

Factual analysis of Member States Investors' Schemes granting citi- zenship or residence to third- country nationals investing in the said Member State

Deliverable B.II Investors' Residence Schemes in Portugal

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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

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I. GENERAL BACKGROUND

■ *Legal background:*

The legal basis for the acquisition of Portuguese residency by investment is Law 23/2007 of 4 July 2007 on the Legal regime of entry, stay and removal of foreigners from the national territory¹, as amended by: Law 102/2017 of 28 August (Aliens Act).² This Law is regulated under the Regulatory Decree 84/2007 of 5 November, as last amended by Regulatory Decree 15-A/2015 of 2 September³, which has also specific provisions for acquisition of Portuguese residency by investment (Aliens Act Regulation)⁴.

As part of the legal framework, the Regulation Portaria 305-A/2012, of 4 October sets forth the amount of fees to be paid in administrative procedures for granting and renewing residence permits.⁵

Being administrative procedures, the procedures for granting an Investment Residence Permit (IRP) must also be processed according to the Portuguese Administrative Procedures Code, which is the applicable subsidiary legislation⁶. The Code on Administrative Courts' Litigation must be applicable to all jurisdictional reviews and appeals of decisions on immigration⁷.

In addition, the Portuguese Nationality Act from 1981 is also applicable. This Act has been amended several times.⁸ In 2006, it was deeply modified, with the creation of a subjective right to naturalisation to all possible resident foreigners, including investors from third countries as they can be eligible to the Portuguese citizenship by naturalisation if they comply with the requirements set therein (see Section IV of this Report).

In particular, the Portuguese residence permit for investment (hereinafter, IRP, also known as “*Golden Residence Permit*”, name used by the Immigration and Borders Service, hereinafter SEF⁹) was introduced by Law 29/2012, which amended the Aliens Act and entered in force in 8 October 2012.¹⁰ Law 29/2012 was approved following a Government initiative and was the first amendment to the

¹ Chapter IV, Section II, Subsection II, Articles 90-A et seq.

² Law 23/2007 of 4 July on the Legal regime of entry, stay and removal of foreigners from the national territory (*regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional*), as amended by: Law 102/2017 of 28 August. Official publication in the *Diário da República*, I série, n. 165/2017, available at <https://dre.pt/web/guest/pesquisa/-/search/108063583/details/normal?l=1>.

³ Regulatory Decree 84/2007 of 5 November, as last amended by Regulatory Decree 15-A/2015 of 2 September (*Regulamenta o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional*). Official publication in the *Diário da República*, I série, n. 171/2015, available at <https://dre.pt/application/file/a/70144437>.

⁴ Articles 65-A et seq.

⁵ Official publication in the *Diário da República*, I série, n. 193/2012, available at <http://www.sef.pt/documentos/35/PortariaTaxas2012.pdf>.

⁶ Decree-Law 4/2015, of 7 January. Administrative Procedures Code (*Código de Procedimento Administrativo*). Official publication in the *Diário da República*, I série, n. 4/2015, available at <https://dre.pt/application/file/a/66047121>.

⁷ Law 15/2002, of 22 February, as amended by Decree-Law 214-G/2015 of 2 October, Code on Administrative Courts' Litigation (*Código de Processo nos Tribunais Administrativos*). Official publication in the *Diário da República*, I série, n. 193/2015, available at <https://dre.pt/home/-/dre/70423756/details/maximized?serie=I&dreId=70423754>.

⁸ The last amendment dates from 2015 (Organic Law 9/2015, of 29 July. Nationality Act (*Lei da Nacionalidade*). Official publication *Diário da República*, I Série, n. 146/2015), available at http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=614&tabela=leis) which extends the Portuguese nationality to the grandchildren of Portuguese people born abroad.

⁹ Immigration and Borders Service (SEF) website, ‘Golden Residence Permit Programme’, available at http://www.sef.pt/portal/V10/EN/asp/aoiocliente/detalheApoio.aspx?fromIndex=0&id_Linha=6269.

¹⁰ Law 29/2012 of August. Official publication in the *Diário da República*, I série, n. 154/2012, available at <https://dre.pt/application/file/a/175251>.

Immigration Law.¹¹ It was aimed at transposing several EU Directives (Directive 2008/115/EC,¹² Directive 2009/50/EC,¹³ Directive 2009/52/EC,¹⁴ Directive 2011/51/EU¹⁵ and Directive 2011/98/EU¹⁶) and to insert some amendments due to Regulation 810/2009/CE establishing the Visa Code.¹⁷ The Bill mentions expressly that the Government took the opportunity to create “a new mechanism for third country nationals to invest in Portugal under certain conditions”, which would fit “the objectives of economic diplomacy pursued by the Government”¹⁸. During the drafting of the Bill several public bodies were heard: the Governing Bodies of the Autonomous Regions, the Superior Council for the Judiciary, the Superior Council for Administrative and Tax Courts, the Superior Council for the Public Prosecutor's Office, the Lawyer's Bar Association, the National Commission for Data Protection and the Advisory Board for Immigration Affairs.

During the debates there was not a deep discussion on the scheme. Only one Member of Parliament claimed that the amendments would create a division between “first class” and “second class” of immigrants.¹⁹ On the contrary, the biggest opposition Party at the time (the Socialist Party) upheld the amendment.²⁰

After the entry into force of Law 29/2012 introducing the Golden Residence Permit Programme in Portugal, several implementing acts were also approved, such as the Order 11820-A/2012, issued by the Ministries of State, of Foreigner Affairs and of Internal Affairs²¹ later amended by the Order 1661-A/2013.²² These legal instruments were aimed at establishing the documents, means of proof and other practical aspects for application of the regime of IRP. However, these orders were revoked by the 2015 amendment to the Aliens Act Regulation, which incorporated these norms in the Regulation.²³

Regarding the investment requirements for the IRP, first of all, applicants shall fulfil the general conditions laid down on Article 77 for issuing residence permits in general.

Secondly, they have to respect specific conditions, the first being an investment activity. In this context, the Aliens Act currently includes several forms of capital transfer, creation of job positions and

¹¹ Bill 50/XII, available at <http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c324679595842774f6a63334e7a637664326c756157357059326c6864476c3259584d7657456c4a4c33526c6548527663793977634777314d43315953556b755a47396a&fich=pl50-XII.doc&Inline=true>.

¹² Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, of 24 December 2008, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0115>.

¹³ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155 of 18 June 2009, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0050>.

¹⁴ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168 of 30 June 2009, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0052>.

¹⁵ Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, OJ L 132 of 19 May 2011, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0051>.

¹⁶ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343 of 23 December 2011, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32011L0098>.

¹⁷ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243 of 15 September 2009, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R0810>.

¹⁸ Bill 50/XII.

¹⁹ Honório, C., (Left Block), in *Diary of the Parliament*, 13 April 2012, page 39, available at <http://debates.parlamento.pt/catalogo/r3/dar/01/12/01/095/2012-04-12/39?pgs=36-54&org=PLC&plcdf=true>.

²⁰ Rodrigues, R., (Socialist Party), in *Diary of the Parliament*, 13 April 2012, page 39.

²¹ Official publication in the *Diário da República*, II série, n. 171/2012.

²² Official publication in the *Diário da República*, II série, n. 19/2013.

²³ Regulatory Decree 15-A/2015 of 2 September.

purchase of real estate property, also under different modalities²⁴.

Article 90-A of the Aliens Act sets forth additional requirements for IRP applicants, such as: holding a valid Schengen visa, regularization of stay in 90 days after the entry in national territory.

Holders of IRP have a set of rights, such as residence visa waiver for entering Portugal, to live and work in Portugal, on condition that they stay in Portugal for a period of 7 or more days, in the first year, and 14 or more days, in the subsequent years²⁵; visa exemption for travelling within the Schengen Area; family reunification; applying for permanent residence (according to Article 76 of the Aliens Act, a permanent residence permit is a residence permit with no expiring date, thus conferring a right to live permanently in the Portuguese territory) and applying for Portuguese citizenship, by naturalization, provided all other requirements set out by the Nationality Act are fulfilled.

