

Forms of doing business in Poland

1. 1. Legal basis

The principal legal acts governing business activity in Poland:

- Act of July 2, 2004 on freedom of business activity (Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej; Dz. U.; Polish Journal of Laws of 2010 No. 220, item 1447 as amended)

The act regulates undertaking, running and closing business on the territory of Poland, as well as tasks of the public administration within this regard.

- Act of September 15, 2000 the Code of commercial partnerships and companies (Ustawa z dnia 15 września 2000 r. Kodeks Spółek Handlowych; Dz. U. Polish Journal of Laws of 2000 No. 94, item 1037 as amended)

The act regulates formation, structure, operation, dissolution, merging, division and transformation of commercial partnerships and companies.

- Act of April 23, 1964 the Civil Code (Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny; Dz. U.; Polish Journal of Laws of 1964 No. 16, item 93 as amended)

The act regulates civil law relationships between natural persons as well as legal entities.

2. 2. Forms of doing business in Poland

Polish persons as well as foreign persons from the European Union and European Free Trade Agreement zones belonging to the European Economic Area and foreign persons from countries which are not party to the Agreement on the European Economic Area, which may benefit from the freedom of business on the basis of contracts concluded by these countries with the European Community and its Member States, may undertake and run a business in following legal forms:

- Sole Proprietorship (*Indywidualna działalność gospodarcza*)
- Civil Partnership (*Spółka cywilna*)
- Registered Partnership (*Spółka jawna*)
- Professional Partnership (*Spółka partnerska*)
- Limited Partnership (*Spółka komandytowa; sp.k.*)
- Limited Joint-Stock Partnership (*Spółka komandytowo-akcyjna; S.K.A*)
- Limited Liability Company (*Spółka z ograniczoną odpowiedzialnością*)
- Joint-Stock Company (*Spółka akcyjna; S.A.*)
- Branch Office (*Oddział*)
- Representative Office (*Przedstawicielstwo*)

The same rules apply also to foreign persons other than those mentioned above who:

- received a permanent residence permit in the Republic of Poland;
- received temporary residence permit pursuant to Act on freedom of business activity;
- received temporary residence and remains married to a Polish citizen living on the Polish territory;
- received tolerated residence permit;
- was granted a refugee status in the Republic of Poland;
- holds “Polish Charter”;
- enjoys temporary protection within Polish territory.

Other foreign persons may only undertake and conduct business in one of the following legal forms:

- Limited Partnership (*Spółka komandytowa; sp.k.*)
- Limited Joint-Stock Partnership (*Spółka komandytowo-akcyjna; S.K.A*)
- Limited Liability Company (*Spółka z ograniczoną odpowiedzialnością*)
- Joint-Stock Company (*Spółka akcyjna; S.A.*)

- Branch Office (*Oddział*)
- Representative Office (*Przedstawicielstwo*)

as well as to enter into such companies or purchase their shares, unless international agreements provide otherwise.

Sole Proprietorship (*Indywidualna działalność gospodarcza*)

It is the simplest form of business which is owned and run by one individual and in which there is no legal distinction between the owner and the business.

The Sole Proprietorship might be run by a natural person with full capacity for acts in law.

It is relatively easy to begin the business activity in this form in which no minimum initial capital is required. The sole proprietor shall obtain an entry into the Business Activity Central Register and Information Record. All required documents might be enclosed using the online system run by the Minister of Justice.

This form of running a business is designed for small entrepreneurs. The Sole Proprietor has no legal personality. It is the entrepreneur who is fully liable for all debts and obligations without limitation to the extent of his or her entire property.

Civil Partnership (*Spółka cywilna*)

A Civil Partnership may be established to operate a small business.

The partnership in question has no legal personality consequently each partner is jointly liable for the debts and obligations of the partnership without limitation to the extent of his or her entire assets. It's partners who are entrepreneurs and they run the business under their business names (individual identification of an entrepreneur). Accordingly a Civil Partnership is not entitled to have a business name. The name may however refer to a business entity run by the Civil Partnership. Name of such business entity (known as trade name) is protected by the law and may be reported to the Patent Office as a trademark.

The Civil Partnership is set up in accordance with the general principles of the Civil Law. By concluding an agreement the partners shall strive to achieve a common economic purpose by acting in a specific manner.

Registered Partnership (*Spółka jawna; sp.j.*)

A Register Partnership may be set up for the purpose of operating business under its own name on a larger scale. It brings together partners to conduct business, and unlike Civil Partnership, which can be set up only for a specific transaction.

