

# GUIDE FOR NON-EU INVESTORS

## *HOW TO SET UP A COMPANY IN POLAND*

# SETTING UP A COMPANY IN POLAND BY NON-EU INVESTORS

## *How we can help you in achieving success in international investments*

**The only EU Member State which avoided the financial crisis was Poland. Foreign investors wishing to locate their investments directly in Poland are still impressed by the economic development of Poland.**

We prepared this guidebook in order to help you understand the basic issues related to investing in Poland, stressing in particular the issues related to setting up a new company or buying a shelf company.

Woźniak Legal has been advising international clients for many years now. Over the years, we have developed a wide network of co-operating law firms in several countries. Thanks to this, we are able to advise clients on investments in Poland and abroad.

We hope that this guidebook will help you to rise to the challenges of a constantly changing global market.



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**1. What types of companies are available in Poland to non-EU investors?**

The Polish law allows setting up the following types of business entities: branch of a foreign company, limited liability company (abbreviation – sp. z o.o.) or joint-stock company (abbreviation – SA).

All of these entities need to be registered in the Register of Entrepreneurs of the National Court Register.

At the present moment, a limited liability company is the most popular form of conducting business activity in Poland by foreign investors.

Joint-stock companies are intended for large enterprises. Joint-stock companies may be public (which can be listed on the Warsaw Stock Exchange) or private.

Recently, there has been an increase in choosing a branch of a foreign company as a form of conducting cross-border business activity. You should keep in mind that the scope of activity performed by a branch must be the same or narrower from the scope of activity performed by a foreign company.

**2. What is the difference between a branch of a foreign company and a company?**

In practice, the difference is not significant.

Accounting books of a branch of a foreign company may be kept in the investor's country of residence. However, a branch of a foreign company must have its own bank account.

**3. Is it better to buy a shelf company or to set up a new company?**

Both options are similar to each other. There are firms on the Polish market which offer shelf companies and guarantee that these companies are free of any encumbrances. However, even if you buy a shelf company, you are required to take all necessary actions to change the name of the company, change the registered shareholders, change the members of the Management Board, change the scope of the company's activity, change the manner of representation etc. In practice, the amount of work put into the above mentioned actions is comparable to the amount of work put into setting up a new company.

The main advantage of setting up a new company, is that the new company has no corporate history and no debts.

**4. What form is required to make a share purchase agreement concerning shares in a limited liability company?**

The share purchase agreement concerning shares in a limited liability company should be made in writing with signatures certified by a notary.

**5. In which form the accounting books of a limited liability company should be kept?**

A limited liability company should keep its accounting books in compliance with the provisions of the Polish Accounting Act. In order to guarantee compliance with the Polish law, the company should enter into a contract with a firm performing accounting services or hire a professional accountant.

**6. What documents are needed to set up a limited liability company in Poland?**

The following documents are needed:

- Power of Attorney authorising someone to register the company,
- Articles of Association of a new company,
- resolution of the shareholders on the appointment of the members of the Management Board,
- declarations on approval of being appointed to the Management Board,
- declarations on the addresses of residence of the members of the Management Board,
- list of shareholders signed by the Management Board,
- excerpt from the foreign register of companies (if one of the shareholders is a foreign legal person),
- declaration of the Management Board that the contributions to the company's share capital were fully paid up by all shareholders,
- document confirming the rights of the company to the premises where it is located.

Please note that all documents drawn up in a foreign language must be translated into Polish by a certified sworn translator.

**7. What form is required for a Power of Attorney authorising a person to set up a company?**

The Power of Attorney should be made in the form of a notarial deed. It is a very important document and it is essential to make every effort to ensure that the Power of Attorney contains all necessary information. It is advisable to ask a Polish law firm to prepare the Power of Attorney in Polish and in English versions. Then, the Power of Attorney should be signed in Japan by the duly empowered persons.

Additionally, the Power of Attorney should be confirmed by the relevant Ministry of Foreign Affairs as to its compliance with domestic laws.

