

## IC 28-1-7

### Chapter 7. Merger and Consolidation of Banks, Trust Companies, and Building and Loan Associations

#### IC 28-1-7-0.5

##### Approval of department not required

Sec. 0.5. The approval of the department of an:

- (1) agreement of merger; or
- (2) agreement of consolidation;

is not required under this chapter if the corporation surviving the merger or consolidation is an institution organized or reorganized under the laws of the United States or a state (as defined in IC 28-2-17-19) other than Indiana.

*As added by P.L.122-1994, SEC.41. Amended by P.L.171-1996, SEC.2.*

#### IC 28-1-7-1

##### "Corporation", "shareholder"; authority to merge or consolidate; transactions involving savings banks; merger or consolidation of corporation and affiliate

Sec. 1. (a) As used in this chapter, "corporation" means:

- (1) a bank;
- (2) a trust company;
- (3) a corporate fiduciary;
- (4) a savings bank organized, reorganized, or formed as a result of a conversion after December 31, 1992;
- (5) a savings association; or
- (6) an industrial loan and investment company that maintains federal deposit insurance.

(b) As used in this chapter, "shareholder", with respect to a:

- (1) mutual savings bank; or
- (2) mutual savings association;

refers to a member of the mutual savings bank or mutual savings association.

(c) Any two (2) or more corporations that are organized or reorganized under the laws of any state (as defined in IC 28-2-17-19) or of the United States may merge into one (1) of such corporations, or may consolidate into a new corporation, to be organized under IC 28-12, by complying with the provisions of this chapter.

(d) A savings bank organized before January 1, 1993, may under section 25 of this chapter merge, consolidate, or join together with a bank or trust company. Except as provided in section 25 of this chapter, all other provisions of this chapter apply to the merger, consolidation, or joining together.

(e) A corporation organized or reorganized under the laws of a state (as defined in IC 28-2-17-19) or of the United States may merge or consolidate with one (1) or more of its affiliates (as defined in IC 28-1-18.2-1) by complying with all the provisions of this chapter. In effecting a merger or consolidation between a corporation and an affiliate, this chapter applies as if the affiliate were a corporation

except that a noncorporation survivor of a merger or consolidation does not retain powers of the corporation.

*(Formerly: Acts 1933, c.40, s.114; Acts 1935, c.5, s.23.) As amended by P.L.263-1983, SEC.1; P.L.122-1994, SEC.42; P.L.262-1995, SEC.9; P.L.171-1996, SEC.3; P.L.192-1997, SEC.2; P.L.79-1998, SEC.36; P.L.35-2010, SEC.112; P.L.27-2012, SEC.38; P.L.13-2013, SEC.71.*

#### **IC 28-1-7-2**

##### **Manner of effecting merger**

Sec. 2. The merger of any two (2) or more corporations shall be effected in the following manner. The board of directors of each corporation shall, by a resolution, approve a joint agreement of merger setting forth the following:

- (a) The names of the corporations proposing to merge, and the name of the corporation into which such corporations propose to merge.
- (b) The terms and conditions of the proposed merger.
- (c) The manner and basis of converting the shares of the capital stock of each corporation into the shares of the surviving corporation, or, in whole or in part, into cash, property, shares, or other securities or obligations of any other corporation.
- (d) A restatement of such provisions of the articles of incorporation of the surviving corporation as may be deemed necessary.
- (e) Such other provisions with respect to the proposed merger as may be deemed necessary.

*(Formerly: Acts 1933, c.40, s.115.) As amended by Acts 1979, P.L.257, SEC.1; P.L.141-1984, SEC.3; P.L.122-1994, SEC.43.*

#### **IC 28-1-7-3**

##### **Resolution of approving agreement; direction for submission to vote of shareholders**

Sec. 3. The resolutions of the boards of directors shall direct that the agreement be submitted to a vote of the shareholders of the corporations at an annual or a special meeting. If the meeting is to be an annual meeting, notice of the submission of the agreement shall be included in the notice of the annual meeting. If the meeting is a special meeting, the special meeting shall be called by the resolution designating the meeting, and notice of the meeting shall be given at the time and in the manner provided in IC 28-13-5-8. A copy of the proposed agreement of merger shall be included with the notice of the annual or special meeting.

