

CHAPTER 18
AUTOMATED TELLER MACHINE REGULATIONS

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NOTE: Due to recent litigation and a change in federal law, ATM's are no longer restricted as to the numbers that may be operated by non-Guam chartered banks. Therefore, check with the Banking Commissioner for the latest on this issue.

§18101. Authority. These Rules and Regulations are promulgated pursuant to the authority granted to the Banking Board, 11 GCA §103103 is hereinafter referred to as Banks & Banking.

§18102. Purpose. The purpose of these Rules and Regulations is to establish the Definitions, Licensing, Placement and Operations of a Bank Branch, an "Automated Teller Machine" (ATM)(s) and a "Remote Automated Teller Machine" (Remote ATM)(s) for the Territory of Guam.

§18103. Definitions. The following definitions or terms as defined in 11 GCA §100101 of the Banks and Banking Law, are hereby made a part of these Rules and Regulations:

(a) *Financial Institutions* means any bank as defined in 11 GCA §100102 of the Guam Banking Code which is duly authorized, pursuant to the terms of the Guam Banking Code, to conduct business within the Territory of Guam.

(b) *Bank Principal Office* means the location where banking activities, administrative and operational policies of the bank are established.

(c) *Bank Branch* means a location of a bank, other than the bank's principal office, at which the bank engages in financial transactions and other activities permitted by its charter, and local banking laws.

(d) *Financial Transaction* monetary activities permitted by local and federal banking laws.

(e) *Automated Teller Machine (ATM)* means an unmanned electronic information processing device which uses either the direct transmission of electronic impulses to a financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution in order to perform any and all financial transactions. ATM(s) is/are defined as a Bank Branch except those ATM(s) that are within or upon the premises of the bank principal office or bank branch.

(f) *Remote Automated Teller Machine (Remote ATM)* means an unmanned, free standing electronic information processing device, located separate and apart from a financial institution's bank principal office, bank branch, detached or mobile facility, which uses either the direct transmission of electronic impulses or other indicia of a transaction for delayed transmission or services to a financial institution in order to perform financial transactions except for accepting cash/check deposits and cash/check loan payments. Remote ATM(s) are not defined as a Bank Branch.

(g) *Point-of-Sale Terminal(s)* means a manned electronic information processing device, other than a telephone, located at the point of sale and separate and apart from a financial institution's principal office, bank branch, or detached facility, which use either the direct transmission of electronic impulses to a financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution in order to perform financial transactions. Point-of-sale terminal(s) includes electronic information processing devices which interface with the telephone transmission system and which, either through the direct transmission of electronic impulses or the recording and delayed transmission of electronic impulses to a financial institution, perform financial transactions. Nothing in this definition prevents a device which constitutes a point-of-sale terminal from being used to perform, for its operator, any internal business functions that are not financial transactions. Point of sale Terminal(s) are not defines as a Bank Branch.

(h) *Federal Banking Agency* means the Comptroller of the Currency with respect to a National Bank, the

Federal Deposit Insurance Corporation with respect to State & Territorial Banks.

(i) *Banking Holding Company* refer to the Federal definition.

(j) *Out-of-State* means with respect to any State or Territory, a Bank whose home State or Territory is outside the Territory of Guam.

(k) *Uninsured Branch* means a branch of a financial institution that is not an insured branch, as defined in §3 (s)(3) of the Federal Deposit Insurance Act.

(l) *Adequately Capitalized* means a level of capitalization which meets or exceeds all applicable Territorial or Federal regulatory capital standards.

(m) *Electronic Fund transfer* means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic device or telephone instrument, or computer or magnetic tape or point-of-sale terminal so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

(n) *Pre-authorized electronic fund transfers* means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(o) *Deposit* means the establishment of a debtor-creditor relationship represented by the agreement of the deposit debtor to act as a holding, paying, or disbursing agent for the deposit creditor.