The IRP is initially valid for one year, renewable for periods of two years, provided that the applicant continues to meet the requirements (Article 90-A, n.3 of the Aliens Act). Due to the minimal physical presence in Portugal required in a calendar year, we can consider that the Portuguese scheme provides facilitated residence conditions.

■ ***Competent authorities:***

The Portuguese Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*, SEF), working under the hierarchy of the Ministry of Internal Affairs, has exclusive competence on migration issues²⁶. Therefore, it is the authority entrusted with the regulation and running of the IRP.

Under Article 65-H of the Aliens Act Regulation, a follow-up group is set up consisting of the national director of SEF, the Director-General for Consular Affairs and Portuguese Communities, the President of Agency for Investment and Foreign Trade of Portugal, a representative of the member of the Government responsible for culture and a representative of the member of the Government responsible for the areas of education and science.

²⁴ Aliens Act, Article 3 (d).

²⁵ Order 11820-A/2012, as amended by Order 1661-A/2013 sets forth the requirements regarding the minimum periods of stay of the IRP holder in the national territory per year.

²⁶ See Decree -Law 252/2000, of 16 October, Organic Law of the Aliens and Borders Service (*Lei Orgânica do Serviço de Estrangeiros e de Fronteiras*), as amended by Decree-Law 240/2012, of 6 November, Official publication in the *Diário da República*, I série, n. 2014/2012, available at <http://www.sef.pt/documentos/56/LOSEF.pdf>.

II. PROCEDURES, COMPETENT AUTHORITIES AND APPLICABLE CRITERIA

1 APPLICATION PHASE

1.1 PROCEDURES

■ *Who can apply for a residence permit*

According to Article 4 of the Aliens Act, only third-country nationals may apply for a residence permit under the IRP. The IRP legal mechanism does not apply to EU and EEE citizens, neither to Refugees or subsidiary protection holders living in Portugal.

Third country nationals must conduct an investment activity, as an individual businessperson or through a company set up in Portugal or in another EU Member State and in addition, must be settled in Portugal.

Application may also be done by legal representatives duly authorized for that purpose. In case of the applicant being a minor, legal representation is mandatory.

■ *Procedural stages*

The procedure for granting investors residence permits is composed by three steps: (1) the preliminary procedure, where an application is made and the completeness of the documentation is confirmed; (2) the investigation phase, where the application is analysed and a proposal decision is drafted and finally, (3) the final decision and executory acts.

The preliminary phase starts with an application. Anyone interested in applying for an IPR, may submit an application by several ways:

a) Online, by registering at the website of SEF (<http://ari.sef.pt>).

After completing the registration, the applicant receives a password to fill in and submit the necessary form and send the relevant documents, as well as the proof of having paid the application fee;

b) In person, at the Portuguese diplomatic posts or consular post abroad

The applicant must submit the whole application procedural documents (application, proof of the investment, and proof of payment of application fee);

c) In person, at SEF's Regional Directorates and Delegations in Portugal:

The interested party may apply for IRP at the Regional Directorate or Delegation of SEF in his/her area of residence, within a maximum period of 90 days from the date of his/her first entry into Portugal, where he/she shall deliver all the application documents (application, proof of the investment and proof of payment of application fee).

Applicants have the possibility to schedule an appointment online, though SEF's website (<http://ari.sef.pt>).

After the preliminary procedure, the analysis of the documentation is carried out at the Regional Directorate of the territorial area where the investment activity will be developed. The SEF must then confirm whether the type of investment corresponds to that in the online register. If these do not coincide, it does not entail the rejection of the IRP application. After submitting the IRP application, it is not possible to change the investment typology in the same procedure (thus, a new IRP application would have to be submitted with the new type of investment).

SEF will also verify whether the documentation is complete:

- If the documentation is complete, the proceedings continue by verifying this documentation;
- If the documentation is insufficient, the applicant will be immediately notified to present the necessary documents in 10 to 20 days. The specific deadline will be determined by the officer and will depend on the complexity of the missing element. The applicant is informed that, if they fail to present the necessary documents on time, the application will be rejected;
- If evidence relating to the investment is missing, the applicant shall be informed that his/her application will be refused, unless they present an appeal on the basis of their right to be heard, as granted by Article 121 of the Administrative Procedures Code.

The competent Regional service will then proceed with the analysis of the application (this launches the second phase of the proceedings, the investigation phase). All documentation is examined and additional or supplementary documents may be requested in case of doubts. A security analysis also takes place. It consists of the collection of information in the scope of police cooperation.

This assessment phase must not be longer than 90 days. The person in charge of the investigation (the instructor) drafts a report and a decision proposal. If the latter is a refusal of the application, the applicant must be informed and has the right to be heard (Article 121 of the Administrative Procedures Code). Following this hearing, some complementary acts may take place.

The final phase consists in the issuance of a final decision by the SEF's national Director. The applicant is informed and execution acts will then be adopted. Collection of biometric data takes place within 10 to 60 days and the applicant pays the issuing fee.

The residence permit is then issued and sent to the address that the applicant has indicated in the application, in Portugal or abroad²⁷.

- ***Condition(s) for granting residence to investors.***

According to Article 3, d) of the Aliens Act and Article 65-A of the Aliens Law Regulation, Investment requirements for the IRP may be one of the following:

- a) the capital transfer of at least 1 million Euros;
- b) the creation of, at least, 10 job positions;
- c) the purchase of real estate property for at least 500 000 Euros, or, c) for at least 350 thousand Euros, regarding acquisition for refurbishing of properties with construction dating back more than 30 years or located in urban regeneration areas;
- d) a capital transfer of at least 350 000 Euros for investment in research activities conducted by public or private scientific research institutions involved in the national scientific or technology system;
- e) capital transfer of at least 250 000 Euros for investing or supporting artistic activities and for reconstruction or refurbishment of national heritage;
- f) capital transfer of at least 350 000 Euros for the acquisition of units of investment funds or venture capital fund of funds dedicated to the capitalisation of companies, capital injected under the Portuguese legislation, whose maturity, at the moment of the investment, is, at least, of five years and, at least, 60% of the investments is realized in commercial companies with head office in national territory;
- g) a capital transfer of at least 350 000 Euros, for constitution of commercial societies with head office in the national territory, combined with the creation of five permanent working jobs, or for the reinforcement of the share capital of an already existing commercial society with head office in national territory, involving the creation or maintenance of a minimum of five permanent jobs, and for a minimum period of three years.

²⁷ The procedure is described in the *Manual de Procedimentos relativo à Autorização de Residência para Investimento*, issued by SEF in 01/09/2017, and available at http://www.sef.pt/documentos/56/Manual_ARI_2017.pdf.

Article 90-A of the Aliens Act sets forth additional and cumulative requirements for RP applicants, such as:

- a) holding a valid Schengen visa, regularization of stay in 90 days after the entry in national territory and the general conditions laid down on Article 77.º;
- b) absence of any fact which, if known to the competent authorities, would impede the granting of the visa;
- c) presence in Portuguese territory;
- d) possession of means of subsistence;
- e) accommodation;
- f) enrolment in social security, whenever applicable;
- g) no conviction for a crime that in Portugal is punishable by deprivation of liberty for more than one year;
- h) not being in the period of prohibition of entry into national territory, following a measure of removal from the country;
- i) no indication in the Schengen Information System;
- j) no indication in the SEF's Integrated Information System for the purpose of non-admission, in accordance with article 33.

■ ***Application fee***

The regulation Portaria 305-A/2012 sets forth the fees that need to be paid by the applicant. Fees shall be paid directly to the SEF.

