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PLMJ INTERNATIONAL LEGAL NETWORK

OBTAINING A RESIDENCE PERMIT BY INVESTING IN PORTUGAL

On 28 January the «Diário da República» (official gazette) published a set of measures - that came into force the following day - to improve and streamline the special scheme for granting a Portuguese 'investment residence permit' ("IRP") to foreign nationals to enable them to make certain investments in the country.

On 28 January 2013 the «Diário da República» (official gazette) published a set of measures¹ - that came into force the following day - to improve and streamline the special scheme² for granting a Portuguese 'investment residence permit' ("IRP") to foreign nationals to enable them to make certain investments in the country.

The Legislative Order now published introduces changes to the rules that define the requirements that applicants for the IRP must meet, with reference to the chosen investment activity. It also makes changes to the respective means of proof to be presented upon application for the issue of the IRP or its renewal. The aim is to adjust the scheme to make it more flexible and to stimulate investment in Portugal.

■ **General Principles:** It is now possible for a temporary residence permit to be granted without the need to first obtain a residence visa if the foreign national, personally or through a company, makes an investment that leads to the creation of at least one of the following situations in Portugal:

- (A) Transfer of capital in an amount equal to or greater than **EUR 1 000 000**;
- (B) Creation of at least **10 jobs**; or
- (C) Acquisition of real estate of a value equal to or greater than **EUR 500 000**.

¹Diário da República, 2nd series, No 19 of 28 January 2013 publishing Legislative Order 1661-A/2013 amending Legislative Order 11820 -A/2012 of 4 September.

² Approved by Law 29/2012 of 9 August amending Law 23/2007 of 4 July (which approved the legal rules on entry and stay of foreign nationals in Portugal).

The investment chosen by the applicant for the residence permit must have been made at the time the application for the residence permit is presented and must be maintained for a minimum period of five years from the date the residence permit is granted.

■ **Investment through companies:** If the investment is made through a company, the respective value is determined by reference to the stake the applicant for the IRP holds in the respective share capital of a company with its registered office in Portugal or in another European Union Member State but with a permanent establishment in Portugal.

■ **Validity Periods:** The temporary residence permit is valid for the period of one year from the date of issue and may be renewed for successive periods of two years as long as the conditions necessary for it to be granted remain in place.

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For the residence permit to be granted under these terms, foreign nationals must regularise their stay in Portugal within 90 days of their first entry into the country.

For the residence permit to be granted under these terms, foreign nationals must regularise their stay in Portugal within 90 days of their first entry into the country (obtaining, in cases in which it is necessary, a short term visa – Schengen visa – issued by the Portuguese Consulate in the country of origin) and prove they have met the minimum quantitative requirements for the chosen investment activity. For the purposes of renewal, applicants may have to demonstrate that they have remained in Portugal for at least (i) 7 consecutive or interrupted days in the first year and (ii) 14 consecutive or interrupted days in each subsequent period of two years.

(A) Transfer of capital: In the case of a transfer of capital in an amount equal to or greater than EUR 1 000 000, the applicant must present a declaration issued by a financial institution operating in Portugal confirming the actual transfer of the capital (i) to an account for which the IRP applicant is the sole or first holder or (ii) for the acquisition of shares or quotas³ in companies. In the case of an investment made by a company, it is also necessary to present an up to date commercial registration certificate declaring the stake held in the company, valued at the amount of the investment required for this purpose.

For the purposes of the renewal of an IRP granted as a consequence of a transfer of capital, the IRP holder must – in each case with reference to a minimum value of EUR 1 000 000, (i) demonstrate the existence of an average quarterly bank

balance in their favour of at least the said amount, or (ii) prove that they hold a stake in a company valued at least the said amount, by means of a commercial certificate. In the latter case, the IRP must also produce either (a) a document issued by the CMVM⁴ or by a financial institution confirming the ownership of shares listed on the Portuguese stock market, or (b) in the case of an unlisted company, a declaration from the board of directors or management of the and the certified accounts of the company confirming the ownership and integrity of the minimum required investment.

(B) Job creation: In the case of investment activity that leads to the creation of at least 10 jobs, the applicant must demonstrate that he or she has registered the employees for social security purposes by presenting an up to date certificate issued by the social security authorities.

Currently social security contributions for most employers are 23.75% to be paid by the employer [the applicant for the IRP] and 11% to be paid by the employee. These contributions are calculated on the gross value of the monthly salary.

