

## Content

Title :	The Financial Institutions Merger Act <b>Ch</b>
Date :	2000.12.13
Legislative :	1.This Act passed its third reading on Congress on November 24, 2000, plus was enacted and promulgated by the president (file no.:8900295690) on December 13, 2000.
Content :	<p>Article 1</p> <p>This Act is enacted to regulate the merger of financial institutions, expand economic scale, and economic horizon, enhance the operational efficiency of financial institutions, and protect proper competition environments.</p> <p>Article 2</p> <p>Merger of financial institutions shall be governed by this Act. Merger of non-corporation Financial Institutions shall be effected in accordance with this Act. In addition, the provisions regarding merger of companies limited by shares under the Company Act shall apply mutatis mutandis.</p> <p>Where a banking enterprise, in accordance with the Banking Act and the Deposit Insurance Act, is merged by its ministrant, supervisor, receiver or liquidator, the Banking Act, Deposit Insurance Act, and the relevant rules shall apply to the merging procedures on a priority basis.</p> <p>Matters not provided in this Act shall be governed by other relevant acts and regulations; in the absence of such other acts and regulations, the competent authority shall prescribe separately.</p> <p>Article 3</p> <p>The Competent Authority under this Act shall be the Ministry of Finance</p> <p>Article 4</p> <p>The terms used herein shall have the following meanings:</p> <p>1."Financial Institution" means the following banking enterprises, securities and futures enterprises, institutions covered by the insurance enterprise, and other institutions approved by the Competent Authority:</p> <p>(1) Banking Enterprises: including banks, credit cooperatives, credit departments of farmers associations, credit departments of fishers associations, bill finance companies, credit card institutions, and Directorate General of Postal Remittances &amp; Savings Bank.</p> <p>(2) Securities and Futures Enterprises: including securities firms, securities investment trust enterprises, securities investment consulting enterprises, securities finance</p>

enterprises, futures commission merchants, leverage dealers, futures trust enterprises, futures management enterprises, and futures consulting enterprises.

(3) Insurance Enterprises: including insurance companies and insurance cooperatives.

(4) Trust Enterprises.

2. "Merger" means the merger of two or more Financial Institutions into one Financial Institution.

3. "Extinguished Institution" means the Financial Institution which becomes extinguished due to merger.

4. "Surviving Institution" means the Financial Institution which survives the merger.

5. "Newly Incorporated Institution" means the Financial Institution separately established due to merger.

#### Article 5

For the merger of Financial Institutions other than the credit departments of farmers or fishers associations, the institutions to be merged shall jointly apply to the Competent Authority for approval; provided that no merger shall be allowed if the businesses cannot be concurrently operated according to act or regulation.

Where a bank in the Banking Enterprises is merged with other Financial Institutions in the Banking Enterprise, the Surviving Institution or Newly Incorporated Institution shall be the bank.

Where a securities firm in the Securities and Futures Enterprises is merged with other Financial Institutions in the Securities and Futures Enterprises, the Surviving Institution or Newly Incorporated Institution shall be the securities firm.

Where a property insurance company is merged with an insurance cooperative, the Surviving Institution or Newly Incorporated Institution shall be the property insurance company.

#### Article 6

When approving a merger, the Competent Authority shall take into account the following factors:

1. influence on the expansion of the economic scale of the Financial Institutions, enhancement of its operation efficiency, and upgrade of international competitiveness;
2. influence on the competition factors on the financial market;
3. financial status, management ability, and operational soundness of the Surviving Institution or Newly Incorporated Institution; and
4. influence on the improvement of public interests, including promotion of financial stability, enhancement of financial service quality, provision of convenience, and handling of problematic Financial Institutions.

#### Article 7

After the merger of a Financial Institution is approved by the Competent Authority, if such institution exceeds the scope

provided by the acts and regulations due to the merger, the Competent Authority shall order it to make adjustment within a time limit.

The maximum adjustment period related to the merger of Financial Institutions in the same category of business referred to in the preceding paragraph shall be two years; provided that if the provision regarding credit to related parties, or credit to one and the same person, one and the same related party or one and the same affiliated company under the Banking Act is exceeded, the maximum adjustment period shall be five years. When necessary, an application for extension may be applied once, and the period shall be limited to two years.

#### Article 8

For the merger of Financial Institutions other than the credit departments of farmers or fishers associations, the board of directors shall prepare a merger agreement pertaining to the consolidation or merger, attached with balance sheets, income statements, and property inventory audited and certified by a CPA and checked by the supervisor, and submit the same to the shareholders meeting or general members (representatives) meeting for approval.

