

Ha Noi, 11 February 2010

**CIRCULAR
REGULATING
MERGER AND CONSOLIDATION OF CREDIT INSTITUTIONS AND ACQUISITION
OF A CREDIT INSTITUTION¹**

Pursuant to the 1997 Law on the State Bank of Vietnam as amended in 2003;

Pursuant to the 1997 Law on Credit Institutions as amended in 2004;

Pursuant to the 2005 Law on Enterprises;

Pursuant to the 2005 Law on Investment;

Pursuant to the 2004 Law on Competition;

Pursuant to Decree 96-2008-ND-CP of the Government dated 26 August 2008 on functions, duties, powers and organizational structure of the State Bank of Vietnam;

The State Bank of Vietnam (hereinafter abbreviated to *State Bank*) hereby regulates merger and consolidation of credit institutions and acquisition of a credit institution as follows:

CHAPTER 1

General Provisions

Article 1 *Governing scope*

1. This Circular regulates merger, consolidation and acquisition by the following credit institutions established and operating in Vietnam:
 - Commercial banks;
 - Finance companies;
 - Finance leasing companies;
 - Co-operative credit institutions.

2. The merger or consolidation of co-operative credit institutions shall be implemented in accordance with the Regulations issued with Decision 24-2006-QD-NHNN of the Governor of the State Bank dated 6 June 2006 on issuance and withdrawal of licences for establishment and operation of people's credit funds; on opening and termination of operation of transaction departments, branches, representative offices, trading offices and trading locations of people's credit funds; on separation,

¹ Alternative translation of "acquisition" is "buy back", but see the definition in article 4.3 and also article 6.3 which provides that "One bank may acquire a finance company [and/or] finance leasing company", so this Circular does not regulate acquisition by a bank of another bank.

demerger, consolidation and merger of people's credit funds; and on liquidation of people's credit funds under supervision of the State Bank.

Article 2 *Applicable entities*

1. The credit institutions prescribed in article 1 of this Circular.
2. Organizations and individuals involved in the merger or consolidation of credit institutions or in the acquisition of a credit institution.

Article 3 *Authority to consent to merger or consolidation of credit institutions or to acquisition of a credit institution*

The Governor of the State Bank (hereinafter referred to as *Governor*) shall provide consent to the merger or consolidation of credit institutions or to an acquisition of a credit institution in accordance with the provisions in this Circular and other relevant laws.

Article 4 *Interpretation of terms*

In this Circular, the following terms shall be construed as follows:

1. *Merger of credit institutions* means the form whereby one or more credit institutions (hereinafter referred to as the *merging credit institutions*) merge with one other credit institution (hereinafter referred to as the *merged credit institution*) by transferring all their legal assets, rights, obligations and interests to the merged credit institution, and by simultaneously terminating the existence of the merging credit institution or institutions.
2. *Consolidation of credit institutions* means the form whereby two or more credit institutions (hereinafter referred to as the *consolidating credit institutions*) consolidate to become one new credit institution (hereinafter referred to as the *consolidated credit institution*) by transferring all their legal assets, rights, obligations and interests to the consolidated credit institution, and by simultaneously terminating the existence of the consolidating credit institutions.
- 3.² *Acquisition of a credit institution* means the form whereby one credit institution (hereinafter referred to as the *acquiring credit institution*) purchases the entire legal assets, rights, obligations and interests of another credit institution (the *acquired credit institution*). After the acquisition, the acquired credit institution becomes a subsidiary company of the acquiring credit institution.
4. *Credit institutions participating in a merger* comprise the merging credit institution or institutions and the merged credit institution.
5. *Credit institutions participating in a consolidation* comprise the consolidating credit institutions and the consolidated credit institution.
6. *Credit institutions participating in an acquisition* comprise the acquiring credit institution and the acquired credit institution.
7. *Representative credit institution* means one of the consolidating credit institutions to which the other consolidating credit institutions delegate authority to act as co-ordinator in dealing with issues relevant to such consolidation.

² Article 4.3 should be read in conjunction with article 6.3 which limits the "acquired credit institution" to a finance company or finance leasing company.

8. *Decision maker of the credit institution* means the body authorized to make the decision on merger or consolidation of credit institutions or on acquisition of a credit institution pursuant to the charter of such [decision making] credit institution and current law.
9. *Parent credit institution* means the foreign credit institution owning more than 50% of the charter capital of a credit institution with 100% foreign owned capital operating in Vietnam.
10. *Owner* means the shareholders (in the case of a shareholding credit institution), the State (in the case of a State credit institution), the capital contributing parties to a joint venture (in the case of a joint venture credit institution), the parent credit institution and capital contributing members (in the case of a credit institution with 100% foreign owned capital), or the capital contributing members (in the case of a co-operative credit institution).

