

# **B.C.-Alberta Trade, Investment, Labour Mobility Agreement AUMA Backgrounder**

## **Introduction**

The B.C.-Alberta Trade, Investment, Labour Mobility Agreement (TILMA) ([click here to view](#)) was signed on April 28, 2006 by the Government of Alberta and the Government of B.C. The 2 provincial governments state the following with regard to the intent of TILMA:

The agreement will give businesses and workers in both provinces seamless access to a larger range of opportunities across all sectors including energy, transportation, labour mobility, business registration, and government procurement. The agreement will:

- Streamline business registration and reporting requirements so that businesses registered in one province are automatically recognized in the other;
- Enhance labour mobility by recognizing occupational certifications of workers in both provinces;
- Provide open and non-discriminatory access to government procurement; and,
- Create a clear, comprehensive and enforceable dispute avoidance and dispute resolution mechanism.

The agreement came into force on April 1, 2007 and is currently in a transition period until April 2009 when the agreement comes into full effect.

## **AUMA Action on TILMA**

The Alberta Urban Municipalities Association (AUMA) has heard multiple presentations regarding the TILMA over the past 2.5 years. These presentations and updates were provided by the Government of Alberta, and in response to the TILMA, AUMA made a Submission ([click here to view](#)) to the Government of Alberta in June 2007. AUMA has also participated in the TILMA consultation process held last summer, and TILMA focus groups that were held last fall.

Early in 2008, the AUMA and its sister municipal associations in Alberta and B.C. met several times with the lead negotiators of the Government of Alberta and the Government of B.C. These meetings were held to better represent and understand the potential effects of TILMA on municipal governments, and to ensure that municipal concerns were strongly voiced to the 2 provincial governments.

The last TILMA meeting of officials from the Government of Alberta, the Government of B.C., AUMA, AAMDC and UBCM was held on April 7, 2008 in Victoria.

In February 2008, the Associations posed nine questions to the Provincial negotiators and their legal counsels. On April 16, 2008, a written reply was received, and can be viewed at the end of this document.

## **Municipal Discussion Points with regard to TILMA**

### **Threshold limits for procurement**

One of the main points of discussion has been around Article 14 of TILMA; namely, threshold limits for procurement.

Under the current Agreement on Internal Trade (AIT), the limits above which one must comply with the broader rules of procurement are \$250,000 for construction and \$100,000 for goods and services.

Under TILMA, it has been proposed between the Provinces that these limits change to \$10,000 for goods, \$75,000 for services and \$100,000 for construction. The problem for the Associations here has been that the Provinces are comfortable with these limits for themselves, and so have taken the view that municipalities should also be comfortable with them.

In any event, the Associations have been successful in having the Provincial negotiators reconsider their position in this regard. While the negotiators are not prepared to simply leave the AIT limits in place, they are now prepared to review procurement limits (below which TILMA will not be in effect) of \$75,000 for goods and services and \$200,000 for construction.

Some survey work by the Associations seems to indicate that with these larger limits in place, the majority of ongoing “small transactions” in municipalities (which require staff resources) will not require any additional TILMA process to be followed.

### **Business registration reconciliation**

A second matter of discussion has been around Article 11(1) which reads as follows:  
*Parties shall reconcile their business registration and reporting requirements so that an enterprise meeting such requirements of one Party shall be deemed to have met those of the other Party.*

The Associations have been concerned about the exact intent of this wording, in that it assumes that municipal licensing is the same as provincial licensing regimes, such as drivers' licences or the provincial registration of a corporation.

Again, the Associations have been successful in having Provincial negotiators now suggesting that additional wording be added to the Article which would require municipal governments to consult on this Article, but until such time as the issue is resolved the Article “will not apply to municipal business licensing”.

### **Business license administration**

Our third concern is with respect to business licences, and our position that municipalities must continue to be able to set different fees and regulations for those who enter the municipalities to do business and who have no permanent business address in the community. The negotiators appear to agree that these powers will continue, so long as ALL who are not resident (e.g. from either Alberta or B.C.) are treated in a similar manner.

### **TILMA transition period**

With respect to “pre-TILMA practices”, there has been considerable discussion about whether or not TILMA is really in effect right now. The Provinces say “no” and at least some Association legal advice says “yes”. What the negotiators have now said is that if a municipality has historically signed long term contracts for matters now to be covered under TILMA, and these contracts are coming up for renewal, the municipality can continue its previous historical practice and renew the contracts without offending the upcoming TILMA rules. However, a municipality which has not traditionally worked this way could not right now decide to sign long term contracts with a preferred supplier to avoid having to deal with TILMA in 2009.

