
Corporate Law

Newsletter | Portugal

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Contents

**Legal Framework for the “Tech Visa”
Programme**

National Legislation

National Case-law

I. Legal Framework for the “Tech Visa” Programme

Order no. 328/2018 of 19 December came into force on 1 January 2019. It sets out the legal regime for accrediting companies under the “Tech Visa” Programme, with a view to the admission of foreign nationals¹ for the purposes of undertaking highly-skilled activities² in Portugal, pursuant to Articles 31 (1) c) and 90 (1) c) of Act no. 23/2007 of 4 July (as amended by Acts no. 29/2012 of 9 August, no. 56/2015 of 23 June, no. 63/2015 of 30 June, no. 59/2017 of 31 July and no. 102/2017 of 28 August), establishing the conditions and procedures for entry, stay, departure and removal of foreign citizens from the Portuguese territory, in addition to the status of long-term resident.

The “Tech Visa” Programme comprises the establishment of an accreditation programme for technology-based and innovative companies for the purposes of issuing visas or residency permits to highly-skilled foreign nationals who wish to undertake activities in them.

In order to be accredited, companies that undertake technology and innovation-based activities must fulfil certain selection and assessment criteria, namely:

- Be legally incorporated;
- Not have any overdue Social Security or tax debts or unpaid salaries;
- Not be considered a restructuring company;
- Set out the priority areas of technical expertise sought on the application form, under the “Tech Visa” Programme, on the basis of the National Catalogue of Qualifications;
- Produce goods and services, with export potential;
- Have positive net equity, evidenced by the latest available Simplified Business Information;
- Evidence its technology and innovation basis;
- Successfully meet the following assessment criteria: (i) sales potential; (ii) degree of technological innovation, and (iii) export vocation.

A company must meet no fewer than two of the following criteria, in order to evidence its technology and innovation basis: (i) have been legally incorporated for at least two years and undertake activity in a high-tech sector or a medium high-tech sector, or an activity which is highly knowledge-intensive; (ii) at least 15% of its employees must be highly-qualified; (iii)

¹ Non-EU countries.

² In the meaning given by Article 3 (1) a) of Act no. 23/2007, a “highly-skilled activity” is an activity requiring specialized technical skills, exceptional skills or an activity requiring specific expertise to perform it.

have had an average annual increase in business turnover of more than 20% during the last three years; (iv) have raised venture capital investment (through an injection of funds from “*Business Angels*” or “*Venture Capital*”) within the past three years; (v) have had investment projects approved within the past three years under the Portugal 2020 programme, or a future programme to be established within the scope of the European Union Multi-annual Financial Framework, in the areas of Productive Innovation, Skilled and Creative Entrepreneurship or R&D Companies; (vi) have successfully applied to the Tax Incentives Regime for R&D Companies (SIFIDE) within the past three years; and (vii) have had a project approved within the past three years under the European Union Innovation Framework Programmes (e.g. Horizon 2020 or the forthcoming Horizon Europe).

IAPMEI, I.P. and the Borders and Immigration Service (SEF) shall carry out inspections on accredited companies in order to verify the faithfulness of information provided during the accreditation process and shall immediately inform them of any relevant facts or changes that could call into question the criteria for admitting highly-skilled citizens from non-EU countries under the “*Tech Visa*” programme. Furthermore, no more than 50% of the company’s employees can be recruited under the “*Tech Visa*” programme at any given time, or 80% if the company undertakes most of its activity³ in inner territories⁴.

For the purposes of the “*Tech Visa*” Programme, employees must meet a range of requirements in order to be considered highly-skilled, in particular: (i) be nationals of a non-EU country and not have permanent residence in an EU member-state; (ii) where applicable, have fulfilled all their tax and social security obligations; (iii) have a clean criminal record; (iv) be at least 18 years of age; (v) perform a highly-skilled activity (evidenced through skills requirements and experience or an employment contract); (vi) earn an annual income of at least 2.5 times the Social Benefits Reference Figure; and (vii) have sufficient knowledge of Portuguese or English for the tasks they will perform.

Applications must be filed in Portuguese, using the online form available on the website of IAPMEI, I.P., which must deliver its decision within 20 working days of all the required documentation having been properly submitted.

Companies shall be accredited for a period of 2 years, renewable for further periods of 2 years and shall have their accreditation withdrawn should they fail to fulfil their statutory obligations and requirements or at their own request.

³ The used criterion has as reference the weight of the number of employees who develop their activity in the company’s establishments located in inner territories, against the total number of employees of the company.

⁴ Inland regions are those listed in Order no. 208/2017, of 13 July.

