

**From the Banking Regulation and Supervision Agency:**

**REGULATION ON MERGER, ACQUISITION, DIVISION AND CHANGES IN  
SHARES OF BANKS**

(Published in Official Gazette dated November 1, 2006 Nr. 26333)

**SECTION ONE**

**Objective and Scope, Basis and Definitions**

**Objective**

**ARTICLE 1** — (1) The objective of this Regulation is to set down the procedures and principles for a bank to merge with another or more than one bank or financial institution or to transfer all its assets and liabilities along with its other rights and obligations to another bank, to take over all its assets and liabilities along with its other rights and obligations or to divide or changes in shares.

**Scope**

**ARTICLE 2**— (1) This Regulation covers the merger, acquisition, division and changes in shares of banks.

(2) The provisions of this Regulation are not applicable to the merger, acquisition, division and changes in shares of banks whose shares or/and administration and supervision were transferred to the Fund as to the provisions of the Article 71 of the Law.

(3) (**Annex: OG-16/11/2017-30242**) The provisions concerning division in this Regulation, preserving the provisions of the Article 15(3), are not applicable to the transfer of one or more parts of the assets of a bank, so as not to cause the dissolution of the bank, and to its partial division subsequently leading to the establishment of its subsidiary by acquiring shares and rights of the transferee against the share of the transferred assets of the bank. If the paid-in capital of the bank is less than the minimum amount of the capital specified in the Article 7(1)(f) of the Law when such partial division takes place, the shareholders of the bank have to commit to increase the capital to be paid in cash in a three month period for the equivalent of the difference in-between.

**Basis**

**ARTICLE 3** — (1) This Regulation has been prepared based on the Articles 19 and 93 of the Banking Law Nr. 5411 dated October 19, 2005.

**Definitions**

**ARTICLE 4**— (1) The following terms used in this Regulation shall have the meanings expressly designated to them below:

a) Bank: Bank defined in the Article 3 of the Law,

- b) Merger: Transfer of all rights and receivables as well as with all debts and liabilities including deposits and participation funds of a bank whose legal entity status ceased with one or more than one bank or financial institution to a bank to be newly established.
- c) **(Amended: OG 16/11/2017-30242)** Division: Full division which refers to transfer of all assets of a bank by dividing into sections to more than one bank, financial institution or other joint-stock companies provided that its legal entity status ceased or partial division which refers to transfer of one or more parts of the assets of a bank to a bank, financial institution or other joint-stock companies so as not to cause dissolution of the bank and so that the shareholders of the bank will acquire the rights and shares of the transferee
- ç) Acquisition: Transfer of all assets and liabilities as well as its other rights and obligations of a bank to another bank provided that its legal entity status ceased or take over one or more than one bank with all its assets and liabilities as well as its other rights and obligations.
- d) Financial institution: Financial institution defined in the in the Article 3 of the Law.
- e) Fund: Savings Deposit Insurance Fund.
- f) Changes in shares: Taking over of shares of a bank or financial institution by a bank so as to have control of this bank or financial institution and in return giving shares to the shareholders of this bank or financial institution representing its own capital.
- g) Law: Banking Law Nr. 5411.
- ğ) Participation fund: Participation fund defined in the in the Article 3 of the Law.
- h) Control: Control defined in the in the Article 3 of the Law.
- ı) Credit institution: Credit institution defined in the in the Article 3 of the Law.
- ı) Board: Banking Regulation and Supervision Board.
- j) Agency: Banking Regulation and Supervision Agency.
- k) Deposit: Deposit defined in the Article 3 of the Law.

## **SECTION TWO**

### **Board Permission**

#### **Board Permission**

**ARTICLE 5—** (1) Merger, acquisition, division and change in shares operations of banks are subject to the permission of the Board. Detailed feasibility report analyzing the expected results from merger, acquisition, division and change in shares and projected balance-sheet and statement of profit and loss stating three-year targets following the date of merger, acquisition, division and change in shares transactions are included in the written application to be submitted to the Agency for permission by the banks or financial institutions subject to the merger, acquisition, division and change in shares transactions. The Agency is authorized to demand the additional information and documents it deems necessary.