### **Dispute resolution**

The Associations have also raised the issue of the dispute resolution process, as we do not currently believe that the wording adequately protects a municipality from potentially having a tender delayed while a disgruntled attack is made on the procurement process alleging a breach of TILMA. The Provincial response seems to indicate that they are cognizant of this problem and do not intend to let a dispute hold up the timing of a tendering situation.

### **Municipal insurance providers**

Another issue still under discussion relates to the conducting of insurance and other business by the Associations, through related but independent corporations. We have been seeking clarification around the status of these corporations and our Members when, for example, we retain brokers, or seek excess insurance carriers. The answer from the Provinces is based on an erroneous assumption that our companies are non-profits, and so a further response is required.

### **Legislated municipal autonomy**

A final outstanding issue concerns obtaining some confirmation that legislated municipal autonomy as it relates to the provision and enforcement of bylaws is not subject to TILMA. In this regard, land use is of particular concern, and the provincial negotiators are now suggesting that this be specifically clarified with TILMA amendments.

## **Current Status**

AUMA has been told that the Government of Alberta and the Government of B.C. are working on amendments to TILMA that should satisfy many of the municipal concerns outlined.

At its March 2008 meeting, the AUMA Board of Directors passed the following motions regarding TILMA:

*THAT the AUMA Board approve that a letter be sent to the Minister of IIR asking that the TILMA transition period end one year following the finalization of the wording of the MASH portion of TILMA; and*

*THAT any other modifications to the TILMA be given one year transition period before implementation.*

*THAT the AUMA Board approve that the letter from AUMA to the Minister of IIR regarding TILMA, include the request that municipal autonomy and reference to Alberta's MGA be made explicit in the MASH portion of the TILMA.*

The above motions have now been communicated to the Alberta Minister of International and Inter-governmental Affairs.

## **Further questions and discussion**

If you would like to discuss the TILMA further, please contact the following AUMA staff:

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April 16, 2008

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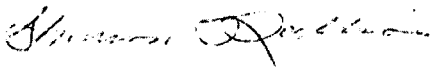
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Thank you for your e-mail of February, 28, 2008, in which you ask for additional information and clarifications regarding the *Trade, Investment and Labour Mobility Agreement* (TILMA) between British Columbia and Alberta and its potential affect on municipal governments.

We believe that the three meetings between the two provinces and the three municipal associations have provided a forum for a full and complete set of discussions on the concerns raised by the three associations. The Governments of Alberta and British Columbia have confidence that they adequately addressed the concerns expressed. Where necessary, the Parties agree that they will amend the TILMA to address municipal concerns, related to business licensing at the municipal level, procurement thresholds for the MASH sector, and land use bylaws.

Please be advised that in the interests of courtesy and expediency, we have prepared the attached response to the nine questions asked by the three municipal associations. We have yet to have the text reviewed by legal counsel, nor have we had the text approved by our respective Ministers. With these limitations, we hope that this will be of assistance to you.

We would appreciate a response, indicating your concurrence with the attached, by April 30, 2008.



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Director, Internal Trade  
Alberta International and  
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Attachment

On February 28, 2008 the Alberta Association of Municipal Districts and Counties, Alberta Urban Municipalities Association and the Union of British Columbia Municipalities, submitted a list of nine questions to the Governments of British Columbia and Alberta. The following is a restatement of those question and the answers of the two provincial governments to those questions.

Question 1:

*Based on the data that the AUMA, AAMDC and UBCM have supplied to the Provinces of Alberta and British Columbia, we assert that the proposed thresholds for procurement of goods and construction activities be adjusted to the following -*

- *Goods - \$75,000*
- *Services - \$75,000*
- *Construction - \$200,000*

*(Attached is in Appendix A is a summary of total purchasing for the City of Airdrie which we as a group replace for the previous AAMDC Trade Division sample as a better sample as it reflects total municipal purchasing by the municipality, not just what they could have bought through the AAMDC Trade program. Appendix A also has additional threshold arguments provided by the UBCM)*

Answer:

The three municipal associations have proposed thresholds that the provinces have agreed to take back and discuss with the academic institutions, school boards and regional health authorities.

Question 2:

*With regard to Article 11, which states that "Parties shall reconcile their business and reporting requirements", we require confirmation that revised wording be put in place to confirm that it either does not apply to the business licensing process of local governments or will be made voluntary.*

Answer:

With respect to the associations request to address municipal business licensing, the Parties have drafted the following language:

Parties and their municipal governments shall consider options to provide for the mutual recognition or other reconciliation of municipal business registration and reporting requirements. Until such time as this matter is resolved Article 11.1(a) will not apply to municipal business licensing.

This new text will become Article 11.1(b).

