



Province of Alberta

ALBERTA TREASURY BRANCHES ACT

ALBERTA TREASURY BRANCHES REGULATION

Alberta Regulation 187/1997

With amendments up to and including Alberta Regulation 239/2009

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(Consolidated up to 239/2009)

ALBERTA REGULATION 187/97

ATB Financial Act

ALBERTA TREASURY BRANCHES REGULATION

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Definitions

1(1) In this Regulation,

- (a) “ATB” means Alberta Treasury Branches;
- (a.1) “bank”, without limiting section 28(1)(d) of the *Interpretation Act*, includes a bank named in Schedule III to the *Bank Act* (Canada);
- (a.2) “financial futures agreement” means a contract to buy or sell a standard quantity of a specified financial instrument on or before a specified future date at an agreed price;
- (b) “financial institution” means
 - (i) a bank,
 - (ii) a loan corporation or trust corporation incorporated or continued by or under an Act of Canada or a province,
 - (iii) a credit union incorporated or continued by or under an Act of Canada or a province,
 - (iii.1) an association or a central cooperative credit society within the meanings of the *Cooperative Credit Associations Act* (Canada), including (to avoid any doubt) a federation of credit unions, being a financial services cooperative, referred to in *An Act Respecting Financial Services Cooperatives* (Quebec) (R.S.Q. cC-67.3) and La Caisse centrale Desjardins du Québec (commonly called the “Caisse centrale Desjardins”),
 - (iii.2) a credit union central incorporated or continued by or under the *Credit Union Act*,
 - (iv) a Canadian authorized company or an insurance company constituted or continued by or under an Act of Canada or a province, and

- (v) a securities dealer within the meaning of the *Securities Act*;
 - (b.1) “fiscal year” means ATB’s fiscal year;
 - (c) “forward contract” means a contract to buy or sell currency or a specified financial instrument on or before a specified future date at an agreed price;
 - (c.1) “guidelines” means guidelines made under section 23.1(1);
 - (d) “improved real estate” means
 - (i) land on which there exists a building or on which a building is being or is about to be constructed and the adjacent land used or to be used in connection with the building,
 - (ii) land on which bona fide farming operations are being conducted, and
 - (iii) vacant land that is restricted by law in its use to commercial, industrial or residential purposes, whether by zoning or otherwise;
 - (e) “option agreement” means a contract under which a person acquires the right to buy or sell a particular security at a specified future date at an agreed price;
 - (f) “participating share” means a share of a corporation that carries the right to participate in the earnings of the corporation to an unlimited degree and to participate in a distribution of the remaining property of the corporation on dissolution;
 - (g) “swap” means an agreement between two parties to exchange cash flows in the future in accordance with a prearranged formula.
- (2)** For the purposes of section 19 of the Act and section 12 of the Act, where applicable,
- (a) “asset management corporation” means a corporation that administers and disposes of property acquired through realization of a security interest held by or for the benefit of ATB;
 - (b) “factoring corporation” means a corporation whose activities are limited to acting as a factor in relation to accounts receivable, including the lending of money and

the raising of money for the purpose of financing those activities;

- (c) “financial leasing corporation” means a corporation that enters into or acquires agreements as defined in section 5.1;
- (d) “information management corporation” means a corporation whose activities are limited to
 - (i) the collection, manipulation and transmission of information,
 - (ii) the design, development, marketing and sale of computer software,
 - (iii) the provision of advisory and other services related to the design and development of information management systems,
 - (iv) the design, development, marketing and sale of equipment integral to information management systems, and
 - (v) the design, development, management, manufacturing, marketing and sale of data transmission services, information sites, communication devices and information platforms or portals,in respect of information that is primarily financial or economic in nature or information that relates to the business of ATB or of a corporation in which ATB beneficially owns shares pursuant to section 19(4) of the Act;
- (e) “insurer” means a corporation that is an insurer within the meaning of the *Insurance Act* and whose activities are limited to underwriting term-life insurance and annuities and providing risk management and financial advisory services;
- (f) “investment counselling corporation” means a corporation that is registered as an investment counsel under the *Securities Act*;
- (g) “mutual fund distribution corporation” means a corporation that is registered as a mutual fund dealer under the *Securities Act*;

- (h) “portfolio management corporation” means a corporation that is registered as a portfolio manager under the *Securities Act*;
 - (i) “real property brokerage corporation” means a corporation whose activities are limited to acting as agent for vendors or purchasers of real estate where the real estate is owned or administered by ATB;
 - (j) “real property corporation” means a corporation whose primary business activity consists of holding, managing or otherwise dealing with
 - (i) real property, or
 - (ii) shares of a corporation (including another real property corporation) or ownership interests in an unincorporated entity that is primarily engaged in holding, managing or otherwise dealing with real property;
 - (k) “securities dealer” means a corporation that is a dealer within the meaning of the *Securities Act*;
 - (l) “service corporation” means a corporation whose activities are limited to the provision of management services to
 - (i) ATB,
 - (ii) a financial institution that is affiliated with ATB, or
 - (iii) a corporation in which ATB or a financial institution that is affiliated with ATB, or both of them, holds or beneficially owns more than 50% of the outstanding voting shares.
- (3)** For the purposes of section 14 of the Act,
- (a) “interest payable” includes interest that has accrued but is not yet payable;
 - (b) “money deposited” includes debt instruments issued by ATB that
 - (i) repealed AR 169/2006 s2,
 - (ii) have an original term to maturity of not more than 10 years, and

- (iii) are not subordinate to any other money deposited with ATB.

AR 187/97 s1;54/98;164/2002;110/2004;169/2006

Interpretation

2(1) For the purposes of the Act and this Regulation,

- (a) an entity is affiliated with another entity if one of them is controlled by the other or both of them are controlled by the same person, and
- (b) the affiliates of an entity are deemed to be affiliated with all other entities with which the entity is affiliated.

