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# Doing Business In... 2023

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## **USA – Georgia: Trends and Developments**

Shawn Kachmar and Louann Bronstein  
HunterMaclean



# USA – GEORGIA



## Trends and Developments

### Contributed by:

Shawn Kachmar and Louann Bronstein  
**HunterMaclean**

**HunterMaclean** represents a wide variety of local, regional, national and international companies and individuals in their legal and business matters in Georgia from offices in Savannah and St. Simons Island. HunterMaclean is a business law firm that is committed to its clients and connected to the communities in which its clients do business. HunterMaclean has extensive experience representing clients in all areas of litigation as well as corporate, employment,

tax, real estate, transportation law, maritime law, information technology and business planning matters. Firm clients include Fortune 500 companies, banks and hospitals, professional service organisations, industrial development authorities and nonprofit corporations. With 60 attorneys, HunterMaclean's clients receive knowledgeable counsel on all the varied legal issues their industry may face from one comprehensive source.

## Authors



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**Louann Bronstein** is a partner in the Savannah office, where she chairs the corporate/tax group. She has counselled clients across multiple industries through every phase of growth.

She frequently serves in the capacity of outside general counsel to her clients and provides general legal, business and decision-making advice and documentation for domestic, foreign-owned and multinational businesses. Louann routinely assists C-suite executives, board members and owners with general corporate advisory matters and transactional contract drafting and negotiation, including business formation, capital and corporate structure, funding, equity and stockholder agreements, operating agreements, and establishing and managing operations in the United States.

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### Background

The State of Georgia is located in the Southeastern United States. It has a population of almost 11 million people (eighth largest in the United States) and is growing. Atlanta, a regional and national business hub, serves as the state capital, while the port city of Savannah is one of the busiest ports in the country.

### Business Environment

Georgia has a business-friendly legal and regulatory environment. The State focuses on business development through investments in workforce training, infrastructure, real estate development, logistics, and a wide range of tax credits and exemptions. It has been named the “Top State for Doing Business” for nine consecutive years. Growth sectors include agriculture, logistics and distribution, automotive, cybersecurity, aerospace, life sciences, and entertainment.

### Infrastructure

Georgia is ideally located for quick access to the fast-growing Southeastern United States and the rest of the country. Proactive investments in road, rail, and port facilities have led to Georgia becoming one of the largest logistics hubs in the country. It also has one of the busiest airports in the world with ready access to global locations.

### Taxes

In addition to federal taxes levied by the government of the United States, Georgia levies a top-end personal and corporate tax rate of 5.75% but also offers a multitude of credits through which companies can reduce or eliminate their tax liability, including job creation and investment tax credits, as well as industry-specific exemptions.

### Basic Legal Structure

Federal law applies in all 50 United States, with slight variations in scope and application of some federal laws based upon appellate circuits. Georgia is subject to the United States Constitution and federal law as interpreted by the United States Supreme Court, the 11th Circuit Court of Appeals, and federal trial courts. Georgia also has a state constitution, laws passed by the General Assembly (legislative branch), and local laws passed by municipalities, all as interpreted by the Georgia Supreme Court, the Georgia Court of Appeals, and state trial courts.

### Business Formation

The United States does not have a federal law governing the formation and internal operations of corporations, limited liability companies, or other business entities. Each state has its own individual business entity statute. A business

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entity may choose any state as its formation or home state. The state of formation does not need to be a state where the entity has an office and/or employees or where the entity does business. The state of formation will govern formation requirements, dissolution, or merger. Courts typically apply the law of the state of formation to an entity's internal affairs.

It is relatively easy to form a business in Georgia. Primary business forms are limited liability companies (LLCs) or corporations. To form an entity, Articles of Incorporation (corporation) or Articles of Organization (LLC) are filed with the Georgia Secretary of State.

Corporations are generally favoured by foreign investors primarily due to their tax advantages. Foreign owners are not required to file United States federal and state income tax returns or pay tax on gains when sold, unless the corporation is a United States real property holding company. Foreign owners are subject to tax on profit distributions, typically 30%, unless reduced or eliminated by treaty. Shareholders of corporations are generally not liable for the liabilities, debts, and other obligations of the corporation.

