

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*BRIAN KEMP  
GOVERNOR*

*KEVIN HAGLER  
COMMISSIONER*

*SPECIAL EDITION  
IMPORTANT NOTICE  
PROPOSED RULEMAKING*

**November 18, 2024**

**NOTICE OF PROPOSED RULEMAKING  
AND  
OPPORTUNITY TO COMMENT**

**PROPOSED ENACTMENT OF RULES AND REGULATIONS  
BY  
DEPARTMENT OF BANKING AND FINANCE  
STATE OF GEORGIA**

To all interested persons:

Pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-1012, 7-1-1109, 7-3-51, 7-9-13, and other cited statutes, the Department of Banking and Finance hereby gives notice of its intent to adopt new rules.

A synopsis and purpose precedes the proposed rules.

Comments to the Department of Banking and Finance must be received by the close of business on **Wednesday, December 18, 2024**. Please send all comments to:

Oscar B. Fears III, Senior Deputy Commissioner  
Georgia Department of Banking and Finance  
2990 Brandywine Road, Suite 200  
Atlanta, GA 30341-5565  
Fax: (770) 986-1654 or 1655  
Email: [bfears@dbf.state.ga.us](mailto:bfears@dbf.state.ga.us)

The Department shall review all comments, may contact commenters to discuss their suggestions, and, after the comment period has closed, intends on promulgating final rules. The Department will consider the proposed new rules for adoption at a meeting **at 10:00 a.m. on Friday, December 20, 2024**, at the offices of the Department of Banking and Finance at 2990 Brandywine Road, Suite 200, Atlanta, Georgia 30341. Notice and a copy of the final rules adopted will be e-mailed to persons who have made a special request and will be made available on our website at <http://dbf.georgia.gov>. Other interested parties may receive a copy of the final rules by contacting the Department at (770) 986-1633, after **Friday, December 20, 2024**.

## **2024 Rules and Regulations**

### **Proposed Changes: Synopsis, Purpose and Background**

#### **80-2-1-.02 Minimum Requirement for Books and Records**

The proposed amendment provides details on items to be included in the cash items register as well as provides details on the maintenance and internal review of the registry.

#### **80-5-1-.02 License and Supervision Fees for Check Cashers, Money Transmitters, Representative Offices, Mortgage Lenders, Mortgage Brokers, Mortgage Loan Originators, and Installment Lenders; Due Dates**

The proposed amendment strikes the references to registered entities as House Bill 876 (“HB876”), which was effective on July 1, 2024, eliminated the requirement for certain entities that are exempt from being licensed as a mortgage lender or broker to register with the Department.

#### **80-5-1-.08 Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders Through June 30, 2022**

The proposed amendment strikes the rule as House Bill 891, which was effective on July 1, 2023, replaced the loan tax with a per loan fee. The relevant rule related to the collection and remittance of the per loan fee is contained in Rule 80-5-1-.07.

#### **80-7-1-.01 Scope**

House Bill 55 (“HB55”), which was effective on July 1, 2023, substantially updated and revised the foreign bank office law in Georgia. The proposed amendment strikes the existing rule and replaces it with a description of the scope of Rule Chapter 80-7-1, which deals with the operations of foreign bank offices. The domestic international banking facilities concepts currently captured in Rule 80-7-1-.01 have been moved to proposed Rule 80-7-2-.01.

#### **80-7-1-.02 Definitions**

HB55 substantially updated and revised the foreign bank office law in Georgia. The proposed amendment strikes the existing rule and replaces it with the definitions for Rule Chapter 80-7-1, which deals with the operations of foreign bank offices. The domestic international banking facilities concepts currently captured in Rule 80-7-1-.02 have been moved to proposed Rule 80-7-2-.02.

#### **80-7-1-.03 Approval of a Georgia State Branch, Georgia State Agency, or Georgia State Representative Office**

HB55 substantially updated and revised the foreign bank office law in Georgia. The proposed amendment strikes the existing rule and replaces it with the varying processes for foreign bank

offices to operate in Georgia. The proposed revision sets forth the application procedures and approval considerations for Georgia state branches, Georgia state agencies, and Georgia state representative offices. In addition, the proposed amendment sets forth situations for expedited review of applications or certain circumstances where notice filings are acceptable. The proposed revision also sets forth the mechanism for after-the-fact authorization for foreign bank acquisitions, mergers, and consolidations. The proposed amendment provides the Department can accept similar applications to other governmental entities and has the ability to modify the application procedures. Finally, the domestic international banking facilities concepts currently captured in Rule 80-7-1-.03 have been moved to proposed Rule 80-7-2-.03.

#### **80-7-1-.04 Permissible Activities**

HB55 substantially updated and revised the foreign bank office law in Georgia. The proposed amendment strikes the existing rule and replaces it with the permissible activities for foreign bank offices. The proposed amendment provides that unless otherwise limited by federal or state law, a Georgia state branch, Georgia state agency, and Georgia state representative office shall have all the same rights as if the entity was a Georgia state-chartered bank. In addition, the proposed revision restricts the ability of a Georgia state branch or a Georgia state agency to manage a shell branch. The proposed amendment also provides that the Department may issue guidance related to whether activities are authorized at a Georgia state branch, Georgia state agency, or Georgia state representative office. Finally, the domestic international banking facilities concepts currently captured in Rule 80-7-1-.04 have been moved to proposed Rule 80-7-2-.04.

#### **80-7-1-.05 Additional Authorized Activities**

HB55 substantially updated and revised the foreign bank office law in Georgia. The proposed amendment strikes the existing rule and replaces it with the process for Georgia state branches and Georgia state agencies to obtain authorization from the Department to engage in additional activities. The domestic international banking facilities concepts currently captured in Rule 80-7-1-.05 have been moved to proposed Rule 80-7-2-.05.

#### **80-7-1-.06 Limitations Based Upon Capital of a Foreign Bank; Loans to One Borrower**

The proposed rule provides that the capital restrictions applicable to a Georgia state bank shall refer to the dollar equivalent of a foreign bank. In addition, the proposed rule provides that for purposes of the legal lending limit, the loans and extensions of credit to a borrower by a Georgia state branch or Georgia state agency shall be aggregated with all loans or extension of credit to the same borrower by foreign bank branches and agencies operated by the foreign bank throughout the United States.

#### **80-7-1-.07 Deposit Taking by a Georgia State Branch**

The proposed rule sets forth certain limitations related to the ability of a Georgia state branch to accept deposits. The proposed rule sets forth requirements surrounding the notifications related to a lack of deposit insurance as well as prohibitions around the representation that the deposits are insured by the FDIC.

#### **80-7-1-.08 Notice of Change in Activity or Operations**

The proposed rule provides that a foreign bank office must provide the Department with notice in the event of certain events as well as the ability of the Department to require the foreign bank office to submit an application after review of the notice.

#### **80-7-1-.09 Recordkeeping and Reporting**

The proposed rule sets for the recordkeeping and reporting requirements for Georgia state branches, Georgia state agencies, and Georgia state representative offices. The proposed rule provides that a foreign bank office shall provide the Department with a list of all reports filed with federal and Georgia state regulatory agencies related to the Georgia office and the process to provide the Department with copies of the requested reports. In addition, the proposed rule provides that records of the operations of the Georgia offices must be maintained in English and separate from the records of the foreign bank and any other foreign branch or agency. The proposed language also provides for the record keeping requirements by a foreign bank related to the assets and liabilities of Georgia state branches and Georgia state agencies, including the record retention period and the process to maintain these records on a consolidated basis as opposed to an office-by-office basis. In addition, the proposed rule sets forth the record keeping and report requirements for assets pledged by a Georgia state branch or a Georgia state agency. The proposed rule also provides that the assets and liabilities of an international banking facility must be taken into account in determining the required amount of assets to be pledged by the Georgia state branch or Georgia state agency. Finally, the proposed language requires compliance with federal requirements surrounding sanctions and suspicious activities.

#### **80-7-1-.10 Voluntary Closure of State Representative Offices – Procedures**

The proposed rule sets forth the notice process that must be followed by a foreign bank prior to the closure of a Georgia state representative office.

#### **80-7-1-.11 Pledged Assets**

The proposed rule sets for the valuation methodology for pledged assets as well as the requirement that the assets shall be held at a financial institution approved by the Department. In addition, the proposed rule identifies the types of assets that can be pledged, the method to determine the total amount of assets required to be pledged, and the ability of the Department to impose conditions and limitations on the assets that have been pledged and ability to modify such conditions and limitations. The proposed language also requires the existence of a tri-party

security agreement between the Department, the approved depository, and the Georgia state branch or Georgia state agency. In addition, the approved depository must keep the pledged assets segregated, the pledged assets may not fall below the required minimum calculation, and the pledged assets must be free and clear of any liens. The proposed rule provides that Georgia state branches and Georgia state agencies must provide periodic reports of the pledged assets. In addition, the proposed language sets forth the liabilities of the Georgia state branch and Georgia state agency that are required to be covered and, thus, taken into consideration in calculating the amount of the pledged asset requirement. Finally, the proposed rule provides that the Department can require that assets be pledged in an amount greater than the minimum required amount.

### **80-7-1-.12 Highly Rated Foreign Banks**

The proposed rule sets forth the factors that must be satisfied in order for a foreign bank to be considered “highly rated,” sets forth a process for a foreign bank to certify that it continues to satisfy the requirements to be highly rated, and provides for a notification process in the event any of the requirements to be considered highly rated are no longer satisfied. In addition, the proposed rule provides an alternative pledged asset requirement for highly rated foreign banks. Finally, the proposed rule provides that if a highly rated foreign bank loses its status as highly rated, then it has thirty days to satisfy the pledged asset requirement contained in Rule 80-7-1-.11.

### **80-7-2-.01 Definitions**

The proposed rule contains the domestic international banking facility concepts that are currently captured in Rule 80-7-1-.01. The proposed Rule Chapter 80-7-1 addresses Georgia state branches, Georgia state agencies, and Georgia state representative offices while the proposed Rule Chapter 80-7-2 addresses domestic international banking facilities.

### **80-7-2-.02 Status of Georgia Institutions**

The proposed rule contains the domestic international banking facility concepts that are currently captured in Rule 80-7-1-.02. The proposed Rule Chapter 80-7-1 addresses Georgia state branches, Georgia state agencies, and Georgia state representative offices while the proposed Rule Chapter 80-7-2 addresses domestic international banking facilities.

### **80-7-2-.03 Applications and Registrations**

The proposed rule contains the domestic international banking facility concepts that are currently captured in Rule 80-7-1-.03. The proposed Rule Chapter 80-7-1 addresses Georgia state branches, Georgia state agencies, and Georgia state representative offices while the proposed Rule Chapter 80-7-2 addresses domestic international banking facilities.

### **80-7-2-.04 Interpretations**

The proposed rule contains the domestic international banking facility concepts that are currently captured in Rule 80-7-1-.04. The proposed Rule Chapter 80-7-1 addresses Georgia state branches, Georgia state agencies, and Georgia state representative offices while the proposed Rule Chapter 80-7-2 addresses domestic international banking facilities.

#### **80-7-2-.05 Operating Restrictions**

The proposed rule contains the domestic international banking facility concepts that are currently captured in Rule 80-7-1-.05. The proposed Rule Chapter 80-7-1 addresses Georgia state branches, Georgia state agencies, and Georgia state representative offices while the proposed Rule Chapter 80-7-2 addresses domestic international banking facilities.

#### **80-12-1-.01 Definitions**

The proposed amendment revises the definition of “chargeback” to reference “a payment card network” instead of “the payment card network” as there are multiple payment card networks.

#### **80-12-1-.02 Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank**

The proposed amendment strikes the references to Application Manual and Statement of Policy and replaces it with the Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank (“Guidelines”) as the referenced provisions are found in the Guidelines as opposed to the Application Manual and Statement of Policy.

#### **80-12-2-.03 MALPB Applications**

The proposed amendment strikes the reference to Application Manual and Statement of Policy and replaces it with the Guidelines as the referenced provision is found in the Guidelines as opposed to the Application Manual and Statement of Policy.

#### **80-12-2-.08 General Standards for Consideration of Applications**

The proposed amendment strikes the reference to Application Manual and Statement of Policy and replaces it with the Guidelines as the referenced provision is found in the Guidelines as opposed to the Application Manual and Statement of Policy.

#### **80-12-4-.08 Notification of Computer Security Incident**

The proposed rules provides that an MALPB is required to provide the Department with notice within 36 hours of determining that is has suffered a computer security incident, which is defined as an occurrence that harms the confidentiality, integrity, or availability of an information system or information related to the information system.

