

1995 BILL 39

---

Third Session, 23rd Legislature, 44 Elizabeth II

---

THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 39**

**TREASURY BRANCHES AMENDMENT ACT, 1995**

---

THE PROVINCIAL TREASURER

---

First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

---

## BILL 39

1995

### TREASURY BRANCHES AMENDMENT ACT, 1995

(Assented to \_\_\_\_\_, 1995)

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

Amends RSA  
1980 cT-7

*1 The Treasury Branches Act is amended by this Act.*

*2 Sections 1, 2 and 3 are repealed and the following is  
substituted:*

Definitions

**1** In this Act,

- (a) "board" means the board of directors appointed pursuant to section 2.1;
- (b) "depositor" means a person who has entered into a contract with the Minister providing for the making of deposits in a treasury branch;
- (c) "entity" includes a body corporate, trust, partnership, fund or other unincorporated association or organization, but does not include an individual;
- (d) "Fund" means the Treasury Branches Deposits Fund;
- (e) "Minister" means the Provincial Treasurer;
- (f) "officer" means the Superintendent and any other person the board has appointed as an officer of Alberta Treasury Branches under section 2.1(4);
- (g) "professional adviser" means
  - (i) an auditor,

## Explanatory Notes

1 Amends chapter T-7 of the Revised Statutes of Alberta 1980.

2 Sections 1, 2 and 3 presently read:

*1 In this Act,*

- (a) "depositor" means a person who has entered into a contract with the Minister providing for the making of deposits in a treasury branch;*
- (b) "Fund" means the Treasury Branches Deposits Fund;*
- (c) "Minister" means the Provincial Treasurer;*
- (d) "Superintendent" means the Superintendent of Treasury Branches;*
- (e) "treasury branch facility" means real property*
  - (i) that is used or intended to be used in connection with or incidental to the operations of the Province of Alberta Treasury Branches, and*
  - (ii) the acquisition of which is paid for with money from the Fund;*
- (f) "treasury branch" means a Province of Alberta Treasury Branch.*

*2(1) The Minister may, on behalf of the Crown, establish and operate branches of the Treasury Department at any places in Alberta that he selects.*

- (ii) a lawyer, accountant, appraiser, architect or engineer, or
- (iii) any other person whose profession or occupation would tend to lend credibility to a statement made or opinion given by that person;
- (h) “relative” means a person who is related by blood, marriage or adoption;
- (i) “spouse” means the person of the opposite sex to whom a person is married or with whom a person is living in a conjugal relationship outside marriage;
- (j) “Superintendent” means the Superintendent of Treasury Branches;
- (k) “treasury branch facility” means real property
  - (i) that is used or intended to be used in connection with or incidental to the operations of Alberta Treasury Branches, and
  - (ii) the acquisition of which is paid for with money from the Fund;
- (l) “treasury branch” means an Alberta Treasury Branch.

**Branches**

**2(1)** The Minister may, on behalf of the Crown, establish and operate branches of the Treasury Department at any places in Alberta that the Minister selects.

**(2)** A branch of the Treasury Department established and operated pursuant to subsection (1) shall be called an “Alberta Treasury Branch”.

**Appointment of board**

**2.1(1)** The Lieutenant Governor in Council may appoint a board of directors and a chair of the board.

**(2)** Subject to the regulations, the board may exercise the powers and perform the duties of the Minister under this Act.

**(3)** The board may delegate to any director, to a committee of directors or to any officer any of the board’s powers and duties under this Act except the power to make by-laws.

**(4)** The board may designate the offices of Alberta Treasury Branches, other than the office of Superintendent, and appoint persons to those offices and prescribe their duties.

