

MERCHANT ACQUIRER LIMITED PURPOSE BANKS

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It is the Department's expectation that an entity chartered as a merchant acquirer limited purpose bank ("MALPB") will conduct merchant acquiring activities in a sound manner so that payment systems are not disrupted. The Department does not intend to place undue restraint upon MALPB applicants and encourages competition. However, in chartering a MALPB, the Department will admit only those qualified applicants that have demonstrated technical expertise and experience in providing merchant acquiring services in a safe and economically viable manner. In evaluating a new MALPB application, in addition to statutory and regulatory requirements, the following general factors will be considered: Financial Structure and Business Plan, Capital Structure and Safeguards, Management, Information Technology Systems and Data Security, Number of Georgia Employees, and Affiliates and Organizers. There is no expedited processing.

FINANCIAL STRUCTURE AND BUSINESS PLAN. The financial structure of the MALPB applicant must comply with all applicable regulations. Books and records of the MALPB must be maintained and made available to the Department in accordance with Department Rules. The MALPB may only establish subsidiaries and invest its funds as prescribed by Department Rules or otherwise approved in writing by the Department.

The applicant must submit a Business Plan and financial projections that are reasonable and achievable. The Business Plan must encompass at least a three-year period with financial projections provided on a quarterly basis. The applicant must clearly demonstrate that adequate resources will be employed to facilitate the successful implementation of the proposed Business Plan. The financial projections must indicate the MALPB has reasonable prospects to achieve profitability. Any special market niche or non-traditional activity will be scrutinized to determine consistency with statutory and regulatory requirements and appropriateness with the authority granted under an MALPB charter. The Business Plan must clearly indicate any plan to engage in settlement activities, and the MALPB must obtain the Department's specific, prior written approval before engaging in settlement activities.

CAPITAL STRUCTURE AND SAFEGUARDS. Minimum capital requirements and safeguards for Merchant Acquirer Limited Purpose Banks (MALPBs) are specifically designed to:

- 1) Promote confidence by the general public in the MALPB charter;
- 2) Provide mechanisms to protect merchant funds in process; and
- 3) Ensure adequate financial resources to support processes and systems that meet regulatory and industry standards for protection of confidential consumer information.

While not specifically designed for this purpose, it is recognized that the MALPB minimum capital requirements and safeguards indirectly provide a degree of protection to the interests of creditors, card networks, and the broader retail payment system, all of which are important to the acceptance and effective operation of MALPBs in the conduct of merchant acquiring activities.

These capital requirements are designed to provide for minimum capital buffers that promote solvency and viability such that an MALPB can effectively serve the charter's role of facilitating the processing of payments accepted by merchants through card networks while safeguarding the confidential consumer information in its possession. Capital buffers sufficient to support an MALPB's ability to safely and soundly carry out its role, even through periods of entity specific or broader economic stress, are important to general public and creditor confidence in both the individual MALPB and the charter as well as the acceptance of the charter by merchants and card networks as a desirable merchant acquiring platform. The minimum capital requirements are based in part on a combination of traditional banking capital standards and those applicable to similar entities currently operating as merchant acquirer members of card networks in the European Union (EU) under the framework established in the Payment Services Directive (PSD). Safeguards established in the Department's rules are designed to allow for the methodical and incremental ramp-up of merchant acquiring activities by an MALPB while incorporating similar safeguards to those currently applicable to merchant acquirers operating under the PSD and laws of the various EU countries. As a track record of performance for this new charter is established and payment systems continue to evolve through innovation and new standards, it is expected to be an ongoing process for the Department to review and modify, through its rulemaking authority and issuance of supervisory guidance, MALPB minimum capital requirements and safeguards as appropriate and prudent.

The minimum initial capital required for an MALPB must satisfy the requirements under applicable laws, Department Rules, and the *Capital Policy and Safeguards Statement for Merchant Acquirer Limited Purpose Banks*.

MANAGEMENT. The application must clearly demonstrate that the proposed Board of Directors and day-to-day management team have the character, experience, competence, and ability to oversee a sound institution and achieve the goals of the Business Plan. The organizers, proposed executive officers, directors, control persons, and principal shareholders of the proposed MALPB should be of good moral character and reputation, should have successful employment and business histories, should be responsible in personal and financial affairs, and must not have any felony conviction. The majority of directors should not be officers or employees of the MALPB.

