

International **Comparative** Legal Guides



Corporate Immigration **2021**

A practical cross-border insight into corporate immigration law

Eighth Edition

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1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The main sources of immigration law in Portugal are: the EU Directives (transposed into national law); EU Regulations; EU Agreements; and Portuguese Law, in particular Law no. 23/2007, of 4th July, Decree Law no. 84/2007, of 5th November, Law no. 37/2006, of 9th August and the Portuguese Labour Code.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Portuguese Immigration Office (*Serviço de Estrangeiros e Fronteiras* – SEF), which is a department of the Ministry of Internal Affairs, processes visa requests and residence permits.

The City Councils deal with registrations in the case of EU citizens.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Portugal is part of the European Union, which entitles EU citizens to live, move and work in an EU Member State.

Portugal is also party to the Schengen Agreement, under which internal border controls have been abolished, and of agreements between the EU and specific countries on the facilitation of the issuance of visas.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

The possibility of travelling to Portugal without a visa depends on the nationality of the individual.

The following business visitors are exempted from holding a visa:

- nationals of an EU Member State, Iceland, Liechtenstein, Norway or Switzerland;
- third-country nationals listed in Annex II of Regulation (EU) 2018/1806;

- third-country nationals holding a Schengen visa or a residence permit issued by an EU Member State; and
- UK citizens.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Business visitors can stay in Portugal for a maximum of 90 days within a 180-day period.

2.3 What activities are business visitors able to undertake?

Business visitors may not undertake remunerated professional activities in Portugal without an appropriate visa.

This being said, business visitors may:

- attend conferences, events or congresses;
- participate in meetings, negotiations or trade deals;
- visit clients or partners; and
- execute research and networking activities.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

Business visitors mentioned in question 2.1 point a) may work and provide services. Business visitors mentioned in question 2.1 point c) employed in an EU Member State may work or provide services in Portugal for a temporary period provided that they remain employed with their employer in the EU Member State. For UK citizens, the Trade and Cooperation Agreement applies.

2.5 Can business visitors receive short-term training?

Yes, they can receive short-term training.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

The SEF, the Authority for Labour Conditions (ACT) and the police entities act in cooperation to warrant compliance with the Portuguese Labour Code and the Immigration Law, which includes executing inspections in companies.

3.2 What are the rules on the prevention of illegal working?

Although there are no specific rules on the prevention of illegal working, employers must:

- confirm that the employee holds a valid work permit; and
- notify the authorities in the case of illegal stay.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

There are two types of penalties:

- The act might be subjected to an administrative offence: the penalty may vary from €2,000 to €90,000.
- The act may be qualified as a crime: according to the specific situation, an imprisonment penalty of up to two years might be applicable.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

There is no such mandatory system in Portugal.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

According to the Portuguese Labour Code, an employer who hires foreign nationals must:

- attach a copy of the residence visa/residence permit of the employee to the employment contract;
- inform ACT of the execution of an employment contract with a foreign national; and
- inform ACT of the termination of the contract, within 15 days.

4.3 Are employers who hire foreign nationals required to show a commitment to train or up-skill local workers?

There is no such obligation in Portugal. However, according to the Portuguese Labour Code, employers must provide ongoing training to all employees, foreign or national.

4.4 Are employers who hire foreign nationals required to pay government charges and fees which contribute towards the training or up-skilling of local workers?

There is no such obligation in Portugal.

4.5 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Please see question 3.1.

4.6 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

No, SEF does not maintain such a list.

4.7 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Yes, there is a short stay visa for seasonal work in the following sectors:

- Agriculture, livestock, hunting, forestry and fishing.
- Hospitality, restaurants and similar.
- Food, liquor and tobacco industries.
- Gross and retail commerce.
- Construction.
- Land transport.

4.8 Are there annual quotas for different types of employment-related work permits or visas?

There will be no quotas in 2021.

4.9 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

Such restrictions are not generally set out in the law.

However, companies hiring through the Tech Visa programme are only permitted to hire 50% of the employees under this programme.