*(Formerly: Acts 1933, c.40, s.116; Acts 1965, c.356, s.4.) As amended by P.L.263-1985, SEC.26; P.L.14-1992, SEC.67; P.L.122-1994, SEC.44.*

#### **IC 28-1-7-4**

##### **Department's approval of joint agreement of merger**

Sec. 4. (a) After the resolutions approving a joint agreement of

merger have been adopted by the board of directors of each of the corporations, such resolutions and joint agreement shall be submitted for approval by the department. Subject to any approvals required under federal law, the department may, in its discretion, approve or disapprove the resolution and joint agreement.

(b) In deciding whether to approve or disapprove a resolution and joint agreement under this section, the department shall consider the following factors:

- (1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.
- (2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.
- (3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.
- (4) Whether the proposed transaction, in the department's judgment and considering the available information under the prevailing circumstances, will result in an institution that is more favorable to the stakeholders than if the entities were to remain separate.
- (5) Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.
- (6) Whether the institutions subject to the proposed transaction under this chapter furnish all the information the department requires in reaching the department's decision.

*(Formerly: Acts 1933, c.40, s.117.) As amended by P.L.263-1985, SEC.27; P.L.14-1992, SEC.68; P.L.122-1994, SEC.45; P.L.171-1996, SEC.4; P.L.90-2008, SEC.21; P.L.35-2010, SEC.113; P.L.27-2012, SEC.39.*

#### **IC 28-1-7-5**

##### **Submission of merger agreement; vote required**

Sec. 5. The agreement of merger shall be submitted to a vote of the shareholders of each corporation, at the meeting directed by the resolution of the board of directors of each corporation, and the agreement shall be adopted by each corporation upon receiving the affirmative votes of the holders of a majority of the outstanding shares of the capital stock of the corporation. A mutual savings association or mutual savings bank shall adopt the agreement upon receiving the affirmative vote of fifty-one percent (51%) or more of the votes cast at the meeting called to consider such agreement of merger.

*(Formerly: Acts 1933, c.40, s.118; Acts 1959, c.348, s.1.) As amended by P.L.122-1994, SEC.46; P.L.79-1998, SEC.37; P.L.90-2008, SEC.22.*

#### **IC 28-1-7-6**

##### **Notice of adoption of agreement and approval by department**

Sec. 6. The secretary or cashier of each corporation shall promptly deliver or mail a written or printed notice of the adoption of the agreement and the approval by the department to each shareholder of record.

*(Formerly: Acts 1933, c.40, s.119; Acts 1965, c.356, s.5.) As amended by P.L.122-1994, SEC.47.*

#### **IC 28-1-7-7**

##### **Repealed**

*(Repealed by P.L.14-1992, SEC.165.)*

#### **IC 28-1-7-8**

##### **Execution of merger agreement; administrative approval; abandonment of planned merger**

Sec. 8. (a) After the adoption of the agreement of merger by the shareholders, the agreement shall be signed on behalf of each corporation by:

- (1) its president or a vice president; and
- (2) its secretary or cashier.

(b) If the department considers it to be advisable and in the best interests of the creditors and shareholders of any two (2) or more merging corporations, the corporations may merge by complying with the provisions of this chapter other than sections 3 and 5 of this chapter. However, in a merger under this subsection, waivers of the notice of meetings provided for in sections 3 and 5 of this chapter shall be procured from a majority of the shareholders of each of the merging corporations.

(c) A proposed merger may be abandoned (subject to contractual rights), without further shareholder action, in accordance with the procedure set forth in the agreement of merger or, if none is set forth, in the manner determined by the board of directors for the corporation that seeks to abandon the merger.

*(Formerly: Acts 1933, c.40, s.121; Acts 1965, c.356, s.7.) As amended by P.L.263-1985, SEC.28; P.L.256-1989, SEC.2; P.L.122-1994, SEC.48.*

#### **IC 28-1-7-9**

##### **Execution and filing articles of merger**

Sec. 9. (a) After the signing of the agreement of merger under section 8 of this chapter, articles of merger shall be executed and filed in the manner provided in this section, setting forth:

- (1) the agreement of merger;
- (2) the fact that the merger has been approved by the department;
- (3) the signatures of the corporations that are parties to the agreement;
- (4) the manner of its adoption; and
- (5) the vote by which adopted by each of the corporations.