Article 5 *Principles for merger or consolidation of credit institutions or acquisition of a credit institution*

1. Principle regarding agreement:

Credit organizations participating in a merger or consolidation of credit institutions or in an acquisition of a credit institution must reach agreement on resolution of rights and obligations as between the relevant parties in conformity with current law.

2. Principle on protection of clients:

Credit organizations participating in a merger or consolidation of credit institutions or in an acquisition of a credit institution must ensure there is no adverse impact on the rights and interests of clients, especially the rights and interests of depositors at each credit institution participating in such merger, consolidation or acquisition.

3. Principle on confidentiality of information:

Members of the board of management and of the board of controllers³, the general director and organizations and individuals related to any credit institution participating in a merger, consolidation or acquisition shall be responsible to protect confidentiality of information in order for such credit institution to operate stably prior to the merger, consolidation or acquisition plan being passed by the decision maker of the credit institution.

4. Principle on provision of information:

- (a) During the process of conducting the procedures relevant to a merger or consolidation of credit institutions or to an acquisition of a credit institution, the board of management of a credit institution shall be responsible to promptly provide complete, uniform, truthful and accurate information about the process of such merger, consolidation or acquisition, including information on the financial, organizational and operational status of the credit institution, without discriminating against owners of the parties participating in such merger, consolidation or acquisition or against other authorized organizations.

³ Alternative translation of "board of controllers" is "inspection committee".

- (b) Files, data and advertisements of credit institutions participating in a merger, consolidation or acquisition must comply with the principle that such information is honest and accurate, and does not cause misunderstanding.

5. Principle on the decision on merger, consolidation or acquisition:

- (a) The decision maker of any credit institution participating in a merger, consolidation or acquisition shall pass a decision on such merger, consolidation or acquisition in accordance with the conditions and procedures for conducting meetings and voting stipulated in current law.
- (b) Consolidating credit institutions shall reach agreement on issues relevant to organization of the consolidation and on the conditions and procedures for holding meetings and voting in order to pass the relevant decision, and shall specify same in detail in the consolidation plan and in conformity with current law.

Article 6 *Forms of merger or consolidation of credit institutions or acquisition of a credit institution*

1. Forms of merger:

- (a) A bank, finance company [and/or] co-operative credit institution may merge with one bank.
- (b) A finance company may merge with one [other] finance company.
- (c) A finance leasing company may merge with one [other] finance leasing company.

2. Forms of consolidation:

- (a) A bank may consolidate with a bank, finance company [and/or] co-operative finance company to become one bank.
- (b) Finance companies may consolidate to become one finance company.
- (c) Finance leasing companies may consolidate to become one finance leasing company.

3. Forms of acquisition:

- (a) One bank may acquire a finance company [and/or] finance leasing company.
- (b) One finance company may acquire a finance leasing company.

Article 7 *Consultancy on merger or consolidation of credit institutions or acquisition of a credit institution*

Credit institutions participating in a merger, consolidation or acquisition may hire consultancy services. A consultant must satisfy all the following conditions:

- 1. Being an organization permitted to provide consultancy services in the finance [and/or] banking sectors.
- 2. Not simultaneously providing consultancy to the credit institutions participating in the merger, consolidation or acquisition.
- 3. The boards of management of the credit institutions participating in the merger, consolidation or acquisition certify that such consultant does not have a financial relationship which may result in a

conflict of interest with such credit organizations participating in the merger, consolidation or acquisition.

Article 8 *Announcement of merger, consolidation or acquisition*

1. Credit institutions participating in a merger, consolidation or acquisition pursuant to this Circular must publish an announcement in at least three consecutive editions of a daily newspaper which is published nationwide.

The announcement must, during the period of its publication, also be listed at the head offices, branches and transaction departments of the credit institutions participating in the merger, consolidation or acquisition; and it must also be published on the websites of such credit institutions, on the website of the State Bank, and on the website of the Banking Association.

2. The announcement must include at least all the information set out in the standard form in Appendix 1 issued with this Circular.
3. Credit organizations participating in a merger, consolidation or acquisition may make one common press announcement.
4. The merger, consolidation or acquisition contract must be sent to all creditors and announced to employees within fifteen (15) days from the date on which the Governor agrees in principle to such merger, consolidation or acquisition.

CHAPTER 2

Merger of Credit Institutions

Article 9 *Conditions for eligibility to merge*

1. Not being within the cases in which the *Law on Competition* prohibits an economic concentration.
2. Having a merger plan containing at least all the contents stipulated in article 12 of this Circular, and not containing any items inconsistent with the merger contract.
3. The merged credit institution will, following the merger, have minimum charter capital equal to the amount of legal capital required by current law.