## **Initiation of merger, acquisition, division and change in shares transactions**

**ARTICLE 6** — (1) The permission granted renders null and void unless the related institutions do not execute merger, acquisition, division and change in shares transactions in three months following the permission by taking resolutions in their general boards-as per the Articles 7, 11, 15 and 19, these transactions cannot be proceeded without taking permission again.

### **SECTION THREE**

#### **Merger**

##### **General board permission**

**ARTICLE 7** — (1) Balance-sheets and draft merger contract which has been approved by independent audit firm which board of directors of bank or financial institution participating in merger shall determine jointly are submitted to the approval of general meeting of shareholders and are voted according to the quorum specified in their articles of association in general meeting of shareholders. Unless no quorum has been specified in articles of association of banks or financial institutions, a resolution is adopted with the majority of the attendants, on condition that the majority of issued or registered capital share is represented in general meeting of shareholders.

(2) In the event that balance-sheets prepared for merger and draft merger contract are approved, board of directors are granted authorization the general meeting of shareholders to prepare merger contract and articles of association of the bank to be established newly.

##### **Merger contract**

**ARTICLE 8**— (1) It is obligatory in merger contract to be included:

- a) Information on conditions and planned stages of the merger.
- b) Title and headquarter of banks or financial institutions whose legal entity status shall cease subsequent to merger as well as of the bank to be established newly
- c) Record proving that the draft articles of association of the bank to be established newly has been prepared and signed.
- ç) Record concerning the capital sum of the bank to be established newly and assets of banks or financial institutions to be merged composes the capital of the new bank and in case the capital sum to be paid by founder shareholders of the bank to be established newly subsequent to merger is lower than the minimum capital defined as per the Article 7(1)(f) of the Law, the difference shall be met by means of a capital increase to be made in cash in three months following the trade registry of the new bank.
- d) Record declaring that all assets and liabilities as well as rights and obligations of the banks or financial institutions to be merged shall transfer to the bank to be established newly.
- e) Record declaring sum, type, partnership shares exchange ratio, nominal value of shares and amount of privileged shares, if applicable, to be granted to the shareholders of the banks or financial institutions to be merged.

f) Record proving that the merger shall take place free from collusion and losses to occur otherwise shall be compensated jointly and severally.

(2) Provisions violating the rights and receivables of customers and third parties cannot be included in the merger contract. It is not obligatory that signatures in merger contracts have to be notarized.

### **Post merger transactions**

**ARTICLE 9** — (1) Draft contract signed by board of director is submitted to the Agency in seven days following the signing together with the financial statements prepared for merger which are approved by independent audit firms, draft articles of association, reports on share value assessment to be prepared according to the provisions of the Regulation on Principles for Authorization and Activities of Rating Institutions to Perform Rating Activities in Banks and a report including the required sum for capital increase and resources thereof, if applicable, of banks or financial institutions to be merged. The Agency is authorized to demand additional information and documents it deems necessary.

(2) State of the banks demanding merger is analyzed to be evaluated in respect of legal and regulatory compliance, compliance to standard ratios and credit limits, organization and branch structure, efficiency of internal control, risk management and internal audit systems. The Agency may demand additional measures to be taken from the applying banks so as to realize the benefit expected from the merger and to strengthen their financial structures.

(3) Following the necessary investigations have been conducted by the Agency, merger contract approved by the Board and draft articles of association of the bank to be established newly, balance-sheet and statements of profit and loss of the banks to be merged are submitted to the approval of their general meeting of shareholders and are voted according to quorum specified in their articles of association in general meeting of shareholders. Unless no quorum has been specified in articles of association of banks or financial institutions, a resolution is adopted with the majority of the attendants, on condition that majority of issued or registered capital share is represented in general meeting of shareholders.

(4) In the course of merger, capital of the bank to be established newly is determined in accordance with the capital of banks or financial institutions participating in the merger and the shares to be given to the shareholders of banks and financial institutions participating in the merger.

