TITLE 26
BANKS AND BANKING

CHAPTER 9
CONSOLIDATION, SALE AND REORGANIZATION

26-901. RESULTING NATIONAL BANK. (1) Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this state, except that a vote of the holders of two-thirds (2/3) of each class of voting stock of a state bank, at a meeting called in conformity with the provisions of section 26-904, Idaho Code, shall be required for the merger or conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in section 26-909, Idaho Code.

(2) Upon the completion of the merger or conversion, the franchise of any merging or converting state bank shall automatically terminate.

[26-901, added 1979, ch. 41, sec. 2, p. 96.]

26-902. RESULTING STATE BANK. Upon approval by the director, banks may be merged to result in a state bank or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting stockholders.

[26-902, added 1979, ch. 41, sec. 2, p. 97.]

26-903. MERGER PROCEDURE -- RESULTING STATE BANK. (1) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(a) A statement or recital that the agreement is subject to approval by the director and by the stockholders of each merging bank.

(b) The name of each merging bank and location of each office.

(c) With respect to the resulting bank:

1. the name and location of the principal and the other offices;
2. the name and residence of each director to serve until the next annual meeting of the stockholders;
3. the name and residence of each officer;
4. the amount of capital, the number of shares and the par value of each share;
5. the amount, terms, and preferences if preferred stock is to be issued; and
6. the amendments to its charter and bylaws.

(d) Provisions governing:

1. the manner of converting the shares of the merging banks into shares of the resulting state bank or into shares of a bank holding company; and
2. the manner of disposing of the shares of the resulting state bank or of the bank holding company not taken by the dissenting stockholders of each merging bank.

(e) Such other provisions as the director may require to enable him to discharge his duties with respect to the merger.

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board of each merging state bank and evidence of proper action by the board of directors of any merging national bank.

(3) After receipt by the director of the papers specified in subsection (a), the director shall approve or disapprove the merger agreement. The director shall approve the agreement if it finds that:

(a) The resulting state bank meets the requirements as to the formation of a new state bank.

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken.

(c) The agreement is fair.

(d) The merger is not contrary to the public interest.

(4) If the director disapproves an agreement, the objections shall be stated in writing and the merging banks shall be given an opportunity to amend the merger agreement to obviate such objections.

[26-903, added 1979, ch. 41, sec. 2, p. 97.]

26-904. MERGER -- APPROVAL BY STOCKHOLDERS OF STATE BANKS. (1) To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds (2/3) of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments in the merger agreement.

(2) Notice of the meeting of stockholders of each state bank shall be given by publication in a newspaper of general circulation in the place where its principal office is located at least once a week for four (4) successive weeks, and by mail at least fifteen (15) days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank; no notice by publication need be given if written waivers are received from the holders of two-thirds (2/3) of the outstanding shares of each class of stock. The notice shall be accompanied by a copy of section 26-909, Idaho Code, and shall state that the section sets forth the exclusive rights and remedies of dissenting stockholders.

[26-904, added 1979, ch. 41, sec. 2, p. 98.]

26-905. EFFECTIVE DATE OF MERGER -- FILING OF APPROVED AGREEMENT -- CERTIFICATE OF MERGER AS EVIDENCE. (1) A merger or sale which is to result in a state bank shall, unless a later date is specified in the agreement, become effective upon the filing with the director of the executed agreement together with copies of the resolutions of the stockholders of each merging purchasing and selling bank approving it and a list of the owners of the shares voted against the merger or purchase, certified by the bank's president or a vice-president and a secretary or cashier. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

(2) The director shall promptly issue to the resulting bank a certificate of merger specifying the name of each merging bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in the office of the county recorder of any county wherein property of the merging banks is held, to evidence the new name in which the property of the merging banks is held.

[26-905, added 1979, ch. 41, sec. 2, p. 98.]

26-906. CONVERSION OF NATIONAL INTO STATE BANK. (1) A national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank, shall be granted a charter by the director unless he finds that the bank does not meet the standards as to location of offices, capital structure, and business experience and character of officers and directors for the incorporation of a state bank.

(2) The national bank may apply for such charter by filing with the director a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of the national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank.

[26-906, added 1979, ch. 41, sec. 2, p. 99.]

26-907. CONTINUATION OF CORPORATE ENTITY -- USE OF OLD NAME. (1) A resulting state or national bank shall be the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers, and duties of each merging bank or the converting bank, except as affected by the law of this state in the case of a resulting state bank or the laws of the United States in the case of a resulting national bank, and by the charter and bylaws of the resulting bank.

(2) A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it can do any act under such name more conveniently.

(3) Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing, except when the resulting bank is not authorized to or has not qualified to exercise the powers conferred or required by the writing.

[26-907, added 1979, ch. 41, sec. 2, p. 99.]

26-908. SALE OF ASSETS OF BANK OR DEPARTMENT. (1) Any state bank may sell to any other bank:

(a) all or substantially all of the selling bank assets and business; or

(b) all or substantially all of the assets and business of any department of the selling bank.