(2) For the purposes of the Act and this Regulation,

- (a) a person controls a corporation if securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held or beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;
- (b) a person controls a trust, partnership, fund or other unincorporated entity if more than 50% of the beneficial interest, however designated, into which the entity is divided is held or beneficially owned by that person and the person is able to direct the affairs of the entity;
- (c) notwithstanding clauses (a) and (b), a person controls an entity if the person has, in relation to the entity, any direct or indirect influence that, if exercised, would result in control in fact of the entity;
- (d) a holding corporation is deemed to control any entity that is controlled or deemed to be controlled by a subsidiary of the holding corporation;
- (e) an entity that controls another entity is deemed to control any entity that is controlled or deemed to be controlled by the other entity;
- (f) a corporation is the holding corporation of all of its subsidiaries.

(3) For the purposes of the Act and this Regulation, a corporation is a subsidiary of another corporation if

- (a) it is controlled by
 - (i) that other,

- (ii) that other and one or more corporations each of which is controlled by that other, or
- (iii) 2 or more corporations each of which is controlled by that other,

or

- (b) it is a subsidiary of a corporation that is that other's subsidiary.

(4) For the purposes of the Act and this Regulation, a person has, or a group of persons have, a significant interest in a corporation if

- (a) in the case of a person, the person holds or beneficially owns, either directly or indirectly, more than 10% of the outstanding shares of the corporation, or
- (b) in the case of a group of persons, they hold or beneficially own, either individually or together and either directly or indirectly, more than 50% of the outstanding shares of the corporation.

(5) For the purposes of the Act and this Regulation, a person has, or a group of persons have, a significant interest in an entity other than a corporation if,

- (a) in the case of a person, the person holds or beneficially owns, either directly or indirectly, more than 10% of the beneficial interest, however designated, into which the entity is divided, or
- (b) in the case of a group of persons, they hold or beneficially own, either individually or together and either directly or indirectly, more than 50% of the beneficial interest, however designated, into which the entity is divided.

(6) For the purposes of the Act and this Regulation, a security or other interest is beneficially owned by a person when it is held directly or through a personal representative or other intermediary for the use or benefit of that person otherwise than as a security interest.

(7) For the purposes of the Act and this Regulation, a person shall be deemed to own beneficially securities that are beneficially owned by a corporation that is controlled by that person.

(8) For the purposes of the Act and this Regulation, where a person beneficially owns shares of a corporation, the person shall be deemed to beneficially own that proportion of shares of every other corporation that is beneficially owned by the first-mentioned

corporation that is equal to the proportion of shares of the first-mentioned corporation that is beneficially owned by the person.

(9) Where subsections (7) and (8) apply to a person, only the subsection under which the person is deemed to beneficially own more securities applies to the person.

Corporations prescribed for section 19(4)(l) of the Act

2.1 The following are the prescribed corporations for the purposes of section 19(4)(l) of the Act:

- (a) a financial leasing corporation;
- (b) a mortgage broker within the meaning of the *Real Estate Act* that is a corporation;
- (c) a loan servicing corporation, being a corporation that performs administrative functions to carry out the obligations of a loan holder under a loan agreement;
- (d) a payment processing corporation, being a corporation that provides cheque clearing, remittance processing or similar services or any 2 or all of them.

AR 164/2002 s3;110/2004;169/2006

Significant borrower prescribed amounts

3(1) The prescribed amount of an entity's outstanding indebtedness for the purposes of section 4(1)(a) of the Act is an amount equal to 25% of the equity of the entity.

(2) The prescribed amount of an individual's outstanding indebtedness for the purposes of section 4(1)(b) of the Act is an amount equal to the greater of

- (a) \$200 000, and
- (b) 25% of the individual's net worth.

Trustee powers

4 The following are the prescribed transactions in respect of which ATB may act as a trustee for a trust:

- (a) a self-directed registered income fund under the *Income Tax Act* (Canada);
- (b) a self-directed registered education savings plan under the *Income Tax Act* (Canada);

- (c) a self-directed registered retirement savings plan under the *Income Tax Act* (Canada);
- (d) a mutual fund trust that ATB manages and for which a prospectus or simplified prospectus has been filed and a final receipt has been issued under the *Securities Act*;
- (e) a self-directed registered tax-free savings account under the *Income Tax Act* (Canada).

AR 187/97 s4;110/2004;215/2008

Limitation on real estate investments

5(1) All subsidiaries of ATB, except subsidiaries that are financial institutions, are prescribed subsidiaries for the purposes of section 17 of the Act.

(2) The prescribed amount for the purposes of section 17 of the Act is 3.5% of the assets of ATB and its prescribed subsidiaries.

(3) An interest in real property that is acquired through realization of a security interest is exempt from the application of section 17 of the Act for a period of 7 years after the date of its acquisition.

AR 187/97 s5;110/2004

Leasing and related agreements

5.1(1) In this section,

- (a) “agreement” means
 - (i) a security agreement as defined in the *Personal Property Security Act*, or
 - (ii) a financial lease agreement, being an agreement for a lease of personal property in which credit is extended by the lessor to the lessee for the purpose of enabling the lessee to meet the lessee’s obligations under the lease;
- (b) “property” means the personal property to which an agreement relates.

(2) ATB may not beneficially own shares in a financial leasing corporation unless

- (a) the aggregate of
 - (i) the book value of all of the property that is subject to agreements held by the corporation, and

- (ii) all amounts owing as receivables in respect of such agreements

is equal to at least 80% of the assets of the corporation,
and

- (b) the corporation meets the requirements of the agreements.