(5) There can be no convention held and no resolutions adopted in the general meeting of shareholders about the merger contract and articles of association of the bank to be established newly which are not approved by the Board.

### **Registration and notification**

**ARTICLE 10** — (1) General meeting of shareholders' resolutions of banks or financial institutions participated in the merger and articles of association of the new bank are submitted to the Agency in seven days following the general meeting of the shareholders.

(2) Approval of the Board enabling the resolutions of the general meeting of shareholders to be registered, the resolution of the Board concerning issuance of operation license according to the Article 10 of the Law, ensuring with the completion of registry and notification transactions of

newly established bank, and providing permission to establish the new bank pursuant to the Article 6 of the Law are published in the Official Gazette. General meeting of shareholders' resolutions on merger and articles of associations approved by general meetings of shareholders and establishment of the new bank are registered and notified in the Trade Register Offices in which the banks participated in the merger are recorded, in seven days following the publication of Board resolution in the Official Gazette.

(3) All assets and liabilities as well as rights and obligations of banks or financial institutions participated in merger upon registry transfer to the newly established bank and legal entity status of banks or financial institutions participated in merger cease and their records in Trade Registry are deleted.

## **SECTION FOUR**

### **Acquisition**

#### **General board permission**

**ARTICLE 11** — (1) In acquisition of one or more than one bank by another bank, balance-sheets subject to acquisition and draft acquisition contract which have been approved by independent audit firm that will be determined jointly by boards of directors of transferee and transferred banks are submitted to the approval of general meeting of shareholders and are voted in general meetings of shareholders according to the quorum specified in their articles of association. Unless no quorum has been specified in articles of association of banks, a resolution is adopted with the majority of the attendants, on condition that the majority of issued or tier-I capital share is represented in general meeting of shareholders.

(2) In the event that balance-sheets subject to acquisition and draft acquisition contract are approved, boards of directors are granted authorization by the general meeting of shareholders to prepare and sign acquisition contract.

#### **Acquisition contract**

**ARTICLE 12**— (1) It is obligatory in acquisition contract to be included:

- a) Information about conditions and planned stages of acquisition
- b) Title and headquarter of banks transferred and whose legal entity status ceased and of transferee banks who endure,
- c) Record proving that the capital of the transferee bank is composed of assets of transferred banks along with its own capital and in case the sum of paid-up capital of the transferee bank subsequent to acquisition is less than minimum capital included in the Article 7(1)(f) of the Law, the difference shall be met by the partners of transferee bank by means of a capital increase to be paid in cash in three months,
- ç) Record proving that all assets and liabilities as well as rights and obligations of transferred banks were transferred to the transferee.

d) Record declaring sum, type, partnership shares exchange ratio, nominal value of shares and amount of privileged shares, if applicable, to be granted to the shareholders of the transferred banks .

e) Record proving that the merger shall take place free from collusion and losses to occur otherwise shall be compensated jointly and severally.

(2) Provisions violating the rights and receivables of customers and third parties cannot be included in the acquisition contract. It is not obligatory that signatures in acquisition contracts have to be notarized.

### **Post Acquisition Transactions**

**ARTICLE 13**— (1) Draft contract signed by board of directors is submitted to the Agency in seven days following the signing together with the financial statements prepared for acquisition which are approved by independent audit firms, draft articles of associations, reports on share value assessment to be prepared according to the provisions of the Regulation on Principles for Authorization and Activities of Rating Institutions to Perform Rating Activities in Banks and a report including the required sum for capital increase and resources thereof, if applicable, of banks to be parties to the acquisition. The Agency is authorized to demand additional information and documents it deems necessary

(2) State of the banks demanding acquisition is analyzed to be evaluated in respect of legal and regulatory compliance, compliance to standard ratios and credit limits, organization and branch structure, efficiency of internal control, risk management and internal audit systems. The Agency may demand additional measures to be taken from the applying banks so as to realize the benefit expected from the acquisition and to strengthen their financial structures.

