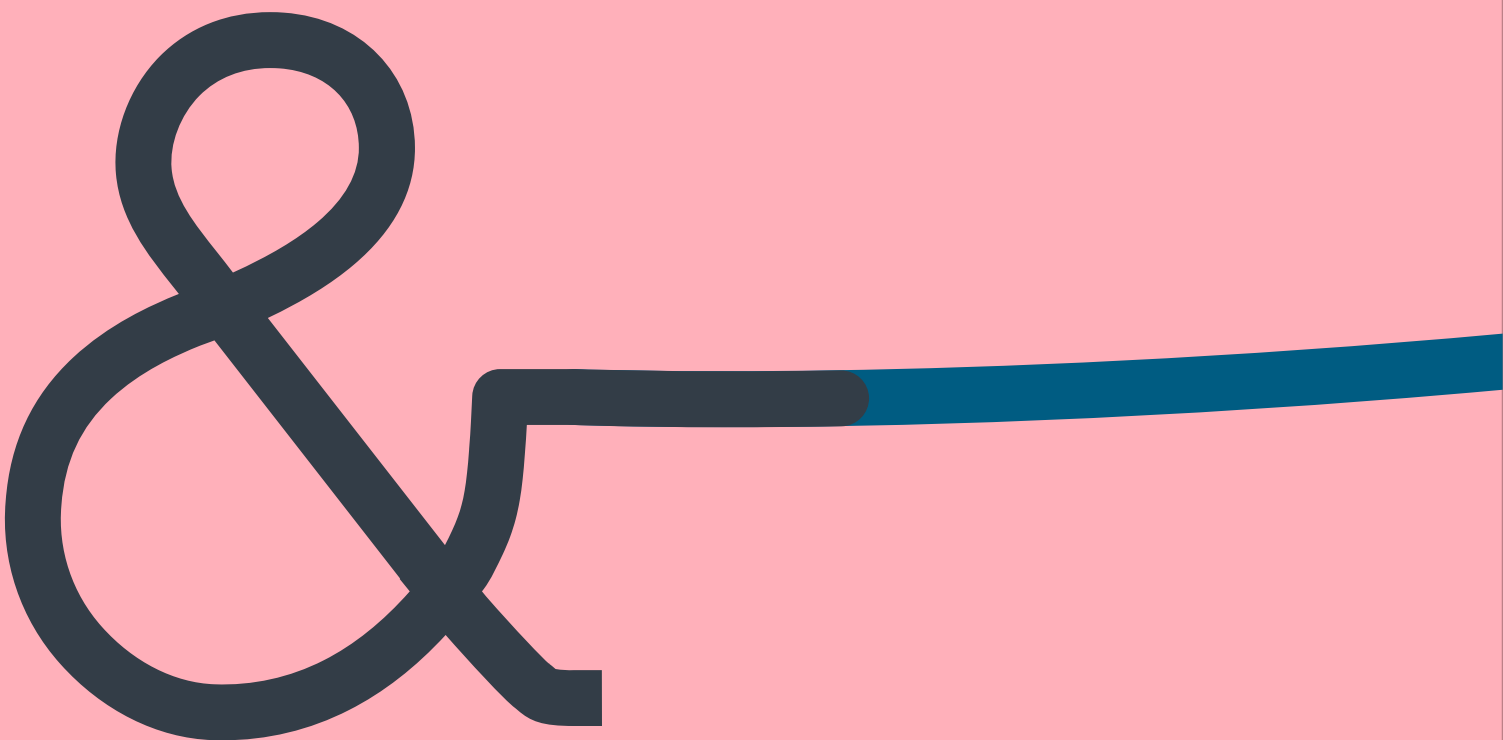


Bird & Bird

Setting up a business in Belgium

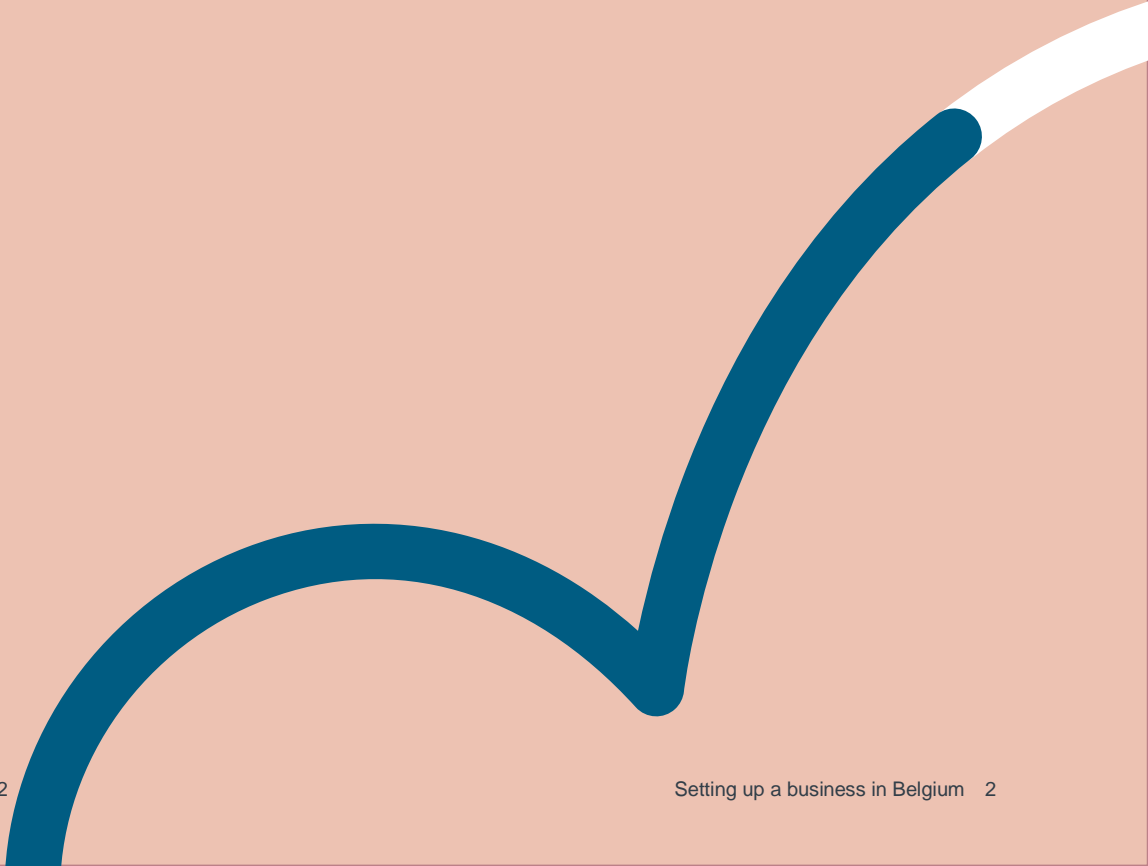
2022





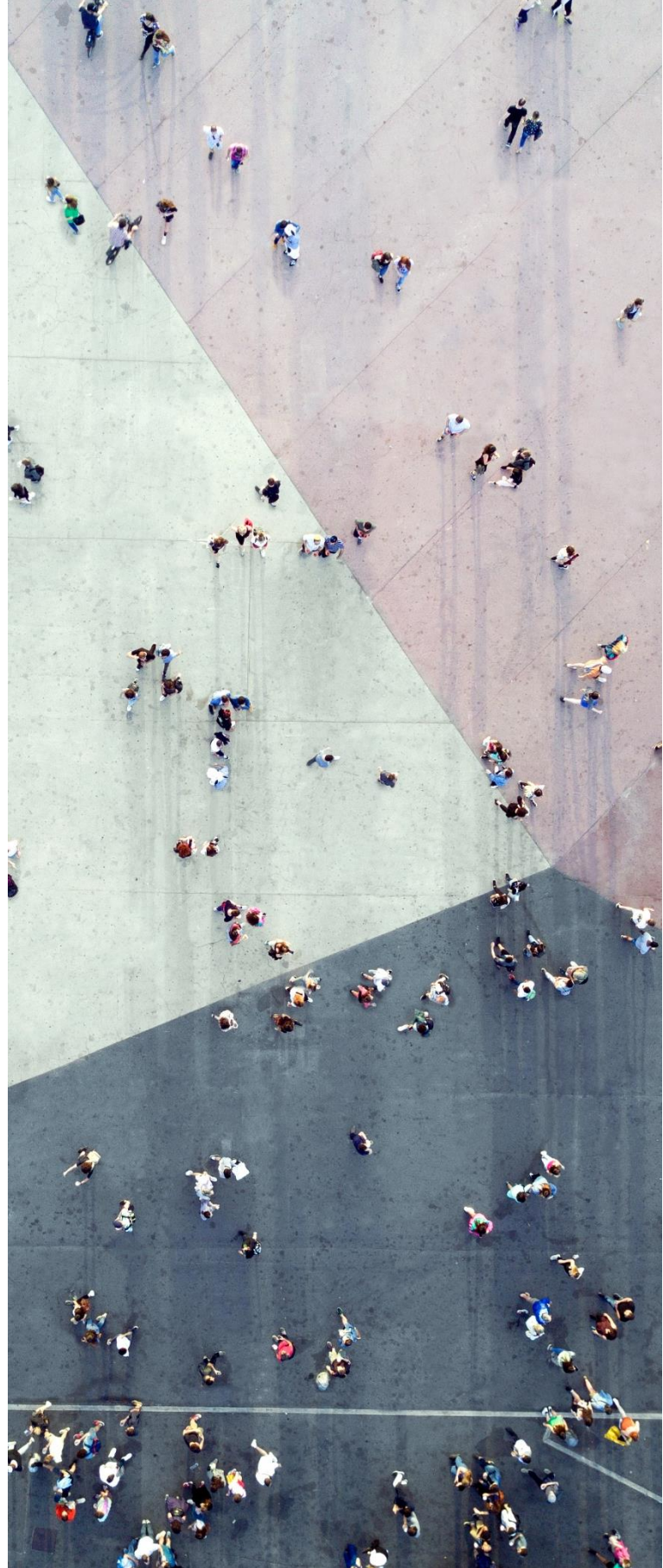
The Bird & Bird team is “highly responsive” and that the lawyers “understand the most complicated aspects of business and fully understand our company.”

