DIGEST OF FEDERAL AND STATE LAWS RELATING TO CONSOLIDATION, MERGER, ETC., OF BANKS AND/OR TRUST COMPANIES.

The following is a digest of the laws of the United States and of the several States, as of July 1, 1931, having reference to the consolidation, merger, etc., of banks and/or trust companies, which was prepared in the office of the General Counsel to the Federal Reserve Board, with the assistance of Counsel to the Federal Reserve Banks, pursuant to a request of the Board's Committee on Branch, Group and Chain Banking. Except for provisions covering the conversion of one bank or trust company into another this digest includes every provision of the Federal and State laws under which any bank or trust company, or the assets and liabilities thereof, may be united with, or transferred to, any other bank or trust company, such as the provisions governing consolidations, mergers, purchases of assets, etc.

NATIONAL BANK ACT.

Consolidation of two or more national banks.

The National Bank Act provides for the consolidation with the approval of the Comptroller of the Currency of any two or more national banks located in the same county, city, town or village under the charter of one of the banks. Such consolidation shall be on the terms and conditions agreed upon by a majority of the board of directors of each bank which must be ratified by the shareholders of each bank owning two-thirds of its capital stock at a meeting of the shareholders held after publication of notice in the newspapers for a period of four weeks and after sending notice to each shareholder by registered mail at least ten days prior to the meeting. The act makes provision for the payment to any dissenting shareholders of the appraised value of the stock held by such shareholders and for the disposal of any such shares at public auction. (Act of November 7, 1918; 40 Stat., 1043; U. S. Code, Annotated, Title 12, sec. 33.)

Legal effect - transfer of rights and assets by operation of law.

"All the rights, franchises, and interests of the said national bank so consolidated in and to every species of property, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such national bank into which it is consolidated without any deed or other transfer, and the said consolidated national bank shall hold and enjoy the same and all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed by the national bank so consolidated therewith". (Act of

(National Bank Act - cont'd.)

November 7, 1918; 40 Stat., 1044; U. S. Code, Annotated, Title 12, sec. 34.)

Consolidation of State and national banks.

The National Bank Act also makes provision for the consolidation of any State bank or any bank incorporated in the District of Columbia, when not in contravention of the law of the State under which such bank is incorporated, with a national bank and under the charter of the National Bank. The procedure provided for effecting such consolidations is similar to the procedure provided for the consolidation of two or more national banks which is described above. A similar procedure is also provided for the satisfaction of dissenting shareholders. (Act of February 25, 1927; 44 Stat., 1225; U. S. Code, Annotated, Title 12, sec. 34a.)

Legal effect - transfer of assets and rights by operation of law.

"All the rights, franchises, and interests of such State or District bank so consolidated with a national banking association in and to every species of property, real, personal, and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such national banking association into which it is consolidated without any deed or other transfer, and the said consolidated national banking association shall hold and enjoy the same and all rights of property, franchises, and interests, including the right of succession as trustee, executor, or in any other fiduciary capacity in the same manner and to the same extent as was held and enjoyed by such State or District bank so consolidated with such national banking association". (Act of February 25, 1927; 44 Stat.,

1225; U. S. Code, Annotated, Title 12, sec. 34a.)

ALABAMA.

Consolidation, merger or transfer of assets of banks and trust companies.

"Any bank or trust company doing a banking business may consolidate or merge with, or transfer its assets and liabilities to, another bank or trust company, * * *." (Civil Code of Alabama, sec. 6403; Banking Law Pamphlet, 1928, sec. 6403, page 41.)

Resolution of board of directors; consideration and approval of by stockholders and superintendent of banks; effect of approval.

In order to effect such consolidation, merger or transfer of assets, the Board of directors of each bank or trust company affected must pass a resolution stating that such consolidation, merger or transfer is desirable and call a meeting of the shareholders of each institution by giving at least thirty days' written notice to each shareholder of the date, place and purpose of the meeting. A copy of the resolution must also be furnished to the Superintendent of Banks and he must investigate the advisability of such consolidation, merger or transfer. On the day of the meeting of the shareholders, a resolution may be prepared setting forth the desirability and terms of the consolidation, merger, or transfer and if a majority of the shareholders of each institution approve the resolution and the superintendent of banks approves all of the proceedings, such resolution shall have the force and effect of consolidating or merging the institutions affected. (Civil Code of Alabama, section 6404; Banking Law Pamphlet, 1928, sec. 6404, page 41.)

Submission of certificate of proceedings to Superintendent of Banks for approval.

A certified copy of the minutes of the board of directors passing

(Alabama - cont'd.)

the resolution for consolidation, merger or transfer of assets and a certified copy of the minutes of the stockholders' meetings must be made under corporate seal and acknowledged by the president and cashier of each institution, and forwarded to the Superintendent of Banks for his certificate of approval. (Civil Code of Alabama, sec. 6405; Banking Law Pamphlet, 1928, sec. 6405, p. 42.)

Certificate of approval by Superintendent of banks; filing of.

If the superintendent of banks approves the entire proceedings, he must issue his written certificate of approval in duplicate, one to be filed in his office and the other to be forwarded to the probate judge of the county for record. (Civil Code of Alabama, sec. 6406; Banking Law Pamphlet, 1928, sec. 6406, p. 42.)

Examination of institutions by superintendent of banks.

Before approving proceedings to consolidate, the superintendent of banks must make an examination of each institution to determine whether the interests of the depositors, creditors and stockholders of each are protected and that such consolidation or transfer is made for legitimate purposes. His approval or disapproval in the premises must be on the basis of such examination and no "consolidation or transfer" can be made without his written consent. (Civil Code of Alabama, section 6407; Banking Law Pamphlet, 1928, section 6407, page 42.)

Appeal from adverse decision of superintendent of banks.

In case the superintendent refuses to give his consent, an appeal may be taken "to the circuit court of the county where such institution is located, said court considering the same in equity." (Civil Code of Alabama,

section 6408; Banking Law Pamphlet, 1928, sec. 6408, page 42.)

ARIZONA.

No provisions applicable to consolidations, mergers, etc.

The laws of Arizona do not contain any provisions specifically providing for the consolidation, merger, transfer of assets, etc., of banks or trust companies.

ARKANSAS.

Definition of the term "Bank".

The word "bank" as used in the laws of Arkansas applies to any incorporated bank, trust company or savings bank. (Acts of 1923, Act 627, sec. 17; Crawford and Moses Digest, 1927 Supplement, sec. 674; Banking Law Pamphlet, 1929, p. 14.)

Consolidation of banks.

Any bank may purchase the assets of, or consolidate with, another bank by filing with the commissioner of banks, as an amendment to its articles of agreement, two copies of a resolution to the effect desired, adopted upon two-thirds vote of the stockholders of the respective banks affected, both such copies to be verified by the president and cashier or secretary, one to be retained by the commissioner and the other, upon his approval, to be filed for record with the clerk of the county in which the bank is located. The purchase or consolidation becomes effective only when such resolution is approved by the bank commissioner and so filed with the county clerk. It is further provided that upon the purchase of the assets of another bank, or the consolidation of two or more banks, all or any part of the assets may be accepted in lieu of cash at their actual value.

(Acts of 1923, Act 627, sec. 4; Crawford and Moses Digest, 1927 Supplement, sec. 674; Banking Law Pamphlet, 1929, p. 10.)

CALIFORNIA.

Definition of word "bank".

The term "bank" as used in the following provisions of the so-called California Bank Act includes commercial banks, savings banks and trust companies. (Cal. Bank Act, sec. 1.)

Consolidation of banks.

Any state bank may consolidate with one or more state banks "its capital stock, properties, trusts, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, * * *." (Cal. Bank Act, sec. 31a.)

Directors' agreement for consolidation; subject to approval of superintendent of banks.

The consolidation may be upon such terms and in such manner as may be agreed upon by the board of directors of the banks involved. An original copy of such agreement must be filed in the office of the superintendent of banks and it does not become valid until it is approved by him. (Cal. Bank Act, 1929, sec. 31a.)

Submission of consolidation agreement to stockholders.

No consolidation can take effect until the agreement has been "ratified and confirmed" by the stockholders of each of the constituent banks, either in writing by two-thirds of the respective stockholders, or by the vote of two-thirds of such stockholders at a special meeting called after two weeks' notice has been given to each stockholder specifying the time, place and object of the meeting and after such notice has been

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published for two successive weeks in a certain designated newspaper. (Cal. Bank Act, 1929, sec. 31a.)

Agreement for consolidation filed with superintendent of banks must be accompanied with certain papers.

There must be attached to the agreement which is filed with the superintendent of banks, either a memorandum of the ratification and confirmation of the agreement, signed and acknowledged by two-thirds of the stockholders of each bank, or a certificate of the secretary of the bank, under corporate seal and acknowledged by him, certifying that the agreement has been ratified and confirmed as provided above. (Cal. Bank Act, 1929, sec. 31a.)

Articles of incorporation and consolidation, contents of.

Articles of incorporation and consolidation must be prepared which must set forth:

"First - The name of the new corporation;

Second - The purpose for which it is formed;

Third - The place where its principal business is to be transacted;

Fourth - The term for which it is to exist, which shall not exceed fifty years;

Fifth - The number of its directors (which shall not be less than three) and the names and residences of the persons appointed to act as such until their successors are elected and qualified;

Sixth - The amount of its capital stock and the number of shares into which it is divided;

Seventh - The amount of stock actually subscribed, and by whom;

Eighth - The names of the constituent corporations."

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The articles of incorporation and consolidation must be signed and countersigned by the president and secretary of each bank and sealed with the corporate seal; and the approval of the superintendent of banks must be attached thereto. (Cal. Bank Act, 1929, sec. 31a.)

Filing of articles of incorporation and consolidation.

The articles of incorporation and consolidation must then be filed with the secretary of state, and a copy of such articles, certified by the secretary of state, must be filed in his office, in the office of the county clerk of the county in which is located the principal place of business of the new corporation and each of its constituents and in the office of the superintendent of banks. The secretary of state must issue over the seal of the state a certificate that the articles have been filed in his office. (Cal. Bank Act, 1929, sec. 31a.)

Certificate of authorization to consolidated bank; issuance and filing of.

Provision is made for the issuance of a certificate of authorization to the consolidated bank by the superintendent of banks; and the superintendent must transmit to the secretary of state a duplicate of such certificate which he must file in his office. The superintendent must also file a duplicate of such certificate in his own office. (Cal. Bank Act, 1929, secs. 31a and 128.)

Certificate of superintendent of banks showing approval and consummation of consolidation.

Whenever two or more banks "authorized and qualified to conduct the business of acting as executor, administrator, guardian of estates, assignee, receiver, depositary or trustee" are consolidated into a bank

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"likewise authorized and qualified", the superintendent of banks upon request, must issue a written certificate under his official seal and acknowledged by him, that the consolidation agreement has been filed in his office, that the consolidation has been approved by him and that it has been completed and consummated. He must attach to the certificate a true copy of the consolidation agreement which is on file in his office. Such certificate is prima facie evidence of the regularity of the proceedings and the fact of such consolidation. (Cal. Bank Act, 1929, sec. 31c.)

Recordation of certificate of superintendent; effect of.

"The recordation of such certificate in the office of the recorder of any county shall be, to all persons, in such county, constructive notice that all of the rights, benefits, privileges, duties and obligations of whatsoever kind or nature, held or possessed by or imposed upon the bank * * * that has expired by such consolidation * * *, are retained by and imposed upon the successor bank." (Cal. Bank Act, 1929, sec. 31c.)

Legal effect of consolidation.

When the superintendent of banks authorizes the consolidated corporation to commence business as provided by law "the new or consolidated corporation shall be a body politic and corporate by the name stated in the certificate, and for the term of fifty years, unless it is, in the articles of incorporation and consolidation, otherwise stated and thereupon each constituent corporation named in the articles of incorporation and consolidation must be deemed and held to have become extinct in all courts and places, and said new corporation must be deemed and held in all courts and places

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to have succeeded to all their several capital stocks, properties, trusts, claims, demands, contracts, agreements, assets, choses and rights in action of every kind and description, both at law and in equity, and to be entitled to possess, enjoy, and enforce the same and every thereof, as fully and completely as either and every of its constituents might have done had no consolidation taken place. Said consolidated or new corporation must also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities, of every kind and nature, to any persons, corporations, or bodies politic, whomsoever, or whatsoever, and said new corporation must sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued at law or in equity had no such consolidation been made. Nothing in this section contained shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of such consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation, and satisfaction obtained out of the property which, at the date of the consolidation, belonged to the constituent which was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation, and the stockholders of each constituent corporation so entering into such agreement shall continue subject to all the liabilities, claims and demands existing against them at or before such consolidation to the same extent as if the same had not

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been made. The right of said new corporation to increase or decrease its capital stock, to change the number of its directors, to amend its articles of incorporation, to change its principal place of business, or its name, or to effect any other organic change shall be governed by the general corporation laws of this state and by the bank act, and the procedure to effect any such change shall be that defined by the general corporation laws and the bank act." (Cal. Bank Act, 1929, sec. 31a.)

Merger of banks.

Any two or more banks empowered by their articles of incorporation and authorized by the so-called Bank Act "to do the business of a commercial bank and savings bank and trust company, or any one or more or all of them, are hereby authorized to merge one or more of such banks into another of them," in accordance with the following requirements. (Cal. Bank Act, sec. 31b.)

Agreement of directors to merge; contents of.

The board of directors of each bank involved, may by a majority of the membership of each board at a meeting duly called and held, make or authorize to be made a duplicate written agreement for the merger of the banks. The agreement must specify the receiving bank and each bank to be merged, "and it shall prescribe the terms and conditions of the merger and the mode of carrying it into effect." The agreement may also provide for any matters to effect and accomplish the merger, not inconsistent with the bank act or other laws of California. (Cal. Bank Act, 1929, sec. 31b.)

Submission of merger agreement to superintendent of banks; approval of necessary.

The merger agreement and sworn copies of the proceedings of the

(California - cont'd.)

boards of directors authorizing the making of the agreement must be submitted to the superintendent of banks in duplicate for his approval "and shall not be valid until such approval is obtained." (Cal. Bank Act, sec. 31b.)

Merger agreement to be approved by stockholders.

The merger does not take effect until the agreement has been "ratified and confirmed" in writing by two-thirds of the stockholders of each bank, or approved by two-thirds of such stockholders at a regular or special meeting. When so adopted, the agreement "shall thereupon become binding upon such banks." (Cal. Bank Act, 1929, sec. 31b.)

Filing of approved merger agreement.

One original duplicate of the adopted agreement with a copy of the written approval of the superintendent of banks and a sworn copy of the proceedings of the meetings at which such agreement was finally approved, made by the respective secretaries, must be filed with the superintendent of banks, and the other original duplicate must be filed in the office of the clerk of the county where the principal place of business of the receiving corporation is located. (Cal. Bank Act, 1929, sec. 31 b.)

When merger takes effect.

Upon filing the duplicates of the agreement as above described, the agreement "shall take effect according to all of its terms and the merger shall thereupon take place as provided in the agreement without further or other act, transfer or substitution," and the merged corporations must surrender their licenses to do a banking business for cancellation to the superintendent of banks. (Cal. Bank Act, 1929, sec. 31b.)

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Issuance of new stock for old; dissenting stockholders, rights of.

Provision is made for the issuance of new shares of stock to stockholders in lieu of the stock held by them in the merging corporations and for the appraisal and payment of the value of the stock held by any stockholder who votes against the merger or dissents thereto in writing after the merger agreement has been adopted by the stockholders. (Cal. Bank Act, 1929, sec. 31b.)

Certificate of superintendent of banks showing approval and consummation of merger.

Whenever two or more banks "authorized and qualified to conduct the business of acting as executor, administrator, guardian of estates, assignee, receiver, depositary or trustee" are merged into a bank "likewise authorized and qualified", the superintendent of banks upon request, must issue a written certificate under his official seal and acknowledged by him, that the merger agreement has been filed in his office, that the merger has been approved by him and that it has been completed and consummated. He must attach to the certificate a true copy of the merger agreement which is on file in his office. Such certificate is prima facie evidence of the regularity of the proceedings and the fact of such merger. (Cal. Bank Act, 1929, sec. 31c.)

Recordation of certificate of superintendent; effect of.

"The recordation of such certificate in the office of the recorder of any county shall be, to all persons, in such county, constructive notice that all of the rights, benefits, privileges, duties and obligations of whatsoever kind or nature, held or possessed by or imposed upon the bank * * * that has expired * * * by such merger, are retained by and imposed upon the

successor bank." (Cal. Bank Act, 1929, sec. 31c.)

Legal effect of merger.

"Upon the merger of any corporation or corporations into another, as provided in this section:

(a) "Its corporate existence shall be merged into that of such other corporation, and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property, real, personal or mixed, and choses in action, and every right, privilege, interest or asset, of conceivable value or benefit then existing or which would thereafter inure to it under an unmerged existence shall be deemed fully and finally, and without any right of reversion, interruption, impairment or limitation of title, right or privilege, transferred to and vested in the corporation into which it shall have been merged, without further act or deed, and such last mentioned corporation shall have, hold, possess, enjoy and enforce the same in its own right, as fully as the same was possessed, enjoyed and held by the merged corporation from which it was, by operation of the provisions of this section, transferred.

(b) "Its rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts, as defined in the bank act, and other relations to any person, creditor, depositor, trustee, principal or beneficiary of any court or private trust, shall remain unimpaired and without change or alteration in any respect, and the corporation into which it shall have been merged shall, by such merger, ipso facto and by operation of law, without further transfer, substitution, act or deed, and in all courts and places be deemed and held to have, and shall become subrogated and shall succeed, to all such rights, obligations,

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properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts and other relations to any person, creditor, depositor, trustee, principal or beneficiary of any court or private trust, obligations and liabilities, of every kind or nature, and shall execute and perform all such court and private trusts in the same manner as though it had itself originally assumed the relation or trust or incurred the obligation or liability; the corporation into which it shall have been merged shall succeed to and be entitled to take and execute and receive the appointment to all executorships, trusteeships, guardianships and other fiduciary capacities in which the merged corporation may be then or thereafter named in wills theretofore or thereafter probated, or in any other instruments; and the liabilities and obligations of such merged corporation to the depositors, beneficiaries, principals and other creditors existing for any cause whatever shall not be impaired by such merger; nor shall any obligation or liability of any stockholder in any corporation which is a party to such merger be affected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger.

(c) "Any action pending or other judicial proceedings to which any corporation that shall so be merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or other decree in the name of the merged corporation, in the same manner as if the merger had not been made, or such merging corporation may be substituted as a party to such action

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or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such merged corporation, if the merger had not occurred." (Cal. Bank Act, 1929, sec. 31b.)

Legal effect of consolidation or mergers on trusts held by the constituent banks.

"Whenever a national banking association authorized and qualified to conduct in this state the business of acting as executor, administrator, guardian of estates, assignee, receiver, depositary or trustee under court and private trusts, has been heretofore or is created by the conversion of a state bank likewise authorized and qualified; or whenever one or more state banks or one or more national banking associations so authorized and qualified has been heretofore or is hereafter consolidated with or merged into one or more other national banking associations or into one or more state banks, likewise authorized and qualified, such state bank or national banking association into which such state bank has been or is converted or into or with which such bank or banks has been or are merged or consolidated shall by such conversion, merger or consolidation ipso facto and by operation of law, without further transfer, substitution, act or deed and in all courts and places, be deemed and held to have, and shall become subrogated and shall succeed to, all rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts, and other relations to any person, creditor, depositor, trustor, principal or beneficiary of any court or private trust, and obligations and liabilities of every kind or nature which such prede-

(California - cont'd.)

cessor bank or banks so converted or merged or consolidated into or with such state bank or national banking association shall have held or enjoyed or been subject to, and shall execute and perform all such court and private trusts in the same manner as though it had itself originally assumed the relation or trust or incurred the obligation or liability. Such state bank or national banking association shall succeed to and be entitled to take and execute and receive the appointment to all executorships, trusteeships, guardianships and other fiduciary capacities in which the bank or banks so converted or merged into or consolidated with such state bank or national banking association may be then or thereafter named, in wills theretofore or thereafter probated, or in any other instruments. When such conversion, consolidation or merger is completed, there may be executed by the president and secretary or cashier of such state bank or national banking association" a certificate certifying that the business formerly conducted by the constituent corporation or corporations has been acquired and is being conducted by the resulting corporation. (Cal. Bank Act, 1929, sec. 31d.)

Recordation of certificate of bank; effect of.

"The recordation of such certificate in the office of the recorder of any county shall be, to all persons, in such county, constructive notice that all the rights, benefits, privileges, duties and obligations of whatsoever kind or nature held or possessed by or imposed upon the bank so converted or consolidated or merged are retained by and imposed upon the successor bank." Such certificate is prima facie evidence of the regularity of the proceedings and the fact of such consolidation or merger.

(California - cont'd.)

(Cal. Bank Act, 1929, sec. 31d.)

Sale of business.

Any bank may sell the whole of its business or the business of any of its departments or branches to any other bank. (Cal. Bank Act, 1929, sec. 31.)

Consent of stockholders necessary to effect sale.

The consent of two-thirds of the stockholders of each of the banks involved is necessary to effect such a sale; and the consent may be either in writing and acknowledged by such stockholders and attached to the instrument of sale, or to a copy thereof, or by vote of such stockholders at a special meeting. (Cal. Bank Act, 1929, sec. 31.)

Agreement for sale and purchase; contents of.

The selling and purchasing banks must enter into an agreement of sale and purchase which must contain all the terms and conditions connected with the transaction. The agreement must contain proper provision for the payment of liabilities of the selling bank and the assumption by the purchasing bank of all fiduciary and trust obligations of the selling bank, and in these particulars, is subject to the approval of the superintendent of banks and does not become valid until such approval is obtained. The agreement may contain provisions for the transfer of all deposits to the purchasing bank, subject to the right of every depositor of the selling bank to withdraw his deposit in full on demand after such transfer, regardless of the terms under which it was deposited. The agreement may also contain provisions for the transfer of all court and private trusts to the purchasing banks, subject to the rights of trustees and beneficiaries after such

(California - cont'd.)

transfer to nominate another and succeeding trustee of the trusts so transferred. (Cal. Bank Act, 1929, sec. 31.)

Filing of agreement for purchase and sale.

The agreement or a duplicate original thereof must be filed in the office of the superintendent of banks immediately after its execution by the banks involved and its approval by the superintendent. (Cal. Bank Act, 1929, sec. 31.)

Publication of notice of agreement for purchase and sale.

Notice of the agreement must be published for four successive weeks in a newspaper in each of the counties in which either of the banks has its principal place of business. An affidavit showing such publication must be filed with the superintendent within ten days after the last publication. (Cal. Bank Act, 1929, sec. 31.)

Obligations and liabilities of selling bank not impaired by sale; liability of stockholders of respective banks.

No obligation or liability of the selling bank or its stockholders and no rights, obligations and relations of any parties, creditors, depositors, trustors and beneficiaries are impaired by any sale, but the purchasing bank succeeds to all such relations, obligations, trusts and liabilities and is liable to pay and discharge all debts and liabilities and to perform all trusts of the selling bank. The stockholders of the respective corporations also continue subject to all the liabilities, claims and demands existing against them as such at or before the sale. (Cal. Bank Act, 1929, sec. 31.)

The affairs of the selling bank shall remain subject to the provisions of the so-called Bank Act. (Cal. Bank Act, 1929, sec. 31.)

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Actions on account of transferred deposits, obligations, etc.; when estopped to bring.

No action can be brought against the selling bank or any of its stockholders on account of any deposit, obligations, trust or liabilities, which have been transferred to the purchasing bank, after the expiration of one year from the last day of the publication above referred to. (Cal. Bank Act, 1929, sec. 31.)

Maintenance of capital and surplus by selling bank.

The selling bank must maintain for a period of one year after the last day of the publication above described such an amount of capital or capital and surplus as the superintendent of banks may deem necessary. (Cal. Bank Act, 1929, sec. 31.)

Certificate of superintendent of banks showing approval and consummation of sale of business.

Whenever there has been completed the sale of the business of any bank "authorized and qualified to conduct the business of acting as executor, administrator, guardian of estates, assignee, receiver, depositary or trustee, to another bank, likewise authorized and qualified", the superintendent of banks upon request, must issue a written certificate under his official seal and acknowledged by him, that the agreement of sale and purchase has been filed in his office, that the sale and purchase has been approved by him and that it has been completed and consummated. He must attach to the certificate a true copy of the sale and purchase agreement which is on file in his office. Such certificate is prima facie evidence of the regularity of the proceedings and the fact of such sale

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and purchase. (Cal. Bank Act, 1929, sec. 31c.)

Recordation of certificate of superintendent, effect of.

"The recordation of such certificate in the office of the recorder of any county shall be, to all persons, in such county, constructive notice that all of the rights, benefits, privileges, duties and obligations of whatsoever kind or nature, held or possessed by or imposed upon the bank so selling its business and assets * * * are retained by and imposed upon the successor bank." (Cal. Bank Act, 1929, sec. 31c.)

Legal effect on trusts held by selling bank.

"Upon the approval by the superintendent of banks of an agreement of sale and purchase and the transfer of the business of a trust department or of a bank having a trust department the purchasing bank shall, ipso facto and by operation of law and without further transfer, substitution, act or deed, and in all courts and places, be deemed and held to have succeeded and shall become subrogated and shall succeed to all rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts and other relations to any person, creditor, depositor, trustor, principal or beneficiary of any court or private trust, obligations and liabilities of every nature, and shall execute and perform all such court and private trusts in the same manner as though it had itself originally assumed the relation or trust or incurred the obligation or liability." (Cal. Bank Act, 1929, sec. 31.)

COLORADO

Consolidation of banks and/or trust companies.

Any state bank or trust company, or any national bank, "may be

consolidated with any state bank or trust company, or with any national banking association, under the charter of such state bank or trust company, or under the charter of such national banking association, or under a new charter issued to such consolidated state bank or trust company or to such consolidated national banking association, upon such terms and conditions as may be lawfully agreed upon; * * * " (Laws of 1931, ch. 54, sec. 1, p. 161.)

Consent of State Bank Commissioner or Comptroller of Currency necessary.

No state bank or trust company can consolidate with another state bank or trust company "without the written consent of the State Bank Commissioner; and no state bank or trust company shall consolidate with a national banking association, nor shall any national banking association consolidate with any state bank or trust company, without the written approval of the State Bank Commissioner and the Comptroller of the Currency; and no national banking association shall consolidate with any other national banking association without the consent of the Comptroller of the Currency." (Laws of 1931, ch. 54, sec. 1, p. 161.)

Consolidations involving national banks to comply with laws of United States and regulations of Federal Reserve Board.

The consolidation of a state bank or trust company with a national bank must comply with the "Federal banking laws and the rules and regulations of the Federal Reserve Board" and no consolidation of any kind "shall be in contravention of the laws of the United States or of the laws of the State of Colorado." (Laws of 1931, ch. 54, sec. 1. p. 161.)

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Legal effect of consolidation

"At any time when such consolidation becomes effective all the property of the merging or consolidating banks, trust companies, or associations, including all right, title, and interest in and to all property of whatever kind of the institutions forming such consolidated bank, trust company, or association, whether real, personal or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable nature, or benefit then existing, belonging or pertaining to the banks, trust companies, or associations forming such consolidated bank, trust company, or association, shall immediately, by proper order of the court, act of law and without any conveyance, transfer, and without any further act or deed, be vested in and become the property of such consolidated bank, trust company or association, which consolidated bank, trust company, or association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the institutions, or any of the institutions, forming such consolidated bank, trust company, or association."