Registered Partnership has no legal personality yet it is a personal partnership. Although, the Registered Partnership has a legal capacity and may in its own name acquire rights, incur obligations, sue and be sued.

Each partner has unlimited liability for debts and obligations of the partnership, extending to their entire assets, including personal assets, joint and subsidiary with other partners and with the partnership.

A creditor of a partnership may carry out an execution from partner's assets in case an execution from partnership's assets proves ineffective (subsidiary liability of the partner). What must be noted is that only individual partners are taxpayers.

Professional Partnership (*Spółka partnerska; sp.p.*)

This kind of partnership may be established for the purpose of practicing liberal profession in the form of a partnership and conducting business under partners own business names. Only limited amount of liberal professions defined in the Code of commercial partnerships and companies can be conducted in this form of partnership, e.g. advocates, attorney at law, architects, building engineers, insurance and securities brokers and investments advisers. The Professional Partnership does not have a legal personality yet it is a personal partnership. Although, the Registered Partnership has a legal capacity and may in its own name acquire rights, incur obligations, sue and be sued.

All partners must be natural persons and possess the license to practice a liberal profession.

The partnership is being represented by each partner unless the deed of partnership provides otherwise. This form of conducting a business allows to avoid liability for malpractice committed by co-partners.

Limited Partnership (*Spółka komandytowa; sp.k.*)

Overview

A Limited Partnership is established for the purpose of conducting business activity under its own business name usually for the purposes of a larger commercial enterprise.

This partnership may be established by at least two natural or legal persons or organizational units without legal personality which were granted a legal capacity on the basis of a specified act (for example partnerships).

The Limited Partnership has no legal personality. Nevertheless, it possess a legal capacity and may in its own name acquire rights, undertake liabilities, sue or be sued. There is no requirement as to the minimum amount of nominal capital.

There are no additional requirements with respect to foreign investors incorporating a Limited Partnership.

Liability

The basis for separation of a limited partnership from other companies is the design of personal responsibility - a limited partnership is a partnership in which to creditors for the obligations of the company at least one partner is liable without limitation (partner), and the liability of at least one (limited partner) is limited.

Representation

The Limited Partnership is represented by the partners who were not deprived of the right to represent the partnership under an articles of association or by a valid court decision. A limited partner may represent the partnership only as an attorney. The Limited Partnership may be also represented by a proxy.

Limited Joint-Stock Partnership (*Spółka komandytowo-akcyjna; S.K.A*)

Overview

Limited Joint-Stock Partnership is a specific merger of a partnerships and a capital companies features consequently it is devoid of legal personality. At the same time this form of business allows the entrepreneur to raise capital by issuing shares without having to sacrifice the personal character of the company.

Limited Joint-Stock Partnership operates under its own business name and it's usually formed for a larger-scale business, for example large family enterprises.

It must be founded by at least two natural or legal persons or organizational units without legal personality which were granted a legal capacity on the basis of specified act. The Limited Joint-Stock Partnership has no legal personality, but it has been granted a legal capacity by law therefore it may acquire rights in its own name, undertake liabilities, sue or be sued.

The minimum nominal capital should amount to at least 50.000 pln and it's divided into shares.

There are no additional requirements with respect to foreign investors incorporating the Limited Joint-Stock Partnership.

Liability

At least one shareholder is liable to the creditors for debts and obligations of the partnership without limitation ("partner") and at least one shareholder is not liable for debts and obligations of the partnership. Nevertheless, if a business name of the Limited Stock-Joint Partnership includes a name or a business name of a shareholder, this shareholder is liable for obligations of the partnership without limitation.

Representation

Limited Joint-Stock Partnership is represented by a partners who was not deprived of the right to represent a partnership under an articles of association or by the valid court decision. Shareholder may represent the partnership only as an attorney. The Limited Joint-Stock Partnership may be also represented by a proxy.

Supervisory Board in the Limited Joint-Stock Partnership is not obligatory, however if the number of shareholders exceeds 25, the Supervisory Board is compulsory.

Special tax provisions

This legal form of doing business is very attractive due to specific tax provisions which enables to limit tax obligations. Each partner in the Limited Joint-Stock Partnership pays taxes separately (Personal Income Tax PIT or Corporate Income Tax CIT). Act on corporate income tax of February 15, 1992 Dz. U.; Polish Journal of Laws of 2011 No. 74, entry 397 as amended in article 6 enables to exempt invest funds and common investment funds with their seat in UE from the CIT tax. On 4th December 2011 an amendment concerning requirements for investment fund entered into force. The scope of the investments conducted by common investment funds shall be limited, as well as new restrictions concerning the supervision by domestic supervisory body has been set. Having considered this regulations, Partnership articles of association may allow to redistribute 98-99% of the Partnership profit to the fund, which is not obligated to pay the CIT tax. Described solution substantially limits the tax duties.

