

IC 28-2-16

Chapter 16. Foreign Bank Holding Companies

IC 28-2-16-1

"Acquire" defined

Sec. 1. As used in this chapter, "acquire" means directly or indirectly:

- (1) to merge or consolidate with;
- (2) to assume control of; or
- (3) to purchase all or substantially all of the assets of.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-2

"Bank" defined

Sec. 2. (a) As used in this chapter, "bank" means a financial institution:

- (1) that has been organized or reorganized under the laws of the United States, any state of the United States, or the District of Columbia; and
- (2) that:
 - (A) is an "insured bank" (as defined in Section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or is eligible to make application to become an insured depository institution under Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815); or
 - (B) is a stock savings bank that was formed as a result of conversion under IC 28, incorporated under IC 28-12, or organized or reorganized under the laws of any other state of the United States.

(b) Except as provided in subsection (a)(2)(B), the term "bank" does not include:

- (1) any institution that has been or is chartered by the Federal Home Loan Bank Board or the Office of Thrift Supervision;
- (2) institutions of the "Farm Credit System" as described in 12 U.S.C. 2001 through 2260, which include the Farm Credit Banks, the Federal Land Bank Associations, the Production Credit Associations, the Banks for Cooperatives, and any other institution that may become a part of the Farm Credit System, as chartered by and subject to the supervision of the Farm Credit Administration; or
- (3) any other institution that has been organized or reorganized as a savings association, a credit union, or an industrial loan and investment company.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.38; P.L.42-1993, SEC.67; P.L.122-1994, SEC.92; P.L.79-1998, SEC.64.

IC 28-2-16-3

"Bank holding company" defined

Sec. 3. (a) As used in this chapter, "bank holding company" means

any company that controls one (1) or more banks.

(b) For the purposes of this chapter:

(1) a company is not a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, unless the shares are held for the benefit of the shareholders of the company;

(2) a company is not a bank holding company by virtue of its ownership or control of shares that are acquired by the company in connection with its underwriting of securities and that are held only for a period of time as will permit the sale of the shares on a reasonable basis;

(3) a company formed for the sole purpose of participating in a proxy solicitation is not a bank holding company by virtue of its control of voting rights of shares acquired in the course of the solicitation; and

(4) a company is not a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two (2) years after the date of acquisition.

The department may extend, from time to time but for not more than one (1) year at a time, the two (2) year period referred to in subdivision (4), but the extensions may not, in the aggregate, exceed three (3) years.

(c) For the purposes of this chapter, any successor to a bank holding company is a bank holding company from the date the predecessor company became a bank holding company.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-4

"Bank subsidiary" defined

Sec. 4. As used in this chapter, "bank subsidiary" means a bank controlled by a bank holding company.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-5

"Company" defined

Sec. 5. As used in this chapter, "company" means any corporation, limited liability company, partnership, joint-stock company, business trust, voting trust, joint venture, association, or similar organization that has been organized or reorganized under the laws of the United States, any state of the United States, or the District of Columbia. The term may or may not include a bank holding company as the context indicates. The term does not include a bank.

As added by P.L.279-1987, SEC.9. Amended by P.L.8-1993, SEC.447.

IC 28-2-16-6

"Control" defined

Sec. 6. As used in this chapter, "control" means directly or indirectly:

- (1) to own, control, or hold, with power to vote, twenty-five percent (25%) or more of the voting shares of a bank or company;
- (2) to control in any manner the election of a majority of the directors or trustees of a bank or company; or
- (3) to exercise a controlling influence over the management or policies of a bank or company, as determined by the Board of Governors of the Federal Reserve System after notice and opportunity for hearing.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-7

"Department" defined

Sec. 7. As used in this chapter, "department" refers to the department of financial institutions created under IC 28-11-1-1.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.39.

IC 28-2-16-8

"Deposits" defined

Sec. 8. As used in this chapter, "deposits" has the meaning set forth in IC 28-2-14-8.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.40.

IC 28-2-16-9

"Foreign bank holding company" defined

Sec. 9. As used in this chapter, "foreign bank holding company" means a bank holding company that has its principal place of business in a state other than Indiana.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-10

Repealed

(Repealed by P.L.33-1991, SEC.57.)

IC 28-2-16-11

"Indiana bank" defined

Sec. 11. As used in this chapter, "Indiana bank" means a bank that has its principal office in Indiana.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-12

"Indiana bank holding company" defined

Sec. 12. As used in this chapter, "Indiana bank holding company" means a bank holding company that has its principal place of business in Indiana.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-13

"Indiana bank subsidiary" defined

Sec. 13. As used in this chapter, "Indiana bank subsidiary" means an Indiana bank that is controlled by a bank holding company.
As added by P.L.279-1987, SEC.9.