(p) *Financial Instrument* includes, but is not limited to, any check, draft, warrant, note, certificate of deposit, letter of credit, bill of exchange or any negotiable instrument, credit or debit card, transaction authorization mechanism, or any computer system representation thereof.

§18104. Licensing. Licensing regulations for Bank Branch, Automated Teller Machines (ATM)(s), Remote Automated Teller Machine (Remote ATM)(s), and Interstate Branching.

(a) **Bank Branch**

(1) An application to establish a Bank Branch shall be considered by the Board after a public hearing at which all interested parties may present their reasons and any evidence in favor or against the establishment of said Bank Branch.

(i) A brief description of the general type of functions which the Bank Branch will perform.

(ii) Insurance policies and security measures for the protection of the Bank Branch and its customers.

(iii) The exact location of each Bank Branch to include; distance from the establishing branch bank, population of the city or town of location of proposed Bank Branch.

(iv) Current financial statement of the financial institution applying for the proposed bank branch.

(v) Names and addresses of the main office and each existing branch and the total amount of deposits arising as a result of the operation of the main office of each existing branch as of the date of the application.

(vi) Submit information of the capital structure of the applicant bank.

(vii) Submit information on the future earning prospects for the proposed bank branch.

(viii) Submit information on the proposed management brief resume or outline of his past business or banking experience, other qualifications and duties and responsibilities in connection with the operation of the Proposed Bank Branch.

(ix) Submission of a Resolution from the Board of Directors of the applicant bank branch.

(2) Each financial institution shall pay a fee of Five Hundred (\$500.00) to accompany each application submitted to the Banking Commissioner.

(b) Automated Teller Machines (ATM)(s)

(1) An application to establish an Automated Teller Machine (ATM) shall be considered by the Board after public hearing at which all interested

parties may present their reasons and any evidence in favor or against the establishment of said ATM.

(i) There is sufficient need for such an ATM.

(ii) The proposed ATM has reasonable opportunity to be economically self-sustaining.

(iii) A brief description of the general type of functions which the ATM will perform.

(iv) Insurance policies and security measures for the protection of the ATM and its customers.

(v) The exact location of each ATM to include; distance from the establishing branch bank, population of the city or town of location of proposed ATM.

(vi) Current financial statement of the financial institution applying for the proposed bank branch.

(vii) Names and addresses of the main office and each existing ATM at the date of the application.

(viii) Submit information of the capital structure of the applicant bank.

(ix) Submission of a Resolution of the Board of Directors of the applicant bank branch.

(2) Each financial institution shall pay a fee of Five Hundred (\$500.00 to accompany each application submitted to the Banking Commissioner.

(c) Remote Automated Teller Machines (Remote ATM)(s)

(1) A Remote ATM does not constitute a branch office or other type of office facility or agency of a bank within the meaning of §30900 of the Guam Banking Code of The Government Code of Guam.

(2) A financial institution may establish and operate one or more "Remote Automated Teller Machine" (Remote ATM) in this Territory. Within thirty (30) days before any "Remote ATM" is installed by a financial institution, the financial institution shall send to the Commissioner's office written notice of the intended installation. The notice shall be on such form as the Commissioner may reasonably prescribe and shall contain the following information:

(i) A brief description of the general type of functions which the Remote ATM will perform.

(ii) Insurance policies and security measures for the protection of the Remote ATM and its customers;

(iii) The exact location of each Remote ATM to include; distance from the establishing branch bank, population of the city or town of location of proposed Remote ATM.

(3) For each Remote ATM established, the establishing financial institution shall pay a fee of Five Hundred Dollars (\$500.00) and such fees shall accompany the notice to the Commissioner.