Limited Liability Company (*Spółka z ograniczoną odpowiedzialnością; Sp. z o.o.*)

Overview

Limited Liability Company as one of the most common form of running a business is a form of capital company. As the rest of a capital companies, described below, mains feature of a Limited Partnership are:

- legal personality;
- liability for debts is limited to the company's capital;
- formation of the company is effective as of the date of entry into the National Court Register
- it's established for the purpose of conducting business activity under its own business name.

A Limited Liability Company may be established for any purpose allowed by law. It may be established by one or more natural or legal persons (as long as it is not incorporated solely by another single-member limited liability company) or organizational units without legal personality which were granted a legal capacity on the basis of specified act (for example a partnership).

The Limited Liability Company has a legal personality what makes it a separate legal entity.

The minimum capital of the company used to amount to 50 000 pln. It is now reduced to the amount of 5000 pln in order to increase the number of emerging companies and investments from abroad. There are no additional requirements with respect to foreign investors incorporating a Limited Liability Company.

The Limited Liability Company is a subject to the Corporate Income Tax CIT.

Liability

The shareholders are not liable for the company's obligations, they bear a risk up to the value of shares contributed. Members of the management board may also in some cases be liable for the company's obligations when the execution against the company has proved ineffective.

Bodies of a company

Meeting of Shareholders is a superior authority of a company. An ordinary meeting of shareholders should be held no later than six months after the end of each financial year.

The Limited Liability Company is represented by a Management Board (consisting of at least one person). It may also be represented by a proxy. The Management Board shall be appointed and recalled under a resolution of shareholders. The Management Board member's right to conduct the company affairs and to represent the company cannot be subjected to limitations against third parties.

"24 hours" Limited Liability Company

On 1st January 2012 an amendment to the Code of commercial partnerships and companies which facilitated the registration of the Limited Liability Company entered into force. Since the beginning of 2012 the Limited Liability Company might be registered via internet by using the form specimen published on the internet site of the Ministry of Justice. The Register Court shall examine the form within just one day (therefore the "24 hours Company"). The certified digital signature is not required.

In comparison to the standard registration of the Company, initial capital do not need to be fully made before lodging the petition for registration.

Joint-Stock Company (*Spółka akcyjna; S.A.*)

Overview

Legal construction of a Joint Stock Company is adapted to carry out large business projects and allows the accumulation of substantial financial resources. Generally, the company's capital comes from the numerous persons - the future shareholders, which as a result makes an establishing of this company more formal than it is in the case of a Limited Liability Company. The partners have a much less freedom in shaping company's bodies. A Joint-Stock Company has a legal personality what makes it a separate legal entity.

This form of business may be founded by one or more persons although it may not be established solely by a single-member Limited Liability Company. The minimum nominal capital amounts to 100.000 pln.

There are also no additional requirements with respect to foreign investors incorporating a Joint-Stock Company. The Joint-Stock Company is a subject to the Corporate Income Tax CIT.

Liability

The company is liable for its debts and obligations with the whole property without any limitation. The shareholders are not liable for the company's obligations, they bear a risk up to the value of shares taken up.

Organs of the company

A General Assembly is a superior authority of the Joint-Stock Company.

The Company is represented by a Management Board, which consist of at least one person, according to principles laid down in company's statute. It may be also represented by a proxy.

In this kind of a company, a Supervisory Board must be appointed.

Both in Join-Stock Company and Limited Liability Company only a natural person with full capacity for acts in law can be a member of a management board, supervisory board, audit commission, or a liquidator.

Branch Office (*Oddział*)

Overview

The business activity of a branch office must overlap with foreign entrepreneur business activity. Nevertheless, its objectives do not have to be wider than a foreign entrepreneur's business activity carried out abroad: the business pursued by the branch office may constitute only a part of the entire business operations conducted by the foreign entrepreneur.

The Branch Office does not possess a legal capacity.

Obligations of a foreign entrepreneur

A foreign entrepreneur is obliged to:

- appoint a person who represents a foreign entrepreneur in the branch office;
- use the original name of the foreign entrepreneur, together with the Polish translation of the entrepreneur's legal form of operating with the phrase '*oddział w Polsce*';

- keep separate books in Polish in accordance with the provisions of Polish accountancy laws;
- notify the Minister of the Economy of any factual and legal changes (such as a winding-up of the foreign entrepreneur which established the Branch Office or a loss of his right to conduct business activity) within 14 days following the occurrence of such changes.