(b) The articles of merger shall be signed on behalf of each corporation by its president or a vice president and by its secretary or cashier and shall be acknowledged before a notary public. The articles of merger shall then be filed with the secretary of state.

*(Formerly: Acts 1933, c.40, s.122.) As amended by P.L.263-1985, SEC.29; P.L.122-1994, SEC.49.*

#### **IC 28-1-7-10**

##### **Articles of merger; approval by secretary of state; issuance of certificate of merger**

Sec. 10. Upon the filing of the articles of merger, the secretary of state shall:

- (1) endorse the approval of the secretary of state upon each of the copies of the articles;
- (2) retain one (1) copy of the articles;
- (3) issue a certificate of merger; and
- (4) return the remaining copies of the approved articles, together with the certificate of merger, to the surviving corporation or its designated agent.

*(Formerly: Acts 1933, c.40, s.123.) As amended by P.L.122-1994, SEC.50.*

#### **IC 28-1-7-11**

##### **Consolidation; resolution approving joint agreements; contents**

Sec. 11. The consolidation of any two (2) or more corporations, as authorized in section 1 of this chapter, shall be effected in the following manner. The board of directors of each corporation shall, by a resolution adopted by a majority vote of the members of such board, approve a joint agreement of consolidation setting forth the following:

- (a) The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, hereinafter designated as the new corporation.
- (b) The terms and conditions of the proposed consolidation and the manner of carrying such consolidation into effect.
- (c) The manner and basis of converting the shares of the capital stock of each corporation into the shares of the new corporation.
- (d) With respect to the new corporation, all of the statements required by IC 28-12-2 to be set forth in original articles of incorporation for corporations formed under this article.
- (e) Such other provisions with respect to the proposed consolidation as may be deemed necessary or desirable.

*(Formerly: Acts 1933, c.40, s.124.) As amended by P.L.263-1985, SEC.30; P.L.14-1992, SEC.69.*

#### **IC 28-1-7-12**

##### **Consolidation; submission of resolutions and joint agreements to department; approval or disapproval**

Sec. 12. (a) After the resolution approving a joint agreement of

consolidation has been adopted by the board of directors of each of the corporations, the resolutions and joint agreement shall be submitted to the department. The department may, in its discretion, approve or disapprove the resolutions and joint agreement.

(b) In deciding whether to approve or disapprove a transaction under this chapter, the department shall consider the following factors:

(1) Whether the institutions subject to the proposed transaction are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of any institution subject to the proposed transaction will jeopardize the financial stability of any other institutions subject to the proposed transaction.

(3) Whether the proposed transaction under this chapter will result in an institution that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(4) Whether the management or other principals of the institution that will result from the proposed transaction under this chapter are qualified by character and financial responsibility to control and operate in a legal and proper manner the resulting institution.

(5) Whether the public convenience and advantage will be served by the resulting institution after the proposed transaction.

(6) Whether the institutions subject to the proposed transaction under this chapter furnish all the information the department requires in reaching the department's decision.

*(Formerly: Acts 1933, c.40, s.125; Acts 1945, c.348, s.24.) As amended by P.L.263-1985, SEC.31; P.L.14-1992, SEC.70; P.L.122-1994, SEC.51; P.L.171-1996, SEC.5; P.L.90-2008, SEC.23.*

#### **IC 28-1-7-13**

##### **Shareholders' votes on consolidation agreements**

Sec. 13. The agreement of consolidation shall be submitted to a vote of the shareholders of each corporation and shall be adopted upon receiving the same affirmative votes, and the adoption shall be followed by the same notice to shareholders as is prescribed in sections 3, 5, and 6 of this chapter, as if the consolidation were a merger.

*(Formerly: Acts 1933, c.40, s.126.) As amended by P.L.263-1985, SEC.32; P.L.122-1994, SEC.52; P.L.90-2008, SEC.24.*

#### **IC 28-1-7-14**

##### **Repealed**

*(Repealed by P.L.14-1992, SEC.165.)*

#### **IC 28-1-7-15**

##### **Execution of agreement**

Sec. 15. Upon the adoption of the agreement of consolidation, the agreement shall be signed as provided in section 8 of this chapter.

