

## ESTABLISHING A BRANCH AND REPRESENTATIVE OFFICE IN POLAND

### *A. Basic facts on Branches and Representative Offices of foreign entrepreneurs in Poland*

A branch and/or representative office may be established in Poland by a foreign entrepreneur who already is doing business outside the territory of Poland. Branch and representative office operate with no legal separation from the business structure of foreign entrepreneur. Both forms of conducting business activity enable foreign entrepreneur to do business in Poland only in the scope admissible by law, which is different for the branch and for the representative office.

Please also note that establishing the branch and/or representative office in Poland may not be available for the investors from all countries. However, the investors from the EU enjoy the entire freedom of establishing the above business units in Poland.

| <b>Branch</b>                |  |
|------------------------------|--|
| <i>the aim</i>               | The object of business of the branch should comply with the objects of the original business of foreign entrepreneur, as conducted abroad, though the branch may operate the business within the limited scope.  |
| <i>founder</i>               | Only one foreign entrepreneur - foreign person doing business outside the territory of Poland. Establishing joined branches by various foreign entrepreneur is not admissible.   |
| <i>specific features</i>     | <p>The branch is a separate part of foreign undertaking which acts independently outside the registered office of entrepreneur.</p> <p>However, from the legal point of view, branch is <b>the part of foreign business undertaking</b> and it does not possess legal personality nor formally distinguished property. Moreover all actions of the branch affects directly a foreign entrepreneur.</p> |
| <i>minimum share capital</i> | No separate capital of the branch.   |
| <i>liability</i>             | The founder (foreign entrepreneur) bears the full liability  |

| <i>Representative office of foreign entrepreneur</i> |  |
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| <i>the aim</i>                                       | Solely advertising and promotion of foreign entrepreneur's business on the territory of Poland. No other business activity is allowed.   |
| <i>founders</i>                                      | Foreign entrepreneurs and foreign persons qualified to the promotion of the economy of the country of their registered office.   |
| <i>specific features</i>                             | <p>The representative office of foreign entrepreneur is the business unit legally dependent and subordinated in the whole range to the parent company. Its only activity is the advertisement and the promotion on behalf and to the benefit of foreign entrepreneur as a parent company</p> <p>The only entity performing business activity is the foreign entrepreneur and authorised persons acting in a representative office act directly on behalf and to the benefit of foreign entrepreneur.</p> |
| <i>minimum share capital</i>                         | No separate capital of the representative office.  |
| <i>liability</i>                                     | Founder (Foreign entrepreneur or foreign person entitled to promote the industry).   |

### ***B. Foundation of the branch – the milestones***

- 1) Collecting the documents required for entering the branch to the commercial register
  - Statement on establishing the business unit in the territory of Poland by the foreign entrepreneur;
  - Document nominating the proxy of foreign entrepreneur, entitled to represent the entrepreneur in Poland;
  - Document confirming that the person representing the founder is authorized to sign the above documents. This may be a copy from the commercial register of the founder, provided that the person signing the deed is disclosed in the above document as the founder's representative, having necessary powers to establish the branch. Otherwise, in addition to the excerpt from the commercial register, a power of attorney for the person signing the documents is required;
  - If it is required by the internal regulations of the founder or by the law of the country of the founder's origin, the appropriate governing body of the founder (Board of Directors/Supervisory Board/Shareholders' Meeting) needs to adopt a formal decision on establishing the branch in Poland;
  - Some of the documents issued abroad must be legalized by the Polish consul (not required in the countries where obtaining an "Apostille" is possible or if specific provisions of law provide otherwise).
- 2) Printing specimen signature of the Proxy.
- 3) Executing the office space lease contract (obtaining an official address).

- 4) Registration of the branch with the register of entrepreneurs of the National Court Register and publication of the announcement on registration in *Monitor Sądowy i Gospodarczy* official journal. The application for making an entry shall be enclosed with:
  - application for obtaining the statistical number (REGON),
  - application for obtaining tax identification number (NIP),
  - application to the national social security institution (ZUS), if the branch employs employees.
- 5) Opening the bank account for the branch.
- 6) Possible further tax registrations for the purpose of VAT, VAT-UE and CIT (Corporate Income Tax) taxation.
- 7) Supplementing the branch entry in the register of entrepreneurs with a statistical number (REGON) and tax identification number (NIP).

### ***C. Foundation of the representative office – the milestones***

The procedure of establishing the representative office is similar to that described in section B above, however, the representative office is registered in the Register of representative offices of foreign entrepreneurs kept by the Polish Minister of Economy. Application for obtaining REGON number and (if the representative office employs employees) NIP number as well as application to ZUS shall be filed separately to competent institution, not along with application for making an entry in the Register of representative offices.

### ***D. Timing***

#### **a) Branch office**

It is our experience that the entire process of branch registration, as presented in section B above, normally takes about 6-7 weeks:

- 1) preparing all required documents for registration of the branch in commercial register - about 2 weeks. This period can be significantly shortened, if the founder can obtain without delay the documents as referred to in section B.1 above,
- 2) registration proceedings at the registry court - about 2 weeks,
- 3) registration in the tax office - about 2-3 weeks.

Under the Polish law, the branch may undertake business actions only after being entered to the commercial register. Therefore, the branch may start business activity even before completing tax registration process.

**b) Representative office**

It is our experience that the entire process of representative office registration described in point C above, takes about 3-5 weeks:

- 1) preparing all required documents for registration of the representative office in Register of representative offices of foreign entrepreneurs - about 2 weeks. This period can be significantly shortened, if the founder can obtain without delay the documents needed for registration,
- 2) registration proceedings at the Register of representative offices of foreign entrepreneurs – about 1 week,
- 3) registration in the revenue office (obtaining tax identification number – NIP) - about 2 weeks (needed in certain cases).

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All information valid as of June 2011.