Chambers Europe 2022, Belgium



Setting up a business in Belgium

Belgium has a strategic location situated in the heart of Europe and hosts a significant number of international organisations and institutions, such as the European Union and NATO. Belgium is a welcoming environment for foreign investors because investments do not, in principle, require prior governmental authorisation, which means there are no general capital movement restrictions and bank accounts may be held in any foreign currency.





“The quality of their advice is outstanding,” says one client, adding that “it gives me a lot of comfort that I get direct contact with the team handling the matters.”

Chambers Europe 2022, Belgium

Choice of legal entity

A company can carry on business in Belgium either by incorporating a subsidiary company or by establishing a branch.

| Subsidiary | Branch |
|--|---|
| A subsidiary is a separate legal entity, entitled to contract in its own name and on its own behalf. | A branch has no separate legal personality, remains part of the company and contracts as a Belgian branch on behalf of the company. Company accounts show Belgian income. |
| It can have limited liability (depending upon chosen legal form). | Company is liable for the branch. |
| <p>Depending on the legal form, a minimum share capital may be required (this is almost only required for public limited companies, not for private companies). Incorporation deed must be a notarial deed for limited liability companies.</p> <p>Duration of entire incorporation process depends on legal form and availability of information, but, in general, can be estimated at two weeks.</p> | <p>No minimum share capital requirements due to the absence of separate legal personality and no notarial deed required in connection with its registration.</p> <p>Duration of entire registration process depends on country of origin and availability of information, but, in general, can be estimated at two weeks.</p> <p>Prior to the opening of the branch, documents relating to the company (constitutional documents and financial statements) and the branch (including information on the name, address, operations, and identity and powers of appointed representative(s) of the branch) must be filed and depending on the country of incorporation of the company, also be apostilled. Any document that needs to be filed must be translated into the official language of the location of the branch.</p> |
| <p>Costs for a notary to incorporate a private or public limited company are approximately €1,200–1,700, if the company has no or only the minimum required share capital.</p> <p>Lawyers' costs for assisting with the corporate law aspects of the incorporation of a company are estimated at €3,000 – 4,000, to the extent that the Articles of Association contain standard clauses designed for a controlled affiliate of a foreign company. This does not include employment or tax law advice, or translation costs.</p> | <p>Any subsequent modifications to the required documents and information following the establishment of the branch must also be filed.</p> <p>Set-up costs depend mainly on possible translation costs of filed documents; filing costs are negligible. Lawyers' costs are estimated at €3,000 – 4,000. This estimate does not include employment law advice or tax law advice.</p> |
| Directors do not need to be Belgian nationals. | <p>No specific rules in the Belgian Companies and Associations Code regarding functioning and decision making of the branch; more flexibility/simplicity for company regarding the functioning of the branch and its decision-making process (by the appointed branch representative(s)).</p> <p>Branch representative(s) do(es) not need to be (a) Belgian national(s).</p> |

