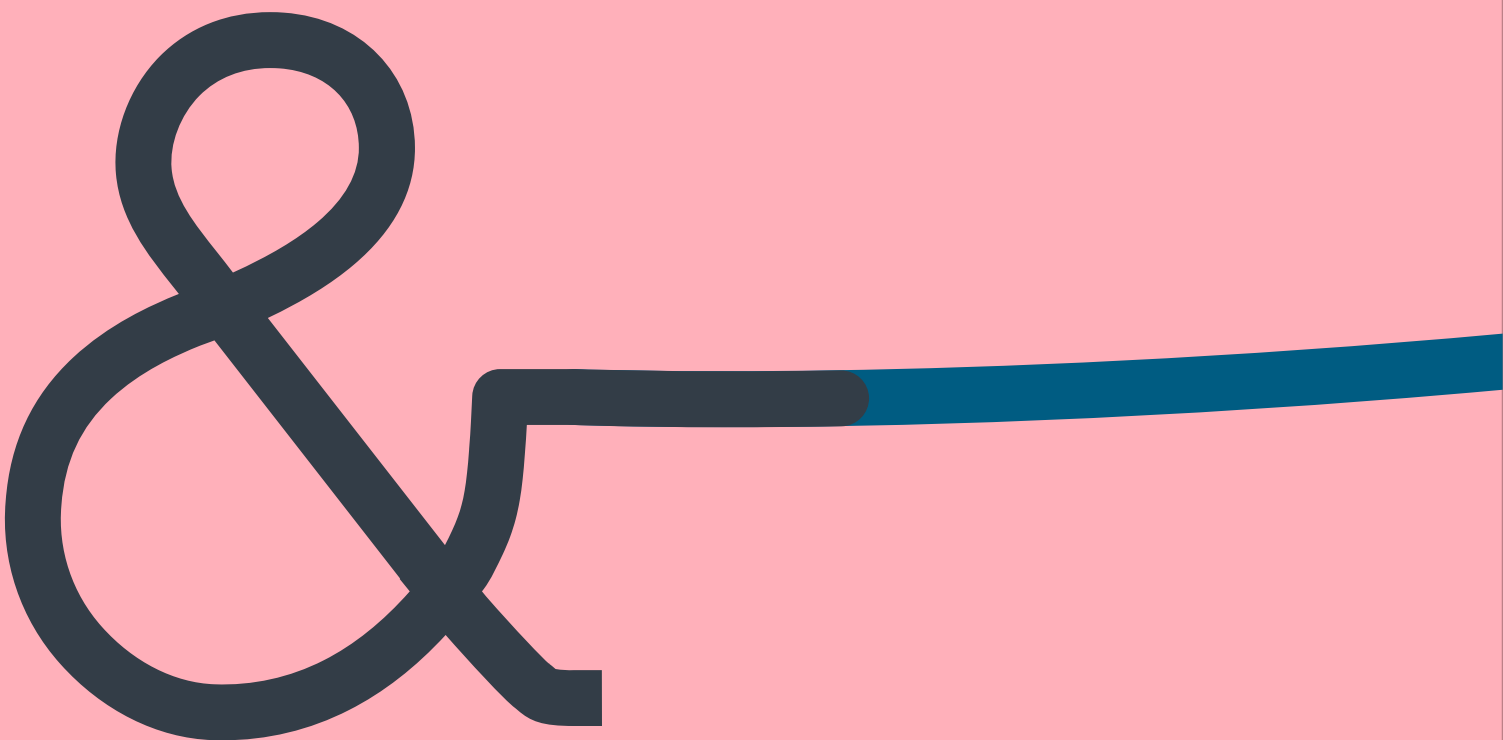


Bird & Bird

Setting up a business in Poland

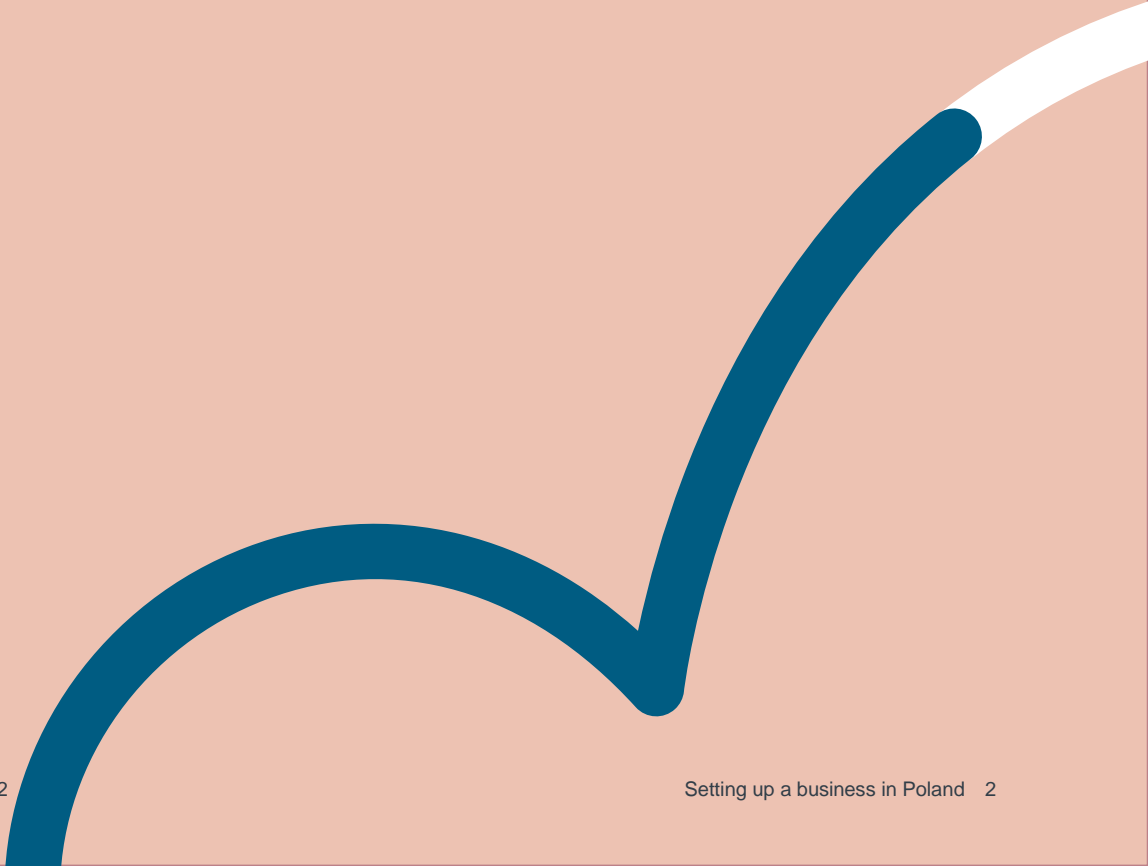
2022





“Bird & Bird offered us complex expert knowledge together with high responsiveness and a business-oriented approach.”