Article 10 *Order and procedures for merger*

1. The credit institutions participating in the merger shall co-ordinate in formulating a merger plan, a merger contract, and a charter on organization of the merged credit institution (in a case where following the merger, the charter on organization of the merged credit institution needs to be amended or supplemented). The contents of the charter of the merged credit institution following the merger, the merger plan and the merger contract must be passed by the decision makers of the credit institutions participating in the merger. The merger plan must be jointly signed and sealed by the chairmen of the boards of management of the credit institutions participating in the merger, and such chairmen shall be liable for the contents of the merger plan.
2. Credit institutions participating in a merger must provide written notice to the authority managing competition or request exemption in a case where the *Law on Competition* prohibits such merger.

3. Agreement in principle to the merger:
- (a) The credit organizations participating in the merger shall co-ordinate in formulating five sets of an application file in accordance with article 11.1 of this Circular in order for the merged credit institution to send same to the State Bank (Banking Regulator)⁴ for its consideration and decision.
 - (b) The Banking Regulator shall, within five business days of the date of receipt of a complete file in accordance with article 11.1 of this Circular, provide letters enclosing a copy of the file from the credit institution to the following entities in order to obtain their opinions:
 - (i) The State Bank branch in the province or city where the credit institutions participating in the merger have their head offices, which State Bank branch shall, based on its managerial and monitoring work within the locality, and based on the file from the credit institution requesting merger, assess and report the current organizational and operational status of the credit institutions participating in the merger, and the State Bank branch's opinion on the merger.
 - (ii) The people's committee of the province or city where the credit institutions participating in the merger have their head offices, which shall report on any impact of the merger on socio-economic stability within the locality, and provide the opinion of the people's committee on the merger.
 - (iii) State Bank departments or divisions with functions or duties relevant to one or more of the contents of the file requesting the merger, which shall provide their opinions on the merger (if this is considered necessary).
 - (c) The above-mentioned entities shall, within fifteen (15) business days from the date of receipt of the request from the Banking Regulator, provide their written opinions to the Banking Regulator on the contents of the request to merge.
 - (d) The Banking Regulator shall, within fifteen (15) business days from the date of receipt of complete opinions from the entities prescribed in clause 3(b) above, evaluate the file and submit its opinion and proposal to the Governor for his consideration regarding agreement or non-agreement in principle to the merger of the credit institutions. In a case of non-agreement in principle, the reasons for same must be specified.
4. Consent to a merger:
- (a) The credit institutions participating in a merger shall, within ninety (90) days from the date on which the Governor signs a letter providing agreement in principle:
 - (i) Obtain an opinion from their decision makers to pass any items [which need to be] changed in the merger plan and other relevant issues (if any);
 - (ii) Co-ordinate in preparing two sets of a file as prescribed in article 11.2 of this Circular in order for the merged credit institution⁵ to send it to the State Bank (Banking Regulator) for its consideration to provide consent.
 - (b) The Banking Regulator shall, within fifteen (15) business days from the date of receipt of a complete file as prescribed in article 11.2, evaluate the file and submit its opinion and proposal to the Governor

⁴ The literal translation is "Banking Supervisory/Regulatory Authority".

⁵ This is the literal translation although obviously there is no "merged credit institution" until all procedures have been completed.

for his consideration regarding consent or non-consent to the merger of the credit institutions. In a case of non-consent, the reasons for same must be specified.

5. Within fifteen (15) business days from the effective date of the decision consenting to the merger, the merging credit institutions must complete procedures for withdrawal of their establishment and operating licences and publish announcements required by relevant law; and the merged credit institution must complete procedures for business registration and publish an announcement on the merger in accordance with article 8 of this Circular.

