

## CHAPTER 49

### LIQUIDATION, REORGANIZATION, CONSOLIDATION

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#### 49.33 CONSOLIDATION AND MERGER, WHEN AUTHORIZED.

Subject to the provisions of sections 49.33 to 49.41, with the written consent of the commissioner of commerce, any bank of discount and deposit or trust company may effect a transfer of its assets and liabilities to another bank or trust company for the purpose of consolidating or merging, but the same shall be without prejudice to the creditors of either.

**History:** 1989 c 166 s 8

#### 49.34 CONSOLIDATION OR MERGER OF STATE BANKS OR TRUST COMPANIES, PROCEDURE.

Subdivision 1. **Generally.** Any two or more state banks, operating in the same city, may be consolidated or merged into a consolidated or merged state bank, and any two or more trust companies, operating in the same city, may be consolidated or merged into a consolidated or merged trust company, and any state bank or state banks and any trust company or trust companies, operating in the same city, may be consolidated or merged into a consolidated or merged state bank or consolidated or merged trust company, as the respective boards of directors thereof may determine. The consolidation or merger shall be effected in the manner provided in sections 49.35 to 49.41 and when so organized, the consolidated or merged corporation shall be governed and conducted in all other respects as provided by the statutes relating to the respective classes of financial corporations.

*[For text of subd 2, see M.S.1988]*

**History:** 1989 c 166 s 9

#### 49.35 CONSOLIDATION OR MERGER AGREEMENT.

The respective boards of directors of the consolidating or merging corporations may, by the majority vote of all of the members of each board, make or authorize to be made between the corporations a written agreement, in duplicate, for the consolidation or merger of the corporations. The agreement shall specify each corporation to be a party to the transaction, and shall prescribe the terms and conditions thereof; the mode of carrying it into effect; the authorized capital stock of the consolidated or surviving corporation, which shall not exceed the aggregate authorized capital stock of all of the corporations that are a party thereto; the name of the consolidated or surviving corporation, which may be the name, in whole or in part, of any corporation which is a party to the agreement, and shall specify the city in which it shall have its principal place of business. It shall name the persons who shall constitute the board of directors of the consolidated or surviving corporation, but the number and qualifications of these persons shall be in accordance with the statutes relating to the number and qualifications of directors of that class of corporation.

**History:** 1989 c 166 s 10

**49.36 APPROVAL BY COMMISSIONER.**

Subdivision 1. **Requirements.** This consolidation or merger agreement and certified copy of the proceedings of the meetings of the respective boards of directors, at which the making of the agreement was authorized, must be submitted to the commissioner of commerce for approval with a fee of \$250 payable to the commissioner of commerce. The fee must be paid in equal parts by the parties to the agreement, and it shall not be effective until so approved by the commissioner. The commissioner shall take action after the documents are submitted, and is entitled to further information from any party to the transaction as may be requested by the commissioner, or as may be obtained upon a hearing directed by the commissioner.

*[For text of subds 2 to 4, see M.S.1988]*

**History:** 1989 c 166 s 11

**49.37 STOCKHOLDERS TO APPROVE; CERTIFICATE OF CONSOLIDATION OR MERGER.**

Either before or after the consolidation or merger agreement has been approved by the commissioner of commerce, it must be submitted to the stockholders of each corporation at a meeting thereof called, and it does not become binding upon the corporation until it has been approved at each of the meetings required by this section by the vote or ballot of the stockholders, holding at least a majority of the amount of stock of the respective corporations, or a higher percentage as may be required by the certificate of incorporation of the corporations. Proof of the holding of these meetings and the results thereof must be submitted to the commissioner of commerce. After the agreement called for by sections 49.33 to 49.41 has been approved by the stockholders of the respective corporations and by the commissioner of commerce, the latter shall issue a certificate reciting that the corporations have complied with the provisions of sections 49.34 to 49.41 and declaring the consolidation or merger of these corporations and the name of the consolidated or surviving corporation, the amount of capital stock thereof, the names of the first board of directors, and the place of business of the consolidated or surviving corporation, which must be within the city where any of the constituent corporations have been previously authorized to have their places of business. Upon the issuing of this certificate and the filing of it for record in the office of the secretary of state, the incorporation is deemed to be complete in the case of the consolidation, and the assets of the constituent corporations merged into the survivor in the case of a merger, and the consolidated or surviving corporation shall, from the date of this certificate, have the term of corporate existence as may be specified in it, not exceeding the longest unexpired term of any constituent corporation. The certificate of the commissioner of commerce is prima facie evidence that all of the provisions of sections 49.34 to 49.41 have been complied with, and is conclusive evidence of the existence of the consolidated or surviving corporation.