"Such consolidated state bank or trust company, or such consolidated national bank or association, shall be deemed to be a consolidation of the entity and of the identity of the institutions forming such consolidated bank, trust company, or association, and all the rights, obligations, and relations of the banks, trust companies or associations forming such consolidated bank, trust company or association, to or in respect to any person, estate, creditor, depositor, trustee, or beneficiary of any trust, and in or in respect to any executorship or trusteeship or

other trust or fidiciary function, and in or with respect to any appointment or designation as executor, trustee or other fiduciary, shall remain unimpaired, and the consolidated bank, trust company, or association, as of the time of taking effect of such change or consolidation, shall succeed to all the rights, obligations, designations, appointments, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every trust or relation in the same manner as if such consolidated bank, trust company, or association had itself assumed the trust or relation, including the obligations and liabilities connected therewith. If any bank, trust company, or association forming such consolidated institution, is acting, or is designated as administrator, co-administrator, executor, co-executor, trustee, or co-trustee, of or in respect to any estate or trust being administered, or to be administered, under the laws of this state, such designation or relation, as well as any other and similar designation or fiduciary relations, and all rights, privileges, duties and obligations connected therewith, shall remain unimpaired and shall continue into and in said consolidated bank, trust company, or association, from and as of the time of the taking effect of such consolidation, irrespective of the date when any such designation or relation may have been made, created, or established, and irrespective of the date of any instrument relating thereto."

"All Acts and parts of Acts in conflict with this Act are hereby repealed". (Laws of 1931, secs. 2-4, ch. 54, pp. 162-164.)

CONNECTICUT.

Merger or consolidation.

"Any two or more state banks, trust companies or state bank and trust companies * * *, located and doing business in the same town may, with the approval of the banking commission, merge or consolidate into a single corporation to engage in the business of a state bank or trust company or both". (General Statutes, 1930, sec. 3890.)

Agreement of directors to merge or consolidate.

The directors of the corporations proposing to merge or consolidate may enter into an agreement prescribing the terms and conditions of the merger or consolidation and containing certain prescribed statements of fact with reference to the name and location of the consolidated corporation, the amount of its capital stock, the number of its directors, etc. (General Statutes, 1930, sec. 3891, as amended by Public Acts of 1931, ch. 88.)

Submission of agreement to stockholders.

The agreement must be submitted to the stockholders of each of the corporations involved at a special meeting called after twenty days' notice. Such notice must also be published in a designated newspaper or newspapers for three successive weeks. (General Statutes, 1930, sec. 3892, as amended by Public Acts of 1931, ch. 88.)

Approval of consolidation by stockholders; submission to banking commission.

If the consolidation or merger is approved by two-thirds of the

(Connecticut - cont'd.)

stockholders of each of the corporations, that fact must be certified under corporate seal upon the agreement by the secretaries of the respective corporations, and such certified agreement must then be submitted to the banking commission. (General Statutes, 1930, sec. 3892, as amended by Public Acts of 1931, ch. 88.)

Consideration and approval of agreement by banking commission; filing of approved agreement.

If the banking commission, after a hearing held after publication for three successive weeks of notice of such hearing, determines that the consolidation or merger "will promote public convenience" and that the terms thereof are reasonable and in accordance with law and sound public policy, it may approve such consolidation or merger. If approval is granted, the banking commission must certify its findings and approval on the agreement and file such agreement in the office of the Secretary of State. When so approved and filed, the agreement "shall evidence the terms and conditions of such consolidation and the legal existence and the organization of said consolidated corporation, and the provisions of the charters or organization certificates of the consolidating corporations in so far as they may be inconsistent therewith shall be inapplicable to said consolidated corporation." (General Statutes, 1930, sec. 3892, as amended by Public Acts of 1931, ch. 88.)

Increase or reduce capital stock, change of name, or other amendments to agreement; when may be made.

The consolidated corporation, subject to the approval of the

banking commission, may at any time in the future change its name, increase or reduce its capital stock, and make other amendments to the agreement provided such change or amendment is approved at a special meeting by two-thirds of the stockholders "and a certificate setting forth such change or amendments and stating that the same has been adopted by the stockholders shall be made by a majority of the directors, approved by the banking commission and filed in the office of the secretary of state." (General Statutes, 1930, sec. 3892, as amended by Public Acts of 1931, ch. 88.)

NOTE: - The 1931 amendment referred to under the five preceding headings is not yet obtainable; but, inasmuch as the bank commissioner of the State of Connecticut has advised that it is a purely clarifying measure, the provisions as amended probably do not differ substantially from the provisions as above digested.

Legal effect of merger or consolidation.

"Upon the completion of such consolidation as hereinbefore prescribed, the consolidating corporation shall become a corporation by the name so provided and the corporate existence of the consolidating corporations shall be continued by and in the consolidated corporation and the consolidated corporation shall possess all the rights, privileges, powers

(Connecticut - cont'd.)

and franchises of each of the consolidating corporations and the entire assets, business, goodwill and franchises of each of the consolidating corporations shall be vested in the consolidated corporation without any deed or transfer, provided the consolidating corporations may execute such deeds or instruments of conveyance as may be convenient to confirm the same, and the consolidated corporation shall assume and be liable for all debts, accounts, undertakings, contractual obligations and liabilities of every name and nature of the consolidating corporations and shall exercise and be subject to all the duties, relations, obligations, trusts and liabilities of each of the consolidating corporations, whether as debtor, depositary, registrar, transfer agent, executor, administrator, trustee or otherwise, and shall be liable to pay and discharge all such debts and liabilities to perform all such duties and to administer all such trusts in the same manner and to the same extent as if the consolidated corporation had itself incurred the obligation or liability or assumed the duty, relation or trust, and all rights of creditors and all liens upon the property of either of such consolidating corporations shall be preserved unimpaired and said consolidated corporation shall be entitled to receive, accept, collect, hold and enjoy any and all gifts, bequests, devises, conveyances, trusts and appointments in favor of or in the name of either of said consolidating corporations whether made or created to take effect prior to or after such consolidation, and the same shall inure to and vest in said consolidated corporation; and no suit, action or other proceeding pending at the time of such consolidation before any court or

(Connecticut - cont'd.)

tribunal in which either of said consolidating corporations is a party shall be abated or discontinued because of such consolidation but may be continued and prosecuted to final effect by or against the consolidated corporation. The consolidated corporation shall have the right to use the name of either of the consolidating corporations whenever it can do any act or discharge any duty or obligation or enforce any right under such name more conveniently or with greater advantage to itself or to any person to whom it holds any relation of trust or owes any duty under any contract or conveyance, and no other corporation shall take or use the name of either of said consolidating corporations. The consolidated corporation shall possess all the powers granted by the general statutes to banks and trust companies and shall be subject to all provisions of the general statutes relating to such banks and trust companies." (General Statutes, 1930, sec. 3893.)

Exchange of stock of consolidating corporations; stockholders dissenting to consolidation.

Provision is made for the exchange of stock of the consolidating corporations for stock of the consolidated corporation, and for the appraisal and payment of the value of stock held by stockholders who objected to the consolidation. (General Statutes, 1930, sec. 3894, as amended by Public Acts of 1931, ch. 88.)

Restrictions on branches.

The statute further provides that nothing herein shall be construed

(Connecticut - cont'd.)

as giving the consolidated corporation the right to maintain more than one banking house for the conduct of its business. (General Statutes, 1930, sec. 3895.)

Consolidation or merger of savings banks.

Any two or more savings banks located within the same town m merge or consolidate into a single savings bank. (General Statutes, 1930, sec. 4007.)

Procedure to effect consolidation.

The procedure prescribed to effect the consolidation of two or more savings banks is substantially similar to the procedure above described with reference to the consolidation of banks or trust companies, except that in the case of savings banks an appeal from the decision of the bank commissioner upon a protest against such consolidation is allowed to any judge of the Superior Court. (General Statutes, 1930, secs. 4008-4012; Banking Law Pamphlet, 1929, secs. 4008-4012, pp. 73 and 74.)

Legal effect of consolidation.

"Upon the completion of such consolidation, the several savings banks shall become a single savings bank by the name provided in such agreement, which may be a new name or the name of either of the consolidating banks; and said consolidated bank shall have all the powers and authority contained in either of the charters of the banks so consolidating and may proceed to enact such by-laws, rules and regulations for its management as were authorized at the organization of either of said banks.

(Connecticut - cont'd.)

"All liabilities of the respective consolidating banks for current expenses shall be adjusted and paid by them before such consolidation goes into effect; and certificates to that effect, signed by the treasurer of each of said banks, shall be filed with the consolidated bank.

"All the assets of each of said banks shall become the property of the consolidated bank as soon as the certificate of consolidation, approved by the bank commissioner, shall have been filed in the office of the secretary of the state, and thereupon no further business shall be transacted by either of such consolidating banks, except such as may be necessary for the completion of such consolidation; and the consolidated bank shall thereupon become liable for all the deposits and other obligations of each of said consolidating banks." (General Statutes, 1930, secs. 4013-4015; Banking Law Pamphlet, 1929, secs. 4013-4015, pp. 74 and 75.)

DELAWARE.

Consolidation or merger of banks and trust companies; approval of State Bank Commissioner necessary.

"It shall be unlawful for any bank or trust company doing business in this State to merge or consolidate with any other bank or trust company or to take over any substantial portion of the assets of and/or to assume the liabilities, in

(Delaware - cont'd.)

whole or in part, of any other bank or trust company (Whether said other bank or trust company is then doing business or has ceased to do business or has surrendered its charter or has dissolved) unless and until such action shall be approved by the State Bank Commissioner, and the said Commissioner is hereby authorized to require that he be furnished with such information as to the said assets and liabilities and as to the condition of the banks or trust companies concerned as he shall deem necessary or proper to determine whether to give or withhold his approval.

"It shall be the duty of the State Bank Commissioner to refuse his approval whenever in his opinion the transaction will weaken or tend to weaken any bank or trust company concerned.

"No title to any property shall pass where the transaction is in violation of the provisions of this Section." (Act approved April 25, 1931.)

DISTRICT OF COLUMBIA.

No provisions relating to consolidations, mergers, etc.

The laws of the District of Columbia do not contain any pro-

(District of Columbia - cont'd.)

visions with specific reference to the consolidation, merger, etc. of banks or trust companies.

FLORIDA.

Consolidation or transfer of assets.

Any bank which is winding up its business for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in process of consolidating, but no consolidation shall be made without the consent of the comptroller of the State of Florida, nor shall such consolidation operate to defeat the claim of any creditor or hinder any creditor from collection of his debt against such banks or either of them. (Act of June 7, 1913, sec. 12; Banking Law Pamphlet, 1930, p. 32.)

GEORGIA.

Definition of word "bank".

The word "bank" as used in the following provisions of the laws of Georgia includes banks, savings banks and trust companies. (Banking Law Pamphlet, with amendments to August 26, 1925, Art. I, sec. 1, p. 1.)

Merger or consolidation of banks.

Any two or more banks are authorized to consolidate with or merge into another bank. (Banking Law Pamphlet, with amendments to August 26, 1925, Article XIII, sec. 1, p. 49.)

Agreement to merge or consolidate; contents of.

In order to effect a merger or consolidation, the boards of

(Georgia - cont'd.)

directors of the banks involved may, under their corporate names and seals, enter into an agreement prescribing the terms and conditions of the merger or consolidation and the mode of carrying it into effect. Such agreement "shall be subject to the approval of the Superintendent of Banks", and it must specify the name of the proposed resulting corporation, must name the persons who will constitute the board of directors after the merger or consolidation has taken place and until a new board of directors "shall be elected by the stockholders, and shall provide for a meeting of the stockholders of the merged or consolidated banks within thirty (30) days after the merger or consolidation, to elect such board of directors, with such temporary provisions for conducting the affairs of the merged or consolidated banks meanwhile, as shall be agreed upon." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 1, p. 50.)

Submission of agreement to stockholders; filing of certified copies of proceedings approving; effect of.

After the agreement has been approved by the Superintendent of Banks, it must be submitted to the stockholders of the banks involved at a special meeting called after ten days' written notice specifying the time, place and object of the meeting has been given to each stockholder. If it is approved by two-thirds of the stockholders of each bank, "the same shall be the agreement of such banks". A certified copy of such proceedings, signed under corporate seal by the chairman and secretary of each bank is evidence of the holding and action of such meetings. Such certified copies must also be filed in the office of the Superintendent of Banks, "and thereupon such banks shall be merged or consolidated as specified in such agree-

(Georgia - cont'd.)

ment, and the bank into which the other or others are merged, or the consolidated bank, as the case may be, shall thereafter have the new name specified in such agreement, and the provisions of such agreement shall be carried into effect as therein provided." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 2, pp. 50 and 51.)

Charter, application for, issuance and recording of.

When the acts described above have been performed, the merged or consolidated bank must file in the office of the Secretary of State a formal application in duplicate accompanied by a fee of $25.00 in which it must state:

"(1) The names and locations of the banks which have been merged or consolidated, with the dates of their original charters and all amendments thereto, respectively.

"(2) The date of the consolidation agreement, and the dates of the approval thereof by the Superintendent of Banks and by the stockholders of the several contracting banks, respectively.

"(3) The name under which the consolidated bank proposes to do business.

"(4) The amount of capital stock of the consolidated bank.

"(5) The number of its Board of Directors."

Immediately upon filing the application, the Secretary of State must transmit one copy to the Superintendent of Banks, and when it has been approved by the latter and a certificate of such approval has been filed by him with the Secretary of State, the "Secretary of State shall issue to the consolidated bank a certificate under the seal of the State,

(Georgia - cont'd.)

certifying that the contracting banks have been merged or consolidated under the name adopted and with the capital stock in said application set forth, which certificate shall be the charter of the consolidated or merged bank; and the Secretary of State shall record the application, the certificate by the Superintendent of Banks approving the same, and his certificate, in the order named." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 2-a, pp. 51 and 52.)

Published notice of merger or consolidation necessary.

Notice of the merger or consolidation must be published for a certain prescribed time and in a certain designated newspaper or newspapers. Such notice must give the name and location of the consolidated or merged bank and must state that such bank "has taken over the assets of the banks respectively, entering into the consolidation or merger agreement, and has assumed the liabilities of such banks, including the liability to depositors." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 3, p. 52.)

Issuance of new stock for old.

Provision is also made for the issuance of new certificates of stock of the consolidated or merged bank in lieu of original certificates of stock of the merging or consolidating banks. (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 4, p. 52.)

Legal effect of merger or consolidation.

"Upon the merger or consolidation of any banks in the manner herein provided, all and singular, the rights, franchises, duties and

(Georgia - cont'd.)

liabilities, and the interests of the bank or banks so merged or consolidated, and all the assets of every kind and character, including the real and personal property and choses in action thereunto belonging, shall be deemed to be transferred to and vested in such bank into which the other or others have been merged or in the consolidated bank, without any deed, transfer or assignment, and said bank shall hold, enjoy and be subject to the same in the same manner and to the same extent as the merged or consolidated banks, respectively, had, held, owned, enjoyed, and was subject to the same.

"The rights of creditors of any bank that shall be so merged or consolidated shall not be impaired in any manner by any such merger or consolidation; nor shall any liability or obligation for the payment of any money due or to become due, or any claim or demand in any manner or for any cause existing against such bank, or against any stockholder thereof, be in any manner released or impaired; and all the rights, obligations and relations of all the parties, creditors, depositors, and others shall remain unimpaired by such merger or consolidation. But such bank into which the other or others shall be merged, or the consolidated bank, as the case may be, shall succeed to all obligations, trusts, and liabilities, and be held liable to pay and discharge all such debts and liabilities and to perform all such trusts in the same manner as though such bank into which the other or others shall have become merged, or the consolidated bank had itself incurred the obligation or liability; and the stockholders of the respective bank shall continue subject to all the

(Georgia - cont'd.)

liabilities, claims and demands, existing against them as such at or before such merger or consolidation; and no suit, action, or other proceeding then pending before any court or tribunal in which any bank that may be merged or consolidated is a party shall be deemed to have abated or been discontinued by reason of any such merger, but the same may be prosecuted to final judgment in the same manner as if said bank had not entered into said agreement, or the bank into which the others shall have been merged, or the consolidated bank, as the case may be, may be substituted in the place of any bank so merged or consolidated by order of the court in which such action, suit, or proceeding may pe pending. Such bank into which the other or others have been so merged, or the consolidated bank, shall be subject to be sued in any court having jurisdiction, upon any cause of action against any of the banks so merged or consolidated, in the same manner as if such cause of action had originated against such bank into which the other or others have been so merged or against such consolidated bank." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, secs. 5 and 6, pp. 53 and 54.)

IDAHO.

Definition of word "bank".

The word "bank" as used in the banking laws of Idaho includes commercial banks, savings banks, and trust companies. (Idaho Banking Code, 1925, Art. 1, sec. 2, as amended, Laws of 1929, ch. 192, p. 353; Banking Law Pamphlet, 1925, sec. 2, pp. 5 and 6, as amended, Laws of 1929, ch. 192, p. 353.)

Consolidation or sale of business.

Any bank may sell its business "to any other bank, state or

(Idaho - cont'd.)

national, or may, for the purpose of consolidating with another bank, state or national bank, transfer its affairs, assets and liabilities to the bank with which it intends to consolidate, * * *." (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

Consent of stockholders necessary; meeting; notice of.

No state bank, either as purchaser or seller, can enter into a sale, purchase or consolidation unless such action is consented to by two-thirds of the stockholders. Such consent, if acknowledged, may be given in writing by the stockholders, or by a vote at a special stockholders' meeting, if ten days advance written notice of such meeting has been given to each stockholder stating its time, place and purpose. (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

Consent of Commissioner of Finance necessary; examination of banks involved; filing of certain documents.

No sale, purchase or consolidation can be made without the consent of the Commissioner of Finance, and before granting his consent he must examine each of the banks involved. He must also, before granting his consent, require each of the banks to file certified copies of all proceedings of their directors and stockholders relating to the transaction, showing a full compliance with the provisions herein digested, and also copies of any agreement or agreements which may have been entered into between the banks. (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

(Idaho - cont'd.)

Consent of Comptroller of Currency, when necessary.

The consent of the Comptroller of the Currency to a consolidation, liquidation, or purchase must be furnished to the Commissioner of Finance if either bank concerned is a national bank. (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

Rights of creditors not affected.

A sale or consolidation "shall in no wise impair, defeat or defraud any creditors of said bank or either of them." (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

ILLINOIS.

Consolidation of banks.

"Whenever the board of directors, managers or trustees of any corporation having any banking powers * * * * may desire * * * to consolidate such corporation with any other corporation having banking powers * * * they may call a special meeting of the stockholders of such corporation for the purpose of submitting to a vote of such stockholders the question of such * * * consolidation with some other corporation * * * *." (Laws of 1929, sec. 12, p. 184.)

Special meeting, notice of.

A special meeting of the stockholders may be called by delivering personally, or by mailing thirty days before the time fixed for the meeting, a notice to each stockholder which must be signed by a majority of the directors, managers or trustees and state the time, place

(Illinois - cont'd.)

and object of such meeting. Notice of such meeting must also be published in a designated newspaper. (Laws of 1929, sec. 12, p. 184.)

Stockholders' approval of consolidation; certificate of, to be filed with Auditor of Public Accounts.

At a special meeting, or at any regular meeting, if two-thirds of the stockholders vote to approve the consolidation, a certificate of such approval, verified under corporate seal by the affidavit of the president or a vice president, must be filed immediately in the office of the Auditor of Public Accounts. (Laws of 1929, sec. 12, pp. 184 and 185.)

Approval of Auditor of Public Accounts; filing of certain papers with recorder of deeds.

If the auditor of Public Accounts gives his written approval to the consolidation such approval together with the certificate of the stockholders' approval, must be immediately filed for record in the office of the recorder of deeds of the county in which the principal business office of such corporation is located, and the consolidation "shall be and is hereby declared accomplished in accordance with the said vote of the stockholders." (Laws of 1929, sec. 12, p. 185.)

Conditions precedent to approval by Auditor of Public Accounts.

Before the Auditor can approve the consolidation, "he shall require to be filed with him a complete record of the proceedings of such consolidation, a list of stockholders, the agreement or articles of consolidation approved by the stockholders, which shall include the amount of capital and surplus of the consolidated corporation, the plan of business, name and time for which such consolidated corporation shall continue,

(Illinois - cont'd.)

which shall comply with the requirements of this Act as to application for and organization in the case of a new association, a detailed financial statement showing the assets and liabilities of such proposed consolidation and such other records as he may deem necessary, verified by the affidavit of one or more of the officers of each consolidating corporation, and shall satisfy himself that said records and list are true and complete and that said financial statement is true and that a sufficient amount is dedicated to the business of such proposed consolidation." The Auditor must also require each director of the proposed corporation to take and subscribe a certain prescribed oath. (Laws of 1929, sec. 13, pp. 186 and 187.)

Examination by Auditor.

The auditor is given authority to make an examination into the affairs of such corporation. (Laws of 1929, sec. 13, p. 187.)

Publication of change of organization.

After the filing of the above described certificate in the recorder's office, the consolidated corporation must publish the change of organization once each week, for three successive weeks, in a designated newspaper. (Laws of 1929, sec. 12, p. 185.)

Pending suits or rights of persons not affected by consolidation.

The consolidation of one corporation with another does not affect pending suits in which the consolidating banks are involved nor does it affect causes of action or the rights of persons in any particular. (Laws of 1929, sec. 12, p. 185.)

(Illinois - cont'd.)

Dissenting stockholders, rights of.

Detailed provision is made for the payment to any stockholder, who objects to the consolidation within a certain prescribed time, of the stock held by such stockholder. (Laws of 1929, sec. 12, pp. 185 and 186.)

Sale of assets.

With the approval of the Auditor of Public Accounts, which shall state that the proposed sale is in his opinion necessary for the protection of depositors and other creditors, any bank may by a vote of two-thirds of its directors and without a vote of its stockholders, sell all or any part of its assets to another corporation organized under the Laws of Illinois or the United States, provided that such other corporation assumes in writing all of the liabilities of the bank other than its liabilities to stockholders as such. Provision is also made for the payment to any stockholders objecting to such sale of the value of the stock held by such stockholders. (Laws of 1929, sec. 12, pp. 185-186.)

INDIANA.

Consolidation of State bank with national bank.

Any State bank "may be consolidated with any national banking association or associations, under the charter of such national banking association, or under a new charter issued to such consolidated association, upon such terms and conditions as may be lawfully agreed upon". (Act approved February 21, 1931, sec. 1.)

(Indiana - cont'd.)

Legal Effect of Consolidation.

"Whenever any bank shall have become, or shall have become consolidated with, a corporation for carrying on the business of banking under the laws of the United States, it shall notify the bank commissioner of this state of such fact, and shall file with him a copy of its authorization as a national banking association or a copy of the certificate of approval of consolidation, certified by the controller of the currency. It shall thereupon cease to be a corporation under the laws of this state, except that for the term of three years thereafter, its corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and of enabling it to close its concerns, and to dispose of and convey its property. Such change from a state bank to or consolidation of a state bank with a national banking association shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming, or becoming consolidated with, a national banking association, or any tax imposed by the laws of this state up to the date of its becoming, or becoming consolidated with, such national banking association in proportion to the time which has elapsed since the next preceding payment and assessment therefor, or any assessment, penalty or forfeiture imposed or incurred under the laws of this state up to the date of its becoming, or becoming consolidated with, a national banking association.

(Indiana - cont'd.)

"At such time when the consolidation of a state bank with a national banking association under the charter of the latter company or such charter as may thereafter be issued, becomes effective, all the property of the state bank, including all its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately, by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the national banking association which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the state bank; and the national banking association shall be deemed to be a continuation of the entity and of the identity of the state bank, and all the rights, obligations and relations of the state bank to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust, and in, or in respect to, any executorship or trusteeship or other trust or fiduciary function, or appointment thereto, shall remain unimpaired, and the national banking association as of the time of the taking effect of such change or consolidation shall succeed to all such rights, obligations, relations, appointments and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trustor relation in the same manner as if the national banking association had

(Indiana - cont'd.)

itself been appointed to and/ or assumed the trust or relation, including the obligations and liabilities connected therewith. If the state bank is acting as administrator, co-administrator, executor, co-executor, trustee or co-trustee of or in respect to any estate or trust being administered under the laws of this state, such relation, as well as any other or similar fiduciary relations, and all rights, privileges, duties, and obligations connected therewith shall remain unimpaired and shall continue into and in said national banking association from and as of the time of the taking effect of such consolidation, irrespective of the date when any such relation may have been created or established and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or decedent whose estate is being so administered. Nothing done in connection with the consolidation of a state bank with a national banking association shall, in respect to any such executorship, trusteeship or similar fiduciary relation, be deemed to be or to effect, under the laws of this state, a renunciation or revocation of any letters of administration or letters testamentary pertaining to such relation, nor a removal or resignation from any such executorship or trusteeship or other fiduciary relationship, nor shall the same be deemed to be of the same effect as if the executor or trustee or other fiduciary had died or otherwise become incompetent to act.

"All of the rights, powers, privileges, duties, obligations and liabilities conferred on or extended to banking institutions which

(Indiana - cont'd.)

are formed by the consolidation of a state bank with a national banking association, as hereinbefore provided, are hereby conferred upon and extended to state banks which are formed by the consolidation of two or more previously existing state banks". (Act approved February 21, 1931, sec. 2.)

Meaning of Terms.

The words "bank," "banks" or "state banks," as used in this act shall be held to include banks of discount and deposit, loan and trust and safe deposit companies, private banks, and savings banks, or any other corporations or institutions carrying on the banking business under authority of the laws of this state." (Act approved February 21, 1931, sec. 3.)

IOWA.

Consolidation or sale of assets of bank or trust company in receivership.

The laws of Iowa do not contain any provisions covering the consolidation, merger, etc., of solvent banks or trust companies. With reference to banks or trust companies in receivership, the laws provide that:

> "If a majority of the creditors holding direct unsecured obligations of such bank in excess of ten dollars each, and totaling in the aggregate amount seventy-five per cent of all direct unsecured obligations, shall agree in writing to a plan of

(Iowa - cont'd.)

disposition and distribution of assets through sale to another bank, reopening, reorganization or consolidation of the bank, the district court in which such receivership is pending, upon application of the superintendent of banking, may order a disposition and distribution conforming in general to the provisions of such plan." (Banking Laws, 1929, ch. 415, sec. 9239-a1.)

Secured Creditors, certain rights, not affected.

"Nothing contained in the five preceding sections shall affect the rights of secured creditors in the security pledged, or to share in the capital stock assessment, nor affect the rights of depositors or creditors on bonds or other contracts with third parties."

NOTE: - Section 9239-a1 above quoted is one of the "five preceding sections" referred to herein. (Banking Laws, 1929, ch. 415, sec. 9239-a6)

Applicability of above provisions to trust companies.

The laws of this State make the provisions above quoted applicable "with equal force and effect to all trust companies organized or reorganized under this chapter". (Banking Laws, 1929, ch. 416, sec. 9304.)

KANSAS

Consolidation of bank and trust company.

The laws of this State provide that "Any bank or trust company authorized to do business in the state of Kansas is hereby authorized and

(Kansas - cont'd.)

"empowered to consolidate with any other bank or trust company authorized to do business in the state." (Session Laws of Kansas, 1931, p. 148.)

Terms of consolidation; consent of bank commissioner necessary.