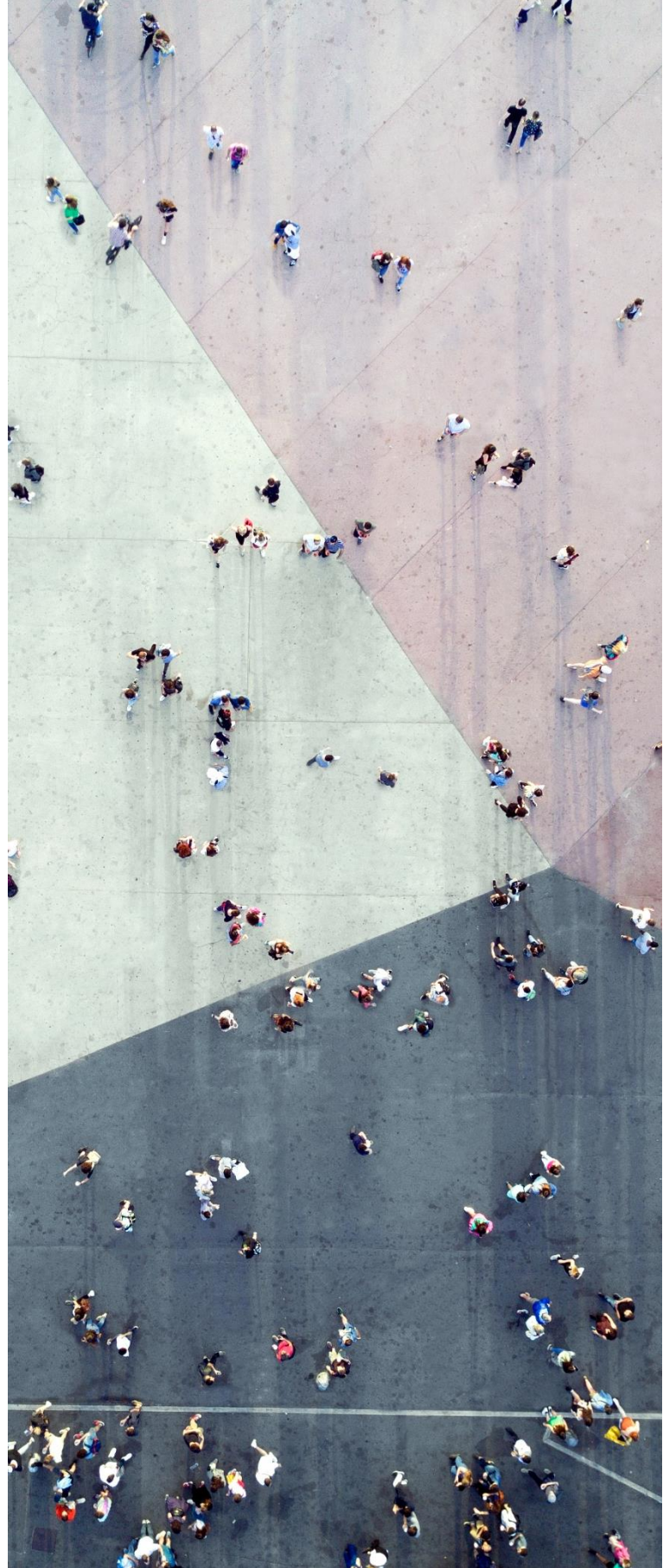
Chambers Europe, 2022, Poland



Setting up a business in Poland

The economic development of Poland offers many opportunities for setting up and expanding new business. According to the statistics, Poland remains one of the most favourable countries in Central and Eastern Europe for foreign direct investment. A strong factor in this is that it is possible to hire highly trained local personnel at a relatively low cost.

Under Polish law, the basic principle is that business activity not expressly forbidden by law is otherwise permitted. There is a closed catalogue of business activities which require a concession, entry into the regulated activity register or obtaining a permit.





‘They bring the highest level of professionalism to every case they take on’ and ‘it is clear that they know what they’re doing, that their experience is really valuable and not forgotten, but is used to enhance their current work.’

Legal 500 EMEA 2022, Poland

Setting up a Business in Poland

Choice of legal entity

Main regulations

The principal legislation governing business activity (e.g., undertaking, conducting, and terminating businesses in Poland) is:

- The Act of 6 March 2018 - Entrepreneurs Law,
- The Act of 6 March 2018 on the Rules for the Participation of Foreign Entrepreneurs and Other Foreign Persons in Economic Transactions on the Territory of the Republic of Poland,
- The Act of 15 September 2000 - the Polish Commercial Companies Code ("CCC").

What form can I choose?

Subject to your business requirements you can choose to conduct business in one of the following business forms, entities, and legal forms:

1. Business forms

Individual business activity: This is a form in which a natural person may conduct business activity as an entrepreneur.

Civil law partnership (*spółka cywilna*): This is a form for relatively small-scale business activity conducted on the basis of a written agreement between at least two persons (natural or legal). In the agreement, the partners of a civil law partnership undertake to strive to achieve a joint economic aim by acting in a specified manner by making contributions towards the business.