#### **80-12-5-.05 Minimum Requirements for Books and Records**

The proposed amendment strikes the reference to “stockholder” as HB876 adopted the term “shareholder.”

**80-12-5-.08 Public Access to Records**

The proposed amendment provides that the portion of an MALPB charter application that has been designated as public by the Department is open for public inspection from the date the application is accepted by the Department until 90 days after a final determination has been made on the application.

**80-12-7-.01 Minimum Capital Requirements**

The proposed amendment provides clarifying language related to the period of time that is utilized in computing the alternative risk capital calculations.

**80-12-7-.06 Liability Funding of Corporate Activities**

The proposed rule precludes an MALPB or the holding company of an MALPB to enter into a contractual debt obligation where the annual servicing of the obligation is greater than 50% of the consolidated net operating earnings of the MALPB and any subsidiary of the MALPB without the written authorization of the Department.

**80-12-8-.03 Oversight of Eligible and Support Organizations**

The proposed amendment clarifies that an MALPB must notify the Department if it discovers or suspects that an eligible organization or a support organization will experience a net operating loss.

**80-12-9-.02 Subsidiaries**

The proposed amendment clarifies that an MALPB must notify the Department if it discovers or suspects that a subsidiary will experience a net operating loss.

**80-14-1-.02 Location Managers**

The proposed amendment corrects a typographical error.



## **CHAPTER 80-2**

### **CREDIT UNIONS**

#### **SUBJECT 80-2-1**

#### **BOOKS AND RECORDS**

80-2-1-.02 Minimum Requirements for Books and Records

#### **Rule 80-2-1-.02 Minimum Requirements for Books and Records**

- (1) In addition to the requirements otherwise set forth herein, the following subsidiary records must be maintained:
  - (a) Securities Register - shall contain a record of all securities, certificates of deposit, commercial paper, acceptances, and other investments bought or sold, showing date of transaction, proper name of the security, interest rate, maturity date, par value, purchase price, book value, schedule of amortization of premium and accretion of discounts, and location where the security is held.
  - (b) Loan Ledgers -
    1. credit unions shall maintain a record of the direct and indirect liability of each member;
    2. where a credit union elects to maintain installment loans separately from other direct loans of a borrower and does not include them on the Liability Ledger above, they may be maintained in a separate ledger with payments being posted directly thereto. Such ledger must reflect any and all modifications to the terms of the original note contract which may be granted from time to time, i.e., adjustments of the due date or amount of payments;
    3. such record may be maintained in whatever order desired by management, i.e., alphabetical, numerical, class of loan, except where they are not maintained alphabetically, a cross-reference file must be maintained.
  - (c) Deposit Ledgers - credit unions must maintain separate deposit records for each general ledger segregation of deposits. Such record must contain a continuing itemized record of all deposits and withdrawals. Deposits will be segregated into no fewer than the following categories: Transaction or Share Draft Accounts, Savings Deposits, Christmas Savings, and Member Deposit Certificates. Deposit records must be posted daily wherever the credit union offers transaction or share draft accounts; provided, a credit union may defer business conducted on Saturday for posting on the next business day. Such record may be maintained in whatever order desired by management; i.e., alphabetical, numerical, class of deposit, except where they are not maintained alphabetically, a cross-reference file must be maintained.

- (d) Income and Expense Register - a detailed record of income and expenses must be maintained. Expenses are to be recorded in such detail as to clearly describe each expense; i.e., supplies, rent, salaries, etc.
- (e) Cash Items Register - a daily listing must be maintained of all cash items held which shows the maker on the item, last endorser, date acquired, amount, and reason held. The register may be maintained on a decentralized basis at each of the credit union's operating offices. The current register shall be reviewed by the Board of Directors at least monthly. For purposes of this Rule, Cash Items shall include any item received by a credit union and paid but for which reimbursement by the maker or endorser is not made before the end of the next business day following the date in which the item is received, except such items as are customarily held by the credit union for settlement with its member, whether maker or endorser on the item, not less frequently than weekly. Where the item is held beyond the regular settlement date, it shall be considered as a Cash Item within the definition of this Rule. In addition to the foregoing, Cash Items and the register thereof shall include such other items as the Board of Directors shall from time to time determine.
- (f) Charged-Off Assets - all charge-offs, including loans, must be approved by the Board of Directors and such approvals recorded in the minute book. A permanent record of all charge-offs and recoveries thereon must be maintained. When a recovery is made on an asset that has been charged off, the funds are to be credited to the regular reserve and applied to the account that was charged off.
- (g) Safekeeping Register - a register must be maintained of all items held for safekeeping by a credit union for its members other than items maintained in a safe deposit box under the sole control of the member. The register should describe the item fully, show the name of the owner, date received, and the number of the receipt given to the member. When the item is returned to the member, the receipt must be secured by the credit union, signed by the member stating that he has received the item that was held for safekeeping. The receipt must then be maintained with the safekeeping register.
- (h) Reconciliation Records - the Audit Committee shall reconcile correspondent account statements monthly or shall verify for accuracy reconciliations made by others. A copy of each reconciliation shall be filed in chronological order and kept as a record. The Audit Committee may delegate this responsibility to an internal auditor provided such person has no authority to sign on the account or to initiate or post entries to the general ledger.
- (i) Overdrafts - a record of all overdrawn deposit accounts shall be maintained. Such record shall contain the name of the account holder, the amount of the overdraft, and the date the overdraft originated. The most current record shall be approved by the Credit Committee or, in lieu thereof, by the board of directors of the credit union at least monthly, and such approval shall be recorded in the minutes of the meeting at

which the action was taken. Overdrafts of less than \$1,000, other than overdrafts on the accounts of officers, and directors may be aggregated and reported in lump sum.

- (2) All subsidiary records maintained in support of General Ledger accounts must be balanced back to the General Ledger control balance at least monthly. After balancing at the end of each month on all accounts segregated in the general ledger, the balances and the amounts shown in the general ledger of those accounts and the reconciliation of differences, if any, must be recorded in the Trial Balance Log. The date and the initials of the person running the trial balance must be entered in the log.
- (3) Information required to be maintained pursuant to this Rule may be in written form or available subject to access upon computer query. If available, subject to query access, a written record of such information shall be produced at least monthly.
- (4) Where a credit union has net worth of \$5,000,000 or more, review by the Board of Directors as required in paragraphs (1)(e), (1)(f), and (1)(i) above, may be delegated to a specific officer or department of the credit union where such delegation is recorded in the minutes of the Board of Directors. A properly constituted member of the Board of Directors may perform this function for the full Board of Directors regardless of the size of the credit union.

Authority: O.C.G.A. §§ 7-1-61; 7-1-663.

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## CHAPTER 80-5

### FINANCIAL INSTITUTIONS

#### SUBJECT 80-5-1

#### **SUPERVISION, EXAMINATION, REGISTRATION AND INVESTIGATION FEES AND ADMINISTRATIVE LATE FEES**

80-5-1-.02 License and Supervision Fees for Check Cashers, Money Transmitters, Representative Offices, Mortgage Lenders, Mortgage Brokers, Mortgage Loan Originators, and Installment Lenders; Due Dates

80-5-1-.08 ~~Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders Through June 30, 2022~~  
Reserved

#### **Rule 80-5-1-.02 License and Supervision Fees for Check Cashers, Money Transmitters, Representative Offices, Mortgage Lenders, Mortgage Brokers, Mortgage Loan Originators, and Installment Lenders; Due Dates**

- (1) Money transmitters.
  - (a) The annual license fee is one thousand nine hundred dollars (\$1,900) for money transmitters.

- (b) The annual renewal license fee is one thousand nine hundred dollars (\$1,900) money transmitters and shall be due and must be received by the Department on or before the first day of December of each year. A licensee whose renewal application and annual license renewal fee is not received by the Department on or before December 1 may be assessed a late fine of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.
  - (c) An additional non-refundable application investigation fee of two hundred fifty dollars (\$250) will be assessed.
  - (d) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-688 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).
- (2) Check Cashers.
- (a) The annual license fee is three hundred dollars (\$300).
  - (b) The annual renewal license fee is three hundred dollars (\$300).
  - (c) An initial investigation and supervision fee shall be five hundred fifty dollars (\$550) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.
  - (d) Initial and renewal license fees shall also include an additional thirty dollars (\$30) for the second and each additional location, plus a fee in an amount as directed by the Department to cover the cost of the required number of fingerprints for each individual background check.
  - (e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of December of each year. A licensee whose renewal application and annual renewal license fee is not received by the Department on or before the first day of December of each year may be assessed a late fine of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.
  - (f) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-705.1 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).
- (3) Registrants of Georgia state representative offices as defined in O.C.G.A. § 7-1-1100 shall pay an annual registration fee of one thousand dollars (\$1,000).
- (4) Mortgage licensees ~~and registrants~~.

- (a) Lenders. The initial and renewal application and license fee for mortgage lenders shall be nine hundred dollars (\$900). The initial fee of nine hundred dollars (\$900) covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred thirty dollars (\$330) each. A fee of three hundred thirty dollars (\$330) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars (\$300). A renewal application and license fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.
  
- (b) Brokers. The initial and renewal application and license fee for mortgage brokers shall be four hundred dollars (\$400). The initial four hundred dollar (\$400) fee covers the main office. Any branch offices located in Georgia shall be assessed a fee of three hundred thirty dollars (\$330) each. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars (\$300). A renewal application and license fee that is not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.
  
- (c) Mortgage Loan Originators. The initial and renewal application and license fee for mortgage loan originators shall be two hundred dollars (\$200). Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant may be assessed a late fine of two hundred dollars (\$200). A renewal application is not deemed received until all required information, including a renewal fee in the appropriate amount and documentation showing that the requisite continuing education hours have been obtained, has been provided by the licensee. A renewal application, containing all of the required information along with the correct fees and proof of required continuing education that is not received by the Department on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct mortgage loan origination activity without a current license.

~~(d) Lender Registrants. The initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be nine hundred dollars (\$900), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.~~

~~(e) Broker Registrants. The initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be four hundred dollars (\$400), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant may be assessed a late fine of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.~~

~~(fd)~~ All late fees collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. § 7-1-1018(e).

~~(ge)~~ Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A. Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

~~(hf)~~ Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred thirty dollars (\$330), as provided in O.C.G.A. § 7-1-1006.

(5) Installment Lenders.

(a) The annual license fee is five hundred dollars (\$500).

(b) The annual license renewal fee is five hundred dollars (\$500) and must be received by the Department on or before the first day of December of each year. A licensee whose

renewal application and annual license renewal fee is not received by the Department on or before December 1 may be assessed a late fine of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.

- (c) An additional nonrefundable initial application investigation fee of two hundred fifty dollars (\$250) will be assessed.
  - (d) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-3-32 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).
  - (e) An application for an additional location of a licensee shall be accompanied by a nonrefundable fee of three hundred dollars (\$300). An annual renewal fee of three hundred dollars (\$300) per each approved additional location shall be due and must be received by the Department on or before the first day of December of each year.
- (6) The Department may discount or surcharge all supervision or license fees herein provided to assure funding of annual appropriations by the General Assembly.
- (7) Any fees or charges imposed by the Nationwide Multistate Licensing System and Registry ("NMLSR") shall be independent of any fees charged by the Department. Applicants, licensees, and registrants will be responsible for any and all fees or charges imposed by NMLSR.
- (8) All license, investigation, and supervision fees, late fees, fines, taxes owed to the Department, and assessed civil penalties must be paid prior to renewal, reinstatement, or reapplication for a license or any other approval from the Department.

Authority: O.C.G.A. §§ 7-1-41, 7-1-61, 7-1-683, 7-1-685, 7-1-702, 7-1-704, 7-1-716, 7-1-721, 7-1-1004 7-1-1005, 7-3-20, 7-3-32.