Such consolidation must be upon such terms as may lawfully be agreed upon by the two banks or trust companies, and must have the consent of the bank commissioner. (Session Laws of Kansas, 1931, p. 148.)

Location, consolidation conditional upon.

The consolidating banks or trust companies must have their banking houses in the same county in order to consolidate. (Session Laws of Kansas, 1931, p. 148.)

Legal effect of consolidation.

"In case of such consolidation, the consolidated bank and/ or trust company shall become, without deed or transfer of any kind, the owner of and entitled to all rights, franchises and interests, which shall be referred to in such agreement, of every bank and/ or trust company which shall be subject to the laws of the state of Kansas and which shall so consolidate, including every species of property and everything of value of every kind and description except real estate; and such consolidated corporation shall, without further appointment, act as trustee, executor, administrator or in any other fiduciary capacity in which any such bank or trust company subject to the laws of this state was acting at the time

(Kansas - cont'd.)

"of such consolidation." (Session Laws of Kansas, 1931, p. 148.)

"In case any bank or trust company shall be named as trustee or in any other fiduciary capacity in any trust deed or other writing, or shall be named as executor in any will, and shall afterwards consolidate with any other bank or trust company such consolidated company shall be entitled to be appointed or to act as such trustee, fiduciary, or executor, with the same effect as if such consolidated corporation had been specifically named in the trust deed, writing, or will creating such trust or fiduciary relationship." (Session Laws of Kansas 1931, p. 151.)

KENTUCKY.

Consolidation of two or more trust companies.

The laws of Kentucky do not appear to contain any provisions covering the consolidation or merger of banks; and it has been held that proceedings by the boards of directors of two banks were not sufficient to effect a consolidation. (La Rue v. Bank of Columbus, 165 Ky. 669, 178 S. W. 1033.) With reference to trust companies, however, the laws provide that "any two or more corporations organized under the laws of this State, for the purpose of conducting the business of trust companies, may consolidate their capital stock, assets and management into one organization." (Laws of Kentucky, 1912, ch. 41, sec. 1; Carroll's Ky. Stats., 1930,

(Kentucky - cont'd.)

sec. 603a-1; Banking Law Pamphlet, including 1926 legislation, sec. 603a-1, p. 32.)

Specific legal effect of such consolidation.

"The separate existence of each corporation shall continue and all duties, powers and discretions of the constituent companies as personal representative, trustee, assignee, guardian, agent, or otherwise conferred, shall be imposed upon and may be exercised by the consolidated corporation; and such duty, power or discretion, at the time of consolidation or thereafter imposed upon either of the constituent companies, may be performed

(Kentucky - cont'd.)

or exercised by the consolidated corporation in its own name or in the name of the constituent company upon which was imposed or conferred such duty, power or discretion; or by the constituent company upon which was imposed or conferred such duty, power or discretion; but in every case the consolidated corporation shall be liable for the proper performance of such duty and the proper exercise of such power or discretion."

The method and effect of such consolidation must be as provided in the provisions below digested, (Sections 555, 555a, 556, 557 and 558 of chapter 32, Carroll's 1930 Kentucky Statutes), "except that as above provided, the separate existence of the constituent corporations shall not cease, and the consolidated corporation and the constituent corporations shall continue to exist, the management of said consolidated corporation and each of said constituent corporations being in the directors and officers of the consolidated corporation." (Carroll's Ky. Stats., 1930, secs. 603a-1, 603a-2; Banking Law Pamphlet, including 1926 legislation, secs. 603a-1, a-2, pp. 32 and 33.)

Agreement of directors to consolidate.

A majority of the directors of each corporation proposing to consolidate, may enter into a signed agreement to consolidate. (Laws of Kentucky, 1902, ch. 58, sec. 2, p. 118; Carroll's Ky. Stats., 1930, sec. 555.)

Submission of agreement to stockholders for approval, notice of.

Notice of intention to consolidate must be mailed to each stock-

(Kentucky - cont'd.)

holder at least twenty days prior to entering into the agreement and must be published at least two weeks in a designated newspaper. The written consent of two-thirds of the stockholders of each corporation "shall be necessary to the validity of such agreement." (Laws of Kentucky, 1902, ch. 58, sec. 2, p. 118; Carroll's Ky. Stats., 1930, sec. 555.)

Names and addresses of stockholders not necessary.

All charters or articles of incorporation "heretofore taken out" by two or more state companies consolidating "are hereby declared to be valid, regardless of whether the names and addresses of the stockholders in the consolidating companies be inserted in the articles of consolidation or not; and that all articles of consolidation heretofore taken out are hereby declared to be valid without having the names and addresses of the stockholders inserted therein; and said charters shall be as valid and legal as if each and every stockholder in the companies composing the consolidated company was set out in such articles of consolidation." (Laws of Kentucky, 1906, ch. 131, p. 458; Carroll's Ky. Stats., 1930, sec. 555.)

Additional provisions relating to the legal effect of a consolidation.

Except as provided in the provisions above referred to setting out the specific legal effect of a consolidation or trust companies (Sections 603a-1 and 603a-2 of Carroll's Kentucky Statutes), a consolidation of trust companies also has a further effect under another section of the Kentucky laws. This section provides that "When the agreement is signed, acknowledged and recorded in the same manner as articles of incorporation are required to be, the separate existence of the constitutent corporations

(Kentucky - cont'd.)

shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, and subject to all the provisions of this chapter and other laws related to it, and shall be vested with all the rights, privileges, franchises, exemptions, property, business, credits, assets and effects of the constituent corporations without deed or transfer, and shall be bound for all their contracts and liabilities; Provided, that no consolidated company formed under this chapter or the laws of this state shall be required to pay any organization tax on the amount of capital stock on which the organization tax has been paid by the constituent companies prior to the consolidation, and when a foreign corporation consolidates with one or more corporations in this state the organization tax as required by the laws of this state shall be paid on the amount of capital stock of such foreign corporation and the organization tax shall be paid on any increase of the capital stock of the consolidated corporation over the aggregate capital stock of the constituent corporations prior to consolidation." (Laws of Kentucky, 1916, ch. 46, p. 490; Carroll's Ky. Stats., 1930, sec. 556.)

Consolidated corporation subject to State Courts and general corporation laws.

The consolidated corporation becomes a corporation of Kentucky for all purposes and is subject to the jurisdiction of its courts and all its laws regulating corporations. (Carroll's Ky. Stats., 1930, sec. 555.)

Pending suits not affected by consolidation.

Any suit pending by or against any of the constituent corporations may be prosecuted to judgment as if no consolidation had taken place,

(Kentucky - cont'd.)

"or the new corporation may be substituted in its place." (Laws of Kentucky, 1893, ch. 171, p. 612; Carroll's Ky. Stats., 1930, sec. 557.)

Dissenting stockholders, rights of.

Provision is made for the payment within a certain time of the value of stock held by any stockholder who objected in writing to the consolidation and who demands such payment within twenty days after the consolidation agreement has been recorded. (Laws of Kentucky, 1893, ch. 171, p. 612; Carroll's Ky. Stats., 1930, sec. 558.)

LOUISIANA.

Sale of assets.

The laws of Louisiana do not contain any provisions specifically covering the consolidation or merger of banks and trust companies; but the laws do permit any State banking association, savings bank or trust company to sell its assets to any other bank after having obtained the consent of two-thirds of the stockholders of both the selling and purchasing banks. The consent must be either in writing and acknowledged by such stockholders and attached to the instrument of sale, or to a copy thereof, or by their vote at special meetings. The agreement for such sale shall contain provisions for the payment of liabilities of the selling bank and it may contain provisions for the transfer of all deposits to the purchasing bank, subject, however, to the unconditional right of every depositor of the selling bank to withdraw his deposit in full on demand after such transfer. (Act 193 of 1910, sec. 3; Banking Law Pamphlet, 1928, sec. 3, p. 50.)

MAINE.

Consolidation of savings banks or sale or lease of franchises, property, etc.

The laws of this state provide that savings banks "may exercise the powers and shall be governed by the rules and be subject to the duties, liabilities, and provisions in their charters, *** and in the general laws relating to corporations, unless otherwise specially provided". (R. S., 1930, ch. 57, sec. 13.)

The "general laws relating to corporations" provide that "No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation". (R. S., 1930, ch. 56, sec. 63, p. 877.)

Agreement to consolidate, contents of, acknowledgment.

Any two or more state corporations, or any state corporation or corporations and any corporation or corporations of any other state, "may consolidate into a single corporation which may be either one of said corporations, provided the same be a corporation originally organized under the laws of this state, or a new corporation under the laws of this state to be formed by means of such consolidation", by entering

(Maine - cont'd.)

into an agreement authorized by a majority of the directors of each of the corporations involved and signed by the proper officers, "and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation" and the mode of carrying it into effect and whether the consolidated corporation will be one of the constituent corporations or a new one. The agreement must also state such other facts as are necessary to be set out in the certificate of organization of an organizing corporation and as are pertinent in the case of a consolidation, the manner of converting the capital stock of the constituent corporations into stock of the consolidated corporation, together with such other details as are deemed necessary to perfect the consolidation. The agreement must "be acknowledged by one of the executing officers of each of the consolidating corporations" before a person authorized to take acknowledgements of deeds "to be the respective act, deed and agreement of each of said corporations". (R. S., 1930, ch. 56, sec. 63, p. 877.)

Submission of agreement to stockholders; recordation and filing of; when deemed to be act of consolidation.

The consolidation agreement must be submitted at a special meeting to the stockholders of each corporation involved, and if adopted by a majority of such stockholders, that fact must be certified thereon by the clerk or secretary of each corporation, "and the agreement so signed, acknowledged, adopted and certified, after it has been examined by the Attorney General, and been by him

(Maine - cont'd.)

certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within sixty days after the day of the meeting at which such consolidation agreement is adopted by the stockholders, a copy thereof certified by such register shall be filed in the office of the Secretary of State, who shall enter the date of filing thereon, and on the original agreement, certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the Secretary of State, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said corporations and the said original consolidation agreement or a certified copy thereof shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation". (R. S., 1930, ch. 56, sec. 63, p. 877.)

Legal effect of consolidation.

When the agreement is signed, acknowledged, adopted, recorded and filed, "the separate existence of all of the constituent corporations, or all of such constituent corporations except the one into which such constituent corporations shall have been consolidated, shall cease, and the constituent corporations, whether consolidated into a new corporation

(Maine - cont'd.)

or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such corporations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, and all other things in action of or belonging to each of said corporations, shall be vested in the consolidated corporations; and all property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations shall not revert or be in any way impaired by reason thereof; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation and may be enforced against

(Maine - cont'd.)

it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it". (R. S., 1930, ch. 56, sec. 63, p. 877.)

Procedure where location of consolidated corporation is different from that of constituent corporations.

"If the location of the consolidated corporation is not the same as that of the constituent corporations, then the clerk of the consolidated corporation shall within sixty days after such consolidation has become effective file a certificate of the consolidation, setting forth the names and locations of the consolidated and constituent corporations, in the registry of deeds of each county, other than that of the consolidated corporation, where the constituent corporations may be located." (R. S., 1930, ch. 56, sec. 63 pp 877-879.)

Dissenting stockholders.

The laws also contain detailed provisions under which stockholders in any of the constituent corporations who dissent or object to the consolidation, sale or lease, may obtain the value of the stock held by them. (R. S., 1930, ch. 56, secs. 63-74, pp. 877-881.)

MARYLAND.

Consolidation of banks and trust companies; transfer of resources and liabilities.

Any banking institution having capital stock incorporated under the laws of Maryland may consolidate with any other banking

(Maryland - cont'd.)

institution of the state having capital stock. The consolidation must be effected in the same manner provided for the consolidation of corporations under the general laws of the state, and the rights of any stockholder of any consolidating banking institution having capital stock who dissents from the plan of consolidation at the stockholders' meeting at which the said plan is submitted to the stockholders shall be the same as the rights of a stockholder of an ordinary business corporation.

No consolidation, however, can be made without the consent of the Banking Commissioner, and not then to defeat or defraud any of the creditors of any of the consolidating institutions. The laws also provide that a banking institution which is in good faith winding up its business for the purpose of consolidating with some other banking institution may transfer its resources and liabilities to the banking institution with which it is in process of consolidation. (Annotated Code of Maryland for 1924, Article 11, Section 59, as amended by laws of Maryland for 1931, Chapter 294, Page 761).

Provisions for the consolidation of corporations.

Since under the above statute the consolidation of banking institutions is regulated by the general law applicable to the consolidation of corporations, the substance of such provisions is set forth below.

Any two or more corporations having capital stock existing or formed under the laws of Maryland which have been or shall have been

(Maryland - cont'd.)

duly authorized by law to carry on in whole or in part any business of the same or a similar nature may consolidate, and by such consolidation form one new corporation. (Annotated Code of Maryland for 1924, Article 23, Section 33).

Proceedings for consolidation.

Such consolidations shall be made in the manner following:

There shall be an agreement of consolidation between the consolidating corporations giving: (a) the terms and conditions of the proposed consolidation; (b) the mode of carrying the same into effect; (c) the name of the new corporation; (d) the postoffice address of the place at which the principal office of the corporation in this State will be located as in the case of a certificate of incorporation and the name or names and postoffice address or addresses of the resident agent or agents who will be in charge thereof, as in the case of a certificate of incorporation; (e) the counties in this State in which any of the consolidating corporations own property, the title to which could be affected by the recording of an instrument among the land records, and if any of the consolidating corporations own such property in the City of Baltimore, the agreement of consolidation shall so state; (f) the number, names and addresses of the directors and the names of the officers, who shall act as such until their successors are duly chosen and qualified; (g) the amount of authorized capital stock of each consolidating corporation and the total amount of authorized capital

(Maryland - cont'd.)

stock of the new corporation and the number and par value of the shares; (h) the total amount of capital stock of the new corporation to be issued for stock of the consolidating corporations; (i) the restrictions, if any, imposed upon the transfer of the shares or of any of them; (j) if the capital stock is classified, the amount, par value, preferences, restrictions and qualifications of each class, specifying the amount of each class authorized and the amount of each class to be issued for stock of the consolidating corporations; (k) the manner of converting the capital stock of each of the consolidating corporations into stock of the new corporation; (l) all such other provisions and details which shall be deemed necessary to perfect the consolidation.

The agreement of consolidation must be first submitted to the boards of directors of the consolidating corporations, which must pass resolutions declaring that such consolidation is advisable and calling separate meetings of the stockholders of the respective corporations to take action thereon. Notice of the meetings of stockholders must be given in the manner provided by law and if the agreement of consolidation is approved by the affirmative vote of two-thirds of all shares (or if two or more classes of stock have been issued, two-thirds of each class) outstanding and entitled to vote of each consolidating corporation, the agreement must then be signed and acknowledged in the name and in behalf of the respective consolidating corporations by their respective president or vice-president and sealed with their respective corporate seals, attested by their

(Maryland - cont'd.)

respective secretaries or assistant secretaries.

The agreement thus executed must have attached to it the affidavits of the chairmen or secretaries of the respective stockholders' meetings, showing that the agreement was duly advised by the boards of directors and approved by the stockholders of their respective corporations. (Annotated Code of Maryland for 1924, Article 23, Section 33).

Legal effect of the consolidation.

When such agreement has been duly filed with the State Tax Commission and the proper fees paid all of the property and assets belonging to said consolidating corporations of whatever nature and description, and all the powers and rights and all debts and liabilities of the said consolidating corporations of whatever nature and description shall be devolved upon said new corporation, which shall be regarded as substituted by operation of law in the room and stead of said consolidating corporations. (Annotated Code of Maryland for 1924, Article 23, Section 34.)

Rights of dissenting stockholders.

Any stockholder of any corporation consolidating as aforesaid, who at such meeting voted against the agreement submitted, may within twenty days after the agreement of consolidation has been delivered to the State Tax Commission, but not afterwards, make upon the consolidated corporation a written demand for the payment of his stock

(Maryland - cont'd.)

and shall thereupon be entitled to receive the fair value thereof. If the stockholder and the corporation are unable to agree upon the fair value of the stock, or if having agreed, the corporation shall fail to tender the amount thereof, the dissenting stockholder may within thirty days after such written demand apply by petition to any court of equity, which must appoint three commissioners to determine the fair value of the stock without regard to depreciation which has occurred since the consolidation, and the award of said commissioners, or the majority of them, when confirmed by the court is final and conclusive on all parties except that the corporation and stockholder have the right of appeal to the court of appeals. (Annotated Code of Maryland for 1924, Article 23, Section 35).

Sale of all assets of a corporation.

Any corporation of the State of Maryland having capital stock may at any meeting duly called in accordance with law sell, lease, or exchange all of its property or assets as an entirety, including its good will and franchises to and with any corporation organized under the laws of Maryland, or of any other state which is duly authorized to acquire and hold such or similar property. An agreement containing the terms and conditions of such proposed sale, lease, or exchange must after approval by the board of directors be submitted for the approval of the stockholders of any corporation organized under the laws of the state, which shall be a party to such agreement at a duly called

(Maryland - cont'd.)

meeting, and if approved by the affirmative vote of two-thirds of all stock (or if two or more classes of stock have been issued of two-thirds of each class) outstanding and entitled to vote, such agreement shall be executed and in terms and conditions performed by the proper officers of the respective corporations. If any stockholder dissents at such meeting or votes against the agreement submitted he may within twenty days after such meeting, but not afterwards, require the payment to him by the corporation of the fair value of his stock, which, if not agreed upon, must be determined in a manner substantially similar to that provided in the case of consolidations. (Annotated Code of Maryland for 1924, Article 23, Section 36).

MASSACHUSETTS.

Consolidation or merger of trust companies.

The laws provide that "No trust company shall be merged in or consolidated with another trust company except with the written approval of the commissioner and under the provisions of sections forty-two and forty-six of chapter one hundred and fifty-six, which are hereby made applicable to the sale or exchange of all the property and assets, including the good will and corporate franchise, of a trust company." (General Laws, ch. 172, sec. 44, as amended by Acts of 1931, ch. 11.)

Section 42 of Chapter 156 above referred to provides that

(Massachusetts - cont'd.)

"Every corporation may, at a meeting duly called for the purpose, by vote of two-thirds of each class of stock outstanding and entitled to vote, or by a larger vote if the agreement of association or act of incorporation so requires, change its corporate name, the nature of its business, the classes of its capital stock subsequently to be issued and their preferences and voting power, or make any other lawful amendment or alteration in its agreement of association or articles or organization, or in the corresponding provisions of its act of incorporation, or authorize the sale, lease or exchange of all its property and assets, including its good will, upon such terms and conditions as it deems expedient." (General Laws, ch. 156, sec. 42.)

Section 46 of Chapter 156 provides for the appraisal and payment of the value of stock held by any stockholder who at the stockholders' meeting referred to in section 42 voted against a sale, lease, exchange of property and assets, or a change in the nature of the business of the corporation. (General Laws, ch. 156, sec. 46.)

Legal effect of consolidation or merger.

"The charter of a trust company the business of which shall, on or after July first, nineteen hundred and twenty-two, be consolidated or merged with, or absorbed by, another bank or trust company, or the affairs of which shall, on or after said date, have been liquidated, shall be void except for the purpose of discharging

(Massachusetts - cont'd.)

existing obligations and liabilities." (General Laws, ch. 172, sec. 44, as amended by Acts of 1931, ch. 11.)

Office of consolidating or merging company may be maintained as branch office.

"Any office of a trust company the business of which has been taken over under section forty-four by, or any office of a national bank purchased by or merged in, a trust company located in the same town, may be maintained as a branch office of such corporation, if in the opinion of the commissioner public convenience will be served thereby." (General Laws, ch. 172, sec. 46, as amended by Acts 1922, ch. 396; Trust Company Pamphlet, 1929, sec. 46, p. 24.)

Consolidation or merger of savings banks.

Any savings bank may, if authorized at a special meeting by two thirds of its corporators, be dissolved and liquidate its affairs, "provided, that the (bank) commissioner is satisfied that such savings bank has given at least thirty days' notice to each other savings bank, located within twenty-five miles, of its willingness to enter into negotiations with a view to consolidation or merger and that no consolidation or merger with any such savings bank can be arranged upon terms satisfactory to the commissioner; * * *. If, however, the commissioner is satisfied that a consolidation or merger of the savings bank proposing liquidation

(Massachusetts - cont'd.)

with another savings bank located within twenty-five miles can be effected on terms approved by him and if he finds that such consolidation or merger is in the interest of the depositors of the savings banks concerned, such consolidation or merger may be effected upon such terms and subject to the direction of the commissioner, provided that a vote authorizing the same is passed by at least two-thirds of the corporators of each of the savings banks aforesaid at meetings specially called to consider the subject". (Laws of 1930, ch. 329, p. 377.)

MICHIGAN.

Consolidation under so-called "Bank Act" of bank or trust company with State bank; procedure.

"A bank or trust company which is in good faith winding up its business for the purpose of consolidating with some other state bank may transfer its assets and liabilities to the bank with which it is in process

(Michigan - cont'd.)

of consolidation." Before such consolidation can become effective each bank or trust company concerned must file with the banking commissioner, with the secretary of state and in the office of the clerk of the county in which the bank or trust company is located, certified copies of all proceedings had by its directors and stockholders. The stockholders proceedings must state that stockholders owning at least two-thirds of the stock voted in the affirmative on the proposition of liquidation and consolidation and must also contain a copy of the agreement entered into between the consolidating institutions. Upon filing such stockholders proceedings, the banking commissioner must make an examination of each bank or trust company, and his consent to or rejection of such liquidation and consolidation shall be based thereon. No consolidation can be made without the consent of the banking commissioner, and not then to defeat or defraud any of the creditors of any of the consolidating institutions. (Public Acts, 1929, Act 66, sec. 57; Banking Law Pamphlet, 1929, sec. 66, p. 40.)

State bank - consolidation with, or purchase of assets of national bank; absorption of State bank by national bank.

A State bank is given authority to consolidate with or purchase the assets and assume the liabilities of any national bank. In case any State bank is to be absorbed by a national bank, the banking commissioner must require to be filed in his office, with the secretary of state and in the office of the clerk of the county in which the bank is located, certified copies of all proceedings had by the stockholders of each bank,

(Michigan - cont'd.)

which must state that stockholders owning at least two-thirds of the capital stock voted in favor of liquidation and consolidation. Such stockholders' proceedings shall also recite an exact copy of the agreement entered into between the banks. The banking commissioner must also require the national bank to furnish a certified copy of the consent of the comptroller of the currency to such consolidation, liquidation or purchase. In the instance of a State bank absorbing a national bank, the transaction shall not become effective until each bank files with the banking commissioner certified copies of all proceedings had by its stockholders, which proceedings shall set forth that stockholders owning at least two-thirds of the capital stock voted in the affirmative on the proposition of such consolidation or purchase. A copy of the agreement entered into between the stockholders of each bank shall be set forth at length in such stockholders' proceedings. In addition, the national bank is required to furnish a certified copy of the consent of the comptroller of the currency to such liquidation or consolidation under section 5220 of the Revised Statutes of the United States. It is also the duty of the banking commissioner to make an examination of each bank and no such consolidation shall be made without the consent of the commissioner, and not then to defeat or defraud any of the creditors of either of the banks parties to the consolidation. The expenses of the examinations must be paid by the banks but can not exceed ten dollars per day for each examiner and the actual expenses incurred while making the examinations. (Public Acts, 1929, Act 66, sec. 59; Banking Law Pamphlet, 1929, sec. 68, pp. 41 and 42.)

(Michigan - cont'd.)

Legal effect of consolidation under so-called "Bank Act" of State bank or trust company with State bank.

"In the event of any consolidation heretofore or hereafter effected in any manner prescribed by this (bank) act, the consolidated corporation, by whatever name it may assume or be known, shall be a continuation of the entity of each and all of the corporations so consolidated, and as such entity shall hold, exercise and perform all rights, powers, privileges, duties and obligations appertaining to any and all trust, representative or fiduciary relationships of whatsoever nature of each of the consolidating corporations at the time of such consideration, whether the appointment of such consolidating corporation in any such trust, representative or fiduciary capacity shall have been by any court or otherwise and shall hold, exercise and perform all rights, powers, privileges, duties and obligations appertaining to any and all trust, representative or fiduciary relationships whatsoever as to or for which either or any one of the corporations so consolidating may have been appointed, nominated or designated by any will or conveyance or otherwise, whether or not such will, conveyance or other act intended to create such trust, representative or fiduciary relationship shall have been executed or have come into or taken effect at the time of such consolidation; and further, in the event of any such consolidation heretofore or hereafter effected, the consolidated corporation shall succeed to and become the owner of all property, rights, powers, franchises, privileges and appointments, whether existing, contingent or future, corporeal,

(Michigan - cont'd.)

or incorporeal, tangible, or intangible, of every nature whatsoever of each of the consolidating corporations, and if any of the consolidating corporations shall be acting or shall have been nominated, appointed, delegated or designated by any court, person or otherwise irrevocably or contingently to act as trustee, attorney, agent, executor, administrator, receiver, assignee, guardian, or in any fiduciary or respresentative capacity or relationship, or in any other capacity or relationship whatsoever, the consolidated corporation shall succeed to all of the property, rights, powers, privileges, duties and obligations appertaining to each fiduciary, representative or other capacity or relationship, without further or additional appointment, confirmation or designation whatsoever, and said consolidated corporation shall file with each court or other public tribunal, agency or officer by which any of the consolidating corporations shall have been so appointed and designated, and in the file of each estate, suit or proceeding in which so then acting, a statement setting forth the fact of such consolidation, the name of each other corporation entering therein, the name of the consolidated corporation and its place of business, capital, and surplus; but nothing herein contained is intended or shall be construed to limit or restrict in any wise the powers and authority of any court of competent jurisdiction in respect of any matter arising by reason of any such condition." (Public Acts, 1929, Act 66, sec. 57; Banking Law Pamphlet, 1929, sec. 66, pp. 40 and 41.)

(Michigan - cont'd.)

Consolidation under so-called "Trust Company Act" of trust companies, or of State or national bank with trust company authorized to engage in banking business.

Any two or more trust companies, or a State or national bank and "a corporation organized or existing under this (trust company) act, and which has obtained the consent of the Commissioner of the banking department to engage in the banking business, may consolidate in pursuance of authority granted by the affirmative vote of the holders of at least two-thirds of the capital stock of such corporation, in accordance with either of the following methods:

(a) by the dissolution of each of the consolidating corporations and the conveyance of all of their assets and liabilities to a new corporation which must assume all of the liabilities, duties and obligations of each of the consolidating corporations. The capital and surplus of the new corporation shall be equivalent to the aggregate of the capitals and surplus of the consolidating corporations.

(b) by the acquisition by one corporation of all the assets and liabilities of one or more other corporations, and the dissolution of each of the other corporations. The acquiring corporation shall deliver to the dissolvent corporation or corporations such cash, stock, or property as may be provided in the agreement for consolidation, and shall assume all of the liabilities, duties and obligations of each of the

(Michigan - cont'd.)

dissolving corporations. Each dissolving corporation shall distribute pro rata to its stockholders any cash or property or stock received by it.

No such consolidation is valid unless and until it is approved by the banking commissioner and not then to defeat or defraud any creditors. Such consolidation does not become effective, until each of the consolidating corporations files with the banking commissioner, with the secretary of state, and in the office of the county clerk of the county in which the corporation is located, certified copies of all proceedings had by its directors and stockholders, and the stockholders' proceedings of each such corporation shall set forth that two-thirds of the stockholders voted for the consolidation. Such stockholders' proceedings shall also contain a copy of the agreement for consolidation entered into by the consolidating corporations.