(3) A financial leasing corporation may enter into or acquire agreements only if the following requirements are met:

- (a) the corporation shall not direct its customers or potential customers to particular dealers in the property;
- (b) at no time may the aggregate of the estimated residual values of all the property of the corporation, excluding motor vehicles, leased under the financial lease agreements exceed 10% of the aggregate of the costs of acquisition of that leased property to the corporation;
- (c) the estimated residual value of property leased under a financial lease agreement must not exceed 20% of its cost of acquisition to the corporation;
- (d) the agreement must be entered into or acquired for the purpose of extending credit to the lessee or purchaser;
- (e) the property that is the subject of the agreement must be selected by the lessee or buyer and
 - (i) must be acquired by the corporation at the request of the lessee or buyer, or
 - (ii) must have been acquired by the corporation through the operation of an earlier agreement;
- (f) the agreement must yield a return that
 - (i) will compensate the corporation for not less than its full investment in the property,
 - (ii) is reasonable, taking into account
 - (A) the term of agreement and the other terms and conditions of it,
 - (B) the technological obsolescence of the property, and
 - (C) the rate of return sought by the other lessors in respect of similar agreements in respect of

similar property and under the same terms and conditions,

and

(iii) is calculated by taking into account

(A) rental charges paid by the lessee or purchaser,

(B) estimated tax benefits of the agreement to the corporation, including tax credits and capital cost allowance claims, and

(C) the amount of,

(I) where the lessee or purchaser or a third party who is dealing at arm's length with the corporation has, on or before the commencement of the agreement, contracted to purchase the property or unconditionally guaranteed the resale value of the property at the date of expiry of the agreement, the purchase price or the resale value so guaranteed, or

(II) in any other case, but subject to clause (c), the estimated residual value of the property;

(g) the agreement must contain a provision

(i) assigning and conveying to the lessee or purchaser the benefit of all warranties, guarantees or other undertakings made by a manufacturer or supplier relating to property, or

(ii) setting out the responsibilities of the corporation with regard to the warranties, guarantees or other undertakings referred to in subclause (i);

(h) the agreement must substantially transfer to the lessee or purchaser the benefits and risks incidental to the operation of the property and must not place responsibility on the part of the corporation to install, promote, service, clean, maintain or repair the property;

(i) where the lessee or purchaser defaults in the manner set out in the agreement and the default is not waived or the agreement, including any renewals or extensions of it, expires, the corporation shall

(i) liquidate its interest in the property, or

- (ii) enter into a new agreement in respect of that property within 2 years of that default or expiry or, where proceedings in respect of that property have prevented the corporation from complying with that requirement within that period, within 2 years of the completion of those proceedings.

(4) An agreement may be renewed on its expiry and may be extended during its terms.

(5) The financial leasing corporation shall not enter into an agreement in respect of

- (a) a motor vehicle whose estimated residual value exceeds 50% of the cost of its acquisition, or
- (b) personal household property.

(6) For the purposes of subsection (5),

- (a) repealed AR 169/2006 s4;
- (b) “personal household property” means personal property that is leased by an individual pursuant to a financial lease agreement or purchased by an individual pursuant to a conditional sales agreement and intended primarily for the personal use or enjoyment of the lessee or purchaser or of an individual who is not dealing at arm’s length with the lessee or purchaser.

AR 164/2002 s4;110/2004;169/2006

Limitation on equity investments

6(1) In this section and section 7 “subsidiary” does not include a financial institution.

(2) For the purposes of this section,

- (a) a purchase or acquisition by a subsidiary of ATB is considered to be a purchase or acquisition by ATB;
- (b) in calculating beneficial ownership of participating shares in a corporation, no regard shall be taken of the ownership of shares in a corporation referred to in section 19(4) of the Act.

(3) Subject to section 7, ATB shall not

- (a) beneficially own participating shares of a corporation or an ownership interest in an unincorporated entity, or

- (b) acquire control of a corporation that beneficially owns shares or ownership interests referred to in clause (a),

if, as a result of the transaction, the aggregate value of all such shares and ownership interests beneficially owned by ATB and its subsidiaries would exceed 3.5% of the assets of ATB and its subsidiaries.

AR 187/97 s6;110/2004

Combined limitation

7 Where ATB or its subsidiaries, or both of them, have investments referred to in section 17 of the Act and investments referred to in section 6 of this Regulation,

- (a) the aggregate value calculated under section 17 of the Act and section 5(2) of this Regulation, plus
- (b) the aggregate value calculated under section 6 of this Regulation

shall not exceed 5% of the assets of ATB and its subsidiaries.

AR 187/97 s7;110/2004;169/2006

Connected persons

8(1) For the purposes of section 18(1) of the Act a person is connected to another person

- (a) if the person is an affiliate of the other person, or
- (b) if, in respect of a loan to or an investment in those persons,
 - (i) the loan or investment is for the same purpose in whole or in part,
 - (ii) the expected source of repayment of the loan or investment is the same in whole or in part, or
 - (iii) the security for the loan or investment is the same in whole or in part.

(2) For the purposes of section 18 of the Act, this section, section 10(5) and section 30(2), references to the making of a loan are to be taken to include references to the guaranteeing of persons' obligations and for the purposes of section 18(2)(c) of the Act "investment" includes anything into which money may be placed as a result of subsection (5)(m).

(3) Notwithstanding subsection (1), persons who are financially independent of each other to a material extent are not connected persons for the purposes of section 18 of the Act.

(4) The amount prescribed for the purposes of section 18(1)(a) of the Act is such amount as would make ATB's exposure to the relevant person or connected persons equal to 25% of ATB's capital within the meaning of the guidelines under section 20 of the Act.

(4.1) In subsection (4), "ATB's exposure" to the relevant person or connected persons means the aggregate of

- (a) the outstanding balance of principal and interest owing under all loans made by ATB to or in respect of that person or those connected persons, and
- (b) the book value of all investments made by ATB in that person or in those connected persons and still held by ATB,

but excluding investments referred to in section 18(2)(a) and (b) of the Act and subsection (5) of this section.