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**~~Rule 80-5-1-.08 Collection and Remittance of Per Loan Fee on Loans Made by Installment Lenders Through June 30, 2022~~ Reserved**

- ~~(1) A tax shall be paid on a semiannual basis on all interest charged on loans made under Chapter 3 of Title 7 (Georgia Installment Loan Act) through June 30, 2022. A licensee may report such tax on interest either on a "cash basis" or on an "accrual basis" as those terms are defined in subsection (b). However, once a licensee has made such an initial election, such basis shall not be changed without the prior written approval of the Commissioner, with any such approved change becoming effective at the commencement of the next semiannual reporting period.~~
- ~~(2) A licensee shall report this tax by use of one of the following methods:~~



- (a) ~~"Cash Method" is based on actual interest charged during the month as reported in the daily cash report. The charges of interest shall be increased by recoveries of interest on accounts previously written off and the interest may be reduced by interest on accounts to be presently written off and interest being refunded on accounts prepaid by cash, renewal, and refinancing. The net interest is subject to the tax.~~
- (b) ~~"Accrual method" is based principally on collections during the month of accounts under the Act. An accurate percentage comparison of interest charged to the gross loan is obtained by dividing the outstanding loans at the beginning of the month into unearned interest at the beginning of the month. The percent obtained is then multiplied by the collections for the month. The total obtained is subject to be taxed.~~
- (3) ~~The taxes payable under the provisions of subsection (a) shall be payable to the Department by the licensee on a semiannual basis. More specifically, such taxes for the period January 1 through June 30 of each year shall be remitted to the Department no later than the first business day of September of each year and such taxes for the period July 1 through December 31 of each year shall be remitted to the Department no later than the first business day of March of each year. A return indicating the amount of the tax, the method of calculation, and such other information as may be required by the Department shall accompany the taxes remitted. The taxes and the corresponding return shall be remitted to the Department through its online reporting and payment system. In the event that any licensee fails to timely remit taxes along with the corresponding return via the online reporting and payment system, the unpaid tax shall bear interest at the rate of one percent (1%) per month from the date the tax is due until the date the tax is paid, and there shall be added to the tax a penalty equivalent to twenty five percent (25%) of the tax, or not less than five dollars (\$5). In the event that any licensee fraudulently remits the incorrect tax, there shall be added to the tax a penalty equivalent to fifty percent (50%) of the tax, or not less than five dollars (\$5).~~
- (4) ~~The requirement to pay the taxes pursuant to Chapter 3 of Title 7 (Georgia Installment Loan Act) and this rule shall apply to interest charged on all installment loans through June 30, 2022.~~

Authority: ~~O.C.G.A. §§ 7§§ 3-16, 7-3-17, 7-3-18.~~

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## CHAPTER 80-7

### **FOREIGN BANKING AND INTERNATIONAL BANKING FACILITIES**

#### **SUBJECT 80-7-1**

### **BANKING ACTIVITIES IN GEORGIA BY ORGANIZATIONS DOMICILED OUTSIDE OF GEORGIAGEORGIA STATE BRANCHES, GEORGIA STATE AGENCIES, ANDGEORGIA STATE REPRESENTATIVE OFFICES OF FOREIGN BANKS**



80-7-1-.01 ~~Definitions~~Scope  
80-7-1-.02 ~~Status of Georgia Institutions~~Definitions  
80-7-1-.03 ~~Applications and Registrations~~Approval of a Georgia State Branch, Georgia State Agency, or Georgia State Representative Office  
80-7-1-.04 ~~Interpretations~~Permissible Activities  
80-7-1-.05 ~~Operating Restrictions~~Additional Authorized Activities

80-7-1-.06 ~~Repealed~~Limitations Based Upon Capital of a Foreign Bank; Loans to One Borrower  
80-7-1-.07 Deposit Taking by a Georgia State Branch  
80-7-1-.08 Notice of Change in Activity or Operations  
80-7-1-.09 Recordkeeping and Reporting  
80-7-1-.10 Voluntary Closure of State Representative Offices-Procedures  
80-7-1-.11 Pledged Assets  
80-7-1-.12 Highly Rated Foreign Banks

### **Rule 80-7-1-.01 ~~Definitions~~Scope**

This rule chapter applies to all Georgia state branches, Georgia state agencies and Georgia state representative offices of foreign banks. Nothing in the Department's rules relieves a Georgia state branch, Georgia state agency or Georgia state representative office from complying with requirements that are imposed by the FRB under Regulation K (12 CFR part 211) or otherwise imposed in accordance with applicable federal or Georgia law or regulation.

- ~~(1) Unless further defined herein, definitions contained in provisions of Georgia Code Ann. Title 7, the Financial Institutions Code of Georgia (FIC), shall be applicable to this Chapter.~~
- ~~(2) Definitions contained herein shall be applicable to FIC Sections 7-1-590 and 7-1-710 through 7-1-734.~~
- ~~(3) Further Definitions:
  - ~~(a) "Parent Organization" shall mean the corporate entity containing any FBO located in this State and any affiliate (see FIC subsection 7-1-4(1)) of such entity.~~
  - ~~(b) "Foreign Banking Organization (FBO)" shall mean an "International Bank Agency", an "International Bank Representative Office," a "Domestic International Banking Facility", and a "Business Production Office".~~
  - ~~(c) "Business Production Office" shall mean a "Representative Office" as discussed in FIC Section 7-1-590 and shall include any corporate subsidiary (see FIC subsection 7-1-4(37)), of a bank domicile outside of this State which maintains an office within this State.~~
  - ~~(d) "Temporary Advances" shall mean credit balances which bear interest.~~~~

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109Ga. L. 1974, pp. 705, 733.

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### **Rule 80-7-1-.02 ~~Status of Georgia Institutions~~Definitions**

(1) For purposes of this rule chapter, the following terms have the meanings assigned to them by O.C.G.A. § 7-1-1100: “affiliate”, “agency”, “bank”, “bank supervisory agency”, “branch” (when used in reference to an office of a foreign bank), “control”, “deposit”, “depository institution”, “federal agency”, “federal branch”, “foreign bank”, “functional regulatory agency”, “Georgia state agency”, “Georgia state bank”, “Georgia state branch”, “Georgia state representative office”, “home state”, “insolvency”, “International Banking Act”, “national bank”, “office of a foreign bank”, “out-of-state foreign bank”, “representative office” (when used in reference to an office of a foreign bank), “state”, “state bank”, “subsidiary”, and “United States.”

(2) For purposes of this rule chapter, the following terms shall have the meanings assigned to them below:

(a) “Approved Depository” has the meaning assigned in Rule 80-7-1-.11(a).

(b) “Commissioner” means the commissioner of the Department.

(c) “Department” means the Department of Banking and Finance.

(d) “Establish a Georgia state branch, Georgia state agency or Georgia state representative office” means to:

1. Open and conduct permitted business through an initial or additional Georgia state branch or Georgia state agency, or open and engage in permitted representative activities at a Georgia state representative office;
2. Acquire directly or indirectly through merger, consolidation, or similar transaction with another foreign bank, the operations of a Georgia state branch or Georgia state agency that is open and conducting business or, in the case of a Georgia state representative office, engaging in representative activities in Georgia permitted for a Georgia state representative office;
3. Acquire a Georgia state branch, Georgia state agency or Georgia state representative office through the acquisition of a foreign bank that will cease to operate in the same corporate form following the acquisition;
4. Convert a federal branch or federal agency operated by a foreign bank in Georgia controlled by a foreign bank, into a Georgia state branch, a Georgia state agency or a Georgia state representative office;
5. Convert a loan production, deposit production, or trust representative office operated in Georgia by a federal branch of foreign bank, which is not located in Georgia, into a Georgia state branch, a Georgia state agency or a Georgia state representative office;
6. Relocate a foreign bank state branch, state agency or state representative office from another state to Georgia, through the establishment of a Georgia state branch, Georgia state agency, or Georgia state representative office and a

transfer of assets and/or liabilities to the new Georgia location or by other means; or

7. Convert a Georgia state agency or Georgia state representative office to a higher class of Georgia state foreign bank office, in accordance with O.C.G.A. §§ 7-1-1107 and 7-1-1111.
- (e) “FDIC” means the Federal Deposit Insurance Corporation
  - (f) “Foreign business” means any entity, including, but not limited to, a corporation, limited liability company, partnership, sole proprietorship, association, foundation, trust, or similar entity that is organized under the laws of a foreign country, or any United States entity that is controlled by a foreign entity or foreign national.
  - (g) “Foreign country” means one or more nations other than the United States, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States (including the Commonwealth of Puerto Rico).
  - (h) “FRB” means the Board of Governors of the Federal Reserve System.
  - (i) “Highly rated foreign bank” has the meaning assigned in Rule 80-7-1-.12.
  - (j) “Home country” means the foreign country in which the foreign bank is chartered or incorporated.
  - (k) “Home country supervisor” means the governmental entity or entities in the foreign bank’s home country responsible for supervising and regulating the foreign bank.
  - (l) “International banking facility” means a set of asset and liability accounts segregated on the books and records of a depository institution, Georgia state branch or Georgia state agency of a foreign bank.
  - (m) “Managed” by a Georgia state branch or Georgia state agency means that a majority of the responsibility for business decisions, including decisions with regard to lending, asset management, funding, or liability management, or the responsibility for recordkeeping of assets or liabilities for a non-United States office, resides at the Georgia state branch or Georgia state agency. For purposes of this definition, forwarding data or information of offshore operations gathered or compiled by the United States office in the normal course of business to the foreign bank or its affiliates does not constitute recordkeeping.
  - (n) “NRSRO” means a Nationally Recognized Statistical Rating Organization designated by the federal Securities and Exchange Commission
  - (o) “OCC” means the federal Office of the Comptroller of the Currency.
  - (p) “Foreign bank senior management” means individuals at the executive level of the foreign bank who are responsible for supervising and authorizing activities of the Georgia state branch, Georgia state agency or Georgia state representative office.

- (q) “Person” means an individual or a corporation, government, limited liability company, partnership, association, or any other entity.
- (r) “Permitted Pledged Assets” has the meaning assigned in Rule 80-7-1-.11(b).
- (s) “Pledged Assets” has the meaning assigned in Rule 80-7-1-.11(a).

~~Banks chartered by this State or National Banking Associations domiciled in this State shall, unless otherwise restricted, have the same rights, privileges, and responsibilities as are granted to FBO's herein or by statute.~~

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109Ga. L. 1974, pp. 705, 733, 922.

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**Rule 80-7-1-.03 ~~Applications and Registrations~~Approval of a Georgia State Branch, Georgia State Agency, or Georgia State Representative Office**

(1) Approval and licensing requirements —

- (a) General. Except as otherwise provided in this Rule, a foreign bank shall submit an application to and obtain prior approval from the Department before it:
  - (i) establishes a Georgia state branch or a Georgia state agency; or
  - (ii) establishes a Georgia state representative office.
- (b) Licensing. A foreign bank must receive a license from the Department to establish a Georgia state branch, Georgia state agency or Georgia state representative office.
- (c) Classes of Georgia state offices. Consistent with O.C.G.A. § 7-1-1107, offices of foreign banks in this state shall be divided into classes and ranked in descending order as a:
  - (i) Georgia state branch;
  - (ii) Georgia state agency; and
  - (iii) Georgia state representative office.

Changes to the class of Georgia offices made by a foreign bank shall be made pursuant to and in accordance with O.C.G.A. §§ 7-1-1107 and 7-1-1111, and these rules.