If the consolidation is between a State or national bank and a trust company, the directors' and stockholders' proceedings shall set forth the proportion of the capital of the new or acquiring corporation which will be allocated to the banking business of such corporation. Such allocation is subject to the approval of the banking commissioner.

"For the purposes of this act the words 'consolidate', 'consolidation', 'consolidating', and 'consolidated' shall be construed to include in their meanings the meanings of

(Michigan - cont'd.)

the words 'merge', 'merger', 'merging' and 'merged', respectively." (Public Acts, 1929, Act 67, sec. 30; Banking Law Pamphlet, 1929, sec. 143, pp. 72 and 73.)

Legal effect of consolidation under so-called "Trust Company Act" of trust companies, or of State or national bank with trust company authorized to engage in banking business.

"In the event of any consolidation heretofore or hereafter effected in any manner prescribed by this (trust company) act, the consolidated corporation shall have, possess and be the owner of all property, rights, powers, franchises, privileges and appointments whether existing, contingent or future, corporeal or incorporeal, tangible or intangible, of every nature whatsoever of each of the consolidating corporations, and if any of the consolidating corporations shall be acting or shall have been nominated, appointed, delegated or designated by any court, person or otherwise irrevocably or contingently to act as trustee, attorney, agent, executor, administrator, receiver, assignee, guardian, or in any fiduciary or representative capacity or relationship, or in any other capacity or relationship whatsoever, the consolidated corporation shall have, possess and be vested with all of the property, rights, powers, privileges, duties and obligations appertaining to each such fiduciary, representative or other capacity or relationship, without further or additional appointment, obligation or designation whatsoever. In the event of any such consolidation heretofore or

(Michigan - cont'd.)

hereafter effected in any manner aforesaid, the consolidated corporation, by whatever name it may assume or be known, shall be a continuation of the entity of each and all of the corporations so consolidated, and as such entity shall hold, exercise and perform all rights, powers, privileges, duties and obligations appertaining to any and all trust, representative or fiduciary relationships of whatsoever nature of each of the consolidating corporations at the time of such consolidation, whether the appointment of such consolidating corporation in any such trust, representative or fiduciary capacity shall have been by any court or otherwise and shall hold, exercise and perform all rights, powers, privileges, duties and obligations appertaining to any and all trust, representative or fiduciary relationships whatsoever as to or for which either or any one of the corporations so consolidating may have been appointed, nominated or designated by any will, or conveyance or otherwise, whether or not such will, conveyance or other act intended to create such trust, representative or fiduciary relationship shall have been executed or have come into or taken effect at the time of such consolidation.

"Said consolidated corporation shall file with each court or other public tribunal, agency or officer by which any of the consolidating corporations shall have been so appointed and designated, and in the file of each estate, suit or proceeding in which so then acting, a statement setting forth the

(Michigan - cont'd.)

fact of such consolidation, the name of each other corporation entering therein, the name of the consolidated corporation and its place of business, capital and surplus; but nothing herein contained is intended or shall be construed to limit or restrict in any wise the powers and authority of any court of competent jurisdiction in respect of any matter arising by reason of such condition." (Public Acts, 1929, Act 67, Sec. 30; Banking Law Pamphlet, 1929, sec. 143, pp. 72 and 73.)

Purchase of assets by State bank or trust company of another bank or trust company.

If any State bank or trust company purchases the capital stock of another bank or a trust company for the purpose of retiring such stock and takes over all assets and assumes all liabilities, the banking commissioner must require the stockholders of the bank or trust company selling its business to authorize such sale by a vote of the stockholders owning at least two-thirds of the capital stock; and the commissioner

(Michigan - cont'd.)

may, in his discretion, require authorization of such purchase by the acquiring bank or trust company by a two-thirds vote of its directors or stockholders, and may in his discretion make an examintion of any of the institutions involved before consenting to the transaction. Certified copies of all stockholders and directors' proceedings must be filed with the banking commissioner, the secretary of state and in the office of the clerk of the county in which the institutions are located, and shall contain in detail the particulars relating to such sale and purchase, and a copy of any agreement entered into between the stockholders and directors of the institutions. No sale or purchase shall be made without the consent of the commissioner and not then to defeat or defraud any of the creditors of any of the institutions. The expenses of any examinations must be paid by the institutions and shall not exceed ten dollars per day for each examiner and the actual expenses incurred while making the examinations. (Public Acts, 1929, Act 66, sec. 58, and Act 67, sec. 31; Banking Law Pamphlet, 1929, sec. 67, p. 41 and sec. 144, p. 74.)

MINNESOTA.

Consolidation of banks and trust companies.

The laws of Minnesota authorize the consolidation of State banks or trust companies with other State banks or trust companies "operating in the same city or village" under such charter as the boards of directors of the consolidating corporations may determine. All consolidations must be made in the manner prescribed below and when completed, the consolidated corporation "shall be governed and conducted in all

(Minnesota - cont'd.)

other respects" by the statutes covering the operation of a corporation of the same class as the corporation whose charter was adopted by the consolidated corporation. (Laws of 1925, ch. 156, sec. 1, Act approved Apr. 8, 1925; Banking Law Pamphlet, 1929, sec. 1, p. 25.)

Agreement for consolidation, terms of; capital stock; name.

A consolidation agreement may be made by the boards of directors of the institutions involved and this agreement must prescribe the terms and conditions of and specify the parties to, the consolidation. The agreement must also prescribe the manner of carrying the consolidation into effect, the name of the consolidated corporation, which may be the name, in whole or in part, of any of the constituent corporations, and the authorized capital stock of the resulting institution, which can not exceed the aggregate authorized capital stock of all of the consolidating corporations; and the city or village in which the principal place of business will be carried on must be specified. The persons who will constitute the board of directors of the consolidated corporation must also be named, but the number and qualifications of such directors shall be in accordance with the statutes relating to the number and qualifications of directors of the class of corporation under whose charter the consolidation is made. (Laws of 1925, ch. 156, sec. 2, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 2, p. 25.)

Approval of superintendent of banks necessary.

The consolidation agreement and certified copies of the proceedings of the boards of directors authorizing the making of the agreement must be submitted to the superintendent of banks for his approval; and the agreement does not become effective until he has approved it.

(Minnesota - cont'd.)

After such documents are received, the superintendent within twenty days must take action on them "and he shall be entitled to such further information from the consolidated corporation as he may request or as he may obtain upon a hearing directed by him." (Laws of 1925, ch. 156, sec. 3, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 3, p. 25.)

The laws of Minnesota also provide that "With the written consent of the examiner, (superintendent of banks), it may effect a transfer of its assets and liabilities to another bank for the purpose of consolidating therewith, but the same shall be without prejudice to the creditors of either." (General Statutes, 1923, sec. 7692; Banking Law Pamphlet, 1929, p. 25.)

Submission to and approval by stockholders of agreement, certificate by superintendent of banks.

Either before or after the agreement has been approved by the superintendent of banks, it must be submitted to a special meeting of the stockholders of each corporation involved and it does not become binding upon the consolidated corporation until it has been approved "by a vote or ballot of the stockholders, holding at least a majority of the amount of stock of the respective corporations". Proof of the holding of such meetings and such action as was taken must be made to the superintendent. After the agreement has been approved by the stockholders and the superintendent, "the latter shall issue a certificate reciting that such corporations have complied with the provisions of this act and declaring the consolidation of such corporations; the name of the consolidated

(Minnesota - cont'd.)

corporation, the amount of capital stock thereof and the names of the first board of directors and the place of business of such consolidated corporation, which shall be within the city or village where any one of said constituent corporations shall have been previously authorized to have its place of business". (Laws of 1925, ch. 156, sec. 4, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 4. pp. 25 and 26.)

When incorporation complete and corporate existence begins.

When the superintendent of banks has issued the certificate above described and it has been filed for record in the office of the Secretary of State, and in the office of the Register of Deeds for the county in which the consolidated corporation will have its principal place of business, "such incorporation shall be deemed to be complete, and such consolidated corporation shall from the date of such certificate have such term of corporate existence as may be therein specified not exceeding the longest unexpired term of any constituent corporation." The certificate of the superintendent is prima facie evidence that all the provisions of the so-called consolidation act have been complied with and "shall be conclusive evidence of the existence of such consolidated corporation". (Laws of 1925, ch. 156, sec. 4, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 4, p. 26.)

Legal effect of consolidation.

"Upon the consolidation of any such corporation, with any one or more corporations, into a consolidated corporation, as herein provided, the corporate existence of each former corporation shall be merged

(Minnesota - cont'd.)

into that of the consolidated corporation, and all and signular its rights, privileges, and franchises, and its right, title and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and all things in action, and every right, privilege interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged or unconsolidated existence shall be deemed fully and finally transferred to and vested in the consolidated corporation without further act or deed and such last mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the former corporation from which it was, by operations of this act, transferred. Its rights, obligations, and relations to any person, creditor, depositor, trustee, or beneficiary of any Trust, shall remain unimpaired and the corporation into which it shall have been consolidated shall succeed to such relations, obligations, trusts, and liabilities and shall execute and perform all such trusts in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause whatsoever shall not be impaired by such consolidation, nor shall any obligation or liability of any stockholder in any corporation, which is party to such consolidation, be affected by any such consolidation, but such obligations and liabilities shall continue as fully and to the same extent as existed before such consolidation. The consolidated corporation shall become without further act or deed, the successor of the consolidating corporations in

(Minnesota - cont'd.)

any and all fiduciary capacities, in which each such consolidated corporations may be acting at the time of such consolidation, and shall be liable to all beneficiaries as fully as if such consolidating corporations had continued its separate corporate existence. If any consolidating corporation shall be nominated and appointed or shall have been nominated or appointed as executor, guardian, administrator, agent or trustee, or in any other trust relation or fiduciary capacities in any will, trust agreement, trust conveyance or any other conveyance, order or judgment of any Court, or any other instrument whatsoever prior to such consolidation (even though such will or other instrument shall not become operative or effective until after such consolidation shall have become effective) every such office, trust relationship, fiduciary capacity, and all of the rights, powers, privileges, duties, discretions and responsibilities so provided to devolve upon, vest in, or inure to the corporation so nominated or appointed, shall fully and in every respect devolve upon, vest in, and inure to, and be exercised by the consolidated corporation, whether there be one or more successive mergers or consolidations." (Laws of 1925, ch. 156, sec. 5, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 5, pp. 26 and 27.)

Consolidation does not affect pending judicial proceedings against consolidating corporations.

Any judicial proceeding in which any consolidating corporation is a party is not abated or discontinued because of the consolidation, but it may be prosecuted to final disposition, or the consolidated corporation

(Minnesota - cont'd.)

may be substituted as a party and judgment rendered for or against it. (Laws of 1925, ch. 156, sec. 6, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 6, p. 27.)

Rights of stockholders objecting to consolidation.

The so-called consolidation act also contains detailed provisions with reference to the rights of stockholders of any of the consolidating corporations in case they object to the consolidation. (Laws of 1925, ch. 156, sec. 7, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 7, p. 27.)

MISSISSIPPI.

No provisions covering consolidations, mergers, etc.

The laws of Mississippi do not contain any provisions specifically covering the consolidation, merger, etc. of State banks or trust companies.

MISSOURI.

Banks, Sale of business to, or consolidation or merger with, another bank or trust company.

"Any bank may sell the whole of its business, or the whole of the business of any of its departments, to any other bank or trust company, state or national, or may for the purpose of consolidating or merging with another bank or trust company, state or national, transfer its affairs, assets and liabilities to the bank or trust company with which it intends to consolidate or merge; * * *." (Laws of 1927, sec. 11. p. 232; Rev. Stats. of Mo. 1929, sec. 5379.)

(Missouri - cont'd.)

Consent of stockholders, when necessary.

Unless such sale, merger or consolidation is deemed by the commissioner of finance to be a public necessity or advantage, it can be entered into only after obtaining the consent of two-thirds of the stockholders. This consent may either be in writing, executed and acknowledged by such stockholders, or by a special meeting of the stockholders, prior notice of which, stating the time, place and object, must be given to each stockholder of record. (Laws of 1927, sec. 11, p. 232; Rev. Stats. of Mo., 1929, sec. 5379.)

Consent of Commissioner of Finance finally necessary.

"No such sale, purchase, merger or consolidation shall be made without the consent of the commissioner of finance", and he must, "before granting his consent, require each of the banks or trust companies to file certified copies of all proceedings of their directors' and stockholders' meetings relating to the transaction, showing a full compliance with the requirements of this section, and also copies of any agreement or agreements which may have been entered into between said banks or trust companies." (Laws of 1927, sec. 11, p. 232; Rev. Stats. of Mo., 1929, sec. 5379.)

Commissioner of finance may examine institutions involved.

The commissioner of finance, before granting his consent to such sale, purchase, merger or consolidation, may examine each of the banks or trust companies involved, the expenses of

(Missouri - cont'd.)

which must be paid by such banks or trust companies. (Laws of 1927, sec. 11, p. 232; Rev. Stats. of Mo. 1929, sec. 5379.)

Rights of creditors not affected.

It is further provided that "such sale, merger, or consolidation shall in no wise impair, defeat or defraud any creditor of said bank or trust company or either of them". (Laws of 1927, sec. 11, p. 232; Rev. Stats. of Mo. 1929, sec. 5379.)

Trust companies - merger or consolidation with each other.

The laws of Missouri also provide that any trust company organized under such laws may be merged in or consolidated with any other such trust company or companies to form a single corporation. (Laws of 1919, p. 160; Rev. Stats. of Mo., 1929, sec. 5470.)

(Missouri - cont'd.)

Agreement to merge or consolidate; authorization for; execution and acknowledgement.

Each trust company which is a party to a merger or consolidation, upon being first authorized by a majority of all the members of its board of directors, must enter into an agreement with the other trust companies which are parties to the merger or consolidation, providing for such merger or consolidation. The agreement must be in writing, and executed and acknowledged under the seals of the trust companies involved in such form as is required by law for the execution and acknowledgement of instruments conveying real estate. (Laws of 1919, p. 160; Rev. Stats. of Mo., 1929, sec. 5471.)

Merger agreement; terms, conditions and contents of.

The merger agreement must set out:

(1) The names of the merging trust companies;

(2) The terms and conditions of such merger, and the manner of carrying it into effect;

(3) The corporate name of the resulting trust company, which may be the name, in whole or in part, of any of the merging trust companies;

(4) The names of the persons who are to constitute the board of directors, provided that the number and qualifications of such directors shall be in accordance with the provisions of law relating to the number and qualifications of directors of trust companies;

(5) The agreement shall provide further that the directors named shall, after qualifying, divide themselves into certain classes, and that

(Missouri - cont'd.)

they may adopt new by-laws for the consolidated trust company. (Laws of 1919, p. 160; Rev. Stats. of Mo., 1929, sec. 5472.)

Consolidation agreement; terms and contents of.

The consolidation agreement must set forth:

(1) The terms and conditions of the consolidation and the method of carrying it into effect;

(2) The name of the resulting corporation, which may be the name, in whole or in part of any of the consolidating corporations;

(3) The name of the city or town and county in Missouri in which the consolidated corporation will be located;

(4) The amount of the capital stock of the corporation;

(5) The number of shares into which the stock has been divided and the par value thereof;

(6) That the shares have been subscribed by the persons named therein as the first board of directors as trustees for the stockholders of the consolidating companies, and that all of the capital stock has been paid-up either in lawful money of the United States, or by the capital stock, surplus and undivided profits of the consolidating companies, provided that such part of the capital as is paid for in the latter manner, shall be received only for the amount which may be approved by the bank commissioner;

(7) That the custody of all such cash and property has been placed in the care and control of the persons named as the board of directors;

(8) The number, names and addresses of the directors and that said directors shall, after qualifying, divide themselves into classes in

(Missouri - cont'd.)

accordance with the provisions of law and that they may adopt new by-laws for the consolidated company;

(9) The purposes for which the consolidated company is formed, which shall be limited to the purposes then prescribed by law for trust companies;

(10) The number of directors necessary to constitute a quorum;

(11) The duration of the company;

(12) Such other provisions as may be necessary fully to set out the rights of the consolidating companies, their stockholders and creditors and the plan of such consolidation. (Laws of 1919, p. 161; Rev. Stats. of Mo., 1929, sec. 5473.)

Consolidation or merger agreement and directors' proceedings as evidence.

A copy of the minutes of the proceedings of the board of directors authorizing the making of the consolidation or merger agreement and a copy of such agreement certified and verified by the secretaries of the trust companies involved "shall be presumptive evidence of the action of such respective boards". (Laws of 1919, p. 161; Rev. Stats. of Mo., 1929, sec. 5474.)

Consolidation or merger agreement and directors' proceedings must be submitted to and approved by bank commissioner.

A copy of the consolidation or merger agreement and certified and verified copies of the proceedings of the respective boards of directors must be submitted in duplicate to the bank commissioner for approval or disapproval. In case the bank commissioner disapproves the agreement, "the companies which are parties thereto may submit another plan for a merger or consolidation under the provisions of this chapter." (Laws of 1919, p. 161;

(Missouri - cont'd.)

Rev. Stats. of Mo., 1929, sec. 5475.)

Commissioner must certify finding within thirty days.

The approval or disapproval of the bank commissioner of the agreement must be certified by him in writing to each trust company which is a party to the merger or consolidation within thirty days after the agreement has been submitted to him. (Laws of 1919, p. 162; Rev. Stats. of Mo., 1929, sec. 5476.)

Agreement must be submitted to stockholders within sixty days after its approval.

In case the agreement is approved by the bank commissioner, it must, within sixty days after such approval, be submitted at a special meeting to the stockholders of each trust company. Notice of the time, place and object of this meeting must be given two weeks in advance to each stockholder and must also be likewise published once a week for at least two successive weeks in a newspaper in each of the counties in which any of the consolidating or merging trust companies has its place of business, and for the purpose of such notice the city of St. Louis is considered as a county. (Laws of 1919, p. 162; Rev. Stats. of Mo., 1929, sec. 5477.)

Agreement binding if two-thirds of stockholders of respective companies vote favorably.

If two-thirds of the stockholders of each of the consolidating or merging trust companies vote in favor of the agreement "then such agreement shall be valid and binding upon such trust companies". (Laws of 1919, p. 162; Rev. Stats. of Mo., 1929, sec. 5478.)

(Missouri - cont'd.)

When merger agreement becomes effective.

A copy of the minutes of the stockholders' meetings at which an agreement for a merger has been approved, with a copy of such agreement and the bank commissioner's approval thereof, all certified and verified by the secretaries of the respective stockholder's meetings, must be filed with the bank commissioner and with the secretary of each of the trust companies involved. An identical copy of such minutes, agreement and approval, together with an affidavit of the secretary of the resulting company showing the filing of such copies with the bank commissioner and the secretary of each of the merging companies, "shall be filed for record and recorded in the office of the recorder of deeds of each county wherein is located the place of business of each trust company which is party to such agreement, it being understood that the City of St. Louis shall be considered as a county in regard to the filing and recording of such copies". When such copies have been "filed for record in the office of the recorder of deeds, the agreement and merger shall become effective according to its terms." (Laws of 1919, p. 162; Rev. Stats. of Mo., 1929, sec. 5479.)

When consolidation agreement becomes effective.

A copy of the minutes of the stockholders meetings of the consolidating companies at which the consolidation agreement was approved, with a copy of the agreement and the bank commissioner's approval thereof, all certified and verified by the secretaries of such stockholders meetings, must be filed in the office of the bank commissioner and with the secretary of each of the consolidating trust companies. A like copy of such minutes, agreement and approval, with an affidavit of the secretary

(Missouri - con'td.)

of one of the consolidating companies showing the filing of such copies with the bank commissioner and the secretary of each of the consolidating companies, must also be filed and recorded in the office of the recorder of deeds in each county wherein is located the place of business of each of the consolidating companies. The city of St. Louis is considered as a county as far as the filing for record with the recorder of deeds of such copies is concerned. Upon the filing with the recorder of deeds of the agreement, with the approval of the bank commissioner, "and the proceedings above prescribed, the agreement for the consolidation of the trust companies, which are parties thereto, shall take effect according to its terms, and the consolidation shall thereupon be complete, provided the legal fees for the incorporation of such consolidated trust companies shall have been paid to the state bank commissioner, the same as if a new corporation were organized for the same amount of capital authorized for such consolidated company." (Laws of 1919, p. 163; Rev. Stats. of Mo., 1929, sec. 5480.)

New certificates of stock, when resulting company shall issue.

The resulting company may require the return of the original certificates of stock held by the stockholders in either the merging or consolidating companies, unless such certificates have been lost or destroyed, "and shall cancel said original certificates and issue in lieu thereof new certificate or certificates for such number of its own shares as such stockholders may be entitled to receive under the agreement providing for the merger or for the consolidation and according to the terms

(Missouri - cont'd.)

and conditions contained in the agreement for such merger or such consolidation;" but if the original certificates have been lost or destroyed, such loss or destruction must be proved by affidavit or otherwise to the satisfaction of the board of directors of the resulting company, before new certificates in lieu thereof can be issued. (Laws of 1919, p. 163; Rev. Stats. of Mo., 1929, sec. 5481.)

Stockholders dissenting to merger or consolidation; rights, privileges, etc.

There are also detailed provisions giving to stockholders who object to or do not vote for a merger or consolidation the right to receive a reasonable value for their stock, and prescribing the manner for determining the value of the stock, the time within which the dissenting stockholders must assert their rights, the procedure for doing so, etc. (Laws of 1919, pp. 164-166; Rev. Stats. of Mo., 1929, secs. 5482-5485.)

Legal effect of merger or consolidation.

(a) Corporate existence merged into new company - title to property, etc. - "The corporate existence of the merging company or companies shall be merged into that of the receiving trust company, or in the event of consolidation, the corporate existence of the consolidating companies shall be merged into that of the consolidated trust company; and all and singular the rights, privileges and franchises, and the rights, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing to which either of such companies so merging or consolidating shall be entitled at

(Missouri - cont'd.)

law or in equity, shall be fully and finally and without any right of reversion, transferred to and vested in the receiving trust company in case of merger, or in the consolidated trust company, in case of a consolidation, without further act or deed, and such receiving company or such consolidated company shall have and hold the same in its own corporate right as fully as the same was possessed and held by either of the merging or consolidating corporations from which such rights were, by operation of the provisions of this article, transferred." (Laws of 1919, p. 166; Rev. Stats. of Mo., 1929, sec. 5486.)

(b) Trust and fiduciary powers, passage of to new company. - "The receiving corporation under merger of (or) the new corporation under consolidation, shall become, without further act or deed, the successor of the merging or of the consolidating corporation, in any and all fiduciary capacities in which such merging or consolidating corporation may be acting at the time of such merger or consolidation, and shall be liable to all beneficiaries as fully as if such receiving or consolidating corporations had continued their separate corporate existence. All and singular the rights and privileges and the right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing to which either of such companies so merging or consolidating shall be entitled at law or in equity, in any fiduciary capacity shall fully and finally, and without any right of reversion, be transferred to and vested in the receiving or consolidated

(Missouri - cont'd.)

corporation, without further act or deed; and such receiving or consolidated corporation shall have and hold the same as fully and in the same fiduciary capacity and for the same purposes, and with the same powers, duties, responsibilities and discretion, as the same were possessed and held by the merging or consolidating corporation from which they were, by operation of the provisions of this article, transferred.

"If any trust company which merges with or shall have merged with another, or if any trust company which consolidates with or shall have consolidated with another or other trust companies to form a consolidated trust company, shall be nominated and appointed or shall have been nominated or appointed as executor, guardian, curator, administrator, agent or trustee or in any other trust relation or fiduciary capacity in any will, trust agreement, trust conveyance or any other conveyance or instrument whatsoever prior to such merger or consolidation (even though such will, trust agreement, trust conveyance, or other conveyance or instrument shall not become operative or effective until after such merger or consolidation shall have become effective) every such office, trust relationship, fiduciary capacity and all of the rights, powers, privileges, duties, discretions and responsibilities, so provided to devolve upon, vest in, or inure to the company so nominated or appointed, shall fully and in every respect devolve upon, vest in and inure to and be exercised by the trust company into which such company so designated in such capacity shall be or shall have been merged, or shall devolve upon, vest in, inure to and be exercised by the consolidated trust company

(Missouri - cont'd.)

formed by any consolidation to which the trust company so designated shall have been a party, whether there be one or more successive mergers or consolidations." (Laws of 1919, pp. 166 and 167; Rev. Stats. of Mo., 1929, secs. 5487-5490.)

(c) Obligations of consolidating companies unaffected.- "The rights, obligations and relations of either of the merged companies or of the consolidating companies, in respect to any person, creditor, depositor, trustee or beneficiary of any trust shall remain unimpaired, and the receiving corporation or the consolidated corporation shall, when the merger or consolidation becomes effective, as in this chapter provided, succeed to all such relations, obligations, trusts, powers and liabilities and shall execute and perform all duties in relation thereto in the same manner as though it had itself assumed or been clothed with such relation, trust or power, or had itself incurred the obligation or liability; and the liabilities and obligations to creditors of either of the merged companies, or of either of the consolidating companies shall not be impaired by such merger or consolidation; nor shall any obligation or liability of any stockholder in any corporation which is a party to such merger or consolidation be affected by any such merger or consolidation, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger or consolidation." (Laws of 1919, p. 167; Rev. Stats. of Mo., 1929, sec. 5488.)

Merger or consolidation does not affect pending judicial proceedings against consolidating companies.

Any judicial proceeding in which any merging or consolidating

(Missouri - cont'd.)

company is a party is not affected because of the merger or consolidation, but it may be prosecuted to final disposition, or the resulting company may be substituted as a party and judgment rendered for or against it. (Laws of 1919, p. 167; Rev. Stats. of Mo., 1929, sec. 5489.)

MONTANA.

Definition of word "bank".

The word "bank" as used in the laws of Montana, applies to any incorporated bank, trust company or savings bank. (Laws of 1927, ch. 89, sec. 2, Act approved March 8, 1927; Banking Law Pamphlet, 1927, sec. 2, pp. 7 and 8.)

Consolidation of banks.

"Any two (2) or more banks may, with the approval of the Superintendent of Banks, consolidate into one (1) bank under the charter of either existing bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate, and be ratified and confirmed by the vote of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors, after sending notice to each shareholder of record by registered mail at least ten (10) days prior to said meeting; provided, that the stockholders may unanimously waive such notice and may consent to such meeting and consolidation in writing." (Laws of 1927, ch. 89, sec. 94, Act approved March 8, 1927; Banking Law Pamphlet, 1927, sec. 94, p. 56.)

(Montana - cont'd.)

Capital required of consolidated corporation.

The capital stock of the consolidated bank must be not less than that required under law for the organization of a bank of the class of the largest consolidating bank. (Laws of 1927, ch. 89, sec. 94, Act approved March 8, 1927; Banking Law Pamphlet, 1927, sec. 94, p. 56.)

Legal effect of consolidation.

"The assets and liabilities of the consolidated bank shall be reported by the surviving bank. All the rights, franchises, and interests of said bank so consolidated in and to every specie of property, real, personal and mixed and choses in action thereto belonging, shall be deemed to be transferred to and vested in such bank into which it is consolidating without other instrument of transfer, and said consolidated bank shall hold and enjoy the same and all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed by the bank so consolidated therewith, provided, however, that merging bank shall transfer to the surviving bank all of its real property by good and sufficient deed of conveyance and for that and other purposes shall remain a body corporate for a period of at least three (3) years after merger and shall not then dissolve without the approval of the Superintendent of Banks." (Laws of 1927, ch. 89, sec. 94, Act approved March 8, 1927; Banking Law Pamphlet, 1927, sec. 94, p. 57.)

