

SPAIN OPENS DOORS TO INTERNATIONAL ENTREPRENEURS

Simplification of entry and stay procedures for non-EU foreigners in Spain for reasons of economic interest

Some 10 months after firstly announcing its intentions to introduce new measures to facilitate entrepreneurship projects in Spain, last Friday the Spanish Parliament approved the Entrepreneur Support Act.

This Act is approved in the context of a very serious financial and economic crisis, which has caused the disappearance of some 1.9 million enterprises in Spain between 2009 and 2012 and an unemployment rate above 25%. The Spanish Government has been approving a series of legal provisions aimed, on the one hand, at keeping the economy under control and, on the other, at facilitating the creation of new businesses and attracting domestic and foreign investment. The stated objective of this new piece of legislation is to support entrepreneurs and the entrepreneurial activity, assist in their development, growth and internationalisation and foster the entrepreneurial culture.

We will focus this summary of the Act 14/2013 on those issues which are, at first sight, of most interest to foreigners and foreign investors. It must be said, though, that the new Act contains a myriad of provisions which amend or substantially modify many aspects of Spanish law, including Taxation, Social Security contributions, Corporate Law, Insolvency Law, etc.

After many decades of setting up obstacles against the entry of foreigners into the Spanish employment market, the introduction to the Act significantly states that:

"[...] the number of professionals and managers in Spain with the required capacities to manage the entrepreneurial internationalisation is, in some situations, not sufficient and it is necessary that foreign professionals –in some very specific areas- come to train Spaniards or become themselves trained in Spain. Historically, immigration policies have been solely focused on the employment market. It is now appropriate to widen the perspective. [...] Thus, the most advanced countries have already specially devised systems to attract investment and talent, which are characterised by specialised and quick procedures".

Articles 61 and 62 state the general terms and conditions whereby the entry and residence in Spain of certain categories of foreigners is facilitated for economic reasons. Obviously, these conditions do not apply to European Union citizens or foreigners who benefit from the EU legal regime. The following categories of "foreigners" are to be distinguished for the purposes of the Act:

- Investors
- Entrepreneurs
- Highly qualified professionals
- Investigators
- Employees who are transferred to Spain within the same group of companies.

Generally, all such foreigners must comply with European legislation in respect of entry requirements as set out under Regulation (EC) 562/2006 ("Schengen Borders Code" for stays of not more than 3 months), Regulation (EC) 810/2009 ("Visa Code") and Regulation (EU) 265/2010 (for long-stay visa). It is worth noting that, pursuant to the new Act, the Spanish Police must answer within seven days all requests which it receives from Spanish diplomatic and consular offices in matter of security relating to visa applicants; failure to provide an answer within this deadline is deemed to mean that the applicant poses no threat to Spanish security.

1. INVESTORS

Articles 63 to 67 of the Act contain the regulations which are specific for **foreigners who enter Spanish territory with the intention to carry out a capital investment of significance** ("investors" according to the Act's terminology). The following types of investment qualify for the purposes of requesting an investor's stay or residence permit:

- An initial investment of at least €2 million in Spanish public debt
- An initial investment of at least €1 million in shares of Spanish companies
- An initial deposit of at least €1 million in deposits with Spanish financial entities
- The acquisition of Spanish real estate with a net investment value of at least €500,000 per applicant (i.e., the property must be free of charges and liens for at least €500,000)
- A business project to be developed in Spain which can be considered as of "general interest" (as per a report to be issued by the appropriate governmental authority), and where the following factors will be taken into account:
 - Creation of new jobs
 - Carrying out an investment with a relevant socio-economic impact in a certain geographical area
 - Significant contribution to scientific or technological innovation

The investment can also be made indirectly, through a company where the foreign individual holds the control. Such company may, however, not be based in a territory considered as a tax haven.

The investor's residence visa will be granted for a minimum period of one year. If a longer stay is sought, then additional requirements must be met, such as holding the initial residence visa, maintenance of the initial investment, etc.

2. ENTREPRENEURS

Articles 68 to 70 of the Act state the conditions upon which **foreign entrepreneurs** can be granted a residence visa of up to one year to develop an entrepreneurial activity. This permit can be obtained either before entering Spain or even once they are in our country (provided that they have another type of residence visa). In order to obtain this kind of permit, the activity must be innovative and have a special economic interest for Spain. To this end, a favourable report from the governmental authorities must be obtained, who will take into account issues such as:

- Creation of employment in Spain
- Professional Profile
- Business plan including market analysis, product and service funding

3. HIGHLY QUALIFIED PROFESSIONALS

Highly qualified professionals whose services are required by Spanish companies can also obtain a residence permit under articles 71 and 72 of the Act. Each specific case will need to be analysed on an individual basis, because the Act foresees a large number of situations which could be used as a basis to apply for this type of permit.

To apply for a residence permit for highly qualified professionals, companies which need to incorporate a foreigner into their organization in Spain to establish an employment or professional relationship, must prove one of the following assumptions:

- Average staff of over 250 employees registered with the Social Security in Spain
- Annual net volume of business exceeding 50 million euros in Spain, or volume of equity or net assets in Spain over 43 million euros
- Annual average gross investment from outside Spain of no less than 1 million euros in the three years preceding the application for a residence permit

- Companies with investor stock positions valued at 3 million euros according to the Foreign Investment Registry of the Ministry of Finance of Spain
- In case of small and medium enterprises it will be necessary to belong to a strategic sector

4. OTHER MATTERS OF INTEREST

Foreign multinationals will probably welcome the specific regime contemplated under articles 73 and 74 for **employees who are transferred to Spain within the same group of companies**. This system is specifically devised for individuals with a university degree or, at least, a professional experience of at least 3 years, provided that they have been working for the group for at least 3 months before being transferred to Spain. It is noteworthy that the law now allows to request collective permits.

To apply for authorization to reside and work in Spain for foreigners who moved to Spain as part of an employment relationship, professional or training reasons within a company or group of companies the following requirements must be fulfilled:

- The existence of a real and actual business
- Company documentation evidencing the transfer

KEY ITEMS OF THE PROCEDURE FOR GRANTING RESIDENCE PERMITS

The application for any permit or entry visa for Spain will be handled at the diplomatic missions and consular offices of Spain in the country where the applicant resides.

The diplomatic mission will grant a visa which may be of short duration (for stays of less than three months) or a long term visa (for stays longer than three months), which will be for cases where there is an economic interest of the foreigner as we have previously indicated.

The granting of a residence visa will be sufficient to reside in Spain for at least one year. If the foreigner wants to reside for a period exceeding one year, they may apply for a residence permit for two years, provided that certain requirements are met and that the conditions that generated the previous visa have been maintained.

A very important aspect of this new legal regulation is that the Spanish Government will not consider the national employment situation when granting residence and work permits in Spain for the processes indicated above.

In order to avoid delays in the decision-making process, the new Act expressly states that the Administration has twenty days to issue its decision. Failure to do so entails that the permit is deemed to have been granted. While this is certainly good news, it cannot be forgotten that certain types of the visa described above require

the issuance of favourable reports from the governmental authorities, which may still cause some delays.

Holders of these permits may move between countries of the Schengen Agreement during the term of the authorization.

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