



## Steps to create a company in Brussels

### LEGAL ENTITY: A BRANCH OFFICE OR A BELGIAN SUBSIDIARY?

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.

Unlike a subsidiary of a foreign company which is detained and managed by the mother company abroad and owns stocks, an act of incorporation with statutes of its own. A subsidiary must hold general assemblies and comply with any other corporate rule of law.

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.

### PROCEDURE: WHAT ARE THE STEPS TO CREATE A COMPANY?

#### 1. Procedure and costs relating to the opening of a branch in Belgium

Any foreign company, wishing to set up a branch in Belgium must appoint 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.

The corporate resolutions for the start of the branch, together with a copy of the incorporation act and statutes of the foreign company, need to be translated into French or Dutch by a Belgian sworn translator prior publication in the Official Gazette (*Le Moniteur Belge*). *It goes without saying that translation is not required when the documents to be produced are drawn up in either of the two national languages).*

The foreign company will equally provide a translation of the most recent balance sheet to be deposited with the National Bank. As from publication of incorporation in the Official Gazette, the branch shall register at the Crossroads Bank for Enterprises « Banque Carrefour des Entreprises » for the obtaining of a company registration number and the filing for a TVA number from the local TVA administration.

### **What does it cost to set up a branch office?**

In addition to the fees for legal and fiscal advice, the cost for the creation of a branch comprises:

- Translation into French or Dutch : approx. Euro 1.5 per line of 60 characters;
- Publication in the Official Gazette : approx. Euro 207,39 per page (incl. TVA), and
- Crossroads Bank for Enterprises « Banque Carrefour des Entreprises » (Euro 70).

## **2. Procedure and costs relating to the opening of a subsidiary in Belgium**

The creation of a Belgian company requires an incorporation act, executed and authenticated by a notary. The cost of incorporation mainly comprises the cost of publication in the Official Gazette « le Moniteur Belge » and the notary fees. The latter are calculated in function of the company assets. For an SPRL (private company with limited liability) count approximately 1.000 Euro, while for an SA (company limited by shares) expenses near 1.500 Euro. These amounts are approximate and given for guidance only.

[http://www.notaire.be/info/societes/220\\_etapes\\_de\\_la\\_constitution.htm](http://www.notaire.be/info/societes/220_etapes_de_la_constitution.htm)

## **3. Most frequent types of companies**

### **SA (Société Anonyme) or company limited by shares**

The S.A., the most commendable of commercial companies, offers the advantage to make a clear distinction between the company and its shareholders, the latter remaining mostly anonymous.

#### **Founders**

An S.A. must have at least two (2) associated founders.

#### **Minimum capital**

The future associates commit themselves to bringing into the company the sum of 61.500 €.

#### **Capital liberated at the time of constitution**

The amount of the capital released matches the amount the associates brought into the company. In this case, it corresponds to ¼ of the total capital subscribed, with a minimum of 61.500 €.

#### **Administration**

The SA is represented by a board of directors, members of which are appointed at the time of the constitution of the company or, during the holding of a general assembly. The board administrates and represents the company. The law further provides for a minimum number of administrators of least three (3), but not limited to more. The rule notwithstanding, the number of administrators can be limited to two (2) there where the company only has two shareholders.

### **SPRL (Société de personnes à responsabilité limitée) or company with 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.

### **Founders**

An SPRL must have at least two (2) associated founders.

### **Capital subscribed**

The future associates commit themselves to bringing into the company the sum of 18.500 €.

### **Capital liberated at the time of the constitution**

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 €.

### **Administration**

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.

## **4. Other formalities to comply with**

### **4.1. 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.

### **4.2. Production of a business plan and a financial plan**

#### **The business plan**

Drafting a business plan (plan d'affaires) constitutes the ideal preparation prior consultations with private fundraisers, bankers, venture capitalists or the public administration. Do not treat this as yet another procedure among others, it is an important step in the general process.

A conventional business plan comprises a general presentation of the investment project, products and/or services offered, a market study, human capital needs and financial means.

#### **The financial 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 with 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.

### **4.3. Registration at the Crossroads Bank for Enterprises « la Banque Carrefour des Entreprises » for the obtaining of a company registration number**

Self-employed, company administrators and (candidate) entrepreneurs can apply with a one-stop desk called « le guichet d'entreprise » for the handling of a series of administrative formalities on par with the creation of a company or setting up business.

Among the most relevant tasks the desk takes up:

- Registration at the Crossroads Bank for Enterprises « Banque Carrefour des Entreprises » ;
- Authentication of authorisations necessary to setting up a trade activity.

### **4.4. Access to the occupation**

The legislator had provided for different forms of administrative authorisations regulating the access to exercising a professional activity.

#### Basic knowledge in management

Each and every SME, physical or moral person exercising a commercial activity is required to justify a minimum knowledge in management skills.

#### Professional competences

Moreover, in the case of regulated professions, candidate entrepreneurs will have to comply with specific skills of the trade. (34 professions in total, of which 17 in the builders' trade).

### **4.5. VAT**

Under strict conditions, companies and physical persons must apply to activate a Belgian VAT-number (Value Added Tax). Application follows the enterprise registration at the Crossroads Bank for Enterprises.

### **4.6. Registration with the social insurance fund**

Self-employed or company directors must affiliate with a social insurance company within 90 days of the start of commercial activities. This insurance covers the following self-employed social security status: family allowance, pension and healthcare (big risks).

Small risks (GP, dentist) will be covered by taking out a private insurance (mutuelle). Unless self-employment is for complementary activities, understand therefore covered under the status of the main activity (wage earner).