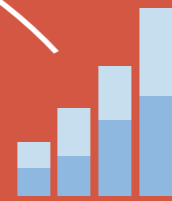
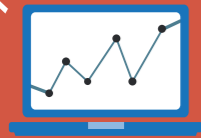


Bird & Bird &

Setting up a business
in Belgium



Bird & Bird LLP are praised for being “extremely well prepared, with the capability to discuss complete agreements in different languages, providing always the best cost-efficient advice.”

Chambers, Global 2018

Setting up a business in Belgium

Belgium has a strategic location situated in the heart of Europe and hosts a significant number of international organisations and institutions, such as the European Union and NATO. Belgium is a welcoming environment for foreign investors because investments do not, in principle, require prior governmental authorisation, which means there are no general capital movement restrictions and bank accounts may be held in any foreign currency.

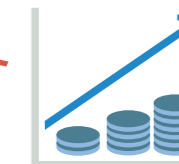


“Bird & Bird excels in corporate transactions in its sector focus areas of TMT, life sciences and financial services, and also provides corporate and competition advice to international trade and lobbying organisations and international research institutions.”

Belgium, Legal 500 EMEA, 2018

Choice of legal entity

A company can carry on business in Belgium either by incorporating a subsidiary company or by establishing a branch.



Subsidiary	Branch
A subsidiary is a separate legal entity, entitled to contract in its own name and on its own behalf.	A branch has no separate legal personality, remains part of the company and contracts as a Belgian branch on behalf of the company. Company accounts show Belgian income.
Can have limited liability (depending upon preferred legal form).	Company is liable for the branch.
Depending on the legal form, a minimum share capital may be required. Incorporation deed must be a notarial deed for private and public limited liability companies.	No minimum share capital requirements due to the absence of separate legal personality and no notarial deed required in connection with its registration.
Duration of entire incorporation process depends on legal form and availability of information, but, in general, can be estimated at two weeks.	Duration of entire registration process depends on country of origin and availability of information, but, in general, can be estimated at two weeks.
	Prior to the opening of the branch, documents relating to the company (constitutional documents and financial statements) and the branch (including information on the name, address, operations, and identity and powers of appointed representative(s) of the branch) must be filed, and, depending on the country of incorporation of the company, also be apostilled. Any document that needs to be filed must be translated into the official language of the location of the branch.
Costs for a notary to incorporate a private or public limited company are approximately €1,200-1,700, if the company has the required minimum share capital.	Any subsequent modifications to the required documents and information following the establishment of the branch must also be filed.
Lawyers' costs for assisting with the corporate law aspects of the incorporation of a company are estimated at €3,000 - 4,000, to the extent that the Articles of Association contain standard clauses designed for a controlled affiliate of a foreign company. This does not include employment or tax law advice, or translation costs.	Set-up costs depend mainly on possible translation costs of filed documents; filing costs are negligible. Lawyers' costs are estimated at €3,000 - 4,000. This estimate does not include employment law advice or tax law advice.
Directors do not need to be Belgian nationals.	No specific rules in Belgian Company Code regarding functioning and decision making of the branch; more flexibility/simplicity for company regarding the functioning of the branch and its decision-making process (by the appointed branch representative(s)). Branch representative(s) do(es) not need to be (a) Belgian national(s).
Board and shareholder meetings do not necessarily need to be held on Belgian territory. However, it is advisable to hold the majority of the meetings of the Board in Belgium (or by conference call) as this could impact the tax residence of the company.	No need for separate branch meetings (except if so decided by the company).
Board decisions can also be made by written resolutions. The Shareholders' meeting approving the annual accounts should be held on Belgian territory for the same reason.	

Subsidiary	Branch
Belgian company accounts must be prepared and may need to be audited.	No separate accounts for a branch. Company accounts must be filed and possibly translated (see above).
Higher annual filing and accounting costs.	Lower operational costs.
Corporate income tax of 29.58% on worldwide profits and gains (25% as of 2020 - tax year 2021), although exemptions normally apply to foreign income that is taxable abroad. For SME's, the first €100 000 of income is taxed at a 20.4% rate (20% as of 2020 - tax year 2021), provided certain conditions are met.	Corporation tax (at the same rates as Belgian resident companies) on profits that arise in, or are allocable to, Belgium.
Can benefit from the extensive network of double tax treaties concluded by Belgium.	A branch can in principle only rely on the treaty network of its head office. However, under certain circumstances, a branch is also eligible for protection under the Belgian tax treaty network.
Intra-group transactions require arm's length terms.	Intra-company allocations require arm's length terms.
Trading losses can be off-set against the profits for the accounting period, with some exceptions (e.g. profits derived from "abnormal and benevolent advantages", tax base corrections after tax audit, secret commission tax, etc.).	Trading losses can be off-set against the profits for the accounting period and they may also appear in company's accounts, but usually a claw-back applies in the company's jurisdiction if losses were off-set in Belgium.

Employment

Belgian employment law is heavily regulated with most of the regulations being criminally sanctionable (although in practice criminal sanctions are rarely applied). Those regulations entail, amongst other things, restrictions on working time (in principle 38 hours per week and 8 hours per day), part-time employment, night-work, temp work, successive definite period contracts, etc. There are, however, various exemptions.

The regulations also encompass a general anti-discrimination principle and very stringent legislation concerning well-being at work.

Belgium is one of the only countries in the EC that maintains a distinction between blue-collar workers (i.e. employment mainly of a manual nature) and white-collar workers (i.e. employment mainly of an intellectual nature). However, following a decision of the Belgian Constitutional Court that found the distinction discriminatory, the legislator is in the process of eliminating this distinction with major changes already implemented in the field of termination legislation.