(4) The Commissioner may, within 30 days after receiving a notice, disapprove the installation, operation or installation and operation of a Remote ATM if a financial institution not connected to the Remote ATM files a protest with the department in which it establishes by a preponderance of the evidence that the installation, operation, or installation and operation would unreasonably interfere with its operations or if the commissioner determines that the installation, operation, or installation and operation of a Remote ATM would result in an unsafe and unsound condition affecting any institution or other person under the jurisdiction of the department. The installation, operation, or installation and operation of a Remote ATM is considered approved if the commissioner does not disapprove it within thirty (30) days after filing of the notice.

§18105. Placements. (a) Bank Branch.

(1) A financial institution shall not change the location of an established bank branch without prior written approval from the Banking Board.

(b) Automated Teller Machine (ATM)(s)

(1) A financial institution shall not change the location of an established automated teller machine without prior written approval from the Banking Board.

(c) Remote Automated Teller Machine (Remote ATM)(s)

(1) A financial institution may change the location of an established Remote ATM from one location to

another but not without prior written approval from the Banking Commissioner.

§18106. Operations. (a) Automated Teller Machine (ATM)(s)

(1) An ATM of a financial institution located other than on the premises of the principal place of business of the financial institution or the premises of any of its branches, may by agreement be made available to one or more other financial institutions on such terms and conditions as the financial institutions may agree.

(b) Any financial institution establishing or sharing the use of more ATM's in this territory may:

(1) Make the facilities available for use by account holders of one or more financial institutions other than the institutions owning or operating the ATM.

(2) Impose a transaction fee for the use of an ATM, if the imposition of the fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the transaction fee. This fee may be in addition to any other charges imposed by the financial institution.

(3) An agreement to share an ATM may not prohibit, limit, or restrict the right of a financial institution to charge a customer any fee allowed by state or federal law, or require a financial institution to limit or waive its rights or obligations.

(4) The commissioner may, after notice and hearing, require rescission or modification of any provisions of such contractual agreement as provided relating the rights and obligation of account holders of financial institutions, merchants, merchant customers, or others using or having access to an ATM finds to be unconscionable or contrary to the public interest.

(5) The financial institution who establishes an ATM shall provide:

(i) Lighting during the hours of darkness for the machine and its access area and defined parking area to include in the evaluation a consideration of:

(A) the extent to which the presence of landscaping, vegetation, or other obstructions in the area of the machine and the access area

and defined parking area for the machine;
and

(B) the incidence of crimes of violence in the immediate neighborhood of the machine as reflected in the records of law enforcement and of which the financial institution has actual knowledge.

(C) in an access area or defined parking area for, but not controlled by the financial institution, the person who leased the site where the ATM is located controls the access area or defined parking area, that person shall comply.

(ii) Notices shall be furnished to customers of basic safety precautions that each customer should employ while using a ATM. The financial institution shall deliver personally or mail the information to each customer whose mailing address is in this territory to which accesses this ATM. The financial institution may furnish this information with periodic disclosure statements furnished pursuant to the federal Electronic Fund Transfer Act (15 U.S.C. Section 1693 et seq).

(6) Any electronic fund transfer made through or by use of an ATM is subject to the provisions of the federal Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E (12 CFR 205.2), and except as otherwise may be provided by applicable law, shall govern the rights, liabilities and responsibilities of the financial institution and its customers with regard to ATM transactions. The financial institution and its customers may also by contract establish the rights, liabilities and responsibilities of the parties, provided that the terms of the contract shall not be more restrictive than any provisions of the Electronic Transfer Act applicable to the ATM transaction(s). Any electronic fund transfer or electronic impulse or data or information originating from an ATM or transmitted to an ATM may be received, transmitted and processed at any office, branch, or data processing facility of a financial institution wherever located, either within or without the Territory of Guam.

(c) Remote Teller Machine (ATM)(s)

(1) A Remote ATM of a financial institution, may by agreement be made available to one or more other financial institutions on such terms and conditions as the financial institutions may agree.