*(2) A branch of the Treasury Department established and operated pursuant to subsection (1) shall be called a "Province of Alberta Treasury Branch".*

*(3) The Superintendent, the employees of the treasury branches and that part of the staff establishment of the Treasury Department assigned to the general administration and supervision of the treasury branches are a division of the Treasury Department called the "Province of Alberta Treasury Branches".*

*(4) The powers, duties and functions conferred or imposed on the Minister or the Superintendent by this Act or by any contract, arrangement or other transaction made pursuant to this Act*

*(a) may be exercised and performed in the name of the Province of Alberta Treasury Branches or in the name of a Province of Alberta Treasury Branch, and*

*(b) shall be deemed to be exercised and performed on behalf of the Crown,*

*whether those powers, duties and functions are exercised or performed by the Minister or the Superintendent or any employee of the treasury branches or an agent of the Minister.*

*3(1) In accordance with the Public Service Act, there may be appointed a Superintendent of Treasury Branches and any other employees required for the operation and supervision of the treasury branches.*

*(2) The Superintendent*

*(a) may exercise the powers and perform the duties of the Minister under sections 4, 6, 7, 8, 9(1), 13(2) and 16;*

*(b) may delegate any of his powers and duties under this Act or the regulations to any employees of the Province of Alberta Treasury Branches;*

*(c) may prescribe forms required for the purposes of the business and affairs of the Province of Alberta Treasury Branches;*

*(d) may enter into an agreement or arrangement with any person providing for the appointment of that person as an agent of the Minister for the purpose of receiving deposits under this Act and for any other purpose specified under the agreement or arrangement, and providing for the remuneration to be paid to that person;*

*(e) may execute purchase and sale agreements, transfers, leases and other related documents, including any documents relating to the matters referred to in this subsection;*

*(f) may enter into agreements with banks and other financial institutions respecting deposits, the making and*

Composition  
of board

**2.2(1)** The following persons are not eligible to become or remain a director:

- (a) a person who is not an individual;
- (b) an individual who is less than 18 years of age;
- (c) an individual who
  - (i) is a dependent adult as defined in the *Dependent Adults Act* or is the subject of a certificate of incapacity under that Act,
  - (ii) is a formal patient as defined in the *Mental Health Act*, or
  - (iii) has been found to be a person of unsound mind by a court elsewhere than in Alberta;
- (d) an individual who has the status of bankrupt;
- (e) an individual who, within the immediately preceding 5 years,
  - (i) has been convicted of an indictable offence that is of a kind that is related to the qualifications, functions or duties of a corporate director, and either the time for making an appeal has expired without an appeal's having been made or the appeal has been finally disposed of by the courts, or
  - (ii) has contravened this Act, the regulations or the by-laws or has been convicted of an offence under the *Bank Act* (Canada) or the *Loan and Trust Corporations Act*, the *Credit Union Act*, the *Insurance Act* or the *Securities Act*, or an equivalent statute of another province or Canada;
- (f) a Member of the Legislative Assembly of Alberta;
- (g) an individual who is otherwise ineligible under the regulations.

**(2)** At least 50% of the directors must be unaffiliated directors.

**(3)** Subsection (2) does not apply where the required percentage of unaffiliated directors is not met due to a

*recovering of loans, realization on securities and other related matters;*

- (g) may receive loans from and establish lines of credit with any person where those loans and lines of credit are required for the efficient and orderly receipt and disbursement or disposition of money or other property comprising the Fund;*
- (h) may enter into agreements for the purpose of using clearing-house facilities;*
- (i) may, subject to this Act, do any act or enter into any agreement for and on behalf of the Minister that is necessary or convenient for the conduct of the normal business and affairs of the treasury branches.*

vacancy caused by an unaffiliated director's ceasing to be a director.