If a company has employees in Belgium, it has to comply with various formalities / requirements such as registration with the Belgian tax and social security authorities, the so-called Dimona form to be filed before the entry into service of a new hire, etc. Most of these requirements / formalities can be carried out by a payroll agency on behalf of the employer.

The Belgian social security contributions for salaried workers amount to +/- 39% of uncapped gross salary (including variable pay and most benefits in kind) with +/-26% employer's share and 13.07% employee's share. Taxes are due on salaries at the Belgian progressive income tax rates (top rate set at 50%, but increased with local taxes). These taxes are paid in advance normally through the levying by the employer of payroll withholding taxes on salaries.

In a nutshell, salaries are heavily taxed in Belgium. For foreign executives working in Belgium a special favourable tax regime can - under certain conditions - be applied.

As far as termination of employment is concerned, the employer must in principle justify the reasons for the dismissal (specific obligations such as in case of termination for serious cause still exist). The employer has the choice between a dismissal with notice served (formal requirements) or with severance paid (immediate effect). The new notice / severance alternatives introduced as from 1 January 2014 amount, on average, to 3 weeks for each year of service (longer notice / severance is accrued for the first years of service). Transitional measures exist for employees with seniority dating from before 1 January 2014. Additional obligations apply to qualified collective redundancy.



“Bird & Bird LLP have been noted for offering “pragmatic advice grounded in a lot of experience.”

Belgium, Chambers Europe, 2018

Setting up a business in Belgium

Commercial Contracts

Belgium has a civil law system historically based upon the Napoleonic legislative codes. There is considerable freedom for all types of collaboration, licensing and distribution agreements.

EU legislation applies in Belgium and regulates consumer protection, sales agents, distance selling, government procurement, direct marketing and the privacy of personal data.

Belgian law restricts certain terms of consumer contracts, including limitations on liability.

Belgian and EU competition law prohibit anti-competitive behaviour (e.g. price fixing) where there is an appreciable effect on trade in Belgium and/or between EU Member States.

Overseas companies should be aware of any industry specific laws that apply to their business. These laws are typically based on EU legislation and are relatively consistent across the EU.

Real Estate

Most companies setting up business in Belgium will rent serviced offices or lease their premises rather than buy them. Serviced offices are more flexible. They are ready-to-go and can be rented for very short periods. There is no capital outlay.

The terms and conditions of leases are (freely) negotiable, but are usually signed up for at least 9 years, often with break clauses set at every third year of the contract period along with an annual indexation of the rent. Leased premises

usually require fitting-out by the tenant at its own cost although typically the landlord will encourage a prospective (or existing) tenants by allowing a rent free period. The tenant will be responsible for reinstating the premises at the end of the lease.

The landlord will usually require collateral security, including a cash deposit of 3 months’ rent and/or a bank guarantee on first demand.

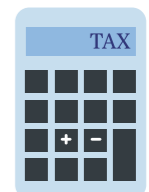
Data Protection/Privacy

Organisations processing personal data (which includes employee data, customer data, and business contact information) must comply with the General Data Protection Regulation, which is applicable since May 25 2018, and with the Belgian DPA Act which also entered into force on the same day.

Organisations must therefore ensure their use of personal data complies with the data protection standards. These impose obligations of transparency (information of data subjects), security, fairness and data quality, to respect the rights of data subjects and a limited retention period.

Maintaining a record of their processing activities, implementing a data privacy impact assessment and designating a Data Protection Officer when required is also among the organisations’ obligations under the General Data Protection Regulation.

The transfer of data out of the EEA will also be subject to specific requirements depending on the recipient country.



Setting up a business in Belgium

Intellectual Property

All essential data regarding Belgian companies (including their business names) is listed in a central Company Database. Although business names per se are best protected and monopolised by means of registration as a trade mark, they can also be protected without registration under Belgian unfair competition and tort law. Trade marks can be registered either for the Benelux area (through the Benelux Office for Intellectual Property) or for the European Union (through EUIPO). Furthermore, it is advisable for companies to obtain national and international domain name protection.

The outward appearance of products can be protected by obtaining a design registration in the Benelux, or by a (registered or unregistered) Community Design right on an EU-wide basis.

A broad and undefined variety of works may also be eligible for protection under Belgian copyright legislation, provided that these works are original (i.e. demonstrate the personal stamp of the author).

Technical inventions can be protected by way of a Belgian or a European patent. European patents are applied for via a single, harmonised procedure at the European Patent Office. However, once a European patent is granted, the applicant currently receives a bundle of independent national patents, which are not centrally enforceable. It is important to note that a new centralised system of unitary patents is likely to come into effect in the near future. This will make it possible to protect technical inventions by obtaining a Unitary Patent in 25 EU member states (with the exception of Spain, Poland and Croatia) at the European Patent Office, which will be centrally enforceable before the Unified Patent Court, a local division of which will be established in Belgium as well.

Particular inventions or knowledge can also be contractually shielded from competitors as trade secrets. It should also be noted that Belgian law is generally quite favourable towards holders of Intellectual Property Rights, as it provides for tax incentives and guarantees and timely enforcement measures at a very reasonable cost before centralised courts.

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 Baseline can help you answer these questions and create a fit-for-purpose roadmap to guide your business through its internationalisation journey.

Contact us

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

This summary gives general information only as at May 2018 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.

Bird & Bird are a “European powerhouse backed up by strong teams across the Middle East and Asia-Pacific regions” that are “strategic thinking and global thinking” with a “very good footprint across the world.”

Chambers, Global 2018

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