

The Georgia MALPB: A Strategic Alternative to Traditional Sponsor Banks for Merchant Card Processing Services

The Georgia Merchant Acquirer Limited Purpose Bank (MALPB) offers a compelling alternative to traditional sponsor bank models by enabling payment processors to directly access card networks like Visa and Mastercard without relying on third-party financial institutions. This structure provides significant advantages, including operational simplicity, faster speed to market, and greater policy independence—allowing processors to streamline compliance and reduce friction in launching new services or adapting to network changes.

MALPBs are more narrowly scoped than traditional banks and do not engage in deposit-taking, lending, or consumer banking. This helps the parent company avoid classification as a bank holding company for purposes of the Bank Holding Company Act, which carries additional regulatory burdens and restrictions on commercial activities. The model also offers resilience -- processors can maintain continuity even if a third-party sponsor exits the market or shifts priorities. With Georgia’s Department of Banking and Finance providing a robust regulatory framework, and Fiserv already operational as the first MALPB in the U.S., this charter structure is poised to reshape how merchant acquirers engage with the payments ecosystem.

<u>Activity or Restriction</u>	<u>Traditional Bank</u>	<u>MALPB</u>
Direct participation in card networks	Yes (with card network approval)	Yes (with card network approval)
Geographic presence requirements	Varies, but typically some state nexus	Majority of directors must reside in Georgia; must have 50 or more employees residing in Georgia and devoted to merchant acquiring activities or contract with an “eligible organization” with 250 or more employees in Georgia devoted to merchant acquiring and/or specified other support services; may only engage in merchant acquiring activities originating in the U.S. with a merchant having a physical location in the U.S. ¹ ; MALPB must

¹ For transactions over the internet, a MALPB may only engage in merchant acquiring activities with a merchant who has a fixed place of business located in the United States where the economic activity is completed (i.e. where the merchant receives payment).

<u>Activity or Restriction</u>	<u>Traditional Bank</u>	<u>MALPB</u>
		be Georgia corporation or LLC
Capital requirements	Imposed by FDIC and primarily based on lending and deposit-taking activities; supplemental capital requirements likely to be imposed based on transaction volume and chargebacks	Imposed by Georgia Department of Banking and based on transaction volume. MALPB may include parent capital maintenance guaranty and capital letter of credit in tier 1 capital calculation
Issuance of network-branded payment cards	Permitted	Not permitted
Deposit taking	Required	Not permitted, except deposits from parent company
Lending	Permitted	Not permitted
Money transmission	Permitted, generally with exemption from FinCEN registration and state money transmission laws ²	Not permitted
Fiduciary activities	Permitted	Not permitted
Merchant receivables factoring	Permitted	Not permitted ³

² Banks are typically exempt from state money transmission laws, but exemptions for out-of-state, state-chartered banks are not clearly established in all states.

³ The Georgia MALPB regulations prohibit both “merchant receivables factoring” and “advance funding activities”, which would prevent a chartered institution from extending credit to merchants by purchasing receivables or advancing funds on the security of future receivables. Ga. Comp. R. & Regs. r. 80-12-4-.01. Additionally, MALPBs are generally prohibited from making loans, regardless of the mechanism used or the identity of the borrower.

<u>Activity or Restriction</u>	<u>Traditional Bank</u>	<u>MALPB</u>
Parent generally subject to capital requirements and other restrictions of the Bank Holding Company Act	Yes	No
Federal supervision of bank	FDIC	None
Federal supervision of parent	Yes (provided parent has ownership or control over the bank)	None
Subject to BSA/AML Requirements	Yes	Yes
Subject to Community Reinvestment Act (CRA)	Yes, FDIC will consider CRA in determining whether to insure and will conduct ongoing CRA examinations	No
Subject to Stress Testing	Yes, if assets reach a significant level	No (but Georgia Department of Banking and Finance can require as part of oversight program)
Resolution Planning Requirements	Yes, if assets reach a significant level and certain risk-based factors identified by the FDIC are present	Must maintain receivership letter of credit in an amount determined by the Department but not less than \$100,000
Statutory insurance requirements	FDIC deposit insurance	Fidelity coverage or bond based on historical merchant volume. Data breach coverage in an amount approved by the Georgia Department of Banking and Finance