(2) Any electronic fund transfer made through or by use of a Remote ATM is subject to the provisions of the federal Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E (12CFR 205.2), and except as otherwise may be provided by applicable law, shall govern the rights, liabilities and responsibilities of the financial institution and its customers with regard to Remote ATM transactions. The financial institution and its customers may also by contract establish the rights, liabilities and responsibilities of the parties, provided that the terms of the contract shall not be more restrictive than any provisions of the Electronic Transfer Act applicable to the Remote ATM transaction(s). Any electronic fund transfer or electronic impulse or data or information originating from a Remote ATM or transmitted to a Remote ATM may be received, transmitted and processed at any office, bank branch, or data processing facility of a financial institution wherever located, either within or without the Territory of Guam.

(3) No person shall use or attempt to use a Remote ATM for the purpose of obtaining any information concerning the account or line of credit of a customer with a financial institution without the prior approval of the customer. Nothing contained in the Rules & Regulation shall authorize the Commissioner to regulate the conduct or business functions or to obtain access to any business records, data or information of a financial institution or its customers except as may otherwise be provided by law.

(4) Any financial institution establishing or sharing the use or more Remote ATM's in this territory may:

(i) Make the facilities available for use by account holders of one or more financial institutions other than the institutions owning or operating the Remote ATM.

(ii) Impose a transaction fee for the use of a Remote ATM, if the imposition of the fee is disclosed at a time and in a manner that allows a

user to terminate or cancel the transaction without incurring the transaction fee. This fee may be in addition to any other charges imposed by the financial institution.

(iii) An agreement to share a Remote ATM may not, prohibit, limit, or restrict the right of a financial institution to charge a customer any fee allowed by state or federal law, or require a financial institution to limit or waive its rights or obligations.

(iv) The commissioner may, after notice and hearing, require rescission or modification of any provisions of such contractual agreement as provided relating the rights and obligation of account holders of financial institutions, merchants, merchant customers, or others using or having access to Remote ATM's funds to be unconscionable or contrary to the public interest.

(v) The financial institution who establishes a Remote ATM shall provide:

(A) Lighting during the hours of darkness for the machine and its access area and defined parking area to include in the evaluation a consideration of:

(1) the extent to which the presence of landscaping, vegetation, or other obstructions in the area of the machine and the access area and defined parking area for the machine; and

(2) the incidence of crimes of violence in the immediate neighborhood of the machine as reflected in the records of law enforcement and of which the financial institution has actual knowledge.

(3) in an access area or defined parking area for but not controlled by the financial institution, the person who leased the site where the Remote ATM is located controls the access area or defined parking area, that person shall comply.

(5) Notices shall be furnished to customers of basic safety precautions that each customer should employ while using a Remote ATM. The financial institution shall deliver personally or mail the information to each customer whose mailing address is in this territory to which accesses this Remote ATM. The financial institution may furnish this information with periodic disclosure statements furnished pursuant to the federal Electronic Fund Transfer Act (15 U.S.C. Section 1693 et seq).

(6) Any electronic fund transfer made through or by use of a Remote ATM is subject to the provisions of the federal Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E (12CFR 205.2), and except as otherwise may be provided by applicable law, shall govern the rights, liabilities and responsibilities of the financial institution and its customers with regard to Remote ATM transactions. The financial institution and its customers may also by contract establish the rights, liabilities and responsibilities of the parties, provided that the terms of the contract shall not be more restrictive than any provisions of the Electronic Transfer Act applicable to the Remote ATM transaction(s). Any electronic fund transfer or electronic impulse or data or information originating from a Remote ATM or transmitted to a Remote ATM may be received, transmitted and processed at any office, branch, or data processing facility of a financial institution wherever located, either within or without the Territory of Guam.

§18107. Effective Date. These Rules and Regulations shall become effective the ____ day of _____, 199__ and shall remain in effect unless amended or until rescinded.

§18108. Forms. The application, notification and discontinuance notifications applications/forms for Branch Banks, Automated Teller Machine (ATM)(s) and Remote Automated Teller Machine (Remote ATM)(s) are made part of these rules and regulations.