The name and resume of the proposed Chief Executive Officer must be submitted with the MALPB charter application. To protect the proposed Chief Executive Officer's current employment, such information may be included in the confidential section of the application. The proposed Chief Executive Officer should have been continuously employed in a field related to merchant acquiring or credit card processing for the five years immediately preceding the filing of the application.

Before an MALPB charter will be granted, the applicant must submit qualified candidates for the supporting executive officer positions of Chief Risk Officer and Chief Information Officer. The Chief Risk Officer shall be responsible for oversight of the MALPB's infrastructure to measure, monitor, report, and control risks inherent in the business of merchant acquiring (including, but not limited to, operational/technological, credit, liquidity, legal/compliance, reputation, market, and strategic risk), and the Chief Information Officer shall be responsible for oversight of the integration of business and technological resources in the conduct of merchant acquiring activities in a safe and sound manner (including, but not limited to, the maintenance of robust data security, systems performance, and compliance standards). Additional executive officer positions may be required as warranted by the applicant's Business Plan and scope of proposed activities. An individual shall not serve simultaneously in more than one MALPB executive officer position. All executive officers should have demonstrated sufficient abilities and experience commensurate with the position for which proposed. Compensation for executive officers shall be reasonable based upon the proposed Business Plan and normal and customary levels of compensation within the industry.

A detailed review of internal operations and policies, control processes and audit procedures will be conducted as part of the evaluation of Management. In addition, a detailed review of risk mitigation strategies will be conducted. The applicant shall deploy sufficient resources to ensure the proposed MALPB complies with all applicable state and federal laws, regulations and guidance including, but not limited to, *Interagency Guidelines Establishing Information Security Standards*, *Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice*, customer identification standards, suspicious transaction reporting, anti-money laundering requirements, and Office of Foreign Assets Control requirements.

INFORMATION TECHNOLOGY SYSTEMS AND DATA SECURITY. The application shall clearly demonstrate that information technology systems and data security controls are sufficient for the size and scope of the proposed activities of the MALPB applicant. The application should describe in detail policies and procedures to protect against data compromises, data processing errors, and data theft and include the level and coverage of insurance policies. The application should describe in detail procedures for evaluating and selecting eligible organizations, support organizations, and third party service providers to mitigate any potential breaches. Sufficient resources and personnel shall be committed to the Information Technology and Data Security areas.

NUMBER OF GEORGIA EMPLOYEES. The applicant must submit a detailed plan for achieving full compliance with the statutory requirement of employing no fewer than 50 employees located in Georgia devoted to merchant acquiring activities within one year of issuance of the MALPB charter. The application must clearly indicate if the applicant intends to invoke the eligible organization allowance provision, under Section 7-9-4(c) and Rule 80-12-4-.04(2) and (3), to meet the minimum employee requirement. The use of an eligible organization to satisfy the minimum employee requirement must be approved in writing by the Department prior to the applicant contracting with the eligible organization.

AFFILIATES AND ORGANIZERS. The financial condition, standing, and performance of all affiliates and organizers of the applicant will be considered in the evaluation of the MALPB charter application. Organizers should be of good moral character and reputation, must not have any felony conviction, should have successful employment and business histories, and should be responsible in personal and financial affairs. An entity seeking to form a new MALPB charter must submit all information as required under the MALPB charter application. An entity will be considered to be an MALPB Holding Company if it will own or control an MALPB institution. The proposed MALPB shall not engage in self-acquiring activities at any time.

All expenses incurred in connection with the organization of the MALPB are to be assumed by the organizers. If a charter is issued, expenses determined to be reasonable by the Department may be reimbursed by the MALPB after the commencement

of business. In no event shall the amount of or payment of any fee be solely contingent upon action, decision, or forbearance on the part of the Department. A contingent expense or fee will ordinarily result in disapproval of the application.

Other Matters

Requests for reconsideration of disapproved applications will not be accepted. A new application along with the required filing fee may be filed at any time by submitting substantive new or additional information to the Department. To the extent relevant, the Department will consider and incorporate the prior administrative record. When a charter application is disapproved, a written statement of the general factors influencing the decision will be provided to the applicant.

The time allowed to open for business normally will be one year from the date of issuance of the MALPB charter. The MALPB charter will expire if the MALPB is not open for business within this one-year period unless an extension is approved in writing by the Department.