Summary of Key Georgia MALPB Requirements

1. Activities of the Chartered Institution

- a. A MALPB is limited to “merchant acquiring” originating in the U.S. and territories. The term is defined by statute as “the various activities associated with effecting transactions within payment card networks” and expressly includes:
1. Obtaining and maintaining membership in one or more payment card networks;
 2. Signing up and underwriting merchants to accept network-branded payment cards;
 3. Providing the means to authorize valid card transactions at client merchant locations;
 4. Facilitating the clearing and settlement of the transactions through a card network;
 5. Providing access to one or more payment card networks to MALPB affiliates, customers, or customers of its affiliates;
 6. Sponsoring the participation of MALPB affiliates, customers, or customers of its affiliates in one or more payment card networks;
 7. Statement generation and other information reporting for client merchants;
 8. Training and technical assistance for merchants;
 9. Terminal support;
 10. Encryption servicing;
 11. Authorization and capture;
 12. Dispute processing; and
 13. Such other activities as may be necessary, convenient, or incidental to effecting transactions within payment card networks, provided the MALPB obtains prior authorization from the Georgia Department of Banking and Finance.⁴
- b. A MALPB is generally **prohibited** from undertaking any activity that is not expressly permitted by rule or by the Georgia Department of Banking. The rule further specifically **prohibits**:
1. Taking deposits (except from the parent company);
 2. Self-acquiring⁵;
 3. Any activity that comprises the business of banking;
 4. Money transmission (as defined by Georgia law)⁶;
 5. Acting as a fiduciary;
 6. Sponsoring ATMs;
 7. Issuing network-branded payment cards;
 8. Merchant receivables factoring;
 9. Advance funding activities;
 10. Soliciting, processing, or making loans (pursuant to a payment card or otherwise); and

⁴ The MALPB is required to include with its authorization request a description of the incidental activity, the safeguards in place to ensure safety and soundness, the public need to be served, any legal justification required under state law, and the financial ability of the MALP bank to support the activity. Ga. Comp. R. & Regs. r. 80-12-4-.01(2).

⁵ The term “Self-acquiring Activities” is defined to mean “the act of a merchant, for itself or through an affiliated entity, engaging in merchant acquiring or settlement activities on its own behalf for payments it, or its affiliated entity, receives for goods and services it, or its affiliated entity, provides to consumers.” O.C.G.A. § 7-9-2(10).

⁶ The definition of “money transmission” in Georgia is: “engaging in the business of receiving money or monetary value for transmission or transmitting money or monetary value within the United States or to locations abroad by any and all means, including, but not limited to, an order, wire, facsimile, or electronic transfer. The term does not include closed-loop transactions.” O.C.G.A. § 7-1-680(14).

11. Engaging in merchant acquiring activities that originate outside the U.S. or with a merchant that does not have a physical location in the U.S.⁷

2. Activities of the Parent Company

- a. The MALPB is not a “bank” within the meaning of the federal Bank Holding Company Act (BHCA), meaning that its parent is not a bank holding company subject to the burdensome requirements of the BHCA. The parent may operate as a non-financial company, need not register for supervision by the Federal Reserve, does not face penalties applicable to a holding company if the subsidiary bank is inadequately capitalized, and is not subject to minimum capital requirements applicable to a financial holding company.
- b. A merchant may not control⁸ a MALPB, its holding company, or any of its affiliates.

3. Geographic Presence Requirements

- a. The MALPB must have at least 50 employees located in Georgia and devoted to merchant acquiring activities within one year of charter issuance. Alternatively, the MALPB may contract with an “eligible organization”, which is a company that has an office located in Georgia where it employs at least 250 Georgia residents for acquiring activities, settlement activities, administrative support, IT support, financial support, or tax and finance support.⁹
- b. The MALPB must begin operation within one year of charter issuance and must have at least 50 employees located in Georgia and engaged in merchant acquiring activities within one year after it begins operating. The Department may extend these deadlines in its discretion.
- c. A majority of the directors of the MALPB must be residents of Georgia, and there must be at least three directors in total. The Department may waive or reduce the residency requirement for directors on request of the MALPB’s management.
- d. The MALPB may only engage in merchant acquiring activities originating in the U.S. with merchants that have physical locations in the U.S. For internet transactions, the merchant must have a fixed place of business in the U.S. where the merchant receives payment.
- e. The MALPB may be a corporation or a limited liability company but must be organized under the laws of Georgia.

4. Regulatory Supervision

- a. The Georgia Department of Banking and Finance examines all MALPBs at least annually. As part of any

⁷ For transactions over the internet, a MALPB may only engage in merchant acquiring activities with a merchant who has a fixed place of business located in the United States where the economic activity is completed (i.e. where the merchant receives payment).

⁸ For purposes of the rule, a merchant has control over a MALPB or its holding company or affiliate if the Department determines: “the merchant directly or indirectly or acting through one (1) or more other persons owns, controls, or has the power to vote five (5) percent or more of any class of voting securities of the MALPB, holding company, or affiliate; the merchant controls in any manner the election of a majority of the directors or trustees of the MALPB, holding company, or affiliate; or the merchant exercises a controlling influence over the management or policies of the MALPB, holding company, or affiliate.” Ga. Comp. R. & Regs. r. 80-12-4-.02(2).

