

New Circular on Merger, Consolidation and Acquisition by Credit Institutions

On 11 February 2010, the State Bank of Vietnam (“SBV”) issued Circular No. 04/2010/TT-NHNN regulating merger, consolidation and acquisition of credit institutions (“Circular 04”).

A credit institution means a bank, finance company, finance leasing company or a credit co-operative.

A merger means one or more credit institutions merging with another credit institution; a consolidation means two or more credit institutions consolidating to become one new credit institution; and an acquisition means a credit institution purchasing another credit institution.

Circular 04 opens the door for future M&A deals in the financial sector and replaces an old circular issued in 1998 which applied only to the merger, consolidation and acquisition of joint stock credit institutions.

Overview

Circular 04 is significant in that it provides for a clearer legal framework for M&A transactions in the financial sector. Previously, a bank can only own up to 11% of the shares in another bank.

Circular 04 allows for mergers, consolidations and acquisitions of all types of credit institutions as long as a clear plan to do so is submitted and the Competition Law is complied with.

Circular 04 also applies to wholly foreign owned banks licensed in Vietnam and allows them to also merge, consolidate with and acquire other credit institutions.

Further details of Circular 04 are discussed below.

Governing scope

- Circular 04 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.
- The merger or consolidation of co-operative credit institutions must comply with the Regulations issued with Decision No. 24/2006/QD-NHNN of the Governor of the SBV 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, demerger, consolidation and merger of people’s credit funds, and on liquidation of people’s credit funds under supervision of the SBV.

Applicable entities

- Credit organisations as stipulated in the governing scope
- Provincial SBV branches
- Banking Inspectorate
- Finance–Accounting Department
- Legal Department
- Other related departments and divisions under the SBV

Competence to approve merger or consolidation of credit institutions and acquisition of a credit institution

Proposed merger or consolidation of credit institutions or acquisition of credit institution is subject to the consent of the Governor of the SBV.

Principles for merger or consolidation of credit institutions or acquisition of a credit institution

- Principle regarding agreement: Credit organisations 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.
- Principle on protection of clients: Credit organisations 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.
- Principle on confidentiality of information: Members of the board of management and of the board of controllers, the general director and organisations and individuals related to

any credit institution participating in a merger, consolidation or acquisition will 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.

- Principle on provision of information:
 - » When conducting the procedures for the relevant merger or consolidation of credit institutions or acquisition of credit institution, the board of management of the credit institution will 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, organisational and operational status of the credit institution, without discriminating against owners of the parties participating in such merger, consolidation or acquisition or against other authorised organisations.
 - » 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.
- Principle on the decision on merger, consolidation or acquisition:
 - » The decision makers of any credit institution participating in a merger, consolidation or acquisition will pass a decision on such merger, consolidation or acquisition in accordance with the conditions and procedures for conducting meetings and voting as stipulated in current law.
 - » Consolidating credit institutions will reach agreement on issues relevant to organisation of the consolidation and on the conditions and procedures for holding meetings and voting in

order to pass the relevant decision, and will specify the same in detail in the consolidation plan and in conformity with current law.

Forms of merger or consolidation of credit institutions or acquisition of a credit institution

- Forms of merger:
 - » A bank, finance company and/or co-operative credit institution may merge with one bank.
 - » A finance company may merge with another finance company.
 - » A finance leasing company may merge with another finance leasing company.
- Forms of consolidation:
 - » A bank may consolidate with a bank, finance company and/or co-operative credit institution to become one bank.
 - » Finance companies may consolidate to become one finance company.
 - » Finance leasing companies may consolidate to become one finance leasing company.
- Forms of acquisition:
 - » One bank may acquire a finance company and/or finance leasing company.
 - » One finance company may acquire another finance leasing company.

Conditions for eligibility to merge/consolidate/acquire

Conditions for eligibility to merge	Conditions for eligibility to consolidate	Conditions for eligibility to acquire
Not falling within the cases in which the Competition Law prohibits an economic concentration	Not falling within the cases in which the Competition Law prohibits an economic concentration	Not falling within the cases in which the Competition Law prohibits an economic concentration
Having a merger plan containing at least all the contents stipulated in the following table, and not containing any items inconsistent with the merger contract	Having a consolidation plan containing at least all the contents stipulated in the following table, and not containing any items inconsistent with the consolidation contract	Having an acquisition plan containing at least all the contents stipulated in the following table, and not containing any items inconsistent with the acquisition contract
The merged credit institution will, following the merger, have minimum charter capital equal to the amount of legal capital required by current law	The consolidated credit institution will, following the consolidation, have minimum charter capital equal to the amount of legal capital required by current law	The acquiring credit institution will, following the acquisition, have minimum charter capital equal to the amount of legal capital required by current law