(3) Following the necessary investigations have been conducted by the Agency, acquisition contract approved by the Board and draft articles of association including old and new texts, balance-sheet and statements of profit and loss are submitted to the approval of bank general meeting of shareholders and are voted according to the quorum specified in their articles of association in general meeting of shareholders. Unless no quorum has been specified in articles of association of banks, a resolution is adopted with the majority of the attendants, on condition that the majority of issued or tier-I capital share is represented in general meeting of shareholders.

(4) In the acquisition by take over, capital of the transferee bank is increased at the rate of the share to be given to the shareholders of transferred bank.

(5) There can be no conventions held and no resolutions adopted in the general meeting of shareholders about the amendments in acquisition contract and in articles of association which are not approved by the Board.

### **Registration and notification**

**ARTICLE 14** — (1) General meeting of shareholders' resolutions and amendments in articles of associations on acquisition are submitted to the Agency in seven days following the general meeting of shareholders.

(2) Approval of the Board enabling the general meeting of shareholders' resolutions on acquisition to be registered is published in the Official Gazette.

(3) General board resolutions and main contracts amendments on acquisition are registered and notified in the Trade Register Offices in which the transferee and transferred bank participated in the acquisition are recorded in seven days following the publication of Board resolution in the Official Gazette, without requiring any application to the Ministry of Industry and Trade or Province Industry and Trade Offices.

(4) Following the registry of general meeting of shareholders' resolutions of transferee and transferred banks, all assets and liabilities as well as rights and obligations of transferred bank are transferred to the transferee bank and legal entity status of the transferred banks cease and their records in Trade Registry are deleted.

## **SECTION FIVE**

### **Division**

#### **General board permission**

**ARTICLE 15**— (1) Balance-sheets subject to division and draft division contract which have been approved by independent audit firm that will be determined jointly by boards of directors of bank, financial institution or other joint stock companies which are party to division operations are submitted to the approval of general meeting of shareholders and are voted in general meeting of shareholders according to the quorum specified in their articles of association. Unless no quorum has been specified in articles of association of banks, financial institutions or other joint stock companies a resolution is adopted with the majority of the attendants, on condition that majority of issued or tier-I capital share is represented in general meeting of shareholders.

(2) In the event that balance-sheets subject to division and draft acquisition contract are approved, boards of directors are granted authorization by the general meeting of shareholders to prepare and sign division contract.

(3) In the full or partial division of credit institutions, deposits or participation funds which are included in their accounts can only be transferred to other credit institutions.

#### **Division contracts**

**ARTICLE 16** — (1) Individual division contracts are signed with each of bank, financial institution or other joint-stock companies to take over the assets of the bank which are divided into sections. It is obligatory in division contract to be included:

a) Information about conditions and planned stages of division.

b) Title and headquarter of banks divided partially or fully and whose legal entity status ceased or of bank, financial institution or other joint-stock companies which took over sections.

c) Record proving that the capital sum of the transferee bank, financial institutions or other joint-stock companies will be increased at the rate of the share to be given to the divided bank and to its shareholders and in case the sum of paid-up capital of the bank in partial division is

lower than the minimum capital included in the Article 7(1)(f) of the Law, the difference shall be met by means of increasing divided bank capital in cash by bank shareholders in three months.

ç) Record declaring all assets and liabilities as well as rights and obligations concerning the divided part or parts of divided bank were transferred to the transferee bank, financial institution and joint-stock companies.

d) Record declaring sum, type, partnership shares exchange ratio, nominal value of shares and amount of privileged shares, if applicable, to be granted to the divided bank or its shareholders.

e) Record proving that the division or transfer shall take place free from collusion and losses to occur otherwise shall be compensated jointly and severally.

(3) Provisions violating the rights and receivables of customers and third parties cannot be included in the division contract. It is not obligatory that signatures in division contracts have to be notarized.