NEBRASKA.

Consolidation of banks - no provisions covering trust companies.

The laws of Nebraska do not contain any provisions covering the

(Nebraska - cont'd.)

consolidation or merger of trust companies; but, with reference to banks, the laws provide that "Any bank which is in good faith winding up its business for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in process of consolidation but no consolidation shall be made without the consent of the department of trade and commerce, nor shall such consolidation operate to defeat the claim of any creditor or hinder any creditor in the collection of his debt against such banks or either of them." (Comp. Stats. of Nebraska, 1929, sec. 8-160; Banking Law Pamphlet, 1929, sec. 8021, p. 20.)

NEVADA.

No provisions covering consolidation, merger, etc.

The laws of Nevada do not contain any provisions specifically covering the consolidation, merger, etc. of banks and trust companies.

NEW HAMPSHIRE.

Consolidation of mutual savings banks with trust or banking companies or with other savings banks.

The laws of New Hampshire do not contain any provisions covering the merger or consolidation of so-called trust or banking companies or savings banks with each other; but the laws do provide that "Any mutual savings bank incorporated under the laws of this state, or a majority of the members thereof, and any trust or banking company, or any other savings bank, incorporated under the laws of this state, or a majority of the members or the holders of a majority of the stock thereof, may

(New Hampshire - cont'd.)

apply by petition to the superior court in the county in which either of said petitioning corporations is located, or to any justice of said court in vacation, for a decree authorizing a union of said savings bank with said trust or banking company, or other savings bank, and a dissolution of said first named savings bank in the manner herein provided". (Laws of 1917, ch. 54, sec. 1; Public Laws, 1926, ch. 263, sec. 1; Banking Law Pamphlet, 1929, ch. 263, sec. 1, p. 30.)

Notice and hearing on petition; reference to bank commissioner by court.

When the petition for consolidation is filed, the court or justice "shall fix a time for hearing thereon, and after due notice by publication to all parties interested, and such other notice as the court may order, and hearing the court shall refer said petition to the bank commissioner". (Laws of 1917, ch. 54, sec. 2; Public Laws, 1926, ch. 263, sec. 2; Banking Law Pamphlet, 1929, ch. 263, sec. 2, p. 30.)

Hearing by bank commissioner; character of duties after.

The bank commissioner, after notice and hearing, must ascertain "whether the public convenience and advantage and the interest of said institutions, their members, stockholders and depositors, will be promoted by the proposed union." (Laws of 1917, ch. 54, sec. 3; Public Laws, 1926, ch. 263, sec. 3; Banking Law Pamphlet, 1929, ch. 263, sec. 3, p. 30.)

Appraisal of assets and determination of amount due depositors.

If the bank commissioner approves the petition, "he shall appraise the assets and ascertain the liabilities of said savings bank, and determine the net value thereof for the purpose of liquidation, the total number of depositors therein and the amount of their respective deposits,

(New Hampshire - cont'd.)

and, upon such appraisal and findings, determine the proportionate share of the net deposits due such depositors". The commissioner is authorized to employ expert or other assistance at the expense of the petitioners in making such appraisal. (Laws of 1917, ch. 54, secs. 3 and 4; Public Laws, 1926, ch. 263, secs. 4 and 5; Banking Law Pamphlet, 1929, ch. 263, secs. 4 and 5, p. 30.)

Report to court of findings and determinations.

The Commissioner must "forthwith make a report to the court of his findings and determinations, and of the expense of said hearings, appraisal and findings. Upon due notice to all parties of record the court shall thereupon enter a final decree." (Laws of 1917, ch. 54, sec. 5; Public Laws, 1926, ch. 263, sec. 6; Banking Law Pamphlet, 1929, ch. 263, sec. 6, p. 30.)

Decree of Court, extent of; depositor's option.

After receiving such report, if "it appears that the public convenience and advantage and the interest of said several parties will be promoted by the action sought by said petition the court shall by decree fix a date upon which the funds of the depositors in the savings bank to be liquidated shall cease to draw interest, and shall authorize the trustees or directors of said savings bank to sell and convey all of its assets to said trust or banking company or other savings bank at the value fixed by such appraisal, and to pay said depositors the several amounts found to be their due". Each depositor in the mutual savings bank is given the option to receive in cash from the sale of its assets the amount found to

(New Hampshire - cont'd.)

be due him or to accept a deposit in the consolidated institution for the same amount without loss of interest. (Laws of 1917, ch. 54, sec. 6; Public Laws, 1926, ch. 263, secs. 7 and 8; Banking Law Pamphlet, 1929, ch. 263, secs. 7 and 8, pp. 30 and 31.)

Unclaimed deposits and dividends.

The laws contain provisions prescribing the manner of disposing of unclaimed deposits and dividends in the consolidating mutual savings bank at the time of the consolidation. (Laws of 1917, ch. 54, sec. 7; Public Laws, 1926, ch. 263, secs. 9 and 10; Banking Law Pamphlet, 1929, ch. 263, secs. 9 and 10, p. 31.)

Other orders court may make.

"The court shall make all other and further orders and decrees in respect to the winding up of the affairs of said liquidated savings bank and its dissolution that may be necessary for the protection of all parties interested". (Laws of 1917, ch. 54, sec. 8; Public Laws, 1926, ch. 263, sec. 11; Banking Law Pamphlet, 1929, ch. 263, sec. 11, p. 31.)

NEW JERSEY.

Merger of State banks and/or trust companies.

The laws of New Jersey authorize State banks and trust companies having their main offices or places of business in the same municipality to merge into another State bank or trust company. (Laws of 1925, ch. 198, ch. 197 and ch. 203; Banking Law Pamphlet, 1930, sec. 11, p. 59, sec. 19, p. 119 and sec. 1, p. 155.)

Agreement for merger.

The boards of directors of such banks or trust companies may, by

(New Jersey - con'td.)

a vote of two-thirds of the entire membership of each board, make or authorize to be made between such banks or trust companies a written merger agreement in duplicate and under corporate seal. A sworn copy of the proceedings of the directors' meetings "shall be presumptive evidence of the holding and action of such meetings." (Laws of 1925, ch. 198, ch. 197 and ch. 203; Banking Law Pamphlet, 1930, sec. 12, p. 59, sec. 20, p. 119 and sec. 2, p. 155.)

What merger agreement must specify.

The merger agreement must name each bank or trust company to be merged and the bank or trust company which is to receive the merging institution or institutions, "and it shall prescribe terms and conditions of the merger and the mode of carrying it into effect." It may specify the name of the receiving corporation, which may be the name of any of the merging corporations; but, in the case of a merger of a bank into a trust company or a trust company into a bank, such name must comply "with the provision of the law under which said continuing corporation is organized." It may also name the persons who will constitute the board of directors of the receiving corporation; but the number and qualifications of such directors must be in accordance with the pertinent provisions of law covering the number and qualifications of directors of the kind of corporation into which the merging corporation or corporations are received; "or such agreement may provide for a meeting of the stockholders to elect a board of directors within sixty days after such merger becomes effective and may make provision for conducting the affairs of the corporation meanwhile." (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking

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Law Pamphlet, 1930, sec. 13, p. 60, sec. 21, p. 120 and sec. 3, pp. 155 and 156.)

Merger agreement must be submitted to commissioner of banking and insurance for approval.

The merger agreement and sworn copies of the proceedings of the boards of directors at which the making of the agreement was authorized must be submitted in duplicate to the commissioner of banking and insurance for his approval. (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 14, p. 60, sec. 22, p. 120 and sec. 4, p. 156.)

After approval of commissioner, agreement must be submitted to stockholders.

Within sixty days after notice from the commissioner that the merger agreement has been approved, it must be submitted to a special meeting of the stockholders of the merging corporations, and, if it is approved by two-thirds of the stockholders of each corporation, it then becomes binding upon such corporation. A sworn copy of the proceedings of such meetings is presumptive evidence of the holding and action of such meetings. (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 15, pp. 60-61, sec. 23, p. 121, and sec. 5, pp. 156-157.)

Filing and recording of approved agreement and copies of proceedings.

After the agreement has become binding upon the merging corporations, one copy with a copy of the written approval of the Commissioner of Banking and Insurance, and a sworn copy of the proceedings of the meetings at which the agreement was approved, must be filed in the office

(New Jersey - cont'd.)

of the Commissioner of banking and insurance. An identical copy of such agreement, approval and proceedings "shall be recorded in the office of the clerk of the county in which is located the place of business of the corporations so merged; such record being made in the book provided for the record of certificates of incorporation of corporations organized under the laws of this State." (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 16, p. 61, sec. 24, p. 121 and sec. 6, p. 157.)

When merger becomes effective.

Upon filing and recording the merger agreement with copies of its approval by the commissioner of banking and insurance as above prescribed, "the merger agreement shall take effect according to its terms, and the merger shall thereupon take place as provided in the agreement." (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 17, p. 62, sec. 25, p. 122 and sec. 7, pp. 157-158.)

Legal effect of merger.

Upon the merger of any corporation into another as above provided:

(1) "Its corporate existence shall be merged into that of such other corporation; and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged existence, shall be deemed fully and finally, and without any right of reversion, transferred

(New Jersey - cont'd.)

to and vested in the corporation into which it shall have merged, without further act or deed, and such last-mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the merged corporation from which it was, by operation of the provisions hereof, transferred."

(2) Its rights, obligations and relations to any person, creditor, depositor, trustee or beneficiary of any trust, remain unimpaired, and the receiving corporation succeeds to all such relations, obligations, trusts and liabilities, and shall execute and perform all such trusts, in the same manner as though it had itself assumed the relation or trust, or incurred the obligations or liability. Liabilities and obligations to creditors existing for any cause whatsoever shall not be impaired by such merger, nor "shall any obligation or liability of any stockholder in any corporation which is a party to such merger be affected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger."

(3) "A pending action or other judicial proceeding to which any corporation that shall be so merged is a party shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the corporation into which such other corporation shall have been merged may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such other corporation

(New Jersey - cont'd.)

if the merger had not occurred." (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 18, pp. 62-63, sec. 26, pp. 122-123 and sec. 8, pp. 158-159.)

Maintenance of offices of merged corporations; capital required for each office, number further limited according to population.

The resulting corporation, "with the written approval of the Commissioner of Banking and Insurance, may continue to conduct business at the location or locations of the office or offices heretofore established by the merged corporations and under such office designation as the Commissioner of Banking and Insurance may approve"; but the paid-in capital of the resulting corporation must be, if it is a bank, at least fifty thousand dollars, and, if it is a trust company, at least one hundred thousand dollars, for each office thereafter to be maintained. Further limitations on the maintenance of such offices are that the resulting corporation can maintain but one office within the corporate limits of a municipality "where the population by the last decennial census is less than twenty-five thousand; not more than two offices where such population by said census is more than twenty-five thousand and not more than fifty thousand; not more than three offices where such population by said census is more than fifty thousand and not more than one hundred thousand and where such population is more than one hundred thousand only such number of offices as the Commissioner of Banking and Insurance may approve." In case of a merger of trust companies, it is provided further "that the commissioner of banking and insurance shall not approve the maintenance of more offices by the continuing corporation than the corpora-

(New Jersey - cont'd.)

tion into which the other corporation or corporations shall be merged was authorized to maintain prior to the date of the merger agreement, unless at the time of such approval national banking associations organized under the laws of the United States and located in New Jersey shall by an act of Congress be enabled to originally establish branch offices or agencies for the transaction of their business in this State." (Laws of 1925, ch. 198, as amended by Laws of 1927, ch. 21, ch. 197, and ch. 203, as amended by Laws of 1927, ch. 14; Banking Law Pamphlet, 1930, sec: 19, p. 63, sec. 27, p. 123 and sec. 9, p. 159.)

Issuance of new certificates of stock.

The new corporation may require the return of the original certificates by the stockholders in any of the merging corporations and may issue in lieu thereof new certificates. (Laws of 1925, ch. 198, ch. 197 and ch. 203; Banking Law Pamphlet, 1930, sec. 20, p. 64, sec. 28, p. 125 and sec. 10, p. 160.)

Dissenting stockholders, rights of.

There are also detailed provisions giving the right to stockholders of any of the merging corporations who did not vote for or object to the merger to demand payment for their shares of stock, and prescribing the procedure and conditions for securing such payment. (Laws of 1925, ch. 198, ch. 197 and ch. 203; Banking Law Pamphlet, 1930, sec. 21, p. 64, sec. 29, pp. 125-126 and sec. 11, p. 160.)

(New Jersey - cont'd.)

Consolidation of State bank or trust company with national bank; surrender of charter.

When two-thirds of the stockholders of any State bank or trust company give their written consent to consolidate with a national bank, and the directors of such bank or trust company file in the Department of Banking and Insurance a certificate under their hands that such consent has been given and that the directors intend to act in pursuance thereof, such bank or trust company "shall be deemed and taken to have surrendered its charter". (Laws of 1902, ch. 28 and Laws of 1920, ch. 300, as amended by Laws of 1928, ch. 208 and ch. 207; Banking Law Pamphlet, 1928, sec. 1, p. 47, and sec. 8, p. 98.)

Continuance of corporate existence for three years for certain purpose.

It is provided, however, that every such State bank or trust company "shall be continued a body corporate for the term of three years after the time of such surrender for the purpose of prosecuting and defending suits by or against it, and closing its concerns, but not for any other business or purposes whatsoever". The board of directors of the consolidated bank is to act as, and be taken to be, the board of directors of such bank or trust company while closing its concerns during such three year period. (Laws of 1902, ch. 28, and Laws of 1920, ch. 300, as amended by Laws of 1928, ch. 208 and ch. 207; Banking Law Pamphlet, 1928, sec. 1, p. 48, and sec. 8, p. 99.)

(New Jersey - cont'd.)

Legal effect of consolidation:

(a) of State with national bank.

"When the charter of such bank shall be surrendered to the State, as hereinabove provided, and any such bank shall have been organized as or consolidated with a banking association under the laws of the United States, or have become capable in law as a new or consolidated national bank to take and hold property, all the assets, real and personal, choses in action and all rights and privileges of every nature and description, of any such bank shall immediately, by act of law and without any conveyance or transfer, be vested in and become the property of the said association, formed or consolidated as aforesaid under the laws of the United States, to be held by said association or its stockholders in as ample and beneficial manner for all purposes as the same can, by virtue of the laws of the United States, be held and enjoyed; but nothing in this section shall be so construed as to impair the obligation existing in the first section of this act." (Laws of 1902, ch. 28, as amended by Laws of 1928, ch. 208; Banking Law Pamphlet, 1928, sec. 4, p. 50.)

(b) of trust company with national bank.

In this connection the laws provide " * * * that all rights, privileges, choses in action, property, real and personal, and all trust powers, duties, designations and appointments made or contained by or in any deed, will, instrument, order or decree,

(New Jersey - cont'd.)

executed or made before the filing of such certificate, shall vest in, devolve upon, and inure to the benefit of said new or consolidated national bank." (Laws of 1920, ch. 300, as amended by Laws of 1928, ch. 207; Banking Law Pamphlet, 1928, sec. 8, p. 99.)

Dissenting stockholders, rights of.

The laws also contain detailed provisions with reference to the rights of stockholders who dissent to the consolidation. (Laws of 1902, ch. 28, and Laws of 1920, ch. 300; Banking Law Pamphlet, 1928, secs. 2, and 3, pp. 48 and 49, and sec. 9, p. 99.)

Extent of act relating to consolidation of State bank with national bank.

"The authority conferred by this act may be exercised by the stockholders of any bank incorporated or organized by the authority of this state, notwithstanding said bank may have been converted into a national banking association under the laws of the United States prior to the passage of this supplement." (Laws of 1902, ch. 28; Banking Law Pamphlet, 1928, sec. 5, p. 50.)

Merger or consolidation of corporations "for the insurance or guaranty of title to lands" with trust companies.

The laws of New Jersey also contain detailed provisions providing for and regulating the merger or consolidation of corporations "for the insurance or guaranty of title to lands" with State trust companies which, in many respects, are substantially similar to the

(New Jersey - cont'd.)

provisions digested above. (Laws of 1923, ch. 97; Banking Law Pamphlet, 1930, secs. 1-6, pp. 146-150.)

NEW MEXICO.

Consolidation or merger of banks or trust companies.

The laws of New Mexico covering banks and trust companies do not contain provisions having specific reference to the merger, consolidation, etc., of such institutions; but these laws do provide that "Except as herein limited incorporated banks shall exercise and enjoy all the rights and privileges and be subject to all the liabilities and restrictions provided by law for corporations in general." (Laws of 1915, ch. 67, sec. 55; New Mexico Stats., Annot., 1929, sec. 13-156, p. 325; Banking Law Pamphlet, 1929, sec. 55, p. 20.) These so-called banking laws also provide that the word "bank", as used therein, includes commercial banks, savings banks and trust companies but does not include national banks. (Laws of 1915, ch. 67, sec. 2; New Mexico Stats., Annot., 1929, sec. 13-102, p. 316; Banking Law Pamphlet, 1929, sec. 2, p. 5.)

The law covering "corporations in general" contain elaborate consolidation or merger provisions, (Laws of 1905, ch. 79, secs. 109-115; New Mexico Stats., 1929, secs. 32-213 to 32-219 inclusive) and also provide that such provisions shall be held applicable to banks and trust companies. (Laws of 1905, ch. 79, sec. 131; New Mexico Stats., Annot., 1929, sec. 32-234). Such provisions are set forth below.

Authority for consolidation or merger.

"Any two or more corporations organized under any law or laws

(New Mexico - cont'd.)

of this state for the purpose of carrying on any kind of business of the same or a similar nature may merge or consolidate into a single corporation, which may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger and consolidation." (Laws of 1905, ch. 79, sec. 109; New Mexico Stats., Annot., 1929, sec. 32-213, p. 483.)

Directors' agreement to merge or consolidate; contents of.

The directors of the several corporations involved may under corporate seal enter into a "joint agreement" for the merger or consolidation of such corporations. The agreement must prescribe the terms and conditions of the merger or consolidation, the mode of carrying it into effect, the name of the resulting corporation with the number, names and residences of its first directors and officers, the number and value of the shares of capital stock, the manner of converting the stock of the constituent corporations into stock of the resulting corporation, and, if a new corporation is created, how and when the directors and officers will be chosen or appointed. The agreement may also contain such other provisions as the contracting directors may deem necessary to perfect such merger or consolidation. (Laws of 1905, ch. 79, sec. 110, subd. 1; New Mexico Stats., Annot., 1929, sec. 32-214, subd. 1, pp. 483 and 484.)

Submission of agreement to stockholders; approval of; effect of.

The agreement must be submitted to the stockholders of each of the corporations involved at a special meeting after twenty days' notice of the time, place and object of such meeting has been given to each stock-

(New Mexico - cont'd.)

holder. If two thirds of the stockholders of each corporation vote for the adoption of the agreement, that fact must be certified thereon by the secretary of each corporation under its corporate seal. The agreement so adopted and certified must be filed with the state corporation commission and then must "be deemed and taken to be the agreement and act of merger or consolidation of the said corporations." A copy of this agreement certified under seal by the corporation commission is "evidence of the existence of such new or consolidated corporation." (Laws of 1905, ch. 79, sec. 110, subd. 2; New Mexico Stats., Annot., 1929, sec. 32-214, subd. 2, p. 484.)

Legal effect of consolidation or merger.

"Upon making and perfecting the said agreement and act of merger or consolidation, and filing the same, in the office of the state corporation commission, the several corporations shall be one corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations, shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this article." (Laws of 1905, ch. 79, sec. 111; New Mexico Stats., Annot., 1929, sec. 32-215, p. 484.)

"Upon the consummation of said act of merger or consolidation, all and singular, the rights, privileges, powers and franchises of each

(New Mexico - cont'd.)

of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this article: Provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and the respective former corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it." (Laws of 1905, ch. 79, sec. 112; New Mexico Stats., Annot., 1929, sec. 32-216, p. 484.)

Dissenting stockholders, rights of.

Provision is made for the appraisal and payment of the value of stock held by any stockholder of any of the corporations involved who did not vote in favor of the merger or consolidation. (Laws of 1905, ch. 79, secs. 113 and 114; New Mexico Stats., Annot., 1929, secs. 32-217 and 32-218, pp. 484 and 485.)

(New Mexico - cont'd.)

State corporations authorized to merge with corporations of "other states and territories."

"Corporations organized under the laws of other states and territories may also be merged with corporations organized under the laws of this state, in accordance with the provisions of this article." (Laws of 1905, ch. 79, sec. 115; New Mexico Stats., Annot., 1929, sec. 32-219, p. 485.)

Consolidated corporation authorized to issue bonds and mortgage property.

The consolidated corporation is authorized to issue bonds or other obligations "to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume," in order to effect the merger or consolidation; and to secure the payment of such bonds or obligations it may mortgage its property. The consolidated corporation may also purchase and sell stocks of other corporations and may issue capital stock to the stockholders of the constituent corporations in exchange or payment for their original shares in the manner and on the terms specified in the agreement of merger or consolidation. (Laws of 1905, ch. 79, sec. 115; New Mexico Stats., Annot., 1929, sec. 32-219, p. 485.)

Sale or purchase of assets.

The laws also provide that "any corporation * * * shall have power to sell, convey and transfer or exchange all of its assets, property, rights, privileges, franchises (except its primary franchise), good will, easements, rights of way, and all other property and property rights it

(New Mexico - cont'd.)

may use or possess; Provided, however, that no corporation shall have the right to sell, transfer or exchange any contract, or property, or rights derived therefrom or thereunder, not assignable by its terms." (Laws of 1927, ch. 85, sec. 1; New Mexico Stats., Annot., 1929, sec. 32-1201, p. 514.)

Any corporation is also empowered "to purchase and acquire all of the assets, property, rights, privileges, franchises (except its primary franchise), good will, easements, rights of way, and all other property and property rights, of any other corporation * * * ". (Laws of 1927, ch. 85, sec. 2; New Mexico Stats., Annot., 1929, sec. 32-1202, p. 514.)

Consent of stockholders necessary.

The consent of two-thirds of the stockholders of the vendor corporation to "such sale or exchange" is required which shall be given at a special meeting called for that purpose, "or if the by-laws fail to provide for special meetings, then according to requirement for notice of annual meeting, which notice shall clearly state the time, place and purpose of such meeting". (Laws of 1927, ch. 85, sec. 3; New Mexico Stats., Annot., 1929, sec. 32-1203, p. 515.)

Dissenting stockholders of the vendor corporation may notify its secretary in writing of the fact of their objection to the proposed sale or exchange on or before the day of the meeting of the stockholders. Within ninety days after the sale or

(New Mexico - cont'd.)

exchange, the vendee corporation, upon demand of such dissenting stockholders and upon their surrender to the vendor corporation of their stock for cancellation, shall pay them the market value of their stock, which in no event can be less than the book value of such stock according to the last balance sheet of the selling corporation. Amounts so paid shall be deducted from the purchase price of the property in question. (Laws of 1927, ch. 85, sec. 3; New Mexico Stats., Annot., 1929, sec. 32-1203, p. 515.)

Limitations on actions to question legality of sale.

Suits to attack any sale or exchange must be brought within three months after the recording of the conveyance or other instrument evidencing such sale in the county wherein the property or any part of it sold or exchanged is located. (Laws of 1927, ch. 85, sec. 4; New Mexico Stats., Annot., 1929, sec. 32-1204, p. 515.)

NEW YORK.

Merger of banks and trust companies.

The laws of New York provide that "Any two or more corporations, other than savings banks, organized under any one article of this chapter (ch. 2 of the Consolidated Laws of 1914, ch. 369, as amended) or under the laws of this state for the purposesor any of them mentioned in any one article of

(New York - cont'd.)

this chapter, or for the purposes or any of them mentioned in both articles three (covering banks) and five (covering trust companies) of this chapter, are hereby authorized to merge one or more of such corporations into another of them as prescribed in succeeding sections of this article." (Banking Law, sec. 487, subd. 1.)

With particular reference to savings banks, the laws provide that any two of such banks "located in a city of the first class and in the same county or borough, or any two or more savings banks located elsewhere in the state and in the same or adjoining counties, are hereby authorized to merge as prescribed in succeeding sections of this article." (Banking Law, sec. 487, subd. 2.)

The laws also provide that "Any national banking association is hereby authorized to merge itself into a State bank or trust company located in the same county, city, town or village in the manner prescribed in succeeding sections of this article." (Banking Law, sec. 487, subd. 3.)

Agreement for merger.

The boards of directors of each of the corporations which are a party to the merger, by a vote of the majority, or, if the corporations are savings banks, by a vote of two-thirds of the entire membership of each board of trustees, may make or authorize to be made a written merger agreement in duplicate and under corporate seal. A sworn copy of the proceedings of such meetings, made by the respective secretaries, is presumptive evidence of the holding and action of such meetings. (Banking Law, sec. 488.)

(New York - cont'd.)

What agreement merger must specify.

The merger agreement must specify each corporation to be merged and the corporation which is to receive the merging corporation or corporations "and it shall prescribe the terms and conditions of the merger and the mode of carrying it into effect." It may provide the name of the receiving corporation, which may be the name of any of the merging corporations, and it may also name the persons who will constitute the board of directors or trustees of the receiving corporation; but the number and qualifications of such directors or trustees must be in accordance with the provisions of law relating to the number and qualifications of directors or trustees of the class of corporation into which the merging corporation or corporations are merged; "or, except in the case of savings banks, such agreement may provide for a meeting of the shareholders or stockholders to elect a board of directors within sixty days after such merger, and may make provision for conducting the affairs of the corporation meanwhile." In case of a merger agreement between trust companies, the agreement must provide that the directors named or elected, after qualifying, shall divide themselves into classes as provided by the pertinent provisions of the law covering trust companies, and that they may adopt new by-laws for the resulting corporation. (Banking Law, sec. 488.)

Agreement must be submitted to superintendent for approval.

The merger agreement and sworn copies of the proceedings of the boards of directors or trustees at which the making of the agreement was authorized, must be submitted in duplicate to the superintendent of banks

(New York - cont'd.)

for his approval. (Banking Law, sec. 489.)

Submission of approved agreement to stockholders necessary.

Except in the case of savings banks, the merger agreement must be submitted to a special meeting of the stockholders of the merging corporations within sixty days after notice of its approval by the superintendent of banks. If it is approved by two-thirds of the stockholders of each of the corporations, or in the case of "savings and loan associations by the affirmative vote of at least two-thirds of the members present in person or by proxy at such meetings," provided a copy of the merger agreement shall have accompanied the required notice by mail of such special meetings, it then becomes binding upon the corporations involved in the merger. (Banking Law, sec. 490.)

The merger agreement of savings banks, within sixty days after notice to such banks of its approval by the superintendent of banks, must be submitted to a special meeting of the board of trustees of each of the savings banks. A notice of at least fifteen days specifying the time, place and object of the meeting, and accompanied by a complete copy of the merger agreement, must be given by mail to each trustee. If the agreement is approved by a vote of three-fourths of all the members of each board of trustees, it then becomes binding upon such savings banks. (Banking Law, sec. 491.)

Filing of approved agreement and copies of proceedings.