*(Formerly: Acts 1933, c.40, s.128.) As amended by P.L.263-1985,*

*SEC.33; P.L.122-1994, SEC.53.*

#### **IC 28-1-7-16**

##### **Execution and filing articles of consolidation**

Sec. 16. Upon the execution of the agreement of consolidation by all of the corporations that are parties to the agreement, articles of consolidation shall be executed and filed with the secretary of state. The articles of consolidation must set forth the factors prescribed in section 9 of this chapter as if the consolidation was a merger.

*(Formerly: Acts 1933, c.40, s.129.) As amended by P.L.263-1985, SEC.34; P.L.122-1994, SEC.54.*

#### **IC 28-1-7-17**

##### **Secretary of state; approval of articles of consolidation; issuance of certificates of consolidation and incorporation**

Sec. 17. Upon the filing of the articles of consolidation, the secretary of state shall:

- (1) endorse the approval of the secretary of state upon each of the copies of the articles;
- (2) retain one (1) copy of the articles;
- (3) issue a certificate of consolidation and incorporation to the new corporation; and
- (4) return the remaining copies of the approved articles of consolidation, together with the certificate of consolidation and incorporation, to the new corporation or to its designated agent.

*(Formerly: Acts 1933, c.40, s.130.) As amended by P.L.122-1994, SEC.55.*

#### **IC 28-1-7-18**

##### **Effective date of merger or consolidation**

Sec. 18. Upon the issuance of a certificate of merger or a certificate of consolidation and incorporation by the secretary of state, the merger or consolidation, as the case may be, shall be effected.

*(Formerly: Acts 1933, c.40, s.131.)*

#### **IC 28-1-7-19**

##### **Effect of merger or consolidation upon corporate structures, powers, privileges, and obligations**

Sec. 19. When any such merger or consolidation shall have been effected, as provided in this chapter:

- (a) the several corporations which are parties to the agreement of merger or of consolidation shall be a single corporation, which shall be:
  - (1) in case of a merger, the surviving corporation which is a party to the agreement of merger into which it has been agreed that the other corporations which are parties to the agreement shall be merged, which surviving corporation shall survive the merger; or
  - (2) in case of a consolidation, the new corporation into

which it has been agreed that the corporations which are parties to the agreement of consolidation shall be consolidated;

(b) the separate existence of all the corporations which are parties to the agreement of merger or consolidation, except the surviving corporation in the case of a merger, shall cease;

(c) such single corporations shall have all of the rights, privileges, immunities, and powers and shall be subject to all of the duties and liabilities of a corporation organized under IC 28-1-4;

(d) such single corporation shall thereupon and thereafter possess all of the rights, privileges, immunities, powers, and franchises which such corporation would possess if it were organized under the provisions of this article; all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares of capital stock, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed, and the title to any real estate, or any interest therein, under the laws of this state vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation;

(e) such single corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated, in the same manner and to the same extent as if such single corporation had itself incurred such liabilities and obligations, or contracted therefor, and any claim existing or any action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such single corporation may be substituted in its place; neither the rights of creditors nor any liens upon the property of any of such corporations shall be impaired by such merger or consolidation, but such liens shall be limited to the property upon which they were liens immediately prior to the time of such merger or consolidation, unless otherwise provided in the agreement of merger or consolidation and with the consent in writing of the parties affected; and

(f) in case of a merger, the articles of incorporation of the surviving corporation shall be supplanted and superseded to the extent, if any, that any provision or provisions of such articles shall be restated in the agreement of merger as provided by section 2(d) of this chapter, and such articles of incorporation shall be deemed to be thereby and to that extent amended. In case of a consolidation, the statements set forth in the agreement of consolidation, as provided in section 11(d) of this chapter, shall be deemed to be the articles of incorporation of the new corporation formed by such consolidation.