A civil law partnership is not a separate legal entity (formally it is an agreement) and does not set out rights and obligations. The partners are jointly and severally liable for the civil law partnership's obligations. The partners are also considered as entrepreneurs within the scope of their economic activities.

2. Partnership

Partnerships (*spółki osobowe*): Partnerships are entities conducting business under their own name which have no legal personality and in principle have no corporate bodies. However, a partnership may in its own name acquire rights (including real

property ownership and other property rights), assume obligations, and sue and be sued.

In partnerships, utmost importance is attached to the identity of the partners, their credentials and work performed. As a rule, the liability of the partners is subsidiary to the partnership's liability; the partner is liable for the partnership's obligations without any limitations, jointly and severally with other partners.

Types of partnerships:

- **Registered partnership (*spółka jawna*)**

This is a form for relatively small-scale business activity (micro and small businesses). The agreement for a registered partnership is concluded in simple written form.

The liability of the partners is subsidiary to the partnership's liability; the partner is liable for the partnership's obligations without any limitations, jointly and severally with other partners.

It is possible to incorporate a registered partnership through the Internet.

- **Limited liability partnership (*spółka partnerska*)**

This is an entity where a business activity may be conducted only by persons who have the right to practise one of the freelance professions listed in the CCC (e.g., physician, architect, securities broker, attorneys-at-law). Freelance professionals may choose another form of business activity as well. The limited liability partnership may be formed for the purpose of practising more than one freelance profession unless it is forbidden by provisions of law (e.g., a notary public).

The Articles of Association of a limited liability partnership are concluded in simple written form.

In principle, each partner is liable for the partnership's obligations (without limitations, jointly and severally with other partners), however, a partner is not liable for the partnership's obligations arising in connection with other partners practicing a freelance profession. The partnership's Articles of Association may extend the liability of one or more partners (it is not possible to extend the liability of all partners).

- *Limited partnership (spółka komandytowa)*

This is a form of business activity of any scale. A limited partnership is a partnership whose purpose is to conduct a business enterprise under its own business name.

The Articles of Association of a limited partnership are concluded in notarial deed form.

In a limited partnership, at least one partner (general partner) bears unlimited liability to creditors for the obligations of the partnership and at least one partner (limited partner) bears limited liability. A limited partner shall be liable for the obligations of the partnership towards its creditors only up to the amount indicated in the Articles of Association.

A limited partnership is represented by the general partner(s).

It is possible to incorporate a limited partnership through the Internet.

- *Limited joint-stock partnership (spółka komandytowo – akcyjna)*

A limited joint-stock partnership is also a partnership whose purpose is to conduct a business enterprise under its own business name.

The Articles of Association of a joint-stock partnership are concluded in notarial deed form.

In a limited joint-stock partnership, at least one partner (general partner) bears unlimited liability to creditors for the obligations of the partnership, and at least one partner is a shareholder.

The share capital of a limited joint-stock partnership should amount to at least PLN 50,000.

Capital companies (spółki kapitałowe): Companies are entities which have a separate legal personality and act through their corporate bodies. In companies, the emphasis is on the equity provided by the shareholders, on which the company's operations are based.

The shareholders are not liable for the company's obligations - their risk is limited to the amount of the contribution made, which may not be recovered if the business fails.

Members of the corporate body (such as the Management or Supervisory boards) may be any natural person having full legal capacity (unless they have been convicted in a final

judgment for offences against information, documents, assets, economic trade or trade in money and securities). He or she may perform his or her duties for remuneration or for free. He or she may also be an employee of the company.

1. Types of companies:

- *Limited liability company (spółka z ograniczoną odpowiedzialnością)*

A limited liability company may be established by one or more persons for any legitimate purpose unless the law provides otherwise, but it may not be formed solely by another single-member limited liability company. However, a single-shareholder limited liability company may become a sole shareholder of a limited liability company by acquiring all of the shares therein.

The limited liability company's Articles of Association are concluded in notarial deed form.

The shareholders of a limited liability company are not liable for the obligations of the company and are obliged to perform only such duties as are set out in the company's Articles of Association and respective provisions of law.