(2) Application procedures for Georgia state branch or Georgia state agency. Without limiting the powers and authority of the Department under O.C.G.A. §§ 7-1-1107, 7-1-1111, 7-1-1112, 7-1-1113 or other applicable law and unless an alternative procedure is set forth in this Rule, an application submitted to the Department under this Rule to establish a Georgia state branch or Georgia state agency shall:

- (a) Be in letter format or in an application form specified by the Department;

- (b) Be signed and acknowledged by a member of the foreign bank senior management; and
  - (c) Include and address all requirements in O.C.G.A. § 7-1-1111, including without limitation the foreign bank's notice or application to the FRB, as well as all other information that is requested by the Department.
- (3) Standards for approval of Georgia state branches and Georgia state agencies. In reviewing an application by a foreign bank to establish a Georgia state branch or Georgia state agency (including applications under O.C.G.A. § 7-1-1107 and this Rule to change an existing office into a higher class office), the Department shall make the determinations required by O.C.G.A. § 7-1-1113. The Department shall also consider whether the applicant foreign bank maintains a federal branch or federal agency in this state and, if it does so, the Department shall not approve an application to maintain a Georgia state branch or Georgia state agency, as required by O.C.G.A. § 7-1-1115.
- (4) Application procedures for Georgia state representative office. Unless an alternative procedure is set forth in this Rule, an application submitted to the Department under this Rule to establish a Georgia representative office shall:
  - (a) Be in letter format or in an application form specified by the Department;
  - (b) Be signed and acknowledged by a member of the foreign bank senior management; and
  - (c) Include and address all requirements in O.C.G.A. §§ 7-1-1131, including without limitation the foreign bank's notice or application to the FRB (if required by the FRB in connection with the office), as well as all other information that is requested by the Department
- (5) Standards for approval of Georgia state representative offices. In reviewing an application by a foreign bank to establish a Georgia state representative office under O.C.G.A. § 7-1-1131, the Department shall make the determinations set forth in this subsection (5). Determinations (a) through (c) shall apply, and determinations (d) through (l) shall not apply, to a foreign bank that is establishing the Georgia state representative office under and in accordance with the FRB's "general consent" authority at 12 CFR part 211. Determinations (a) through (l) shall apply to all other foreign bank applicants for a Georgia state representative office.
  - (a) The foreign bank engages directly in the business of banking outside of the United States and the FRB has concluded the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the home country supervisor or determined that comprehensive supervision or regulation is not required but the foreign bank's application is otherwise subject to approval;
  - (b) The foreign bank has furnished to the Department the information it needs to act on the application;

- (c) The home country supervisor has consented to the proposed establishment of the Georgia state representative office by the foreign bank;
- (d) The managerial resources of the foreign bank, including the foreign bank's experience and capacity to engage in international banking, are sufficient to enable the Georgia state representative office to operate in accordance with safe and sound banking practices;
- (e) The foreign bank has provided the Department with adequate assurances that the bank will make available to the Department such information on the operations or activities of the foreign bank and any affiliate of the bank that the Department deems necessary to determine and enforce compliance with state law, the International Banking Act, and other applicable federal law;
- (f) The foreign bank is in substantial compliance with applicable federal and state law, as determined by the Department;
- (g) The financial resources of the foreign bank, including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and future prospects, are sufficient to enable the Georgia state representative office to operate in accordance with safe and sound banking practices;
- (h) The directors, executive officers, and principal shareholders of the foreign bank are qualified by reason of their financial experience, reputation, and integrity and have sufficient banking and other business experience to indicate that they will manage and direct the affairs of the foreign bank in accordance with safe and sound banking practices;
- (i) The natural person who shall be in charge of the business and affairs of the Georgia state representative office is of sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the Georgia state representative office will operate in compliance with state law, the International Banking Act, and other applicable federal law;
- (j) The establishment is not otherwise prohibited by applicable federal law;
- (k) The foreign bank has sufficient standing to justify a belief the Georgia state representative office will be free from improper or unlawful influence or interference with respect to the operation of the Georgia state representative office in compliance with state law; and
- (l) The foreign bank is acting in good faith and the application does not contain a material misrepresentation.

Without limiting this subsection (5), the Department may deny an application for a Georgia state representative office in accordance with O.C.G.A. §§ 7-1-1134. The Department may waive, in whole or in part, any of the determinations listed in this subsection on a case-by-

case basis based on the specific facts and circumstances relating to the proposed Georgia state representative office or the foreign bank.

- (6) Expedited review. Unless the Department concludes that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues, the Department generally processes the following filings under expedited review procedures:
- (a) Notification for relocation of a Georgia state branch, Georgia state agency, or Georgia state representative office: When a foreign bank seeks to relocate a Georgia state branch, Georgia state agency, or Georgia state representative office, the foreign bank shall submit a notification not less than 30 days in advance of the proposed date for the relocation. The Department may waive this 30-day period if immediate action is required. The Department also may require an application if the notification raises significant policy or supervisory concerns.
  - (b) Notification for an additional intrastate Georgia state branch or Georgia state agency or Georgia state representative office: When a foreign bank seeks to establish an additional intrastate Georgia state branch, Georgia state agency or Georgia state representative office, the foreign bank shall submit a notification not less than 30 days in advance of the establishment of the intrastate Georgia branch, agency or representative office. The Department may waive this 30-day period if immediate action is required. The Department also may require an application if the notification raises significant policy or supervisory concerns.
  - (c) Conversion of federal branch or agency: An application submitted by a highly rated foreign bank to establish a Georgia state branch or Georgia state agency through the conversion of an existing federal branch or federal agency in this state is deemed approved by the Department as of the 30th day after the Department accepts the application, unless the Department notifies the foreign bank prior to that date that the filing is not eligible for expedited review. In performing its review, the Department generally shall apply the standards for state branch and state agency applications under O.C.G.A. § 7-1-1113.
  - (d) Other expedited filings: Any other application submitted by a highly rated foreign bank may be approved by the Department on an expedited basis as determined by the Department in writing on a case-by-case basis
- (7) After-the-fact approval for acquisitions, mergers, consolidations. Unless otherwise provided by the Department in this Rule or otherwise, a foreign bank proposing to establish a Georgia state branch, Georgia state agency, or Georgia state representative office through the acquisition of, or merger or consolidation with, a foreign bank that has a Georgia state branch, Georgia state agency, or Georgia state representative office, may proceed with the transaction before an application to establish the Georgia state branch, Georgia state agency, or Georgia state representative office has been filed or acted upon, if the applicant:



- (a) Gives the Department reasonable advance notice of the proposed acquisition, merger, or consolidation;
  - (b) Prior to consummation of the acquisition, merger, or consolidation, commits in writing to comply with the Department's application procedures and standards and submits an application within 14 days following the Department's receipt and acceptance of such written commitment, or has already submitted an application; and
  - (c) Commits in writing to abide by the Department's decision on the application, including a decision up to and including an order to terminate activities of the Georgia state branch, Georgia state agency, or Georgia state representative office.
- (8) After-the-fact notice for a highly rated foreign bank. Unless otherwise provided by the Department, a foreign bank proposing to establish a Georgia state branch or Georgia state agency through the acquisition of, or merger or consolidation with, a foreign bank that has a Georgia state branch or Georgia state agency may proceed with the transaction and provide after-the-fact notice to the Department within 14 days of the transaction, if the resulting bank is a highly-rated foreign bank. Notwithstanding the after-the-fact notice contemplated by this paragraph, the resulting bank shall provide such information as requested by the Department following the Department's receipt of the after-the-fact notice, and shall abide by any subsequent Department orders with respect to the transaction, up to and including an order to terminate activities of the Georgia state branch, Georgia state agency or Georgia state representative office.
- (9) Procedures for approval. The Department reserves the right to adopt materially different procedures for a particular filing or class of filings subject to this Rule, as determined by the Department in writing on a case-by-case basis or in accordance with procedures published by the Department.
- (10) Other applications accepted. The Department may accept an application or other filing submitted to the FRB or another U.S. Government or state agency that covers the proposed activity or transaction and contains substantially the same information as required by the Department.
- ~~(1) Applications and registrations of FBO's shall be on forms prescribed by and available through the Department.~~
- ~~(2) Applications and registration forms shall be accompanied by such additional information as is required by FIC Sections 7-1-713 and 7-1-715 in the case of an applicant for an International Bank Agency license or FIC Section 7-1-732 in the case of an applicant for a Domestic International Banking Facility.~~
- ~~(3) Domestic International Banking Facilities shall pay the same fees as an International Bank Agency under the provisions of Rule Chapter 80-5-1. Other FBO's shall pay fees in accordance with Rule 80-5-1.~~



- ~~(4) Applications and registrations shall be accepted only where the parent organization of the applicant or an affiliate of such organization is recognized by its chartering authority or other appropriate governmental body in the country of its domicile as a banking institution with the legal authority to accept deposits from the citizens of that country.~~

Authority: ~~O.C.G.A. §§ 7-1-61; 7-1-1109. Ga. L. 1974, pp. 705, 733, 919; 1978, pp. 712, 713; 1981, pp. 770, 771.~~

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#### **Rule 80-7-1-.04 ~~Interpretations~~ Permissible Activities**

(1) Applicability of laws —

- (a) General. As provided in O.C.G.A. § 7-1-1106, except as otherwise provided by the International Banking Act, other Federal laws or regulations, other state laws or regulations, or otherwise determined by the Department, the operations of a foreign bank at a Georgia state branch, Georgia state agency, or Georgia state representative office shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Georgia state branch, Georgia state agency, or Georgia state representative office were a Georgia state bank operating at the same location.
- (b) Foreign bank senior management approval. Unless otherwise provided by the Department, any provision in law, regulation, policy, or procedure that requires a Georgia state bank to obtain the approval of its board of directors will be deemed to require a Georgia state branch or Georgia state agency to obtain the approval of foreign bank senior management.

- (2) Management of shell branches — Georgia state branches and Georgia state agencies. A Georgia state branch or Georgia state agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Georgia state branch or Georgia state agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States. United States procedural or quantitative requirements that may be applicable to the conduct of those activities by United States banks do not apply.

- (3) Additional guidance regarding permissible activities. For purposes of O.C.G.A. § 7-1-1101(c), the Department may issue opinions, interpretations, or rulings regarding the permissible business activities of Georgia state branches and Georgia state agencies may engage in, and the representative activities a Georgia state representative office may engage in.

- (1) The phrase "deposits subject to check or draft" as used in FIC Sections 7-1-730 through 7-1-734 shall not include deposits withdrawn by wire transfer or by check or draft where the

~~check or draft is payable to the owner of the deposit or an affiliate of the owner and where there are five or fewer checks/drafts in any thirty-day (30) period.~~

- ~~(2) For purposes of distinguishing between "deposits" and "credit balances", the following guidelines shall be applicable:~~
- ~~(a) The maintenance of all credit balances shall be supported by appropriate file memorandum relating to the class of credit balances generally, e.g. compensating loan balances, letter of credit transactions, or to the specific credit balance being maintained and its related exercise of lawful power. Such memorandum shall recite the terms under which the credit balance(s) is maintained, the nature of the transaction out of which the credit balance arose, and the terms under which the credit balance must be terminated.~~
  - ~~(b) Access to credit balance accounts (other than by internally generated entry) may be by draft or transfer. Such items should not represent any significant volume relative to the nature of the account and should be two-party items, i.e. the payee should also be either the maker, the international bank, or an affiliate of the maker or international bank.~~
  - ~~(c) The foregoing shall not be applicable to accounts (operating expenses) payable arising out of the operations of the International Bank Agency in the ordinary course of business, nor shall it curtail the right of such an Agency to borrow money and issue obligations to evidence such borrowings.~~
  - ~~(d) Balances maintained by corporations and divisions affiliated with an International Bank Agency shall not be considered to be deposits even though not maintained in strict compliance with the foregoing.~~
  - ~~(e) Balances maintained by salaried employees of an International Bank Agency shall not be considered deposits even though not maintained in strict compliance with the foregoing.~~
- ~~(3) The phrase "through its parent organization" as used in FIC Section 7-1-731 includes funds placed with and used internally for the benefit of the parent organization.~~

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109, Ga. L. 1974, pp. 705, 733.

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#### **Rule 80-7-1-.05 ~~Operating Restrictions~~ Additional Authorized Activities**

- (1) General. A Georgia state branch or Georgia state agency shall not engage in any activity not authorized under O.C.G.A. § 7-1-1116 except as authorized by the Department in accordance with this rule.

