



Understanding the Invest Georgia Exemption

by the Staff of the Securities Division
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THIS PUBLICATION IS NOT LEGAL ADVICE AND MAY NOT BE RELIED UPON AS AUTHORITY IN ANY LEGAL PROCEEDING. This publication is not all-inclusive with respect to an issuer of securities invoking the Invest Georgia Exemption (“IGE”) or any other aspect of the regulation of securities in Georgia and/or compliance with the Georgia Uniform Securities Act of 2008 (“Act”). It is recommended that all interested persons review the Act and the rules/regulations promulgated under the Act that pertain to its particular business activities.

Purpose of the IGE

- On December 8, 2011, [Rule 590-4-2-.08](#), *the Invest Georgia Exemption* (the “IGE”) was adopted by the Commissioner of Securities for the State of Georgia.
- The purpose of the IGE is to provide Georgia-based entrepreneurs with expanded access to much needed capital in order to develop new business ventures, expand existing operations, and create more Georgia jobs.
- The IGE takes advantage of a federal securities exemption that exempts securities registration requirements with respect to certain securities offerings conducted on an entirely *intrastate* basis—i.e., between issuers residing in, and doing business in, the same state as all of its investors.

Basic Securities Law Concepts

- Securities are evidence of ownership in a business entity, and can be in the form of Equity or Debt.
 - *Examples:* Stocks, Equity Interests (LP or LLC Interests or Units), Bonds or Debentures.
 - Securities are issued to investors by an entity known as an “Issuer”.
- All securities are regulated by the Federal and/or State Governments—i.e., the SEC and/or the Georgia Securities Division.
- Every security must be either Registered or Exempt on **both** the Federal and State governmental levels.
 - Registering a security means that the Issuer has filed a registration statement and other required documents with the relevant regulator.
 - Exempted securities are securities that meet one of various available exemptions to the federal or state obligation to register.

IGE Requirements—Summary

- Must meet federal intrastate offering exemption requirements.
- Issuer must be a for-profit businesses formed under Georgia law and registered with the Georgia Corporations Division.
- Must adhere to \$1 million offering limit and cannot accept more than \$10k from any non-accredited investor.
- All funds received must be deposited into a bank or depository institution authorized to do business in Georgia.
- All funds must be used as represented to investors.
- Issuer must file a notice BEFORE the use of any general solicitation or BEFORE the 25th private sale of a security.
- The issuer must inform all purchasers/investors that the securities have not been registered and are subject to resale limitations.

Federal Law Requirements

- It is a ***precondition*** of satisfying the IGE that the IGE offering meet the ***federal*** exemption requirements for ***intrastate*** offerings found in:
- **§3(a)(11) of the Securities Act of 1933-**
 - Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.
- **SEC Rule 147-**
 - An SEC “safe-harbor” rule that clarifies the requirements of the (above) statutory intrastate offering exemption.

SEC Rule 147 Requires

- An individual investor's residence is to be determined objectively by the location of that person's **primary residence**, NOT that person's domicile (which is more subjective).
- The issuer must obtain a **written representation** from each investor as to that investor's residence.
- **3X 80% Test:** An issuer will be deemed to be doing business in a state if its principal office is in that state and:
 - 80% of its gross revenues are derived from that state;
 - 80% of its assets are held in that state; and
 - 80% of the offering's proceeds are used in that state.
- The issuer must place a **written legend** on the stock certificate or other indicia of ownership given to the investor.
- No re-sales to non-residents for 9 months after offering's end.
- **NOTE: Interpretation of these requirements is a matter of federal law NOT within the purview of the Securities Division.**

IGE Issuers

- The issuer is the entity that is offering and selling, i.e. “issuing”, the securities to investors in exchange for an ownership interest in the entity.
- Under the IGE, an issuer must be a **for-profit business entity** formed under the laws of Georgia *and* registered with the *Corporations Division* of the Georgia Secretary of State.
 - *i.e.* Operating companies that will generate revenue through the sale of its products and/or services.
- An issuer **cannot be an investment company** as defined in §3 of the federal Investment Company Act of 1940 or subject to the reporting requirements of §13 or §15(d) of the federal Securities Exchange Act of 1934.
 - *i.e.* the issuer cannot be a hedge fund, mutual fund or publicly traded/SEC-reporting company.

IGE Funding Limits

- Issuer cannot raise more than \$1,000,000 in the IGE offering.
- Issuer cannot accept more than \$10,000 from any investor that is not accredited.
 - An accredited investor's contributions are not limited as such.
 - "Accredited investor" is defined in [SEC Rule 501\(a\)\(1\)-\(8\)](#).
- The IGE cannot be used in conjunction with any other exemption under the Act or the Division's Rules.
 - Unless the offer and sale is to an officer, director, partner, trustee, similar person, or person owning $\geq 10\%$ of any outstanding shares of the issuer.
- The IGE is not available if the issuer is subject to a disqualifying event in [Rule 590-4-2-.06](#).

Notice Filing on Form GA-1

- An issuer must file a notice with the Georgia Securities Division, electronically or via mail, **BEFORE** the use of any general solicitation *or* **BEFORE** the 25th private sale of a security; whichever comes first.
- The notice shall specify that the issuer is conducting an offering based upon the IGE.
- The notice shall contain the names and addresses of:
 - The Issuer;
 - All persons who will be involved in the offering on behalf of the issuer; *and*
 - The Bank, or other depository institution, where investor funds will be deposited.
- **Form GA-1** is the form that provides the notice for claiming the IGE and the information required by the IGE rule (*See next slide*).