Article 11 *Application file requesting merger*

1. An application file requesting agreement in principle to a merger shall comprise:
 - (a) Submission from the chairman of the board of management of the merged credit institution requesting agreement in principle to the merger on the standard form in Appendix 2 to this Circular.
 - (b) Merger plan containing at least all the items stipulated in article 12 of this Circular.
 - (c) Audited financial statements which the decision makers of the credit institutions participating in the merger agreed to use when formulating the merger plan.
 - (d) Copies of licences for establishment and operation; copies of letters consenting to any additional operational items; and business registration certificates of the credit institutions participating in the merger, certified in accordance with law.
 - (dd) Decisions of the decision makers of the credit institutions participating in the merger as prescribed in article of 10.1 of this Circular. Decisions of the merging credit institutions delegating authority to the merged credit institution to make a submission to the Governor for his consideration to provide agreement to the merger pursuant to the provisions of this Circular.
 - (e) A written letter from the authority managing competition or a decision granting exemption from the Ministry of Industry and Trade or from the Prime Minister of the Government if the credit institutions participating in the merger are granted exemption as mentioned in article 10.2 of this Circular. If such letter is not required, then the merged credit institution must provide a letter explaining the reasons and undertaking to be liable for the honesty of the report that the credit institutions are not in breach of the provisions on economic concentration in the *Law on Competition*.
 - (g) Merger contract with the basic items required by the *Law on Enterprises*.
 - (h) Draft charter of the merged credit institution (if the charter of the merged credit institution needs to be amended or supplemented following the merger).
2. An application file requesting consent to a merger shall comprise:
 - (a) Submission from the chairman of the board of management of the merged credit institution⁶ requesting consent to the merger on the standard form in Appendix 2 to this Circular.
 - (b) Submissions from the chairmen of the boards of management of the merging credit institutions requesting withdrawal of their licences for establishment and operation.

⁶ Regarding "merged credit institution", see footnote 5.

- (c) Decisions of the decision makers of the credit institutions participating in the merger on the matters prescribed in article 10.4(a) of this Circular.
 - (d) Letter from the merged credit institution specifying changes (if any) as compared with the merger plan which was submitted to the Governor for agreement in principle, and signed by the chairmen of the boards of management of the merging credit institutions.
 - (dd) Submission from the chairman of the board of management of the merged credit institution and a file requesting ratification of items for which the current law requires ratification from the Governor.
3. The Governor shall have the right in necessary cases to require the merged credit institution to supplement its explanation of matters relevant to the request for consent to the merger.

Article 12 *Merger plan*

A merger plan shall contain at least the following contents:

- 1. Names, addresses and websites of the credit institutions participating in the merger.
- 2. Names, addresses and contact telephone numbers of members of the boards of management and of the boards of controllers, and of the general directors of the credit institutions participating in the merger.
- 3. Summary of the financial and operational status of the credit institutions participating in the merger up until the time prescribed in article 11.1(c) of this Circular.
- 4. Reason for the merger.
- 5. Charter capitals prior to the merger of the credit institutions participating in the merger, and charter capital of the merged credit institution following the merger.
- 6. List of major shareholders (in the case of a shareholding credit institution) or of owners (in the case of other credit institutions) of the merged credit institution following the merger.
- 7. Rights and obligations of the credit institutions participating in the merger, and of related organizations and individuals (if any).
- 8. Schedule for conducting the merger.
- 9. Proposed staff, operational network and contents and other issues relevant to organization and operation of the merged credit institution following the merger.
- 10. Proposed business plan of the merged credit institution for the three years following the merger. The business plan must include at least a list of total assets and a report on forecast business results; norms on minimum capital safety; norms on operational effectiveness and an explanation of the capability for implementing the plan during each year.
- 11. Measures for converting and combining the information management systems, internal inspection and control, internal audit, and the data transmission systems in order to ensure effective operation both before and after the merger.
- 12. Method and time-limit for conversion of capital contributions or shareholding capital; and form of conversion of such capital and the relevant conversion ratios.

13. Liability of the parties participating in the merger for expenses arising during the merger process.
14. Plan for dealing with a case where one or more of the credit institutions participating in the merger unilaterally rescinds the agreement to merge.

CHAPTER 3

Consolidation of Credit Institutions

Article 13 *Conditions for eligibility to consolidate*

1. Not being within the cases in which the *Law on Competition* prohibits an economic concentration.
2. Having a consolidation plan containing at least all the contents stipulated in article 16 of this Circular, and not containing any items inconsistent with the consolidation contract.
3. The consolidated credit institution will have minimum charter capital equal to the amount of legal capital required by current law.

Article 14 *Order and procedures for consolidation*

1. The consolidating credit institutions shall co-ordinate in formulating a consolidation plan, a consolidation contract, and a charter on organization of the consolidated credit institution. The contents of the consolidation plan, consolidation contract, and charter on organization of the consolidated credit institution must be passed by the decision makers of the consolidating credit institutions. The consolidation plan must be jointly signed and sealed by the chairmen of the boards of management of the consolidating credit institutions, and such chairmen shall be liable for the contents of the consolidation plan.
2. The consolidating credit institutions must provide written notice to the authority managing competition or request exemption in a case where the *Law on Competition* prohibits such consolidation.
3. Agreement in principle to the consolidation:
 - (a) The consolidating credit institutions shall co-ordinate in formulating five sets of an application file in accordance with article 15.1 of this Circular in order for the representative credit institution to send same to the State Bank (Banking Regulator) for its consideration and decision.
 - (b) The Banking Regulator shall, within five business days of the date of receipt of a complete file in accordance with article 15.1 of this Circular, provide letters enclosing a copy of the file from the credit institution to the following entities in order to obtain their opinions:
 - (i) The State Bank branch in the province or city where the consolidating credit institutions have their head offices, which State Bank branch shall, based on its managerial and monitoring work within the locality, and based on the file requesting consolidation from the credit institution, assess and report the current organizational and operational status of the consolidating credit institutions, and the State Bank branch's opinion on the consolidation.
 - (ii) The people's committee of the province or city where the consolidating credit institutions have their head offices, which shall report on any impact of the consolidation on socio-economic stability within the locality and its opinion on the consolidation.