Applicants must pay fee of € 517.40 (plus € 80.60 per family member) for having their application analysed. After the approval of the application, investors shall pay a fee for 5.137,50 €, for being issued with a IRP. The fee amount is 2.568, 75 € for the renewal of the “Golden Visa”.

■ ***Reasons for turning-down applications***

According to Article 77, n.2 of the Aliens Act, any residence permit may be refused on grounds of public policy, public security or public health. The refusal of a residence permit based on public health grounds may only be based on diseases defined in the applicable instruments of the World Health Organization or on other contagious infectious or parasitic diseases subject to national protection measures (Article 77, n.3).

Other reasons, also foreseen in Article 77 are the conviction for having committed a crime that in Portugal is punishable by deprivation of liberty for more than one year; being in the period of prohibition of entry into national territory, following a measure of removal from the country; indication in the Schengen Information System and indication in the SEF's Integrated Information System for the purpose of non-admission, in accordance with article 33.

■ ***Legal remedy(ies) which apply in the case of refusal of residence***

In case of refusal of the application for IRP, applicants have access to administrative courts, which are jurisdictional organs. They may appeal against a refusal decision through an administrative action, specifically aimed at reviewing administrative decisions (Article 51 et seq. of the Code on Administrative Courts' Litigation).

An administrative action is a jurisdictional action brought before the Administrative and Tax Courts. In cases where the applicant claims that the decision is null and void, the action can be filed at any time. Otherwise, the applicant must respect the three-month deadline foreseen in Article 58 of the Code on Administrative Courts' Litigation.

The applicant must plead in writing, and the authority shall also respond in writing. There may be subsequent allegations. An oral hearing in front of the Court is not mandatory and it only takes place if the judge so considers (Article 91 of the Code).

The applicant may appeal the decision of the Administrative and Tax Courts to the Superior Court (Central Administrative Court) and, in exceptional circumstances (where a new question on the substance of the law arises), there may be an appeal to the Supreme Administrative Court.

- ***Who can contest the decision refusing to grant residence under the investors' residence programme (i.e. the unsuccessful applicant as well as any other person contesting a successful application)***

According to Article 55 of the Code on Administrative Courts' Litigation, several parties may contest an administrative decision before Administrative Courts:

- a) Those who claim to have a direct and personal interest, such as the applicant;
- b) The Public Prosecutor's Office;
- c) Public and private entities, as to the rights and interests that they have to defend;
- d) Administrative organs, in relation to acts performed by other organs of the same public legal person that allegedly compromised the conditions of the exercise of competences legally conferred on the former for the pursuit of interests for which those organs are directly responsible;
- e) Other authorities, in defence of administrative legality, in the cases provided by law;
- f) Any person, independently of having a personal interest in the matter, as well as the associations and foundations defending the interests in question, and local authorities for the defence of values and constitutionally protected assets, such as public health, environment, urban planning, land-use planning, quality of life, cultural heritage and assets of the State, Autonomous Regions and local authorities.

The people mentioned in letters (a) to (f) above also have the right to promote the execution of the corresponding judicial decisions (Article 9, n. 2 of the Code on Administrative Courts' Litigation).

Therefore, the applicant has legal standing for contesting a refusal decision, and other people may have legal standing to contest a positive decision (granting the residence to the investor), if they fulfil any of the conditions referred to above. For example, where the Public Prosecutor considers that the IRP was awarded with misuse of powers, he/she may initiate a judicial procedure aimed at annulling the administrative decision that has awarded the IRP.

1.2 COMPETENT AUTHORITIES AND NON-PUBLIC BODIES

The Procedure is directed, investigated and decided by SEF. Under this Service, the competent Regional Service is competent for analysing the application. The National Director is competent for issuing the decision on the application whereas the Regional Director is competent for the enforcement of the decision.

According to Article 65-G of the Aliens Act Regulation, the SEF, during the examination of the IRP application, may consult the diplomatic and consular posts whenever it finds important to check some information in the country of origin. This consultation of the diplomatic and consular posts is made through the Ministry of Foreign Affairs, at the request of SEF.

There are no non-public bodies involved in processing applications. The Portuguese State has no bona fide intermediaries; either Portuguese or foreigner to act on its behalf with regards the administration of IRP applications. However, there are many law firms and solicitors who offer legal advice and

representation in the proceedings.²⁸

1.3 MONITORING OF THE PROCEEDINGS AND THE AUTHORITIES INVOLVED

There is no cap for the scheme under the Portuguese legal system. The follow-up group referred to above (Section I of this Report), established under Article 65-H of the Aliens Act Regulation, has the competence to monitor the statistical evolution of the IRP and to present reports with the “status quo” and with suggestions that they consider appropriate.

Moreover, according to Article 65-I of the same legal act, the General Inspection of Internal Affairs carries out, at least once a year, an audit of the procedure for IRP. The conclusions and recommendations are notified to the First Commission of the Portuguese Parliament (Constitutional Affairs and Fundamental Rights, Freedoms and Guarantees) and are also made available on the Government's website.

However, the mentioned website only contains one report, with the date of 2014. The first one mentions several recommendations, issued due to some inefficiencies of the procedure. It recommends, *inter alia*, the development of internal supervision mechanisms, and the conception of a procedures manual²⁹.

1.4 INFORMATION ON APPLICATIONS

There is no obligation to disclose information about successful applicants, but only to organize statistical data (Article 65, n.4. c) of the Aliens Act Regulation).

The Table below shows the number of successful applications and, in some cases, the number of applications turned down between 2012-2017. It is based on the statistical data provided by SEF on its webpage and in several annual reports. These do not provide statistical data on numbers of requests per type of residence permit. Also, only two reports mention the number of turned down applications.³⁰

| Year | Total no. of re-quests for resi-dence | No. of re-quests for resi-dence by in-vestors | No. of success-ful appli-cations | No. of turned down applica-tions | Sources |
|------|---------------------------------------|---|----------------------------------|----------------------------------|---|
| 2012 | N/A | N/A | 2 | N/A | http://www.sef.pt/documentos/56/Mapa_ARI_EN_january18.pdf |
| 2013 | N/A | N/A | 494 | 4 | SEF, Statistics' Report 2013 |
| 2014 | N/A | N/A | 1.526 | 2 | SEF, Statistics' Report 2014 |
| 2015 | N/A | N/A | 766 | N/A | SEF, Statistics' Report 2015 |
| 2016 | N/A | N/A | 1.414 | N/A | SEF, Statistics' Report 2016 |
| 2017 | N/A | N/A | 1.351 | N/A | http://www.sef.pt/documentos/56/Mapa_ARI_EN_january18.pdf |

²⁸ The Henley & Partners website lists the firms and solicitors who offer their services for investors' programmes, available at <https://www.henleyglobal.com/residence-portugal/>.

²⁹ Consulted in 13/06/2018 at <https://www.igai.pt/2015-04-01-14-43-41/relatorios-inspectivos>.

³⁰ The numbers of turned-down applications are not presented on a table or graphically, but textually. This could be a reason for interrupting the collection of data on turned-down applications in SEF reports.

1.5 INFORMATION ON APPLICATIONS BY FAMILY MEMBERS

■ *Measures concerning residence permits granted to family members:*

The holder of IRP has the right to family reunification, regulated under Articles 98 et seq. of the Aliens Act.

The application for Family Reunification can be made simultaneously with IRP application /investor

The applicant may ask the reunification of the following family members:

- The spouse;
- Minor or incapable children under the custody of the couple or of one spouse;
- Minors adopted by an unmarried applicant, by a married applicant or by the spouse, following a decision taken by the relevant authority of the country of origin, provided that its legal framework comprises the same rights and duties of natural filiation and provided that such decision is acknowledged by Portugal;
- Adult children who are unmarried and dependent of the couple or of one of the spouses, and who are studying in an education establishment;
- First-degree relatives in the direct ascending line of the resident or his/her spouse, provided that they are dependent on them;
- Minor siblings provided they are under the tutelage of the resident, in accordance with a decision made by the relevant authority of the country of origin, and provided that such decision is recognised by Portugal.
- Civil partners, even where the partnership was not registered, pursuant that there is sufficient evidence on the existence of such partnership;
- The civil partner's unmarried minor children or those considered incapable, including the children adopted by the partner, provided that they have been entrusted to that partner;

According to Article 101, in order to exercise the right to family the applicant shall have ensured Accommodation and means of subsistence.