The merger agreement referred to in the preceding paragraph shall state the following particulars:

- 1.Names of Financial Institutions to be merged, name of Surviving Institution or Newly Incorporated Institution, address of its head office, its business areas, and total number, kinds and amount of shares (shares of cooperative) to be issued by it;
- 2.The total number, kinds and amount of new shares to be distributed by the Surviving Institution or Newly Incorporated Institution to the shareholders (members) of the Extinguished Institution, method of distribution, and other related matters;
- 3.Method of protection provided by the Surviving Institution or Newly Incorporated Institution to the creditors, fund beneficiaries, securities investors, or futures traders;
- 4.Amendment of Articles of Incorporation of the Surviving Institution or Articles of Incorporation of the Newly Incorporated Institution.

#### Article 9

When Financial Institutions other than the credit departments of farmers or fishers associations are merged, except for a public company which should make public announcement and report within two (2) days from the occurrence of merger in accordance with Paragraph 2 of Article 36 of the Securities and Exchange Act, such institutions shall reach a resolution for merger pursuant to the preceding Article and make a public announcement of the content of the resolution and particulars to be stated in the merger agreement within ten (10) day, without being subject to the provision regarding separate notice under Paragraph 2 of Article

73 of the Company Act and other acts and regulations. The said public announcement shall specify a period of not less than 30 days within which the creditors, fund beneficiaries, securities investors or futures traders may raise any objection in writing that the merger would damage their rights and interests.

The public announcement referred to in the preceding paragraph shall be consecutively placed at all the business premises for at least seven (7) days and consecutively published in the local daily newspapers for at least five (5) days.

If the Financial Institution does not make the public announcement referred to in Paragraph 1, or if the public announcement does not meet the requirements referred to in the preceding paragraph, or if such institution fails to satisfy, settle, or provide an appropriate security interest for, the claims of its creditors, fund beneficiaries, securities investors, or futures traders who raise objection within the specified time limit, the merger shall not be valid against such creditors, fund beneficiaries, securities investors, or futures traders.

#### Article 10

For merger of a credit cooperative or insurance cooperative, a resolution shall be adopted by two-thirds or more of the members or representatives of members present at a members or representatives of members meeting attended by all members or three-fourths or more of representatives of members.

If the resolution referred to in the preceding paragraph is adopted in a general representatives of members meeting, the credit cooperative and insurance cooperative shall give a written notice containing the resolution and particulars to be recorded in the merger agreement to the non-representative members or make a public announcement in the manner provided in Paragraph 2 of the preceding Article, and specify an objection period of not less than 30 days. Dissenting members shall make objection in writing within the specified period. When one-third or more members raise objection, the original resolution shall become void. If no objection is raised within the said period, the resolution shall be deemed agreed.

#### Article 11

The sale or assignment of the credit department of a farmers or fishers association to a Banking Enterprise shall be concurred by two-thirds of the members or representatives of members present at a members or representatives of members meeting attended by all members or two-thirds or more of representatives of members, and the Banking Enterprise shall file an application to the Competent Authority for approval. Before granting the approval, the Competent Authority shall seek the opinion of the central competent authority in charge of the farmers and fishers association.

If the resolution referred to in the preceding paragraph is adopted

in a general representatives of members meeting, the farmers or fishers association shall give a written notice containing the resolution and particulars to be recorded in the sale/assignment agreement to the non-representative members or make a public announcement in the manner provided in Paragraph 2 of Article 9 and specify an objection period of not less than 30 days. Dissenting members shall make objection in writing within the specified period. When one-third or more members raise objection, the original resolution shall become void. If no objection is raised within the said period, the resolution shall be deemed agreed.

When a Banking Enterprise and farmers or fishers association reaches a resolution for acquiring or assigning/selling the credit department of the farmers or fishers association, its board of directors shall prepare an agreement pertaining to the relevant matters, attached with the balance sheets, income statements, and property inventory audited and certified by a CPA and checked by the supervisor, and submit the same to the shareholders meeting or general members (representatives) meeting.

The agreement referred to in the preceding paragraph shall contain the following particulars:

1. Name of the Financial Institution, name, address of head office, and business area of the acquiring Banking Enterprise;
2. Methods and procedures to evaluate and split the assets and liabilities of the credit department of the farmers or fishers association;
3. Methods to protect the rights and interests of the creditors of the credit department of the farmers or fishers association; and
4. Amendments to the Articles of Incorporation of the acquiring Banking Enterprise.