## **8. What are the Articles of Association?**

The Articles of Association is the basic document regulating the operation of a company. It must be made in the form of a notarial deed.

The Articles of Association should specify the name of the company, the scope and objects of its activity, its governing bodies, the amount of its share capital, the amount and value of the shares taken up, the information whether a shareholder can take up more than one share and the duration of the company.

## **9. What is the required minimum share capital of a limited liability company in Poland?**

The minimum share capital required to register a limited liability company amounts to PLN 5,000 (approx. USD 1,400). The nominal value of one share cannot be lower than PLN 50 (approx. USD 14).

It is assumed that the share capital is of a guarantee nature, that is, its purpose is to secure the interests of the company's creditors in the case of the company's insolvency.

## **10. What are the governing bodies of the Polish limited liability company?**

A limited liability company has two obligatory bodies: the shareholders' meeting and the Management Board which is responsible for most of the company's matters. In some instances, the company also has a supervisory board.

The Management Board consists of one or more members. They may be appointed for an indefinite term.

The supervisory board must be appointed if the company has more than 25 shareholders or if its share capital exceeds PLN 500,000 (approx. USD 140,000). It may be also appointed if the provisions of Articles of Association state that.

The supervisory board consist of at least 3 members appointed for one year, unless the Articles of Associations states otherwise.

## **11. How can the company be represented if the Management Board consists of more than one person?**

There are several types of representation:

- by every member of the Management Board individually,
- by the President of the Management Board,
- by two or more members of the Management Board acting jointly.

It is advised to apply in the company "the four-eyes principle", that is, at least two members of the Management Board should act jointly while representing the company.

## **12. Who is a commercial proxy?**

The members of the Management Board of a limited liability company can grant a Power of Attorney to an individual by way of a unanimous resolution.

It is a special type of Power of Attorney (commercial proxy) entitling the person to whom it is granted to represent the company in dealings with third parties in matters related to the operation of the company. The commercial proxy cannot alienate or encumber the company or its property.

A commercial proxy should be made in writing and it takes effect from the date it is signed. It is also required to be registered with the National Court Register.

## **13. Which taxes need to be paid by a limited liability company?**

The company's income is subject to a 19% corporate income tax (CIT). The company is a VAT taxpayer.

The dividend paid to the company's shareholders is also subject to a 19% personal income tax (PIT).

## **14. What kind of notification obligations has a limited liability company after being registered?**

The members of the Management Board should provide the tax office with the supplementary data within 21 days of the day the company was registered. They should also register the company as a VAT taxpayer within this time limit.

The company may choose a monthly or quarterly form of VAT taxation. Please note that this decision should be taken before issuing the first invoice.

There is also a possibility to choose a monthly or quarterly form of corporate income tax (CIT) taxation. A monthly form is a standard form and there is no need to notify it to the tax office. However, if you choose a quarterly form, it is required to notify this fact to the tax office.

The notification on a quarterly form of CIT taxation should be submitted to the tax office until 20 February of the given tax year. If the company has started operating during the tax year, the notification should be submitted at the latest on the day preceding the day of commencement of company's operation but not later than the day when the first revenue is obtained.

## **15. Is it necessary to open a bank account?**

Under Polish law there is an obligation to open a bank account for a company. The bank account should be open by the company's board in compliance with the type of representation set out in the Articles of Association of the company.

**16. What kind of special obligations has a limited liability company towards its employees?**

If the company intends to hire employees, there are some additional requirements which need to be met. The company should notify ZUS (the Polish social insurance institution) of hiring the employees in the electronic form.

The notification on the hired employees should be submitted to ZUS within 7 days after signing the employment agreements.

**17. What is the easiest way to meet all of the obligations related to the company after its registration?**

The most reasonable solution is to entrust all matters related to the taxation and notification of the hired employees to a firm performing accounting services. You should keep in mind that it is necessary to grant a Power of Attorney to represent the company before the tax office. It is also advisable to hire professional accountants at a later stage of the company's operation.