Question 3:

*With regard to businesses licenses (i.e. non-resident mobile vendors, massage parlors and adult video stores) we assert that local government can continue to have the authority to set differentiating fees and regulations that protect the interests of locally*

*based businesses. Specifically municipalities wish to retain the ability being the stop of last resort to check good behavior of those who would operate in our municipalities (where we can check references, insurance etc.), and also regulate the practice of nonresident business licenses. Overall, we wanted some assurance in writing that the Provinces are not interpreting these provisions (especially 4(2) and 11(2)) so as to wipe out our ability to treat "those from away" differently than those business folks who pay local taxes.*

Answer:

TILMA does not compromise the authority of municipalities to require licenses for mobile, permanent or different classes of businesses and to charge different fees for these different types of licenses.

Question 4:

*How does the TILMA impact a municipality that is involved in the following agreements?*

- *A long-standing continuous agreement that pre-dates TILMA*
- *A long-term contract that is signed during the time leading up to April 2009*

*Notwithstanding Article 9 (4), what are the exact rules?*

Answer:

TILMA does not require governments to alter a long- standing contract entered into with a person before the date of the execution of the TILMA for governments, where that contract was authorized by a measure that is inconsistent with TILMA

TILMA does not require governments to alter a long-term contract that has been renewed on or after the date of the execution of the TILMA, where it has been renewed pursuant to an option to renew.

Additionally, the AIT continues to apply to local governments.

In regard to Article 9(4) municipalities are free to continue historic procurement practices during the transition period. Any deviation from these practices can not decrease consistency with the TILMA.

Question 5:

*With regard to dispute resolutions, we request written clarification on the time frame associated with the bid protest mechanism under Article 14(4). In particular, we request confirmation of a framework specifying timelines that prevents negative impacts resulting from municipal procurement activities (i.e. infrastructure construction contracts). Any bid protest mechanism must permit construction projects to proceed at once. Additionally, we request that municipalities not be subject to adjudications and penalty awards long after the fact.*

While a more detailed response to this questions is forthcoming, the provinces would like to take this opportunity to reassure the three municipal associations that there will be a front-end resolution process contained in the TILMA's bid protest mechanism, that the

bid protest mechanism will not create delays in the tendering process, and that should a procurement be found to be inconsistent with TILMA there will be an opportunity to remedy the situation before a fine is levied.

Question 6:

*The Provinces should confirm the rules around reciprocal insurance arrangements and the purchasing of excess insurance above the reciprocal caps as these relate to the Associations, their Members, and the corporate structures of the Associations which handle these matters (e.g. Alberta Municipal Services Corporation, Jubilee and the Municipal Insurance Association of British Columbia). Based on the fact that regulatory regime in both provinces is extensive for the insurance industry, and BC has government run auto insurance, it is our view that all insurance should be exempt from the TILMA as it is currently with AIT. We attach a letter (appendix C) from the Insurance Brokers Association of Alberta commenting on issues about Credit Unions selling insurance cross border.*

Answer:

The procurement of insurance is covered by the TILMA. However, we understand from the descriptions provided by the associations that the Alberta Municipal Services Corporation, Jubilee, and the Municipal Insurance Association of B.C are non-profit organizations, and therefore not subject to Article 14 (Procurement).

Question 7:

*Does the utilization of an insurance broker, employed following AIT and TILMA guidelines, exempt the Associations and their members from the TILMA based on the fact that procurement is conducted by the broker?*

Answer:

The procurement of the services of an insurance broker is subject to the procurement rules of the TILMA. As set out in Question 6, the actual procurement of insurance by the three associations is not covered because the associations are non-profit corporations.

Question 8:

*The Associations are seeking confirmation that legislated municipal autonomy as it relates to the provision and enforcement of bylaws is not subject to the terms of the TILMA. These bylaws include, but are not limited to, those noted below.*

- i. land use bylaws*
- ii. bylaws restricting road weights*
- iii. water usage bylaws*
- iv. building standards bylaws*

*Specifically, we seek clarification of the language “standard” and “regulation” used under Article 5 and “reconciliation” and “measures” under Article 3. Please see Appendix B for specific examples.*

Answer:

We are confident that the proposed addition to the TILMA's General Exceptions (Subject to Article 4, land use) will address your concerns with respect to land use concerns.

Neither the provinces nor the associations have identified anything municipalities do as a standard or regulation that operates to restrict or impair trade, investment or labour mobility.

Question 9:

*Understanding that any governmental supplier lists are prepared in accordance with the TILMA, we request clarification regarding the ability of municipalities to procure goods through those supplier lists with impunity from the TILMA. (this may be Alberta only).*

Answer:

Alberta Government will continue with its arrangement where municipalities can purchase off of pre-existing TILMA-compliant standing offers.