- (2) Request. A Georgia state branch or Georgia state agency may request the Department to determine whether an activity that is not otherwise authorized for the Georgia state branch or Georgia state agency should be authorized by the Department by rule or regulation under O.C.G.A. § 7-1-1116(c)(12)(A), or should be determined by the Department under O.C.G.A. § 7-1-1116(c)(12)(C) to be analogous or incidental to specific activities authorized by O.C.G.A. § 7-1-1116. At a minimum, the application shall:
- (a) Be in letter format; be signed and acknowledged by a member of senior management of the foreign bank; if applicable, be submitted simultaneously with the federal notice or application to the FRB and include a complete copy of that notice or application;
  - (b) Describe in detail the proposed activity or activities; the names and relevant expertise of its officers and employees who will conduct the activities; and the manner in which the activities will be captured in the books and records of the Georgia state branch or Georgia state agency with due regard for separation of beneficial and legal interests;
  - (c) Describe in detail whether the activity is (i) permitted by the OCC for a foreign bank federal branch or agency and, if so, provide supporting information including copies of the authorizing document and identify all regulatory conditions, limitations and other requirements imposed by the OCC relating to the proposed activity; or (ii) not permitted by the OCC for a foreign bank federal branch or agency but has been permitted by a state banking agency and the FRB, and, if so, provide supporting information including copies of the authorizing document or documents and identify all regulatory conditions, limitations and other requirements imposed by the state or FRB relating to the proposed activity; and
  - (d) Include an analysis of the impact of the proposed activity on the condition of the operations of the Georgia state branch or Georgia state agency, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, risk assessment, compliance plan, or similar documents concerning the conduct of the activity.
- ~~(1) Balances maintained in violation of restrictions against deposits shall be returned to the owner within ninety (90) days of receipt of a notice from the Department to terminate the account unless a review by the Department at the written request of the FBO results in a determination that the balance should be allowed to remain on the books of the FBO.~~
- ~~(2) Each FBO shall maintain separate accounting records covering its assets, liabilities, income and expenses resulting from the operations located in this State. Such records may be reviewed by the Department to determine that the scope of the activities of the FBO in this state are within the limitations prescribed by law. The results of the Department review shall be maintained and treated by the Department in the same manner as Reports of Examination and may, in the discretion of Department, be provided to other regulatory authorities to whom the parent organization is accountable.~~

- ~~(3) No FBO shall be eligible to act as a fiduciary in the State or to provide fiduciary services as a consequence of its maintaining a place of business within this State or of its licensing or registration by the Department.~~

Authority: ~~O.C.G.A. §§ 7-1-61; 7-1-1109. Ga. L. 1974, pp. 705, 733, 922; Ga. L. 1981, pp. 770, 773.~~

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**Rule 80-7-1-.06 [Repealed] Limitations Based Upon Capital of a Foreign Bank; Loans to One Borrower**

- (1) General. Any limitation or restriction based upon the capital of a Georgia state bank shall be deemed to refer, as applied to a Georgia state branch or Georgia state agency, to the dollar equivalent of the capital of the foreign bank.
- (2) Calculation. Unless otherwise provided by the Department, a foreign bank must calculate its capital in a manner consistent with 12 CFR part 3, subpart C, for purposes of this Rule.
- (3) Limitation on loans to one borrower; Aggregation. In determining the compliance of a foreign bank with the loan to one borrower limitations set forth in O.C.G.A. § 7-1-285 and any related rules promulgated by the Department, the total loans and extensions of credit by all Georgia state branches and Georgia state agencies of a foreign bank outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all other United States state and federal branches and state and federal agencies of the same foreign bank outstanding to the same borrower at the time in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the International Banking Act (12 U.S.C. § 3102(b)) as if such state branches and state agencies were federal branches and federal agencies. The foreign bank shall designate one Georgia state branch or Georgia state agency office to maintain consolidated information so that the Department can monitor compliance.

Authority: ~~O.C.G.A. §§ 7-1-61; 7-1-1109. Ga. L. 1974, pp. 705, 733.~~

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**Rule 80-7-1-.07 Deposit Taking by a Georgia State Branch**

- (1) Policy. In carrying out this Rule, the Department shall consider the importance of according foreign banks competitive opportunities equal to those of United States banks and the availability of credit to all sectors of the Georgia state economy, including international trade finance.

- (2) General. A Georgia state branch may only accept deposits subject to the limitations and requirements established by applicable federal law, including, but not limited to, 12 U.S.C. § 3104 and 12 C.F.R. 28.16.
- (3) Notification to depositors. A Georgia state branch that accepts deposits shall provide notice to depositors that their deposits are not insured by the FDIC. Without limiting the preceding sentence, each such Georgia state branch shall include a statement that the deposit accounts are not FDIC-insured, which statement shall be clear, concise and conspicuous:
- (a) on a sign displayed at any Georgia state branch that accepts deposits;
  - (b) on each deposit agreement and other document evidencing a deposit;
  - (c) on each customer deposit account statement;
  - (d) on each advertisement for a Georgia state branch deposit account; and
  - (e) on any digital deposit-taking channel relating to a Georgia state branch.
- (4) FDIC insurance representations. No Georgia state branch shall engage in any practice, or use any symbol, that:
- (a) Represents, expressly or by implication, that any deposit liability, obligation, certificate, or share is FDIC-insured by using the FDIC's name or logo;
  - (b) Represents, expressly or by implication, that any deposit liability, obligation, certificate, or share is insured by the FDIC if such an item is not so insured;
  - (c) Represents, expressly or by implication, the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured by the FDIC, if such an item is not insured to the extent or manner represented;
  - (d) States or implies that deposit obligations of the Georgia state branch are backed or guaranteed by any public body, including the state of Georgia or any of its instrumentalities, or the United States federal government or any federal agency; or
  - (e) Aids or abets another in any of the foregoing listed in paragraphs (a) through (d) of this subsection (4).

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109.

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### **Rule 80-7-1-.08 Notice of Change in Activity or Operations**

A Georgia state branch, Georgia state agency, or Georgia state representative office shall notify the Department not less than ten (10) calendar days in advance of the effective date of the action (except when not reasonably practicable due to exigent circumstances) if:

- (a) Title. It changes its corporate title;

- (b) Address. It changes its mailing address or email address for communications with the Department;
- (c) Conversion. In the case of a Georgia state branch or Georgia state agency, it converts to a federal branch or federal agency;
- (d) Home state. In the case of a Georgia state branch or Georgia state agency, the foreign bank changes the designation of its home state;
- (e) Change of Management. It changes the designated head of the Georgia state branch, Georgia state agency, or Georgia representative office in question; or
- (f) Other material change. It changes the business and operations of the Georgia state branch, Georgia state agency, or Georgia representative office in question in a material way.

Notwithstanding the above notification provisions, upon review of a notice but prior to the effective date of the action, the Department may require an application if the notification raises significant policy or supervisory concerns.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109.

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### **Rule 80-7-1-.09 Recordkeeping and Reporting**

- (1) General. A Georgia state branch, Georgia state agency, and Georgia state representative office shall comply with the record keeping requirements in O.C.G.A. § 7-1-1102, all other applicable recordkeeping and reporting requirements that apply to Georgia state banks, and with any additional requirements that may be prescribed by the Department. A Georgia state branch, Georgia state agency, Georgia state representative office, and the foreign bank, shall furnish information relating to the affairs of the foreign bank and its affiliates that the Department may from time to time request.
- (2) Regulatory reports filed with other agencies. A foreign bank operating a Georgia state branch, Georgia state agency, or Georgia state representative office shall provide the Department with a comprehensive listing of reports filed with federal and other Georgia state regulatory agencies that are specific and limited to the Georgia office in question, together with a general summary description of the contents of each report. This listing shall be provided by the foreign bank within 30 days following a request from the Department, or otherwise with such frequency and in such a format as may be specified by procedures established by the Department. The Department shall advise the foreign bank from time to time as to which of the reports identified by the foreign bank shall be provided to the Department, with such reports to be provided to the Department concurrently with or reasonably concurrently with the provision of the report to the federal or other Georgia state regulatory agency. If the foreign bank concludes in good faith that the sharing of a report with the Department would be in violation of applicable law or regulations, the foreign bank shall notify the Department in writing. A notice provided to the Department

under this subsection (2) shall include a description of the federal or Georgia report that is not being provided to the Department (to the extent not inconsistent with applicable federal and Georgia law), as well as an explanation of the reasons the report is not being provided.

(3) Maintenance of accounts, books, and records.

(a) Each Georgia state branch or Georgia state agency shall maintain a set of accounts, books and records which reflect its transactions and operations that are separate from those of the foreign bank and any other branch or agency. The Georgia state branch or Georgia state agency shall keep a set of accounts, books and records in English sufficient to permit the Department to examine the condition of the Georgia state branch or agency and its compliance with applicable laws and regulations.

(b) A Georgia state representative office shall keep records in English sufficient to permit the Department to examine the Georgia state representative office and its compliance with applicable laws and regulations.

(c) Each Georgia state branch, Georgia state agency, or Georgia state representative office shall promptly provide any additional records requested by the Department for examination or supervisory purposes. All documents shall be provided to the Department in English and, where the document has been translated to English, shall be translated consistent with translation standards and certifications (if any) as directed or requested by the Department.

(d) A foreign bank with more than one Georgia state branch or Georgia state agency shall designate one of those offices to maintain consolidated asset pledge accounts for all Georgia state branches or Georgia state agencies.

(4) Record of liabilities and assets. Except as provided in subsection (6) of this Rule, every foreign bank licensed to maintain one or more Georgia state branches or Georgia state agencies shall maintain a record of the liabilities of the foreign bank appearing in the books, accounts and records of those offices in Georgia as liabilities of such Georgia state branch or branches or Georgia state agency or agencies as of the close of business in accordance with Rule 80-7-1-.11. The record shall be retained for the longer of (a) five years, (b) such period of time otherwise specified by applicable federal or state law or regulation, or (c) until the conclusion of the next examination of the Georgia state branch or Georgia state agency by the Department and the issuance by the Department of the related examination report. A foreign bank authorized to maintain more than one Georgia state branch or Georgia state agency shall maintain the records on a Georgia state branch or Georgia state agency on an office-by-office basis, unless the Department has authorized maintenance on a consolidated basis for the Georgia state branch and Georgia state agency offices, and provided that nothing in such authorization shall limit any requirements under federal law for each Georgia state branch or Georgia state agency to maintain records on a branch or agency office-by-office basis. While no specific format for the record is prescribed by this Rule, the record shall contain such information in sufficient detail as will permit ready verification of its accuracy by the Department.



- (5) Records of Pledged Assets. Each foreign bank licensed to maintain one or more Georgia state branch or Georgia state agency shall maintain, in addition to the record required to be maintained by subsection (4) of this Rule, an itemized record of pledged assets for the account of the Department pursuant to O.C.G.A. § 7-1-1123 and Rule 80-7-1-.11. The record shall include the then value of pledged assets, at the lower of the then amortized cost or the then current fair value.
- (6) Report of Pledged Assets. Each foreign bank licensed to maintain one or more Georgia state branch or Georgia state agency shall, in a form and at an interval to be prescribed by the Department, prepare a report showing the pledged assets pursuant to O.C.G.A. § 7-1-1123 and section Rule 80-7-1-.11 and the calculation of the pledge required under Rule 80-7-1-.11.
- (7) Suspicious Activities. Every Georgia state branch, Georgia state agency, and Georgia state representative office must comply with federal requirements regarding sanctions, and for detecting and reporting suspicious activities. A copy of any suspicious activity report filed by a Georgia state branch, a Georgia state agency, or as Georgia state representative office shall be provided to the Department upon request.
- (8) Authentication of Records and Reports. The records required to be maintained by subsections (4) and (5) and the report required by subsection (6) of this Rule shall be authenticated by the signature of a duly authorized officer of the Georgia state branch or Georgia state agency.
- (9) International banking facility. Unless specifically exempted by the Department, the eligible assets and liabilities of any international banking facility operated through the Georgia state branch or agency must be included in the computation of eligible assets and liabilities for purposes of Rule 80-7-1-.11.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109.

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#### **Rule 80-7-1-.10 Voluntary Closure of State Representative Offices--Procedures**

In cases in which a foreign bank proposes to close any or all of its Georgia state representative offices, the foreign bank shall provide the Department with written notice not less than 30 calendar days before the date of the proposed closure. The notice by a foreign bank regarding a representative office shall be in such form and include such information as the Department requires.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109.

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## Rule 80-7-1-.11 Pledged Assets

### (1) Pledged Assets requirement, valuation, approved depositories —

A foreign bank licensed to establish and maintain a Georgia state branch or Georgia state agency shall be required to pledge to the Department money and securities (the “pledged assets”) in an aggregate amount as specified in this Rule. The pledged assets shall be valued at the lower of the then amortized cost amount or the then current fair value, and shall consist of permitted pledged assets. The pledged assets shall be deposit obligations of, or assets custodied with, a state or federal FDIC-insured depository not affiliated with the foreign bank and with a primary or branch office located in Georgia (each such institution being referred to in these rules as an “approved depository”).

### (2) Permitted Pledged Assets. Permitted pledged assets shall consist of and be limited to the following:

- (a) United States dollar deposits at one or more FDIC-insured depositories not affiliated with the foreign bank and with a primary or branch office located in Georgia, provided that in any case where the deposited amounts exceed or may exceed the then applicable limits of FDIC insurance (as aggregated in accordance with FDIC rules), the depository has an adequate capacity to meet financial commitments for the uninsured deposit exposure. A depository has an adequate capacity to meet financial commitments if the risk of failure of the depository is low and the full and timely repayment of deposit principal and interest is expected. The foreign bank must analyze, support and document (in English) the adequate capacity of a depository as required by this paragraph and make that documentation available for review by the Department;
- (b) Bonds, notes, debentures, or other legally created, general obligations of a state, an agency or political subdivision of a state, the United States, or an instrumentality of the United States;
- (c) Securities that this state, an agency or political subdivision of this state, the United States, or an instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;
- (d) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in each case, the issuer has an adequate capacity to meet financial commitments for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if: (i) the obligation is fully insured by the FDIC in accordance with FDIC rules; or (ii) the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. For obligations not fully insured by the FDIC in accordance with FDIC rules, the foreign bank must analyze, support and document (in English) the adequate capacity of an issuer and make that documentation available for review by the Department. Each

certificate of deposit or bankers' acceptance must be issued by an unaffiliated depository institution or a United States office of an unaffiliated foreign bank;

- (e) Repurchase agreements;
- (f) Commercial paper, provided such paper is accorded the highest or second highest rating of a NRSRO, and further provided that the commercial paper of any one issuer or group of affiliated issuers shall not constitute more than 10% of the pledged assets and that the total of all commercial paper shall not constitute more than 25% of the pledged assets at any one time. In the event that an issue of commercial paper is rated by more than one NRSRO, it must have the highest or second highest rating of each.

