

NEW LEGAL REGIME FOR GRANTING OF RESIDENCY PERMITS TO NON-EU NATIONALS

Overview:

Portugal has just recently approved Law no. 29/2012 of the 9th August, which constitutes the first amendment to the Law no. 23/2007 of the 4th of July which established the regime for the legal entry, stay, exit and removal of foreigners from the country.

This amendment has significantly widen the range of Residency permits established under the previous regime, by now establishing a new category, the "Residency Permit for Investment" which is available to Non-EU Nationals as a gateway to enter and reside within the EU.

The Regime:

Under this new regime - as established on paragraph d) of Article 3 of the above mentioned amended Law - it is now possible for a Non-EU National to obtain a Residency Permit whenever the same commits to engage within Portuguese territory into *"any activity performed personally or through a company which leads, in general terms, to the implementation of at least one of the following situations within national territory and for a minimum period of five years"*.

As established on Article 4th of the Ordinance no. ° 11820-A/2012 of the Ministry of Foreign Affairs and Inland Administration (a supplementary regulation which rules the practical conditions of application of this special regime for the granting of Residency Permits), it is considered that the above is fulfilled when the applicant undertakes:

a) **The transfer of capital in the amount of not less than 1 million Euros**, meaning, when the applicant demonstrates having made an investment in minimum amount established, with the express exception of equity investments in companies not listed in the Stock Exchange, pursuant to article 3 of the Ordinance no. 11820-A/2012.

b) **The creation of at least 30 jobs**, being such condition verified when the applicant demonstrates having created 30 jobs and proceeded with the enrollment of the workers in the Social Security, according to article 3. ° of the Ordinance no. 11820-A/2012.

c) **The acquisition of real estate property of a value equal or greater to 500 thousand Euros**, being such condition verified with the presentation of proof of acquisition of the right of property over an immovable assets, free from onuses or charges (no mortgages), as per Article 3.º of the Ordinance no. 11820-A/2012.

General Notes on the Procedure and on the Fulfilment of the Conditions:

The legal requirements listed here for the granting of Residency Permits for Investment must be already fulfilled at the time of the application for the Residency permit.

In the event that any of the minimum requirements is met through a corporate structure, the amount attributable to the applicant for the purpose of establishing the amount of the investment made will be established based on the proportion of the applicant's stake in the corporate structure's share capital.

With regard to the "means of proof" requested for the granting of the Residency Permits for Investment, the Article 6th of the Ordinance no. 11820-A/2012 states the following:

- To prove the transfer of capital in the amount of no less than € 1 million Euros, the applicant must submit a statement from a financial institution authorized to carry on business in Portugal stating that the applicant is the sole or the first holder of the capital, or an up to date certificate issued by the Commercial Registrar which attests the title over the share capital;
- To demonstrate the creation of at least 30 jobs, it is simply necessary to submit an up to date certificate issued by the Social Security;
- To prove the acquisition of a real estate property of equal or greater value to 500 thousand Euros, it is simply necessary the presentation of an up to date Land Registry Certificate.

For the granting of the Residency Permit for Investment to take place it will be necessary for the applicant (amongst other minor criteria):

- a) Not have been convicted for a crime punishable in Portugal with an imprisonment sentence above 1 year;
- b) Not be subject to a period of prohibition of entry into Portugal;
- c) Not be black-listed on the Schengen information system;

d) Not be black-listed on the SEF (Portuguese Border and Foreign Citizens Control Entity) information system.

The application must be made within 90 (ninety) days from the date of first entry into the national territory and the applications for Residency Permits should enclose a sworn declaration, whereby the applicant attests that he will meet the minimum requirements of temporal and quantitative investment activity in the country, **being that the minimum period of stay in Portugal has been set out as 30 (thirty) days during the first year and 60 (sixty) days in the subsequent years.**

Conclusion:

We believe that this new regime will be an extremely viable and flexible means for Non-EU Nationals to become legally resident within the European Union and that this measure has the potential to make Portugal as a viable platform for Non-EU Nationals launching business activities and investments and expand their activities outside their traditional markets.

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