Form GA-1 (Pages 1-2 of 3)



**Office of the Secretary of State
Commissioner of Securities**

**Form GA-1
Invest Georgia Exemption**

This form provides the notice for claiming the "Invest Georgia Exemption" and the information required by Rule 590-4-2-.08. The exemption is available only to issuers organized and based in Georgia, and all offers and sales of securities under the exemption must be limited to Georgia residents. The filing of this form is due before any general solicitation or the 25th sale of securities to Georgia residents, whichever occurs first. Please enter the information requested below, sign and have notarized as indicated below, and file with the Georgia Commissioner of Securities Registrations Office at 237 Coliseum Drive, Macon, Georgia 31217-3858, or the form may be submitted by attachment to email at InvestGeorgia@sos.ga.gov.

All provisions of Rule 590-4-2-.08 should be reviewed carefully for compliance with the regulation.

1. Issuer Name and Address (the issuer is the entity issuing securities):			
Name of Issuer			
Address			Telephone
City	State	Zip Code	Email

2. All persons involved in making offers and sales of the Issuer's securities in Georgia:		
Name	Street Address, City, State & Zip Code	Telephone

* Should you need additional space, please attach an addendum with the required information.

237 Coliseum Drive • Macon, Georgia • 31217-3858 • Tel: (478) 207-2440 • Fax (478) 314-5805
www.sos.state.ga.us/securities

Form GA-1
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3. The bank or other depository institution(s) where investor funds are to be deposited:	
Name	Street Address, City, State & Zip Code

SIGNATURES ON FOLLOWING PAGE

General Solicitation

- **After** an issuer files the required notice on Form GA-1 with the Georgia Securities Division, it is allowed to engage in general solicitation for its offering; *i.e.* advertising.
- “*General solicitation*” includes advertisements published in newspapers and magazines, public websites, communications broadcasted over television and radio, and seminars where attendees have been invited by general solicitation or general advertising.

Internet Portals

- Internet portals may act as intermediates to facilitate an IGE offering.
 - These portals can help connect issuers with potential investors.
 - Most portals have fees associated with their services.
- Portals can fall under the term “individual” in para. (1) of the IGE so long as they are duly organized under the laws of Georgia and DO NOT:
 - Offer investment advice or recommendations;
 - Solicit purchases, sales, or offers to purchase the securities exempted by the IGE;
 - Compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to purchase the securities exempted by the IGE; or
 - Take custody of investor funds or securities.
- Portals are not required to be used by the IGE or the Securities Division.

IGE Investors

- Issuers may offer and sell securities under the IGE to both accredited and non-accredited investors.
- As with any securities offering, IGE investors must ensure that they are educated and apprised of the risks associated with the security and issuer that they are dealing with.
 - An investor should explore the issuer's business plan, goals, financial history and projections, formation documents, risk/disclosure documents, and the way the issuer has planned to use the funds being raised.
- Investors also need to understand that the securities offered under the IGE are not registered under the Act and that their resale is limited under SEC Rule 147(e).

IGE-Full Text of the Rule

Rule 590-4-2-.08 Invest Georgia Exemption-

- **(1)** The offer or sale of a security by an issuer shall be exempt from the requirements of Article 3 and Section 10-5-53 of the Act, and each individual who represents an issuer in an offer or sale shall be exempt from the requirements of Section 10-5-30, if the offer or sale is conducted in accordance with each of the following requirements:
 - **(a)** The issuer of the security shall be a for-profit business entity formed under the laws of the state of Georgia and registered with the Secretary of State.
 - **(b)** The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147.
 - **(c)** The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.
 - **(d)** The issuer shall not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501.

IGE-Full Text Continued

- **(e)** All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Georgia, and all the funds shall be used in accordance with representations made to investors.
- **(f)** Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer shall file a notice with the Commissioner in writing or in electronic form. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of the following persons:
 - 1. The issuer;
 - 2. All persons who will be involved in the offer or sale of securities on behalf of the issuer; and
 - 3. The bank or other depository institution in which investor funds will be deposited.
- **(g)** The issuer shall not be, either before or as a result of the offering, an investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).
- **(h)** The issuer shall inform all purchasers that the securities have not been registered under the Act and that the securities are subject to the limitation on re-sales contained in subsection (e) of SEC Rule 147, 17 C.F.R. 230.147(e).

IGE-Full Text Continued

- **(2)** Offers and sales to controlling persons. This exemption shall not be used in conjunction with any other exemption under these rules or the Act, except for offers and sales to the following persons, who shall not count toward the limitation in paragraph (1)(c):
 - **(a)** An officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or
 - **(b)** A person owning 10 percent or more of the outstanding shares of any class or classes of securities
- **(3)** Disqualifications. This exemption shall not be available if the issuer is subject to a disqualifying event specified in Rule 590-4-2-.06.
- **(4)** The exemption authorized by this section shall be known and may be cited as the “Invest Georgia Exemption.
- **(5)** “Individual,” for the purpose of paragraph (1) of this Rule, means a natural person residing in the State of Georgia, or a corporation, trust, partnership, association, or any other legal entity duly organized under the laws of the State of Georgia, that does not:
 - **(a)** offer investment advice or recommendations;
 - **(b)** solicit purchases, sales, or offers to purchase the securities exempted by this Rule;
 - **(c)** compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to purchase the securities exempted by this Rule; or
 - **(d)** take custody of investor funds or securities.