(C) Real estate investment: The most accessible investment activity leading to obtaining a residence permit is a real estate investment made by acquiring property of a value equal to or greater than EUR 500 000. In this case, the applicant must demonstrate that they are the owner of such a property (even as a joint owner, as long as each one of the joint owners invests at least EUR 500 000) or promissory purchaser of real estate (as long as the deposit paid by the IRP applicant as an advance payment on the purchase price is at least EUR 500 000).

In order to prove compliance with the minimum requirements associated with this type of investment activity, the IRP applicant must, upon making the application, present the document that proves the purchase or promise to purchase the real estate. This document must also include a declaration from

a financial institution operating in Portugal confirming the actual transfer of the capital for this purpose (definitive purchase or payment of deposit). The applicant must also present an up to date land registry certificate including registration of the purchase and, if possible, of the promissory sale and purchase contract in favour of the IRP applicant. In cases in which a promissory sale and purchase serves as the basis for the granting of the IRP, the respective definitive contract must be presented prior to the application for renewal.

It should be noted that properties acquired for the purposes of obtaining an IRP may be mortgaged or charged on any part of their value over and above the required minimum of EUR 500 000, and may also be leased or assigned for commercial, agricultural or tourism purposes.

■ **Taxation of real estate investments:** when acquiring a property in Portugal, the investor must take into consideration the charges associated with such a transaction. These charges include Imposto Municipal sobre as Transmissões Onerosas (“IMT”), which is the municipal tax on transfer of real property for value, Imposto do Selo

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³ The share specific to the Portuguese sociedade por quotas, a type of private limited company.

⁴ The Portuguese securities market commission.

OBTAINING A RESIDENCE PERMIT BY INVESTING IN PORTUGAL

("IS"), which is stamp duty and Imposto Municipal sobre Imóveis ("IMI"), which is the annual municipal property tax:

■ **IMT** is charged on transfers of rights in property for value and the applicable rate is 6.5% or, in the case of residential property there is a progressive rate (which, for a property valued at EUR 500 000, will be approximately 6%). The rate is calculated on the basis of the value that appears in the contract or other transfer document (or on the valor patrimonial tributário - the official valuation of the property for tax purposes, if greater);⁵

■ **IMI** is payable by whoever owns the property on 31 December of the year for which the tax is due. The rate varies between 0.3% e 0.5% for urban buildings (according to the location of the property) and 0.8% for rural buildings. These rates are applied to the official valuation of the property for tax purposes;

■ The rate of **IS** (stamp duty) is 0.8% and is charged on the value that serves as the basis for assessment of IMT.

We would also draw attention to the fact that, as a result of the recent changes to the legislation, IS (stamp duty) at the rate of 1% will be charged on the ownership of (as well as any right to use or enjoy) urban buildings with an official value for taxation purposes (valor patrimonial tributário) equal to or greater than EUR 1 000 000.

■ **Tax Regime:** Applicants for a residence permit who intend to move their official tax residence to Portugal, may – upon making an application, to be considered on a case-by-case basis by the tax authorities – benefit from the non-habitual residents' regime (as long as they have not been taxed as tax residents in Portugal in any of the preceding 5 years). In doing so, they acquire the right to be taxed as non-habitual residents for a period of 10 consecutive years at the end of which they will be taxed in accordance with the general rules of the IRS (personal income tax) Code.

Residence in Portugal for tax purposes may be acquired in any year, among other situations, when the taxable person has remained in Portugal for more than 183 days, whether consecutive or not, or when they have remained for fewer days but, on 31 December of the year in question, they have a residence in Portugal in conditions that make it possible to presume the intention to maintain and occupy it a their habitual residence.

We should also highlight the fact that Portugal has entered into a number of double taxation agreements the provisions of which should be taken into consideration in the taxation of income earned from operations between entities resident in Portugal and entities resident in other states.⁶

■ **Schengen Area:** Like any other holder of a residence permit in Portugal, persons with a residence permit through an investment in Portugal may travel around the Schengen Area (Germany, Austria, Belgium, Denmark, Slovakia, Slovenia, Estonia, Spain, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Norway, the Czech Republic, the Netherlands, Poland, Portugal, Sweden and Switzerland).

⁵ A single rate of 6% will apply from EUR 550 836 in the case of a property used exclusively as a non-permanent residence

⁶ To see information on Double Taxation Agreements entered into by Portugal please visit: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/

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