The share capital of the company should amount to at least PLN 5,000 and may be divided into shares of equal or unequal nominal value of not less than PLN 50 each. The shares in a limited liability company do not have document form. The shares are transferable; however, some restrictions can be provided in the company's Articles of Association, i.e., require consent of the shareholders' meeting.

The limited liability company has corporate bodies, i.e., Management Board, Shareholders Meeting and Supervisory Board. In principle, establishing a Supervisory Board is optional unless the company's share capital exceeds PLN 500,000, and it has more than 25 shareholders.

It is possible to incorporate a limited liability company through the Internet.

- *Joint-stock company (spółka akcyjna)*

A joint-stock company may be formed by one or more persons but may not be formed solely by a single-member limited liability company. However, a single-shareholder limited liability company may become a sole shareholder of a joint-stock company by acquiring all of the shares therein.

The joint-stock company's Articles of Association are concluded in notarial deed form.

The shareholders are not liable for the obligations of the company and are obliged to perform only such duties as are set out in the statutes and respective provisions of law.

The share capital of the company should amount to at least PLN 100,000 and be divided into shares of equal nominal value, of not less than PLN 0.01 each. The shares in a joint-stock company can be either bearer or registered shares. The shares are dematerialised and transferable. However, some restrictions on the disposal or encumbrance of registered shares can be provided in the company's Articles of Association or in other agreements.

Due to the possibility of conditional share increase in a joint-stock company, it is quite common to introduce incentive schemes for the company's employees or Management Board members.

The corporate bodies in the joint-stock company are the Management Board, Shareholders' Meeting and Supervisory Board.

If you want to list your company on the Warsaw Stock Exchange, a joint-stock company would be the best form.

- *Simple joint-stock company (prosta spółka akcyjna)*

A simple joint-stock company may be established by one or more persons for any legitimate purpose unless the law provides otherwise, but it may not be formed solely by a single-member limited liability company. However, a single-shareholder limited liability company may become a sole shareholder of a simple joint-stock company by acquiring all of the shares therein.

The simple joint-stock company's Articles of Association are concluded in notarial deed form.

The shareholders are not liable for the company's obligations and are obliged to perform only such duties as are set out in the statutes and respective provisions of law.

The share capital of the company should amount to at least PLN 1. The share capital is created with cash or in-kind contributions. The shares are dematerialised and transferable. However, some restrictions on the disposal or encumbrance of shares can be provided in the company's Articles of Association or in other agreements.

Unlike the limited liability company and the joint-stock company, the amount of the share capital is not specified in the Articles of Association of the

simple joint-stock company. Shares have no nominal value and are not part of the share capital.

The corporate bodies in the simple joint-stock company are the Management Board or Board of Directors, the Supervisory Board, and the General Meeting. Establishing the Supervisory Board is optional.

Low share capital requirements combined with the simplicity of establishment and operation make the simple joint-stock company a good choice for start-ups.

4. Legal forms

Branch offices (oddział): A branch office is a separate and independent part of a business activity which is pursued by a company outside of its registered office or principal place of business.

When establishing a branch office, a foreign company may pursue economic activity only within the scope of business pursued by that foreign company.

Representative offices (przedstawicielstwo): Foreign companies may establish representative offices, with their registered office in the territory of the Republic of Poland.

The scope of activities of a representative office may only include activities consisting of advertising and promoting the foreign company.

Setting up a business in Poland

Obtaining required permits

Polish law stipulates the principle of freedom of business activity, which means that everyone has equal rights in undertaking business activity of their choosing, unless otherwise provided by law.

In order to carry out certain types of business activity, entrepreneurs should however obtain a prior administrative decision enabling them to undertake a given activity.

These activities are divided into three groups:

- activities that may be performed after obtaining a concession;
- activities that may be performed upon entry into the register of regulated activities; and
- activities that may be performed after obtaining a permit.