II. National Legislation

Act no. 5/2019. D.R. no. 8/2019, Series I, 11 January 2019

Establishing the legal regime for energy suppliers' information obligations to consumers

Decree-Law no. 16/2019. D.R. no. 15/2019, Series I, 22 January 2019

Establishing the legal regime for access and performance of space activities

Order no. 31/2019. D.R. no. 17/2019, Series I, 24 January 2019

Adopting the terms governing the submission of Simplified Business Information/Annual Tax and Accounting Return (IES/DA)

Order no. 43/2019. D.R. no. 22/2019, Series I, 31 January 2019

Amending article 7 of Order no.102/2015 of 7 April, as amended by Order no. 246/2018 of 3 September, by modifying procedures for authorizing the installation of additional capacity in wind generating stations

Decree-Law no. 24/2019. D.R. no. 23/2019, Series I, 1 February 2019

Establishing rules applicable to electronic communication between the Portuguese register of companies and the registers of other European Union member-states, transposing Directive no. 2012/17/EU

Act no. 16/2019. D.R. no. 32/2019, Series I, 14 February 2019

Fifth amendment to Act no.52/2003 of 22 August (Counter-terrorism Act), transposing EU Directive 2017/541, of the European Parliament and of the Council, of 15 March 2017

Cabinet Resolution no. 46/2019. D.R. no. 38/2019, Series I, 22 February 2019

Creating the "ePortugal" portal with the domain name eportugal.gov.pt, replacing the Portal do Cidadão (Citizen's Portal) and the Balcão do Empreendedor (Entrepreneur's Counter)

Decree-Law no. 33/2019. D.R. no. 44/2019, Series I, 4 March 2019

Establishing the rules governing Startup Portugal – Portuguese Association for promoting Entrepreneurship

Cabinet Resolution no. 48/2019. D.R. no. 44/2019, Series I, 4 March 2019

Establishing support measures for companies to be implemented in case of a no-deal Brexit

Order no. 80/2019. D.R. no. 54/2019, Series I, 18 March 2019

Making the seventh amendment to the Regulations of the Register of Companies, adopted in the annex to Order no. 657-A/2006 of 29 June, amended by Order no. 1416-A/2006 of 19 December, no.562/2007 of 30 April, no. 234/2008 of 12 March, no. 4/2009 of 2 January, no. 1256/2009 of 14 October and no. 233/2018 of 21 August

III. National Case-law

Constitutional Court Ruling no. 616/2018 – D.R. no. 3/2019, Series II, 4 January 2019

Ruling the provisions contained in articles 163 and 164 (2) and (3) of the Insolvency and Corporate Recovery Code to be unconstitutional. The Court interprets them as preventing a creditor with a real guarantee over assets to be disposed from claiming the nullity in court against the disposal carried out by the insolvency practitioner that violates obligations to publish the minimum sales price set or the forecast sales price to a given entity.

Constitutional Court Ruling no. 675/2018 – D.R. no. 16/2019, Series I, 23 January 2019

Declaring the unconstitutionality, with general mandatory effects, of the provision contained in Article 17-G (4) of the Company Insolvency and Recovery Code, adopted by Decree-Law no.53/2004, of 18 March, when interpreted as the provisional liquidator's declaration of insolvency, pursuant to the provisions of Article 28 – albeit with the necessary adaptations – equating to the debtor filing for insolvency, when the latter disagrees with such insolvency.

Constitutional Court Ruling no. 7/2019 – D.R. no. 53/2019, Series II 15 March 2019

Upholding the constitutionality of the provisions contained in Articles 2, 3, 4, 11 and 12 which underpin the legal regime of the “Extraordinary Contribution levied on the Energy Sector” adopted by Article 228 of Act no. 83-C/2013 of 31 December (State Budget for 2014).

Ruling by the Supreme Court of Justice of 15 January 2019 (case no. 5808/15.0T8LSB.L1.S1)

The Supreme Court was called to rule on a case concerning the annulment of a company's resolution. A private limited liability company held an extraordinary General Meeting in 2015, with the only agenda item included in the notification being “*current management's termination of duties by virtue of resignation and/or dismissal and election of new management for the two-year period 2015-16*”, without any indication as to the reasons for the early termination of the current management's term. The issue at stake was whether or not said notification was a breach of shareholders' right to information, in particular the two shareholders who also acted as company's managers, who had not been informed of the grounds for their removal, requested by the other company's shareholders.

The Court pointed out that private limited liability companies are companies of individuals, in which relationships of trust take on particular importance, especially when the shareholders are few in number and hold similar stakes, hence removal from company's office should ensure that those shareholders whose removal is being sought have access to

enough information to defend themselves against allegations levelled at them by the company.

The Court therefore considered that as the notification of General Meeting did not include even “basic information” concerning allegations against the managers that would lead to the early termination of their offices, they were prevented, both in advance of and during the General Assembly, from knowing the grounds to justify their removal. A procedural error had thus been committed, rendering the resolution subject to annulment.

Furthermore, the Court added that the free removal of managers, pursuant to Article 257 (1) of the Portuguese Companies Code, without even having to invoke lawful grounds, must be determined by shareholders in a duly convened General Meeting, so that those with decision-making powers are vested with the right to vote or not vote on the motion, having been adequately informed. As a result, as the General Meeting which approved the removal of the managers violated obligations to inform, hence the Supreme Court ruled that it had not been correctly convened, and thus the company’s resolution taken should be considered null and void.

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