Representative Office (*Przedstawicielstwo*)

Overview

A Representative Office is a subordinated organizational entity functioning for the purpose of advertising and promoting the business activity of the foreign entrepreneur.

The Representative Office may also be established by foreign persons appointed to promote the economy of the country of their seat, but the scope of activities of such representative office may be limited exclusively to advertising and promotion of the economy of the aforesaid country.

Obligations of a foreign entrepreneur

A foreign entrepreneur is obliged to:

- use original name of the foreign entrepreneur, together with the Polish translation of the entrepreneur's legal form of operating and with the phrase '*przedstawicielstwo w Polsce*';
- keep separate books in Polish in accordance with the provisions of Polish accountancy laws;
- notify the Minister of the Economy of any factual and legal changes concerning data included in the application for registering in the Register of Representative Offices, as well as of the commencement and termination of any proceedings conducted to wind-up the business of the foreign entrepreneur and of the loss of his right to conduct business activity or possess property, not later than 14 days from the time upon which such events take place.

3. 3. Establishing a business in Poland – formal requirements

Partnerships and companies

A registered partnership and professional partnership deed shall be performed in writing under the pain of nullity. Deed of other partnerships and companies shall be made in the form of a notarial deed.

Partnerships and companies must be registered in the Central Statistical Office (*Główny Urząd Statystyczny GUS*) which grants a REGON statistical number.

They also have to be registered in the Register of Entrepreneurs of the National Court Register (*Krajowy Rejestr Sądowy KRS*), which grants a KRS number.

Tax-paying-entrepreneurs must also be registered in the Tax Office and obtain Taxpayer's Identification Number (*Numer Identyfikacji Podatkowej NIP*). Certain entities must receive VAT certificate. It is also required that they are registered in the Social Security Office (*Zakład Ubezpieczeń Społecznych ZUS*).

Costs

Cost of establishing new partnership or company vary depending on the form and initial capital. Generally, the most expensive form in doing business is the Join-Stock company and Limited Liability Company.

There are also formal requirements for Branch Offices and Representative Offices. A Branch Office has to be registered in the Register of Entrepreneurs of the National Court Register (*Krajowy Rejestr Sądowy KRS*). A Representative Office has to be registered in the Register of the Representative Offices of Foreign Entrepreneurs, which is kept by the Minister of Economy.

Taxation – general information

The Polish tax system distinguish 12 types of taxes, including:

➤ ***Direct taxes***

- Corporate Income Tax CIT,
- Personal Income Tax PIT,
- tax on civil law transactions,
- property tax,
- tax on means of transport,
- inheritance and donations tax,
- agricultural tax,
- forestry tax,
- tax on dogs;

➤ ***Indirect taxes:***

- Value Added Tax VAT (tax on goods and services),
- excise duty,
- game tax.

Corporate Income Tax (CIT)

General information

The CIT is, apart from VAT, the most important tax levied on activities of legal persons in Poland. This is flat-rate, generally imposed on income, irrespective of the source of revenue, from which the income has been earned.

The basis CIT tax rate is 19% of the tax base. This rate is also applicable to incomes from dividends and other incomes from participation in profits of legal persons having their seat in Poland.

Subject of taxation

Following entities are subjects of the CIT:

- legal persons (in particular: , , capital companies in organization,
- partners who are legal persons,
- foreign partnerships, if in the states of their headquarters they are treated as legal persons and they are subject to unlimited tax liability,
- tax capital groups.

Personal Income Tax PIT

General information

Basically, natural persons in Poland are subject to income tax which is calculated in according to a progressive tax scale. At present, there are two general income thresholds: 18% and 32%.

Value Added Tax VAT (tax on goods and services)

General Information

Polish VAT is harmonized with the common VAT system binding in the Member States of the European Community since May 1, 2004. It means that VAT is governed by the Polish Law as well as by the Community Law.

There are four tax rates:

- 22% rate is a basic rate; applies to majority of goods and services,

- 7% rate applies to specific goods and services (e.g. goods related to health protection, groceries and hotel services),
- 3% rate applies to supply of some farm produce,

Subjects of taxation

The VAT is imposed on entities which professionally carry out below stated activities:

- supply of goods,
- supply of services,
- export of goods,
- import of goods,
- intra-Community supply of goods,
- intra-Community acquisition of goods.

It must be noted that 0% rate applies to intra-Community supply of goods as well as exports of goods.

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