must be made according to the society’s rules. For example, a community benefit society with an asset lock cannot convert to a company without a statutory asset lock.

Special resolution

8.10.4 **G** The wording of the resolution will depend on the society’s circumstances e.g. the value of its share capital. The wording of the resolution should include the following points:

- (1) the society will be converted into a company incorporated under the Companies Act 2006 limited by shares/guarantee
- (2) the name of the company;
- (3) the registered office of the company [England/Wales/Scotland];
- (4) the objects for which the company is established;
- (5) the liability of members;
- (6) the share capital (if any) of the company;
- (7) that the memorandum and articles attached to the resolution, signed for identification by the chair of the meeting, will be the memorandum and articles of association of the company.

8.10.5 **G** The special resolution must be passed:

- (1) at a first general meeting by:

- (a) 75% of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution;
 - (b) with at least 50% of all members entitled to vote at the meeting in person or by proxy casting their vote; and
- (2) at a second general meeting (to be held at least 14 days, and no more than one month, from the day of the first meeting) by over half of the members who actually vote in person or by proxy at that meeting.

8.10.6 G A declaration by the chair of either meeting that the resolution has been carried is conclusive evidence of that fact.

8.10.7 G Within 14 days from the date that the special resolution is confirmed at the second meeting, the society must send us a copy for registration. The copy must be signed by the chair of the second meeting and countersigned by the society secretary.

Registration of the conversion.....

8.10.8 G Before applying to us to register the special resolution, societies need to contact Companies House to apply for a company to be set up on conversion from a society. It is important that societies tell Companies House not to register the company until we have agreed a date with them. Societies cannot convert into an existing company.

8.10.9 G When we have received the application we will contact Companies House to agree a conversion date.

8.10.10 G To register a conversion we will need:

- (1) three copies of the special resolution. Each copy must be headed with the name and registration number of the society, and signed by the society secretary and the chair of the second meeting that approved the resolution;
- (2) a copy of the proposed memorandum and articles for the company;
- (3) confirmation that the society has applied to Companies House to register a company and has told them that the application is coming from a converting society;
- (4) conversion form signed by the secretary;
[Note: <http://www.fca.org.uk/your-fca/documents/forms/application-for-the-conversion-of-a-society-into-a-company-form>]
- (5) a statutory declaration confirming that the resolution was passed in line with legislative requirements and society rules;

(6) for any regulated housing association, or society on the Scottish Charity Register, consent from the relevant regulator must also be provided for the conversion to proceed.

8.10.11 **G** If the application is complete and correct, we will send a formal acknowledgement of registration of the special resolution. Following that, we will send confirmation of the cancellation of the society.

8.10.12 **G** Companies House will send us information relating to the company registration.