(4) An individual is not eligible to be an unaffiliated director if that individual

- (a) has outstanding indebtedness in excess of \$200 000 for money borrowed from a treasury branch,
- (b) beneficially owns or controls directly or indirectly
  - (i) 10% or more of the issued and outstanding voting shares of an entity that is a body corporate that has outstanding indebtedness for money borrowed from a treasury branch, or
  - (ii) a 10% or greater interest in an entity, other than a body corporate, that has outstanding indebtedness for money borrowed from a treasury branch,
- (c) is a spouse of an individual referred to in clause (a) or (b),
- (d) is a relative, other than a spouse, of an individual referred to in clause (a) or (b) who has the same residence as the individual, or
- (e) is otherwise ineligible under the regulations.

Ceasing to  
hold office

**2.3(1)** A director ceases to hold office when

- (a) the director dies or resigns,
- (b) the director becomes ineligible under section 2.2, or
- (c) the director's appointment expires or is terminated by the Lieutenant Governor in Council.

(2) A resignation of a director becomes effective at the time a written resignation is sent to the Minister or at the time specified in the resignation, whichever is later.

Board by-laws

**2.4(1)** Subject to this Act and the regulations, the board

- (a) shall make by-laws
  - (i) governing conflicts of interest for directors and officers including, without limitation, by-laws



- (A) governing what constitutes a conflict of interest or a potential conflict of interest,
- (B) establishing techniques for identifying potential conflicts of interest,
- (C) requiring disclosure of involvement or potential involvement in conflict of interest situations,
- (D) governing the conduct of directors or officers who are involved or may become involved in a conflict of interest situation, and
- (E) establishing the consequences of a director's or officer's involvement in a conflict of interest situation or failure to properly disclose such involvement including, without limitation, requiring the director or officer to account to Alberta Treasury Branches for any profit that person has made as a result of that involvement,

and

- (ii) governing the making of loans by treasury branches to directors and officers and to entities in which a director or officer has a significant interest,

and

- (b) may make by-laws governing

- (i) the management of the business and affairs of Alberta Treasury Branches, and
- (ii) the calling and conduct of board meetings and the conduct of the business of the board generally.

(2) By-laws made by the Board under subsection (1)(a) are ineffective until they have been approved by the Minister.

(3) On approving by-laws under subsection (2) the Minister shall,

- (a) if the Legislative Assembly is sitting at that time, table the by-laws before the Assembly, or



- (b) if the Legislative Assembly is not sitting at that time, table the by-laws before the Assembly within 15 days after the commencement of the next sitting.

(4) The *Regulations Act* does not apply to by-laws made under this section.

Superinten-  
dent and staff

**2.5(1)** In accordance with the *Public Service Act*, there may be appointed a Superintendent of Treasury Branches and any other employees required for the operation and supervision of the treasury branches.

(2) The board, the Superintendent and other officers, the employees of the treasury branches and that part of the staff establishment of the Treasury Department assigned to the general administration and supervision of the treasury branches are a division of the Treasury Department called "Alberta Treasury Branches".

(3) The powers, duties and functions conferred or imposed on the Minister, the board or the Superintendent by this Act or by any contract, arrangement or other transaction made pursuant to this Act

- (a) may be exercised and performed in the name of Alberta Treasury Branches or in the name of an Alberta Treasury Branch, and
- (b) are deemed to be exercised and performed on behalf of the Crown,

whether those powers, duties and functions are exercised or performed by the Minister, an agent of the Minister, the board, the Superintendent or another officer or any employee of the treasury branches.

Powers of  
Super-  
intendent

**2.6** Subject to the regulations, the Superintendent may, under the direction and control of the board,

- (a) exercise the powers and perform the duties of the Minister under sections 4, 6, 7, 8, 9(1), 13(2) and 16;
- (b) delegate any of the Superintendent's powers and duties under this Act, the regulations or the by-laws to any officer or to any employee of Alberta Treasury Branches;
- (c) prescribe forms required for the purposes of the business and affairs of Alberta Treasury Branches;