(3) Amount of Pledged Assets. Except as provided for highly rated foreign banks in Rule 80-7-1-.12, the aggregate amount of pledged assets for each Georgia state branch or Georgia state agency established and operating under O.C.G.A. § 7-1-1123 shall be not less than the greater of:

- (a)
  - (i) That amount of capital which would be required of a Georgia state bank under O.C.G.A. § 7-1-410; or
  - (ii) One percent of the total liabilities of such Georgia state branch or Georgia state agency, including acceptances, but excluding accrued expenses and amounts due and other liabilities to affiliates, offices, branches, agencies, and subsidiaries of such foreign bank. This amount shall be calculated based on the average total liabilities for the previous calendar month of such Georgia state branch or branches or Georgia state agency or agencies. The amount shall include the liabilities of an international banking facility maintained by such Georgia state branch or branches or Georgia state agency or agencies of such foreign bank.
- (b) A foreign bank opening its initial Georgia state branch or Georgia state agency shall maintain, for its first year of operations, pledged assets based upon the Georgia state branch's or Georgia state agency's projection of total liabilities at the end of its first year of operation.
- (c) Except as otherwise provided in these rules, calculation of liabilities of Georgia state branches and Georgia state agencies shall be in accordance with the instructions in the FFIEC 002 Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (call report). The calculation of pledged assets shall be on the same basis on which quarterly averages are calculated for call report purposes (for example, based on current requirements, the average of liabilities subject to the pledged asset requirements as of the close of business on the weekdays during the previous month as specified by the FFIEC 002 instructions). The value of the amount of the pledged assets, calculated in accordance with the requirements of these rules, must equal the required value under these rules by the close of business on the fifth business day

immediately following the end of the monthly period for which the calculation is made.

- (4) Additional Pledged Asset conditions and limitations. The amount of pledged assets under O.C.G.A. § 7-1-1123 shall be subject to: (i) the conditions and limitations as the Department may consider to be necessary or desirable for the maintenance of a sound financial condition; (ii) the protection of depositors, creditors, and the public interest in this state; and (iii) the support of public confidence in the business of the Georgia state branch or Georgia state agency. Without limiting the authority of the Department under the prior sentence, the following conditions and limitations shall apply to the pledged assets unless the Department specifically permits otherwise:
- (a) All pledged assets must be payable in the United States in United States' dollars.
  - (b) Each pledged asset shall be held in such form or subject to such conditions as the Department may prescribe. The Department may expressly disallow one or more otherwise eligible pledged asset, either for all institutions or for specific institutions. All pledged assets shall be subject to any additional conditions or limitations as determined by the Department with respect to such assets. The balance of any other pledged asset or pledged asset category disallowed at the preceding examination or by direction of the Department for any other reason shall be ineligible for use as a pledged asset until the underlying reasons for the disallowance have been removed, and the Department has confirmed in writing that the pledged asset is no longer disallowed.
  - (c) All amounts due from the home office, other offices and affiliates of the foreign bank, including income accrued but uncollected on such amounts, shall be ineligible for use as a pledged asset, except that upon a letter application to the Department and the Department's prior written approval, all amounts due from other offices located within the United States shall be considered eligible for use as a pledged asset.
- (5) Security agreement; segregation; minimum value; liens. All pledged assets shall be maintained pursuant to a written tri-party security agreement prescribed by the Department and entered into among the Georgia state branch or Georgia state agency, the Department, and the approved depository. Each security agreement shall create and effect the perfection of a first-lien security interest in the pledged assets in favor of the Department in accordance with the Uniform Commercial Code as adopted and in effect in this state. Without limiting this subsection (5), a foreign bank shall require the approved depository to segregate on its books and records the pledged assets held by the approved depository as custodian, and for such custody account to reflect the security interest in the custodied pledged assets for the benefit of the Department. Without further limiting this subsection (5), pledged assets that consist of deposit obligations of the approved depository shall be in deposit accounts titled to reflect the security interest of the Department, which deposit accounts shall be subject to and governed by a written security agreement meeting the requirements of this subsection (5). The pledged assets that consist of deposit accounts at

the approved depository or, in the case of other assets that are placed in safekeeping with an approved depository acting as custodian:

- (a) Shall not be reduced in value below the minimum required for that Georgia state branch or Georgia state agency without the prior approval of the Department, but in no event below the minimum amount required under O.C.G.A. § 7-1-410; and
  - (b) Shall be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the approved depository against the foreign bank, other than with respect to reasonable and customary fees payable to the approved depository.
- (6) Reports and statements. Each Georgia state branch or Georgia state agency shall file with the Department such reports, account statements and other documents as required by the Department to determine compliance with this Rule.
- (7) Multiple Georgia offices. If a foreign bank has more than one Georgia state branch or Georgia state agency, it shall determine the amount of the pledged assets and the amount of liabilities on an aggregate basis for all the foreign bank's Georgia state branches and Georgia state agencies.
- (8) Liabilities requiring cover; excluded liabilities.
- Liabilities requiring cover under these rules shall include all liabilities of a foreign bank appearing in the books, accounts and records of its Georgia state branches and Georgia state agencies as liabilities of such agency, agencies, branch or branches, including acceptances and such other liabilities (including contingent liabilities) as the Department shall determine, but excluding the following:
- (a) amounts due and other liabilities to other offices, agencies, branches and affiliates of such foreign bank, including unremitted profits;
  - (b) reserves for possible loan losses and other contingencies;
  - (c) liabilities of an international banking facility to third parties and of a Georgia state branch or Georgia state agency to an international banking facility; and
  - (d) liabilities from repurchase agreements as determined by the Department on a case-by-case basis.
- (9) Increase in Pledged Assets. For prudential or supervisory reasons, the Department may require, in individual cases or otherwise, that a foreign bank increase the amount of the pledged assets above the minimum amount.
- (10) Valuation of Pledged Assets. The non-deposit obligations referred to in this Rule and custodied with an approved depository must be valued at the then amortized cost amount or the then current fair value, whichever is lower. FDIC-insured deposit obligations must be valued at the principal amount plus accrued but unpaid interest.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109.

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### **Rule 80-7-1-.12 Highly Rated Foreign Banks**

- (1) Highly rated foreign bank. For purposes of these Rules, a foreign bank is a highly rated foreign bank if each Georgia state branch and Georgia state agency, each federal branch and federal agency of the foreign bank, and each state branch and agency maintained by the foreign bank in a state other than Georgia:
- (a) As to Georgia state branches or Georgia state agencies, has a composite rating of 1 or 2 from the Department and the FRB under the interagency rating system for United States branches and agencies of foreign banks;
  - (b) As to foreign bank federal branch or agency offices, or state branch or agency offices licensed by a state other than Georgia, has a composite rating of 1 or 2 from the FRB, the OCC or the relevant state bank supervisory authority, as applicable, under the interagency rating system for United States branches and agencies of foreign banks;
  - (c) Is not subject to an administrative action, including, a cease and desist order, consent order, formal written agreement, or prompt corrective action directive; and
  - (d) As to the foreign bank's capital, the foreign bank maintains capital on a consolidated basis that meets or exceeds the minimum capital standards under its home country law as of the most recent fiscal quarter and year end.

Not less than annually, a highly rated foreign bank shall provide a certification to the Department confirming that it satisfies the provisions in this Rule to be considered a highly rated foreign bank, in accordance with such procedures as the Department shall establish. A highly rated foreign bank shall promptly inform the Department if it becomes aware of the existence of any fact that could cause its loss of status as "highly rated." The Department will also notify the foreign bank of its loss of status as a highly rated institution when such determination is made.

- (2) Pledged Asset requirement for highly rated foreign banks. For a highly rated foreign bank, the maximum value of the required pledged assets shall be calculated according to the following schedule, as a percentage of average total liabilities for the previous month of such Georgia state branch or branches or Georgia state agency or agencies, including liabilities of an international banking facility maintained by such branch or branches or agency or agencies, but excluding amounts due and other liabilities to other offices, agencies, branches and affiliates not located in the state of Georgia and affiliates (as affiliates is defined in Code Section 7-1-1100), of such foreign bank:
- (a) one percent of the first \$1 billion;
  - (b) three quarters of one percent of the next \$4 billion;
  - (c) one half of one percent of the next \$5 billion;
  - (d) one quarter of one percent of any additional liabilities; and

(e) provided, however, that in no event shall the maximum amount required to be pledged under this section exceed \$100,000,000.

(3) Loss of highly rated status. Upon a foreign bank being informed by the Department that it is no longer deemed "highly rated" for purposes of this Rule, or, if sooner, the foreign bank otherwise becoming aware of the existence of any fact that could cause its loss of status as "highly rated," the foreign bank shall have 30 calendar days to comply with the Pledged Asset requirements applicable to those institutions not designated as "highly rated," unless otherwise directed by the Department.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1109.

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## SUBJECT 80-7-2

### DOMESTIC INTERNATIONAL BANKING FACILITIES

80-7-2-.01 Definitions

80-7-2-.02 Status of Georgia Institutions

80-7-2-.03 Applications and Registrations

80-7-2-.04 Interpretations

80-7-2-.05 Operating Restrictions

#### **Rule 80-7-2-.01 Definitions**

(1) Unless further defined herein, definitions contained in Chapter 1 of Title 7 of the Official Code of Georgia, shall be applicable to this Rule chapter.

(2) Definitions contained herein shall be applicable to O.C.G.A. §§ 7-1-730 through 7-1-734 and this Rule chapter.

(a) "Parent Organization" shall mean the corporate entity containing any IBF located in this State and any affiliate of such entity.

(b) "IBF" shall mean a "Domestic International Banking Facility."

(c) "Temporary Advances" shall mean credit balances which bear interest.

Authority: O.C.G.A. § 7-1-61.

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#### **Rule 80-7-2-.02 Status of Georgia Institutions**

Banks shall, unless otherwise restricted, have the same rights, privileges, and responsibilities as are granted to IBF's herein or by statute.

Authority: O.C.G.A. § 7-1-61.

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### **Rule 80-7-2-.03 Applications and Registrations**

- (1) Applications and registrations of IBFs shall be on forms prescribed by and available through the Department.
- (2) Applications and registration forms shall be accompanied by such additional information as is required by O.C.G.A. § 7-1-732.
- (3) Applications and registrations shall be accepted only where the parent organization of the applicant or an affiliate of such organization is recognized by its chartering authority or other appropriate governmental body in the country of its domicile as a banking institution with the legal authority to accept deposits from the citizens of that country.

Authority: O.C.G.A. § 7-1-61.

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### **Rule 80-7-2-.04 Interpretations**

- (1) The phrase "deposits subject to check or draft" as used in O.C.G.A. §§ 7-1-730 through 7-1-734 shall not include deposits withdrawn by wire transfer or by check or draft where the check or draft is payable to the owner of the deposit or an affiliate of the owner and where there are five or fewer checks/drafts in any thirty-day (30) period.
- (2) For purposes of distinguishing between "deposits" and "credit balances," the following guidelines shall be applicable:
  - (a) The maintenance of all credit balances shall be supported by appropriate file memorandum relating to the class of credit balances generally, e.g. compensating loan balances, letter of credit transactions, or to the specific credit balance being maintained and its related exercise of lawful power. Such memorandum shall recite the terms under which the credit balance(s) is maintained, the nature of the transaction out of which the credit balance arose, and the terms under which the credit balance must be terminated.
  - (b) Access to credit balance accounts (other than by internally generated entry) may be by draft or transfer. Such items should not represent any significant volume relative to the nature of the account and should be two-party items, i.e. the payee should also be either the maker, the international bank, or an affiliate of the maker or international bank.
- (3) The phrase "through its parent organization" as used in O.C.G.A. § 7-1-731 includes funds placed with and used internally for the benefit of the parent organization.