4.10 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

Employees are not required to demonstrate language proficiency, except if they are applying for permanent residence.

However, employees under the Tech Visa programme must demonstrate proficiency in Portuguese, English, French or Spanish appropriate to the duties to be performed.

4.11 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

In some situations, a medical declaration may be requested confirming the applicant does not have any contagious diseases and is filed together with the visa application.

4.12 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

In order to apply for a visa, the employee must have travel insurance including medical coverage. Once the employee is granted a residence permit, he/she will be eligible to enrol with the national health service which entitles them to access the public medical service.

4.13 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Yes, foreign employees who hold work permits may be seconded to a client site.

4.14 Does the work permit system require the sponsoring employer to have a physical office space at which employees are required to be physically present?

There is no such obligation in Portugal.

4.15 Does the work permit system allow employees who hold work permits to work remotely including work from home?

Yes, employees who hold a work permit are permitted to work remotely including work from home.

5 Non-Sponsored Highly Skilled, Exceptional or Extraordinary Talent Visas

5.1 Is there an immigration category which covers highly skilled individuals (including those who are not sponsored by a company)?

There are two immigration categories for highly skilled individuals:

- Highly skilled activity, with the following requisites:
 - i. evidence of academic qualifications;
 - ii. in the case of a profession subject to specific regulations, evidence of the fulfilment of the requirements;
 - iii. the existence of at least a promissory employment contract adequate to the activity they intend to execute; and
 - iv. a salary that matches or exceeds the amount that is set out by law (at present €1,320 per month or €880 per month if belonging to the group of occupations particularly in need).
- The “Blue Card”, with the following requisites:
 - i. evidence of academic/professional qualifications;
 - ii. in the case of a profession subject to specific regulations, evidence of the fulfilment of the requirements;
 - iii. evidence of having had an employment contract with duration of, at least, one year; and
 - iv. a salary that matches or exceeds the amount that is set out by law (at present €1,755 per month or €1,405 per month if belonging to the group of occupations particularly in need).

5.2 Is there an immigration category which allows those with exceptional or extraordinary talent in their specialist field to obtain a work visa?

There is no such category in Portugal.

6 Remote Working Visas

6.1 Is there a visa category which allows employees of overseas companies who remain employed outside your jurisdiction to work remotely in your jurisdiction without the need to obtain a standard work permit?

There is no specific visa category for such purpose. However, the employee could apply for a residence visa (followed by a residence permit application) for people living out from personal revenue, namely revenue from movable and immovable property, intellectual or financial assets. Please note that there may be Tax, Social Security or Labour implications, both for the employer and/or the employee.

6.2 To what extent do your visitor rules explicitly permit temporary remote working, for example where the employee of a foreign company cannot leave your territory due to health or other emergencies?

There are no rules explicitly permitting temporary remote working and therefore there may be Tax, Social Security or Labour implications, both for the employer and/or the employee.

During the COVID-19 pandemic, the government extended the stay of all foreign citizens stuck in Portugal; however, no rules were approved regarding remote working for said citizens.

7 Investment or Establishment Work Permits

7.1 Is there an immigration category which permits employees to be authorised to work based on investment into, or setting up a subsidiary or corporate presence in, your jurisdiction?

There are a few categories:

- A residence permit for self-employed workers and for individuals intending to incorporate a company in Portugal or to move the head office of an existing company to Portugal.
- A residence permit for entrepreneurs, known as the “startup visa”.
- A residence permit for investment purposes, known as the “golden visa”, which implies the execution of an investment in Portugal.

8 Temporary Work Permits

8.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

There are the following temporary stay visas:

- to attend a study programme in an educational establishment, for a student exchange programme, for an unpaid professional internship or voluntary work, or for the execution of a non-remunerated sports activity; and
- for the transfer of employees between countries belonging to the World Trade Organization.

8.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform short-term temporary work?

The temporary visa for seasonal work (see question 4.7) enables foreign workers to perform short-term temporary work in Portugal. However, such activity must be included within the list identifying the sectors to which seasonal work is applicable.

