

Ministry of Economy
Minister's office

Legislative Order Nr. 4/2018

Note: This is a non-certified translation of the official document Legislative Order Nr. 4/2018, which for legal purposes is the document that should be considered

To support and promote entrepreneurship is a priority of the XXI Constitutional Government, a strategy for economic growth and employment in the framework for investment attraction, namely foreign investment. It englobes the incentive to entrepreneurial projects capable of boosting the dynamics on the creation of companies, specially startups, with new ideas and business models and, at the same time attract high qualified professionals viewing to assure a more sustainable specialization and internationalization profile in the Portuguese economy.

In the scope of the promotion and development of the Portuguese economic ecosystem, the Regulation nr. 344/2017, of 13th November 2017 regulates the role of the host incubator's entities, framework and support to foreign entrepreneurs and their entrepreneurial projects. IAPMEI, Portuguese Agency for Competitiveness and Innovation, I.P. will be the entity responsible for the certification of the eligible incubators, according to technical, administrative and financial criteria, and to host foreign entrepreneurs that intend to develop an innovation and/or entrepreneurial project in Portugal.

In this scope, the legislative order regulates the procedures of the "Startup Visa" program, which will be electronically moved (foreseen in the referred Regulation) which consists in the hosting of immigrants that intend to be entrepreneurs and innovate in Portugal, viewing to allow their granting of residency visas or residence authorization, even though they did not start up a business in national territory or that, having already started up business in their own country, aim at setting business in our country.

The entrepreneurs that apply for "Startup Visa", eligible under the law for the purpose of granting of residency visas or residence authorization must celebrate an incubation contract with a certified incubator under the Regulation nr. 344/2017, of 13th November 2017, as long as they previously fulfill, comply and prove a specific number of assumptions and requisites subjected to the validation and follow up by IAPMEI, I.P., in what concerns administrative and financial issues and its entrepreneurial potential, at the time of the application and during the contractual program.

Thereby, as stipulated in section 60th (2) (C), section 89th (4) Act 23/2007 of 4th July 2007, nr. 23, amended by Acts of 9th August 2012 nr.29, of 23rd June 2015 nr. 56, of 30th June 2015 nr.63, of 31st July 2017 nr.59, of 28th August 2017 nr.102. and in the Decree-Law of 28th December 2012 nr. 266 (9) (2) (a) and (b), altered by Decree-Law of 20th May 2014 nr. 82, decrees the following:

Article 1
Object

The present legislative order defines, according to the previewed in section 60th (2) (C), section 89th (4) Act 23/2007 of 4th July 2007, nr. 23, amended by Acts of 9th August 2012 nr.29, of 23rd June 2015 nr. 56, of 30th June 2015 nr.63, of 31st July 2017 nr.59, of 28th August 2017 nr.102, the regulation of “Startup Visa” program, henceforth “the program”.

Article 2 **Scope**

“Startup Visa” is a host program for foreign entrepreneurs who intend to develop an entrepreneurial and/ or innovative business in Portugal, viewing to allow the granting of residency visas or residence authorization, and is applicable to:

- a) Entrepreneurs that intend to develop their entrepreneurial and/ or innovative project in Portugal, even though they didn't start up business;
- b) Entrepreneurs that have already started up business in their countries but want to set up business in Portugal.

Article 3 **Definitions**

For the purposes of this legislative order, here refers:

- a) “Incubation contract” - the contract celebrated between the certified incubator, in accordance with the previewed terms of the Regulation nr. 344/2017, of 13th November 2017 and the entrepreneur which applies to the program;
- b) “Certified incubator” – incubator undergoing a certification process previewed in the Regulation nr. 344/2017, of 13th November 2017.

Article 4 **Validity**

The program has the validity of the incubation contract.

Article 5 **Eligibility requisites**

1 – Any entrepreneur can apply to the program, either individually or jointly, that comprises with the previewed in article 2, as long as it complies with the following requisites:

- a) Do not have residence in the Schengen area;
- b) Have tax obligations fulfilled concerning tax administration and social security, when applicable;
- c) Do not have criminal records;

- d) Is not under 18 years old;
- e) Own adequate financial and subsistence resources equivalent to 12 times the Social Support Index, verified by bank document.

2 – The candidates must also demonstrate that:

- a) Have real interest in developing an entrepreneurial project in Portugal, namely through the creation of an innovative based company;
- b) Intend to develop the production of goods and services activities, in view to internationalization;
- c) Their projects and/ or companies be focused in technology and knowledge, with perspectives of development of innovative products;
- d) There is interest from one of the certified incubators to incubate physically the entrepreneurial project, in terms of the program;
- e) Have potential to the creation of qualified employment, besides the entrepreneurs included in the program's application;
- f) Have potential to achieve until 5 years after the start of the incubation's contract, a turnover over 325,000€/ year and/ or an assets' value over 325,000€/ year;
- g) Have the capacity to establish a company, when applicable, during the undergoing of the program;
- h) The individual contribution of each candidate is essential to the development of the entrepreneurial project.

3 – For the purposes of article 2 (c), the candidates must demonstrate that:

- a) Belong to a startup company, created less than 4 years ago in its origin country;
- b) Will develop activity in national territory;
- c) Have potential to create at least 5 new jobs, excluding the number of the project's entrepreneurs within 24 months;
- d) Have executive functions in the company and/ or equity capital in the act of the company's constitution or right to vote, equivalent to at least 10% of social capital;
- e) The legal accounts of the company in the last fiscal year before the application report a positive net situation.