Authority: O.C.G.A. § 7-1-61.



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### **Rule 80-7-2-.05 Operating Restrictions**

- (1) Balances maintained in violation of restrictions against deposits shall be returned to the owner within ninety (90) days of receipt of a notice from the Department to terminate the account unless a review by the Department at the written request of the IBF results in a determination that the balance should be allowed to remain on the books of the IBF.
- (2) Each IBF shall maintain separate accounting records covering its assets, liabilities, income and expenses resulting from the operations located in this State. Such records may be reviewed by the Department to determine that the scope of the activities of the IBF in this state are within the limitations prescribed by law. The results of the Department review shall be maintained and treated by the Department in the same manner as Reports of Examination and may, in the discretion of Department, be provided to other regulatory authorities to whom the parent organization is accountable.
- (3) No IBF shall be eligible to act as a fiduciary in the State or to provide fiduciary services as a consequence of it maintaining a place of business within this State or of its licensing or registration by the Department.

Authority: O.C.G.A. § 7-1-61.

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## **CHAPTER 80-12**

### **MERCHANT ACQUIRER LIMITED PURPOSE BANKS**

#### **SUBJECT 80-12-1**

#### **DEFINITIONS**

80-12-1-.01 Definitions

#### **Rule 80-12-1-.01 Definitions**

- (1) As used in Chapters 80-12-1, 80-12-2, 80-12-3, 80-12-4, 80-12-5, 80-12-6, 80-12-7, 80-12-8, 80-12-9, 80-12-10, 80-12-11, and 80-12-12, the terms that are defined in O.C.G.A. § 7-9-2 shall have the identical meaning.
- (2) As used in Chapters 80-12-1, 80-12-2, 80-12-3, 80-12-4, 80-12-5, 80-12-6, 80-12-7, 80-12-8, 80-12-9, 80-12-10, 80-12-11, and 80-12-12, the below terms shall be defined as follows unless the term is otherwise defined in a specific rule:
  - (a) "Act" means the Georgia Merchant Acquirer Limited Purpose Bank Act promulgated at O.C.G.A. § 7-9-1 et seq.
  - (b) "Affiliate" means any corporation, business trust, association, or other similar organization:



1. Of which an MALPB, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;
  2. Of which control is held, directly or indirectly, through stock ownership or in any other manner by the shareholders of an MALPB who own or control either a majority of the shares of such MALPB or more than 50 percent of the number of shares voted for the election of directors of such MALPB at the preceding election or by trustees for the benefit of the shareholders of any such MALPB;
  3. Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one MALPB; or
  4. Which owns or controls, directly or indirectly, either a majority of the shares of an MALPB or more than 50 percent of the number of shares of an MALPB voted for the election of directors of an MALPB at the preceding election or controls in any manner the election of a majority of the directors of an MALPB or for the benefit of whose shareholders or members all or substantially all the capital stock of an MALPB is held by trustees.
- (c) "Annual Attestation Report" or "AAR" means the standard annual report filed by an MALPB that will disclose information required by the Department. This report will consist of information on specific matters of compliance with applicable laws, regulations, rules, policies, and charter conditions and contain affirmative attestations by the MALPB's chief executive officer.
- (d) "Average Total Assets" means an average of the MALPB's end of day total assets, excluding goodwill, intangible assets and merchant funds deposited in compliance with Rule 80-12-7-.02, for the previous month. Average total assets is the denominator of the leverage capital ratio.
- (e) "Capital Letter of Credit" means an irrevocable letter of credit made payable to the Department for the benefit of merchants in the event of the bankruptcy - either voluntary or involuntary - receivership, or insolvency of the MALPB, which can be treated as tier 1 capital. Such letter of credit shall be continuously maintained, shall be for a term of not less than one (1) year, have a remaining term of no less than three (3) months, be in a form satisfactory to the Department, and shall be issued by a financial institution authorized to do business in this State and approved by the Department.
- (f) "Capital Maintenance Guaranty" means an unlimited, unconditional, continuous guaranty by the holding company to maintain in the MALPB at least the minimum capital levels required by law, regulation, rule, or administrative order. The guaranty must be in a form acceptable to the Department.

- (g) "Capital Stock" means the sum of the par value of the authorized shares of an MALPB which have been issued and remain outstanding.
- (h) "Chargeback" means a transaction that is returned to an MALPB through ~~the a~~ payment card network.
- (i) "Dispute processing" means all activities associated with the dispute resolution process including exchange of information, reporting, and funding.
- (j) "Executive Officer" means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or MALPB, whether or not: the officer has an official title; the title designates the officer as an assistant; or the officer is serving without salary or compensation. The chief executive officer, chief information officer, chief risk officer, chief accounting officer, chief financial officer, chief compliance officer, president, every vice president and treasurer of a company or an MALPB are considered executive officers, unless the officer is excluded, by resolution of the board of directors or by the bylaws of the MALPB or company from participation (other than in the capacity of a director) in major policymaking functions of the MALPB or company, and the officer does not actually participate in major policymaking functions.
- (k) "Financial Crime" means a crime involving conversion, theft, money laundering, bribery, dishonesty, breach of trust, forgery, counterfeiting, embezzlement, insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering, fraud, including, but not limited to check fraud, credit card fraud, mortgage fraud, medical fraud, corporate fraud, bank account fraud, payment (point of sale) fraud, currency fraud, bank fraud, and securities fraud, or a felony directly related to the financial services business.
- (l) "Incidental Activities" means other activities that may be necessary, convenient, or incidental to effecting transactions within a payment card network and are not specifically enumerated as "merchant acquiring activities" in O.C.G.A. § 7-9-2.
- (m) "Leverage Capital Ratio" means the MALPB's ratio of tier 1 capital to average total assets.
- (n) "Main Office" means the single physical location in this State where the MALPB is authorized to take deposits permitted by O.C.G.A. § 7-9-12.
- (o) "MALPB" means a merchant acquirer limited purpose bank as defined in O.C.G.A. § 7-9-2.
- (p) "Membership" means any agreements between an MALPB and a payment card network that allows access to and/or participation in a payment card network.
- (q) Reserved

- (r) Reserved
- (s) "Paid-in-Surplus" means the sum of the considerations received in the sale or exchange of shares of an MALPB in excess of the amount of the capital stock.
- (t) "Payment Card" means a credit card, debit card, prepaid card, or any other payment device issued to a consumer that enables access to a consumer's funding source and is used to make payments to merchants.
- (u) "Payment Volume or "PV" means the greater of one twelfth of the total dollar amount of payment transactions executed by the MALPB in the preceding twelve (12) months or forecast for the next twelve (12) months.
- (v) "Principal Shareholder" means a person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than ten (10) percent of any class of voting securities of an MALPB or holding company.
- (w) "PV Capital" means the amount of tier 1 capital required to be maintained by the MALPB based on payment volume.
- (x) "Public Company" means any company that is required to file reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, has a market capitalization in excess of \$3,000,000,000, and whose equity securities are listed on the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers Automated Quotations ("NASDAQ"), or other stock market approved by the Department in writing and located in the United States.
- (y) "Quarterly Financial Report" or "QFR" means the standard quarterly report filed by an MALPB that will contain financial statements, which shall include, but not be limited to, a balance sheet and an income statement, required by the Department.
- (z) "Receivership Letter of Credit" means an irrevocable letter of credit made payable to the Department in order to cover the costs and expenses associated with a receivership of the MALPB. Such letter of credit shall be continuously maintained, shall be for a term of not less than one (1) year, have a remaining term of no less than three (3) months, be in a form satisfactory to the Department, and shall be issued by a financial institution authorized to do business in this State and approved by the Department.
- (aa) "Risk Capital" means the amount of tier 1 capital required to be maintained by the MALPB based on the dollar volume of chargebacks.
- (bb) "Standardized Regulatory Reports" or "SRRs" means the quarterly financial report and the annual attestation report that must be filed with the Department by each MALPB.

- (cc) "Statutory Capital" means the sum of capital stock and paid-in-surplus of the MALPB, which, at all times, must be no less than \$3 million.
- (dd) "Subsidiary" means a corporation where an MALPB owns at least a majority of the voting shares.
- (ee) "Support Organization" means 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.
- (ff) "Tier 1 Capital" means the sum of statutory capital, retained earnings, noncumulative perpetual preferred stock, the secured portion of a capital maintenance guaranty, and a capital letter of credit, less any loans or accounts payable by an affiliate or holding company to the MALPB, goodwill, and intangible assets. To be considered for inclusion in tier 1 capital, the collateral securing the capital maintenance guaranty must be of a type approved by the Department, subject to discounting as approved by the Department, and properly assigned.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

## SUBJECT 80-12-2

### APPLICATION PROCESS

80-12-2-.02 ~~Applications Manual and Statement of Policies~~  
Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank

80-12-2-.03 MALPB Applications  
 80-12-2-.08 General Standards for Consideration of Applications

#### **Rule 80-12-2-.02 ~~Applications Manual and Statement of Policies~~ Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank**

Specific requirements for documents, meetings with the Department and publication of notices are contained in the ~~Applications Manual and the Statement of Policies~~  
Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank of the Department. The Department can amend its ~~Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank~~  
~~Applications Manual and Statement of Policies~~ at any time. In the event the Department amends ~~either its Applications Manual or Statement of Policies~~  
the Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank while an application is pending, the applicant will amend its application in order to submit any additional information or documentation that the amendment may require.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

#### **Rule 80-12-2-.03 MALPB Applications**

- (1) Prior to submitting an MALPB charter application, an organizing group must schedule an initial meeting with the Department to discuss the charter proposal and the chartering process, at which time an application form and package will be distributed.
- (2) The requirements for an MALPB charter application submission and documentation include, but are not limited to, the following items:
  - (a) A completed application form and package for chartering an MALPB;
  - (b) The applicant's articles of incorporation that satisfies the requirements of O.C.G.A. § 7-9-5. The suffix "MALPB" must follow the legal name of the MALPB applicant and, in the event a charter is issued, the suffix "MALPB" must be at all times utilized in the legal name of the MALPB;
  - (c) After receipt of the completed application form and package, any additional information requested by the Department in order to fully evaluate the application for a charter;
  - (d) A certificate from the Secretary of State showing that the proposed name of the applicant has been reserved pursuant to O.C.G.A. § 7-1-131. The name can be reserved by filing with the Department a form application to reserve a specified name. If the Department concludes that the use of a proposed name complies with O.C.G.A. § 7-1-130, is consistent with the purposes of the Act, and is distinguishable upon the records of the Secretary of State from the name of any other corporation, it shall approve the name and notify the Secretary of State to issue such name reservation;
  - (e) All applicable fees established by the Department in Rule 80-12-12-.02 or set forth in the [Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank Applications Manual and the Statement of Policies](#) of the Department to defray the expense of the investigation of the application. Such fees shall be remitted to the Department via certified check contemporaneously with the receipt of the application; and
  - (f) A copy of the application for Federal Deposit Insurance, if the applicant has filed such an application.

Authority: O.C.G.A. §§ 7-9-3, 7-9-4, 7-9-6, 7-9-12, 7-9-13.

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### **Rule 80-12-2-.08 General Standards for Consideration of Applications**

In evaluating the merits of an MALPB charter application, the Department shall consider, among other items: the financial history and condition of the applicant; adequacy of applicant capital,

including, but not limited to, leverage capital ratio, PV capital, risk capital, and statutory capital; the capital maintenance guaranty; future earnings prospects for the applicant; character, capacity and ability of applicant management and principal shareholders; consistency of corporate powers; the existence and implementation of sound merchant approval processes and systems in order to closely monitor merchant activities; adequate number of knowledgeable staff, appropriate technology and information security systems, comprehensive and effective operating procedures, and effective contingency plans; sound internal control environment; formal reconciliation processes; adequacy of insurance coverage and letters of credit; robust risk management systems; adequate corporate governance structure; a structured compliance management program; whether there are sizable off-balance sheet or funding risks, chargeback risks, fraud risks, operational risks, technology or information security risks, compliance risks, or significant risks from concentrations of credit or nontraditional activities; the financial history and condition of the holding company; the adequacy of the holding company's capital; future earnings prospects for the holding company; character, capacity and ability of holding company management and principal shareholders; the activities of the holding company and MALPB subsidiaries and affiliates; and the applicant's proposed relationship with eligible organizations and support organizations. Additional information regarding the Department's evaluations may be set forth in greater detail in the [Guidelines for Chartering a Merchant Acquirer Limited Purpose Bank Department's Applications Manual or Statement of Policies](#) or in the instructions accompanying the application.

