

Mergers, consolidations and acquisitions of credit organizations



By Tuan Anh Nguyen

On 11 February 2010, the State Bank of Vietnam (SBV) issued *Circular 04/2010/TT-NHNN* (Circular 04) setting out new legal stipulations on mergers, consolidations and acquisitions of merchant banks, financial companies, finance lease companies and credit cooperative organizations (collectively, credit organizations) in Vietnam. Circular 04 became effective 45 days from the issuing date and replaced *Decision 241/1998/QĐ-NHNN5*, which was issued by the SBV on 15 July 1998.

Definitions – The following definition are useful:

- *Merger*: where one or more credit organizations merge with and into another credit organization (merged organization) by way of transfer of all lawful assets, rights, obligations and interests to the merged organization and, at the same time, termination of the existing credit organizations takes place.
- *Consolidation*: where two or more credit organizations are consolidated into a new credit organization (consolidated credit organization) by way of transfer of all lawful assets, rights, obligations and interests to the consolidated credit organization and, at the same time, termination of the existing credit organizations.
- *Acquisition*: where a credit organization purchases all lawful assets, rights, obligations and interests of other credit organizations. After acquisition, the credit organizations being acquired become subsidiaries of the acquiring credit organization.

Conditions – Circular 04 set out specific conditions applicable to each merger, consolidation and acquisition, which are generalised as follows:

- It must not violate relevant provisions set forth in the Law on Competition;
- There must be a Proposal of Merger, Consolidation or Acquisition, which consists of full information as required in Circular 04 and which must be consistent with the Contract of Merger, Consolidation or Acquisition;
- The merged, consolidated or acquiring credit organization

must have minimum charter capital which is equal to the legal capital prescribed by laws. Apart from satisfying the requirement on minimum charter capital, the acquiring credit organization must comply with statutory requirements on the safety percentage of operation.

Forms of Mergers – The following are permitted:

- Banks, finance companies, and credit cooperative organizations merging with and into a bank;
- Finance companies merging with and into a finance company;
- Finance lease companies merging with and into a finance lease company.

Forms of Consolidations – The following are permitted:

- A bank(s) consolidates with other banks, finance companies and credit cooperative organizations to form a new bank;
- Finance companies consolidate to form a new finance company;
- Finance lease companies consolidate to form a new finance lease company.

Forms of Acquisition – The following are permitted:

- A bank is permitted to acquire a finance company(ies) or finance lease company(ies);
- A finance company is permitted to acquire a finance lease company(ies)

It is unclear as to whether a bank, a finance company or a finance lease company is permitted to acquire other banks, as this form is not specifically mentioned in Circular 04.

Process and Approval: All cases of mergers, consolidations and acquisitions must be approved by the Governor of the SBV. The process and the documents required – with particular guidance as to how the documents shall be prepared for obtaining approval of the Governor of the SBV – are specifically described in Circular 04.

bizconsult law LLC

3/F, VNA Building, 20 Tran Hung Dao Street
Hanoi – VIETNAM

Tel: (84) 4 39332129 Fax: (84) 4 39332130

Email: tuan.na@bizconsult-vietnam.com
www.bizconsult-vietnam.com