*(Formerly: Acts 1933, c.40, s.132.) As amended by P.L.263-1985, SEC.35.*

#### **IC 28-1-7-20**

##### **Recording articles of merger or consolidation**

Sec. 20. The surviving or new corporation resulting from a merger or consolidation shall, within ten (10) days after such merger or consolidation becomes effective, file for record one (1) of the copies of the articles of merger or consolidation bearing the endorsement of the approval of the secretary of state, or a copy of such agreement and endorsement certified by the secretary of state, in the office of the recorder of each county in which the principal office of any of the corporations that are parties to the agreement is located.

*(Formerly: Acts 1933, c.40, s.133.) As amended by P.L.263-1985, SEC.36; P.L.14-1992, SEC.71; P.L.122-1994, SEC.56.*

#### **IC 28-1-7-21**

##### **Dissenters' rights; notice; method of asserting rights; payment for shareholder's shares; withdrawal of demand; determination of value; submission of certificates**

Sec. 21. (a) This section does not apply to a shareholder of a:

- (1) mutual savings bank; or
- (2) mutual savings association;

that is the subject of a proposed merger or consolidation under this chapter.

(b) A shareholder entitled to vote on the adoption of an agreement of merger or consolidation may dissent from the merger or consolidation and obtain payment of the value of the shareholder's shares in the manner provided in this section.

(c) If a proposed merger or consolidation is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this section.

(d) A shareholder who desires to assert dissenters' rights under this section must:

- (1) deliver to the corporation before the vote is taken written notice of the shareholder's demand for payment for the shareholder's shares if the proposed action is effected; and
- (2) not vote the shareholder's shares in favor of the proposed action.

(e) If the merger or consolidation is effected, the surviving or new corporation shall pay to the shareholder, upon surrender of the certificate or certificates representing the shareholder's shares, the value of the shares as of the day before the date on which the vote was taken approving the merger or consolidation. A shareholder failing to satisfy the requirements of subsection (d) is not entitled to payment for the shareholder's shares under this section. Immediately after the vote is taken approving the merger or consolidation, the shareholder, except as otherwise provided in subsection (f), is entitled to payment only as provided in this section, ceases to be a

shareholder, and is not entitled to vote or to exercise any other rights of a shareholder.

(f) A demand for payment made under subsection (d) may not be withdrawn unless the corporation consents to the withdrawal. With respect to a shareholder who has made a demand for payment, the right of the shareholder to be paid the value of his shares ceases and his status as a shareholder is restored without prejudice to any corporate proceedings which may have been taken during the interim, and the shares held by the shareholder shall be treated for all purposes as if no objection and demand had been made by the shareholder, if:

- (1) the shareholder's request to withdraw the shareholder's demand is consented to by the corporation;
- (2) the merger or consolidation is abandoned;
- (3) the shareholders revoke the authority to effect the merger or consolidation;
- (4) a petition for the determination of value by a court is not filed within the time provided in this section; or
- (5) a court of competent jurisdiction determines that the shareholder is not entitled to the relief provided by this section.

(g) Within ten (10) days after the merger or consolidation is effected, the surviving or new corporation shall mail or deliver written notice of the date of that action to each dissenting shareholder who has made demand under this section. For purposes of giving this notice, the corporation shall use the shareholder's address which appears on the corporate records. In the notice the corporation shall include a written offer to the shareholder to pay for the shareholder's shares at a specified price considered by the corporation to be the value of them. If within thirty (30) days after the date on which the merger or consolidation was effected the value of the shares is agreed upon between a dissenting shareholder and the surviving or new corporation, the surviving or new corporation shall make payment to the shareholder for the shares. The surviving or new corporation shall make the payment within ninety (90) days after the date on which the merger or consolidation was effected, upon surrender of the certificate or certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder ceases to have any interest in the shares.

(h) If within the period of thirty (30) days a dissenting shareholder and the surviving or new corporation do not so agree, then either the corporation or the dissenting shareholder may file a petition in any circuit or superior court in the county in Indiana where the principal office of the corporation is located requesting that the court determine the value of the shares. However, the petition must be filed within ninety (90) days after the effective date of the merger or consolidation. Two (2) or more dissenting shareholders may join as plaintiffs or be joined as defendants in the action, and two (2) or more actions may be transferred and consolidated to avoid inconsistent results and promote judicial economy. The jurisdiction of the court is plenary and exclusive.