(5) The following are prescribed as investment vehicles for the purpose of section 18(2)(c) of the Act:

- (a) loans to or investments in subsidiaries of ATB;
- (b) an investment that is authorized under section 19(4) of the Act;
- (c) securities that are issued by a university, a municipality or a hospital or school board in Canada;
- (d) loans to the Government of Canada or the government of a province or to any of their agencies, or to a university, a municipality or a hospital or school board in Canada;
- (e) loans that are guaranteed by the Government of Canada or the government of a province;
- (f) securities on which payment is ensured by rates or by the levy of a tax by a school or municipal corporation under a law of Canada or a province on property situated in the territory of the school or municipal corporation;
- (g) a residential mortgage loan referred to in section 9;
- (h) securities on which payment of principal and interest is guaranteed by the grant of a subsidy by the Government

- of Canada or the government of a province that is payable out of sums voted each year for that purpose;
- (i) debt securities including banker's acceptances, (other than subordinated debt securities) that are issued or guaranteed by a financial institution that is authorized to take deposits in Canada;
 - (j) deposits with financial institutions that are authorized to take deposits in Canada;
 - (k) demand loans at book value, other than loans to an individual, that are fully secured by any of the following securities:
 - (i) at market value, Treasury Bills of the Government of Canada or of a province;
 - (ii) at book value, term deposits or other similar instruments issued by a financial institution that mature within 100 days after the applicable date;
 - (iii) at market value, bankers acceptances that mature within one year from the date of issue and bearer deposit notes;
 - (iv) at market value, commercial paper that matures within 100 days from the date of its issue and has at least a rating of P-1 from Moody's Investors Service or the equivalent rating from another approved rating organization, as that term is defined in the relevant Multilateral Instrument issued by the Canadian Securities Administrators;
 - (v) at market value, securities, other than securities referred to in clause (i), that are issued or guaranteed by the Government of Canada, the government of a province or a municipality;
 - (l) a line of credit to a participant in the Large Value Transfer System that has at least a rating referred to in clause (k)(iv);
 - (m) investments in notes issued by master asset partnerships, as contemplated in the Framework Agreement executed by ATB and other members of the Pan-Canadian Third Party Asset-Backed Commercial Paper Investors Committee that became effective on December 23, 2007, including the results of participation in any related margin funding facility or other actions or agreements to be entered into in furtherance of the proposed restructuring

contemplated in that Agreement, as approved by the board.

AR 187/97 s8;164/2002;110/2004;169/2006;59/2008;63/2009;239/2009

Mortgage investments

9(1) Subject to this section, ATB may

- (a) purchase a mortgage, or
- (b) make a loan on the security of a mortgage,

in this section called the “investment mortgage”, on improved real estate in Alberta.

(2) Where the investment mortgage is a residential mortgage, the amount paid for or advanced on the investment mortgage, together with the amount of indebtedness under any other mortgage on the improved real estate that ranks equally with or prior to the investment mortgage, must not exceed 80% of the market value of the real estate at the time the investment mortgage is purchased or granted, as the case may be, unless the excess amount is guaranteed or insured by the Government of Alberta, the Government of Canada, the government of another province, an agency of any of those governments or an insurance policy issued by an insurance corporation authorized to carry on business in Canada.

(3) Where the excess amount referred to in subsection (2) is guaranteed or insured by an agency of the Government of Alberta, the guarantee or insurance must be on the same basis and subject to the same conditions that would apply if the excess amount were guaranteed or insured under the *National Housing Act* (Canada).

(4) Subsection (2) does not apply where ATB makes a loan to the purchaser of improved real estate that ATB acquired to protect its investment and is disposing of.

AR 187/97 s9;110/2004;111/2007

Mortgage loans re eligible borrowers

9.1(1) In this section,

- (a) “eligible borrower” means
 - (i) a corporation that is incorporated or continued under the *Business Corporations Act* or the *Business Corporations Act* (Canada) and has its head office located in Alberta,
 - (ii) an entity (other than a corporation referred to in subclause (i)) that is registered with the Registrar

appointed under the *Business Corporations Act* and has its head office located in Alberta, or

(iii) an individual who resides in Alberta for the purposes of the *Alberta Income Tax Act*;

(b) “head office” means the place where the chief executive or equivalent of the corporation or entity transacts the business of the corporation or entity.

(2) ATB may make a loan on the security of improved real estate that is located outside Alberta if

(a) the loan is made to an eligible borrower, and

(b) section 9(2), (3) and (4) are complied with, where the loan is in the form of a residential mortgage on improved real estate.

AR 7/2000 s2;110/2004

Extra-provincial syndicated loan agreements

9.2(1) In this section, “Canadian corporation” means a corporation

(a) incorporated or continued in a jurisdiction in Canada, outside of Alberta, and

(b) whose head office is outside of Alberta.

(2) Subject to subsection (3), ATB may enter into a syndicated loan agreement with one or more financial institutions in respect of a Canadian corporation if the corporation operates in Alberta.

(3) ATB’s participation in syndicated loan agreements under subsection (2) must not exceed in the aggregate 10% of the total amount of commercial loans made by ATB at any one time.

AR 164/2002 s6;110/2004

Hedging agreements

10(1) ATB may not enter into derivative contracts, including exchange agreements, financial futures agreements, option agreements and rate agreements or engage in any other similar transactions unless the purpose of the transaction is to hedge against interest rates, exchange rates, equity prices, commodity prices or similar risks associated with specific assets or liabilities or groups of assets or liabilities of ATB or its customers.