**History:** 1989 c 166 s 12

**49.38 CORPORATE EXISTENCE MERGED; RIGHTS, POWERS, OBLIGATIONS.**

Upon the consolidation or merger of a corporation with or into any one or more corporations as herein provided, the corporate existence of each former corporation shall be merged into that of the consolidated or merged corporation, and all and singular its rights, privileges, and franchises, and its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and all things in action, and every right, privilege, interest, or asset of conceivable value or benefit then existing which would inure to it under an unmerged or unconsolidated existence, shall be deemed fully and finally transferred to and vested in the consolidated or surviving corporation without further act or deed, and the last mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the former corporation from which it was, by operation of sections 49.34 to 49.41, trans-

ferred. Its rights, obligations, and relations to any person, creditor, depositor, trustee, or beneficiary of any trust shall remain unimpaired and the corporation into which it shall have been consolidated or merged shall succeed to these relations, obligations, trusts, and liabilities and shall execute and perform all such trusts in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause shall not be impaired by the consolidation or merger, nor shall any obligation or liability of any stockholder, in any corporation which is a party to the consolidation or merger, be affected by any such consolidation or merger, but these obligations and liabilities shall continue as fully and to the same extent as existed before the consolidation or merger. The consolidated or surviving corporation shall become, without further act or deed, the successor of the consolidating or constituent corporations in any and all fiduciary capacities, in which each consolidated or constituent corporation may be acting at the time of the consolidation or merger, and shall be liable to all beneficiaries as fully as if the consolidating or merging corporations had continued its separate corporate existence. If any consolidating or merging corporation shall be nominated and appointed, or shall have been nominated or appointed, as executor, guardian, administrator, agent, or trustee, or in any other trust relationship of fiduciary capacities in any will, trust agreement, trust conveyance, or any other conveyance, order, or judgment of any court, or any other instrument prior to the consolidation or merger, even though the will or other instrument shall not be operative or effective until after the consolidation or merger shall have become effective, every such office, trust relationship, fiduciary capacity, and all of the rights, powers, privileges, duties, discretions, and responsibilities so provided to devolve upon, vest in, or inure to the corporation so nominated or appointed, shall fully and in every respect devolve upon, vest in, and inure to, and be exercised by, the consolidated or surviving corporation, whether there be one or more successive mergers or consolidations.

**History:** 1989 c 166 s 13

#### **49.39 CONSOLIDATION OR MERGER OF BANKS AND TRUST COMPANIES.**

Upon the consolidation or merger of a trust company with a national banking corporation into a consolidated or merged banking corporation, as provided by any existing act of Congress of the United States, the corporate existence of that trust company shall be consolidated or merged into that of the consolidated or merged banking corporation to the same extent and with the same effect provided in section 49.38, relating to the consolidation or merger of two or more state banks or trust companies.

**History:** 1989 c 166 s 14

#### **49.40 PENDING ACTIONS OR PROCEEDINGS NOT AFFECTED.**

Any pending action or other judicial proceeding in which any consolidating or merging corporation is a party shall not be deemed to have abated or to have discontinued by reason of the consolidation or merger but may be prosecuted to final judgment, order, or decree in the same manner as if the consolidation or merger had not been made, or the consolidated or merged corporation may be substituted as a party to the action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against that corporation if the consolidation or merger had not occurred.

**History:** 1989 c 166 s 15

#### **49.41 RIGHTS OF DISSENTING STOCKHOLDERS.**

Any stockholder not voting in favor of the agreement of consolidation or merger at the meeting prescribed in section 49.37 may, at that meeting, or within 20 days thereafter, object to the consolidation or merger and demand payment for that person's stock. If the consolidation or merger takes effect at any time after this demand, the

stockholder may, at any time within 60 days thereafter, apply to the district court in the county wherein is situated the principal place of business of the corporation with which the other or others are consolidated or merged, for the appointment of three persons to appraise the value of that person's stock. The court shall thereupon appoint these appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and also direct the time and manner in which payment shall be made of the value of that person's stock to the stockholder. The appraisers shall meet at the time and place designated, after being duly sworn to discharge their duties honestly and faithfully, make and certify a written estimate of the value of the stock at the time of the appraisal, and deliver one copy to the corporation and another to the stockholder, if demanded. The charges and expenses of the appraisers shall be paid one-half by the stockholder and one-half by the corporation. When the corporation shall have paid the appraised value of this stock, the stock shall be canceled and this stockholder shall cease to be a member of the corporation or to have any interest in this stock or in the corporation or in the corporate property, and this stock may be held and disposed of by the corporation for its own benefit.

**History:** 1989 c 166 s 16