(i) The court shall render judgment against the surviving or new corporation for payment of an amount equal to the value of each dissenting share multiplied by the number of dissenting shares that any dissenting shareholder who is a party is entitled to require the surviving or new corporation to purchase. The judgment is payable only upon the endorsement and delivery to the surviving or new corporation of the certificates for the shares described in the judgment. Any party may appeal from the judgment.

(j) Within twenty (20) days after the merger or consolidation is effected, the shareholder shall submit the certificate or certificates representing the shareholder's shares to the corporation for notation on the certificate or certificates that demand for payment has been made. The shareholder's failure to do so, at the option of the corporation, terminates the shareholder's rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, otherwise directs. If shares represented by a certificate on which notation has been so made are transferred, each new certificate issued for those shares shall bear a similar notation together with the name of the original dissenting holder of the shares, and a transferee of the shares acquires by the transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the value of the shares.

*(Formerly: Acts 1933, c.40, s.134; Acts 1965, c.356, s.9.) As amended by P.L.238-1983, SEC.9; P.L.33-1991, SEC.13; P.L.14-1992, SEC.72; P.L.262-1995, SEC.10; P.L.27-2012, SEC.40.*

#### **IC 28-1-7-22**

##### **Effect of merger or consolidation upon fiduciary status of party**

Sec. 22. If any bank, bank of discount and deposit, trust company, savings bank, corporate fiduciary, or savings association:

(1) is acting as the administrator, coadministrator, executor, coexecutor, trustee, or cotrustee of or in respect to any estate or trust, or as guardian of any person or estate which is being administered under the laws of this state; or

(2) has been named or designated as such in any will or other executed writing;

such relation, and all other similar fiduciary relations, and all rights, privileges, duties, and obligations shall remain unimpaired, and shall continue with the surviving or single corporation, from the effective date of the merger or consolidation.

*(Formerly: Acts 1933, c.40, s.135.) As amended by P.L.122-1994, SEC.57; P.L.262-1995, SEC.11; P.L.79-1998, SEC.38.*

#### **IC 28-1-7-23**

##### **Effect of merger or consolidation upon letters of administration or letters testamentary**

Sec. 23. Nothing done in connection with the consolidation or merger of any two (2) or more banks, banks of discount and deposit, trust companies, savings banks, corporate fiduciaries, or building and

loan associations shall be deemed to be or to effect a renunciation or revocation of any letters of administration or letters testamentary, pertaining to such relation, nor a removal or resignation from any such executorship or trusteeship or any other fiduciary relationship. (Formerly: Acts 1933, c.40, s.136.) As amended by P.L.122-1994, SEC.58; P.L.262-1995, SEC.12.

#### **IC 28-1-7-24**

##### **Repealed**

(Repealed by P.L.122-1994, SEC.122.)

#### **IC 28-1-7-25**

##### **Savings banks; request for order to merge, consolidate, or join with acquiring bank or trust company; requirements**

Sec. 25. (a) A savings bank organized before January 1, 1993, may request that the department order the savings bank to merge, consolidate, or join with an acquiring institution that is a bank, bank of discount and deposit, savings bank formed after December 31, 1992, savings association, or trust company.

(b) A savings bank may make a request under subsection (a) only if its board of trustees has, at a regular or special meeting called for that purpose, by a vote of at least two-thirds (2/3) of the then qualified and acting trustees, adopted a resolution stating that in the opinion of the board, the merger, consolidation, or other joining together is in the best interests of the depositors and other creditors of the savings bank.

(c) The department may order a merger, consolidation, or other joining requested under subsection (a) if it determines that:

- (1) the depositors of the savings bank would not receive any liquidating dividend upon the dissolution of the savings bank; and
- (2) the acquiring institution is willing to be the surviving corporation.

(d) The approval of the depositors of a savings bank organized before January 1, 1993, is not required for a merger, consolidation, or joining together under this section.

(e) To facilitate a merger, consolidation, or joining together under this section, the department may convert the charter, form of ownership, or operating powers of a savings bank into the charter, form of ownership, or operating powers of the acquiring institution. As added by P.L.263-1983, SEC.2. Amended by P.L.122-1994, SEC.59; P.L.79-1998, SEC.39.