■ *Statistical data on the number/percentage of successful applications for residence permits for family members:*

| Year | Number/Percentage of successful applications for residence permits for family members | Source |
|------|---|---|
| 2012 | N/A | |
| 2013 | 576 | SEF, Statistics' Report 2013 |
| 2014 | 2.395 | SEF, Statistics' Report 2014 |
| 2015 | 1.322 | SEF, Statistics' Report 2015 |
| 2016 | 2.344 | SEF, Statistics' Report 2016 |
| 2017 | 2.678 | http://www.sef.pt/documentos/56/Mapa_ARI_EN_january18.pdf |

Statistical data on residence permits for family members only begins in 2013. The fact that the scheme was only adopted on October 2012 may be a reason for an absence of family reunification numbers. For example, only two IRP were granted in 2012.

2 TYPE OF INVESTMENT³¹

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|-----------------------------|--------------------------------------|---|---|
| Capital Transfer | 1 million Euros minimum | <p>Check is carried out at the beginning of the application. The applicant must present the documents proving the investment at the outset:</p> <ul style="list-style-type: none"> ■ The IRP is initially valid for one year, renewable for periods of two years. For renewal, the applicant must prove that he/she maintains the initially-made investment (Article 65-E of the Aliens Act Regulation). ■ The investment must be maintained for a minimum period of 5 years (Article 65-B of the Aliens Act Regulation) <p>The applicant must prove that an investment in the minimum value of 1 million Euros was made, either as an independent entrepreneur, or as proprietor of a single member limited company, by delivering a supporting document of an actual international bank transfer, according to the type of investment (Article 65-D of the Aliens Act Regulation)</p> <p>Evidence will depend on the type of transfer: There are several types of capital transfer: a) transfer of funds to a Portuguese bank account; b) purchase of public debt; c) purchase of book-entry securities; d) purchase of securities held individually deposited with a Safe keeper, e) purchase, f) purchase of securities held individually and not integrated in a central securities depository; g) purchase of other share capital; h) investment in a single</p> | <p>Declarations from several authorities are required, dependent on the type of capital transfer. It is up to the applicant to request the intervention of these authorities whose role is only to issue the declarations. The applicant must then present the declarations while making the application.</p> <p>These are the possible competent authorities and non-public bodies, depending on the type of capital transfer:</p> <p>a) Financial institution accredited or registered in national territory by the Bank of Portugal (for bank transfers and purchase of book-entry securities)</p> <p>b) Agency for the Management of the Public Debt (for the purchase of Portuguese public debt instruments)</p> <p>c) Safekeeping (for the purchase of book-entry held individually deposited with a safe keeper)</p> <p>d) Securities issuer (for the purchase of securities held individually and not integrated in a depository of central securities)</p> <p>e) The Commercial Register (for the purchase of share capital not included in the former items and for investment in a single member limited company)</p> |

³¹ For the purposes of this Table, the term ‘investment’ covers any pecuniary disbursement required as part of the process for obtaining residence under the investors’ residence scheme.