After the resolution referred to in Paragraph 1 is adopted, the farmers or fishers association shall make a public announcement of the content of the resolution and particulars to be stated in the agreement within 10 days. The said public announcement shall specify a period of not less than 30 days within which the creditors may raise any objection in writing that the assignment/sale of the credit department of the farmers or fishers association to a Banking Institution would damage their rights and interests.

The public announcement referred to in the preceding paragraph shall be consecutively placed at all the business premises for at least 7 days and consecutively published in the local daily newspapers for at least five 5 days.

If the farmers or fishers association does make the public announcement referred to in Paragraph 1, or if the public announcement does not meet the requirements referred to in the preceding paragraph, or if the association fails to satisfy, or provide an appropriate security interest for, the claims of its creditors, the assignment of the credit department to the Banking Enterprise shall not be valid against such creditors.

## Article 12

Where a farmers or fishers association invests in a bank or contributes its credit department as capital to invest in a bank, the bank shall apply to the Competent Authority for approval. Before granting the approval, the Competent Authority shall seek the opinion of the central competent authority in charge of the farmers or fishers associations.

For the investment by farmers or fishers association referred to in the preceding paragraph, the provisions in Paragraph 1 through Paragraph 3 and Paragraph 5 through Paragraph 7 of the preceding Article shall apply *mutatis matandis* to the matters related to resolution procedures, agreement, and public announcement procedures, etc.

The provision in Paragraph 3 of the preceding Article shall apply to the bank referred to in Paragraph 1.

The agreement referred to in Paragraph 2 and the preceding paragraph shall contain the following particulars:

1. Name of the Financial Institution, name of the invested or newly established bank, address of its head office, its business area, and total number, kinds, and amount of its issued and outstanding shares.
2. Methods and procedures to evaluate and split the assets and liabilities of the credit department of the farmers or fishers association;
3. Methods to protect the rights and interests of the creditors of the credit department of the farmers or fishers association; and
4. Amendments to the Articles of Incorporation of the invested bank or Articles of Incorporation of the newly established bank.

Where a farmers or fishers association invests in a newly established bank or contributes its credit department as capital to invest in the newly established bank, the farmers or fishers association may become a promoter without being subject to the restrictions in the proviso of Paragraph 3 of Article 128 of the Company Act. The criteria for the investment in a newly established bank by a farmers or fishers association or the contribution of the association's credit department as capital to invest in the newly established bank shall be separately prescribed by the Competent Authority after consultation with the central competent authority in charge of the farmers or fishers associations.

## Article 13

In the event that the business or financial status of its credit department obviously deteriorates, a farmers or fishers association cannot meet its liabilities or its net value after adjustment becomes negative, the Competent Authority may suspend all the powers and authority of the representatives of members, directors, supervisors, or Secretary General of the

farmers or fishers association, or their powers and authority related to the credit department, and the provisions of Articles 45 and 46 of the Farmers Association Act and Articles 48 and 49 of the Fishers Association Act shall not apply. The Competent Authority may designate appropriate personnel to exercise the suspended powers and authority.

When executing the sanctions referred to in the preceding paragraph, the Competent Authority may, if deemed necessary, after consultation with the central competent authority in charge of farmers or fishers associations, order the farmers or fishers association to assign its credit department and the property required for its operation to a bank, and the provisions of Article 37 of the Farmers Association Act and Article 39 of Fishers Association Act shall not apply.

For the acquisition of the credit department of a farmers or fishers association by a bank in the form of company limited by shares, the following provisions shall apply:

1. A resolution shall be adopted at a shareholders meeting attended by shareholders holding and representing a majority of the total number of issued and outstanding shares and at which meeting a majority of the votes held by the shareholders present shall be cast in favor of such resolution. Dissenting shareholders shall not request the bank to redeem their shares, and the bank may be exempt from following the provisions of Article 185 through Article 188 of the Company Act.

2. Where the Competent Authority deems it necessary to take emergency measure, and where such measure does not have any material adverse effect on the competition on the financial market, the bank is exempt from applying to the Fair Trade Commission of the Executive Yuan for an approval in accordance with Paragraph 1 of Article 11 of the Fair Trade Act.

Where a bank not in the form of a company limited by shares acquires the credit department of a farmers or fishers association in accordance with Paragraph 2, the provisions referred to in the preceding paragraph shall apply *mutatis mutandis*

#### Article 14

Where a farmers or fishers association assigns its credit department or contribute its credit department as capital to invest in the Banking Enterprise in accordance with Article 11 to Article 13 herein, the head office or branch of the original credit department may, upon the approval of the Competent Authority, become a branch of the said Banking Enterprise.

