

**TGC** CORPORATE  
LAWYERS

**Procedure of establishing  
a Branch of the Company  
in Poland**

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# Memorandum

Drawn up by

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for

**Client interested in establishing business in Poland**

regarding

**Procedure of establishing a Branch of the Company in Poland**

## INTRODUCTION

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This Memorandum was drawn up by TGC Ordowska Kancelaria Prawnicza Sp.k. (hereinafter referred to as: „**TGC**”) for client interested in establishing business in Poland in order to present procedure of establishing a branch of the company (hereinafter referred to as “**Branch**”) in Poland, its main characteristics and necessary costs.

## CHARACTERISTICS OF THE POLISH BRANCH

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The branch in Poland is an extension of the mother company incorporated in another country. This can be an excellent choice for foreign multinational companies which want to expand their activities to Poland and fully control the activities of their office in the chosen country without establishing separate corporate entity.

Below, we list the main characteristics of the Branch:

- **No separate legal status:** the Branch in Poland is not a separate legal entity from the foreign parent company. This means that the founders (foreign parent company) does not need to select a corporate business form. The branch is created as an extension of a foreign company and used to be referred to as “representative office“ of that foreign company. Thus the Branch is regarded as part of the foreign entity, it does not have separate legal personality but it means as well that any action or obligation of the Branch and thus liability of the branch in Poland will directly affect the foreign company which is directly responsible and liable for its actions and its potential liabilities to third persons/authorities in the country the Branch has been established as the such Branch must fully observe local laws;
- **Limited scope of business:** the Branch must have the same business activities as a parent foreign company; it cannot perform any different business actions than those provided in the parent company statutes. It may perform part of the activities of the foreign company but under the condition that they are clearly provided in the parent company establishing statutes;
- **Dependence:** any branch is completely dependent on the foreign company.
- **Name:** the name of the Polish branch must be the same as the name of the foreign company, translated into Polish and with the addition: “Oddział w Polsce”.
- **No separate/additional capital** is required for establishment of the Branch – as the branch can use freely parent company capital - which is regarded as convenient at the beginning and at the moment of its registration but which

means as well that if the Branch wishes to participate in any tenders the Branch must provide all current documentation, financials and credentials of the parent foreign company.

- **activity can be started only after completion of registration of the Branch.**

The fact that the branch has no separate legal status and thus separate legal personality is one of the most important issues to take into consideration when opening a Polish branch. This means that: without separate legal personality, there is no legal or judicial capacity of actions of such branch, meaning that the branch “itself” cannot be a party to any legal proceedings – which thus always must be taken by the foreign company or when the branch becomes a defendant it is not the branch but the foreign parent company which is the proper party of the lawsuit.

In addition, the Branch does not have procedural capacity and it cannot defend its own interests before court – as the Branch acts “for and on behalf” of the foreign parent company and thus it is foreign company which always have to issue proper authorization in this regard and formally acts as a party in such proceedings.

Thus the foreign parent company retains all rights (eg. to IP), powers but also liability for all actions of the branch as the branch lacks separate legal, judicial and procedural identity and powers.

There are no requirements for a minimum share capital value for a Polish branch, however, there are certain requirements for registration but the court has right to demand financial statements of the foreign parent company in order to be able to assess its financial situation.

A Polish Branch of any foreign company must be entered into the Register of Entrepreneurs kept by National Court Register (KRS).

Only **after** completion of this step – completion of registration of the Branch in National Court Register (KRS) the Branch is allowed to start engaging in its business activities.

Once it is registered, the Branch is granted a certificate of registration. The branch will also need to register for VAT purposes as Polish Branch is subject to subsequent mandatory tax and value added tax registrations, as required when it provides certain types of goods or services locally in Poland for and on behalf of the foreign parent company.

The branch may need special permits and licenses in order to engage in certain business activities. Depending on the business sector in which they will perform, some new Polish Branches need to apply for licenses or special permits with the relevant authorities.

## OPENING OF A BRANCH – BASIC LEGAL REQUIREMENTS AND OBLIGATIONS OF THE BRANCH

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The Branch in Poland is subject to similar obligations as other business entities in the country and must observe Polish laws.