| Subsidiary | Branch |
|---|--|
| <p>Board and shareholder meetings do not necessarily need to be held on Belgian territory. However, it is advisable to hold the majority of the meetings of the Board in Belgium (or by conference call) as this could impact the tax residence of the company.</p> <p>Board decisions can also be made by written resolutions. The Shareholders' meeting approving the annual accounts should be held on Belgian territory for the same tax residency reasons.</p> | <p>No need for separate branch meetings (except if so, decided by the company).</p> |
| <p>Belgian company accounts must be prepared and may need to be audited.</p> | <p>No separate accounts must be prepared, filed, or audited for a branch, but internal accounts must be kept for tax purposes. Company accounts must be filed and possibly translated (see above).</p> |
| <p>Higher annual filing and accounting costs.</p> | <p>Lower operational costs.</p> |
| <p>Corporate income tax of 25% on worldwide profits and gains as of 1 January 2020, although exemptions normally apply to foreign income that is taxable abroad. For SME's, the first €100 000 of income is taxed at a 20% rate as of 1 January 2020, provided certain conditions are met.</p> | <p>Corporation tax (at the same rates as Belgian resident companies) on profits that arise in, or are allocable to, Belgium.</p> |
| <p>Can benefit from the extensive network of double tax treaties concluded by Belgium.</p> | <p>A branch can in principle only rely on the treaty network of its head office. However, under certain circumstances, a branch is also eligible for protection under the Belgian tax treaty network.</p> |
| <p>Intra-group transactions require arm's length terms.</p> | <p>Intra-company allocations require arm's length terms.</p> |
| <p>Trading losses can be off set against the profits for the accounting period, with some exceptions (e.g., profits derived from "abnormal and benevolent advantages"; tax base corrections after tax audit; secret commission tax, etc.).</p> | <p>Trading losses can be off-set against the profits for the accounting period, and they may also appear in company's accounts, but usually a claw-back applies in the company's jurisdiction if losses were off-set in Belgium.</p> |

Employment

Belgian employment law is heavily regulated with most of the regulations containing criminal sanctions (although in practice criminal sanctions are rarely applied). Those regulations entail, amongst other things, restrictions on working time (in principle 38 hours per week and 8 hours per day), part-time employment, night-work, temp work, successive definite period contracts, etc. There are, however, various exemptions.

The regulations also encompass a general anti-discrimination principle and very stringent legislation concerning well-being at work.

Belgium is one of the only countries in the EC that maintains a distinction between blue-collar workers (i.e., employment mainly of a manual nature) and white-collar workers (i.e., employment mainly of an intellectual nature). However, following a decision of the Belgian Constitutional Court that found the distinction discriminatory, the legislator is in the process of eliminating this distinction with major changes already implemented in the field of termination legislation.

If a company has employees in Belgium, it must comply with various formalities / requirements such as registration with the Belgian tax and social security authorities, the so-called Dimona form to be filed before the entry into service of a new hire, etc. Most of these requirements / formalities can be carried out by a payroll agency on behalf of the employer.

The Belgian social security contributions for salaried workers amount to +/- 39% of uncapped gross salary (including variable pay and most benefits in kind) with +/-26% employer's share and 13.07% employee's share. Taxes are due on salaries at the Belgian progressive income tax rates (top rate set at 50% but increased with local taxes). These taxes are paid in advance normally through the levying by the employer of payroll withholding taxes on salaries.

In a nutshell, salaries are heavily taxed in Belgium. For foreign executives working in Belgium a special favourable tax regime can – under certain conditions – be applied.

As far as termination of employment is concerned, the employer must in principle justify the reasons for the dismissal (specific obligations such as in case of termination for serious cause still exist). The employer has the choice between a dismissal with notice served (formal requirements) or with severance paid (immediate effect). The notice / severance alternatives introduced as from 1 January 2014 amount, on average, to 3 weeks for each year of service (longer notice / severance is accrued for the first years of service). Transitional measures exist for employees with seniority dating from before 1 January 2014. Additional obligations apply to qualified collective redundancy



‘Solid experience across the board, reactive, knowledgeable, and very good on the project management side of the equation.’

Legal 500 EMEA 2022, Belgium

Setting up a business in Belgium

Commercial Contracts

Belgium has a civil law system historically based upon the Napoleonic legislative codes, leaving considerable freedom for all types of collaboration, licensing, and distribution agreements. A new Civil Code is progressively being phased in, mainly clarifying existing case law but also introducing a wider pre-contractual information obligation.

Belgian law restricts certain terms of consumer contracts, including limitations on liability. As for B2B relations, a new law was adopted introducing a blacklist and a grey list containing clauses which are illegal per se (for instance the unilateral right to amend the contract) or that are presumed unlawful in the absence of evidence to the contrary (for instance certain termination provisions). It also provides some additional rules in relation to the prohibition of unfair B2B market practices and the abuse of economic dependence.

Furthermore, EU legislation applies in Belgium and regulates consumer protection, sales agents, distance selling, government procurement, direct marketing, and the privacy of personal data.