Concessions are issued in areas of business activity that carry particular importance for national security or the safety of citizens or other important public interest. A concession must be obtained in order to pursue the following types of economic activity:

- prospecting, exploration of deposits of hydrocarbons and solid minerals constituting the property of the State Treasury, mining of minerals from deposits, underground bulk storage of substances, and underground waste dumping;
- manufacture of and trading in explosives, weapons and ammunition, as well as products and technologies used for military or police purposes;
- manufacture, processing, storage, transmission, distribution of, and trade in fuels and energy;
- protection of persons and property;
- broadcasting of radio and TV programmes, with the exception of programmes broadcast exclusively within an ICT system that do not use any terrestrial or satellite systems or cable networks;
- transport by air; and

- operation of casinos.

Permits and regulated activities include a broad range of activities whose performance is regulated by the state. All such activities may be carried out provided they meet the relevant statutory requirements.

Data Protection/Privacy

Currently the processing of personal data in Poland is regulated by:

- General Data Protection Regulation 2016/679 ("GDPR"), (from 25 May 2018), which repealed Directive 95/46/EC;
- The Act of 10 May 2018 on the Personal Data Protection;
- The Act of 21 February 2019, on Amendments to Different Acts in connection with Ensuring the Applicability of the GDPR, which implement or amended data protection provisions in in numerous Polish acts such as the Act of 16 July 2004 on Telecommunications Law and the Labour Code of 26 June 1974.

Any processing must be performed by minimising the use of personal data to what is **necessary** and, as a general obligation, personal data must be:

- processed lawfully and fairly and in a transparent manner in relation to the individual;
- collected and recorded for specific, explicit and legitimate purposes and used in further processing operations consistent with these purposes;
- accurate and, when necessary, kept updated;
- relevant, complete and adequate in relation to the purposes for which they are collected or subsequently processed;
- kept in a form that permits the identification of the data subject for no longer than is necessary for the purposes of the collection or the subsequent processing; and
- appropriately secured, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.

Failure to comply with the data protection regulations can trigger both criminal and administrative fines, as well as a liability to reimburse damages suffered by the individuals. In fact, the GDPR imposes several obligations on controllers to lawfully process personal data. Among others, controllers must:

- ensure that they have an appropriate legal basis to process the data, such as the data subject's consent;
- provide the data subjects with prior information on the processing of their personal data;
- designate a data protection officer in case where, among others:
 - the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or
 - the core activities of the controller or the processor consist of processing on a large scale of special categories of data and personal data relating to criminal convictions and offences;
- carry out an assessment of the impact for the processing of personal data that involves a high risk to the rights and freedoms of natural persons;
- conclude contract with the processor processing the personal data on controller's behalf;
- guarantee the exercise of the right of the individuals, such as the right of access to personal data, the right to be forgotten, right to object etc.;
- implement technical and organisational measures to ensure a level of security appropriate to the risk of the processing of personal data and ensure that in case of a data breach the controller notifies the relevant authority within **72 hours** after having become aware of it; and
- if personal data is transferred outside the European Economic Area, ensure that relevant safeguards for such transfer are in place.

The scope of such obligations may vary depending on the nature of the processing or on the data controllers' sector of activity.

Setting up a business in Poland

Steps required for doing business in Poland

Registration

EU citizens can provide services temporarily without the requirement to register a company in Poland. Temporary provision of services may, however, be associated with the obligation to obtain a license, permit, entry in the register of regulated activities or a certificate, if required by Polish law.

An entrepreneur being a natural person or partner in a civil law partnership may undertake an economic activity on the date of filing an application for an entry in the Central Register and Information on Economic Activity (Polish: *Centralna Ewidencja i Informacja o Działalności Gospodarczej*, CEIDG).

A partnership, a company or a branch office may be incorporated by its founding members and should be registered with the Polish Register of Entrepreneurs kept by the Polish National Court Register (Polish: *Krajowy Rejestr Sądowy*) in order to be established. A limited liability company, a joint-stock company or a simple joint-stock company is incorporated upon execution of its Articles of Association. From that moment a company may act as a company “in organisation” (may acquire rights, including the ownership of real property and other property rights, assume obligations, and sue and be sued). Upon registration in the Register of Entrepreneurs, the company becomes a limited liability company, a joint-stock company or a simple joint-stock company and acquires legal personality.