(2) ATB may enter into a transaction listed in subsection (1) with a customer of ATB only where

- (a) the purpose of the transaction is to hedge against risks of the customer relating to interest rates, commodity prices or exchange rates, and
- (b) if the purpose of the transaction is to hedge against risks of the customer relating to commodity prices, ATB takes an opposite position in the market to offset the risk it assumes under the transaction.

(2.1) Notwithstanding subsections (1) and (2), ATB may enter into a forward foreign exchange contract with a customer if the exposure of ATB

- (a) to risks of the customer's default under the contract has been hedged against, and
- (b) to adverse foreign exchange rate fluctuations has been fully hedged against

in accordance with policies established by the board.

(2.2) ATB may, for asset-liability management purposes, negotiate the replacing or unwinding of existing derivative contracts.

(2.3) Notwithstanding subsection (1), ATB may enter into credit derivative contracts with financial institutions in Canada that have at least one of the credit ratings referred to in the guidelines referred to in subsection (3) in respect of residential mortgage loans secured by land situated in Canada for the purpose of diversifying its geographic concentration risk.

(3) Where ATB enters into a swap with another party (referred to as the counter-party), the counter-party must be an issuer of and have issued debt securities that are outstanding and having at least one of the ratings referred to in the guidelines whose primary subject-matter is derivatives.

(4) Subsection (3) does not apply where the transaction is with a customer in accordance with subsection (2).

(5) Notwithstanding subsection (1), ATB may enter into credit derivative contracts for the purpose of hedging investments referred to in section 8(5)(m) against any risks to which they may be subject.

AR 234/99 s2;164/2002;110/2004;169/2006;59/2008

Deposit guarantee fee

11(1) In this section, "deposits" means

- (a) money whose repayment, taking into account section 1(3), is guaranteed by section 14(1) of the Act, and
- (b) negotiable instruments specified by notice in writing given by the Minister to ATB for the purposes of this subsection.

(2) ATB shall, before July 1 in each year, pay to the Minister in respect of the previous fiscal year the fee required by section 14(2) of the Act, in the aggregate of the following amounts based on deposits held by ATB:

- (a) for deposits that do not exceed \$100 000 or for those portions of deposits exceeding \$100 000 that do not exceed \$100 000, the lesser of
 - (i) an amount equal to the total of those deposits or those portions of those deposits multiplied by Canada Deposit Insurance Corporation's rate for a deposit-taking institution with a similar risk profile as ATB, as determined by the Minister, and
 - (ii) an amount equal to 1/6 of 1% of all those deposits or those portions of those deposits;
- (b) for those portions of deposits exceeding \$100 000 that do exceed \$100 000, an amount equal to 1/6 of 1% of all those excess portions.

(3) For the purposes of subsection (2), the amounts of the respective deposits are to be

- (a) based on the amount reported in ATB's audited annual financial statements except that the Minister may, for those purposes, accept estimates prepared by ATB of the amounts of the deposits to the extent that they are not so reported, and
- (b) subject to clause (a), calculated in accordance with methodology approved by the Minister.

(4) Repealed AR 63/2009 s3.

(5) A notice under subsection (1)(b) is deemed to be a document incorporated in this Regulation for the purposes of section 1(1)(f) of the *Regulations Act*, but the Minister shall ensure that its contents are given publicity in such a form as the Minister considers likely to make it available, generally, to all persons likely to be affected by it.

AR 187/97 s11;164/2002;110/2004;169/2006;63/2009

Financial charges by Crown

11.1 The charges referred to in section 14.1(1) of the Act and sections 11.2 and 11.3 (in those sections referred to as “charges”) are payable with respect to

- (a) ATB’s conducting its businesses generally, and
- (b) the Minister’s general supervision of ATB.

AR 239/2009 s3

Business charges

11.2 The charges under section 11.1(a) are to be in an amount equal to 23% of ATB’s consolidated net income as reported in its audited annual financial statements for each fiscal year, and are payable before July 1 in the fiscal year following that in respect of which each charge is payable.

AR 239/2009 s3

Aspects of and charges for general supervision

11.3 The Minister is authorized to do any of the things mentioned in section 34(1)(k.1) of the Act and ATB shall, each fiscal year before such date as is directed by the Minister, pay the Crown such amount for charges under section 11.1(b) as the Minister directs it in writing representing the costs incurred by the Minister in exercising the Minister’s general supervision of ATB and shall make the payment in the manner directed by the Minister.

AR 239/2009 s3

Requirements for payment of charges

11.4 The charges must be paid

- (a) in the form of subordinated debt issued by ATB until the notional capital represented by the amortized portion of \$600 million of “tier 2 capital”, as that term is defined in the guidelines under section 20 of the Act, reaches zero dollars, and
- (b) after that event is reached, in the form of whichever of cash or such subordinated debt as the Minister directs.

AR 239/2009 s3

Definitions

12 In sections 13 to 22,

- (a) “fair market rate” means

- (i) in respect of a guarantee, investment in securities or other transaction for which there is a competitive or open market, the most probable price in terms of money that should be obtained for that guarantee, investment in securities or other transaction under all conditions requisite to a fair transaction, with both the seller and buyer acting prudently and knowledgeably, or
 - (ii) in respect of a guarantee, investment in securities or other transaction for which there is not an open and competitive market, a consideration that might reasonably be expected to be obtained for that guarantee, investment in securities or other transaction in an arm's length transaction between willing parties to a similar transaction;
- (b) "senior officer" of a corporation means
- (i) a person who is both a director and a full-time employee of the corporation,
 - (ii) the chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief inspector or chief actuary of the corporation,
 - (iii) an individual who performs functions for the corporation similar to those performed by a person referred to in subclause (ii),
 - (iv) the head of the strategic planning unit of the corporation,
 - (v) the head of the unit of the corporation that provides legal services or human resources services to the corporation, or
 - (vi) any other officer who reports directly to the corporation's board of directors, chief executive officer or chief operating officer.