⁹ The “eligible organization” may be an affiliate of the MALPB.

examination or investigation, the Department may also examine or investigate the holding company, affiliates, and any “eligible organization” or support organization¹⁰ of the MALPB.

- b. The Department may require reports on any aspect of the MALPB at any time. Additionally, standardized regulatory reports are required and include a quarterly financial report due within 30 days of quarter-end and an attestation report due within 45 days of year-end.
- c. MALPBs must maintain a receivership letter of credit in an amount specified by the Department but not less than \$100,000.

5. Handling of Merchant Funds

- a. The MALPB must implement controls to prevent commingling of merchant and MALPB funds.
- b. Merchant funds must be accounted for at the individual merchant level, and records evidencing amounts held for each merchant must be maintained and readily accessible.
- c. With the exception of netting arrangements to cover amounts owed the MALPB, all merchant funds in process must be deposited immediately in an FDIC-insured account with an institution qualified to do business in Georgia. Upon deposit, funds are the property of the merchant, and the MALPB will not retain interest on those funds. The agreement and related records for the MALPB’s merchant settlement account shall expressly provide that the account is maintained for the benefit of the MALPB's individual merchants.¹¹
- d. The MALPB and its officers owe a fiduciary duty to preserve and account for merchant funds and are liable for any loss of merchant funds.
- e. The MALPB may not pledge merchant funds as security.¹²

6. Capital Requirements

- a. The MALPB is required to maintain capital stock and paid-in surplus¹³ as required by the Georgia Department of Banking and Finance, but in no event less than \$3 million.
- b. In general, the Georgia Department of Banking requires MALPBs to continuously maintain the following minimum capital levels. The Department may increase these requirements.
 - 1. Minimum leverage capital ratio of not less than 10 percent
 - 2. Minimum Tier 1 capital level based on payment volume (PV), as follows:

¹⁰ A “support organization” is “a legal entity that is not an eligible organization but performs administrative support, information technology support, financial support, or tax and finance support for an MALPB pursuant to the terms of a contract.” Ga. Comp. R. & Regs. r. 80-12-1-.01

¹¹ The MALPB probably could, however, use any interest earned to offset fees charged to maintain the trust account.

¹² Visa and Mastercard require an SPE structure for holding title to the merchant settlement account and a related non-consolidation opinion of counsel.

¹³ The term “Paid-in-Surplus” is defined to mean “the sum of the considerations received in the sale or exchange of shares of a MALPB in excess of the amount of the capital stock.” Ga. Comp. R. & Regs. r. 80-12-1-.01(2)(s).

- A. 5 percent of the tier of PV up to \$10 million, plus
 - B. 3 percent of the tier of PV above \$10 million up to \$25 million, plus
 - C. 1.5 percent of the tier of PV above \$25 million up to \$100 million, plus
 - D. 0.75 percent of the tier of PV above \$100 million up to \$250 million, plus
 - E. 0.25 percent of the tier of PV above \$250 million up to \$1 billion, plus
 - F. 0.15 percent of the tier of PV above \$1 billion up to \$5 billion, plus
 - G. 0.08 percent of the tier of PV above \$5 billion up to \$20 billion, plus
 - H. 0.05 percent of the tier of PV above \$20 billion
3. Minimum risk capital not less than the greater of: a) two times the average monthly chargebacks over the previous six (6) month period; or b) two times the average monthly forecast dollar volume of chargebacks for the upcoming six (6) month period.¹⁴
- c. MALPBs may include the following in tier 1 capital for purposes of determining compliance with the requirements above:
- 1. Statutory capital (capital stock of the MALP bank plus paid-in surplus);
 - 2. Retained earnings;
 - 3. Noncumulative perpetual preferred stock;
 - 4. The secured portion of a capital maintenance guaranty by the parent company¹⁵;
 - 5. A capital letter of credit, less any loans or accounts payable by an affiliate or holding company to the MALP bank¹⁶;
 - 6. Goodwill; and
 - 7. Intangible assets.

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¹⁴ Ga. Comp. R. & Regs. r. 80-12-7-.01.

¹⁵ The guaranty must be of a type approved by the Department, may be discounted as approved by the Department, and must be properly assigned. Ga. Comp. R. & Regs. r. 80-12-1-0.1(f).

¹⁶ The letter of credit must be made payable to the Department for the benefit of merchants in the event of bankruptcy or insolvency of the MALPB and must have a term of at least one year and a remaining term of at least three months, be in a form acceptable to the Department, and be issued by a financial institution authorized to do business in Georgia and approved by the Department. Ga. Comp. R. & Regs. r. 80-12-1-0.1(e).