### **Post division transactions**

**ARTICLE 17**— (1) Draft contract signed by board of director is submitted to the Agency in seven days following the signing together with the financial statements subject to division which are approved by independent audit firms, draft articles of association, reports on share value assessment to be prepared according to the provisions of the Regulation on Principles for Authorization and Activities of Rating Institutions to Perform Rating Activities in Banks and a report including the required sum for capital increase and resources thereof, if applicable, of banks, financial institutions or joint stock companies to be parties to the division. The Agency is authorized to demand additional information and documents it deems necessary

(2) State of the bank demanding division is analyzed to be evaluated in respect of legal and regulatory compliance, compliance to standard ratios and credit limits, organization and branch structure, efficiency of internal control, risk management and internal audit systems. The Agency may demand additional measures to be taken from the applying bank so as to realize the benefit expected from the division and to strengthen its financial structures.

(3) Following the necessary investigations have been conducted by the Agency, division contract approved by the Board and draft articles of association including old and new texts, balance-sheet and statements of profit and loss are submitted to the approval of general meeting of shareholders of banks, financial institutions or other joint stock companies and are voted according to the quorum specified in their articles of association in general meeting of shareholders. Unless no quorum has been specified in articles of association of banks, a resolution is adopted with the majority of the attendants, on condition that the majority of issued or tier-I capital share is represented in general meeting of shareholders.

(4) **(Amended: OG 16/11/2017-30242)** In the division, capital of the transferee bank is increased at the rate of the shares to be given to the divided bank's shareholders.

(5) There can be no convension held and resolutions adopted in the general meeting of shareholders about the amendments in division contract and in articles of association which are not approved by the Board.

## **Registration and notification**

**ARTICLE 18** — (1) (1) General meeting of shareholders' resolutions and amendments in articles of association on division are submitted to the Agency in seven days following the general board.

(2) Approval of the Board enabling the general meeting of shareholders' resolutions on division to be registered is published in the Official Gazette.

(3) General meeting of shareholders' resolutions and articles of association amendments on division are registered and notified in the Trade Register Offices in which the transferee and divided bank, financial institution or other joint stock companies participated in the division are recorded in seven days following the publication of Board resolution in the Official Gazette, without requiring any application to the Ministry of Industry and Trade or Province Industry and Trade Offices.

(4) Following the registry of general meeting of shareholders' resolutions of transferee and divided banks, financial institution and other joint-stock company, assets and liabilities as well as rights and obligations which are subject to division of bank are transferred to the transferee bank, financial institution and other joint-stock company. In the event of full division, legal entity status of the divided banks cease and their records in Trade Registry are deleted.

## **SECTION SIX**

### **Change in Shares**

#### **General board permission**

**ARTICLE 19** — (1) Balance-sheets subject to change in shares and draft change in shares contract which have been approved by independent audit firm that will be determined by board of directors the bank which would conduct change in shares are submitted to the approval of general meeting of shareholders and are voted in general meeting of shareholders according to the quorum specified in their articles of association. Unless no quorum has been specified in articles of association of the bank, a resolution is adopted with the majority of the attendants, on condition that majority of issued or registered capital share is represented in general meeting of shareholders.

(2) In the event that balance-sheets subject to change in shares and draft change in shares contract are approved, administrative boards are granted authorization by the general meeting of shareholders to prepare and sign draft change in shares contract.

(3) Change in shares transactions cannot be performed against the provisions of the Article 56(4) of the Law.

#### **Change in shares contract**

**ARTICLE 20**— (1) It is obligatory in change in shares contract to be included;

- a) Information about conditions and planned stages of change in shares.
  - b) Title and headquarter of banks or financial institutions which are party to change in shares.
  - c) Record concerning the capital sum of the bank will be increased at the rate of the shares to be given to the shareholders of transferred bank or financial institutions.
  - ç) Record declaring sum, type, partnership shares exchange ratio, nominal value of shares and amount of privileged shares, if applicable, to be granted to the shareholders of transferred bank or financial institutions in the change in shares.
  - d) Record proving that change in shares shall take place free from collusion and losses to occur otherwise shall be compensated jointly and severally.
- (2) Provisions violating the rights and receivables of customers and third parties cannot be included in the change in share contract. It is not obligatory that signatures in change in share contracts have to be notarized.