If the Banking Enterprise referred to in the preceding paragraph applies to revoke the branch reorganized from the credit department of the farmers or fishers association so that there is no Banking Enterprise to provide financial services in the area where the farmers or fisher's association is organized other than

the Directorate General of Postal Remittances and Savings Bank, the farmers or fishers association in such area may set up a credit department in accordance with the Farmers or Fishers Association Act to handle financial business for its members. If a farmers or fishers association assigns its credit department or contribute its credit department as capital to invest in the Banking Enterprise in accordance Article 11 to Article 13 so that its promotional fund becomes insufficient, the central competent authority in charge of the farmers or fishers associations shall budget the fund according to actual needs.

#### Article 15

When an asset management company that aims for acquisition of non-performing loans of Financial Institutions handles non-performing loans, the following provisions may apply:

1. When the non-performing loans are assigned from Financial Institutions, Paragraph 3 of Article 18 hereof shall apply.
2. When a Financial Institution transfers its non-performing loans, the enforcement orders that have already been obtained by such Financial Institution against the borrower or guarantor shall extend to the asset management company.
3. When an asset management company forecloses a first-priority mortgage on a collateral that is real estate owned by the borrower or a third party, the asset management company may mandate an impartial third party approved by the Competent Authority to conduct public auction without being subject to Article 28 of the Law Governing the Application of the Obligations of the Civil Code. The remaining amount of proceeds from the said public auction, if any, after paying off the amount receivable shall be returned to the borrower, but if there are other subordinate mortgagor(s), the said amount shall be lodged in the court.
4. If an asset management company has already obtained enforcement order for non-performing loans as a subordinate creditor, the Competent Authority may request the court to use the third-party auction institution referred to in the preceding item to handle the auction procedure under the Compulsory Execution Act.
5. The court shall consult with the asset management company when considering the petition for bankruptcy or reorganization against the borrower of the non-performing loans of a Financial Institution. In case where the Financial Institution is the largest creditor of the said borrower, the court shall appoint the asset management company to be the bankruptcy trustee or reorganization manager.
6. For the claims under non-performing loans of a Financial Institution that have been assigned or the compulsory enforcement thereof has been initiated before the borrower is declared bankrupt or under reorganization, exercise of such claims or compulsory enforcement may continue after the



borrower is declared bankrupt or under reorganization without being subject to the restrictions under the Company Act and the Bankruptcy Act.

Regulations governing the approval of third-party auction institution and the procedure for an auction conducted by such third party as referred to in Item 3 of the preceding Paragraph shall be separately prescribed by the Competent Authority.

An asset management company or the third party auction institution approved by the competent authority under Item 3 of the preceding Paragraph may accept mandate and supervision from the compulsory enforcement authority and handle compulsory enforcement matters from Banking Enterprises pursuant to the Compulsory Execution Act.

The business tax rate for the Banking Enterprises shall apply mutatis mutandis to asset management companies in respect of disposal of the non-performing loans of Financial Institutions as referred to in Paragraph 1.

The losses from sale of non-performing loans by a Financial Institution to an asset management company may be carried forward over five years.

#### Article 16

When a Financial Institution contemplating merger applies to the Competent Authority for approval, it shall submit an application for merger, together with the following documents:

1. Merger plan, stating the content of merger plan (including method of merger, evaluation of economic efficiency, general condition of business area after merger, business items, business development plan, and financial projection for the coming 3 years), expected progress, feasibility, necessity, reasonableness, legality, and the evaluation of the factors to be considered under Article 6, and other analysis;
2. Merger or assignment or investment contract, including important matters such as disposal of the rights and interest of employees, in addition to particulars to be recorded;
3. Minutes of general shareholders meeting, general members (representatives) meeting of the Surviving Institution and Extinguished Institution;
4. Supporting documents of public announcement (notice) of resolution on the merger of the Financial Institution and particulars to be stated in the relevant contracts;
5. Information of shareholders requesting for redemption of shares or members withdrawing capital contribution and a list of the capital contribution amount;
6. CPA's written opinion on the reasonableness of evaluation of the ratio for exchange of shares as a result of the merger, or the assignment/sale of the credit department, or the investment by contributing the credit department as capital;
7. Detailed proforma report of self-provided capital sufficiency for the merger one month prior to the merger;

