

## Representative Office

### 1. Concept

A foreign entrepreneur may set up representative offices in Poland. A representative office operates for and on behalf of the business of the foreign entrepreneur within the territory of Poland and is a part of the organisational and functional structure of his or her business. Therefore, the entrepreneur conducting the business activity is considered to be the foreign investor him/herself.

In legal terms, a representative office set up by a foreign entrepreneur is a subordinate organizational entity functioning with the purpose of advertising and promoting the business of the foreign entrepreneur. Advertising and promotion are the constituent elements of the foreign entrepreneur's business activity.

In addition, a representative office is not independent accounting unit. Any division of property by the entrepreneur, if effected, is of a purely technical and organizational nature.

The objectives of the representative office are not necessarily coherent with the objectives of the business activity because the representative office functions with the purpose of advertising and promoting the business of the entrepreneur.

A representative office must be entered in the Register of Representative Offices of Foreign Entrepreneurs, which is kept by the Minister of the Economy.

### 2. Application for registration

The application for registration should be made in Polish and specify:

- the name, registered place of seat and legal status of the foreign entrepreneur setting up a representative office,
- the business objectives of the foreign entrepreneur setting up a representative office,
- the first name, surname and address in Poland of a person authorized to represent the foreign entrepreneur in a representative office,
- the address of a representative office in Poland.

The following documents should be attached to the application referred to above:

- the founding deed (articles of association, statutes) of the foreign entrepreneur (if the foreign entrepreneur operates on the basis of such a founding document),
- an excerpt from a Commercial Register or the equivalent thereof, (if the foreign entrepreneur operates on the basis of such a founding document),
- a statement from the foreign entrepreneur concerning the es-

establishment of a representative office in Poland,

- a document confirming that the foreign entrepreneur has the legal title to premises or real estate in which activity of the representative office is to be conducted.

Any of these documents that are in foreign languages should be submitted together with their sworn translation into Polish. This requirement is found in Art. 97 Paragraph 3 of the Economic Freedom Act of 2 July 2004 and Article 27 of the Constitution of the Republic of Poland which provides that Polish is the official language in Poland.

The requirement to disclose information on the objects of business activity helps determine whether the advertising and promotional activities that a representative office intends to carry out indeed correspond to the foreign operator's business activity. Although the law does not specify how detailed the description of the objects of business activity ought to be, the assumption is that enough detail must be provided in order to allow the registration authorities to duly perform their obligations set out by provisions concerning the refusal to grant a decision on entry in the Register, or, on the other hand, ban on the conducting of activities by a representative office.

Particular attention should be paid to the documents attached to the application, especially the foreign entrepreneur's founding deed. This is the instrument of constitution, formation or appointment of the entrepreneur. Its character may vary from one legal system to another. The differences concern mainly the legal and organizational forms in which the entrepreneur may take up and conduct business activity. This is of key importance to commercial companies.

### **3. Entry in the Register of the Representative Offices of Foreign Entrepreneurs**

The setting up of a representative office requires entry in the Register of the Representative Office of Foreign Entrepreneurs, which is kept by the Minister of the Economy.

A certificate of registration entry is issued. It should contain data from the application, as well as the entry number and date. If a certificate has defects in its form or contents, or does not include information present in the entry, the foreign entrepreneur may apply for correction of the certificate.

The Minister of the Economy issues a negative decision whereby the application for entry in the Register is rejected under the following circumstances:

- If the existence of a representative office would pose a threat to national security and defense, or to a State secret, or to any other important public interest,
- If the application for registration concerns activities which surpass advertising and promotion of the foreign entrepreneur, or has defects that have not been remedied within the set time limit, or lacks required documentation.

#### **4. Obligations of a representative office**

A representative office is obliged to:

- use the name of the foreign entrepreneur in the language of the country in which his or her registered office is located, together with a Polish translation of the name of the economic entrepreneur's legal form and the phrase "*przedstawicielstwo w Polsce*";
- keep separate books in accordance with the provisions of laws on accountancy;
- notify the Minister of the Economy of any factual and legal changes concerning data included in the application and in the statement of the foreign entrepreneur concerning the extent to which the share capital has been financed by contributions, as well as of the commencement and termination of any proceedings conducted to wind-up the business of the foreign entrepreneur and of the forfeiture of his right to conduct business activity or possess property, no later than 14 days from the date when such events take place.

#### **5. Ban on the activities of a representative office**

After consulting the Minister responsible for the area of the foreign entrepreneur's business activity, the Minister of the Economy may issue a decision to ban the activities of a representative office on the following grounds:

- if a representative office has committed a gross violation of Polish law or fails to perform its obligations arising from the provisions of the law;
- if wind-up proceedings have been instigated against a foreign operator who has set up a representative office, or the right to conduct business activity or possess property has been forfeited by the entrepreneur;
- if activities of the foreign entrepreneur or of his representative office pose a threat to national security and defense or to a State secret or to any other important public interest.