



Update

Momentum



Finance and Governance

10th September 2015

RESIDENCE PERMIT FOR INVESTMENT ACTIVITY ELIGIBLE ACTIVITIES AND PROOF REQUIREMENTS

With the publication of Law no. 63/2015, of 30th July there has been an alteration of the permit to investment activities' regime, namely through the increase of eligible investment activities. However, revocation of article 90-A of Law no. 23/2007, of 4th July, led, during the last months, to an vacuum in the regulatory part of the regime of granting authorization to investment activities, which led to the stoppage in granting the visas during that period.

On 2nd September last it was finally published the Implementing Decree no.15-A/2015 which altered the Implementing Decree no. 84/2007 of 5th November, which established the requirements that must be fulfilled in order to prove the investments made. Here we synthesize the ones that deserve greater emphasis.

Thus, regarding the investment related to transfer of capital in the amount equal to or greater than 1 million Euros there was no modification to the regime already used being enough the proof of the investment done, varying only the medium of proof according to the type of investment (deposit or acquisition of public debt/securities instruments).



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Regarding the investment related to the creation of at least 10 working places, it is stated that the investor shall have to prove the creation of the mentioned working places, as well as the workers' registration in Social Security.

In respect of the investment in the real estate sector, it was expressly clarified that the ownership can be co-ownership, as long as each unit-holder invests an amount equal to or greater than 500 thousand Euros, as well as it was stated that the acquisition can be made by a single shareholder limited liability company, when the applicant is the shareholder. On the other hand, it was laid down that there can be an encumbrance of immovable property in the part exceeding the amount of 500 thousand Euros, just as well it was mentioned that it is possible to lease or explore the property with commercial, farming or touristic purposes.

The explicit reference about the acquisition being able to be made by a single shareholder limited liability company when the applicant is the shareholder raises a few questions, namely about knowing if this is the only corporate form eligible. In face of the previous legislative context and of the absence of regulation about this matter, our understanding was that the property could be acquired by any corporate form as long as it was made proof that the shareholder owned a social participation corresponding to 500 thousand Euros of the property. Considering that the co-ownership is expressly acceptable we believe, without prejudice to the literal wording of the text now published, that the property's ownership may be made by private limited companies and not only by single shareholder limited liability companies. It is acknowledged that there is a greater difficulty in accepting the ownership by a public limited company as the registry certificate will not be able to prove, by itself, its shareholder structure. However, from the point of view of law to be formed, we do not see why not this extension, even if with greater reservations.

Still in the scope of investments in the real estate sector, it is clarified that the amount of 350 thousand Euros for the acquisition of property whose construction has been concluded for, at least, 30 years or located in urban recovery areas, includes not only the value of the acquisition, but also the value which refers to the rehabilitation works that shall be performed in the property acquired.



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On the other hand, the present regime also clarifies that the property's acquisition shall have to occur until the moment of the second renewal application. Thus, during the first 3 months it is possible for the investor to obtain and renovate its residence permit based on a promissory agreement of a property, according to which the investor had already paid the amount of 500 thousand Euros or more. This provision allows to benefit and to increase new constructions in real estate sector.

Lastly, it stands out the provision related to the elaboration of an internal proceedings manual carried out by SEF (the Portuguese Foreigners and Border Service) regarding the conduct of the residence permit for investment activity process.

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