9 Group or Intra-Company Transfer Work Permits

9.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

There are two categories for the transfer of employees within branches of the same company or within companies of the same

group of companies: the intra-corporate transfer (ICT); and the temporary stay visa for the transfer of employees within Member States of the World Trade Organization.

9.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

A group of companies is defined as two or more companies which in relation to each other: directly or indirectly, hold the majority of the share capital; control the majority of the votes; are entitled to appoint more than half of the members of the corporate bodies; or which are managed on a unified basis by the parent company.

9.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Obtaining a work permit under the ICT implies that the hosting company and the company established in a non-EU Member State belong to the same organisation/group of companies.

In addition, the employee should have been working with the employer company for a minimum of three to six months in the case of a trainee, or three to 12 months in the case of managers or specialist workers.

9.4 What is the process for obtaining a work permit for an intra-company group employee?

The process of obtaining a work permit is in general exempted from a previous work visa.

Therefore, the request is filed by the employee at SEF, together with the following documents/evidence:

- i. Passport valid for at least the duration of the stay.
- ii. Proof that the companies belong to the same group of companies.
- iii. Proof that the employee had been working with the employer company for a minimum of three to six months in the case of a trainee or three to 12 months in the case of managers or specialist workers.
- iv. Declaration by the employer company including the identification of the hosting company and the terms and conditions of the employment.
- v. Proof of the necessary qualifications and previous professional experience or diploma.
- vi. Health insurance.

9.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

The ICT does not necessarily need to be preceded by a visa. The visa is only necessary in the case that the individual is not exempted from obtaining a visa to enter into Portugal.

In that case, the visa request must be filed at the Portuguese Consulate or through the e-VISA platform along with the documents referred to in question 9.4 above, the applicant's criminal record from the country of residence, and travel medical insurance.

9.6 How long does the process of obtaining the work permit and initial visa take?

The process for the initial visa usually takes 45–60 days but might vary depending on the availability of the Consulates and the backlog at the SEF.

After being filed with SEF in Portugal, the work permit must be issued within 90 days. Usually, this deadline is not as long and residence permits are issued in a shorter period.

9.7 Is there a maximum period of validity for initial intra-company transfer visas, can they be extended and is there a maximum period of stay in this category?

The ICT residence permit is issued for the period of one year or the same period as set out in the employment contract, and in the case of managers or specialist workers can be renewed for equal periods, provided that the total period does not exceed three years.

9.8 Can employees coming under the intra-company route transfer to a permanent stay visa route and apply for permanent residence?

No, it is not possible.

9.9 What are the main government fees associated with this type of visa?

The government charges are the following:

- With prior visa application:
 - Visa fee: €90.
 - Residence permit analysis fee: €84.
 - Residence permit issuance fee: €72.20.
- Without prior visa application:
 - Residence permit analysis fee: €84.
 - Residence permit issuance fee: €194.20.

10 New Hire Work Permits

10.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

The main immigration categories for new hires are the residence permit for workers (considered non-skilled) and the residence permit for highly skilled professionals.

10.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes, labour market testing may be required before visa applications. Employers who wish to hire third-country nationals who are in their country of origin must register the job offer on the Institute for Employment and Vocational Training's (IEFP) website and may only employ them if the position is not filled within 30 working days by someone legally residing in Portugal.

10.3 Are there any exemptions to carrying out a resident labour market test?

Yes, a resident labour market test is not required for independent workers, highly skilled professionals, ICT transfers, transfers within Member States of the World Trade Organization or for holders of a Blue Card.

10.4 What is the process for employers obtaining a work permit for a new hire?

The employee must first obtain a work visa in his/her country of residence and subsequently to his/her entry into Portugal, request a work permit before the SEF.

Highly skilled employees and ICT employees, among others, may apply for the work permit directly without a prior residence visa.

10.5 What is the process for the employee to obtain a visa as a new hire?

The employee shall apply for a work visa at a Portuguese Consulate in his/her country of residence with the following documents:

- Application form.
- Passport.
- Two passport photos.
- Valid travel insurance, including medical emergencies and repatriation.
- A residence permit, if the country of residence is not the country of nationality.
- Authorisation for checking the employee's criminal record in Portugal.
- Criminal record from the country of origin or the country of residence in the case that they have been living in the latter for over a year.
- Proof of means of subsistence.

