

IC 28-1-8

Chapter 8. Sale of Banks, Trust Companies, and Building and Loan Associations

IC 28-1-8-0.5

"Corporation" defined

Sec. 0.5. As used in this chapter, "corporation" means:

- (1) a bank;
- (2) a trust company;
- (3) a corporate fiduciary;
- (4) a savings bank;
- (5) a savings association; or
- (6) an industrial loan and investment company that maintains federal deposit insurance.

As added by P.L.171-1996, SEC.6. Amended by P.L.192-1997, SEC.3; P.L.79-1998, SEC.40.

IC 28-1-8-0.7

"Shareholder"

Sec. 0.7. 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.

As added by P.L.27-2012, SEC.43. Amended by P.L.13-2013, SEC.72.

IC 28-1-8-1

Disposition of property and assets; authority; compliance with procedures

Sec. 1. A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property and assets, including good will, by complying with the provisions of this chapter.

(Formerly: Acts 1933, c.40, s.137.) As amended by P.L.263-1985, SEC.37; P.L.122-1994, SEC.73; P.L.262-1995, SEC.26; P.L.27-2012, SEC.44.

IC 28-1-8-2

Resolution proposing sale or other disposition; submission to shareholders

Sec. 2. A sale, lease, exchange, or other disposition described in section 1 of this chapter must first be proposed by the board of directors by the adoption of a resolution that:

- (1) sets forth the terms and conditions of the sale, lease, exchange, or other disposition; and
- (2) directs that the proposed disposition be submitted to a vote of the shareholders at the annual meeting or a special meeting.

The meeting shall be called by the resolution and notice of the meeting shall be given in the manner provided in IC 28-13-5-8.

(Formerly: Acts 1933, c.40, s.138.) As amended by P.L.263-1985,

SEC.38; P.L.14-1992, SEC.75; P.L.122-1994, SEC.74; P.L.27-2012, SEC.45.

IC 28-1-8-3

Submission of resolution to department; conditions for approval; economic benefits to officers or directors

Sec. 3. (a) Before a proposed disposition described in section 1 of this chapter is submitted to a vote of the shareholders, the resolution proposing the disposition shall be submitted for the approval of the department.

(b) Subject to section 5(c) of this chapter, and any approvals required under federal law, the department may approve a resolution if the corporation has and will have assets in excess of the corporation's liabilities and either of the following applies:

- (1) The corporation intends to merge out of existence under IC 28-1-7-1.
- (2) The corporation intends to voluntarily dissolve under IC 28-1-9.

(c) An officer or a director of a corporation whose proposed disposition is approved by the department under subsection (b) may not negotiate for or receive any economic benefit in connection with any sale of assets under this chapter, except for:

- (1) compensation and other benefits paid to the officer or director and to officers and directors of the purchasing institution in the ordinary course of business;
- (2) any economic benefit realized by all shareholders as a result of the disposition; or
- (3) any economic benefit received as part of a compensation or benefit plan existing at the time of the disposition and approved before the initiation of sale negotiations.

(d) If the department approves a resolution submitted under this section, the department shall:

- (1) write or stamp on the resolution:
 - (A) the words "Approved by the Department of Financial Institutions of the State of Indiana"; and
 - (B) the date of the approval; and
- (2) place the impression of the seal of the department and the signature of the director or the director's authorized designee beneath the approval stamp.

(Formerly: Acts 1933, c.40, s.139.) As amended by P.L.263-1985, SEC.39; P.L.14-1992, SEC.76; P.L.122-1994, SEC.75; P.L.35-2010, SEC.114; P.L.27-2012, SEC.46.

IC 28-1-8-4

Submission to shareholders; vote required

Sec. 4. If a resolution proposing a disposition described in section 1 of this chapter is approved by the department, the resolution may then be submitted to the shareholders at the annual meeting or a special meeting. The resolution shall be authorized upon receiving the affirmative votes of two-thirds (2/3) of the outstanding shares.

(Formerly: Acts 1933, c.40, s.140.) As amended by P.L.122-1994, SEC.76.

IC 28-1-8-5

Dissenting shareholders; effective date of disposition; mutual savings banks and mutual savings associations

Sec. 5. (a) Subject to subsection (c), the rights of dissenting shareholders in the case of a merger or consolidation, as set forth in IC 28-1-7-21, apply to the sale, lease, exchange, or other disposition of the property and assets of a corporation under this chapter. Any dissenting shareholder shall have such rights and remedies as provided for in IC 28-1-7-21.

(b) For purposes of the application of IC 28-1-7-21 to this chapter, the "effective date" of a sale, lease, exchange, or other disposition under this chapter, within the meaning of IC 28-1-7-21, is the date upon which the disposition was authorized by the shareholders of the corporation.

(c) In a proposed disposition described in section 3(b) of this chapter, if the corporation that is the subject of the proposed disposition is a mutual savings bank or a mutual savings association, the rights and remedies for dissenting shareholders set forth in IC 28-1-7-21 do not apply.

(Formerly: Acts 1933, c.40, s.141.) As amended by P.L.263-1985, SEC.40; P.L.122-1994, SEC.77; P.L.27-2012, SEC.47.

IC 28-1-8-6

Purchase of assets; submission of resolution and application to department; factors for department's approval; exceptions to approval requirement

Sec. 6. (a) Subject to the approval of the department, a corporation may purchase all or substantially all of the assets of one (1) or more other corporations that are organized or reorganized under the laws of any state (as defined in IC 28-2-17-19) or the United States.

(b) After the board of directors of a corporation agrees to purchase all or substantially all of the assets of one (1) or more corporations, the board resolution approving the purchase and an application in the form prescribed by the director of the department must be submitted for approval by the department.

(c) Subject to any approvals required under federal law, the department, in its discretion, may approve or disapprove an application and a board resolution submitted under subsection (b). In deciding whether to approve or disapprove the board resolution and application, 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 of the information the department requires in reaching the department's decision.

(7) If deposits are to be transferred as part of the proposed transaction, whether the resulting institution will maintain adequate federal deposit insurance or such other deposit insurance as approved by the director.

(d) The approval of the department of the purchase of all or substantially all of the assets of one (1) or more corporations is not required under this section if the resulting corporation is a corporation organized or reorganized under the laws of:

- (1) a state (as defined in IC 28-2-17-19) other than Indiana; or
- (2) the United States.

As added by P.L.171-1996, SEC.7. Amended by P.L.79-1998, SEC.41; P.L.27-2012, SEC.48.