Contents of a merger/consolidation/acquisition plan

Merger plan	Consolidation plan	Acquisition plan
Names, addresses and websites of the credit institutions participating in the merger	Names, addresses and websites of the consolidating credit institutions	Names, addresses and websites of the credit institutions participating in the acquisition
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	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	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
Summary of the financial and operational status of the credit institutions participating in the merger up to the time of the audited financial statements which the decision makers of the credit institutions participating in the merger agreed to use when formulating the merger plan	Summary of the financial and operational status of the consolidating credit institutions up to the time of the audited financial statements which the decision makers of the consolidating credit institutions agreed to use when formulating the consolidation plan	Summary of the financial and operational status of the credit institutions participating in the acquisition up to the time of the audited financial statements which the decision makers of the credit institutions participating in the acquisition agreed to use when formulating the acquisition plan
Reason for the merger	Reason for the consolidation	Reason for the acquisition
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	Charter capitals prior to the consolidation of the consolidating credit institutions, and charter capital of the consolidated credit institution	
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	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	
Rights and obligations of the credit institutions participating in the merger, and of related organizations and individuals (if any)	Rights and obligations of the consolidating credit institutions, and of related organizations and individuals (if any)	Rights and obligations of the credit institutions participating in the acquisition, and of related organizations and individuals (if any)

Merger plan	Consolidation plan	Acquisition plan
Schedule for conducting the merger	Schedule for conducting the consolidation	
Proposed staff, operational network and contents and other issues relevant to organization and operation of the merged credit institution following the merger	Proposed staff, operational network and contents and other issues relevant to organization and operation of the consolidated credit institution	Proposed staff, operational network and contents and other issues relevant to organization and operation of the acquiring credit institution after the acquisition
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	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	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
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	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	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
Method and time-limit for conversion of capital contributions or shareholding capital; and form of conversion of such capital and the relevant conversion ratios	Capital contribution or shareholding capital conversion ratios; method and time-limit for conversion	Acquisition price, time-limit for and method of payment; time-limit for handover to the acquiring credit institution

Merger plan	Consolidation plan	Acquisition plan
Liability of the parties participating in the merger for expenses arising during the merger process	Conditions and procedures for holding meetings and voting in order to pass decisions relevant to the consolidated credit institution	Liability of the credit institutions participating in the acquisition for expenses arising during the acquisition process
Plan for dealing with a case where one or more of the credit institutions participating in the merger unilaterally rescind the agreement to merge	Plan for dealing with a case where one or more of the consolidating credit institutions unilaterally rescind the consolidation agreement	Plan for dealing with a case where one or more of the credit institutions participating in the acquisition unilaterally rescind the acquisition agreement

Application file requesting merger/consolidation/acquisition

The application for merger/consolidation/acquisition is to be conducted in two steps:

- An application file requesting agreement in principle to a merger/consolidation/acquisition
- An application file requesting consent to a merger/consolidation/acquisition

Responsibilities of relevant entities

Circular 04 devotes one chapter to prescribing specific responsibilities of credit institutions, provincial SBV branches, the Finance-Accounting Department, the Legal Department and other related departments and divisions under the SBV.

Effect of the Circular

The Circular takes effect 45 days after its issuance and replaces Decision No. 241/1998/QD-NHNN5 of the Governor of the SBV dated 15 July 1998 which issued regulations on merger, consolidation and acquisition of Vietnamese joint stock credit institutions.

If any provisions of a law which is referred to in this Circular are amended, supplemented or changed, then such new provisions will apply.

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 conduct share transfers in accordance with the law on issuance of establishment and operational licences for shareholding credit institutions.

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.

Contact Us

Dao Nguyen, Partner

dao.nguyen@mayerbrownjism.com

Thinh Dan, Associate

thinh.dan@mayerbrownjism.com

JSM operates in association with Mayer Brown LLP and Mayer Brown International LLP. Mayer Brown is a leading global legal services provider with offices in major cities across Asia, the Americas and Europe. In Asia, we are known as Mayer Brown JSM. We have approximately 300 lawyers in Asia, 1,000 in the Americas and 450 in Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge on a global basis.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies. We provide legal services in areas such as litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environment.

Office Locations: Asia: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai
Americas: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Rio de Janeiro, São Paulo, Washington
Europe: Berlin, Brussels, Cologne, Frankfurt, London, Paris

Alliance Law Firms: Mexico (Jáuregui, Navarrete y Nader); Spain (Ramón & Cajal); Italy and Eastern Europe (Tonucci & Partners)

Please visit our website for comprehensive contact information for all offices.

www.mayerbrownjism.com

This JSM publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein. Please also read the JSM legal publications Disclaimer.

© 2010. Mayer Brown LLP, Mayer Brown International LLP, and/or JSM. All rights reserved.

Mayer Brown is a global legal services organization comprising legal practices that are separate entities (the Mayer Brown Practices). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; JSM, a Hong Kong partnership, and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. The Mayer Brown Practices are known as Mayer Brown JSM in Asia. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.