Non-highly skilled workers: employment contract or promissory employment contract; declaration issued by IEFP confirming that a labour market test was carried out and the position was not filled; and a professional certificate, when the profession is regulated in Portugal.

Highly skilled workers: employment contract or promissory employment contract with a minimum duration of one year and a minimum salary of €1,320/€880 per month; and professional certificates/diplomas adequate for carrying out a high-skilled activity.

10.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

- Regular work visa: 60 days.
- High skilled work visa: 30 days.
- Regular and high skilled work permit: 90 days.

10.7 How long are initial visas for new hires granted for and can they be extended?

The work visa is valid for two entries within a period of 120 days. During 2021, holders of work visas will apply for a work permit valid for two years which can be renewed for periods of three years.

10.8 Is labour market testing required when the employee extends their residence?

No, labour market testing is not required for renewals.

10.9 Can employees coming as new hires apply for permanent residence?

Holders of a work permit that have been renewing the temporary residence permit for at least five years may apply for a permanent

residence permit provided that the following conditions are met: absence of a criminal record; and basic knowledge of Portuguese which can be proved by presenting an A2 or higher certificate issued by certified entities.

10.10 What are the main government fees associated with this type of visa?

Please refer to question 9.9 above.

11 Conditions of Stay for Work Permit Holders

11.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Holders of work permits shall keep an employment contract in force so that they are able to renew the work permit.

11.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Foreign nationals that possess a visa who enter into Portugal through a border not subject to control must submit a declaration of entry before SEF within three working days from the date of entry.

In addition, registration with the tax authority and social security is required for whoever holds a work residence permit.

12 Dependants

12.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

For family reunification purposes, the following family members are eligible: spouses; children under 18 or over 18 if single and studying in Portugal; adopted children; direct ascendants of the applicant or spouse that are considered economically dependent (which is assumed if they are over 65 years old); and siblings under 18 whose guardianship has been determined by the Court.

12.2 Do civil/unmarried or same-sex partners qualify as family members?

For immigration purposes, there are no differences between married/unmarried and/or same-sex partners; however, unmarried partners must prove that they have been living together for more than two years.

12.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

The residence permit enables spouses and partners to work in Portugal.

12.4 Do children have access to the labour market?

Individuals between 16 and 18 years old may have access to the labour market, provided they have concluded or are still attending compulsory education and have the physical and mental conditions adequate to the job.

Individuals under 16 years old may also have access to the labour market, provided they have concluded or are still attending compulsory education and the work consists of soft tasks that do not harm their health, education or growth.

13 Permanent Residence

13.1 What are the conditions for obtaining permanent residence?

Permanent residence is a residence permit valid for five years that can be renewed at the end of such period.

The main requisites are:

- To have been living in Portugal for at least five years (under a temporary residence permit).
- To not have been convicted for (a) crime(s) that, individually or jointly, exceed(s) one year of imprisonment.
- To prove basic knowledge of the Portuguese language, which can be demonstrated by presenting an A2 or higher certificate issued by certified entities.

13.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Under the circumstances that the individual fulfils the conditions for permanent residence, they would be entitled to apply.

14 Bars to Admission

14.1 What are the main bars to admission for work?

The main bars are related to the issuance of work visas. The applicant must not have been convicted for a crime which is punishable (in Portugal) by imprisonment that exceeds one year, should not be identified at the Information Integrated System of SEF or referenced in the Schengen Information System and shall not be within a period of prohibition of entry into Portugal following an expulsion measure. Furthermore, in some cases, for some professions it is mandatory to register with the Portuguese regulatory authorities.

14.2 Are criminal convictions a bar to obtaining work permission or a visa?

All individuals intending to apply for a work visa or a residence permit cannot have been convicted for a crime that, in Portugal, is subject to imprisonment exceeding one year.



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