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|-----------------------------|--------------------------------------|---|---|
| | | <p>member limited company</p> <p>Statement issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming the sole ownership of bank accounts with a balance equal to or above 1 million Euros, in which the funds were actually transferred from abroad, or the ownership of a share in the same value in omnibus accounts;</p> <ul style="list-style-type: none"> ■ For the Purchase of Portuguese Public Debt Instruments, namely Treasury bonds, savings certificates and ordinary Treasury bills: supporting documents of the sole burden-free ownership of such instruments in value equal to or above 1 million Euros, issued by the Agency for the Management of the Public Debt and a Declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer, for this investment; ■ For the purchase of book-entry securities: supporting documents of burden-free ownership issued by the relevant registering entity, and a Declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer, for this investment; ■ For the purchase of securities held individually deposited with a Safe keeper, supporting documents of the sole burden-free ownership, issued by the Safe keeper, and Declaration issued by a financial | |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|-----------------------------|--------------------------------------|---|---|
| | | <p>institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer, for this investment;</p> <ul style="list-style-type: none"> <li data-bbox="689 427 1339 687">■ For the purchase of securities held individually and not integrated in a central securities depository: supporting documents of the sole burden-free ownership, issued by the securities issuer, and a declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer for this investment; or <li data-bbox="689 722 1339 954">■ For the purchase of securities integrated in a central securities depository: supporting documents of the sole burden-free ownership, issued by the financial intermediary holding the account, and a Declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer for this investment; <li data-bbox="689 989 1339 1249">■ For the purchase of share capital not included in the former items: certificate issued within the prior 45 days by the Commercial Register, confirming the ownership of the share capital, acquisition contract, and Declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer for this investment; <li data-bbox="689 1284 1339 1334">■ For investment in a single member limited company Certificate issued within the prior 45 days by the | |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|--|--|---|--|
| | | Commercial Register, certifying that the applicant is the sole owner. | |
| OR Creation of, at least, 10 job positions | No financial threshold applicable | <p>Check is carried out at the beginning of the application. The applicant must present the documents proving the investment at the outset:</p> <ul style="list-style-type: none"> ■ The IRP is initially valid for one year, renewable for periods of two years. For renewal, the applicant must prove that he/she maintains the initially-made investment (Article 65-E of the Aliens Act Regulation). ■ The investment must be maintained for a minimum period of 5 years (Article 65-B of the Aliens Act Regulation) ■ For investments by way of creation of, at least, 10 job positions, this requirement may be reduced in 20% (8 job positions) provided the investment is made in sparsely populated territories (with less than 100 inhabitants per sq.km. or with GDP per head less than 75% of national average). ■ The applicant must present a Social security certificate issued within the prior 45 days confirming that the employees are registered, together with the respective individual employment contracts (Article 65-D, n.2 of the Aliens Act Regulation). | It is up to the applicant to request the intervention of the Social Security Services whose role is only to issue the certificate. The applicant must then present the certificate with the application. |
| OR Purchase of real estate property | 500.000 Euros minimum or 400.000 Euros where investment is made in | <p>Check is carried out at the beginning of the application. The applicant must present the documents proving the investment at the outset:</p> <ul style="list-style-type: none"> ■ The IRP is initially valid for one year, renewable for periods of two years. For renewal, the applicant must prove that he/she maintains the initially- | <p>Declarations or certificates issued by several authorities are required. It is up to the applicant to request the intervention of these authorities whose role is only to issue the documents. The applicant must then present the documents while making the application.</p> <ul style="list-style-type: none"> ■ Financial institution accredited or registered in na- |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|-----------------------------|--|--|--|
| | sparsely populated territories (with less than 100 Inhabitants per sq.km. or where the GDP per head is below 75% of the national average). | <p>made investment (Article 65-E of the Aliens Act Regulation).</p> <ul style="list-style-type: none"> ■ The investment must be maintained for a minimum period of 5 years (Article 65-B of the Aliens Act Regulation) <p>Several pieces of evidence must be presented:</p> <ul style="list-style-type: none"> ■ Final Deeds of purchase, or Promissory Contract; Declaration issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming an actual international bank transfer for purchasing or for payment as initial deposit of the sale agreement, amounting to 500 thousand Euro or more; ■ Certificate of the Land Registry Office issued within the prior 45 days, comprising the registrations, endorsements and entries in force and proving the ownership of the real estate, free of any encumbrances, or certificate of registry comprising the provisional record of purchase, when legally feasible, with an initial deposit of 500 thousand Euros or more; ■ Official Tax Description of the real estate, when legally feasible; ■ Excerpt of the Commercial Register issued within the prior 45 days in case the investment is made by means of a single member limited company of which the applicant is the owner | <p>tional territory by the Bank of Portugal</p> <ul style="list-style-type: none"> ■ Land Registry Office ■ Tax Authorities; ■ Commercial Register |
| OR Purchase of real | 350.000 | Check is carried out at the beginning of the application. | Declarations or certificates issued by several authorities |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|---|--------------------------------------|---|---|
| estate property, with construction dating back more than 30 years, or located in urban recovery areas for refurbishing, | Euros minimum | <p>The applicant must present the documents proving the investment at the outset:</p> <ul style="list-style-type: none"> ■ The IRP is initially valid for one year, renewable for periods of two years. For renewal, the applicant must prove that he/she maintains the initially-made investment (Article 65-E of the Aliens Act Regulation). ■ The investment must be maintained for a minimum period of 5 years (Article 65-B, of the Aliens Act Regulation) <p>Several pieces of evidence must be presented (Article 65-D, n.4, 5 and 6 of the Aliens Act Regulation):</p> <ul style="list-style-type: none"> ■ Final Deeds of Sale; ■ Statement issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming the actual international transfer of funds (into an unencumbered deposit bank account, in the sole name of the applicant, or the share of which in the name of the applicant corresponds to the minimum required investment amount), for the purchase of the property; ■ Certificate of the Land Registry Office issued within the prior 45 days, comprising the registrations, endorsements and entries in force and proving the ownership of the real estate, free of any encumbrances; ■ Official Tax Description of the real estate, when legally feasible; | <p>are required. It is up to the applicant to request the intervention of these authorities whose role is only to issue the documents. The applicant must then present the documents while making the application.</p> <p>The involved entities vary dependant on the situation:</p> <ul style="list-style-type: none"> ■ Financial institution accredited or registered in national territory by the Bank of Portugal ■ Land Registry Office ■ Tax Authorities; ■ Commercial Register ■ Municipalities for the feasibility and building authorisations; ■ Entity managing the urban regeneration appropriately accredited ■ Institute for the Real State and Construction |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|-----------------------------|--------------------------------------|--|---|
| | | <ul style="list-style-type: none"> ■ Excerpt of the Commercial Register issued within the prior 45 days, in case the investment is made by means of a single member limited company, certifying that the applicant is the proprietor of that company; ■ For the purchase of real estate located in urban regeneration areas, the following documentary evidence is required: <ul style="list-style-type: none"> (i) evidence of having applied for previous feasibility authorisation, or (ii) having obtained previous feasibility or authorisation (iii) having applied for planning consent together with a statement by the entity managing the urban regeneration appropriately accredited to conduct that operation of urban regeneration. ■ For the purchase of real estate with construction dating back more than 30 years, documentary evidence of <ul style="list-style-type: none"> (i) having applied for previous feasibility authorisation, or (ii) having obtained previous feasibility authorisation, or (iii) having applied for planning consent. ■ Where the purchase of the property is concluded before a building contract has been signed, the difference between the purchase price of the property and the minimum investment value required must be deposited in a banking institution duly accredited or registered in Portugal by the Bank of Portugal in an unencumbered bank account in the name of the applicant, and the applicant must submit a bank statement as documentary evidence of the existence of such depos- | |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|---|---|--|---|
| | | <p>it.</p> <ul style="list-style-type: none"> ■ Where the purchase of the property is concluded after a building contract has been signed with a contractor appropriately accredited to conduct that operation of urban regeneration by the relevant authority [Institute for the Real State and Construction], the applicant must submit that contract, a receipt for the payment, or, if unable to submit that receipt for reasons beyond his / her control, a written declaration stating that the deposit was made, in value equal to, or above the price, in a banking institution duly accredited or registered in Portugal by the Bank of Portugal in an unencumbered bank account. | |
| <p>OR Capital transfer for investing in research activities conducted by public or private scientific research institutions involved in the national scientific or technologic system</p> | <p>350.000 Euros minimum</p> <p>the amount may be reduced in 20% (280.000) provided that such investment is made in sparsely populated areas.</p> | <p>Check is carried out at the beginning of the application. The applicant must present the documents proving the investment at the outset:</p> <ul style="list-style-type: none"> ■ The IRP is initially valid for one year, renewable for periods of two years. For renewal, the applicant must prove that he/she maintains the initially-made investment (Article 65-E of the Aliens Act Regulation). ■ The investment must be maintained for a minimum period of 5 years (Article 65-B of the Aliens Act Regulation) <p>Evidence (Article 65-D, n.7 of the Aliens Act Regulation):</p> <p>a) Statement issued by a financial institution accredited or registered in national territory by the Bank of Portugal, attesting the effective transfer of capital to a bank account held by the applicant;</p> | <p>Declarations or certificates issued by several authorities are required. It is up to the applicant to request the intervention of these authorities whose role is only to issue the documents. The applicant must then present the documents while making the application.</p> <ul style="list-style-type: none"> ■ Financial institution accredited or registered in national territory by the Bank of Portugal; ■ Public or private scientific research institution integrated in the national scientific and technological system; ■ Commercial register |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|---|--|---|--|
| | | <p>b) Declaration issued by a public or private scientific research institution integrated in the national scientific and technological system attesting the effective transfer of the capital;</p> <p>c) Up-to-date commercial register certificate showing that the applicant is the shareholder of the sole shareholder company, in case the amount is applied in research activities, through a sole shareholder company</p> | |
| <p>OR Capital transfer for investing in artistic output or supporting the arts, for reconstruction or refurbishment of the national heritage, through the local and central authorities, public institutions, public corporate sector, public foundations, private foundations of public interest, networked local authorities, local corporate sector organizations, local associations and public cultural associations, pursuing activities of artistic output, and reconstruction or maintenance of the national heritage</p> | <p>Minimum 250.000 Euros.</p> <p>The value may be reduced in 20% (200.000 Euros) provided that it is made in sparsely populated areas (less than 100 inhabitants per sq.km. or GDP per head is below 75% of the national average).</p> | <ul style="list-style-type: none"> ■ Check is carried out at the beginning of the application. The applicant must present the documents proving the investment at the outset: ■ The IRP is initially valid for one year, renewable for periods of two years. For renewal, the applicant must prove that he/she maintains the initially-made investment (Article 65-E of the Aliens Act Regulation). ■ The investment must be maintained for a minimum period of 5 years (Article 65-B of the Aliens Act Regulation) ■ Evidence (Article 65-D, n.8 of the Aliens Act Regulation): <ul style="list-style-type: none"> ■ Statement issued by a financial institution accredited or registered in national territory by the Bank of Portugal, confirming the actual international transfer of funds, in a value equal to or above 250 thousand euros, into a bank account in the name of the applicant; ■ Statement issued by the Cultural Strategy, Planning and Assessment Bureau after con- | <p>Declarations or certificates issued by several authorities are required. It is up to the applicant to request the intervention of these authorities whose role is only to issue the documents. The applicant must then present the documents while making the application.</p> <ul style="list-style-type: none"> ■ Financial institution accredited or registered in national territory by the Bank of Portugal; ■ Cultural Strategy, Planning and Assessment Bureau; ■ Commercial register |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|---|--------------------------------------|---|--|
| | | <p>sultation to the competent authority for this cultural sector, confirming the actual transfer of funds;</p> <ul style="list-style-type: none"> ■ Certificate issued within the prior 45 days by the Commercial Register for investment in a single member limited company, certifying that he applicant is the sole partner. | |
| <p>OR Capital transfer for the acquisition of units of investment funds or venture capital fund of funds dedicated to the capitalisation of companies, capital injected under the Portuguese legislation, whose maturity, at the moment of the investment, is, at least, of five years and, at least, 60% of the investments is realized in commercial companies with head office in national territory</p> | <p>Minimum 350.000 Euros</p> | <p>Check is carried out at the beginning of the application. The applicant must present the documents proving the investment at the outset:</p> <ul style="list-style-type: none"> ■ The IRP is initially valid for one year, renewable for periods of two years. For renewal, the applicant must prove that he/she maintains the initially-made investment (Article 65-E of the Aliens Act Regulation). ■ The investment must be maintained for a minimum period of 5 years (Article 65-B of the Aliens Act Regulation) <p>(This type of investment was only created by the 2017 amendments to the Aliens Act, and evidence are yet to be regulated).</p> | <p>Declarations or certificates issued by several authorities are required. It is up to the applicant to request the intervention of these authorities whose role is only to issue the documents. The applicant must then present the documents while making the application</p> <p>This type of investment was only created by the 2017 amendments to the Aliens Act, and involved authorities and other entities are yet to be determined</p> |
| <p>OR Capital transfer for constitution of a commercial society with head office in the national territory, combined with the creation of five permanent working jobs, or for the reinforcement of the share</p> | <p>Minimum 350.000 Euros</p> | <p>Check is carried out at the beginning of the application. The applicant must present the documents proving the investment at the outset:</p> <ul style="list-style-type: none"> ■ The IRP is initially valid for one year, renewable for periods of two years. For renewal, the applicant must prove that he/she maintains the initially-made investment (Article 65-E of the Aliens Act Regulation). | <p>Declarations or certificates issued by several authorities are required. It is up to the applicant to request the intervention of these authorities whose role is only to issue the documents. The applicant must then present the documents while making the application</p> <p>This type of investment was only created by the 2017 amendments to the Aliens Act, and involved authorities and other entities are yet to be determined</p> |