IC 28-2-16-14

"Principal place of business" defined

Sec. 14. For the purposes of this chapter, the "principal place of business" of a bank holding company is the state in which the total deposits of the bank subsidiaries of the bank holding company are the largest.
As added by P.L.279-1987, SEC.9.

IC 28-2-16-15

Acquisition of financial institutions

Sec. 15. Subject to the limitations of this chapter, a foreign bank holding company is entitled to acquire one (1) or more:

- (1) Indiana banks;
- (2) Indiana bank holding companies; or
- (3) foreign bank holding companies that have acquired one (1) or more Indiana banks;

after approval by the department.
As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.41; P.L.42-1993, SEC.68.

IC 28-2-16-16

Repealed

(Repealed by P.L.171-1996, SEC.44.)

IC 28-2-16-17

Foreign bank holding company acquisition of Indiana bank or bank holding company; application; investigation; factors considered; findings; conditions and restrictions upon acquisition

Sec. 17. (a) If a foreign bank holding company desires to acquire an Indiana bank or Indiana bank holding company under this chapter, the foreign bank holding company must file an application for approval of the acquisition with the department on forms prescribed by the department. Upon receipt of an application under this section, the department may:

- (1) accept the application for processing;
 - (2) request additional information to complete the application;
- or
- (3) return the application if it is substantially incomplete.

The department shall take one (1) of the actions listed in this subsection within ten (10) business days after receiving the application. Within ten (10) business days after acceptance of an application for processing, the department shall notify the applicant and the bank or bank holding company proposed to be acquired of its acceptance of the application. The applicant shall publish notice of the acceptance of the application in a newspaper of general

circulation in each county in which is located the principal office or a branch of the bank proposed to be acquired or a bank subsidiary of the bank holding company proposed to be acquired.

(b) Upon accepting an application for processing under subsection (a)(1), the department shall conduct an investigation, to the extent the department considers necessary, into the condition of the applicant and the Indiana bank or Indiana bank holding company proposed to be acquired. The department may request additional information from the applicant and may hold public hearings with respect to the proposed acquisition. The department may require the applicant to produce any additional information the department considers necessary for the hearing. The department shall commence any public hearing held under this section not less than thirty (30) days and not more than sixty (60) days after the department's acceptance of an application for processing. The hearing shall be held at a place, date, and time specified by the department. The department may assign the task of conducting the hearing to a member or an employee of the department. If the department decides to hold a public hearing under this section, the department shall send written notice to the applicant no later than thirty (30) days after the department's acceptance of an application for processing and at least twenty (20) days before the hearing. The department shall also send written notice to the principal office of the Indiana bank proposed to be acquired or to the principal office of each Indiana bank subsidiary of the Indiana bank holding company proposed to be acquired at least twenty (20) days before the hearing and shall publish notice of the hearing at least twenty (20) days before the hearing in a newspaper of general circulation in each county in which is located the principal office or a branch of:

- (1) the Indiana bank; or
- (2) an Indiana bank subsidiary of the Indiana bank holding company;

proposed to be acquired. The shareholders of the bank or bank holding company proposed to be acquired and the shareholders of the applicant may appear and offer evidence at the hearing. At least ten (10) days before the hearing, a person desiring to appear and offer testimony must give the department written notice of the person's intent to testify. The applicant shall pay all expenses of publication, court reporter fees, department expenses, appropriate department per diem expenses, and hearing room fees, as determined by the department.

(c) The department shall either approve or disapprove the proposed acquisition within:

- (1) sixty (60) days after the acceptance of an application for processing, if the department elects not to hold a public hearing; or
- (2) thirty (30) days after any public hearing held with respect to the proposed acquisition, if the department elects to hold a public hearing.

The department may extend the period for consideration of the

application, upon written notice to the applicant, if the department determines that further information from the applicant is necessary for its decision or that any material information submitted is substantially inaccurate. However, an extension may not exceed an additional thirty (30) days.

(d) The department may not authorize an acquisition under this chapter unless the provisions of this chapter have been met.

(e) In deciding whether to approve an acquisition under this chapter, the department shall consider the following factors:

(1) Whether the banks already controlled by the applicant are operated in a safe, sound, and prudent manner.