Thus:

- a) The Branch must keep its books in Polish, in compliance with Polish accounting law and tax laws - being separate from those of the parent company.
- b) Any change in legal form or status of the foreign parent company abroad, including its liquidation or bankruptcy, must be notified to the Polish Minister of Economy – and liquidation of the parent company means liquidation of the Branch as the Branch acts only for and on behalf of the foreign company as the Branch has no separate legal status.
- c) All employees of the Branch must be employed in accordance with Polish law and thus all social security premiums and taxes must be paid locally unless such person is seconded only temporarily to the Branch.

The Polish Branch is required to have an appointed authorized person with the role of “representative “ of the foreign parent company. The representative will need to provide to National Court Register (KRS) his or her identification details like name and address in Poland.

A Polish Branch needs to be registered in the National Court Register and the following documents are required to file for its registration:

1. General information: details about the registered office or place of business/address of the Branch in Poland ;
2. Full documentation confirming proper registration of the foreign parent company for corporate and tax purposes - confirmed for identity with originals preferably by the foreign notary, and proper resolution of the foreign company passed in accordance with its statutes on opening the Branch in Poland ; sometimes information about all related companies is also required ;
3. Foreign parent company Board Members details their names and addresses;
4. Representative details: information about the individual appointed as branch representative in Poland.
5. The business scope: details about the business that will be carried out in Poland; the definition is made as per the Polish equivalent of the NACE classification.

In some cases, for example, when the parent company is a large foreign company, the names and addresses, as well as other details regarding the Supervisory Board

member, may also be required. The personal identification data for the appointed Polish representative will also include his personal identification number, his address in Poland as well as the name of the company official who made the appointment as a branch representative.

In addition to the documents mentioned above, the following will also be required:

- the branch opening decision: the decision of the Management Board to open the branch in Poland;
- the decision to appoint the representative;
- specimen signature of the individual who will act as branch representative in Poland, signatures submitted before the notary public;
- the certified copies of the foreign company's Articles of Association and a sworn translation thereof.

## REGISTRATION OF THE BRANCH

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Pursuant to provisions of the Law on National Court Register the branch registration application should be examined by the National Court Register Department in within 7 days of receipt (it usually takes much longer time: approximately from 1-2 months) - and before the completion of registration the branch may not take any activities in Poland.

When any lacks or missing documents are found in the application, the Court will return it to the applicant and the applicant generally will have only 7 days to make the necessary corrections / supplementation of documents / amendments.

It is possible – but happens very rarely – that the Court decides to conduct a hearing for the examination of all documents provided and explanation of the doubts if such arise.

All documents provided by foreign parent company must be filed to the court with their court sworn translation into Polish – as otherwise they will be returned without examination.

If registration of the branch is denied the applicant has a right to appeal and the appeal must be filed within two weeks after the decision refusing registration was delivered.

Apart from the registration with the National Court Register, the branch also needs to be registered with:

- a) Social Insurance Institution (ZUS) within 7 days,
- b) the tax office,
- c) the Central Statistical Office within approximately 21 days.

## SPECIAL CONDITIONS FOR BRANCH OPENING

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**Opening a branch in Poland** depends on the fact whether the foreign parent company opening the branch is registered in an EU or a non-EU country. In the first case, the procedure is straightforward and the EU-based company is under the same conditions for branch incorporation as a Polish national.

When the foreign company opening the **Polish branch** is not incorporated in an EU or EFTA member state, then it can only open the branch **only** under a reciprocity procedure, meaning that opening branch in Poland will only be possible if it is possible for a Polish company to open a branch in the country of origin of the foreign parent company and enjoy similar economic rights as local entities.

Moreover, in such situation for official foreign documents (including notarial deeds), their legalization is required, according to the internal regulations of a given country. In the case of documents from countries that are party to the Hague Convention of 1961, instead of legalization, the documents can be confirmed with the apostille clause. In practice, the possibility of using the apostille applies to most European countries.

As previously stated, the branch in Poland may not perform other business activities than the parent company. In order to ensure that this rule is observed, the business activity of the foreign company should be examined before starting the branch registration procedure.