- (d) enter into an agreement or arrangement with any person providing for the appointment of that person as an agent of the Minister for the purpose of receiving deposits under this Act and for any other purpose specified under the agreement or arrangement, and providing for the remuneration to be paid to that person;
- (e) execute purchase and sale agreements, transfers, leases and other related documents, including any documents relating to the matters referred to in this section;
- (f) enter into agreements with banks and other financial institutions respecting deposits, the making and recovering of loans, realization on securities and other related matters;
- (g) receive loans from and establish lines of credit with any person where those loans and lines of credit are required for the efficient and orderly receipt and disbursement or disposition of money or other property comprising the Fund;
- (h) enter into agreements for the purpose of using clearing-house facilities;
- (i) do any act or enter into any agreement for and on behalf of the Minister that is necessary or convenient for the conduct of the normal business and affairs of Alberta Treasury Branches.

Audit  
committee

**2.7(1)** The directors shall appoint from their number an audit committee, which shall meet at least twice each year to review annual financial statements and auditors' reports and to ensure that appropriate internal audit and financial control policies are in place.

**(2)** At least  $\frac{2}{3}$  of the directors on the audit committee must be unaffiliated directors within the meaning of section 2.2(4).

**(3)** A director who is an employee of Alberta Treasury Branches is disqualified from being on the audit committee.

**(4)** The Auditor General is entitled to attend and be heard at all meetings of the audit committee and the Auditor General, a member of the audit committee or a director may call a meeting of the audit committee at any time.

Policies

**3(1)** The directors shall establish reasonable and prudent



investment and lending policies, standards and procedures in respect of investment portfolios and loans in order to avoid undue risk of loss and to obtain a reasonable return.

(2) The directors shall review the policies, standards and procedures established under subsection (1) at least once a year.

Duty of care

**3.1** Every director and officer, in exercising powers and in discharging duties,

- (a) shall act honestly and in good faith, and
- (b) shall exercise the care, diligence and skill that a reasonable and prudent person would exercise under comparable circumstances.

Restrictions on certain transactions

**3.2** No treasury branch shall enter into a business transaction with

- (a) a director who is not an employee of Alberta Treasury Branches,
- (b) the spouse of a director referred to in clause (a),
- (c) a relative, other than the spouse, of a director referred to in clause (a) who has the same residence as the director, or
- (d) an entity in which a director referred to in clause (a) has a significant interest

for the sale of goods or the provision of financial services at rates or under terms that are more favourable than the rates or terms that are offered generally to customers of the treasury branch in the ordinary course of the treasury branch's business.

Setting aside transaction

**3.3** Where a director or officer contravenes the by-laws made under section 2.4(1)(a)(i)(C) or (D), the Court of Queen's Bench may, on the application of Alberta Treasury Branches, set aside the transaction on any terms it considers appropriate.

Personal liability of director

**3.4(1)** Directors who vote for or consent to a resolution authorizing an investment, loan or other transaction that

- (a) contravenes section 3.2 or is contrary to the policies, standards and procedures established under section 3 or the by-laws under section 2.4(1)(a), and



- (b) involves any payment or distribution of property by a treasury branch

are jointly and severally liable to restore to the Fund any amounts so paid and the value of any property so distributed and not otherwise recovered by it.

(2) A director who has satisfied a judgment rendered under this section is entitled to contribution from the other directors who voted for or consented to the act on which the judgment was founded.

(3) A director is not liable under subsection (1) or (2) if he proves that he did not know and could not reasonably have known that the investment, loan or other transaction contravened section 3.2 or was contrary to the policies, standards and procedures established under section 3 or to the by-laws under section 2.4(1)(a), as the case may be.

(4) A director who relies in good faith on

- (a) financial statements represented to the director by an officer or in a written report of the Auditor General as fairly reflecting the financial condition of the Fund, or

- (b) an opinion or report of a professional adviser

is not liable under this section or section 3.1.

(5) No action may be commenced under this section more than 5 years after the happening of the event that gave rise to the cause of action.

Purported  
relief  
ineffective

**3.5** No provision in a contract, by-law or resolution relieves a director or officer from the duty to act in accordance with this Act, the regulations and the by-laws or relieves the director or officer from liability for a breach of them.