After the agreement has become binding upon the merging corporations, one copy with a copy of the written approval of the superintendent and a sworn copy of the proceedings of the meetings at which the agreement was approved, made by the respective secretaries, must be filed in the

(New York - cont'd.)

office of the superintendent. Another like copy of such agreement, approval and proceedings must be filed in the office of the clerk of the county in which is located the principal place of business of the receiving corporation. (Banking Law, sec. 492.)

When merger takes effect.

Upon filing of the papers as above prescribed, "the merger agreement shall take effect according to its terms and the merger shall thereupon take place as provided in the agreement." (Banking Law, sec. 493.)

Legal effect of merger.

"Upon the merger of any corporation into another as provided in this article:

"1. Its corporate existence shall be merged into that of such other corporation; and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged existence, shall be deemed fully and finally, and without any right of reversion, transferred to and vested in the corporation into which it shall have been merged, without further act or deed, and such last-mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the merged corporation from which it was, by operation of the provisions of this article, transferred.

"2. Its rights, obligations and relations to any person, credi-

(New York - cont'd.)

tor, depositor, trustee or beneficiary of any trust, shall remain unimpaired, and the corporation into which it shall have been merged shall by such merger succeed to all such relations, obligations, trusts and liabilities, and shall execute and perform all such trusts, in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause whatsoever shall not be impaired by such merger; nor shall any obligation or liability of any stockholder or shareholder in any corporation which is a party to such merger be effected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger.

"3. A pending action or other judicial proceeding to which any corporation that shall be so merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the corporation into which such other corporation shall have been merged may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such other corporation if the merger had not occurred." (Banking Law, sec. 494.)

Issuance of new certificate of stock.

The receiving corporation may require the return of the original certificate of stock held by the stockholders in the merging corporations and may issue new certificates in lieu thereof. (Banking Law, sec. 495.)

(New York - cont'd.)

Dissenting stockholders, rights of.

The laws also contain provisions giving to stockholders of any of the merging corporations who did not vote in favor of the merger, the right to object thereto and demand payment for their shares; in the case of savings and loan association or credit unions, if such stockholders are borrowers, to demand liquidation of their obligations and cancellation of their shares. (Banking Law, sec. 496.)

Consolidation of State bank or trust company with national bank.

Whenever a State bank or trust company "shall have become consolidated" with a national bank it must notify the superintendent of banks of such fact "and shall file with him a copy of its authorization as a national banking association or a copy of the certificate of approval of consolidation, certified by the Comptroller of the Currency." (Banking Law, secs. 137 and 226.)

Legal effect of consolidation.

Upon doing the acts above described, such State bank or trust company "shall thereupon cease to be a corporation under the laws of this state, except that for the term of three years thereafter, its corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and enabling it to close its concerns, and to dispose of and convey its property". Such consolidation does not release any such State bank or trust company from its obligations to pay and discharge all the liabilities created by law or incurred by it, or any tax imposed by the laws of this state in proportion to the time which has elapsed since the next preceding payment therefor, or any assessment,

(New York - cont'd.)

penalty or forfeiture imposed or incurred under the laws of this state, up to the date of its becoming consolidated with a national bank.

At the time when such consolidation becomes effective all the property of the State bank or trust company "including all its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the national bank, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed" by the State bank or trust company. The national bank is a continuation of the entity and identity of the state bank or trust company and "all the rights, obligations and relations of the State bank or trust company to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust, and in, or in respect to, any executorship or trusteeship or other trust or fiduciary function, shall remain unimpaired, and the national bank as of the time of the taking effect of such * * * consolidation shall succeed to all such rights, obligations, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trust or relation in the same manner as if the national bank had itself assumed the trust or relation including the obligations and liabilities connected therewith. If the State

(New York - cont'd.)

bank (or trust company) is acting as administrator, co-administrator, executor, co-executor, trustee or co-trustee, of or in respect to any estate or trust being administered under the laws of this state, such relation, as well as any other or similar fiduciary relations, and all rights, privileges, duties and obligations connected therewith shall remain unimpaired and shall continue into and in said national bank from and as of the time of the taking effect of such * * * consolidation, irrespective of the date when any such relation may have been created or established and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or decedent whose estate is being so administered." Nothing done in connection with the consolidation of a State bank or trust company with a national bank, "shall, in respect to any such executorship, trusteeship or similar fiduciary relation, be deemed to be or to effect, under the laws of this state, a renunciation or revocation of any letters of administration or letters testamentary pertaining to such relation, nor a removal or resignation from any such executorship or trusteeship or other fiduciary relationship, nor shall the same be deemed to be of the same effect as if the executor or trustee or other fiduciary had died or otherwise become incompetent to act". (Banking Law, secs. 137 and 226.)

Superintendent of banks must post names and locations of merging corporations, and dates of such merger.

The superintendent of banks is required to keep in his office a bulletin board accessible to the public upon which must be posted every Friday the names and locations of all corporations that have been merged

(New York - cont'd.)

under any of the provisions above digested and the dates of such merger. (Banking Law, sec. 82 (12.).)

NORTH CAROLINA.

Definition of the word "bank".

The term "bank" when used in the following provisions of the laws of North Carolina "shall be construed to mean any corporation, partnership, firm, or individual receiving, soliciting, or accepting money or its equivalent on deposit as a business; Provided, however, this definition shall not be construed to include building and loan associations, Morris Plan companies, industrial banks or trust companies not receiving money on deposit". (Cons. Stats. of N. C., sec. 216 (a); Banking Law Pamphlet, 1927, sec. 216 (a), p. 3.)

Consolidation or transfer of assets.

The laws of North Carolina provide that "A bank may consolidate with or transfer its assets and liabilities to another bank". (Cons. Stats. of N. C., sec. 217 (k); Banking Law Pamphlet, 1927, sec. 217 (k), p. 7.)

It is further provided that any bank or trust company incorporated under the laws of North Carolina may con-

(North Carolina - cont'd.)

solidate with any national bank under the charter of the latter or under a new charter issued to such consolidated bank upon such terms and conditions as may be lawfully agreed upon, provided the laws of North Carolina governing the consolidation of such banks shall be first complied with as to the consolidation of such bank or trust company. (Laws of 1929, ch. 148, p. 171.)

Proceedings authorizing consolidation or transfer of assets; agreement; filing of.

Before such consolidation or transfer of assets can become effective, each bank involved must file with the commissioner of banks certified copies of all proceedings of its board of directors and stockholders setting forth that two-thirds of the stockholders voted for the consolidation or transfer. The stockholders proceedings must also contain a complete copy of the agreement of consolidation

(North Carolina - cont'd.)

or transfer of assets which was entered into by the banks concerned. (Cons. Stats. of N. C., sec. 217 (k), as amended by Act of April 2, 1931; Banking Law Pamphlet, 1927, sec. 217 (k), p. 7, as amended by Act of April 2, 1931.)

Examination of banks involved; consent of commissioner of banks necessary to consolidation or transfer; notice of consolidation or transfer must be published.

When the stockholders' and directors' proceedings have been filed as above prescribed, the commissioner of banks must make an examination of each bank to determine whether the interest of the depositors, creditors, and stockholders of each bank are protected, and whether such consolidation or transfer is made for legitimate purposes. No consolidation or transfer can be made without the consent of the commissioner of banks and his consent or rejection must be based upon the examination above referred to. Expenses of such examination must be paid by the banks examined. Notice of the consolidation or transfer must be published for four weeks before or after the same is to become effective, at the discretion of the commissioner of banks, in a newspaper published in a city, town, or county in which each of the banks concerned is located. A certified copy of such published notice must be filed with the commissioner of banks. (Cons. Stats. of N. C., sec. 217 (k), as amended by Act of April 2, 1931; Banking Law Pamphlet, 1927, sec. 217 (k), p. 7, as amended by Act of April 2, 1931.)

Rights of creditors not impaired by consolidation or transfer; corporate existence continued for three years.

In case of either transfer or consolidation the rights of creditors

(North Carolina - cont'd.)

are preserved unimpaired, and the respective companies are continued in existence to preserve such rights for a period of three years. (Cons. Stats. of N. C., sec. 217 (k); Banking Law Pamphlet, 1927, sec. 217 (k), p. 7.)

Legal effect of consolidation.

In case of a consolidation, when the agreement for consolidation is made and a certified copy together with a certified copy of its approval by the commissioner of banks are filed with the Secretary of State, the consolidating banks "shall be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created." Directors and other officers named in the agreement, may serve until the first annual meeting for election of officers and directors, the date for which must be named in the agreement. "On filing such agreement, all and singular, the property and rights of every kind of the several companies shall thereby be transferred and vested in such new company, and be as fully its property as they were of the companies parties to the

(North Carolina - cont'd.)

agreement." (Cons. Stats. of N. C., sec. 217 (1), as amended by Act of April 2, 1931; Banking Law Pamphlet, 1927, sec. 217 (1), p. 7, as amended by Act of April 2, 1931.)

A similar provision is made in the case of the consolidation of a State bank or trust company with a national bank under the charter of the latter or under a new charter; and it is expressly provided that the right of succession as trustee, executor or any other fiduciary capacity shall pass to the consolidated institution. (Laws of 1929, ch. 148, p. 171.)

NORTH DAKOTA.

Consolidation or merger of "banking associations".

The laws of North Dakota provide that any two or more State banking associations "may consolidate their capital, assets, and liabilities,

(North Dakota - cont'd.)

or one or more of such associations may be merged into another" in the manner set out below. (Supp. to 1913 Comp. Laws, sec. 5191c1; Banking Law Pamphlet, 1929, sec. 5191c1, p. 52.)

Meaning of terms.

"The term 'consolidation' as used herein shall mean the consolidation of the liabilities, assets and corporate existence of two or more associations into a single association, which shall issue its stock to stockholders in the consolidating associations in return for the assets of the consolidating associations.

"The term 'merger' as used herein shall mean the taking over, or the absorption of the assets of one association by another, and the assumption of the liabilities of the association, or associations, whose assets and liabilities are taken over.

"The term 'old association' where hereinafter used means the associations which are consolidating or merging into the other associations, and the term 'new association' means the association into which the other associations are being consolidated or merged." (Supp. to 1913 Comp. Laws, sec. 5191c2; Banking Law Pamphlet, 1929, sec. 5191c2, p. 52.)

Meeting to act upon consolidation or merger; notice of.

If two or more banking associations desire to consolidate or merge, the directors of each association "shall call a special meeting of the stockholders", the notice of which must state definitely the purpose for which it is called, to act upon the consolidation or merger, or the matters may be acted on at a regular stockholder's meeting. In the latter

(North Dakota - cont'd.)

event, notice that the consolidation or merger will be considered must be given to each stockholder at least ten days prior to the meeting. (Supp. to 1913 Comp. Laws, sec. 5191c3; Banking Law Pamphlet, 1929, sec. 5191c3, p. 52.)

Vote of stockholders.

The stockholders must put the question of the proposed consolidation or merger to a vote and the question so put "shall embody the proposed amount of capital stock of the consolidated or merged corporation"; but such amount may be varied by the State Examiner or court on passing on the consolidation or merger. "The proposal for consolidation or merger shall be deemed lost, unless two-thirds of all the stock shall vote in favor thereof." (Supp. to Comp. Laws of 1913, sec. 5191c4; Banking Law Pamphlet, 1929, sec. 5191c4, p. 52.)

Capital required of new association.

A consolidation can not be made unless the new association "have a capital of at least two-thirds of the aggregate capital of the old associations, but it may have a larger capital than that of the old associations." (Supp. to 1913 Comp. Laws, sec. 5191c5; Banking Law Pamphlet, 1929, sec. 5191c5, p. 52.)

Time of stockholders meeting.

The several stockholders meetings at which the consolidation or merger is acted upon must be held at such times that the result of all of them may be certified to the State Examiner within thirty days from the date of the holding of the first meeting. The result of each meeting,

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within ten days after it is held, must be certified to the State Examiner by the chairman and secretary of the meeting. (Supp. to 1913 Comp. Laws, sec. 5191c6; Banking Law Pamphlet, 1929, sec. 5191c6, p. 53.)

Examination of consolidating associations.

Upon receiving certificates showing favorable action by all of the consolidating associations, "the state Examiner shall cause a thorough examination of the condition of the said associations to be made with a view of determining whether their condition is such that the proposed consolidation or merger would result in a sound and efficient banking association adapted to the needs of the community in which it is proposed to operate." (Supp. to 1913 Comp. Laws, sec. 5191c7; Banking Law Pamphlet, 1929, sec. 5191c7, p. 52.)

Notice of findings; State Examiner may require changes in conditions.

Upon completing his examination, the State examiner must advise each of the associations if he finds that a consolidation or merger is desirable. If the conditions existing are not desirable for the consolidation or merger, the State Examiner shall indicate any changes therein necessary to correct the situation; and he may prescribe a time within which such changes may be made to warrant his approval. (Supp. to 1913 Comp. Laws, sec. 5191c8; Banking Law Pamphlet, 1929, sec. 5191c8, p. 53.)

Appeal may be taken from adverse decision of State Examiner.

If the State examiner reaches a decision adverse to the consolidation or merger, an informal appeal may be made to the Banking Board, "and the Board shall, as speedily as possible, set a time when it will hear any

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reasons that may be advanced why the findings of the State Examiner should be reversed; and upon such hearing, it shall make such order as seems proper in the premises." (Supp. to 1913 Comp. Laws, sec. 5191c8; Banking Law Pamphlet, 1929, sec. 5191c8, p. 53.)

Finding favorable to consolidation or merger, representative of participating associations must meet; schedule of assets; proportion of stock to be accredited to old stockholders.

If the State examiner, or the Banking Board on appeal, finds favorably with reference to the consolidation or merger, each of the participating associations, by its Board of Directors, must appoint one or more representatives to meet with the representatives of the other association. These representatives must determine and make a schedule of the assets of each of the participating associations and must also "schedule all the indebtedness of the old associations, and only such assets shall be retained by the old associations as the State Examiner shall deem not proper assets to be held by the new association". In case of a consolidation, the representatives must agree upon the proportion of the stock in the new association to be accredited to the stockholders of each of the old associations; "but the distribution of such stock among the stockholders of the several old associations shall be by the old associations as hereinafter provided for." (Supp. to 1913 Comp. Laws, sec. 5191c9; Banking Law Pamphlet, 1929, sec. 5191c9, p. 53.)

Schedules and agreement must be put in writing; State examiner may approve or disapprove; appeal from decision of.

The schedules and agreement above referred to must be put in writing and signed in duplicate by the representatives of the old associa-

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tions and are "binding upon them and non-revocable". If the associations cannot agree, no consolidation or merger shall take place. Upon "agreeing and signing the agreement as aforesaid, one of the duplicates shall be delivered to the State Examiner who may either approve or disapprove the same, or make suggestions for the modification thereof as a condition of approval, and he may fix a time within which the conditions shall be met, and likewise agreed to in writing are resubmitted to him. And in this case likewise the association may informally appeal from the decision of the State Examiner to the Banking Board." (Supp. to 1913 Comp. Laws, sec. 5191c10; Banking Law Pamphlet, 1929, sec. 5191c10, pp. 53 and 54.)

Approval of agreement; notice to participating associations.

If the State Examiner, or the Banking Board on appeal, approves the agreement or modified agreement, an endorsement to this effect must be made on the duplicate of the agreement held by the State Examiner, "and each of the associations shall be immediately notified of such approval." (Supp. to 1913 Comp. Laws, sec. 5191c11; Banking Law Pamphlet, 1929, sec. 5191c11, p. 54.)

After notice of approval, petition for decree of consolidation or merger must be filed with district court.

After notice of the above approval has been received by the participating associations, they must "file in the office of the clerk of the district court of the county in which at least one of the associations is doing business, a petition asking for a decree of consolidation or merger". Such petition must set out the "names and location of the new

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association, and shall recite briefly the taking of the several successive steps hereinbefore provided for and a statement of the amount of the assets and indebtedness of each of the old associations to be transferred to and assumed by the new association, the amount of the capital stock, and the amount thereof to be apportioned to the stockholders of each of the old associations and the names of the first board of directors of the new association." (Supp. to 1913 Comp. Laws, sec. 5191c12; Banking Law Pamphlet, 1929, sec. 5191c12, p. 54.)

Notice of filing of petition to be issued by clerk of court; publication of.

When such petition has been filed, the Clerk of the district court must issue a notice which must set out (1) that the petition has been filed in his office, (2) that the effect of the consolidation or merger will be to transfer the principal assets of the petitioning associations to the new association and to create in the latter association a liability to pay all of the debts of the petitioning associations and to establish a novation by the petitioning associations, creditors, and the new association, and (3) that a hearing in the office of the clerk on the petition will be held on a specified date. This notice must be signed by the clerk and attested by the seal of the court and must be published for a certain length of time "in some newspaper qualified to publish legal notices in the county in which such petition is filed." Proof of such publication must be filed with the clerk of the district court. (Supp. to 1913 Comp. Laws, sec. 5191c13; Banking Law Pamphlet, 1929, sec. 5191c13, p. 55.)

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Decree of court permitting consolidation or merger.

If no objection has been made to the petition within twenty days after its last publication, "the court shall at once upon the showing of the default, make its decree permitting the consolidation, or merger, as the case may be." (Supp. to 1913 Comp. Laws, sec. 5191c14; Banking Law Pamphlet, 1929, sec. 5191c14, p. 55.)

Opposition to petition; stay of proceedings, bond; decree.

Any opposition to the petition made by any creditor will be heard by the court and the only cause for denying the petition "shall be that the objecting creditor is in danger of being substantially damaged in his financial rights". If the creditor establishes this fact, the court may order the proceedings to be stayed; but if a bond of indemnity is given to the creditor to the effect that all of his legal claims will be paid by the new association when due "the proceedings shall be considered as though no opposition had been made thereto" and the court shall accordingly enter its decree permitting the consolidation or merger. (Supp. to 1913 Comp. Laws, sec. 5191c15; Banking Law Pamphlet, 1929, sec. 5191c15, p. 55.)

General effect of decree.

"The effect of a decree permitting consolidation, or merger, shall be to bar forever all objections thereto, and to establish a complete novation between the old associations, and creditors, and the new association to the end that from that time henceforth, the old associations are relieved of all liabilitiy to creditors, all such creditors having a valid and legal claim against the new association to the full extent that they had

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a claim against any of the old associations, and the new association is liable for all indebtedness of all the old associations to the same extent that they were liable, and all of the stockholders' liability, as stockholders, in the several old associations are merged into their stockholders' liability as stockholders in the new association." (Supp. to 1913 Comp. Laws, sec. 5191c16; Banking Law Pamphlet, 1929, sec. 5191c16, pp. 55 and 56.)

Conclusiveness of decree.

The decree of the district court is "final and conclusive, not subject to appeal, nor to motion to vacate or set aside, and not subject to be set aside or vacated on motion for a new trial." (Supp. to 1913 Comp. Laws, sec. 5191c17; Banking Law Pamphlet, 1929, sec. 5191c17, p. 56.)

Objections, who may make; dissenting stockholders, rights of.

No stockholder who voted, or refrained from voting, for a consolidation or merger, can object thereto; but any stockholder who voted against such consolidation or merger, at any time prior to the filing of the petition in court, may file objection and appear before the State examiner or Banking Board and show cause why the consolidation or merger should not be allowed, "but the determination of the State Examiner or the Banking Board shall be conclusive of his rights." No action or proceeding in court can be maintained by any person questioning the validity of the consolidation or merger, or to recover anything on account thereof, unless such action or proceeding was commenced prior to the time of entry of the decree of consolidation or merger. The court in which the petition for consolidation or merger is filed or the appropriate federal court has

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"exclusive jurisdiction of such action or proceedings." (Supp. to 1913 Comp. Laws, sec. 5191c18; Banking Law Pamphlet, 1929, sec. 5191c18, p. 56.)

Decree of merger or consolidation, when necessary to do further acts after; contents of decree of consolidation; filing of certified copy of decree; issuance of certificate of authority.

When a decree of merger has been entered, "no further act shall be necessary to be done, except to make the transfers of the assets from the old associations to the association into which they are merged;" but in case of a consolidation, the decree must specify the name and location, and the amount of capital stock of the new association with the proportions in which it is allotted to each of the old associations. The decree must also name the first board of directors, or in case of death or disability of any of such directors, "shall substitute another or others to be nominated by the petitioners."

"A certified copy of such decree" with a fee of five dollars must then be filed in the office of the Secretary of State, "and such new association shall thereupon become a banking association in all things the same as though originally organized under the Banking Laws and the Secretary of State shall thereupon issue to it a certificate of authority, as in the case of the incorporation of other banking associations, which certificate should be delivered to the State Examiner to be in turn delivered by him to the said new association upon its being made to appear to him that all the terms and conditions of the consolidation have been complied with." (Supp. to 1913 Comp. Laws, sec. 5191c19; Banking Law Pamphlet, 1929, sec. 5191c19, p. 57.)

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Election of officers.

As soon as the certificate of authority has been delivered to the directors they must meet and elect officers, and until such election the directors shall supervise and conduct the business of the new association. (Supp. to 1913 Comp. Laws, sec. 5191c20; Banking Law Pamphlet, 1929, sec. 5191c-20, p. 57.)

Consolidation or merger, operation of old corporations must cease; officers and directors to continue; when corporate existence extinguished.

When either a consolidation or merger has been consummated, "the old associations shall cease to operate as banking associations or to transact any business other than to administer any assets that under the terms of the consolidation or merger have not been transferred. They shall not elect any new officers or directors, but the directors and officers holding at the time of the consolidation or merger shall continue and the corporation itself shall remain in existence for a period of one (1) year during which time its remaining assets, if any must be disposed of, and the proceeds distributed among its stockholders, and at the end of one year from the filing of the decree of consolidation or merger, the said old associationsshall cease to exist, unless upon good cause shown, and before the expiration of the said period of one (1) year any of said old associations shall obtain from the court an order extending the time of their existence, which order shall only be granted upon a showing of a substantial reason therefor." (Supp. to 1913 Comp. Laws, sec. 5191c21; Banking Law Pamphlet, 1929, sec. 5191c21, p. 57.)

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Statement as to new stock due to old stockholders; proportionment of.

When a consolidation has been completed, the board of directors of each of the old associations must furnish to the board of directors of the new association a statement of the amount of stock due to each of the stockholders of the old associations and the new association must then issue stock proportioned upon their former holdings to such stockholders. Provision is also made for the issuance of stock to stockholders where the amount to which they are entitled does not consist of even multiples of one hundred dollars. (Supp. to 1913 Comp. Laws, sec. 5191c22; Banking Law Pamphlet, 1929, sec. 5191c22, p. 57.)

Remedial purpose of above provisions; liberal construction required.

"The purpose of the Act is remedial, and it is intended to remedy a well understood condition existing in the banking business of the State of North Dakota, a part of which condition is the need of larger and stronger banking institutions, and the supplying of more efficient banking service, to various communities, and to the end that such conditions may be remedied to the utmost extent possible, this Act shall be in all things liberally construed, for the accomplishment of its ultimate purpose." (Supp. to 1913 Comp. Laws, sec. 5191c23; Banking Law Pamphlet, 1929, sec. 5191c23, p. 58.)

Additional authorization for consolidation or merger of banks.

Additional provisions covering the consolidation or merger of banks, which were enacted in 1927, provide that "any two or more banks" with the approval of the State Examiner, may consolidate or merge under the charter of either existing bank. The merger or consolidation may be

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on such terms as may be agreed upon by the majority of the board of directors of each bank, and must be "ratified and confirmed" at a special meeting by two-thirds of the stockholders of each bank. Notice of such meeting must be given to the stockholders "at least ten days prior to said meeting"; but the stockholders "may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing." (S. L. 1927, ch. 93; Banking Law Pamphlet, 1929, p. 58.)

Capital stock required of consolidated institution.

The capital stock of the "consolidated bank shall not be less than that required under existing law for the organization of a bank of the class of the largest consolidating bank." (S. L. 1927, ch. 93; Banking Law Pamphlet, 1929, p. 58.)

Report of assets and liabilities.

"The assets and liabilities of the consolidated bank shall be reported by the surviving bank." (S. L. 1927, ch. 93; Banking Law Pamphlet, 1929, p. 58.)

Legal effect of consolidation or merger under chapter 93 of laws of 1927.

"All the rights, franchises, and interest of said bank so consolidated in and to every species of property, real, personal and mixed and choses in action thereto belonging, shall be deemed to be transferred to and vested in such bank into which it is consolidated without other instrument of transfer, and the said consolidated bank shall hold and enjoy the same and all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed by the bank so consolidated therewith, provided, however, that the merging bank shall

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transfer to the surviving bank all of its real property by good and sufficient deed of conveyance and for that and other purposes shall remain a body corporate for a period of at least three years after merger and shall not then dissolve without the approval of the State Examiner." (S. L. 1927, ch. 93; Banking Law Pamphlet, 1929, p. 58.)

Additional provisions with reference to legal effect of consolidation or merger of "corporations, including banks and trust companies."

Additional legislation enacted in 1927 provides further with reference to the legal effect of a consolidation or merger that "Whenever any two or more corporations, including banks and trust companies, organized under the Laws of this State have heretofore consolidated, merged or otherwise transferred, or shall hereafter consolidate, merge or otherwise transfer, its business to another corporation, including bank or trust company, organized, or to be organized, under the laws of this State, the consolidated or new corporation, by whatever name it may assume, or be known, shall, unless otherwise provided in the agreement or order of merger or consolidation, be a continuation of the entities of each and all of the corporations, including banks and trust companies, so consolidated, merged or otherwise transferred to such consolidated or new corporation for all purposes whatsoever, and all of the rights, franchises and interests of said corporations, including banks and trust companies, so consolidated, merged or transferred in and to every species of property, real, personal and mixed and choses in action thereto belonging shall be deemed to be so transferred to and vested in the corporation which acquires the same on such consolidation, merger or other transfer without any assignment, deed

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or other transfer, and such corporation shall hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as was held and enjoyed by the corporation, or corporations, including banks and trust companies, so consolidated, merged or otherwise transferred, including the holding and performing by any bank or trust company of any and all trusts and fiduciary relations whatsoever as to or for which either or any of the banks or trust companies so consolidating, merging or otherwise transferring may have been, or may be appointed, nominated or designated by any will, agreement, conveyance, or otherwise, whether or not such trust or fiduciary relation shall have come into being, or shall have taken effect at the time of such consolidation, merger or other transfer." (S. L. 1927, ch. 108; Banking Law Pamphlet, 1929, pp. 58 and 59.)

OHIO.

Definition of word "bank".

The term "bank" when used in the following provisions of the laws of Ohio includes commercial banks, savings banks and trust companies. (General Code, sec. 710-2; Banking Law Pamphlet, 1928, sec. 710-2, p. 5.)

Consolidation or transfer of assets.

The laws of Ohio provide that "A bank may consolidate with or transfer its assets and liabilities to another bank". (General Code, sec. 710-86; Banking Law Pamphlet, 1928, sec. 710-86, p. 33.)

Proceedings authorizing consolidation or transfer of assets; agreement; filing of.

Before a consolidation or transfer of assets can become effective,

(Ohio - cont'd.)

each corporation concerned must file with the superintendent of banks, "certified copies of all proceedings had by its directors and stockholders which such stockholders' proceedings shall set forth that holders of at least two-thirds of the stock, voted in the affirmative on the proposition of consolidation or transfer." The stockholders' proceedings must also contain a complete copy of the agreement for consolidation or transfer of assets which was entered into by the corporations involved. (General Code, sec. 710-86; Banking Law Pamphlet, 1928, sec. 710-86, p. 33.)

Consent of commissioner of banks necessary to consolidation or transfer; appeal from adverse decision of; examination of corporations involved; publication of notice of consolidation or transfer.