## BRANCH TAXATION AND REPORTING OBLIGATIONS

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**For branches, the formal "one-stop" procedure does not work as:**

- a) along with registration in the National Court Register, NIP is not automatically assigned.
- b) It is necessary to submit an application to the so-called "large tax office" (e.g. I or II Mazowieckie Tax Office for a branch based in Warsaw). Some offices (eg

MTO) accept identification applications on the NIP-8 form, others require NIP-2 - it is worth asking about the practice of a given office before submitting the application. The application is free of charge, and the NIP number is issued within 7 days (in practice, it is 2-3 days).

- c)** The branch can settle VAT charged directly in Poland. In order to register a branch as a VAT payer, a VAT-R form must be submitted to the tax office. In order for registration to be possible, a branch must conduct taxable activities and have the human and technical resources needed to operate in Poland, and due to the tightening of tax law, tax offices are often willing to control compliance with the requirements.

The Polish branch is subject to taxation in Poland in accordance with the provisions set forth by the Polish Ministry of Finance and as per the Corporate Income Tax Law (although it is not a separate corporate entity).

The list below includes the main taxed payable by companies, both branches, and resident companies:

- 19%: the standard corporate income tax rate;
- 9%: the reduced corporate income tax rate applicable to income except for capital gains, which is available to certain small taxpayers;
- 19%: the withholding tax on dividends paid by a Polish resident company to a non-resident company; can be reduced as per a double tax agreement.
- 23: the standard VAT rate;
- 5% and 8%: the reduced VAT rates for certain goods and services.

As far as the branch's reporting obligations are concerned, it is expected that this business form will keep its accounting records separate from that of the parent company. Moreover, these must be kept in the Polish language, irrespective of the language in the country where the headquarters of the parent company is based.

## **COSTS**

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The costs to establish a Branch (excluding legal fees and employment, leasing, and other operational costs) include:

- a)** Approximately of 500-1000 PLN+ VAT of costs of sworn translation of required documents ( at the average),
- b)** a PLN 500 registration fee and a PLN 100 fee for publishing the required announcement in the official court bulletin.



## BASIC DIFFERENCES BETWEEN POLISH BRANCH AND LIMITED LIABILITY COMPANY (Spółka z ograniczoną odpowiedzialnością)

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The basic differences between limited liability company and the branch are as follows:

Referring to the branch and the subsidiary (sp. z o.o. company) – the main general difference relates to:

- **The legal form** - which influences the responsibility and liability of the foreign, mother company and its board members. The Polish subsidiary is a distinct and separate limited liability company in Poland that bears full liability for its activity, as opposed to a branch. This form of business entity can be generally recommended for foreign companies that want to limit the liability of their Polish operations. The Polish company will bear full independent from the foreign parent liability for its assets in Poland and the parent company will not have to deal with eventual losses.
- **Scope of liability** - due to the fact that the branch in Poland does not have separate legal personality and always acts “ for and on behalf “ of the foreign parent company the liability for its actions always rests with the foreign parent company. This means that the foreign legal entity bears full liability for the branches’ actions. The foreign company needs to appoint a Representative for the Polish branch;
- **Scope of activity** - Branches in Poland operate within the objectives of the mother company and are essentially an “ establishment “, but not separate part of the company, operating in a different country;
- **Commencement of activity** - Branches may start their activity only after completion of registration in KR while a limited liability company may start its activity while being “in organization“ – eg. after filing for registration but before its final completion;
- **Capitalization and capital flow** - the advantages of a branch include an easier flow of the capital between the foreign parent company and the branch, while for the subsidiary any flow of capital between entities has to include formal actions (eg. capital payment at the beginning, loans, increase of capital, dividend payment, etc);
- In relation to **IP rights**, in general, in case of a branch all IP rights belong to foreign, parent company, while in case of a subsidiary the intellectual

property would be owned by the local entity, if not transferred to the parent company pursuant to the special contractual agreements;

- **Maintenance costs:** rental costs, bookkeeping and accounting, payroll, and legal advisory related cost of services needed are generally similar as statutory legal, fiscal obligations are the same and they depend on scope of activity of either a branch or limited liability company.



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