Related party status

13(1) For the purposes of the Act and this Regulation and subject to this section, a person is a related party with respect to ATB if that person

- (a) is a director or senior officer of ATB,

- (b) holds or is a beneficial owner of shares of an affiliate of ATB to which are attached 10% or more of the voting rights attaching to all of the outstanding voting shares of the affiliate,
- (c) is the Auditor General or a senior or executive manager employed in the Office of the Auditor General who is actually engaged in auditing ATB or any of its affiliates,
- (d) is an individual who is the agent of the Auditor General or a partner in a firm that is agent of the Auditor General, if that person is actually engaged in auditing ATB or any of its affiliates,
- (e) is a spouse or adult interdependent partner of a person referred to in clause (a),
- (f) is a relative of, or a relative of the spouse or adult interdependent partner of, a person referred to in clause (a), who has the same home as that person,
- (g) is a trust or estate in which a person referred to in clause (a), (e) or (f) has a 10% or greater beneficial interest or in respect of which the person serves as a trustee or in a similar capacity,
- (h) is a corporation in which an individual referred to in clause (a) is the holder or beneficial owner of shares to which are attached 10% or more of the voting rights attaching to all of the outstanding voting shares of the corporation,
- (i) is a corporation that is controlled by a person referred to in clause (c), (d) or (e),
- (j) is a corporation in which ATB holds or beneficially owns shares to which are attached 10% or more of the voting rights attaching to all of the outstanding voting shares of the corporation,
- (k) is the auditor of a corporation referred to in clause (j) or is a partner in the firm that is the auditor of the corporation, if that person is actually engaged in auditing the corporation,
- (l) is
 - (i) a partner of ATB and has a 10% or greater beneficial interest in the partnership, or

- (ii) a party to and has a 10% or greater beneficial interest in a joint venture agreement to which ATB is also a party,

where ATB has a 10% or greater beneficial interest in the partnership or joint venture, as the case may be,

- (m) is an affiliate of ATB or a director or senior officer of an affiliate of ATB, or
- (n) is designated as a related party under subsection (2).

(2) The Minister may designate any person as a related party of ATB if the Minister is of the opinion that

- (a) the person is acting or has acted jointly or in concert with a related party of ATB with respect to the giving of a guarantee, the making of an investment in securities or the entering into of another transaction that would be prohibited or restricted under this Part if given, made or entered into by or with respect to that related party, or
- (b) there exists or has existed between the person and ATB an interest or relationship that might reasonably be expected to affect or that has affected the exercise by ATB of its best judgment with respect to a guarantee, investment in securities or other transaction.

(3) The Minister may, of his own motion or on application by ATB or the related party affected by a designation made under subsection (2), revoke the designation.

AR 187/97 s13;109/2003;110/2004

General prohibition

14(1) Except as provided in the Act or this Regulation,

- (a) neither ATB nor its subsidiary shall, directly or indirectly, give any guarantee on behalf of a related party of ATB,
- (b) neither ATB nor its subsidiary shall, directly or indirectly, make an investment in any securities of a related party of ATB,
- (c) neither ATB nor its subsidiary shall, directly or indirectly, enter into any other transaction with a related party of ATB, and
- (d) no related party of ATB shall, directly or indirectly, enter into any other transaction with ATB or its subsidiary.

(2) Subsection (1) does not apply to

- (a) the payment of remuneration
 - (i) to the Auditor General, or
 - (ii) to the directors of ATB or its subsidiary if the remuneration has been approved by the Lieutenant Governor in Council, in the case of remuneration paid to a director of ATB, or by ATB, in the case of remuneration paid to a director of its subsidiary,

or

- (b) the granting of indemnification in accordance with section 28 of the Act.

AR 187/97 s14;110/2004

Person previously a related party

15(1) Neither ATB nor its subsidiary shall, directly or indirectly, during the 12-month period after a person ceases to be a related party of ATB,

- (a) give any guarantee on behalf of,
- (b) make an investment in any securities of, or
- (c) enter into any other transaction with,

that person that would have been prohibited or that would have required an approval in accordance with procedures required under this Regulation had that person been a related party of ATB at the time of the guarantee, investment or other transaction, unless the proposed guarantee, investment or other transaction is at fair market rate.

(2) A person referred to in subsection (1) shall disclose in writing to ATB the nature of the person's interest in that guarantee, investment or other transaction forthwith after becoming aware of the facts that bring the person within the application of that subsection.

AR 187/97 s15;110/2004

Exceptions

16(1) Subject to the Act and regulations, ATB or its subsidiary may give a guarantee on behalf of, make an investment in the securities of or enter into any other transaction with a related party of ATB if the transaction is at fair market rate and has prior approval of the board.

(2) Subject to the Act and regulations, ATB or its subsidiary may

- (a) make a loan to
 - (i) a director or senior officer of ATB,
 - (ii) the spouse or adult interdependent partner of a director or senior officer of ATB, or
 - (iii) a relative of, or a relative of the spouse or adult interdependent partner of, a director or senior officer of ATB who has the same home as the director or senior officer

on the security of the residence of the person to whom the loan is made if the loan qualifies under section 9 and, except in the case of a loan to a senior officer of ATB, the loan is at fair market rate,

- (b) make a personal loan to
 - (i) a senior officer of ATB,
 - (ii) the spouse or adult interdependent partner of a senior officer of ATB, or
 - (iii) a relative of, or a relative of the spouse or adult interdependent partner of, a senior officer of ATB who has the same home as the senior officer,

if, except in the case of a loan to a senior officer of ATB, the loan is at fair market rate, and

- (c) enter into an employment contract with a senior officer of ATB or its subsidiary.