When the stockholders' and directors' proceedings have been filed as above prescribed, the superintendent of banks must make an examination of each corporation "to determine whether the interests of the depositors and creditors and stockholders of each bank are protected and that such consolidation or transfer is made for legitimate purposes." No consolidation or transfer can be made without the consent of the superintendent of banks and his consent or rejection must be based upon the examination above referred to. If he refuses to give his consent, an appeal may be taken in the manner as is provided in the case of a refusal by the superintendent to certify that a new bank may commence business. Expenses of such examination must be paid by the corporations examined, and notice of the consolidation or merger "shall be published for four weeks, before or after the same is to become effective, at the discretion of the superintendent of banks, in a newspaper published in a city, village or county, in which each of such banks is located, and a certified copy thereof shall

(Ohio - cont'd.)

be filed with the superintendent of banks." (General Code, sec. 710-86; Banking Law Pamphlet, 1928, sec. 710-86, p. 33.)

Rights of creditors.

"In case of either transfer or consolidation, the rights of creditors shall be preserved unimpaired and the respective companies deemed to be in existence, to preserve such rights." (General Code, sec. 710-87; Banking Law Pamphlet, 1928, sec. 710-87, p. 33.)

Legal effect of consolidation.

"In case of consolidation, when the agreement of consolidation is made and a duly certified copy thereof is filed in the office of the secretary of state, together with a certified copy of the approval of the superintendent of banks to such consolidation, the banks, parties thereto, shall be held to be one company possessed of the rights, privileges, powers and franchises of the several companies, but subject to all provisions of law relating to the different departments of its business. The directors and other officers named in the agreement of consolidation shall serve until the first annual election, the date for which shall be named in the agreement. On filing such agreement all and singular the property and rights of every kind of the several companies, including the exclusive right in and to the corporate name of each of the banks parties to such agreement shall thereby be transferred to and vested in such new company, and be as fully its property as they were of the companies parties to such agreement. The secretary of state shall not file or record any articles of incorporation of any company organized to do the business of a bank, a building and loan association, or a mortgage or investment company, within the county within which said consolidated bank is situated, if such name,

(Ohio - cont'd.)

or the distinguishing part thereof, is that of any bank party to such agreement, or so similar thereto as to be likely to mislead the public, unless the written consent of the consolidated bank, signed by its president and secretary, be filed with such articles." (General Code, sec. 710-88; Banking Law Pamphlet, 1928, sec. 710-88, pp. 33, and 34.)

OKLAHOMA.

No provisions covering consolidation, merger, etc.

The laws of Oklahoma do not contain any provisions having specific reference to the consolidation, merger, etc., of banks and trust companies.

OREGON.

Consolidation of bank or trust company: transfer of assets and liabilities including trusts and fiduciary business.

The laws of Oregon provide that if two-thirds of its stockholders vote to do so, "any bank or trust company may consolidate with any other bank or trust company doing business under the laws of this state or under the laws of the United States". The written consent of the superintendent of banks is also necessary to such consolidation and it must be "upon such terms and conditions as he shall require and not otherwise". Any such bank or trust company

(Oregon - cont'd.)

may transfer its assets and liabilities, including its trusts and fiduciary business, to the proposed successor corporation; but if any trust or fiduciary business is transferred, the latter corporation must have at the time of the transfer authority from the superintendent of banks to do a trust business. When the superintendent is satisfied that the consolidation "has been completed and is effective he shall furnish the successor corporation a certificate bearing the seal of the state banking department to the effect that such consolidation has taken place and is effective". Provision is made for the recordation of this certificate and it "shall be prima facie evidence that such consolidation has been made and is effective". (Oregon Code, 1930, sec. 22-1703, as amended by General Laws, 1931, ch. 278, sec. 25, p. 466.)

The Oregon laws also provide that any bank or trust company in the process of voluntary liquidation may sell or transfer its deposit liabilities or its trust and fiduciary business to some other bank or trust company by a resolution of its board of directors authorizing such sale or transfer, and surrender its certificate of authority to the superintendent of banks; but no such sale or transfer can be made without first having obtained the written approval and consent of the superintendent of banks, and then only upon such terms and conditions as he shall require. The purchasing corporation to which any trust or fiduciary business is transferred must have at the time of such transfer authority from the superintendent of banks

(Oregon - cont'd.)

to do a trust business. When the superintendent is satisfied that the sale or transfer has been completed and is effective, "he shall furnish the purchasing corporation with a certificate bearing the seal of the state banking department to the effect that such sale or transfer has taken place and is effective". Provision is made for the recordation of this certificate and it "shall be prima facie evidence that such sale or transfer has been made and is effective". (Oregon Code, 1930, sec. 22-1702, as amended by General Laws, 1931, ch. 278, sec. 24, p. 465.)

Legal effect of sale of assets or consolidation.

If any bank or trust company sells all or any of its assets to another bank or trust company which takes over and assumes its deposit liabilities, "such corporation may not thereafter engage in the banking or trust business and shall amend its articles of incorporation by eliminating therefrom the power to engage in a banking and/or trust business or shall be and is dissolved, except for the purpose of winding up its affairs, and shall not thereafter be reinstated and shall surrender its charter. If any bank or trust company shall consolidate with another bank or trust company one of the corporations shall be dissolved, except for the purpose of winding up its affairs, and shall not thereafter be reinstated and shall surrender its charter." (General Laws of 1925, ch. 207, sec. 178, as amended by General Laws of 1929, ch. 380, sec. 40(b), p. 483.)

PENNSYLVANIA.

Merger of State banks and trust companies.

The general corporation laws of Pennsylvania provide that any State corporation may

(Pennsylvania - cont'd.)

"merge its corporate rights, franchises, powers, and privileges with and into those of any other corporation or corporations transacting the same or a similar line of business, so that by virtue of this act such corporations may consolidate, and so that all the property, rights, franchises, and privileges then by law vested in either of such corporations, so merged, shall be transferred to and vested in the corporation into which such merger shall be made." (Act of May 3, 1909, P. L. 408, sec. 1; Banking Laws, 1930, sec. 496, p. 269.)

Procedure for merger; agreement of directors, conditions and contents of; approval of stockholders necessary to make effective.

The directors of each corporation are required to enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of such corporations. The agreement must prescribe the terms and conditions of the merger or consolidation, the mode of carrying it into effect, the name of the new corporation, the number, names and residences of its directors and other officers, who shall be the first directors and officers, the number and amount or par value of shares of the capital stock, and the manner of converting the capital stock of each of such corporations into the stock of the new corporation. The agreement must also set out how and when directors and officers shall be chosen, with such other details as shall be deemed necessary to perfect the consolidation and merger; but the agreement does not become effective unless it is approved by the stockholders of such corporations, in the manner hereinafter set forth. (Act of May 3, 1909, P. L. 408, sec. 2; Banking Laws, 1930, sec. 497, pp. 269 and 270.)

(Pennsylvania - cont'd.)

Submission of agreement to stockholders; when deemed to be act of consolidation.

The agreement must be submitted at a special, or any annual, meeting of the stockholders of each of the corporations involved, and advance notice of the time, place and object of such meeting must be given in certain designated newspapers. If a majority of the entire stock of each corporation votes in favor of the agreement, merger and consolidation, then that fact must be certified under corporate seal by the secretary of each corporation. These certificates, together with the agreement, or a copy thereof, must be filed in the office of the Secretary of the Commonwealth, who shall forthwith present the same to the Governor for his approval. When approved by the Governor such agreement "shall be deemed and taken to be the act of consolidation of said corporation." (Act of May 3, 1909, P. L. 408, sec. 2; Banking Laws, 1930, sec. 498, p. 270.)

Certified copy of agreement and secretary's certificate as evidence of merger.

A certified copy of the certificate of the secretary of each of the consolidating corporations that the directors' agreement, merger and consolidation has been approved as aforesaid, and the agreement itself, or a copy thereof, filed in the office of the Secretary of the State, is evidence of the lawful holding and action of such stockholders' meetings, and of the merger and consolidation of the corporations. (Act of May 3, 1909, P. L. 408, sec. 4; Banking Laws, 1930, sec. 500, p. 272.)

Legal effect of merger; issue of "new letters patent"; payment of bonus.

Upon the filing of the papers as above described "and upon the

(Pennsylvania - cont'd.)

issuing of new letters patent thereon by the Governor, the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges, and franchises theretofore vested in each of them, and all the estate and property, real and personal, and rights of action of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation without any further act or deed: Provided, That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, limited in lien to the property affected by such liens at the time of the creation of the same, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts not of record, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it." Such merger is not complete, however, and no business of any kind may be transacted until the consolidated corporation has obtained from the Governor new letters patent and has paid to the State Treasurer a certain prescribed bonus upon its capital stock, in excess of the amount of the capital stock of the consolidating corporations. New letters patent can not be issued until each of the consolidating corporations has filed with the Secretary of the Commonwealth a certificate from the Department of Revenue, setting forth that all reports required by the Department of Revenue have been duly filed, and that all State taxes due have been paid, up to and including

(Pennsylvania - cont'd.)

the date of the proposed merger. (Act of May 3, 1909, P. L. 408, sec. 3, as amended by Act of April 29, 1915, P. L. 205; Banking Laws, 1930, sec. 499, pp. 271 and 272.)

Dissenting stockholders; rights of.

The laws of Pennsylvania also contain detailed provisions granting to stockholders in any of the consolidating corporations, who have voted against the consolidation and who "shall be dissatisfied with or object to such consolidation", the right within a certain prescribed time and upon compliance with a certain prescribed procedure, to be paid for the stock held by them. (Act of May 3, 1909, P. L. 408, sec. 5; Banking Laws, 1930, sec. 501, p. 273.)

Trust estate and property specifically transferred to and vested in consolidated corporation; obligations, duties and liabilities assumed; substitution of trustees.

Whenever a State bank exercising trust powers, or a trust company, merges or consolidates with another such bank or trust company "all the estate and property, real and personal, held by either of such merging corporations in any trust or fiduciary capacity shall be deemed and taken to be transferred to and vested in the consolidated corporation without any further act or deed or any order or decree of any court or other tribunal, and the consolidated corporation shall have and hold the same as fully as the same was possessed and held by the constituent corporations from which it was, by operation of the provisions of this act, transferred; and said consolidated corporation shall succeed to all the relations, obligations, and liabilities, and shall execute and perform all

(Pennsylvania - cont'd.)

the trusts and duties devolving upon it in the same manner as though it had itself assumed the relation or trust". (Act of May 9, 1923, P. L. 174, sec. 1; Banking Laws, 1930, sec. 502, p. 274.) If within thirty days after notice to any person or corporation interested in any trust involved in the consolidation, such person or corporation files a written objection with the consolidated corporation and applies to the court having jurisdiction of the trust estate for the appointment of a substituted trustee or other fiduciary, such court may appoint another trustee or fiduciary and may "order said consolidated corporation forthwith to file an account of such trust estate and to pay over and transfer the assets

(Pennsylvania - cont'd.)

and property thereof to the substituted trustee or fiduciary so appointed." (Act of May 9, 1923, P. L. 174, sec. 1; Banking Laws, 1930, sec. 503, p. 275.)

Succession of consolidated corporation to appointments of consolidating corporations.

In all cases where a State bank or trust company or a national bank located in Pennsylvania "has been heretofore, or shall hereafter be, named or appointed executor, guardian, trustee, or to any other fiduciary capacity, by or in any will, deed or other instrument, such nomination or appointment shall not be deemed to have lapsed by reason of the merger or consolidation of such company with another trust company or banking company, incorporated under any general or special law of this Commonwealth, or under any law of the United States, and located in this Commonwealth, where such merged or consolidated company is possessed of fiduciary powers, but such merged or consolidated company shall be entitled to act in the same fiduciary capacity under such instrument as the constituent company could have acted if no such merger or consolidation had been effected." (Act of April 26, 1929, P. L. 839, No. 365; Banking Laws, 1930, sec. 505, p. 276.)

Validation of exercise of fiduciary powers by consolidated corporation.

Wherever a State trust company or banking company, possessed of trust powers, or a national banking company located in Pennsylvania, formed by a merger or consolidation of two or more trust companies, or State banks or national banks, or both, "has heretofore been granted letters testamentary, or has heretofore assumed any fiduciary relationship, and

(Pennsylvania - cont'd.

has heretofore performed any acts pursuant thereto, under the terms of any instrument naming or appointing one of such constituent companies to any fiduciary capacity, such grant of letters, and all relationships of any fiduciary nature heretofore assumed, and all acts heretofore performed pursuant thereto by such merged or consolidated company, shall be taken to be as valid and effectual for all purposes as if such letters had been granted to, and such relationships had been assumed and acts performed by, the constituent company." (Act of April 26, 1929, P. L. 839, No. 366; Banking Laws, 1930, sec. 504, p. 275.)

Merger of national bank with State bank or trust company; definition of term "State bank".

The laws of Pennsylvania provide that the term "State Bank" as

(Pennsylvania - cont'd.)

used in the following provisions, "shall mean a bank, trust company, or bank and trust company, organized under the laws of this Commonwealth." (Act of April 16, 1929, P. L. 522, sec. 1; Banking Laws, 1930, sec. 506, p. 277.)

Authority for merger of national bank with State bank or trust company.

Any national bank located in the State of Pennsylvania "may be merged and consolidated with any state bank, under the charter of such state bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of the national banking association and of the state bank to be merged and consolidated". (Act of April 16, 1929, P. L. 522, sec. 2; Banking Laws, 1930, sec. 507, p. 278.)

Confirmation of agreement by stockholders; notice of meeting.

Before the directors' agreement for merger and consolidation becomes effective, it must be ratified and confirmed by two-thirds of the stockholders of each of the merging corporations at a meeting called by the directors, after publishing notice of the time, place and object of the meeting for two weeks in certain designated newspapers. A copy of such notice must also be sent to each shareholder at least two weeks prior to the day fixed for such meeting. Where notice of such meeting is waived in writing by all of the stockholders, the advertisements and personal notices above provided for are not required. (Act of April 16, 1929, P. L. 522, sec. 3; Banking Laws, 1930; sec. 508, p. 278.)

Capital stock of resulting corporation.

"The capital stock of the merged and consolidated state bank

(Pennsylvania - cont'd.)

shall not be less than that required for such institutions under the laws of the Commonwealth." (Act of April 16, 1929, P. L. 522, sec. 4; Banking Laws, 1930, sec. 509, p. 279.)

Compliance with laws of United States; approval of merger agreement by Secretary of Banking.

The merger and consolidation must not be in contravention of the laws of the United States and does not become effective until the national bank has fully complied with the laws of the United States relating to the merger of national banks with State banks or providing for their liquidation or the shares thereof, "nor until the agreement entered into by the boards of directors of the institutions so merging and consolidating and ratified by the shareholders as before provided has been submitted to and approved by the Secretary of Banking". (Act of April 16, 1929, P. L. 522, sec. 5; Banking Laws, 1930, sec. 510, p. 279.)

Dissenting shareholders, rights of.

After the completion of the merger, any shareholder of the merging corporations "who has not voted for such merger and consolidation" may give notice within a certain prescribed time that he dissents from the merger and is then entitled to receive the value of the shares held by him. Detailed provision is also made for the appraisal, payment and disposition of the shares held by such dissenting stockholder. (Act of April 16, 1929, P. L. 522, sec. 6; Banking Laws, 1930, secs. 511 and 512, pp. 279 and 280.)

Legal effect of merger.

"All the rights, franchises, and interests of such national banking association, so merged and consolidated with a state bank, in and

(Pennsylvania - cont'd.)

to every species of property, real, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such state bank into which it was merged and consolidated, without any deed or other transfer; and the said merged and consolidated state bank shall hold and enjoy the same, and all rights or property, franchises and interests, including the right of succession as trustee, executor or in any tother fiduciary capacity, if qualified by its charter under the laws of this Commonwealth, in the same manner and to the same extent as was held and enjoyed by such national banking association". (Act of April 16, 1929, P.L. 522, sec. 7; Banking Laws, 1930, sec. 513, p. 280.)

Sale, assignment, etc., of franchises and property by one trust company to another.

The laws of this State also contain what is known as the "Short Merger Act". This act makes it lawful, among other things, for one trust company to sell, assign, dispose of and convey its franchises and property to another trust company, the pertinent provisions providing as follows:

> "Any corporation created under the provisions of this act (the creation of banks not being provided for thereunder), and any corporation of the classes named in the second section hereof, (trust companies, i. e., title insurance companies which have accepted the provisions of subsequent supplementary acts giving them trust powers), that is now in existence by virtue of any law of this Commonwealth, may reduce its capital stock or alter and change the par value of the shares thereof,

(Pennsylvania - cont'd.)

by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of this act; and it shall be lawful for any corporation in the same manner to sell, assign, dispose of and convey to any corporation created under or accepting the provisions of this act, its franchises, and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: * * *"(Act of April 29, 1874, P.L. 73, sec. 23, as amended by Act of April 17, 1876, P. L. 30, sec. 5, and Act of June 2, 1915, P.L. 724, No. 333; Banking Laws, 1930, sec. 272, p. 153.)

RHODE ISLAND.

Sale, lease or exchange of assets; no provisions covering consolidation or merger.

The laws of Rhode Island do not contain any provisions having specific reference to the consolidation or merger of banks or trust companies. The laws do provide that "Every bank, savings bank, and trust company * * * shall have all the powers, rights, and privileges, and be subject to all the duties, restrictions and liabilities, set forth in chapter two hundred and forty-eight so far only as is not repugnant to or inconsistent with the provisions of this title." (General Laws of 1923, ch. 271, sec. 1.); and chapter 248, (Section 55), as amended by P.L. 1927, ch. 1008, empowers a corporation to sell, lease or exchange all or substantially all of its assets and property, including good will "upon such terms and conditions as

(Rhode Island - cont'd.)

it deems expedient" if the holders of two-thirds of each class of its capital stock outstanding vote therefor, unless a higher propo r tion of affirmative votes is required by the articles of association. Section 56 of the same chapter outlines the procedure as to dissenting stockholders in such a case.

SOUTH CAROLINA.

Consolidation of State banks and trust companies with national banks and other State banks and trust companies.

With specific reference to banks and trust companies, the State of South Carolina, in an act approved April 7, 1930, provides that any State bank or trust company "may be merged or consolidated with any national banking association or associations under the charter of such national banking association or under a new charter issued as may be lawfully agreed upon," or such bank or trust company "may be merged with or consolidated"

(South Carolina - cont'd.)

with any other State bank or trust company, "provided that the laws of South Carolina governing the consolidation of State banks and trust companies shall first be complied with as to the consolidation of such banks or trust companies." (Act approved April 7, 1930, sec. 1.) The laws further provide that "All acts or parts of acts in conflict with this act are hereby repealed." (Act approved April 7, 1930, sec. 2.)

General legal effect of consolidation of banks and trust companies under provisions of act approved April 7, 1930.

When a consolidation under the provisions of the act approved April 7, 1930, "shall have been effected and approved as provided by law, all the right, franchises and interests of such bank or trust company so consolidated with the national banking association or national banking associations, or state bank or trust company, in and to every species of property, real, personal, and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such national banking association, or in such state bank or trust company into which it is consolidated, without any deed or other transfer, and the said consolidated national banking association or consolidated state bank or trust company shall hold and enjoy the same and all rights of property, franchises, and interests, or in any other fiduciary capacity in the same manner, and to the same extent, as was held and enjoyed by such bank or trust company so consolidated. In case of such consolidation the rights of creditors of such bank or trust company shall be preserved unimpaired and all lawful debts and liabilities of such bank or trust company shall be deemed to have been assumed by such consolidated national banking

(South Carolina - cont'd.)

association and such consolidated state bank or trust company." (Act approved April 7, 1930, sec. 1.)

Legal effect of merger or consolidation of trust companies on trust powers and property.

"When any trust company organized under the laws of this State shall have been appointed executor of the last will of any deceased person, or administrator, with or without the will annexed, of the estate of any deceased person, or as guardian, trustee, receiver, assignee, or in any other fiduciary capacity, if such trust company has heretofore merged or consolidated with or shall hereafter merge or consolidate with any other trust company organized under the laws of this State, then, at the option of said first-mentioned company and upon the filing by it with the court having jurisdiction of the estate being administered, of a certificate of such merger or consolidation, together with a statement that such other trust company is to thereafter administer the estate held by it and an acceptance by said latter trust company of the trust to be administered, such certificate, statement and acceptance to be executed by the president or vice-president of said respective companies and to have affixed thereto the corporate seals of said respective companies, attested by the secretary thereof, and further upon the approval of said court, all the rights, privileges, title and interest in and to all property of whatever kind, whether real, personal or mixed, and things in action, belonging to said trust estate, and every right, privilege or asset of conceivable value or benefit then existing which would inure to said estate under and unmerged or unconsolidated existence of said first mentioned company, shall be fully and finally and without right or reversion trans-

(South Carolina - cont'd.)

ferred to and vested in the corporation into which it shall have been merged or with which it shall have been consolidated, without further act or deed, and such last-mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the corporation from which it was, by operation of the provisions of this section, transferred, and said corporation shall succeed to all the relations, obligations and liabilities, and shall execute and perform all the trusts and obligations devolving upon it, in the same manner as though it had itself assumed the relation or trust." (Code of 1922, ch. XI, sec. 10(6); Banking Law Pamphlet, 1928, sec. 10(6), p. 118.)

Certain provisions of act covering consolidation of corporations in general also apparently applicable.

Other than the provisions set forth above, the laws of South Carolina contain no further provisions specifically covering the merger of consolidation of banks and trust companies. These laws, however, contain rather elaborate provisions covering the consolidation of corporations in general (Act approved April 14, 1925); and because the above digested provisions of the act approved April 7, 1930, require consolidating banks and trust companies to comply with the "laws of South Carolina governing the consolidation of State banks and trust companies", and, particularly, because none of the provisions above digested prescribes the machinery for effecting a consolidation or covers the matter of a consolidation in as elaborate a manner as the act approved April 14, 1925, it would seem that the provisions of the latter act are the "laws of South Carolina" referred to in the act approved April 7, 1930, and that, therefore, such

(South Carolina - cont'd.)

provisions are also applicable, wherever they may be made so, to the consolidation of banks and trust companies.

The act approved April 14, 1925, except in some few irrelevant cases, specifically authorizes any two or more corporations to "consolidate into a single corporation which may be either one of said consolidated corporations or a new corporation." (Section 1.) This provision and other provisions prescribing in detail the procedure for effecting a consolidation and defining the powers, duties, rights and liabilities of the consolidated corporation are digested below.

Agreement for consolidation of corporations in general.

All or a majority of the directors of the corporations desiring to consolidate "may enter into an agreement signed by them under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect and the manner and basis of converting the shares of each of the old corporations into the new corporation, with such other details and provisions as are deemed necessary or desirable." (Act approved April 14, 1925, No. 169, sec. 1.)

Agreement must be submitted to stockholders; notice of meeting; approval or rejection of agreement; certification of agreement to Secretary of State; recording of; charter fees.

The consolidation agreement must be submitted to a special meeting of the stockholders of each of the corporations involved, and advance notice of the time, place and object of such meeting must be given by publication at least once a week for four consecutive weeks in one or

(South Carolina - cont'd.)

more newspapers published in the county in which each corporation either has its principal office or conducts its business. A copy of such notice must also be mailed to each stockholder at least twenty days prior to the meeting. At such meeting, if a majority of the stockholders of each corporation vote to adopt the agreement, that fact must be certified under corporate seal on the agreement by the secretary of each corporation. Such certified agreement must then be signed under corporate seal by the president or vice-president and secretary or assistant secretary of each of the corporations and acknowledged under oath by such president or vice-president" to be the act, deed, and agreement of each of said corporations, respectively, and the agreement so certified and acknowledged shall be filed in the office of the Secretary of State and shall thereupon be taken and deemed to be the agreement and act of consolidation of the said corporations". A copy of the agreement and act of consolidation, certified by the Secretary of State under the seal of his office, must also be recorded with the Clerk of the Court of the county in which the principal office of the consolidated corporation is or is to be established, and with the Clerks of the Courts of the counties where the original charters of the consolidating corporations have been recorded. If any of the corporations have been created by a special act of the General Assembly the agreement must be recorded in the county where such corporation had its principal office. Such record, or a certified copy thereof is "evidence of the existence of the corporation created by the said agreement and of the observance and performance of all antecedent acts and conditions necessary to the creation thereof: Provided, That the Secretary of State shall collect charter fees as now fixed by law for granting new charters on their having the total

(South Carolina - cont'd.)

capital stock of the consolidated corporation". (Act approved April 14, 1925, No. 169, sec. 1.)

Legal effect of consolidation under provisions of act approved April 14, 1925.

When the agreement is signed, acknowledged, filed and recorded, "the separate existence of the constituent corporations shall cease, and the consolidating corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated, and all and single, the rights, privileges, powers and franchises of each of said corporations: Provided, however, where there is a right enjoyed by one corporation and a restriction as to the same matter enjoined on the other or either of the others, the latter shall prevail; and all property, real, personal and mixed, and all debts due on whatever act, and all other things, action or belonging to each of such corporations shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this State, vested in either of such corporations, shall not revert or be in any way impaired by reason of this Act; provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, limited in lien to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective former corporations shall thenceforth

(South Carolina - cont'd.)

attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it." (Act approved April 14, 1925, No. 169, sec. 2.)

Dissenting stockholders, rights of.

If any stockholder in the consolidating corporation, entitled to vote, votes against the consolidation, or if any stockholder not entitled to vote, at or prior to the taking of the vote, objects thereto in writing, and, within twenty days after the consolidation agreement has been filed and recorded, demands payment of the stock held by him, the consolidated corporation "shall within thirty days thereafter pay to him the value of the stock at the time of the consolidation". Detailed provision is made for

(South Carolina - cont'd.)

the appointment of appraisers to appraise the value of the stock in case of disagreement as to its value. Stockholders who do not vote against or object to the consolidation as set forth above, cease to be stockholders in the constituent corporations and are deemed to have assented to the consolidation. (Act approved April 14, 1925, No. 169, sec. 3.)

Actions pending.

"Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place or the new corporation may be substituted in its place." (Act approved April 14, 1925, No. 169, sec. 4.)

Certain liabilities and rights not affected by consolidation.

The liability of corporations, "or of the stockholders or officers thereof, or the rights or remedies of the creditors thereof or of persons doing or transacting business therewith, shall not in any way be impaired or diminished by the consolidation of two or more such corporations under the provisions thereof." (Act approved April 14, 1925, No. 169, sec. 5.)

Bond and stock issues by consolidated corporations.

When two or more corporations are consolidated, the consolidated corporation, subject to State laws, may issue bonds or other obligations with or without coupons or interest certificates attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such consolidation. To secure the payment of such bonds and obligations it may mortgage the corporate franchise, rights, privileges and property. The consolidated corporation may also issue capital stock

(South Carolina - cont'd.)

to such amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment in whole or in part for the original shares in the manner and on the terms specified in the agreement of consolidation. (Act approved April 14, 1925, No. 169, sec. 6.)

Matters prohibited by certain sections of laws not validated.

"No consolidation or merger under the terms of this Act shall render valid any matter or thing declared unlawful under any provisions of Article XIV, Section 3530-3554, Volume 3, Code of Laws of South Carolina, 1922, relating to Trusts, Pools and Monopolies, or any amendment thereof now effective or hereafter adopted, and no consolidation or merger under the provisions of this Act shall be deemed to be lawfully accomplished if in contravention of any provision of Article XIV, Sections 3530-3554, Vol. 3, Code of Laws of South Carolina, 1922, relating to Trusts, Pools and Monopolies, or any amendment thereof now effective or hereafter adopted, every provision of which shall remain in full force and effect after the passage of this Act and shall in no respect be impaired thereby". (Act approved April 14, 1925, No. 169, sec. 6a.)