(2) Any state bank may, upon assuming the liabilities relating thereto, purchase:

(a) all or substantially all of the assets and business of another bank; or

(b) all or substantially all of the assets and business of any department of another bank.

(3) The agreement of purchase and sale shall be authorized, approved by the director, approved by the vote of a majority of the stockholders of the purchasing and selling bank at a meeting called for the purpose in like manner as meetings to approve mergers are called and filed with the director accompanied by evidence of such stockholders' approval in like manner as agreements of mergers are filed. After such approval is given by the stockholders a notice of such sale shall be published once a week for three (3) successive weeks in a newspaper of large general circulation in the county in which the selling bank has its principal office, and proof of such publication shall be filed with the director.

(4) Notwithstanding any term of the agreement, or of his contract of deposit, any depositor whose business is thus sold has the right to withdraw his deposit in full on demand after such sale unless by dealing with [the] purchasing bank with knowledge of the purchase he ratifies the transfer.

(5) The agreement of sale may provide for the transfer to the purchasing bank of all fiduciary positions held by the selling bank subject to the right of the court, on petition of any interested party, to appoint another or succeeding fiduciary to the positions so transferred. Until the court appoints another or succeeding fiduciary the purchasing bank shall, if qualified to do so, exercise any fiduciary function vested in the selling bank.

(6) No right against or obligation of the selling bank in respect of assets or business sold shall be released or impaired by the sale until one (1) year from the last date of publication of the notice pursuant to subsection (3) of this section, but after the expiration of such year, no action can be brought against the selling bank on account of any deposit, obligation, trust, or asset transferred to or liability assumed by the purchasing bank.

(7) A bank may, with the prior approval of the director, purchase assets and the charter of and assume deposit liabilities or [of] a branch office of another bank or sell assets and the charter of a branch and permit the assumption of deposit liabilities by the purchasing bank. The sale or acquisition of a branch office and deposit liabilities shall comply with all capital requirements and other statutory requirements and restrictions relating to the maintenance of branch offices as required by this law. Banks which desire to sell, purchase or exchange branches shall apply to the director and shall provide all information required by the director to properly evaluate the impact upon public need and convenience and the impact upon depositors, stockholders and creditors of both the selling and acquiring banks. The director may in his discretion require a public hearing for the purpose of obtaining public impact and evaluating public need and convenience issues. The department shall make an investigation of the proposed sale, purchase or exchange of branches. The actual cost of an investigation, administrative procedure or hearing, shall be shared equally by the selling and acquiring banks. All fees shall be paid to the department of finance by the applicant banks following the approval or denial by the director. A bank selling a branch shall publish notice of the sale once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the branch is located.

[26-908, added 1979, ch. 41, sec. 2, p. 99.]

26-909. DISSENTING STOCKHOLDERS. (1) A dissenting stockholder of a state bank shall be entitled to receive the value in cash of only those shares which were voted against a merger to result in a state bank, against the conversion of a state bank into a national bank or against a sale of

all or substantially all of the state bank's assets, and only if written demand thereupon is made to the resulting state or national bank at any time within thirty (30) days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares will be determined, as of the date of the stockholders' meeting approving the merger or conversion, by three (3) appraisers, one (1) to be selected by the vote of the owners of two-thirds (2/3) of the shares involved at a meeting called by the director on ten (10) days' notice, one (1) by the board of directors of the resulting state or national bank, and the third by the two (2) so chosen. The valuation agreed upon by any two (2) appraisers shall govern. If any necessary appraiser is not appointed within sixty (60) days after the effective date of the merger or conversion, the director shall make the necessary appointment, or if the appraisal is not completed within ninety (90) days after the merger or conversion becomes effective, the director shall cause an appraisal to be made.

(2) The merger agreement may fix an amount which the merging banks consider to be the fair market value of the shares of a merging or a converting bank at the time of the stockholders' meeting approving the merger or conversion, which the resulting bank will pay dissenting stockholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank.

(3) The expenses of appraisal shall be paid by the resulting state bank except when the value fixed by the appraiser does not exceed the value fixed by the merger agreement in which case one-half (1/2) of the expenses shall be paid by the resulting bank and one-half (1/2) by the dissenting stockholders requesting the appraisal in proportion to their respective holdings.

[26-909, added 1979, ch. 41, sec. 2, p. 101.]

26-910. NONCONFORMING ASSETS OF BUSINESS. If a merging, converting or selling bank has assets which do not conform to the requirements of state law for the resulting or purchasing state bank or carries on business activities which are not authorized or permitted for the resulting or purchasing state bank, the director may permit a reasonable time to conform with the law of this state, and, in the case of a resulting or purchasing state bank that is not to exercise trust powers, shall require that prompt application be made to a court of competent jurisdiction for the appointment of successor trustees.

[26-910, added 1979, ch. 41, sec. 2, p. 101.]

26-911. BOOK VALUE OF ASSETS. Without approval by the director no asset shall be carried on the books of the resulting or purchasing bank at a valuation higher than that on the books of the merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion.

[26-911, added 1979, ch. 41, sec. 2, p. 102.]