LLCs offer partnership-like flexibility of ownership and control and tax treatment, but may be less appealing to foreign investors, particularly those that are corporations. LLCs report their income, profits, and gains to their members, and all members, including foreign members, are required to separately file United States federal and state tax returns and pay tax on their "allocable share" of the income, profits, and gains. Additional United States "branch profits tax" may apply.

Whatever entity is chosen, Georgia requires that an entity qualified to do business in Georgia has

a registered office and a registered agent for receipt of legal documents and notices.

Once an entity is formed and begins operating in Georgia, many municipalities require a business licence or tax certificate, which typically must be renewed annually.

To maintain an entity in good standing in Georgia, the entity is required to file an annual report with the Georgia Secretary of State and pay an annual renewal fee (currently USD50).

## Legal Climate

Georgia is generally a pro-business state, but there can be some large pro-plaintiff verdicts from time to time. Federal courts, where judges are appointed for life, are often viewed as safer for businesses, but they are courts of limited jurisdiction.

## Employment Laws

Georgia is one of the most pro-business jurisdictions in the United States. Georgia is a "right to work" state, which means that the right to work cannot be conditioned upon joining or not joining a union. Absent a contract of employment, which can be found in a written contract or other communication, such as a handbook, the employer/employee relationship is "at-will", which means that the employer or employee may end the employment relationship at any time for any reason not prohibited by law. Generally, prohibited reasons are prescribed by federal law – employment decisions may not be made based upon race, colour, religion, sex, national origin, gender, sexual preference, age, disability, or other prohibited reasons.

• *Immigration Law:* In addition to federal immigration law compliance requirements, Georgia requires all employers with more than ten

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employees to use the federal E-Verify program to confirm an employee's authorisation to work in the United States.

- *Judicial Proceedings*: An employer may not penalise an employee absent from work in response to a subpoena, jury duty summons, or other court order requiring attendance at a judicial proceeding. The law does not apply to an employee attending a judicial proceeding for his or her own criminal charge.
- *Voting*: An employer must give an employee who provides reasonable notice time off (up to two hours) to vote on the day of a primary or general election. If the employee's work schedule begins two hours after polls open or two hours before polls close, no time off is required.
- *Workers' Compensation*: Georgia (like most other states) has instituted a statutory benefits scheme for employees injured on the job. In exchange for guaranteed benefits and wage replacement, employees may not sue their employer. Benefits are paid through insurance programmes paid for by employers.
- *Drug Testing*: Georgia offers a discount on workers' compensation insurance premiums for employers that implement a drug-free workplace programme, which requires drug testing applicants who receive conditional employment offers and in other circumstances. Workers' compensation benefits may be denied to an employee who unjustifiably refuses to submit to a drug test.
- *Break Time to Express Milk*: Both federal and Georgia law require that employers provide

time off and a private place (other than a restroom) for women to express breast milk. Such break time must be paid. Employers with fewer than 50 employees are exempt from the law if such requirements would impose an undue hardship.

- *Unemployment Insurance*: Employees who lose their job through no fault of their own may receive unemployment insurance benefits paid for through payroll taxes paid by employers.
- *Guns*: Employers may prohibit weapons in the workplace and in private, secure parking areas, but may not ban them from private vehicles if they are secured and out of sight, and may not require employees to allow searches of locked, privately owned vehicles.
- *Independent Contractors*: Georgia recently passed a law (in relation to unemployment insurance benefits) making it harder to classify workers as independent contractors. Many companies prefer to do business with contractors because of the lack of regulatory compliance issues, but if a worker is improperly classified as a contractor, rather than an employee, the employer can be liable for unpaid taxes and additional penalties.

There are other laws applicable to employers in Georgia, and some local municipalities impose additional obligations. Companies looking to do business in Georgia should consult with experienced counsel to ensure compliance with applicable requirements.

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