



## PRIVATE CLIENTS

# MAIN CHANGES TO THE RULES ON PORTUGUESE NATIONALITY

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### A) CHILDREN OF FOREIGNERS BORN IN PORTUGUESE TERRITORY

The new law establishes that the children of foreigners born in Portuguese territory (when the parents are not in the service of their home state), are considered Portuguese by origin, provided that one of the parents has been residing legally in Portugal for at least 2 years. This contrasts with the 5 years that were previously necessary. This rule does not apply if there is an express declaration against acquiring Portuguese nationality by origin.

### B) ADOPTED CHILDREN

The new law also makes it possible for anyone adopted by a Portuguese national, before the law came into force, to acquire Portuguese nationality if they so wish.

### C) NATIONALITY BY NATURALISATION

When it comes to acquiring nationality by naturalisation, the legislature has reduced the necessary period of legal residence from 6 to 5 years. It has also created a presumption of sufficient knowledge of the Portuguese language for those born in or citizens of a country where Portuguese is the official language.

The law also establishes that minor children born in Portugal to foreign parents can acquire nationality by naturalisation, provided that (i) they have a sufficient command of the Portuguese language, (ii) they have not been convicted, under a final judgment that is no longer subject to appeal, to a prison sentence of 3 years or more, (iii) they are not a danger or threat to national security or defence, and (iv) one of the parents has been resident in Portugal for at least 5 years preceding the application for nationality, regardless of the basis on which the parent has been resident, or the minor has concluded a programme of basic or secondary education in Portugal. By way of example, this provision allows minors with foreign nationality who are housed in institutions to be able to obtain Portuguese nationality regardless of the residence status of their parents or the conclusion of any basic or secondary education programme.

Another important change relates to applications for nationality by naturalisation through relatives in the ascending line. This change makes it possible for the children of those who have Portuguese nationality by origin to obtain nationality, provided that (i) regardless of its basis, they have been resident in Portugal for at least 5 years immediately preceding the application, and (ii) the family relationship in the ascending line has been established at the time of birth of the Portuguese citizen.

The new law also provides that the absence of real ties with the Portuguese community is not a ground to oppose the acquisition of nationality in the case of marriage or a de facto partnership (the Portuguese concept of *união de facto*), if there are children common to the couple with Portuguese nationality.

#### D) CONSOLIDATION OF NATIONALITY FOR HOLDERS IN GOOD FAITH

There is now an express provision for consolidation of nationality for holders in good faith of Portuguese nationality by origin or by acquisition for at least 10 years. This provision applies even if there is a challenge against the act that resulted in granting of nationality. The legislature provided that the period of 10 years must be counted from the date of registration of birth, or from the date of the first identification document as a Portuguese citizen if the identification as a Portuguese citizen results from the document issued.

### *The changes introduced by the Law of Nationality are intended to make access to Portuguese nationality easier in certain situations.*

#### E) MISCELLANEOUS PROVISIONS

The legislature has also introduced a guideline to count the period of legal residence in Portugal general. This provision states that all periods of legal residence in Portuguese territory, whether or not consecutive, are taken into account provided they fall within a maximum period of 15 years.

The new law also provides that a woman who has lost her Portuguese nationality through marriage with a foreigner may reacquire it with effect from the date of the marriage. It also provides for the nullity of any act that leads to the granting of Portuguese nationality on the basis of forged documents or documents certified with untrue facts, or on the basis of false declarations by the applicant. However, this rule does not apply if the situation originates from the statelessness of the applicant and thus reinforces the fundamental right to nationality.

In summary, the changes introduced by the Law of Nationality are intended to make access to Portuguese nationality easier in certain situations. However, in view of the failure to define certain of the concepts now introduced, we do expect to see problems improving some requirements in the future. By way of example, there is no legal criterion to substantiate the concept of residence in Portugal for more than 5 years, regardless of the basis of residence. Therefore, it could cover situations of illegal residence in the country.



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Composition as Explanation (G. Stein), 2006

Acrílico s/ prova cromogénea

138 x 138 cm

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