



STEPS TO CREATE A COMPANY IN BRUSSELS

1. LEGAL ENTITY: A BRANCH OFFICE OR A BELGIAN SUBSIDIARY?

As an entrepreneur decides to establish his business in Belgium, the first question that shows up is the choice of the legal status of the entity.

Two possibilities are offered:

- The branch office
- The subsidiary

This choice is crucial because this will have long term implication on both legal and fiscal sides.

A) The branch office

A representation office (a branch) is not, legally speaking, a separate entity of the foreign based mother-company, whereas a subsidiary is considered a Belgian company. In other words, a branch office is just an extension of the foreign mother company; a branch office has neither stocks or shares, nor a board of directors.

Advantages:

- ⇒ No need of a minimum capital to start the business
- ⇒ No need to go to a notary to act the creation of the branch
- ⇒ Fiscal benefits (no taxes on capital gains, loss balanced by the benefits of the mother company)

B) The subsidiary

A subsidiary is a company created by a mother company on the Belgian soil but owning its own capital and its own board of administration. Hence, the subsidiary and the mother company are considered has two separate legal entities.

Advantages:

- ⇒ Since a subsidiary and the mother company are considered as two separate legal entities, the mother company cannot be held responsible for its subsidiary. Unlike a foreign investor who is answerable for the activities of his Belgian branch office.
- ⇒ From a marketing point of view, a subsidiary will offer a Belgian or European company image rather than that of a foreign company. This also, could bring a more trustful image to potential Belgian partners.
- ⇒ The annual reports to Belgian authorities are less strict for subsidiaries than for branches.

2. PROCEDURE: WHAT ARE THE STEPS TO CREATE A COMPANY?

A) Procedure and costs relating to the opening of a branch in Belgium

If a foreign company decides to set up a branch office in Belgium, a few steps have to be completed in order to create the branch.

Corporate resolutions:

Any foreign company, wishing to set up a branch in Belgium must appoint, via a decision of the Board, someone to represent and act on behalf of the mother company, responsible for all activities of the branch, including for transactions with third parties and legal matters. This person will be considered as the « legal representative » of the company.

Official documents to legalize and to translate:

In order for a company to open a branch office in Belgium, there are a few documents that have to be legalized by a notary from the origin country and translated into Flemish or French by a Belgian sworn translator prior to the publication into the Belgian Official Journal (Le Moniteur Belge). Translation is not required when the documents to be produced are already established in one of the official languages.

- ⇒ Corporate resolutions
- ⇒ Company by laws
- ⇒ Copy of the company registration to the local court of commerce

Financial documents:

The foreign company must also translate the most recent financial report of the mother company in order to register them to the National Bank of Belgium prior to publication into the Belgian Official Journal.

Administrative steps:

A) Court of commerce:

The documents listed above must be registered to the court of commerce of the judiciary area where the branch is established.

B) One stop desk for companies:

The branch must, afterwards go to a "one stop desk for companies" which will register it to the Crossroad bank for enterprises in order to be granted:

- A company number
- A VAT number
- Affiliation to a payroll agency

C) Fees:

Additionally to legal and fiscal fees, the branch must also allow a budget to:

- Translate the documents (1.5€/line of text)

- Fees for the publication to the Belgian Official Journal (247€/page)
- Registration to the Crossroad Bank for Enterprises (73€)
- Registration to the VAT (53€)

Contact:

Court of Commerce

Boulevard de la deuxième armée Britannique, 148
1190 Brussels

www.juridat.be/tribunal_commerce/bruxelles/index.htm

One Stop desk for companies

http://mineco.fgov.be/Codecharge/Ondernemingsloketten_perloket_fr/Ondernemingslok_list.asp

B) Procedure and costs relating to the opening of a Belgian subsidiary

The establishment of a Belgian subsidiary implicates the creation of a Belgian legal entity. Two main possibilities are offered:

- The Société anonyme (SA - Company limited by shares)
- The SPRL (Company with limited liability)

1. SA (limited by shares)

The SA is the most convenient form for big companies. Indeed, the minimum capital amount invested for the constitution is far more important than for an SPRL.

A) Minimum capital:

The creation of a SA requires a minimum capital of 61.500 € liberated by, at least, two founders, The actions must be since, 08/01/08, converted into shares and placed on a bank account in order to be manageable and transferable by bank companies.