- (iii) State Bank departments or divisions with functions or duties relevant to one or more of the contents of the file requesting consolidation, which shall provide their opinions on the consolidation (if this is considered necessary).
 - (c) The above-mentioned entities shall, within fifteen (15) business days from the date of receipt of the request from the Banking Regulator, provide their written opinions on the request to such Banking Regulator.
 - (d) The Banking Regulator shall, within fifteen (15) business days from the date of receipt of complete opinions from the entities prescribed in clause 3(b) above, evaluate the file and submit its opinion and proposal to the Governor for his consideration to provide agreement or non-agreement in principle to the consolidation. In a case of non-agreement in principle, the reasons for same must be specified.
4. Consent to consolidation:
- (a) Within a time-limit of ninety (90) days from the date on which the Governor signs a letter agreeing in principle to consolidation of the consolidating credit institutions, such consolidating credit institutions shall:
 - (i) Obtain opinions from their decision makers in order to pass any items in the consolidation plan which [need to be] changed, and to pass other relevant issues (if any).
 - (ii) Co-ordinate in formulating two sets of a file as stipulated in article 15.2 of this Circular so that the representative credit institution may send it to the State Bank (Banking Regulator) for its consideration to provide consent.
 - (b) The Banking Regulator shall, within fifteen (15) business days from the date of receipt of a complete file as prescribed in article 15.2, evaluate the file and submit its opinion and proposal to the Governor for his consideration to provide consent to the consolidation. In a case of non-consent, the reasons for same must be specified.
 - (c) Within fifteen (15) business days from the effective date of the decision consenting to the consolidation, the consolidating credit institutions must complete procedures for withdrawal of their establishment and operating licences and publish announcements required by the relevant law; and the consolidated credit institution must complete procedures for business registration and publish an announcement on the consolidation in accordance with article 8 of this Circular and commence operation in accordance with current law.

Article 15 *Application file requesting consolidation*

- 1. An application file requesting agreement in principle to a consolidation shall comprise:
 - (a) Submission from the chairman of the board of management of the representative credit institution requesting agreement in principle to the consolidation on the standard form in Appendix 2 to this Circular.
 - (b) Consolidation plan containing at least all the contents prescribed in article 16 of this Circular.
 - (c) Audited financial statements which the decision makers of the consolidating credit institutions agreed to use when formulating the consolidation plan.

- (d) Copies of licences for establishment and operation; copies of letters consenting to any additional operational items, and business registration certificates of the consolidating credit institutions, certified in accordance with law.
 - (dd) Decisions of the decision makers of the consolidating credit institutions prescribed in article of 14.1 of this Circular. Decisions of the consolidating credit institutions delegating authority to one representative credit institution to make a submission to the Governor for his consideration to provide consent to the consolidation pursuant to the provisions of this Circular.
 - (e) Letter from the authority managing competition or a decision granting exemption from the Ministry of Industry and Trade or from the Prime Minister of the Government if the credit institutions participating in the consolidation are granted exemption as mentioned in article 14.2 of this Circular. If such a letter is not required, the credit institutions participating in the consolidation must provide a letter explaining the reasons and undertake to be liable for the honesty of the report that such credit institutions are not in breach of the provisions on economic concentration in the *Law on Competition*.
 - (g) Consolidation contract with the basic items required by the *Law on Enterprises*.
 - (h) Draft charter of the consolidated credit institution.
2. An application file requesting consent to a consolidation shall comprise:
- (a) Submission from the chairman of the board of management of the representative credit institution requesting consent to the consolidation on the standard form in Appendix 2 to this Circular.
 - (b) Submissions from the chairmen of the boards of management of the consolidating credit institutions requesting withdrawal of their licences for establishment and operation.
 - (c) Decisions of the decision makers of the credit institutions participating in the consolidation on the matters prescribed in article 14.4(a) of this Circular.
 - (d) Letter from the representative credit institution specifying changes (if any) as compared with the consolidation plan which was submitted to the Governor for agreement in principle, and signed by the chairmen of the boards of management of the consolidating credit institutions.
 - (dd) Submission from the chairman of the board of management of the representative credit institution and a file requesting ratification of items for which the current law requires ratification from the Governor.
3. The Governor shall have the right in necessary cases to require the consolidated credit institution to supplement the explanation of matters relevant to the request for consent to the consolidation.