8. Balance sheets, income statement, property inventory, statement of change of shareholders equity, and cash flow statement audited and certified by a CPA on the record date for exchange of shares due to merger, assignment/sale, or investment;

9. Legal opinions issued by a lawyer; and

10. Other documents as required by the Competent Authority.

Where a Newly Incorporated Institution will be formed due to merger, in addition to following the provisions in the preceding paragraph, the promoters of such institution shall submit the following documents to the Competent Authority to apply for incorporation approval:

1. Promoters' register;

2. Minutes of promoters' meeting;

3. Qualification certificates of general manager, vice general manager, and assistant manager;

4. Articles of Incorporation of the Newly Incorporated Institution; and

5. Other documents as required by the Competent Authority.

The format of the documents referred to in the preceding two paragraphs shall be prescribed by the Competent Authority.

#### Article 17

Where the merger of Financial Institutions is approved by the Competent Authority, the Surviving Institution or the Newly Incorporated Institution may, when applying for amendment registration of the real estate owned by the Extinguished Institution, its movable properties that require registration, and all encumbrances, directly process the registration against the certificate issued by the Competent Authority, without paying registration fees, in the following manner:

1. The stamp tax and deed tax incurred by the merger shall be exempted;

2. If the land directly used by the Extinguished Institution is transferred, after the present value of the land is decided upon examination in accordance with the Land Tax Act, the registration for transfer of the title to the land shall be effected, and the payable land value increment tax may be deferred and paid by the Surviving Institution or Newly Incorporated Institution until the land is transferred again. Upon bankruptcy or dissolution, the deferred land value increment tax shall be paid on a priority basis;

3. Where the land assumed by the Extinguished Institution in accordance with Article 76 of the Banking Act is transferred to the Surviving Institution or Newly Incorporated Institution due to merger, the land value increment tax shall be exempted;

4. The goodwill generated due to merger may be amortized within 5 years;

5. Expenses incurred due to merger may be amortized within 10 years;

6. The losses from sale of non-performing loans by a Financial Institution due to merger may be carried forward over 15 years.

The Financial Institutions subject to merger referred to in the preceding paragraph may, in the year of loss and the year of reporting deduction, when the accounting books and vouchers are complete, use the blue return referred to in Article 77 of the Income Tax Act or, if such books and vouchers have been audited and certified by the CPA and a tax return has been processed and the income tax paid, the Surviving Institution or Newly Incorporated Institution after merger may, upon filing business income tax return, deduct the loss approved by the relevant tax collection agency in each period within five years before the merger of such Financial Institutions, which amount shall be calculated based on the proportion of shares in the Surviving Institution or Newly Incorporated Institution held by the shareholders (members) of such Financial Institutions due to merger, and such amount shall be deducted from the net profit of the current year within five years from the year on which the loss is incurred.

#### Article 18

The provisions of this Act shall apply to the Financial Institution which categorically assumes or assigns all assets as well as liabilities. This same rule applies to foreign Financial Institutions which merge with domestic Financial Institutions, or categorically assumes or assigns both assets and liabilities; provided that losses incurred by the foreign Financial Institutions outside of the ROC territory before merger, categorical assumption or assignment shall not be deducted in accordance with Paragraph 2 of the preceding Article.

Where a Financial Institution, in accordance with the Banking Act, Deposit Insurance Act, and Insurance Act, categorically assumes or assigns assets and liabilities, assigns in installments or assigns the principal portion of the business and assets/liabilities by its ministrant, supervisor, receiver, liquidator, or trustee, the Banking Act, Deposit Insurance Act, Insurance Act, and the relevant provisions shall apply on a priority basis. In addition, the provisions of this Act shall apply mutitas mutandis.

Where a Financial Institution categorically assumes or assigns both assets and liabilities, assigns in installments, or assigns the principal portion of the business and assets/liabilities, or follows the provisions of Article 11 through Article 13, the notice of assignment of the claim may be made by public announcement.

When liabilities are assumed, the acknowledgement of creditors may be exempted, and the provisions of Article 297 and Article 301 of the Civil Code shall not apply.

The regulations for the merger between a foreign Financial Institution and a domestic Financial Institution, categorical assumption or assignment by such foreign Financial Institution

shall be separately prescribed by the Competent Authority

#### Article 19

When a Financial Institution undergoes merger, reorganization, or assignment, the rights and interests enjoyed by its employees shall be handled in accordance with the Labor Standards Law.

#### Article 20

This Act shall come into effect on the date of promulgation.

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Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System