AR 187/97 s16;109/2003;110/2004

Form of approval

17 Where this Regulation requires that a guarantee, investment in securities or other transaction have the prior approval of the board, the approval

- (a) must be given
 - (i) in writing,
 - (ii) in accordance with the procedures established under this Regulation, and
 - (iii) by a person authorized by the board of directors to give such an approval,

and

- (b) may be given with respect to a specific guarantee, investment or transaction or with respect to a class of guarantees, investments or transactions.

Limits

18(1) The aggregate of

- (a) the outstanding principal and interest owing on all loans to related parties of ATB,
- (b) the book value of all current investments in securities of related parties of ATB, and
- (c) the contracted amount of all outstanding guarantees on behalf of related parties of ATB,

entered into, made or given by ATB and its subsidiaries shall not exceed 2% of the assets of ATB.

(2) Neither ATB nor its subsidiary shall make a loan to or give a guarantee on behalf of a senior officer of ATB or any of its subsidiaries if the aggregate of the outstanding principal and interest owing on all such loans and the contracted amount of all outstanding guarantees to or on behalf of that senior officer would exceed the greater of

- (a) \$100 000, and
- (b) twice the annual salary of that senior officer.

(3) A loan under section 16(2)(a) shall not be counted for the purposes of calculating the limit under subsection (2) of this section.

(4) Neither ATB nor its subsidiary shall give a guarantee on behalf of or make a loan to or an investment in the securities of a related party of ATB who is

- (a) a person referred to in section 21 of the Act, or
- (b) a senior officer of ATB or any of its subsidiaries,

if the aggregate of

- (c) the outstanding principal and interest owing on all loans by ATB and its subsidiaries to all such related parties,
- (d) the book value of all current investments by ATB and its subsidiaries in securities of all such related parties, and

- (e) the contracted amount of all outstanding guarantees by ATB and its subsidiaries on behalf of all such related parties,

would exceed one half of 1% of the assets of ATB.

AR 187/97 s18;110/2004

Transactions with Crown

19 Neither ATB nor its subsidiaries shall enter into a business transaction with the Crown in right of Alberta unless the transaction is at fair market rate.

AR 187/97 s19;110/2004

Notice of contravention

20 Where ATB or its subsidiary has given a guarantee, made an investment in securities or entered into any other transaction contrary to this Regulation, ATB shall, forthwith on becoming aware of that fact, notify the Auditor General and the Minister of that fact.

AR 187/97 s20;110/2004

Onus

21 For the purposes of the Act and this Regulation, the onus is on the related party and ATB or its subsidiary, as the case may be, to establish that a particular guarantee, investment in securities or other transaction is in compliance with the Act and this Regulation.

AR 187/97 s21;110/2004

Conduct review committee and procedures

22(1) The board shall establish a Governance and Conduct Review Committee consisting of not fewer than 3 members of the board.

(2) At least 2/3 of the members of the Committee must be unaffiliated directors.

(3) The Committee shall not transact any business unless a majority of the members present are unaffiliated directors.

(4) The Committee shall develop for the consideration of the board written review and approval procedures to be followed by ATB to ensure compliance with sections 13 to 21, including procedures respecting the obligations of related parties to disclose information to ATB and procedures respecting approvals under this Regulation.

(5) The procedures may be passed as a by-law under section 8 of the Act and shall be published in The Alberta Gazette.

(6) The procedures shall, at least once each year, be reviewed by the Committee.

(7) The Auditor General is entitled to attend and be heard at all meetings of the Committee.

AR 187/97 s22;110/2004

23 Repealed AR 63/2009 s4.

Guidelines

23.1(1) The Minister may make guidelines for ATB on any matter referred to in section 34(1)(h.2) of the Act and shall make such guidelines on an identified subject-matter where a provision of this Regulation requires guidelines on that subject-matter in order to ensure the efficacy of the provision.

(2) Guidelines

- (a) must not be inconsistent with this Regulation,
- (b) are deemed to be regulations for the purposes, and only for the purposes, of section 33 of the Act, and
- (c) must contain a commencement date from which they come into effect.

AR 164/2002 s9;110/2004

Compliance with legislation and guidelines

23.2(1) ATB shall provide to the Minister a report, in a form satisfactory to the Minister, on its compliance with the Act, the regulations and the guidelines

- (a) for the fiscal year to which the financial statements submitted under section 23 of the Act relate, within 90 days after the date on which it submits those financial statements, and
- (b) for any other period specified by the Minister, if so required by the Minister, on or before the date specified by the Minister.

(2) The Minister shall annually specify subjects on which compliance by ATB with the Act, the regulations and the guidelines is to be the subject of an examination by the person and in the manner decided by the Minister.

AR 110/2004 s9

24 to 28 Repealed AR 63/2009 s4.

Liquidity investments

29 ATB shall have and keep available unencumbered liquid assets in accordance with the guidelines whose primary subject-matter is liquidity.

AR 187/97 s29;54/98;164/2002;110/2004

Treatment of larger unclaimed balances

29.1(1) This section and section 29.2 apply with respect to deposits in the form of deposit accounts, bank drafts, certified cheques, money orders or term deposits.

(2) Where

- (a) within the past 12 months a customer of ATB (in this section referred to as “the customer”) has neither transacted any business through an account of that customer held with ATB (in this section referred to as “the account”) nor provided written acknowledgment to ATB of the balance in the account, and
- (b) the balance of the account equals or exceeds \$250,

ATB shall make reasonable endeavours to locate the customer.

(3) If ATB cannot locate the customer under subsection (2), it shall, within 2 years after the last transaction of any business through the account or the last written acknowledgment of the balance of the account, change the status of the account to “unclaimed”.

(4) ATB shall maintain a record, in relation to the account whose status has changed, of

- (a) the name and last-known address of the customer,
- (b) the balance of the account,
- (c) the type of account,
- (d) the date of the change in status,
- (e) the branch location of ATB, and
- (f) the date of the last transaction or acknowledgment referred to in subsection (3).