Article 16 *Consolidation plan*

A consolidation plan shall contain at least the following contents:

1. Names, addresses and websites of the consolidating credit institutions.
2. Names, addresses and contact telephone numbers of members of the boards of management and of the boards of controllers, and of the general directors of the consolidating credit institutions.
3. Summary of the financial and operational status of the consolidating credit institutions up until the time prescribed in article 15.1(c) of this Circular.

4. Reason for the consolidation.
5. Charter capitals prior to the consolidation of the consolidating credit institutions, and charter capital of the consolidated credit institution.
6. List of major shareholders (in the case of a shareholding credit institution) or of owners (in the case of other credit institutions) of the consolidated credit institution.
7. Rights and obligations of the consolidating credit institutions, and of related organizations and individuals (if any).
8. Conditions and procedures for holding meetings and voting in order to pass decisions relevant to the consolidated credit institution.
9. Schedule for conducting the consolidation.
10. Proposed business plan of the consolidated credit institution for the first three years. The business plan must include at least a list of total assets and a report on forecast business results; norms on minimum capital safety; norms on operational effectiveness and an explanation of the capability for implementing the plan during each year.
11. Proposed staff, operational network and contents and other issues relevant to organization and operation of the consolidated credit institution.
12. Measures for converting and combining the information management systems, internal inspection and control, internal audit, and data transmission systems in order to ensure effective operation both during and after consolidation.
13. Capital contribution or shareholding capital conversion ratios; method and time-limit for conversion.
14. Plan for dealing with a case where one or more of the consolidating credit institutions unilaterally rescinds the consolidation agreement.

CHAPTER 4

Acquisition of a Credit Institution

Article 17 *Conditions for eligibility to acquire*

1. Not being within the cases in which the *Law on Competition* prohibits an economic concentration.
2. Having an acquisition plan containing at least all the contents stipulated in article 20 of this Circular, and not containing any items inconsistent with the acquisition contract.
3. The acquiring credit institution will, after the acquisition, have minimum charter capital equal to the amount of legal capital required by current law and ensure the prudential ratios for operation in accordance with current law.

Article 18 *Order and procedures for acquisition of a credit institution*

1. The credit institutions participating in the acquisition shall co-ordinate in formulating an acquisition plan and an acquisition contract. The acquisition contract must be passed by the decision makers of the credit institutions participating in the acquisition. The acquisition plan must be jointly signed and sealed by the chairmen of the boards of management of the credit institutions participating in the acquisition, and such chairmen shall be liable for the contents of the acquisition plan.
2. The acquiring credit institution must provide written notice to the authority managing competition or request exemption in a case where the *Law on Competition* prohibits such acquisition.
3. Agreement in principle to an acquisition:
 - (a) The credit institutions participating in the acquisition shall co-ordinate in formulating five sets of an application file in accordance with article 19.1 of this Circular in order for the acquiring credit institution to send same to the State Bank (Banking Regulator) for its consideration and decision.
 - (b) The Banking Regulator shall, within five business days of the date of receipt of a complete file as prescribed in article 19.1 of this Circular, provide letters enclosing a copy of the file from the credit institution to the following entities in order to obtain their opinions:
 - (i) The State Bank branch in the province or city where the credit institutions participating in the acquisition have their head offices, which State Bank branch shall, based on its managerial and monitoring work within the locality, and based on the file requesting the acquisition from the credit institution, assess and report the current organizational and operational status of the credit institutions participating in the acquisition, and the State Bank branch's opinion on the acquisition.
 - (ii) The people's committee of the province or city where the credit institutions participating in the acquisition have their head offices, which shall report on any impact of the acquisition on socio-economic stability within the locality, and provide its opinion on the acquisition.
 - (iii) State Bank departments or divisions with functions or duties relevant to one or more of the contents of the file requesting acquisition, which shall provide their opinions on the acquisition (if this is considered necessary).
 - (c) The above-mentioned entities shall, within fifteen (15) business days from the date of receipt of the request from the Banking Regulator, provide their written opinions on the request to such Banking Regulator.
 - (d) The Banking Regulator shall, within fifteen (15) business days from the date of receipt of complete opinions from the entities prescribed in clause 3(b) above, evaluate the file and submit its opinion and proposal to the Governor for his consideration to provide agreement or non-agreement in principle to the acquisition. In a case of non-agreement in principle, the reasons for same must be specified.
4. Consent to an acquisition:
 - (a) Within a time-limit of ninety (90) days from the date on which the Governor signs a letter agreeing in principle to the acquisition of the credit institution, the credit institutions participating in the acquisition shall:

