



Georgia Secretary of State
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Understanding the Invest Georgia Exemption

The Securities Division
July 2017

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Purpose of the IGE

- On December 8, 2011, [Rule 590-4-2-.08](#), the ***Invest Georgia Exemption*** (“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 exemptions that exempt 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.

IGE Requirements

Summary

- ✓ Offering must meet federal intrastate offering exemption requirements in either SEC Rule 147 or SEC Rule 147A.
- ✓ Issuer must be a for-profit registered to do business with the Georgia Corporations Division.
- ✓ Must adhere to \$5 million offering limit.
- ✓ 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 was represented to investors.
- ✓ Issuer must file a notice BEFORE conducting an offering.
- ✓ The issuer must inform all purchasers/investors that the securities have not been registered and are subject to resale limitations.

Evolution of IGE

- **December 8, 2011:** Allows for-profit businesses formed under Georgia law to raise up to \$1 million from Georgia resident investors. Additionally, IGE filers are limited to selling no more than \$10,000 in securities to non-accredited Georgia investors, but there is no selling limited to accredited Georgia investors. Before the use of any general solicitation by the issuer or by the 25th sale, whichever comes first, the Issuer must file a Form GA-1 with the Commissioner.
- **October 15, 2015 Amendment:** Increases the aggregate limit an issuer is allowed to raise pursuant to the exemption from \$1 million to \$5 million.
- **July 11, 2017 Amendment:** Allows certain foreign, for-profit entities to solicit and sell offerings to in-state residents.

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 147A

A SEC rule created in 2016 that expands the eligibility requirements for satisfying the intrastate offering exemption

SEC Rule 147 Requirements

- The solicitation of the offer **must not** be available to out-of-state residents.
- 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 have a reasonable belief of the residence of the purchaser at the time of the sale of securities and obtain a written representation from each purchaser as to their residency.
- Issuer is deemed a "resident" of the state or territory where it is incorporated/organized **and** has its "principal place of business."
- 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 6 months after offering's end.

NOTE: Interpretation of these requirements is a matter of federal law NOT within the purview of the Securities Division.

SEC Rule 147A Requirements

- Solicitation may be available to out-of-state residents but the sale of securities can only be made to residents of the same state where the issuer is a “resident.”
- The issuer must have a reasonable belief of the residence of the purchaser at the time of the sale of securities and obtain a written representation from each purchaser as to their residency.
- Issuer is deemed a “resident” of the state or territory where it has “principal place of business” and is “doing business.”
- 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 6 months after offering’s end.

NOTE: *Interpretation of these requirements is a matter of federal law NOT within the purview of the Securities Division.*

The “Doing Business” Test

- Requirement in both Rule 147 and Rule 147A.
- Utilized to help determine the “residence” of an issuer.
- **“Doing Business” Test:** An issuer will be deemed to be doing business in a state if it meets one of the following requirements:
 - ☑ 80% of its gross revenues are derived from that state;
 - ☑ 80% of its assets are held in that state;
 - ☑ 80% of the offering’s proceeds are used in that state; **or**
 - ☑ A majority of the issuer’s employees are based in a state.

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** 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 \$5,000,000 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](#).

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).

Notice Filing Requirement

Form GA-1

[Form GA-1](#) is the form that provides the notice for claiming the IGE and the information required by the IGE rule.

- An issuer must file a notice with the Georgia Securities Division, electronically or via mail, **BEFORE** conducting an offering pursuant to 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.

General Solicitation

After an issuer files the required notice on Form GA-1 with the Georgia Securities Division, the Issuer 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;
 - ☒ 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.

Additional Information

- Full text of the IGE Rule
 - <http://rules.sos.ga.gov/GAC/590-4-2-.08>
- SEC Guidance on creation of Rule 147A and amendment to Rule 147
 - <https://www.sec.gov/rules/final/2016/33-10238.pdf>
- Georgia Securities Division guidance on IGE July 2017 amendment
 - http://sos.ga.gov/admin/uploads/IGE_Rule_Amendment_Guidance-7.11.17.4.pdf
- Form GA-1
 - [http://sos.ga.gov/admin/uploads/Invest_Georgia_Exemption_Form_GA-1_\(v7.2017\)_5.pdf](http://sos.ga.gov/admin/uploads/Invest_Georgia_Exemption_Form_GA-1_(v7.2017)_5.pdf)