

Forbidden versus authorized activities.

the annual growth prospects should be avoided since it is not possible to terminate the definition of a permanent establishment precisely and both activities are close to management activities and to the core business of a company.

3. ACTIVITIES

Insofar as it is provided in Section 1.3 (d) and Section 1.4 of the contract of employment to allocate other responsibilities to the Representative it should be ensured that such activities are limited to auxiliary functions only. The following checklist shall provide the Representative with some guidance for his activities as German Representative of Yamatake.

It must be possible at all times to evidence observation of these limitations by documentary evidence.

Acceptable Activities

- Information gathering generally and on specific markets and businesses in Germany (e.g. in respect of sales, pricing, inventory and supply levels)
- Analysis of the above information with respect to a specific business, but avoiding specific recommendations
- Information and training of German distribution partners (if any) in respect of product knowledge
- Distribution of marketing material (e.g. brochures)
- Composition of advertising material of Yamatake in respect of the contents and of the design
- Distribution of product samples
- Representing Yamatake in trade shows and organize inhouse-exhibitions and other events on behalf of Yamatake
- Demonstration of products to prospective customers
- Visits to German key accounts
- Disseminate information and other auxiliary activities with respect to new product launches
- Disseminate information on Yamatake

Negative Activities

- Power to represent Yamatake by making or receiving offers
- Concluding and signing agreements or acting on behalf of Yamatake (also an authority by estoppel (*Anscheins- / Duldungsvollmacht*) must be avoided)
- Inviting offers from third parties (e.g. from external advisors)
- Planning of distribution concepts and marketing strategies
- Stock-keeping and conducting deliveries
- Accept orders from the distribution network and forward them to Yamatake (if relevant)
- Rental of an office location
- Right of other Yamatake employees to use the Representative's home office rooms
- Conclusion of employment contracts
- Negotiating pricing, granting price reductions or other benefits for distributor partners
- Conducting or leading price negotiations as opposed to simply attending such negotiations
- Contract management and compliance to insure pricing, credit and distribution policies
- Acting as general representative for distribution partners in receiving orders and other

correspondence

- Selecting and/or instructing other advisors (marketing or PR advisors, advertising agencies, lawyers, CPA, etc)
- Involvement in resolutions and/or business decisions
- Recommendations to Yamatake's management in respect of resolutions and/or business decisions (as opposed to analysis)
- Monitoring of financial reports and information, reviewing of documents and advising on current and future business development
- Controlling of German business