- (i) Obtain opinions from their decision makers in order to pass any items in the acquisition plan which need to be changed, and to pass other relevant issues (if any).
 - (ii) Co-ordinate in formulating two sets of a file as stipulated in article 19.2 of this Circular so that the acquiring credit institution may send it to the State Bank (Banking Regulator) for its consideration to provide consent.
- (b) The Banking Regulator shall, within fifteen (15) business days from the date of receipt of a complete file as prescribed in article 19.2, evaluate the file and submit its opinion and proposal to the Governor for his consideration to provide consent to the acquisition. In a case of non-consent, the reasons for same must be specified.
5. Within fifteen (15) business days from the effective date of the decision consenting to the acquisition, the acquiring credit institution must complete procedures to amend the contents of the establishment and operating licence of the acquired credit institution as a result of conversion of ownership, conduct business registration and publish an announcement in accordance with article 8 of this Circular and other relevant laws.

Article 19 *Application file requesting acquisition of a credit institution*

1. An application file requesting agreement in principle to acquisition of a credit institution shall comprise:
- (a) Submission from the chairman of the board of management of the acquiring credit institution requesting agreement in principle to the acquisition on the standard form in Appendix 2 to this Circular.
 - (b) Acquisition plan containing at least all the contents prescribed in article 20 of this Circular.
 - (c) Audited financial statements which the decision makers of the credit institutions participating in the acquisition agreed to use when formulating the acquisition plan.
 - (d) Letter from the chairman of the board of management of the acquiring credit institution undertaking that following the acquisition, the acquiring credit institution will still comply with the prudential ratios for operation required by current law.
 - (dd) Copies of licences for establishment and operation; copies of letters consenting to any additional operational items, and business registration certificates of the credit institutions participating in the acquisition, certified in accordance with law.
 - (e) Decisions of the decision makers of the credit institutions participating in the acquisition prescribed in article of 18.1 of this Circular. Decisions of the credit institutions participating in the acquisition delegating authority to the acquiring credit institution to make a submission to the Governor for his consideration to provide consent to the acquisition pursuant to the provisions of this Circular.
 - (g) Letter from the authority managing competition or a decision granting exemption from the Ministry of Industry and Trade or from the Prime Minister of the Government as mentioned in article 18.2 of this Circular. If such a letter is not required, the acquiring credit institution must provide a letter explaining the reasons and undertaking to be liable for the honesty of the report that the credit institutions⁷ are not in breach of the provisions on economic concentration in the *Law on Competition*.

⁷ The literal translation here is singular "credit institution", but presumably the report must include a reference to the acquired as well as to the acquiring credit institution.

- (h) Acquisition contract with basic items being names and head office addresses of both the acquiring and acquired credit institutions; procedures for and conditions of the acquisition; payment method; plan on employment of employees; and time-limit within which the acquisition is to be conducted.
2. An application file requesting consent to an acquisition shall comprise:
- (a) Submission from the chairman of the board of management of the acquiring credit institution requesting consent to the acquisition on the standard form in Appendix 2 to this Circular.
 - (b) Submission from the chairman of the board of management of the acquiring credit institution enclosing a file requesting the Governor provide consent to:
 - (i) Changes to the contents of the establishment and operational licence of the acquired credit institution as a result of conversion of ownership;
 - (ii) Other matters (if any) for which the current law requires that the Governor provide approval.
 - (c) Decisions of the decision makers of the credit institutions participating in the acquisition on the matters prescribed in article 18.4(a) of this Circular.
 - (d) Letter from the acquiring credit institution specifying changes (if any) as compared with the acquisition plan which was submitted to the Governor for agreement in principle, and signed by the chairman of the board of management of the acquired credit institution.
3. The Governor shall have the right in necessary cases to require the credit institutions participating in the acquisition to supplement the explanation of matters relevant to the file requesting consent to the acquisition.

