

Start UP Visa



Ministry of Economy

Minister's office

Legislative Order nr. 4/2018, 2nd February

Note: This is a non-certified translation of the official document “*Despacho Normativo n.º 4/2018, 2 de fevereiro*”, which for legal purposes is the document that should be considered.

The XXI Constitutional Government's priority is to support and promote the entrepreneurship as a strategy for economic growth and employment, within the framework of capturing foreign investment. To encourage entrepreneurial projects capable of enhancing the dynamics of business creation, startups with new ideas and business models, and attracting high qualified professionals, at the same time. All these contribute to consistently affirm a profile on the specialization and internationalization of the Portuguese economy.

In the promotion and development of the Portuguese economic ecosystem the Regulation nr. 344/2017, 13th November, establishes the incubator entities' role on hosting, framing, and supporting to foreign entrepreneurs, and their entrepreneurial projects. IAPMEI, I.P., Portuguese Agency for Competitiveness and Innovation, will be responsible for the certification of the incubators eligible to host foreign entrepreneurs that intend to develop an innovation and/or entrepreneurial project in Portugal. The certification occurs in accordance with technical, administrative, and financial criteria.

In this context, this Legislative Order regulates the procedure that will process electronically, as the “Startup Visa” program, envisaged on the mentioned Regulation nr. 344/2017. The program consists in the hosting of immigrants who intend undertake and innovate in Portugal, with the view to granting visas or residence permit, even if they have not formed a company in national

territory, or that having already an established business in their own country and wish to deploy their business in our country.

The entrepreneurs eligible under the law for the granting of residence visa or residence authorization, who apply for “Startup Visa”, must celebrate an incubation contract with a certified incubator, under the Regulation nr. 344/2017, 13th November. That applies, if they previously fil, comply and prove certain assumptions and requirements submitted to the monitoring and validation of IAPMEI, I.P., on their administrative and financial issues and its entrepreneurial potential, at the time of the application and during the contractual program.

Therefore, under Article 60th (2) (C) and Article 89th (4) of Act 23/2007, 4th July, amended by Act 29/2012, 9th August, Act 56/2015, 23rd June, Act 63/2015, 30th June, Act 59/2017, 31st July and Act 102/2017, 28th August, and under Article 9th (2) (a) and (b) of the Decree-Law 266/2012, 28th December, amended by the Decree-Law 82/2014, 20th May, it is determined the following:

Article 1

Object

The present legislative order defines, in accordance with Article 60th (2) (C) and Article 89th (4) of Act 23/2007, 4th July, amended by Act 29/2012, 9th August, Act 56/2015, 23rd June, Act 63/2015, 30th June, Act 59/2017, 31st July and Act 102/2017, 28th August, 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 innovative and/or entrepreneurial project in Portugal; with the view of grating a residence visa or residence permit to those immigrant entrepreneurs, and it is applicable to:

- a) Entrepreneurs that intend to develop their innovative and/or entrepreneurial project in Portugal; even if they have not created a company;
- b) Entrepreneurs that have already business projects in their origin countries and want to deploy their activity in Portugal.

Article 3

Definitions

For the purposes of this legislative order, is understood as:

- a) “Incubation contract” - the contract concluded between the certified incubator and the entrepreneur who applies to the program, under the terms set by Regulation nr. 344/2017, 13th November.
- b) “Certified incubator” – incubator subject to the certification process previewed in the Regulation nr. 344/2017, 13th November.

Article 4

Validity

The program has the duration of the incubation contract.

Article 5

Eligibility requisites

1 – Any entrepreneur, individually or jointly, that integrates the scope provided in Article 2 can apply for the program, since the following requirements have been met:

- a) Do not have permanent residence in the Schengen area;
- b) Have full compliance with tax and social security obligations, when applicable;
- c) Do not have criminal records;
- d) Be not less than 18 years old;
- e) Have own financial and livelihood resources equivalent to 12 times the Social Support Index (IAS), evidenced by a 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 activities of production of goods and services, in view to internationalization;
- c) Their projects and/ or companies are focused on technology and knowledge, with prospects for developing innovative products;
- d) There is an interest to physically incubate the entrepreneurial project, from one or more certified incubators, under the terms of the program;
- e) Have the potential to create qualified employment, in addition to the entrepreneurs included in the application for the program;
- f) Have the potential to reach the turnover of more than 325,000€/ year, and/ or an asset value of more than 325,000€, up to 5 years after the start of the incubation contract;
- g) Have the capacity to set up a company, where applicable, throughout 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 (b), the candidates must demonstrate that:

- a) Belong to the start-up company established for less than 4 years ago in the country of origin;
- b) Will develop activity in national territory;
- c) Have the potential to create at least 5 jobs within 24 months, excluding the number of the project entrepreneurs;
- d) Have executive functions in the company and/ or capital participation in the act of constitution or voting right, corresponding to at least 10% of the share capital;
- e) The company's official accounts in the previous tax year have a positive net situation before the application.