| Type of investment required | Applicability of financial threshold | Procedure to verify the fulfilment of the investment criterion | Competent authorities and non-public bodies |
|---|--------------------------------------|---|---|
| capital of a commercial society with head office in national territory, already existing, with the creation or keeping of working jobs, with a minimum of five permanent jobs, and for a minimum period of three years. | | <ul style="list-style-type: none"> The investment must be maintained for a minimum period of 5 years (Article 65-B of the Aliens Act Regulation) <p>(This type of investment was only created by the 2017 amendments to the Aliens Act, and evidence are yet to be regulated).</p> | |

3 RESIDENCE PHASE

| Residence permit | Procedure | Competent authorities and non-public bodies | Renewal of the residence permit |
|--|---|---|--|
| <p>Temporary Residence Permit.</p> <p>The IRP is initially valid for one year, renewable for periods of two years, provided that the applicant continues to meet the requirements</p> <p>(Article 90-A, n. 2 of the Aliens Act).</p> | <p>The national legal framework foresees a minimum residence period that shall be fulfilled by IRP holders (Article 65-C of the Aliens Act Regulation): 7 consecutive or separate days, in the first year, and 14 consecutive or separate days in the subsequent 2-year periods).</p> <p>Checks are carried out during the renewal of the IRP, therefore, one year after the issuing of the IRP and then every two years until achieving the five-year period of residence in Portugal.</p> <p>Neither the law nor the regulation mention how the residence requirement must be proved.</p> <p>In cases where the renewal request is made after</p> | <p>At this stage, only the Immigration and Borders Service is competent</p> | <ul style="list-style-type: none"> The renewal of the IRP must take place at the Regional Directorates of the investment location. The SEF will confirm whether the exhibited evidence proves that the initial investment is still in force, by comparing with the current documentation with the initial documentation that was provided at the application stage. SEF can also investigate officially whether the investment is still in force. Decision must be taken in 60 days. In cases where no decision is taken, the renewal is considered implicitly accepted (Article 82, n.2 of the Al- |

| Residence permit | Procedure | Competent authorities and non-public bodies | Renewal of the residence permit |
|------------------|---|---|---|
| | <p>the IRP's expiry date, the applicant must prove that he/she stayed in Portugal for the minimum required periods (Article 65 of the Aliens Act Regulation).</p> <p>SEF's manual on proceedings mentions some examples of possible evidence for such purpose: travel certificates, boarding passes, proof of accommodation in hotels, proof of purchase of goods / services in the territory, etc.³².</p> | | <p>iens Act).</p> <ul style="list-style-type: none"> ■ Several conditions must be met for renewing the permit: <ol style="list-style-type: none"> 1. The requirements for the initial investment must be met. Evidence is the same as mentioned in table 2. For each type of investment (Article 65-E of the Aliens Act Regulation) 2. The investor must have stayed in Portugal for the minimum period of time required; (Article 65-C of the Aliens Act Regulation) ■ The IRP is initially valid for one year, renewable for periods of two years, provided that the applicant continues to meet the requirements (Article 90-A, n. 2 of the Aliens Act). IRP may be renewed 3 times until the applicant be eligible for permanent residence |

³² SEF, SEF Website, 'Guidelines on the procedure on the residence authorisation for investment' (*Manual de procedimentos relativo à autorização de residência para investimento*), 2017, available at http://www.sef.pt/documentos/56/Manual_ARI_2017.pdf.

4 DUE DILIGENCE CRITERIA AND SECURITY CONSIDERATIONS

| Due diligence and security considerations | Procedure to verify due diligence and security considerations | Competent authorities and non-public bodies | Ex-post checks |
|--|---|--|---|
| <p>IRP applicants have to fulfil the general conditions laid down on Article 77 of the Aliens Act for entering Portuguese territory. The IRP is only issued after the confirming that:</p> <ul style="list-style-type: none"> ■ the applicant was not convicted for a crime that in Portugal is punishable by deprivation of liberty for more than one year; ■ the applicant is not in the period of prohibition of entry into national territory, following a measure of removal from the country; ■ the applicant is not indicated in the Schengen Information System; ■ the applicant is not indicated in the SEF's Integrated Information System for the purpose of non-admission, in accordance with article 33. <p>The applicant must provide some documents for this security check:</p> <ul style="list-style-type: none"> ■ extract from the criminal record – duly certified by a Portuguese diplomatic or consular post abroad – | <p>These checks are carried out before issuing the IRP and also during decisions on renewal of the IRP.</p> <ul style="list-style-type: none"> ■ The IRP is initially valid for one year, renewable for periods of two years (Article 90-A, n. 2 of the Aliens Act). Therefore, checks are carried out after the first year and then every two years until the 5th year of residence | <ul style="list-style-type: none"> ■ Services on Criminal Identification are responsible for issuing Portuguese criminal record ■ Diplomatic and consular services are responsible for translating foreign criminal records. <p>Apart from these, the competent authority is the SEF. SEF consults SIS database.</p> | <p>There are no systematic ex-post checks to monitor abuses. Checks will only take place following a suspicion of illicit activities.</p> <p>Currently there is a criminal proceeding pending in the Portuguese Courts (initiated in 2014) regarding accusation of corruption involving the higher levels of SEF's officials and the Minister of Home Affairs (a total number of 21 defendants), on the ground of illegally facilitating IRPs to some foreign citizens³³.</p> <p>Other allegations of corruption, regarding illicit activities of foreign citizens were also reported by the news.³⁴ However, no court proceedings have been launched yet to this regard.</p> |

³³ Attorney-General Office's communication dated 17th November 2015, available at http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/nota_comunicacao_social_vistos_gold-acusacao.pdf.