(2) Whether the financial condition of the applicant or any of its affiliates will jeopardize the financial stability of the Indiana bank or Indiana bank holding company proposed to be acquired.

(3) Whether the proposed merger or acquisition will result in an Indiana bank that has inadequate capital, unsatisfactory management, or poor earnings prospects.

(4) Whether banks already controlled by the applicant have provided adequate and appropriate services, including services contemplated by the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.), to the communities in which they are located.

(5) Whether the applicant proposes to provide adequate and appropriate services, including services contemplated by the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.), in the communities served by the Indiana bank or Indiana bank holding company proposed to be acquired.

(6) Whether the management or other principals of the applicant are qualified by character and financial responsibility to control and operate in a legal and proper manner the Indiana bank or Indiana bank holding company proposed to be acquired.

(7) Whether the interest of the depositors and creditors of the Indiana bank or Indiana bank holding company proposed to be acquired and the interest of the public generally will be jeopardized by the proposed acquisition.

(8) Whether the applicant furnishes all the information the department requires in reaching its decision.

(9) If the department holds a hearing under section 18 of this chapter, the finding required by section 19 of this chapter.

(f) The department shall make any acquisition by a foreign bank holding company subject to any conditions, restrictions, and requirements that:

(1) would apply to the acquisition by an Indiana bank holding company of a bank or bank holding company in the state where the foreign bank holding company has its principal place of business; and

(2) would not apply to the acquisition of a bank or bank holding company in that state by a bank holding company that controls only banks located in that state.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991,

SEC.43; P.L.262-1995, SEC.59; P.L.171-1996, SEC.35.

IC 28-2-16-18

Exchange of stock of foreign bank holding company acquiring Indiana bank or bank holding company; request for hearing

Sec. 18. (a) At the time of the filing of an application with the department, the applicant may submit a written request asking the department to hold a hearing upon the fairness of the terms, conditions, and provisions of the proposed issuance and exchange of stock of the applicant for the stock of the Indiana bank or Indiana bank holding company. If a request is submitted under this subsection, the department may hold a public hearing upon the fairness of the exchange or upon any other matter with respect to the proposed acquisition. The shareholders of a bank or bank holding company proposed to be acquired and the shareholders of the applicant may appear and offer evidence at any public hearing at which the fairness of the exchange is to be determined. At least ten (10) days before the hearing, a person desiring to appear and offer testimony must give the department written notice of the person's intent to testify. The department may require the applicant to produce such evidence as the department considers necessary to the hearing.

(b) Any public hearing held under this section must commence not less than thirty (30) days and not more than sixty (60) days after the date on which the department accepts the application for processing under section 17 of this chapter. If the department decides to hold a public hearing under this section, it shall notify the applicant no later than thirty (30) days after the department's acceptance of an application for processing and at least twenty (20) days before the hearing. The public hearing shall be held at a place, date, and time specified by the department. The department may combine any hearing held under this section with a hearing held under section 17 of this chapter. The department may assign the task of conducting the hearing to a member or employee of the department. If the department decides to hold a public hearing under this section, the applicant shall provide written notice of the date, time, place, and purpose of the hearing to each Indiana bank and each Indiana subsidiary of a bank holding company that has an office in a county in which the Indiana bank proposed to be acquired or an Indiana bank subsidiary of the Indiana bank holding company proposed to be acquired has a principal office or branch. The Indiana bank or Indiana bank holding company proposed to be acquired shall transmit the written notice to its shareholders. The notice must also be published at least twenty (20) days before the date of the hearing in a newspaper of general circulation in each county in which is located the principal office or a branch of the bank proposed to be acquired or the principal office or a branch of a bank subsidiary of the bank holding company proposed to be acquired. The notice must contain any other provision as the department may require. The applicant shall pay all expenses of providing the notice, publication, court reporter fees, department expenses, appropriate department per

diem expenses, and hearing room fees, as determined by the department.

(c) The issuance of securities described in subsection (d) is a transaction exempted from the registration requirements of IC 23-19-3-1 if, at the time the applicant submits a written request to the department under subsection (a), the applicant also submits to the securities commissioner appointed under IC 23-19-6-1(a) a notice in writing of all terms of the transaction and if the securities commissioner does not disallow the exemption within the next five (5) full business days.

(d) Subsection (c) applies to any security issued in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in that exchange and partly for cash, under terms and conditions approved by the department after a hearing held under this section.

As added by P.L.279-1987, SEC.9. Amended by P.L.262-1995, SEC.60; P.L.27-2007, SEC.30.