(5) The maturing of a deposit placed for a specific term or that matures at a specific date does, and the application of earnings or a service charge to the account by ATB does not, constitute the transaction of business for the purposes of subsections (2) to (4).

- (6) At approximately the 2nd and 5th anniversaries of the change in the status of the account under subsection (3), ATB shall make reasonable endeavours to locate the customer if the customer has not been repaid.
- (7) For conducting each search under subsections (2) and (6), ATB may impose a reasonable charge against the customer's balance.
- (8) Subject to subsection (7), ATB may only impose those charges in respect of the balance held in the account that would be chargeable to the customer if the account were still active.
- (9) ATB shall continue to pay interest on the account at the same rate as would have applied had the account still been active or, if that type of account is no longer offered, the rate for the most closely comparable account currently offered, on the balance transferred for the whole of the period that the money is in the account designated "unclaimed", but ATB is not required to pay or credit the interest until a claim is paid out or until it has to transfer the money under subsection (12)(b).
- (10) Where the balance in the account is claimed by the person entitled to it, ATB shall, if the claim is substantiated by evidence satisfactory to ATB, pay the claimant the amount due on that balance.
- (11) ATB shall ensure that details of the payment are recorded and that the payment is authorized in writing by at least 2 officers of ATB.
- (12) Before April 1 in the applicable year, if no valid claim has been made, ATB shall
- (a) identify the amount that has or should have been held in the account designated "unclaimed" for 10 years following the change in status under subsection (3), and
 - (b) transfer that amount and the records referred to in subsection (4) to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* for administration in accordance with that Act.
- (13) To the extent that money is transferred under subsection (12)(b), ATB may not be sued for any claims for that money made after the transfer.
- (14) This section does not apply to any money that is
- (a) lawfully retained by ATB under any lien, right of set-off or specific charge, or

- (b) retained in a plan registered under the *Income Tax Act* (Canada).

(15) ATB shall comply with section 7 of the *Unclaimed Personal Property and Vested Property Act*.

AR 239/2009 s4

Treatment of small unclaimed balances

29.2(1) Where

- (a) within the past 2 years a customer of ATB (in this section referred to as “the customer”) has neither transacted any business through an account of that customer held with ATB (in this section referred to as “the account”) nor provided written acknowledgment to ATB of the balance in the account, and
- (b) the balance of the account is less than \$250,

ATB shall make reasonable endeavours to locate the customer, following which ATB shall comply with section 29.1 in respect of that balance, hold the balance for the customer as if business were being regularly transacted on the account or proceed in accordance with this section.

(2) Subject to this section, where subsection (1)(a) and (b) apply, ATB may, if a valid claim has not been made for the balance, transfer the balance to income of ATB.

(3) Section 29.1(4), (5), (7) and (14) apply to balances transferred to income under subsection (2).

(4) Where a balance that has been transferred to income under subsection (2) is subsequently claimed by the person entitled to it, ATB shall pay the claimant the amount due on that balance with interest at a rate that is not less than that prescribed in section 29.1(9) for the whole of the period that the money was subject to the transfer.

(5) If the balance transferred to income is not claimed by the person entitled to it within 5 years after the last transaction or acknowledgment referred to in subsection (1), ATB may retain the money and may not be sued for any claims for the money made after the expiration of that period.

(6) Where ATB opts, pursuant to subsection (1), to comply with section 29.1, the provisions of that section, except section 29.1(15), apply.

AR 239/2009 s4

Transitional

30(1) Where, on the coming into force of this Regulation, there is a loan or mortgage between ATB and another person that would be in contravention of section 9 or 16, as the case may be, if it had been made, purchased or granted after the coming into force of this Regulation, ATB may retain the loan or mortgage but may not after that date

- (a) increase the amount owing in respect of the loan or mortgage, or
- (b) increase the amortization period of the loan or mortgage.

(1.1) Subject to subsection (1.2), where on the coming into force of section 9.1, there is a loan between ATB and another person that would be in contravention of section 9.1 if it had been made after the coming into force of section 9.1, ATB may retain the loan but may not after that date

- (a) increase the amount owing in respect of the loan, or
- (b) increase the amortization period of the loan.

(1.2) ATB may, by means of a loan workout procedure, increase the amount owing in respect of a loan referred to in subsection (1.1) or increase the amortization period of the loan.

(2) Where, on the coming into force of this Regulation, ATB has loans or investments that would contravene the limit prescribed in section 8(4) if they had been made after the coming into force of this Regulation, ATB may retain the loans or investments but shall bring itself into compliance with section 8(4) within 15 years after the coming into force of this Regulation.

(3) For the purposes of subsection (2), “retain” includes the conversion of a guarantee, given by ATB, into a loan.

AR 187/97 s30;54/98;7/2000;164/2002;110/2004

Transitional — unclaimed balances

30.1(1) Notwithstanding section 29.1(3), the initial date before which a change in the status of an account must be made under that subsection is April 1, 2010.

(2) Notwithstanding section 29.2(1), the initial date before which there must be compliance with that subsection is April 1, 2010.

(3) The reference in section 29.2(5) to 5 years after the last transaction or acknowledgment referred to in section 29.2(1) is to be deemed, initially after the commencement of that subsection, to refer instead to April 1, 2015.

AR 239/2009 s5

Consequential amendment

31 The *Loan and Trust Corporations Regulation (AR 171/92)* is amended in section 14 by adding the following after clause (b):

- (c) Alberta Treasury Branches in respect of its acting as trustee in accordance with the *Alberta Treasury Branches Act* and regulations.

Coming into force

32 This Regulation comes into force on the date the *Alberta Treasury Branches Act*, Statutes of Alberta, 1997, chapter A-37.9 comes into force.

Schedule Repealed AR 63/2009 s5.



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