4 – The compliance of the requisites previewed in the present article is mandatory when the application is presented, and should be maintained, when applicable, during the program.

5 – It is eligible for the program a maximum number of 5 entrepreneurs by application.

Article 6 Procedures

1 – The entrepreneur has access to the certified incubators through the program's online platform to be launched for the purpose.

2 – The entrepreneur must contact the certified incubators, whose characteristics and competences better correspond to the needs of their project's development, viewing to obtain a declaration of interest in the incubation, namely taking into account:

- a) The innovative side of the project;
- b) The potential for growth;
- c) The scaling up of the business in the market;
- d) The perspectives of the setting up in Portugal, after the end of the program.

3 – The application is submitted in Portuguese or in English language, through an online form, available in the online platform of the program.

4 – The application can be carried out during the whole civil year, through an online form, as previewed in the previous point.

5 – In the submission of the application, the entrepreneur presents cumulatively the following elements:

- a) Demonstration of the interest to develop an entrepreneurial and/ or innovative project in Portugal, via a letter of motivation;
- b) Documents demonstrating the compliance to the requisites previewed in article 5 (1);
- c) Identification and presentation of the entrepreneurial project, proving the fulfillment of the requisites of section 2 of the previous article;
- d) Declaration of one or more certified incubators interested in the incubation of the project, for the purposes of the referred in section 2.

6 – In case of false declarations, without prejudice to the responsibilities which may be incurred, no new application can be submitted during the subsequent period of 3 years.

7 – IAPMEI, I.P. analyses the application and the fulfillment of the requisites previewed in article 5.

8 – The candidate can present additional elements within 3 working days after IAPMEI's notification of the non-fulfillment of the requisites previewed in article 5. in the online platform of the program.

9 – Without prejudice to the preceding number and of taking place an hearing of the interested parties under the Code of Administrative Procedure, IAPMEI, I.P, renders the final decision on the application in the maximum period of 30 working days, which will be available in the online platform of the program in the period of 3 working days.

10 – If the decision previewed in the preceding number is favorable, the candidate has 40 working days to celebrate an incubation contract with one of the incubators that has stated interest as prescribed in section 2. and section 5. (d), which must be registered by the incubator in the online platform of the program within 5 working days, except for duly justified reasons not imputable to the entrepreneur.

11 - Without prejudice to the preceding number, in the case of the incubators that stated initially interest in the incubation of the project but do not want to formalize a contract with the entrepreneur, the entrepreneur can celebrate an incubation contract with a certified incubator which has not stated interest initially, as prescribed in section 2. and section 5. (d), as long as the deadline previewed in the preceding number is fulfilled.

12 - For the purposes of section 60th (2) (C), section 89th (4) Act 23/2007 of 4th July 2007, nr. 23 amended by Acts of 9th August 2012 nr.29, of 23rd June 2015 nr. 56, of 30th June 2015 nr.63, of 31st July 2017 nr.59, of 28th August 2017 nr.102, IAPMEI, I.P. reports the celebration of the incubation contract by making available online a declaration for the purpose.

Article 7 Incubation Contract

1 – The incubation contract must be set out in writing;

2 – The incubation contract previews, namely:

- a) The obligations of the entrepreneur;
- b) The obligations and services rendered by the certified incubator;
- c) The value of the contract;
- d) The person responsible of the certified incubator by the monitoring of the project;

3 – The entrepreneur's obligations include, namely:

- a) The fulfillment of the incubation plan to be defined in the scope of the incubation process;
- b) To provide all the information required by IAPMEI, I.P. and by the Foreigner and Border Service (SEF) and collaborate with its auditing initiatives;
- c) Communicate the entities referred to in the previous subparagraph, any fact or relevant alteration to the requisites previewed in article 5.

4 – The obligations of the incubator include, namely:

- a) To proceed to the registration of the incubation contract, as previewed in nr.10 of article 6;
- b) The development, follow up and fulfillment of a personalized incubation plan that schedules and characterizes the kind of support that will provided to the project, as previewed in the Regulation nr. 344/2017, of 13th November 2017, to be registered in the online platform in the period of 20 working days;
- c) Providing of mentoring and support services, under article 4 of the Regulation nr. 344/2017, of 13th November 2017;
- d) To present a trimestral progress report of the developed activities, under article 5 of the Regulation Nr. 344/2017, of 13th November 2017;
- e) Identify a member of the incubator to be in charge of the monitoring of the program, as previewed in section 4 (c) and section 2 (d);
- f) To provide all the information required by IAPMEI, I.P. and by the Foreigner and Border Service (SEF) and collaborate with its auditing initiatives;

5 - The incubation contract is valid for 12 months, being renewable for similar periods, by agreement of the parties, as long as the incubator is certified under the Regulation nr. 344/2017, of 13th November 2017;

Article 8

Cessation

The incubation contract ends in the terms of the law and in case of non-fulfillment:

- a) Of the obligations and requisites legally previewed;
- b) Of the obligations and requisites previewed in the referred regulation;
- c) Of the obligations previewed in the contract.

Article 9

Monitoring of the program's execution

As previewed in article 8 of the Regulation nr. 344/2017, of 13th November 2017, the monitoring Committee is responsible for the monitoring of the program's execution during its validity.

Article 10

Subsidiary application

To the procedure previewed in the present regulation is applicable under the Code of Administrative Procedure.

Article 11

Commencement date

The current legislative order shall come into force in the day after its publication.

19th January 2018 – The Ministry of Economy, Manuel de Herédia Caldeira Cabral.