

LAW ON CORPORATION

TITLE IX MERGER AND CONSOLIDATION

CORPORATION CODE OF THE PHILIPPINES
Sec. 76-80



Sec. 76. Plan of merger or consolidation. – Two or more corporations may merge into a single corporation which shall be one constituent corporations or may consolidate into a new single corporation which shall be consolidated corporation.

he board of directors or trustees of each corporation, party to the merger or consolidation, shall approve a plan of merger or consolidation setting forth the following:

1. The names of the corporations proposing to merge or consolidate, hereinafter referred to as the constituent corporations.
2. The terms of the merger or consolidation and the mode of carrying the same into effect.
3. A statement of the changes. If any, in the articles of incorporation of the surviving corporation in case of merger; and, with respect to the consolidated corporation in case of consolidation, all the statements required to be set forth in the articles of incorporation for corporations organized under this Code.
4. Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable.

Sec. 77. Stockholders' or members' approval. – Upon approval by majority vote of each of the board of directors or trustees of the constituent corporations of the plan of merger or consolidation, the same shall be submitted for approval by the stockholders or members of each of such corporations at separate corporate meetings duly called for stockholders or members of the respective corporations, at least two (2) weeks prior to the date of meeting, either personally or by registered mail. Said notice shall state the purpose of the meeting and shall include a copy or a summary of the plan of merger or consolidation as the case may be. The affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each corporations in case of stock corporations or at least two-thirds of the members in case of non-stock corporations, shall be necessary for the approval of such plan. Any dissenting stockholder in stock corporations may exercise his appraisal right in accordance with this Code; *Provided*, That if after the approval by the stockholders of such plan, the board of directors should decide to abandon the plan, the appraisal right shall be extinguished.

Any amendment to the plan of merger or consolidation may be made, provided such amendment is approved by majority vote of the respective boards of directors or trustees of all the constituent corporations and ratified by the affirmative vote of stockholders representing at least two-thirds (2/3) of the members of each of the constituent corporations. Such plan, together with any amendment, shall be considered as the agreement of merger or consolidation.

Definition

Consolidation – the uniting or amalgamation of two or more existing corporations to form a new corporation. The united concern resulting from the union is called the consolidated corporation.

Merger – a union effected by the absorbing of one or more existing corporations by another which survives and continues the combined business. The parties to a combination by consolidation or merger are called the “constituent” corporations.

Sec. 78. Articles of merger or consolidation. – After the approval by the stockholders or members as required by the preceding section, articles of merger or articles of consolidation shall be executed by each of the constituent corporations, to be signed by the president or

vice-president and certified by the secretary or assistant secretary of each corporation setting forth:

1. The plan of the merger or the plan of the consolidation.
2. As to stock corporations, the number of shares outstanding, or in case of non-stock corporations, the number of members.
3. As to each corporation, the number of shares or members voting for and against such plan, respectively.

Sec. 79. Securities and Exchange Commission's approval and effectivity of merger or consolidation. – The articles of merger or of consolidation signed and certified as hereinabove required, shall be submitted to the Securities and Exchange Commission in quadruplicate for its approval: *Provided*, That in the case of merger or consolidation of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained. Where the Commission is satisfied that the merger or consolidation of the corporations concerned is not inconsistent with the provisions of this Code and existing laws, it shall issue a certificate of merger or consolidation, as the case may be, at which time the merger or consolidation shall be effective.

If, upon investigation, the Securities and Exchange Commission has reason to believe that the proposed merger or consolidation is contrary to or inconsistent with the provisions of this Code or existing laws, it shall set a hearing to give the corporations concerned the opportunity to be heard. Written notice of the date, time and place of said hearing shall be given to each constituent corporation at least two (2) weeks before said hearing. The Commission shall thereafter proceed as provided in this Code.

Sec. 80. Effects of merger or consolidation. – The merger or consolidation, as provided in the preceding sections shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation.
2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation.
3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code.
4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed.
5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations;

and any claim, action or proceeding pending by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of such constituent corporations shall be impaired by such merger or consolidation.

Steps to achieve merger or consolidation

1. The BoD of each corporation must draw up a plan of merger or consolidation.
2. A plan must be submitted to the S/M of each corporation for approval. The vote of two-thirds (members) or two-thirds of the outstanding capital stock (stockholders) would be required.
3. There has to be a formal agreement known as the articles of M/C by the officers of each of the constituent corporations.
4. The articles of M/C must be submitted to the SEC for approval.
5. The SEC shall if it deems necessary set a hearing giving notice to all corporations concerned.
6. The SEC issues the certificate of M/C. The M/C becomes effective upon the issuance of the corresponding certificate.

Remedy of creditors of constituent corporations

The only remedy is either against the united corporation, or to pursue the assets of the constituents into its hands on the ground of fraudulent conveyance.