³⁴The Guardian, 'Corrupt Brazilian tycoon among applicants for Portugal's golden visas', 18 September 2017, available at <https://www.theguardian.com/world/2017/sep/18/portugal-golden-visas-corrupt-brazilian-tycoon-among-applicants>.

| Due diligence and security considerations | Procedure to verify due diligence and security considerations | Competent authorities and non-public bodies | Ex-post checks |
|---|---|---|----------------|
| <p>of the country of origin, or country of residence in case the applicant has lived in another country for over one year. This document must be translated into Portuguese and must have been issued within the prior three months;</p> <ul style="list-style-type: none"> ■ Completed application form with permission for checking the Portuguese Criminal Records; ■ Checks on Schengen information system and SEF's Integrated Information System are carried out officially ■ Moreover, the applicant must submit also an up-to-date declaration issued within the prior 45 days by the Portuguese Tax Authorities and by the Portuguese Social Security confirming the absence of any debts to those authorities, and where that is not applicable, declaration confirming that the applicant is not registered with those authorities; <p>Besides these checks, no specific due diligence is performed on the source of funds.</p> | | | |

5 OTHER CRITERIA

| Criterion | Applicable legal provision and implementing act (if applicable) | Procedure | Competent authorities and non-public bodies | Other comments |
|---|---|--|--|--|
| Legal entry in the Portuguese territory | Article 90-A of the Aliens Act | Initial application: The applicant must provide, with the application, supporting Documents on the legal entry and stay in Portugal (that being the case, a valid Schengen visa) | SEF | |
| Applicant's identity | Article 65, n.3 of the Aliens Act Regulation | Valid passport or certified copy of the passport | SEF | For renewals, this condition is only requested in case of doubts. (Article 65, no. 3 of the Aliens Act Regulation) |
| Health insurance | Neither the Aliens Act nor the regulation demands it expressly. However, in SE's webpage applicants are instructed to provide this document with the applications ³⁵ | Initial Application and Renewal applications: Documentary Evidence of adequate health Insurance (issued within the prior three months), specifically: <ul style="list-style-type: none"> ■ Document attesting that the applicant is covered by the National Health Service, or; ■ Document attesting that the applicant is covered by an internationally acknowledged Health Insurance Plan for the | National Health Service or internationally acknowledged Health Insurance | This condition is not foreseen at the legal level. Therefore, it is highly doubtful whether SEF could demand the correspondent evidence to applicants, as it seems to be the case in practice. |

³⁵ SEF, SEF website, 'Applying for a residence permit for investment activity (ARI /golden visa)', available at http://www.sef.pt/documentos/56/FICHA_ARI_PDF1_Pedido_EN.pdf

| Criterion | Applicable legal provision and implementing act (if applicable) | Procedure | Competent authorities and non-public bodies | Other comments |
|----------------------|---|---|---|--|
| | | duration of the stay, with indication of automatic renewal on the expiry date; | | |
| Accommodation | Article 77 of the Aliens Act | <ul style="list-style-type: none"> Article 90-A of the Aliens Act sets forth additional requirements for RP applicants general conditions laid down on Article 77. | | Neither the Aliens Act Regulation nor the information available to applicants in the SEF's website mention this condition or connected evidence. Thus, it seems that it is not applicable in practice. |
| Means of maintenance | Article 77 of the Aliens Act | Article 90-A of the Aliens Act sets forth additional requirements for RP applicants, such as general conditions laid down on Article 77. | | Neither the Aliens Act Regulation nor the information available to applicants in the SEF's website mention this condition or connected evidence. Thus, it seems that it is not applicable in practice |

III. RIGHTS GRANTED BY THE PERMITS

1 RIGHTS GRANTED TO INVESTORS

IRP holders have the right to be active in the business where they have made an investment

Article 15 of the Portuguese Constitution sets forth the principle of assimilation between nationals and foreigners regarding rights and duties. This provision encompasses not only fundamental rights but also all legal rights. Where a certain legal right is only applicable to national citizens, the law must expressly mention it and it is considered as a restrictive law. The restriction must respect the principle of proportionality and be grounded on a public interest.

It is generally accepted that the principle of assimilation is recognised to all foreigners who are holders of a residence permit. Nonetheless, Article 83 of the Aliens Act sets forth a list of rights that shall be granted to all residence permit holders, including IRP holders. Portuguese scholars claim that this clause only aims at reinforcing the general principle stemming from Article 15 of the Portuguese Constitution, foreseeing a list of rights that cannot be denied to these foreigners³⁶. On the other hand, since the Aliens Act also aimed at transposing EU Directives, namely Article 12 of the Single Permit Directive³⁷.

According to Article 83 of the Aliens Act, IRP holders, have the right to:

- education;
- work;
- to be self-employed;
- vocational guidance, training, further training and retraining;
- access to health care;
- access to the law and to the courts.

Also, n. 2 of the Article 83 guarantees the right to equal treatment of foreign nationals, including social security, tax benefits, trade union membership, recognition of diplomas, certificates and other professional qualifications, or access to goods and services made available to the public, which shall include procedures for obtaining housing as provided by national law.

The Portuguese Labour Code sets forth the principle of equality between nationals and foreigners regarding working conditions, including pay and dismissal as well as health and safety at the workplace³⁸. It also grants freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security.

Furthermore, and despite not being expressly mentioned in the Immigration law, IRP holders must

³⁶ Ana Rita Gil, *Imigração e Direitos Humanos*, Petrony, 2017, Carla Amado Gomes e Anabela Costa Leão, *A Condição de Imigrante*, Almedina, 2015.

³⁷ Directive 2011/98/UE of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

³⁸ Law 7/2009 of 12 February, Labour Code, (Official publication in the Diário da República, I série, n. 30/2009), *Lei 7/2009, de 31 de fevereiro, Código do Trabalho*, Labour Code, available at http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1047&tabela=leis&so_miolo, as last amended by Law 73/2017, of 16 August (Official publication in the Diário da República, I série, n. 157/2017), *Lei n.º 73/2017, L. 73/2017*, available at <https://dre.pt/web/guest/pesquisa-avancada/-/asearch/108001409/details/maximized?anoDR=2017&search=Pesquisar&sortOrder=ASC&tipo=lei&types=SERIEI&numero=73>.

also benefit from advice services afforded by employment offices in the same conditions as national citizens, according to Article 15 of the Constitution.

Thus, all rights expressly foreseen in Article 12 of the Single Permit Directive are thus accorded to IRP holders.

2 RIGHTS GRANTED TO THE INVESTORS' FAMILY MEMBERS

According to Article 107 of the Aliens Act, family members have the same rights of the investors, mentioned in point 1.

3 OTHER BENEFITS

The IRP does not automatically entitle the investor and their family members to special tax regimes, but they may qualify as “non-regular residents” (Article 16, n. 6 of the Income Tax Code)³⁹.

Non-regular residents are taxable persons who have not been resident in Portuguese territory in any of the previous five years. A non-regular resident acquires the right to be taxed as such for a period of 10 consecutive years from the year of his/her registration as a resident in Portuguese territory (Article 16, n. and n. 9 of the Income Tax Code).

According to such status, they may have several tax benefits, such as an exemption from taxation for foreign source income and taxation at a reduced rate of 20% for dependent and independent labour income resulting from activities considered to be of “high added value”, such as activities of a scientific, artistic or technical nature, or through intellectual or industrial property, investment income, rental income, capital gains income or other increases in equity⁴⁰).

³⁹ Decree-Law 442-A/88, of 30 November, as last amended by Law 114/2017 of 29 December, Income Tax Code (*Código do Imposto sobre o Rendimento das Pessoas Singulares*). Official Publication *Diário da República*, Serie I, n. 249/2017, available at <https://www.pwc.pt/pt/pwcinformisco/codigos/cirs.html>.

⁴⁰ Regulation (Portaria) 12/2010, of 7 January. Official Publication *Diário da República*, Serie I, n. 4/2010, available at <https://dre.pt/web/guest/pesquisa/-/search/460194/details/maximized>. This Regulation approves the table of activities with high added value

IV. INTERACTION BETWEEN RESIDENCE AND CITIZENSHIP SCHEMES

Under the Nationality Act, all foreigners are eligible for acquiring citizenship through the general provisions on naturalisation.