Article 20 *Acquisition plan*

An acquisition plan shall contain at least the following contents:

- 1. Names, addresses and websites of the credit institutions participating in the acquisition.
 - 2. Names, addresses and contact telephone numbers of members of the boards of management and of the boards of controllers, and of the general directors of the credit institutions participating in the acquisition.
 - 3. Reason for the acquisition.
 - 4. Summary of the financial and operational status of the credit institutions participating in the acquisition up until the time prescribed in article 19.1(c) of this Circular.
 - 5. Rights and obligations of the credit institutions participating in the acquisition, and of related organizations and individuals (if any).
 - 6. Proposed business plan of the acquiring credit institution for the first three years after the acquisition. The business plan must include at least a list of total assets and a report on forecast business results; norms on minimum capital safety; norms on operational effectiveness and an explanation of the capability for implementing the plan during each year.
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7. Proposed staff, operational network and contents and other issues relevant to organization and operation of the acquiring credit institution after the acquisition.
8. Measures for converting and combining the information management systems, internal inspection and control, internal audit, and data transmission systems in order to ensure effective operation both during and after the acquisition.
9. Acquisition price, time-limit for and method of payment; time-limit for handover to the acquiring credit institution.
10. Liability of the credit institutions participating in the acquisition for expenses arising during the acquisition process.
11. Plan for dealing with a case where one or more of the credit institutions participating in the acquisition unilaterally rescinds the acquisition agreement.

CHAPTER 5

Responsibilities of Related Entities

Article 21 *Responsibilities of credit institutions*

1. To comply with the principles on merger, consolidation and acquisition prescribed in article 5 of this Circular.
2. To co-ordinate in formulating the merger, consolidation or acquisition plan and in completing all relevant processes, procedures and files as prescribed in this Circular.
3. It shall be strictly prohibited to disburse assets in any form. The board of management, board of controllers and general director shall be liable for the entire operation of the credit institution and must ensure absolute safety of the assets of the credit institution up until completion of the merger, consolidation or acquisition process in accordance with the approved plan.
4. After agreement in principle has been provided, a merging, consolidating or acquired credit institution must on its own initiative commence handover work, and then immediately hand over the entire rights and obligations and other organizational and operational matters when the Governor issues the merger, consolidation or acquisition decision.
5. If after a merger, consolidation or acquisition, issues outside the books are discovered or if items have not been handed over then the members of the board of management and of the board of controllers and the general director of the merging, consolidating or acquired credit institution shall be wholly legally liable for same.

Article 22 *Responsibilities of provincial State Bank branches*

1. To provide written opinions on a merger, consolidation or acquisition to the Banking Regulator in accordance with this Circular.

2. To guide and supervise credit institutions within their localities to properly conduct mergers, consolidations and acquisitions in accordance with the provisions of this Circular and other relevant current laws.

Article 23 *Responsibilities of Banking Regulator*

1. To act as the co-ordinator in obtaining opinions from relevant entities on mergers, consolidations and acquisitions of credit institutions in accordance with the provisions of this Circular.
2. To evaluate application files for mergers, consolidations and acquisitions and to submit same to the Governor for his consideration and decision in accordance with the provisions of this Circular.
3. To act as the co-ordinator in advising the Governor during direction, supervision and guidance to credit institutions during the process of a merger, consolidation or acquisition.

Article 24 *Responsibilities of State Bank departments and divisions*

1. The Finance/Accounting Department shall be responsible to provide specific guidance regarding the accounting regime during the process of a merger, consolidation or acquisition.
2. The Legal Systems Department shall be responsible to co-ordinate with the Banking Regulator in considering legal issues relevant to the process of a merger, consolidation or acquisition.
3. Departments and Divisions under the State Bank, depending on their respective functions and duties, shall sign Official Letters providing opinions at the request of the Banking Regulator in accordance with the provisions of this Circular.

CHAPTER 6

Implementing Provisions

Article 25 *Dealing with breaches*

Any conduct in breach of the provisions of this Circular shall, depending on the nature and seriousness of the breach, be dealt with in accordance with law.

Article 26 *Effectiveness*

1. This Circular shall be of full force and effect forty-five (45) days after the date of its signing, and shall replace Decision 241-1998-QD-NHNN5 of the Governor of the State Bank dated 15 July 1998 issuing regulations on merger, consolidation and acquisition of Vietnamese shareholding credit institutions.
2. If any provisions of a law which is referred to in this Circular are amended, supplemented or changed, then such new provisions shall apply.
3. If any shareholding merging credit institution or shareholding acquiring credit institution has an operational term below five years, then shareholders who participated in the establishment of the credit institution must comply with share transfers in accordance with the law on issuance of establishment and operational licences for shareholding credit institutions.

4. If any credit institution participating in a merger, consolidation or acquisition is a public company, then in addition to compliance with the provisions in this Circular, such public company must also comply with relevant provisions in the law on securities and securities market regarding merger, consolidation and acquisition of credit institutions.

Article 27 *Organization of implementation*

The Head of the Office, the Head of the Banking Inspectorate, heads of State Bank entities, directors of provincial State Bank branches, and chairmen of boards of management and general directors (directors) of credit institutions shall be responsible for implementation of this Circular.

Governor of the State Bank
Deputy Governor
TRAN MINH TUAN