- 4 – The compliance with the requirements set out in this Article shall be required at the time of application submission and shall remain, when applicable, for the duration of the program;
- 5 – It is considered eligible to the program the maximum number of 5 entrepreneurs per application.

Article 6

Procedures

1 – The entrepreneur has access to the certified incubators, through the electronic platform of the program, created for the purpose.

2 – The entrepreneur should contact the certified incubators, whose characteristics and competencies best match the needs of the development of their project, with a view to obtain a declaration of interest in their incubation, namely considering:

- a) The innovative nature of the project;
- b) The growth potential;
- c) The scalability of the business in the market;
- d) The prospects of the setting up in Portugal, at the end of the program.

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

4 – The application can be carried out throughout the whole calendar year, using the form provided in the previous number.

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

- a) Demonstration of the interest in developing an entrepreneurial and/ or innovative project in Portugal, through motivation letter;
- b) Documents proving compliance with the requirements of Article 5 (1);
- c) Identification and presentation of the entrepreneurial project proving fulfillment of the requirements of paragraph 2 of the previous article;
- d) Declaration, for the purposes of paragraph 2, of one or more certified incubators interested in the incubation of the project.

6 – In case of false declaration, without prejudice of liability which may be incurred, a new application may not be submitted in the subsequent period of 3 years.

7 – IAPMEI, I.P. analyses the application and the fulfilment of the requirements set in Article 5th.

8 – The candidate may submit additional information within 3 working days after IAPMEI's notification of failure to comply with the requirements of Article 5th, on the electronic platform of the program.

9 – Without prejudice to the previous paragraph, and the existence of hearing the interested parties under the Code of Administrative Procedure, IAPMEI, I.P, renders the decision on the application within a maximum period of 30 working days from submission, making it available on the online platform of the program in the period of 3 working days.

10 – If the decision provided in the previous paragraph is favorable, the candidate has 40 working days to conclude an incubation contract, with one of the incubators that declared interest under the terms of paragraph 2 and paragraph 5 (d), which must be registered in the online platform of the program within 5 working days by the incubator, except for duly justified reason not attributable to the entrepreneur.

11 – Without prejudice to the previous paragraph, in the case of the incubators that initially declared interest in the incubation of the project, but do not want to conclude a contract with the entrepreneur, he can conclude an incubation contract with a certified incubator that initially had not declared interest, in accordance with paragraph 2 and paragraph 5 (d), provided that the deadline in the preceding paragraph is observed.

12 – For the purposes of paragraph 2 (c) of Article 60th, and paragraph 4 of Article 89th of Act 23/2007, 4th July, amended by Act 29/2012, 9th August, Act 56/2015, 23rd June, Act 63/2015, 30th June, Act 59/2017, 31st July and Act 102/2017, 28th August, IAPMEI, I.P. certifies the conclusion of the incubation contract by making available an online declaration for the purpose.

Article 7

Incubation Contract

1 – The incubation contract must be in written form;

2 – The incubation contract establishes, namely:

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

3 – The obligations of the entrepreneur include, namely:

- a) Compliance with the incubation plan to be defined in the incubation process;
- b) Provide the information and explanations requested by IAPMEI, I.P. , and by the Immigration and Borders Service (SEF), and collaborate in its oversight initiatives;
- c) The communication to the entities provided for, in the previous subparagraph, of any relevant fact or change of the requirements set in Article 5th.

4 – The obligations of the incubator include, namely:

- a) Proceed with the registration of the incubation contract under the terms of Article 6th, paragraph 10;
- b) The development follow-up and fulfillment of a personalized incubation plan that schedule and characterizes the kind of support that will provided to the project, in accordance with the Regulation nr. 344/2017, 13th November, to register on the online platform within 20 working days;
- c) Provision of mentoring and advisory, in accordance with Article 4th of the Regulation nr. 344/2017, 13th November , and others defined in the contract.

- d) Submit a quarterly progress report on the activities carried out, under the terms of Article 5 of the Regulation nr. 344/2017, 13th November.
- e) Identify the member of the incubator responsible for monitoring the program, in accordance with Article 4 (b) and Article 2 (d).
- f) Provide the information and explanations requested by IAPMEI, I.P., and by the Immigration and Borders Service (SEF), and collaborate in its oversight initiatives.

5 - The incubation contract is valid for 12 months, and it may be renewable for equal periods, by agreement of the parties, provided that the incubator continues to be certified under the terms of the Regulation nr. 344/2017, 13th November.

Article 8 Cessation

The incubation contract ceases in accordance with the law and in case of non-compliance:

- a) Of the obligations and requirements legally established;
- b) Of the obligations and requirements foreseen in the mentioned Ordinance;
- c) Of the obligations laid down in the contract.

Article 9 Monitoring and implementation of the program

The monitoring Committee previewed in Article 8th of the Regulation nr. 344/2017, 13th November, is responsible for monitoring the execution of the program over its term.

Article 10 Subsidiary application

To the procedure previewed in this regulation shall apply the Administrative Procedure Code.

Article 11 Entry into force

This Legislative Order shall enter into force the day after its publication.

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