IC 28-2-16-19

Foreign bank holding company acquisition of Indiana bank or bank holding company; findings and orders

Sec. 19. If the department accepts an application for processing under section 17 of this chapter, the department shall issue an order approving or disapproving the acquisition. The department shall include its findings of fact in the order. If the department holds a hearing under section 18 of this chapter, the findings of fact must include a finding that the terms and conditions of the acquisition and of the issuance and exchange of stock of the applicant for the stock of the Indiana bank or Indiana bank holding company proposed to be acquired are or are not fair and reasonable to the shareholders of the Indiana bank or Indiana bank holding company proposed to be acquired.

As added by P.L.279-1987, SEC.9.

IC 28-2-16-20

Qualification to acquire Indiana bank or bank holding company; divestiture upon ceasing to qualify

Sec. 20. (a) Except as expressly permitted by federal law, a bank holding company that is not:

- (1) an Indiana bank holding company; or
- (2) a foreign bank holding company;

may not acquire an Indiana bank or Indiana bank holding company.

(b) An Indiana bank holding company that ceases to be an Indiana bank holding company, as defined in section 12 of this chapter, or a foreign bank holding company that ceases to be a foreign bank holding company, as defined in section 9 of this chapter, shall within three (3) years divest itself of all Indiana banks and Indiana bank holding companies. However, a foreign bank holding company or Indiana bank holding company may not be required to divest itself of its Indiana banks or bank holding companies because of:

- (1) its acquisition of institutions in another state, if the acquisition has been consummated under Section 116 or 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730a(m) or 12 U.S.C. 1823(f));
- (2) its acquisition of securities or assets of a bank having banking offices in another state, if the acquisition has been consummated in the regular course of securing or collecting a debt previously contracted in good faith, and if the bank or bank holding company divests itself of the securities or assets acquired within three (3) years of the date of acquisition; or
- (3) its acquisition of:
 - (A) a bank or company organized under the laws of the United States or of any state and operating under Section 25 or Section 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 601 through 604a or 12 U.S.C. 611 through 631); or
 - (B) a bank or bank holding company that was organized under the laws of a foreign country, that is principally engaged in business outside the United States, and that either has no banking office in the United States or has banking offices in the United States that are engaged only in business activities permissible for a bank or corporation operating under Section 25 or 25(a) of the Federal Reserve Act, as amended.

As added by P.L.279-1987, SEC.9. Amended by P.L.33-1991, SEC.44.

IC 28-2-16-21

Exemption from IC 28-1-2-23

Sec. 21. (a) An acquisition by a foreign bank holding company of control of an Indiana bank or Indiana bank holding company is exempt from the requirements of IC 28-1-2-23 if the acquisition is made under this chapter.

(b) If a bank will be:

- (1) acquired by a foreign bank holding company; and
- (2) immediately merged with or consolidated into another bank owned by the acquiring foreign bank holding company;

the acquisition of the bank is exempt from the provisions of this chapter.

As added by P.L.279-1987, SEC.9. Amended by P.L.262-1995, SEC.61.

IC 28-2-16-22

Injunctions

Sec. 22. Any person, company, bank, or bank holding company that may be or has been injured by reason of any conduct that constitutes or will constitute a violation of this chapter by any company or bank holding company may sue the company or bank holding company to enjoin the conduct or for damages, together with the costs of suit, including reasonable attorney's fees. In addition, the department may sue to enjoin any conduct that constitutes or will

constitute a violation of this chapter, or to require divestiture of any bank or bank holding company acquired in violation of this chapter.
As added by P.L.279-1987, SEC.9.

IC 28-2-16-23

Cooperation with other financial institutions' regulatory agencies

Sec. 23. The department may enter into cooperative agreements and pay for necessary services with other financial institutions' regulatory agencies to facilitate the regulation of banks, corporate fiduciaries, and bank holding companies doing business in this state. The department may accept reports of examinations and other records from those other agencies instead of conducting its own examinations of corporate fiduciaries with offices in other states or banks controlled by bank holding companies located in other states. The department may take any action jointly with other regulatory agencies having concurrent jurisdiction over banks, corporate fiduciaries, and bank holding companies doing business in this state or may take actions independently in order to carry out its responsibilities.

As added by P.L.279-1987, SEC.9. Amended by P.L.262-1995, SEC.62.

IC 28-2-16-24

Repealed

(Repealed by P.L.215-1999, SEC.16.)

IC 28-2-16-25

Rules

Sec. 25. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.279-1987, SEC.9.