### **Post change in shares transactions**

**ARTICLE 21** — (1). Draft contract signed by board of directors is submitted to the Agency in seven days following the signing together with the financial statements subject to change in shares which were approved by independent audit firms, draft articles of association, reports on share value assessment to be prepared according to the provisions of the Regulation on Principles for Authorization and Activities of Rating Institutions to Perform Rating Activities in Banks and a report including the required sum for capital increase and resources thereof, if applicable, of banks to operate change in shares. The Agency is authorized to demand additional information and documents it deems necessary

(2) State of the bank to operate change in shares is analyzed in respect of legal and regulatory compliance, compliance to standard ratios and credit limits, organization and branch structure, efficiency of internal control, risk management and internal audit systems. The Agency may demand additional measures to be taken from the banks to operate change in shares so as to realize the benefit expected from the change in shares and to strengthen their financial structures.

(3) Following the necessary investigations have been conducted by the Agency, change in shares contract approved by the Board and draft articles of association including old and new texts, balance-sheet and statements of profit and loss of the bank to operate change in shares are submitted to the approval of general meeting of shareholders of bank and are voted in general meeting of shareholders according quorum specified in articles of association. Unless no quorum has been specified in articles of association of banks, a resolution is adopted with the majority of the attendants, on condition that the majority of the issued or registered capital share is represented in general meeting of shareholders.

(4) In the change in shares, capital of the bank which will conduct share change is increased at the rate of the share to be granted to the shareholders of transferred bank or financial institutions.

(5) There can be no convension held and resolutions adopted in the general meeting of shareholders about the change in shares contract and articles of associaiton which are not approved by the Board.

(6) General board resolution on the share change of the bank to operate change in shares is submitted to the Agency in seven days following the general board.

## **SECTION SEVEN**

### **Miscellaneous and Final Provisions**

#### **Special Permissions**

**ARTICLE 22** — (1) In the event that at least one of bank or financial institutions in merger, acquisition, division and change in shares transactions, is subject to the Law on Capital Markets Nr. 2499 dated July 28, 1981 permission is commanded within the scope of capital markets legislation for merger, acquisition, division and change in shares contracts.

#### **No obligation of paying debts or providing collateral**

**ARTICLE 23** — (1) In order that merger, acquisition, division and change in shares transactions become definite, it is not obligatory that debts of banks or financial institutions which have been merged, participated to acquisition, divided or experienced change in shares should be paid or collateralized.

(2) Unless there is any provision to the contrary in the contracts, debts or receivables do not fall due because of merger, acquisition, division and change in shares.

#### **Share acquisitions and transfers**

**ARTICLE 24** — (1) In the event that a change occurs in the partnership structure of the bank at the rates defined in the Article 18(1) of the Law, subsequent to merger, acquisition, division and changes in shares and shares which give privilege to assign members to the boards of directors and supervisory boards or which are granted right of usufruct are transferred, it is obligatory that these shareholders should document that they bear the qualifications sought in founders under the legislation in force and that a permission should be granted from the Board, according to Article 18 of the Law. Provisions of Article 10 (2b) and Article 130 (1c) and (1d) of the Law is not applied about the bank to be established.

#### **Rights of privileged shareholders**

**ARTICLE 25** — (1) It is obligatory that resolutions of general meetings of shareholders to be gathered pursuant to Articles 7, 9, 11, 13, 15, 17, 19 and 21 that may affect the rights of privileged shareholders should be approved by privileged shareholders' general meeting as well.

### **Repealed Regulation**

**ARTICLE 26** — (1) Regulation on Merger and Acquisition of Banks published in the Official Gazette dated June 27, 2001 Nr. 24445 is repealed.

### **Entry into force**

**ARTICLE 27**— (1) This Regulation enters into force in the date of publication.

### **Enforcement**

**ARTICLE 28**— (1) The provisions of this Regulation are enforced by the Chairman of the Banking Regulation and Supervision Agency.