

April 4, 2012

## Georgia Creates New Merchant Acquirer Limited Purpose Bank Charter

On March 28, 2012, Governor Nathan Deal signed into law the Georgia Merchant Acquirer Limited Purpose Bank Act.<sup>1</sup> The Act, which became effective upon signing, creates a new state charter for payment card merchant processors.<sup>2</sup> By affording merchant processors bank status as “merchant acquirer limited purpose banks” (MALPBs) and making them eligible for (but not required to obtain) FDIC insurance, the Act is intended to enable MALPBs to obtain membership in payment card networks without a sponsoring bank.

Under the Act, an MALPB may not solicit depositors from the general public or accept deposits from any person other than the MALPB’s controlling shareholder. These deposits may only be made at one location within the state of Georgia and cannot be withdrawn by the depositor for payment by check or similar means to third parties.<sup>3</sup>

The Georgia Department of Banking and Finance (the Department) will be the sole regulator of MALPBs, and though, at least theoretically, an MALPB could apply for FDIC deposit insurance, it would have no incentive to do so. The permissive insurance application power granted by the Act is provided only for the MALBP to meet the membership requirements of major card payment systems. The MALPB is required to maintain a minimum of \$3 million in capital at all times.

The limited scope of permitted MALPB activities under the Act is intended to allow companies controlling an MALPB to avoid classification as a “bank holding company” under the Bank Holding Company Act. Such classification would not only bring Federal Reserve regulation, but would limit the activities and investments of any company controlling the MALBP. Because an MALPB is prohibited by the Act from accepting demand deposits, accepting deposits that may be withdrawn by check by the depositor for payment purposes, or making commercial loans, the Act seemingly puts MALPBs outside of the definition of a “bank” under the BHCA.<sup>4</sup>



*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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<sup>1</sup> O.C.G.A. § 7-9-1 *et seq.* The text of the Act can be obtained at <http://www.legis.ga.gov/legislation/en-US/display/20112012/HB/898>.

<sup>2</sup> *Id.* at §§ 7-9-2(8), (11).

<sup>3</sup> *Id.* at § 7-9-12(a).

<sup>4</sup> 12 U.S.C. § 1841(c)(1)(B).