Belgian and EU competition law prohibit anti-competitive behaviour (e.g., price fixing) where there is an appreciable effect on trade in Belgium and/or between EU Member States.

Finally, overseas companies should be aware of any industry specific laws that apply to their business. These laws are typically based on EU legislation and are relatively consistent across the EU.

Real Estate

Most companies setting up business in Belgium will rent serviced offices or lease their premises rather than buy them. Serviced offices are more flexible. They are ready-to-go and can be rented for very short periods. There is no capital outlay.

The terms and conditions of leases are (freely) negotiable, but are usually signed up for at least 9 years, often with break clauses set at every third year of the contract period along with an annual indexation of the rent. Leased premises usually require fitting-out by the tenant at its own cost

although typically the landlord will encourage prospective (or existing) tenants by allowing a rent-free period. The tenant will be responsible for reinstating the premises at the end of the lease.

The landlord will usually require collateral security, including a cash deposit of 3 months' rent and/or a bank guarantee on first demand.

Data Protection/Privacy

Organisations processing personal data (which may include employee data, customer data, and business contact information) must comply with the General Data Protection Regulation, which is applicable since May 25 2018, and with the Belgian Data Protection Act which also entered into force on the same day.

Organisations must therefore ensure that their use of personal data complies with the data protection principles stipulated in the General Data Protection Regulation. Such principles concern the obligations of, among others, transparency (informing the data subjects about the details of the processing activities), security, fairness, and data quality, to respect the rights of data subjects and a limited retention period.

Maintaining a record of their processing activities, implementing a data privacy impact assessment, and designating a Data Protection Officer when required is also among the organisations' obligations under the General Data Protection Regulation.

The transfer of personal data out of the EEA or to international organizations will only take place after appropriate transfer safeguards are put into place.

Setting up a business in Belgium

Intellectual Property

All essential data regarding Belgian companies (including their business names) is listed in a central Company Database. Although business names per se are best protected and monopolised by means of registration as a trademark, they can also be protected without registration under Belgian unfair competition and tort law.

Trademarks can be registered either for the Benelux area (through the Benelux Office for Intellectual Property) or for the European Union (through EUIPO). Furthermore, it is advisable for companies to obtain national and international domain name protection.

The outward appearance of products can be protected by obtaining a design registration in the Benelux, or by a (registered or unregistered) Community Design right on an EU-wide basis.

A broad and undefined variety of works may also be eligible for protection under Belgian copyright legislation, provided that these works are original (i.e., demonstrate the personal stamp of the author).

Technical inventions can be protected by way of a Belgian or a European patent. European patents are applied for via a single, harmonised procedure at the European Patent Office. However, once a European patent is granted, the applicant currently receives a bundle of independent national patents, which are not centrally enforceable. It is important to note that in 2023 a new system of European patents with unitary effect (“unitary patent”) is likely to come into effect, offering a unique patent title in up to 25 EU member states. Such Unitary Patent can be applied for at the European Patent Office and will be centrally enforceable before a new supranational court called the Unified Patent Court (“UPC”). Importantly, the UPC will in principle also have jurisdiction for existing and future European patents. The UPC will have a division in Belgium, where patent cases will be heard in English, Dutch, French & German.

Particular inventions or knowledge can also be contractually shielded from competitors as trade secrets.

It should also be noted that Belgian law is generally quite favourable towards holders of Intellectual Property Rights, as it provides for tax incentives and guarantees and timely enforcement measures at a very reasonable cost before centralised courts.

Business Model Design

Alongside legal challenges, whatever the nature of your international ambitions the planning process requires some key questions to be addressed:

- Is internationalisation a feasible option, and are you ready for it?
- What is your internationalisation strategy, and how will you prioritise which markets to target?
- What business model will be most effective for driving profitable growth?
- Will you require business partners, and how do you plan to find them?
- What will your penetration strategy be for your selected markets?
- How will you build the infrastructure and operating model required to support your move into the new markets?
- How will you execute the plan and implement the business model?

Wherever your starting point, our consultancy arm OXYGY can help you answer these questions and create a fit-for-purpose roadmap to guide your business through its internationalisation journey.

Contact us

If you would like further information on setting up business in Belgium, please e-mail our Set up Desk at new.company@twobirds.com and we will contact you within 24 hours.

This summary gives general information only as of May 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.



We use them all across Europe.
It's really useful to have one
firm, like Bird & Bird, that we
can work with in multiple
jurisdictions.

Chambers FinTech 2021, Belgium



twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai
• Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London
• Luxembourg • Lyon • Madrid • Milan • Munich • Paris • Prague • Rome • San Francisco • Shanghai
• Singapore • Stockholm • Sydney • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.