SOUTH DAKOTA.

Consolidation of banks.

The laws of South Dakota provide that a State bank "which is in good faith liquidating its business, may for such purpose consolidate with some other bank in the same city or town by transferring its resources and liabilities to such bank with which it is in process of consolidation, but no consolidation shall be made without due notice in writing of such

(South Dakota - cont'd.)

intention, to the superintendent of banks, and not then until a thorough examination has been made by him and his consent in writing obtained; provided, that in no case may any bank consolidate for the purpose of defrauding or delaying any of its creditors." (Laws of 1909, ch. 222, art. 2, sec. 24, as amended by Laws of 1915, ch. 102, art. 2, sec. 27; South Dakota Rev. Code of 1919, sec. 8974; Banking Law Pamphlet, 1927, sec. 8974, p. 24.)

Consolidation of trust companies.

Any trust company "which is in good faith liquidating its business for the purpose of consolidating with some other like corporation may transfer its assets and liabilities to the corporation with which it is in the process of consolidation; but no such consolidation of corporations shall be made without the consent of the superintendent of banks, and not then to delay or defraud any of the creditors of either corporation." (Laws of 1911, ch. 255; South Dakota Rev. Code of 1919, sec. 9061; Banking Law Pamphlet, 1927, sec. 9061, p. 70.)

TENNESSEE.

Definition of word "bank".

The laws of Tennessee provide that the word "bank" as used in the following provisions, "shall signify, mean, cover and include every trust company, loan company, mortgage security company, safe deposit company, receiving money on deposit, and every individual, firm, corporation, association or company doing a banking, loan or discount business and receiving money on deposit and performing functions of a bank."

(Tennessee - cont'd.)

(Public Acts of 1913, ch. 20, sec. 44; Banking Law Pamphlet, with amendments to and including 1923, sec. 44, p. 28.)

Consolidation or merger of banks.

No State bank "shall have authority or power to * * * consolidate or merge with any other bank, except in pursuance of the provisions of this (1913 bank) act; * * *." (Public Acts of 1913, ch. 20, sec. 23; Banking Law Pamphlet, with amendments to and including 1923, sec. 23, p. 21.)

Procedure to merge or consolidate; application, examination, issuance of certificate by superintendent of banks, filing of.

A written application setting out all of the facts of the merger or consolidation must be filed with the superintendent of banks by the bank desiring to merge or consolidate "and before such * * * merger or consolidation becomes effective, the Superintendent of Banks must examine into the proceedings to * * * the consolidation or merger, and must issue his certificate in triplicate certifying that the * * * consolidation or merger has been in pursuance of the requirements of law." One of the certificates must be kept on file in the office of the Superintendent, one must be filed for record in the office of the Register of Deeds, of the County in which is located the bank's principal place of business, and one must be filed with the bank. The superintendent "shall issue his certificate, if the requirements of the law have been complied with * * * for such consolidation or merger, but shall refuse to issue his certificate unless the requirements of the law have been complied with; provided, however, that the capital stock of no bank shall be decreased below the minimum amount required by law for the incorporation of banks in this State." (Public Acts of 1913, ch. 20, sec. 23; Banking Law Pamphlet, with

(Tennessee - cont'd.)

with amendments to and including 1923, sec. 23, p. 21.)

TEXAS.

Purchase of assets of another bank.

The laws of Texas do not contain any provisions having specific reference to the consolidation or merger of banks or trust companies; but they do provide that "Any State bank or bank and trust company which purchases the assets of any other bank shall, before the purchase of the assets of such other bank, increase its capital to such an amount that the same will have the ratio to the total deposits of the bank, the assets of which it has purchased, as defined and required in Article 506". (Acts of 1909, 2nd C. S.; Banking Law Pamphlet, 1929, Art. 513, p. 44.)

UTAH.

Consolidation of banks.

The laws of this state specifically covering banks and trust companies do not contain any provisions expressly authorizing the consolidation, merger, etc., of such institutions; but these laws do provide that "corporations to conduct commercial or savings banks or banks having departments for both such classes of business may be formed under the provisions of chapter 1, of title 19, Compiled Laws of Utah, 1917 (Sections 860-899), respecting corporations for pecuniary profit, and all the rights, privileges, and powers, and all the duties and obligations, of such corporations and the officers and stockholders thereof shall be as provided in said chapter, except as in this chapter otherwise provided; * * *." (Comp. Laws of Utah, 1917, Title 19, ch. 6, as amended, sec.

(Utah - cont'd.)

979; Banking Law Pamphlet, 1927, sec. 979, p. 6.) "This chapter" does not provide "otherwise", so it would seem that "commercial or savings banks or banks having departments for both such classes of business" may consolidate under the following provisions.

Consolidation of corporations.

State corporations "of the same kind, engaged in the same general business, in the same vicinity, * * * may consolidate * * *." (Laws of 1921, ch. 22, p. 76.)

Stockholders must agree.

The consolidation may be "upon such terms and conditions conformable to the law as shall be agreed upon" by a majority of the stockholders of each corporation at a special meeting after notice stating the time, place and object of such meeting has been published at least thirty days prior thereto in a newspaper in the county in which each corporation has its principal place of business. (Laws of 1921, ch. 22, p. 76.)

Consummation of consolidation.

The "consolidation may be effected either by joining two or more corporations together or by formation of a new corporation under the laws of this State for the purpose of buying in and taking over and operating the properties, rights and franchises of the corporation desiring to consolidate." And if by purchase, such purchase may be made at a private sale or any public judicial sale, "or in the enforcement of mortgages or liens". If the sale is a so-called private one, it must be approved by at least a majority of the stockholders of the selling companies, unless the

(Utah - cont'd.)

articles of association provide how and by whose authority it shall be made. In the latter event, the sale must be in accordance with such provision. If the consolidation is effected by forming a new corporation to purchase, the articles of association of the new corporation must contain, in addition to the regular contents, a provision that the corporation is formed for the purpose of purchasing in and taking over the properties, rights, privileges, and franchises of such corporations so desiring to consolidate. Such articles of association must be filed in the office of the Secretary of State, and upon his filing of the articles and issuing a certificate of incorporation to the corporation, "the association shall without further act be deemed and held to have been duly formed and created a corporation with all the powers specified," that are not inconsistent with the state constitution or laws. If the consolidation is effected by joining two or more companies together, "such consolidation shall be evidenced by a certificate under the corporate seals of the respective corporations, signed by the president and secretary of each, briefly reciting the act or acts sought to be accomplished, and describing in a general way, the property sought to be consolidated, together with the name of the corporation thus formed by amalgamation or consolidation, with such other provisions as the law may require to be inserted in the original articles of incorporation, and such others being conformable to law, as may be deemed necessary to perfect such consolidation". This certificate must be filed and recorded in the same manner as original articles of incorporation, and a copy, certified by the county clerk, must be filed with the secretary of state, "whose

(Utah - cont'd.)

certificate shall constitute such consolidated corporations, a new corporation". Any consolidated corporation has the right to work, operate, and maintain the properties acquired, and all the rights, privileges, franchises and powers named in the new articles of incorporation, including those formerly enjoyed by the original corporations. (Laws of 1921, ch. 22, pp. 76-77.)

Legal effect of consolidation.

"Upon the consummation of such consolidation, all the rights, privileges, and franchises of each of said consolidating corporations, and all the property, real and personal, and all subscriptions and debts due on whatever account, shall be deemed to be transferred to and vested in such new corporation without further act or deed; and such consolidation shall not relieve the consolidating corporations, or either of them, or the stockholders, from any liabilities, nor shall it extinguish or limit any franchise or right; but all debts, liabilities, and duties of either of said corporations shall henceforth attach to such new corporation, and be enforcible against it to the same extent as if incurred or contracted by it." (Comp. Laws of Utah, 1917, Title 19, Ch. 6, Sec. 889.)

VERMONT.

Sale, lease or exchange of assets.

The banking laws of this State do not contain any provisions specifically covering the consolidation or merger of banks; but such laws do provide that "A savings bank or trust company shall not make a sale,

(Vermont - cont'd.)

lease or exchange of all of its assets pursuant to the provisions of section four thousand nine hundred and twenty-six, except with the consent of the bank commissioner given on petition and after hearing. Such notice of the hearing shall be given as the commissioner directs". (General Laws, 1917, ch. 225, sec. 5351; Banking Law Pamphlet, 1918, sec. 5351, p. 5.)

Section 4926 above referred to provides that "A corporation having a capital stock and able to meet its liabilities then matured may, subject to the rights of creditors, sell, lease or exchange all its assets, including its franchises, to any other corporation authorized to do business under the laws of this state and to acquire such assets, for cash, stock of other corporations or other property. Such sale, lease or exchange shall first be authorized by such vote of the stockholders of both corporations as is provided in their articles of association, or, if provision is not so made therein, then by the vote, at meetings called upon twenty days' notice for such purpose, of the holders of two-thirds of the outstanding stock, of both corporations, or, if the stock is divided into classes, then by the vote of the holders of two-thirds of each class of outstanding stock entitled to vote, or, if the purchasing corporation is organizing and issuing stock for the property to be acquired, then by the vote, at a meeting called upon twenty days' notice for such purpose, of all the incorporators of such corporation. If stock of another corporation is received in full or part payment, all of such stock must be disposed of within two years from the time it was acquired. Failure to make such disposition shall be cause for the dissolution of the corporation, under the provisions of

(Vermont - cont'd.)

section four thousand nine hundred and forty-four. A corporation having a capital stock and unable to meet its liabilities then matured may, subject to the rights of creditors, so sell, lease or exchange all its assets, including its franchises, by the vote of the holders, at a meeting called upon twenty days' notice for such purpose, of the holders of a majority of the stock represented at such meeting and entitled to vote." (General Laws, 1917, Ch. 210, sec. 4926, as amended by Public Acts, 1919, No. 125.)

VIRGINIA.

Merger or consolidation of banks.

Any State bank is authorized to merge or consolidate with another State bank, or national bank doing business in Virginia, "upon compliance with the provisions of sections thirty-eight hundred and twenty-one, and thirty-eight hundred and twenty-two of the Code of Virginia relating to mergers or consolidations of corporations, except that such mergers or consolidations of banks shall be ratified and confirmed by an affirmative vote of the shareholders of each of such banks owning at least two-thirds of its capital stock outstanding and having voting power. The provisions of sections thirty-eight hundred and twenty-three, thirty-eight hundred and twenty-five, and thirty-eight hundred and twenty-six of the Code of Virginia shall apply to such merged or consolidated corporation, except as otherwise provided in this act; * * *." (Va. Code of 1930, sec. 4149 (10), p. 1047.)

Legal effect of merger or consolidation.

"In the event of any such merger or consolidation, the merged or consolidated corporation (whether it be one of said merging or consolidating banks, or a new bank, State or national, formed by means of such merger or consolidation) shall succeed to, and be vested with, without further act or deed, all offices of trust or of a fiduciary nature with which any one or more of the banks, parties to such consolidation or merger, were vested immediately prior to the time at which such consolidation or

(Virginia - cont'd.)

merger became effective." (Va. Code of 1930, Sec. 4149(10), p. 1047)

The sections of the laws of Virginia referred to in the provision first above quoted, which banks proposing to merge or consolidate must comply with, are digested under the following captions.

When merger or consolidation may be effected.

Any State corporation "may merge or consolidate into a single corporation with any other corporation organized for the purpose of carrying, on the same or a similar business" under any State or Federal law "which said consolidated corporation shall upon the payment of a proper charter fee, thereby become a domestic corporation of this State and be subject to its laws, and to the jurisdiction of its courts, and may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger or consolidation, and by virtue of this charter, and the proceedings had pursuant thereto, such corporation shall be consolidated and merged, so that all property, rights, franchises, and privileges by law vested in such corporations so merged or consolidated shall be transferred to and vested in the corporation into which such consolidation or merger shall be made." (Va. Code of 1930, sec. 3821, p. 840.)

Agreement of directors to merge or consolidate.

The board of directors of each of the corporations proposing to merge or consolidate may under corporate seal enter into a joint agreement for the merger or consolidation of such corporation. The agreement must prescribe the terms and conditions of the merger or consolidation, the mode of carrying it into effect, the name of the resulting corporation,

(Virginia - cont'd.)

the number, names and residences of its board of directors and principal officers, the aggregate amount and rate of interest of any of its bonds, the number and par value of its shares of stock, the manner of converting the stock of its constituents into new stock, and, if a new corporation is created, how and when the directors and principal officers to succeed those named in the agreement are to be chosen or appointed. The agreement may also contain such other provisions as the contracting board of directors deem necessary or convenient to perfect the merger or consolidation. (Va. Code of 1930, sec. 3822 (a), p. 941.)

Submission of agreement to stockholders and State corporation commission for approval.

The agreement must be submitted at a special meeting to the stockholders of each of the corporations involved. Notice of the time, place and object of such meeting must be given by publication at least six times a week for two successive weeks in a certain designated newspaper, and by mailing a copy of such notice at least ten days prior to such meeting to each stockholder. If a majority of the votes cast at each of these meetings be in favor of the agreement, consolidation and merger, then that fact must be certified by the president or one of the vice-presidents of the corporation, and attested by each secretary under corporate seal. Such certificates, acknowledged by the president or vice-president signing them and by the respective secretaries, must be presented to the State corporation commission, which must ascertain and declare whether the corporations, by complying with the legal requirements, have entitled themselves to the merger or consolidation. (Va. Code of 1930, sec. 3822(b), p. 941.)

(Virginia - cont'd.)

Certificate of merger or consolidation, issuance of by State corporation commission; filing and recordation of; effect of.

If the corporation commission issues a certificate of merger or consolidation, it and the agreement must be certified by the commission to the Secretary of State and recorded in the same manner as an original certificate of incorporation or articles of association. When so filed for recordation, "the said merger or consolidation shall be complete and the merged or consolidated corporation may proceed to carry out the details of said merger and consolidation according to the terms of the agreement and to transact and carry on the business for which it was formed; * * *." (Va. Code of 1930, sec. 3822(b), p. 941.)

Dissenting stockholders, rights of.

Detailed provision is made for the appraisal and payment of the value of stock held by any stockholder who did not vote for the merger or consolidation and who dissents to such merger or consolidation within a certain prescribed time. (Va. Code of 1930, sec. 3822, pp. 941-943.)

Effect of merger or consolidation under general corporation law; rights of former corporations vest in new corporation; rights and liabilities assumed.

"Upon the perfecting, as aforesaid of the said merger or consolidation, the several corporations parties thereto shall be deemed and taken as one corporation, upon the terms and conditions and subject to the restrictions set forth in said agreement, and all and singular the rights, privileges, and franchises of each of said corporations, parties to the same, except as restricted by law, and all property, real and personal, and all debts due on whatever account, as well of stock subscriptions as

(Virginia - cont'd.)

other things in action, belonging to each of such corporations, shall be taken and deemed as transferred to and vested in such new corporation without further act or deed; and all property, all rights of way, and all and every other interest shall be as effectually the property of the new corporation as they were of the former corporations parties to the said agreement; and the title to real estate, either by deed or otherwise, under the laws of this State vested in either corporation, shall not be deemed to revert or be in any way impaired by reason of this chapter; but, the rights of creditors and all liens upon the property of either of said corporations shall be preserved unimpaired; and the respective corporations shall be deemed to continue in existence to preserve the same; and all debts, liabilities, and duties of either of said companies shall thenceforth attach to said new corporation and be enforced against it to the same extent as if the said debts, liabilities, and duties had been incurred or contracted by it." (Va. Code of 1930, sec. 3823, p. 944.)

Suits against new corporation; effect of merger or consolidation on pending suits.

Suits can be maintained against the new corporation in any of the courts of Virginia in the same manner as against any other corporation, and suits pending by or against any of the constituent corporations can be prosecuted as if a consolidation had not taken place or the new corporation may be substituted as a party. (Va. Code of 1930, secs. 3825 and 3826, p. 944.)

WASHINGTON.

Transfer of assets for purpose of consolidation.

The laws of Washington provide that "a bank or trust company may

(Washington - cont'd.)

for the purpose of consolidation or voluntary liquidation transfer its assets and liabilities to another bank or trust company, by a vote, or with the written consent of the stockholders of record owning two-thirds of its capital stock, but only with the written consent of the supervisor of banking and upon such terms and conditions as he may prescribe." (Laws of 1923, p. 312, sec. 12; Rem. 1927 Sup., sec. 3282; Banking Law Pamphlet, 1929, sec. 97, p. 45.)

Certificate of authority and corporate existence, termination of.

When a bank or trust company has transferred all of its assets and liabilities, or has been liquidated or is no longer engaged in business as a bank or trust company, "the supervisor of banking shall terminate its certificate of authority, which shall not thereafter be revived or renewed." When any such corporation has had its certificate of authority revoked, "it shall forthwith collect and distribute its remaining assets, and when that is done the supervisor of banking shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note that fact upon his records." (Laws of 1923, p. 312, sec. 12; Rem. 1927, Sup., sec. 3282; Banking Law Pamphlet, 1929, sec. 97, p. 45.)

Report required showing entire net income; taxation of consolidated corporation.

Every bank or corporation which acquires by merger or by consolidation, the major portion of the assets or franchises of another bank or corporation in this state, or which merges or consolidates with another bank or corporation, must in its annual report show its own and the consolidated

(Washington - cont'd.)

entire net income of all such banks or corporations for the preceding fiscal or calendar year to the extent that all such income has not been used or included in measuring a tax under this act. In any event, it is liable for and must pay all taxes that would have been due and payable by the bank or corporation whose assets or franchises were acquired or which was merged or consolidated, had it continued in business. (Laws of 1929, ch. 151, sec. 20; Banking Law Pamphlet, 1929, sec. 20, p. 135.)

WEST VIRGINIA.

Consolidation or sale of assets.

Any banking institution may at any time with the consent in writing of the Commissioner of Banking take over the business and assets and assume the liabilities of another banking institution, all of the terms or conditions of any such purchase or consolidation to be first approved by the Commissioner of Banking. (Code of West Virginia for 1931, Chapter 31, Article 8, Section 29.)

Legal effect of consolidation or sale.

Upon the completion of any such purchase or consolidation and by operation of law the purchasing or consolidated banking institution shall be substituted in the room and stead of each of the participating institutions in all fiduciary relationships, and all and singular the titles, properties, offices, appointments, rights, powers, duties, obligations, and liabilities of each participating institution as trustee, executor, administrator, guardian, depository, registrar, transfer agent, or other fiduciary shall be vested in and devolve upon the purchasing or

(West Virginia - cont'd.)

consolidating institution, and such purchasing or consolidating institution shall be entitled to take, receive, accept, hold, administer, and discharge any and all grants, gifts, bequests, devises, and conveyances, trusts, and appointments made by deed, will, agreement, order of court, or otherwise in the future or in the name of any such participating institution, whether made, executed, or entered into before or after such purchase or consolidation, and whether to vest or become effective before or after such purchase or consolidation as fully and to the same effect as if the purchase or consolidated institution had been named in such deed, will, agreement, order, or other instrument instead of another participating institution. (Code of West Virginia for 1931, Chapter 31, Article 8, Section 29).

No corporation except consolidating or purchasing corporation may use the name of participating corporation.

After a purchase or consolidation no other corporation shall be allowed to take or use the name of any institution participating in such purchase or consolidation. (Code of West Virginia for 1931, Chapter 31, Article 8, Section 29).

General laws relating to consolidation of corporations.

A note by the Committee of the Legislature appointed to consider the report of the revisers who prepared the draft for the Code of 1931 indicates that the above quoted provisions of law are supplementary to the general provisions of law relating to the consolidation of corporations. Under these general provisions of law any two or more corporations organized or existing under the laws of West Virginia for the purpose of carrying on any kind of business may consolidate or merge into a single corporation,

(West Virginia - cont'd.)

which may be any one of such constituent corporations or a new corporation to be formed by such consolidation or merger, as shall be specified in the agreement mentioned below.

Proceedings for consolidation.

The directors or a majority of them of such corporation as desire to consolidate or merge must enter into an agreement signed by them and under the corporate seals of the separate corporation, prescribing the terms and conditions of consolidation or merger, the mode of carrying same into effect, and stating such other facts required or permitted by law to be set out in an agreement of incorporation as can be stated in the case of a consolidation or merger, stated in such altered form as the circumstances of the case may require, as well as the manner of converting the shares of the constituent corporations into shares of the consolidated corporation, with such other details as are deemed necessary.

Such agreement shall be submitted to the stockholders of each constituent corporation at a meeting thereof called separately for the purpose of taking same into consideration. Due notice of the time, place, and object of said meeting must be given by publication at least once a week for four successive weeks in one or more newspapers published in the county wherein each such corporation has its principal office or conducts its business, and a copy of such notice shall be mailed to the last known post-office address of each stockholder or such corporation at least twenty days prior to the date of meeting.

At such meeting the said agreement must be considered and a vote by ballot in person or by proxy taken for the adoption or rejection thereof,

(West Virginia - cont'd.)

each share entitling the holder thereof to one vote. If the votes of stockholders of each of such corporations representing two-thirds of the total number of shares of its capital stock shall be for the adoption of such agreement, then that fact must be certified on such agreement by the secretary of each such corporation under the seal thereof, and the agreement so adopted and certified shall be signed by the president and secretary of each of such corporations under the corporate seals thereof and acknowledged by the president of each such corporation, and the agreement must be filed in the office of the secretary of the state and recorded as provided by law. When such agreement has been so filed and recorded such record is evidence of the agreement and act of consolidation or merger of such corporation and the observance of all acts and conditions to have been observed and performed precedent to such consolidation or merger. (Code of West Virginia for 1931, Chapter 31, Article 1, Section 63.)

Sale of entire assets and franchises.

Every corporation organized and existing under the laws of West Virginia may at any meeting of its board of directors sell, lease, or exchange all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions and for such consideration as its board of directors shall deem expedient and for the best interest of the corporation when and as authorized by the affirmative vote of sixty per cent of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of sixty per cent of the voting stock issued and outstanding, unless the certificate of incorpora-

(West Virginia - cont'd.)

tion requires the vote or written consent of the holders of a larger proportion of the stock issued and outstanding. (Code of West Virginia for 1931, Chapter 31, Article 1, Section 64).

(West Virginia - cont'd.)

Consolidated or purchasing corporation may use name of participating corporations.

The purchasing or consolidated corporation is given the right to use the name of any of the participating corporations but no other corporation can take or use the name of any of such participating corporations. (Laws of 1929, ch. 23, sec. 31.)

WISCONSIN.

Consolidation of banks.

The laws of Wisconsin provide that "A bank, which is in good faith winding up its business, for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in process of consolidation; but no consolidation shall be made without the consent of the commissioner of banking, and not then to defeat or defraud any of the creditors in the collection of their debts against such banks, or either of them." (Wisc. Stats., sec. 221, 23.)

The laws further provide that, with the approval of the commissioner of banking, any two or more banks located in the same county, city, town or village may consolidate under the charter of any of the consolidating banks. (Wisc. Stats., sec. 221. 25 (1).)

Terms of consolidation; agreement of directors; ratification by stockholders.

The consolidation may be on such terms and conditions as may be agreed upon by a majority of the board of directors of each consolidating bank and must be "ratified and confirmed" by two-thirds of the outstanding stock of each bank at a meeting called by the directors, after sending notice

(Wisconsin - cont'd.)

of the time, place and object of the meeting to each shareholder by registered mail at least thirty days prior to the meeting. (Wisc. Stats., sec. 221.25(1).)

Capital stock required of consolidated bank.

The capital stock of the consolidated bank "shall not be less than that required under existing law for the organization of a state bank in the place in which it is located; * * *." (Wisc. Stats., sec. 221.25 (1).)

Dissenting stockholder, rights of.

Within twenty days after the commissioner of banking has approved the consolidation, any stockholder of the consolidating banks who has not voted for the consolidation may give notice to the directors of the consolidated bank that he dissents from the consolidation whereupon he becomes entitled to receive the value of the shares held by him. Provision is made for an appraisal of such shares and for a reappraisal in case the value first appraised is not satisfactory. (Wisc. Stats., sec. 221.25(1).)

Liquidation not essential; report of assets and liabilities of consolidating banks.

"The bank or banks consolidating with another bank under the provisions of the preceding subsection (Sec. 221.25(1).) shall not be required to go into liquidation but their assets and liabilities shall be reported by the bank with which they have consolidated; * * *." (Wisc. Stats., sec. 221.25(2).)

(Wisconsin - cont'd.)

Legal effect of consolidation of banks.

"All the rights, franchises and interests of said banks so consolidated in and to every species of property, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such bank into which it is consolidated without any deed or other transfer, and the said consolidated bank shall hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as was held and enjoyed by the bank or banks so consolidated therewith." (Wisc. Stats. sec., 221.25(2).)

Consolidation of trust companies.

Any State trust company "may consolidate with any other similar corporation in the same county, city, town or village in the manner provided for the consolidation of banks under section 221.25; * * *." (Wisc. Stats., sec. 223.11.)

Legal effect of consolidation of trust companies.

"In the event of such consolidation the consolidated corporation, by whatever name it may assume or be known, shall be a continuation of the entity of each and all of the corporations so consolidated for all purposes whatsoever, including holding and performing any and all trusts and fiduciary relations of whatsoever nature of which the corporations so consolidating, or either or any of them, was fiduciary at the time of such consolidation, and also including its appointment in any fiduciary capacity by any court or otherwise, and the holding, accepting and performing of any and all trusts and fiduciary relations whatsoever as to or for which either or any one of the corporations so consolidating may have been appointed, nominated or designated by any will or conveyance or otherwise, whether or

(Wisconsin - cont'd.)

not such trust or fiduciary relation shall have come into being or taken effect at the time of such consolidation." (Wisc. Stats., sec. 223.11.)

WYOMING.

Definition of "State bank".

"Every bank, banker or corporation in this state doing a banking business under the provisions of this Act, shall be known as a state bank; and any and all reference herein made in this Act to state banks shall apply to every individual, firm or corporation doing a banking business under the provisions of this Act". (Laws of 1925, ch. 157, sec. 5, as amended by Laws of 1929, ch. 54, sec. 1.)

Definition of "bank" or "banking business".

"Any person, firm or corporation (except national banks) having a place of business within this state where credits are opened by the deposit or collection of money or currency or negotiable paper subject to be paid or remitted upon draft, receipt, check, or order, shall be regarded as a bank or banker, and as doing a banking business under the provisions of this Act." (Laws of 1925, ch. 157, sec. 10; Banking Law Pamphlet, with 1927 amendments, sec. 10, p. 13.)

The laws also provide "that the term 'trust company' may be used by a person, firm or corporation when the business transacted is in no sense a banking business". (Laws of 1925, ch. 157, sec. 11; Banking Law Pamphlet, with 1927 amendments, sec. 11, p. 13.)

Transfer of assets and liabilities for purpose of consolidation.

"A state bank which is in good faith winding up its business for

(Wyoming - cont'd.)

the purpose of consolidating with some other bank may transfer its assets and liabilities to the bank with which it is in process of consolidation, upon receiving written consent of the State Examiner, and not otherwise." (Laws of 1925, ch. 157, sec. 109; Banking Law Pamphlet, with 1927 amendments, sec. 108, p. 59.)