

## Local Insights

## Portugal: New funding opportunities for private equity managers

The country has provided new opportunities for fund managers and promoters to raise capital from high net worth individuals with nationalities in countries outside of the EEA



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The Portuguese investment residence permit programme (commonly called the golden visa programme) is providing interesting new opportunities for fund managers and promoters to raise capital from high net worth individuals with nationalities in countries outside of the European Economic Area (EEA).

### Changes to the Portuguese Immigration Act

In 2017, changes have been adopted to the Portuguese Immigration Act (Law no. 23/2007, of July 4) to allow individuals residing outside of the EEA to obtain an investment residence permit if they invest an amount of €350,000 (\$414,375) in participation units representative of investment funds or private equity funds geared towards the capitalisation of companies, incorporated under Portuguese law, provided that said participation units are held during a period of at least five years and at least 60% of the investments are made in companies located in Portugal.

Given that private equity funds are typically the types of collective investment schemes which are better geared towards the capitalisation of companies, most of the projects in this area have been focused on alternative investment in companies via private equity funds.

Changes to the Portuguese Immigration Act were regulated by, and therefore became fully operational on September 1 2018, with the enactment of Regulatory Decree no. 9/2018.

This new investment route, granting investors the eligibility to participate in the golden visa programme, has gained traction as of late with investors, given its attractiveness vis-à-vis other European residence programmes and the lower investment amount required for programme eligibility compared to other alternatives granted by Portuguese law (notably investment in real estate properties, capital transfers). Residents in countries with strict controls on capital outflows, such as the People's Republic of China, have been particularly interested in obtaining golden visas via subscription of units in funds for these reasons.

### Repercussions in private equity investing

This change in the law is giving way to an innovative investment product which has sparked considerable interest from private equity fund managers, promoters (immigration companies, non-EU asset managers and financial institutions, etc., working with fund managers to canvass interest for the funds) and investors.

The chance for investors to be granted eligibility to obtain a residence permit in Portugal (and therefore be given access to the Schengen Area) and the attractiveness of the product for would-be expats in Portugal (explained above) allow fund managers to raise capital from abundant sources and in more favourable conditions relative to other traditional fundraising routes.

Already we are seeing multiple private equity funds being set up to take advantage of this new product. The following restrictions related to immigration rules should, however, be taken into account. Firstly, investors' preferences will likely dictate that the investment horizon will traditionally be linked to the duration of the residence permit (of five years, added of one year to obtain the permit before the immigration authorities), a perhaps short timeframe to pursue such strategies as growth or venture funding. Secondly, the requirement that 60% of the investments are made in companies with head offices in Portugal limits the ability of these funds to broaden their geographical reach.

### Next steps for regulation

The appetite for this fundraising structure in private equity shown by market participants is also drawing the attention of market regulators and immigration authorities. This is a welcome prospect, as there are various solutions being explored to which administrative authorities would do well to give guidance, in particular:

- by immigration authorities, with regards to the exact criteria for golden visa eligibility and how this criteria should be reflected in fund regulations and investment policies of fund managers;
- by the securities regulator, in what concerns certain governance provisions of fund regulations aiming to protect promoters' interests.

In relation to the latter issue, it should also be noted that the European Securities and Markets Authority has, in a recent letter addressed to the European Commission, discussed 'white-label' fund managers (i.e. those which have close relationships with promoters/originators), prompting more regulation of these entities and arrangements, mostly on the basis of conflicts of interest concerns. Legislative and regulatory innovations in the medium term for these structures are therefore to be expected.

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