Branches may be incorporated by a foreign entrepreneur and should be registered with the Polish Register of Entrepreneurs kept by the Polish National Court Register.

Representative offices should be registered with the Register of the Representative Offices of Foreign Entrepreneurs kept by the Minister of Entrepreneurship and Technology.

The incorporation process for each form of partnership, company, branch office, representative office and business activity also

requires registration with the Polish Tax Office, the Central Statistical Office, as well as the Social Insurance Institution (should it have employees). Upon the motion for registration in the relevant register (KRS, CEIDG), entities are also registered with all other relevant authorities.

Obtaining an official address/ business premises

In order to commence business activity in Poland individuals, partnerships, companies, branch offices or representative offices must have a business address.

For individuals, the business address may be their place of residence. For partnerships, companies, branch offices and representative offices this is the address of their registered office. Polish law also allows the company to be registered under a virtual office address.

Having a business address and registered office requires having a legal title to the business premises. This can be obtained through purchasing real estate or concluding a lease or similar agreement. In practice, most entities rent office space, retail, or warehouse premises rather than purchase them.

Leases are usually concluded for several years, and it is uncommon for the tenant to negotiate a one-sided extension right. Leased premises usually require fit-out by the tenant at its own cost although typically the lessor will contribute by allowing a “rent free period” and sometimes fit-out allowance. The tenant will typically be responsible for reinstating the premises at the end of the lease.

The landlord will usually require some sort of security, including a cash deposit of up to a few months’ rent or a bank or parent company guarantee, especially if the tenant is a company with little or no trading history.

Opening a Polish bank account

In order to conduct business activity in Poland, a bank account is needed both for partnerships and companies. Banks usually open deposit accounts for companies “in organisation” just after the Articles of Associations are signed, i.e., prior to registration with the Polish Register of Entrepreneurs. This bank account is used to deposit the share capital. It is also a requirement that any payments related to the business activity of an entrepreneur will be made or received through the entrepreneur’s bank account whenever another entrepreneur is a party to the transaction, and the entire value of the transaction, regardless of the size of the related payments, exceeds PLN 15,000. The Tax Office requires a bank account for tax return purposes. For an input VAT refund, the tax office requires there to be a bank account in a bank with its registered office in Poland.

Registration in the Tax Office as a VAT payer

The simplified registration procedure does not include registration for VAT. Should an entity conduct business activity involving VAT, it should file an application for registration which should be submitted before the first taxable transaction is performed.

Once a business is set up, you need to take care of certain basic aspects concerning operating a business in Poland.

Employment

Employer: Under Polish law, an employer is an organisational unit with or without legal personality, as well as a natural person, which employs one or more employees. Therefore, partners in a civil law partnership, partnerships, companies, branch offices and representative offices may employ employees.

Notifications: An employer must register itself with the Polish Social Security Institution within seven days from employing the first employee. Employers must also register each employee within seven days from the start day of his or her employment. If it employs more than 25 persons, it must register with the National Disabled Persons Rehabilitation Fund.

Payroll and Administration and OHS: Employers are obliged to keep working time records and personal files for each employee and provide them with adequate OHS conditions, including

introductory and periodical training and medical checks. The employer is responsible for paying social security contributions and tax advances on behalf of its employees. It is common to outsource payroll, HR administration and OHS services.

Employment standards: Polish labour law is harmonised with EU regulations. Employees in Poland have statutory rights such as: minimum termination periods, protection against unjustified or unlawful dismissal, protection against discrimination (age, race, sex, disability, religion, belief, or sexual orientation, etc.), statutory entitlement to annual leave, sickness leave, and statutory rights related to parenthood.

Provisions in an employment contract which are less favourable to employees than the binding provisions of law are ineffective.

Awards for unjustified or unlawful dismissal are capped. In certain situations, the employee may also request reinstatement.