There is no specific procedure for granting citizenship on the basis of a residence permit obtained under an investors' residence scheme. There is also no accelerated naturalisation procedure or any specificities for holders of IRPs.

The conditions for granting citizenship through naturalisation are foreseen in Article 6, n.1 of the Nationality Act. The applicant must fulfil the following requirements:

- Majority or emancipation under Portuguese law;
- Previous legal residence in Portugal for at least six years;
- Sufficient knowledge of the Portuguese language;
- No conviction for having committed a crime, punishable by a maximum prison sentence of 3 years or more, according to Portuguese law;
- No danger or threat to national security or defence, due to involvement in activities related to the practice of terrorism.

Since the investors' residence permit programme only entered into force in 2012, all those who benefit from it do not fulfil yet the minimum residence period (six years) necessary for acquiring Portuguese nationality through naturalisation.

V. ECONOMIC AND FINANCIAL EFFICIENCY OF RESIDENCE PERMITS FOR FOREIGN INVESTORS

The Aliens Act Regulation establishes a mechanism to monitor the general impact of the investor's scheme. Under Article 65-H of the Aliens Act Regulation, a follow-up group is set up consisting of the national director of SEF, the Director-General for Consular Affairs and Portuguese Communities, the President of Agency for Investment and Foreign Trade of Portugal, a representative of the member of the Government responsible for culture and a representative of the member of the Government responsible for the areas of education and science. It has the competence to monitor the statistical evolution of the IRP and to present reports with the "status quo" and with suggestions that they consider appropriate.

The Table below shows the investment resulting from the IRP and the origin of such investment:

| Reference period | 8 October 2012 to the 31 August 2015 ⁴¹ | 8 October 2012 to 31 May 2018 ⁴² |
|---|--|---|
| Total investment and origin of the investment | 1.496.193.478,0€, of which: <ul style="list-style-type: none"> ■ 145.659.605,65€ were due to capital transfer; and ■ 1.350.533.872,38€ to purchases of real estate property | 3.842.445.612,03€ €, from which: <ul style="list-style-type: none"> ■ 363.046.446,68€ € were due to capital transfer; and ■ 3.479.399.165,35€ to real state acquisition. |
| Correspondence of investment with number of IRPs | The numbers above correspond to: <ul style="list-style-type: none"> ■ 2332 IRPs issued due to real estate acquisitions; data on the type of real estate is not available ■ 130 IRPs issued due to capital transfer⁴³; and ■ 3 IRPs issued due to creation of jobs. | These numbers correspond to: <ul style="list-style-type: none"> ■ 5930 IRPs issued due to real state acquisition (5770 under point c) of Article 65-A and 160 under point d) of article 65-A of the Aliens Act Regulation)⁴⁴; ■ 338 IRPs through capital transfer; and ■ 11 IRPs through the creation of jobs |

Recent news reported a decrease of 29% of IRPs attributions in February 2018 by comparison to the previous year.⁴⁵

From the data in the Table I the creation of jobs, according to a 2015 study of the Portuguese Association of Resources, the biggest part of jobs was created in the tourism sector and real estate.⁴⁶ It is estimated that at least 110 job positions were created in total.

Since the creation of investors' residence schemes, has there been a boost of Portuguese economy.

⁴¹ Government of Portugal, 'Golden Residence Permit. Data from the 8 October 2012 to the 31 August 2015', available at http://www.peprobe.com/pe-content/uploads/2015/09/Mapa_ARI_EN_till31aug2015.pdf.

⁴² Government of Portugal, 'Golden Residence Permit. Data from the 8 October 2012 to the 31 May 2018', available at http://www.sef.pt/documentos/56/Mapa_ARI_EN_may18.pdf.

⁴³ These funds must be transferred into a bank account on a Bank Institution registered or authorized by the Bank of Portugal. The transfer must be proven by a declaration issued by the Bank Institution. No further control is made except when renewing the permit, where the bank declaration must be issued again.

⁴⁴ Data on the purpose of acquisition of real estate (accommodation, business) is not available.

⁴⁵ Expresso, 'Golden Visas: investment capped down in 29% in January to EUR 99.2 million' (*Vistos gold: Investimento captado cai 29% em janeiro para €99,2 milhões*), 9 February 2018, available at <http://expresso.sapo.pt/economia/2018-02-09-Vistos-gold-Investimento-captado-cai-29-em-janeiro-para-992-milhoes>.

⁴⁶ Study made by the Portuguese Association of Resources, mentioned in the Parliamentary debates in *Diário da Assembleia da República*, of 12/3/2015, n. 61, page 4.

However, there is no data on whether this is connected to the launching and implementation of IRP schemes. Some sources report that Portugal is the Portuguese country where the Chinese investment has more impact in the economy,⁴⁷ especially in the sectors of energy, banking, health and real estate. Such investment represented a total of 3.3% of the Gross Domestic Product (GDP) in 2016. This investment is partially made through the IRP scheme, where, according to SEF data, the Chinese nationality corresponds to the majority of the applicants, followed by the Brazilian.⁴⁸

The real estate sector, especially in Lisbon and Porto urban areas has been experiencing a dramatic increase of the prices. However, we cannot affirm that this increase was exclusively due to the IRP scheme. In fact, also the Portuguese tourism suffered a strong evolution, also contributing to this increase of real estate prices. Taking the example of the average price for square metre in Lisbon, it has increased from €1.769 in the first semester of 2016 to €2.394 in the last semester of 2017⁴⁹.

⁴⁷ Report of the Barcelona School of Economics and Business, 'Trends in Chinese Investment in Europe', available at <http://www.jornaleconomico.sapo.pt/noticias/portugal-e-o-pais-europeu-onde-o-investimento-chines-tem-mais-impacto-na-economia-141467>.

⁴⁸ Government of Portugal, 'Golden Residence Permit. Data from the 8 October 2012 to the 31 January 2018', available at http://www.sef.pt/documentos/56/Mapa_ARI_PT_janeiro18.pdf.

⁴⁹ National Statistics Webpage, available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0009496&contexto=bd&selTab=tab2.

VI. OTHER COMMENTS

Although the approval of the residence permit scheme for investment did not receive strong opposition, its implementation has been quite controversial. In 2014, a scandal concerning the accusation of corruption for facilitating the granting of residence permits led to the dismissal of senior staff members of the SEF, as well as of the Minister of the Interior, amongst other 21 defendants. The judicial procedure is still pending before the Portuguese criminal Courts.

National journals continue to broadcast several cases of criminality connected to golden visas, such as corruption or fraud, both by investors and by lawyers who are accused of taking advantage of their foreigner clients⁵⁰.

In addition, the scheme merited several subsequent initiatives led by the opposition, one of which consisted precisely on a proposal aimed at repealing the scheme, presented by the Left Block Party. This party invoked the risk of fraud and corruption, as well as the fact that the scheme contributed little to the creation of jobs.⁵¹ However, the initiative of this party, which is the leftmost party, did not merit the support of any of the majority parties.

The legal scheme also led to some layers of the society, NGOs and Human Rights advocates to claim that the State is only concerned with opening the doors to immigrants when it is economically profitable. Some politicians, including members of the European Parliament also claim that the scheme is a way of “selling” the Portuguese citizenship⁵².

Finally, there is a widespread idea that the scheme led to a considerable increase in property prices, which, together with the tourism increase, are making impossible for young Portuguese citizens to buy or rent houses in the city centres of Lisbon and Porto.

However, despite this critics, one must point out that there is a strong will from the authorities to accompany and monitor the scheme, through the publication of statistics that are constantly updated, and also through the development of a procedural manual, which has to be carefully followed.

⁵⁰ <https://www.dn.pt/portugal/interior/advogada-sacou-milhoes-com-burlas-nos-vistos-gold-9444172.html>

⁵¹ Parliamentary Debates in *Diário da Assembleia da República*, of 13/03/2015, n. 61, page 9.

⁵² <https://ionline.sapo.pt/609589>.