B) Management:

An SA is represented by a board of direction appointed during the creation process. The board is in charge of the daily management and the accountancy of the company. The minimum number of directors is three, there is no maximum.

2. SPRL (Limited liability)

Probably the type of company best adapted to the needs of young entrepreneurs. The minimum capital required is less than for an SA and the shares, by nature nominative, are less easily transferable. All the same, the owners of a SPRL have the liability protection of a corporation.

A) Minimum capital:

The future associates commit themselves to bring into the company the sum of 18.550 €. The amount of the capital released matches the amount the associates brought into the company. In the case of an SPRL, it represents 1/5 of the total capital subscribed, with a minimum of 6.200 €.

In case of an SPRL with only one shareholder, the minimum capital to be invested is limited to 12.400€.

B) Management:

A SPRL is managed by one or more administrators called « gérant », physical person, full partner or not, remunerated or not. Unless otherwise specified in the statutes, or unanimously agreed among founders, the administrators, being or not full partner, are appointed by the founders in the incorporation act for an unspecified term implicitly, for the full duration of the company; their mandate is revocable, wholly or partly for reasons of gross negligence only.

3. Standard procedure

The following steps have to be followed for the constitution of every company.

a) Act of incorporation:

This document must be drafted by a Belgian notary, based on the specifics emphasized by the shareholders.

- Name and addresses of the shareholders
- Amount of the capital bring by every shareholder

b) Business plan and financial plan:

A business plan covering the two first year of activity as well as an anticipation of future financial contribution of the shareholders must be drafted.

Usually, a business plan must contain:

- An overview of your company project
- A listing of products and services proposed to your future clients
- A market study of the market segment you want to investigate
- A full description of the human and financial means affected to your action plan.

The financial plan generally concludes the business plan in so far as it translates the entire collection of elements into figures. The main goal being to achieve profitability, it is vital to draw up such a provisional plan.

The financial plan is often assimilated to a legal process in the creation of a company; hence, deposit to a notary is compulsory.

Provisions must insure the three first years of activity. In the case of bankruptcy within this period of time, the court of commerce may ask to provide a copy of the financial plan. Should appear that your company was under-funded (meaning you had not provisioned enough funds for the launching of your company), you may be held personally answerable.

However, note there are no legal recommendations in so far the editorial structure of the plan is concerned, as opposed to the production of the balance sheet and the account book.

c) Opening of a bank account:

A bank account has to be opened in the name of the company. This account will serve the business activities and will appear on all business documents. Most banks will charge operating costs but, the opening of an account in itself is generally free of charge.

d) Evaluation report:

As one of the shareholders brings some valuable goods to the company such as (building, credence ...), this material contribution will be analyzed by an independent consultancy company in order to evaluate the financial value of the contribution.

e) Registration and publication of the Act of incorporation:

- The Act of incorporation must be drafted and legalized by a Belgian notary
- Then, it must be published in the Belgian Official Journal

f) Registration to the Crossroad bank for companies and professional accreditation via the onestop desk:

The main tasks of the one stop desk for companies include:

- Registration to the Crossroad bank for companies
- Control of specific authorizations needed

It is important to mention that a company cannot begin its activities unless it has been previously registered to the crossroad bank.

Additionally, prior to the beginning of the business activities, the Crossroad bank also checks the competences of "basic management" of the Managers.

Basic management competences:

Every person wanting to start a business in Belgium must prove its competences of basic management. This can be established on basis of the diplomas granted to the applicant or on experience.

Professional competences:

In specific sector (mainly construction), some specific knowledge must be proved before being authorized to work in those sectors.

g) VAT number:

After having received your company number, you can ask, at the same desk, for a VAT number

h) Affiliation to a payroll agency:

Every self employed or company manager have to be affiliated to a payroll agency at least 90 days after the beginning of your activity.

This affiliation will allow you and your employees to benefit from retirement allowance, family allowance, healthcare insurance (big risks).

The "small risks" (dentist, physician) aren't covered by the insurance of the payroll agency. So, it is advised to affiliate yourself to a "mutuelle" company to benefit of a complementary insurance.

i) Costs:

- The notary fees will be calculated in function of the capital of the company. Indeed, for an SPRL the fees will be around 1000 €. For a SA, it will be around 1500€. These amounts are an average.
- Publication fees to the Belgian Official Journal: 224,70€
- Registration to the Crossroad Bank: 73€
- Registration to VAT: 53€