Employers cannot avoid the statutory requirements by categorising the employee as a consultant since the authorities will look at the reality of the relationship, though under certain conditions consultants would not fall under employment laws.

Non-compete undertakings and other restrictions, including the protection of trade secrets, are enforceable in Poland during the term of employment and after an employee has left provided, they are reasonable and protect clearly identified business interests and in some cases are compensated.

Immigration: Non-EU or EEA nationals wishing to work in Poland will generally require a relevant visa, or residency permit and a work permit.

Data Protection/Privacy

Given Poland’s EU membership, Polish data protection/privacy regulations do not materially differ from those applicable in other Member States. However, some additional obligations relating to processing of employees’ personal data are specific to Poland only. The person (of any form) processing personal data (including employee data and business contact data) must therefore comply with EU and Polish data protection regulations, in particular with the General Data Protection Regulation (GDPR), as well as applicable provisions of Polish law that specify and/or supplement the GDPR.

Just like in other Member States, Polish entities should adopt relevant procedures and appropriate organisational and technical security measures. Entities processing personal data must also ensure that their use of personal data complies with the data protection principles, such as adequacy, lawfulness, fairness and transparency and other obligations arising from the GDPR and Polish law. Entities transferring personal data outside the EEA must ensure that such data transfers are lawful, in particular that appropriate safeguards are in place, such as Binding Corporate Rules or Standard Contractual Clauses.

Failure to comply with the requirements of data protection laws may expose the entity to the risk of administrative liability and fines.

Setting up a business in Poland

Intellectual Property

Business names need more than the company name protection afforded by registering in the Polish Register of Entrepreneurs. Company and brand names, in order to achieve protection, should be registered as trademarks. This can be done either through registration of a national trademark in the Polish Patent Office or on a Europe-wide basis through the EU trademark scheme, or through the designation of Poland in an International Registration under the Madrid System.

Preventing counterfeiting is based on the EU Customs Regulation and Polish criminal law provisions.

Domain names are registered in principle on a first-come- first served basis. However, a domain name which infringes a registered trademark, or a company name can be transferred to the right holder by a court decision.

Designs can also be protected through industrial design registration in Poland, or on an EU-wide basis, or under the Hague system.

Unregistered trademarks and designs enjoy protection based on the Polish provisions on combating unfair competition, which also provides protection against passing off and misleading advertising.

Inventions are protected if they are new, involve an inventive step and are industrially applicable. Patents can be granted under a national, European or PCT procedure.

A European patent, in order to be enforceable, needs to be validated in Poland. Inventions which do not meet the criterion of inventiveness but are technically useful may be granted protection as utility models. For the time being Poland is not considering participating in the Unitary Patent and Unified Patent Court system.

Works of authorship, performances, audiograms and videograms, image rights, databases and trade secrets also enjoy protection in Poland under copyrights and related rights and other regimes.

Business Model Design

Alongside legal challenges, whatever the nature of your international ambitions the planning process requires some key questions to be addressed:

- Is internationalisation a feasible option, and are you ready for it?
- What is your internationalisation strategy, and how will you prioritise which markets to target?
- What business model will be most effective for driving profitable growth?
- Will you require business partners, and how do you plan to find them?
- What will your penetration strategy be for your selected markets?
- How will you build the infrastructure and operating model required to support your move into the new markets?
- How will you execute the plan and implement the business model?

Wherever your starting point, our consultancy arm OXYGY can help you answer these questions and create a fit-for-purpose roadmap to guide your business through its internationalisation journey.

Contact us

Day-to-day business operations may give rise to many other issues or queries. If your business is growing other legal aspects may have to be considered, such as restructuring, mergers and acquisitions, divisions, purchasing assets and shares, loan financings, and debt restructuring. Should you need any assistance with further corporate matters, we would be pleased to help.

If you would like further information on setting up business in Poland, please e-mail our Set-up Desk at new.company@twobirds.com and we will contact you within 24 hours.

This summary provides general information only as of May 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.



‘They have a very strong full-service team which has been able to distill complex, interdisciplinary legal matters into pragmatic advice.’

Legal 500 EMEA 2022, Poland



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