Deemed  
consent

**3.6(1)** A director who is present at a meeting of directors or a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless

- (a) the director requests that his abstention or dissent be, or his abstention or dissent is, entered in the minutes of the meeting,
- (b) the director gives his written dissent to the secretary of the meeting before the meeting is adjourned,



- (c) the director sends his written dissent or delivers it to the chair immediately after the meeting is adjourned, or
- (d) the director otherwise proves that he did not consent to the resolution or action.

(2) A director who votes for or consents to a resolution or action is not entitled to dissent under subsection (1).

Protection  
from liability

**3.7** A director who resigns from the board because of a disagreement with an act or omission of the board or of an officer or an employee of Alberta Treasury Branches and knows or believes that as a result of the action or omission

- (a) a director or an officer or employee of Alberta Treasury Branches is or will be in contravention of this Act or the *Criminal Code* (Canada), or
- (b) there has been or will be a change in the circumstances of Alberta Treasury Branches that might materially and adversely affect the financial position of Alberta Treasury Branches

and in good faith submits to the Minister a statement of reasons for his resignation shall not be liable in any civil action arising out of the statement.

**3** *Section 17 is repealed and the following is substituted:*

Deposits  
subject to  
trusts

**17(1)** Neither the Minister, the board, the Superintendent or another officer nor an employee of the treasury branches is bound to see to the execution of any trust, whether express, implied or constructive, to which any deposit in a treasury branch may be subject.

(2) The receipt of the depositor in whose name a deposit stands in the books of a treasury branch is a sufficient discharge to the Minister, the board, the Superintendent and other officers and the employees of the treasury branches for any payment made in respect thereof, notwithstanding any trust to which it may then be subject and whether the Minister, board, Superintendent or other officer or employee has or has not had notice of the trust.

(3) Neither the Minister, the board, the Superintendent or another officer nor an employee of treasury branches is bound to see to the application of the money paid on a receipt referred to in subsection (2).

**3** Section 17 presently reads:

*17(1) The Minister, Superintendent or an employee of the treasury branches is not bound to see to the execution of any trust, whether express, implied or constructive, to which any deposit in a treasury branch may be subject.*

*(2) The receipt of the depositor in whose name a deposit stands in the books of a treasury branch is a sufficient discharge to the Minister, Superintendent or an employee of the treasury branches for any payment made in respect thereof, notwithstanding any trust to which it may then be subject and whether the Minister, Superintendent or an employee of the treasury branches has or has not had notice of the trust.*

*(3) The Minister, Superintendent or an employee of the treasury branches is not bound to see to the application of the money paid on a receipt referred to in subsection (2).*

*4 Section 18 is repealed and the following is substituted:*

Regulations

**18** The Lieutenant Governor in Council may make regulations

- (a) governing, prohibiting and restricting the board's exercise of its powers and performance of its duties under this Act;
- (b) establishing additional eligibility criteria for directors and unaffiliated directors;
- (c) respecting additional information that must be included in the financial statements referred to in section 19;
- (d) generally for the purposes of this Act.

*5 Section 19 is amended by adding "and containing any other information required by the regulations" after "that fiscal year".*

*6 The Interpretation Act is amended in section 25(1)(w) by striking out "a Province of" and substituting "an".*

*7 This Act comes into force on Proclamation.*

**4** Section 18 presently reads:

*18 The Lieutenant Governor in Council may make any regulations that are necessary for the purpose of carrying out this Act.*

**5** Section 19 presently reads:

*19 The Minister shall as soon as practicable after the end of a fiscal year prepare financial statements for the Fund showing the financial position results of operations and changes in financial position during that fiscal year, and those statements shall be included in the public accounts.*

**6** Consequential amendment to chapter I-7 of the Revised Statutes of Alberta 1980.

**7** Coming into force.