

## **Polonia:**

Información aportada por la Sección Económica y Comercial de la Embajada Argentina en Varsovia.

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La actividad de los agentes comerciales está regulada a nivel europeo por la Directiva N° 86/653/CEE del Consejo de 18 de diciembre de 1986 relativa a la coordinación de los derechos de los Estados miembros en lo referente a los agentes comerciales independientes.

La legislación sobre este tema de Agentes y Representantes en la Unión Europea es la misma para todos los países miembros: Alemania, Austria, Bélgica, Bulgaria, Chipre, Dinamarca, Eslovaquia, Eslovenia, España, Estonia, Finlandia, Francia, Grecia, Hungría, Irlanda, Italia, Letonia, Lituania, Luxemburgo, Malta, Países Bajos, Polonia, Portugal, Reino Unido, República Checa, Rumanía, Suecia.

**Aconsejamos leer el texto que figura para Alemania pues si bien este solo rige para los 27 países que forman la UE, el conocimiento de su texto ayuda a conocer los aspectos a tener en cuenta al firmar un contrato con un agente o representante.**

**De todas maneras puede también comunicarse con la embajada correspondiente solicitando mayor información.**

## **Información adicional:**

A continuación encontrará el texto en inglés sobre la legislación Polaca que reglamenta la actividad de los agentes y representantes comerciales, proveniente de la página de la entidad gubernamental Agencia Polaca de Información e Inversiones Extranjeras PAIiZ ([www.paiz.gov.pl](http://www.paiz.gov.pl)). Dicha página aporta abundante información sobre temas relacionados con el funcionamiento del mercado polaco.

### **Régimen de actividades de agentes o representantes de empresas extranjeras en el territorio de Polonia**

## **REPRESENTATIVE OFFICES IN THE TERRITORY OF POLAND**

### **1. Concept**

A foreign entrepreneur may set up representative offices in the territory of 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 or herself. In legal terms, a representative office set up by a foreign entrepreneur is a subordinated organisational 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 a self-balancing unit. Any division of property by the entrepreneur, if effected, is of a purely technical and organisational 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. Representative offices may also be established by foreign persons appointed to promote the economy of the country of their headquarters, but

the scope of activities of such representative office may be limited exclusively to advertising and promotion of the economy of the said country.

## 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 authorised 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 upon such founding document), an excerpt from a Commercial Register or equivalent thereof, (if the foreign entrepreneur operates upon such founding document), a statement from the foreign entrepreneur concerning the establishment of a representative office in Poland, document confirming that the foreign entrepreneur has a legal title to premises or a real estate in which activity of the representative office is to be conducted.

The documents in foreign languages should be submitted together with their sworn translation into Polish. This requirement arises from Art. 46 Paragraph 3 of the Business Activity Law 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 ban on the conducting of activities by a representative office.

As regards documents attached to the application, particular attention should be paid to the foreign entrepreneur's founding deed. This is an 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 organisational forms in which 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 Entrepreneur, 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.

Minister of the Economy issues a decision whereby the application for entry in the Register is rejected on the following grounds: the existence of a representative office would pose a threat to national security and defence or to a State secret or to any other important public interest, 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 the required documentation.

An entrepreneur applying for entering a representative office into registry is obligated to pay a stamp duty in the amount of 6713 PLN.

#### 4. Obligations of a representative office

A foreign entrepreneur who established representative office is obligated 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, 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 time upon which such events take place.

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

The competent Minister of Economy shall issue a decision to prohibit the foreign entrepreneur from conducting the economic activity in a representative office 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;
- wind-up proceedings have been instigated against the foreign operator who has set up a representative office, or the right to conduct business activity has been forfeited by the entrepreneur;
- activities of the foreign entrepreneur pose a threat to national security and defence or to a State secret or to any other important public interest.

Para mayor información dirigirse a la Agencia Polaca de Información e Inversiones Extranjeras:

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