Authority: O.C.G.A. §§ 7-9-3, 7-9-7, 7-9-13.

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## SUBJECT 80-12-4

### OPERATIONS OF MALPB

[80-12-4-.08 Notification of Computer Security Incident](#)

#### **Rule 80-12-4-.08 Notification of Computer Security Incident**

- (1) An MALPB must notify the Department about a notification incident through email, telephone, or other similar methods that the Department may prescribe. The Department must receive this notification from the MALPB as soon as possible and no later than 36 hours after the MALPB determines that a notification incident has occurred.
- (2) For purposes of this Rule, these terms have the following meaning:
  - (a) “Computer-security incident” is an occurrence that results in actual harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits.
  - (b) “Notification incident” is a computer-security incident that has materially disrupted or degraded, or is reasonably likely to materially disrupt or degrade, an MALPB’s—

- (i) Ability to carry out operations, activities, or processes, or deliver products and services to a material portion of its customer base, in the ordinary course of business; or -
- (ii) Operations, including associated services, functions and support, as applicable, the failure or discontinuance of which would either result in a material loss of revenue, profit, or franchise value for the MALPB or pose a threat to the financial stability of the United States.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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## SUBJECT 80-12-5

### BOOKS AND RECORDS

80-12-5-.05 Minimum Requirements for Books and Records  
80-12-5-.08 Public Access to Records

#### **Rule 80-12-5-.05 Minimum Requirements for Books and Records**

An MALPB must maintain the following books and records:

- (a) All records required to be maintained by federal, state or, if applicable, international law, rules, or regulations, including, but not limited to, the rules enacted by the Department to carry out the provisions of the Act;
- (b) All records required to be maintained by the applicable payment card networks;
- (c) All contracts related to the MALPB's provision of merchant acquiring activities, including, but not limited to, contracts with payment card networks, merchants, affiliates, subsidiaries, eligible organizations, and support organizations;
- (d) All records related to compliance with payment card network data security standards, such as Payment Card Industry Data Security Standard ("PCI DSS"), including, but not limited to, records indicating data security deficiencies by the MALPB, affiliates, subsidiaries, eligible organizations, support organizations, and merchants;
- (e) All records related to the clearing and settlement of transactions through the payment card networks including, but not limited to, remittances to payment card networks;
- (f) All reports or other compilation of data provided to payment card networks and/or merchants related to transactions;
- (g) All records related to chargebacks, and business format change;
- (h) Daily account of merchant funds broken down by merchant;
- (i) Copies of all trust or custodial account agreements;

- (j) Records of all complaints and records of disposition;
- (k) Copies of examination reports prepared by any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB;
- (l) Copies of reports required to be prepared or submitted by the MALPB to any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country which report relates to the merchant acquiring activities of the MALPB;
- (m) Copies of documents related to any adverse action taken by any agency, division, or instrumentality of the United States, the State of Georgia or any other state, or any foreign country, including, but not limited to, a revocation or suspension of a license or charter or the imposition of a fine or civil monetary penalties;
- (n) Copies of all payroll records, including, but not limited to, federal and state withholding tax forms such as W-2s filed with the Internal Revenue Service by the MALPB on behalf of individuals employed by the MALPB;
- (o) Employee files for all employees which shall include a Georgia Crime Information Center criminal background check and National Crime Information Center background check;
- (p) Subject to the limitations in O.C.G.A. § 7-9-12, a deposit record which contains a continuing itemized record of all activity in the deposit account;
- (q) An income and expense register and all of the supporting documentation related to income and expenses;
- (r) A daily statement for each business day properly supported by a general ledger showing daily activity to each asset, liability, and capital account;
- (s) Minutes from all meetings of the MALPB's Board of Directors and the committees of the Board of Directors;
- (t) A ~~stockholder or~~ shareholder list;
- (u) An investment register and investment safekeeping report; and
- (v) Information on transactions with holding companies, affiliates, and subsidiaries with respect to the terms and circumstances of such transactions and the basis of fees or other charges in order to determine compliance with Rules 80-12-9-.01 and 80-12-9-.02.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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## **Rule 80-12-5-.08 Public Access to Records**

- (1) The following records in the Department's possession shall be subject to inspection by members of the public: the portion of the SSRs, if any, that have been expressly designated as public on the Department's approved form; final orders; the portion of the charter application that has been expressly designated as public on the charter application from the date the application has been accepted by the Department until ninety (90) days after final disposition has been issued on the application; and the audited financial statement with the auditor's opinion from the annual audit prepared in conformity with Rule 80-12-5-.02.
- (2) Upon receipt of a written request by an MALPB, the Department is authorized to disclose any records or information provided to it by the MALPB or by another entity on behalf of the MALPB with any entity related to the payment card network notwithstanding the fact that the records or information are otherwise confidential pursuant to Georgia law or the rules of the Department. These authorized disclosures of information, where appropriate, shall be made only if safeguards are in place that are designed to prevent further dissemination of confidential records or information. The Department retains complete discretion to grant or deny a request for the production of records and documents in whole or in part and nothing in this Rule shall be deemed to require that the Department produce any records or information.
- (3) Any examination reports, reports of investigation or other information in the Department's possession that were obtained from another supervisory or regulatory agency, law enforcement, or the payment card networks shall be treated as the property of the provider. Requests for such information should be made to the provider directly.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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## **SUBJECT 80-12-7**

### **SOLVENCY AND SAFEGUARDS**

80-12-7-.01 Minimum Capital Requirements

[80-12-7-.06 Liability Funding of Corporate Activities](#)

#### **Rule 80-12-7-.01 Minimum Capital Requirements**

- (1) MALPBs must continuously maintain at least the minimum leverage capital ratio, PV capital, risk capital, and statutory capital requirements set forth in this rule. The capital standards in this part are the minimum acceptable for an MALPB whose overall financial condition is fundamentally sound, which is well-managed and which has no material or significant operational or financial weaknesses. Thus, the Department is not precluded from requiring an MALPB to maintain a higher leverage capital ratio, PV capital, risk capital, or statutory capital level based on the MALPB's particular risk profile. The Department will evaluate the factors set forth in Rule 80-12-2-.08 in analyzing the MALPB's capital

adequacy and may determine that the minimum leverage capital ratio, PV capital, risk capital, or statutory capital for that MALPB is greater than the minimum standards stated in this Rule. These same criteria will apply to any MALPB seeking authorization from the Department to engage in any activity if the Department believes the adequacy of the MALPB's capital structure is relevant to the requested authorization.

- (2) The minimum leverage capital ratio requirement for an MALPB shall not be less than ten (10) percent.
- (3) The minimum PV capital requirement for an MALPB shall not be less than:
  - (a) 5.00 percent of the tier of PV up to \$10 million, plus
  - (b) 3.00 percent of the tier of PV above \$10 million up to \$25 million, plus
  - (c) 1.50 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.
- (4) The minimum risk capital requirement for an MALPB shall not be less than the greater of:
  - a) ~~the prior incurred aggregate dollar volume of chargebacks as calculated by~~ two times the average monthly chargebacks over ~~a the previous~~ six (6) month period; or b) two times the average monthly forecast dollar volume of chargebacks for ~~a the upcoming~~ six (6) month period.
- (5) The Department's MALPB charter approval will include a requirement to have and maintain minimum statutory capital, which in no event shall be less than \$3 million.
- (6) An MALPB with less than the minimum leverage capital ratio, PV capital, risk capital, or statutory capital requirement:
  - (a) Is operating with inadequate capital and, therefore, has inadequate financial resources. Thus, at the discretion of the Department, such MALPB may be deemed to be operating in an unsafe or unsound or unauthorized manner and subject to the Department's enforcement powers, including, but not limited to, those set forth in O.C.G.A. 7-1-91.

- (b) Must file a written capital restoration plan with the Department within thirty (30) days of the date that the MALPB knows or should have known that the MALPB is operating with an inadequate capital structure, unless the Department notifies the MALPB in writing that the plan is to be filed within a different period.

Authority: O.C.G.A. §§ 7-9-3, 7-9-12, 7-9-13.

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### **80-12-7-.06 Liability Funding of Corporate Activities**

- (1) No MALPB may enter into contractual debt obligations which in the aggregate are dependent upon revenues produced by the MALPB and any subsidiary of the MALPB for annual servicing during the term of the debt in excess of fifty (50) percent of the average annual consolidated net operating earnings of the MALPB and any subsidiary of the MALPB for the three fiscal years immediately preceding the date of the extension of credit.
- (2) No holding company of an MALPB may enter into contractual debt obligations which in the aggregate are dependent upon revenues primarily produced by the MALPB and any subsidiary of the MALPB for annual servicing during the term of the debt in excess of fifty (50) percent of the average annual consolidated net operating earnings of the MALPB and any subsidiary of the MALPB for the three fiscal years immediately preceding the date of the extension of credit.
- (3) The Department, upon specific written request of the MALPB, may waive the requirements in this Rule.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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## **SUBJECT 80-12-8**

### **ELIGIBLE AND SUPPORT ORGANIZATIONS**

80-12-8-.03 Oversight of Eligible and Support Organizations

#### **Rule 80-12-8-.03 Oversight of Eligible and Support Organizations**

An MALPB contracting with an eligible organization or a support organization must have sufficient controls in place to monitor and ensure that the services provided by the eligible organization or support organization on behalf of the MALPB comply with the Act and the Rules. The MALPB must also employ good faith efforts to monitor the financial condition of the eligible organization or the support organization and must notify the Department immediately when it discovers or suspects that the eligible organization or support organization has experienced or will experience a net operating loss, is insolvent, or is engaged in illegal activity.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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## **SUBJECT 80-12-9**

### **RELATIONSHIPS WITH AFFILIATES AND INVESTMENTS AND DISTRIBUTIONS**

80-12-9-.02 Subsidiaries

#### **Rule 80-12-9-.02 Subsidiaries**

- (1) An MALPB can create a separate subsidiary to only carry out such activities that fall within the authorized scope of merchant acquiring activities as set forth in Rule 80-12-4-.01. Prior to utilizing the subsidiary, the MALPB must submit an application for approval describing the activity that the subsidiary will perform, how the proposed activity relates to the MALPB, and what protections will be in place to deal with any associated risks. The Department shall request additional information, approve, conditionally or otherwise, or deny a request for authorization to utilize a subsidiary within sixty (60) days after receipt of the application. In the event the Department does not take any of the above actions within sixty (60) days of receipt of the application, then the application will be deemed approved.
- (2) Subsidiaries of an MALPB are subject to the same limitations and requirements that apply to an MALPB including, but not limited to, Rule 80-12-9-.01.
- (3) An MALPB contracting with a subsidiary must have sufficient controls in place to monitor and ensure that the services provided by the subsidiary on behalf of the MALPB comply with the Act and the Rules. The MALPB must also employ good faith efforts to monitor the financial condition of the subsidiary and must notify the Department immediately when it discovers or suspects that the subsidiary has experienced or will experience a net operating loss, is insolvent, or is engaged in illegal activity.

Authority: O.C.G.A. §§ 7-9-3, 7-9-13.

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## **80-14**

### **INSTALLMENT LOANS**

#### **80-14-1**

### **PLACE OF BUSINESS, ADVERTISING, AND OTHER REQUIREMENTS**

80-14-1-.02 Location Managers

#### **Rule 80-14-1-.02 Location Managers**

- (1) A "location manager" shall mean an individual who supervises daily activities in Georgia of a licensee, whether at a main office or branch as defined in Rule 80-14-1-~~1~~.01, and regardless of job title.
- (2) No individual shall be permitted to manage a location in Georgia without being approved by the Department as a location manager. A location manager may be put in place subject to Departmental approval, but the Department must receive a complete application for approval within 15 calendar days of the placement. No individual may serve as the location manager of more than one location of a licensee.
- (3) The Department shall conduct a criminal background check and require such other pertinent information to satisfy itself that the location manager will operate the location responsibly and in compliance with the laws and rules of this state.
- (4) Notwithstanding any approval of the location manager by the Department, the licensee has full and direct financial responsibility for the lending activities of each location manager and full and direct responsibility for the training and supervision of the location manager. The licensee will supervise the location and location manager on an ongoing and regular basis and shall be accountable for the lending activities of the location and location manager. Any violation of the Georgia Installment Loan Act or the rules and regulations of the Department by a location manager shall be deemed to be a violation by both the licensee and the location manager.

Authority: O.C.G.A. §§ 7-3-32, 7-3-51.