

3300 Business and Industrial Development Corporations**3307 Procedure for Approval of Mergers, Acquisitions, and Sale of Assets of a Business Industrial Development Corporation**

5 Del.C. §3331

Formerly Regulation No.: 5.3331.0007

Effective Date: January 11, 1993

This regulation establishes procedures for the form and content of requests under §3331, Subchapter IV, Title 5 of the **Delaware Code**, for approval of mergers, acquisitions, and sale of assets of a Business Industrial Development Corporation.

1.0 A request pursuant to §3331, Subchapter IV, Title 5 of the **Delaware Code**, shall be in writing, signed by the President or authorized representative of applicant, and shall include the following:

- 1.1 A non-refundable investigation fee;
- 1.2 Name of applicant. Pursuant to §3331(b), the approval for merger, acquisition, and sale of assets of a Business Industrial Development Corporation with another corporation shall not be granted unless the licensee is the surviving corporation; or, if the licensee is the disappearing corporation, the surviving corporation is also a licensee;
- 1.3 Name of surviving corporation;
- 1.4 Name of disappearing corporation;
- 1.5 Board of resolution authorizing applicant to make application on behalf of the corporation;
- 1.6 An explanation regarding the purpose(s) or reason(s) for the merger, acquisition, and sale of assets of a Business Industrial Development Corporation;
- 1.7 The specific terms of the merger, acquisition, and sale of assets of a Business Industrial Development Corporation, including management changes, stock or other asset sales and the respective prices, location/ relocation, continuation of servicing of disappearing corporation (if Bidco), clients, etc.
- 1.8 If the business plan is to be modified by the merger/acquisition, a detailed amended business plan shall be submitted. This plan shall set forth the services to be provided by the proposed Bidco to business firms located within or outside the State;
- 1.9 Financial statements for all new officers and directors;
- 1.10 Resumes for all new officers and directors, including information concerning the experience of the management of the proposed Bidco and how such experience relates to the execution of the business plan referred to in item 1.8 of this regulation;
- 1.11 Completed officers and directors questionnaires, questionnaires furnished by the Office of the State Bank Commissioner;
- 1.12 Any amendments to the geographical business markets the Bidco intends to service;
- 1.13 Amendments to the detailed summary of how the management of the proposed Bidco intends to implement a reasonable and prudent policy for conserving and investing the capital of such Bidco;
- 1.14 Amendments to types of business firms to be assisted by the Bidco;
- 1.15 Three (3) years of detailed financial projections or until such time as profitability is obtained;
- 1.16 Evidence that the Bidco has, or will have, a net worth of not less than \$1,000,000 at the time it is licensed to transact business as a Bidco;
- 1.17 Any market studies which have been conducted by or on behalf of the applicant or as requested by the Commissioner, if not previously submitted;
- 1.18 If amended, new names, resumes, reference sources, and compensation schedules for any person(s) employed in an advisory capacity for the Bidco, and a description of their purpose(s) and involvement(s) in the affairs of the Bidco;

- 1.19 Current financial statements for both the surviving and disappearing corporations (within the last quarter);
- 1.20 Such other information the applicant may provide to support the request; and
- 1.21 Such other information the Commissioner may require or deem appropriate to the request.
- 1.21 Where such information required above is unchanged from application for formation on file with the Office of the State Bank Commissioner, such information may be referenced.

2.0 If on the basis of the information submitted, the State Bank Commissioner concludes that the request for a merger, acquisition, and sale of assets should be approved, he shall issue a written approval.

3.0

- 3.1 If on the basis of the information submitted or obtained through the investigation process, the State Bank Commissioner proposes to disapprove request for merger, acquisition, and sale of assets, he shall, pursuant to §10131(c) of Title 29 of the **Delaware Code**, give written notice to the applicant of the intended action and the reasons therefor. Such notice shall:
 - 3.1.1 Describe the subject matter of the proceeding and the statutory authority therefor;
 - 3.1.2 Inform the applicant of the proposed action and the reasons therefor;
 - 3.1.3 Inform the applicant that it has a right to demand a hearing on the application at which hearing (a) the applicant would have the right to present relevant evidence, (b) to be represented by counsel, and (c) to appear personally or by other representative; and that the Commissioner is obligated to reach his decision based upon the evidence received; and
 - 3.1.4 Inform the applicant of the period, not less than ten days from the date of such notice, during which it may request a hearing on such application.
- 3.2 Should the applicant request a hearing under this section, the Commissioner shall fix a date for such hearing and shall provide at least twenty (20) days advance notice of such hearing date to applicant.