

Internal Affairs and Economy

Regulation Nr 344/2017 of 13th November

Note: This is a non-certified translation of the official document “Portaria nº344/2017, de 13 de novembro”, which for legal purposes is the document that should be considered.

The economic and social development represents a priority for the 17th Constitutional Government through the attraction of investment, namely foreign investment, and all the dynamics associated to the creation of companies, which are key and strategic drivers of the economic growth, as a source to generate employment and economic activity.

An efficient entrepreneurship’s support and promotion represent very important focus of the government’s action, including a boost towards the creation of startups, new ideas and business models, as well as the promotion and development of micro companies and entrepreneurial projects, enhancing an intelligent, inclusive, sustainable growth, which will act as a key driver to a new economy’s specialization and internationalization profile.

The program of the 17th Constitutional Government and, in particular, the National Reform Program highlights the importance of foreign investment in Portugal, appointing the priority to promote the economic value in new companies, new entrepreneurs and new offers, by supporting and boosting Portuguese startups with a potential for internationalization and also attracting foreign Startups to national territory.

The expansion and fast growth of the Portuguese entrepreneurial ecosystem makes it urgent to create better conditions to host these new innovative and entrepreneurial projects in Portugal and also the need to promote the attraction of high qualified professionals that would contribute to the development of the Portuguese economic ecosystem.

Within this context, the role of the incubators is essential concerning the host, framework and support to foreign entrepreneurs and their business projects, from an early-stage of creation, establishment and development, being the Government legally responsible for their certification.

The Foreigner and Border Service and IAPMEI - Portuguese Agency for Competitiveness and Innovation, I. P. were heard.

Thus, under section 60th (2) (C) and section 89th (4) of Act of 4th July 2007 n.º 23, amended by Acts of 9th August 2012, n.º 29, of 23rd June 2015 n.º 56, of 30th June 2015 n.º 63, of 31st July 2017 n.º 59, of 28th August 2017 n.º 102, the Government, through the Ministry of Internal Affairs and the Ministry of Economy, decrees the following:

Article 1 Purpose

The present regulation defines, as stipulated in section 60th (2) (C), section 89th (4) Act of 4th July 2007 n.º 23, amended by Acts of 9th August 2012, n.º 29, of 23rd June 2015 n.º 56, of 30th June 2015 n.º 63, of 31st July 2017 n.º 59, of 28th August 2017 n.º 102 the incubators’ certification scheme, in view to host foreign entrepreneurs that aim at developing an entrepreneurial and/ or innovative project in Portugal.

Article 2 Definitions

For the purposes of this regulation, is understood as:

- a) “Startup Visa” - the host program for foreign entrepreneurs aiming at developing an entrepreneurial and/ or innovative project in Portugal, viewing to allow the granting of residency visas or residence authorization for foreign entrepreneurs, which is governed by its own regulation;

- b) “Incubator” – the host and support entity to foreign entrepreneurs, concerning the creation and establishment of tech-based companies. It is responsible for the support and development of new businesses during the ram-up period, empowering scientific- and/ or tech-based SMEs and providing diverse services, such as the availability of properly equipped areas and logistic support, constituting an interface between R&D institutions and companies and also between companies and markets;
- c) “List of certified entities” – the list of certified incubators that are selected to receive and host the foreign entrepreneurs.

Article 3 Incubators certification

- 1 - For the purposes of this regulation, the incubators that aim at joining the list of certified entities should apply in terms of the call to be advertised by IAPMEI - Portuguese Agency for Competitiveness and Innovation (IAPMEI, I.P.).
- 2 – The period for applications cannot be less than one month.
- 3 – The submission of applications is done electronically.
- 4 – The applications process takes place in the end of each civil year and the certification is valid for one year’s period.
- 5 – The selected incubators are provided with specific training, defined and assured by IAPMEI, I.P.
- 6 - IAPMEI, I.P. will be the entity responsible for the analysis, selection and certification of the presented applications and also for the follow up of the Startup Visa program’s execution.
- 7 – For the purposes of this regulation, IAPMEI, I.P. can collaborate with other entities with competence in the area of entrepreneurship.

Article 4 Certification criteria

In the scope of Startup Visa and with no prejudice in the compliance of other legal requirements applicable, the applications are evaluated and selected, based in the following criteria to be taken into account by the applicants:

- a) Demonstrate the existence of an incubation program for new business projects, promoted by entrepreneurs or by innovative startups, including the provision of support services in the 5 following areas of intervention:
 - i. Management services, namely support in the definition or consolidation of business models, business operations management follow up (including commercial management, financial planning and management control), mentoring and business management capacity building;
 - ii. Marketing Services, namely support in the structuring of the communication and marketing strategy, support in the dissemination of the activity, products and services, support in the structuring or consolidation of the internationalization process;
 - iii. Legal Advisory services, namely legal and advisory support;
 - iv. Development of products and services, namely support to the digitalization of business processes, support to the protection or enhancement of intellectual property rights;
 - v. Financing services, namely support to entrepreneurship and innovation programs, support in the contact with investors and financial entities;
- b) Develop an economic activity compatible with the incubation services described in the previous point, but not developing real estate activities associated with rental of spaces or consultancy not related with the incubation program, as main activity;
- c) Have own competences in the providing of incubation services, developed by qualified human resources but not only trainees, independent workers, external consultants and unpaid managing partners;
- d) Demonstrate to own sufficient physical and technical resources for the providing of the services, including facilities and equipments;
- e) Have the capacity and availability to proceed to the physical incubation of entrepreneurs to be hosted under Startup Visa program;
- f) Do not have Social Security and tax administration debts and declare not to have unpaid wages;
- g) Have organized business accountancy, in terms of the legislation applicable;

- h) Have a positive net worth/ cash flow, proved in the last Simplified Business information available;
- i) Proceed to the physical incubation of entrepreneurs to be hosted under the Startup Visa program;
- j) Authorize specific control verifications, directly or indirectly, by IAPMEI I. P. and by the Foreigner and Border Service in what concerns the compliance of the statements made;
- k) Organize an annual event to promote the incubated startups to potential investors, as well as the dissemination of the incubation program results and publish annual reports of the incubator's activity in its web page.

Article 5 Obligations of the selected incubators

The selected entities must comply with the following obligations:

- a) Disseminate the information presented in the request registration form to those potentially interested;
- b) Annually update the information and the statements made in the registration request, counting from the date of the last registration, or whenever there are relevant alterations to the statements made or of the entity competences and technical resources;
- c) Do not host more than 20 entrepreneurial projects simultaneously, in the scope of Startup Visa program. Nevertheless, this limit can be modified by deliberation of the entity responsible for the program;
- d) Develop a personalized incubation plan for each entrepreneurial project which schedules, features and measures the kind of support that will be provided to the startup;
- e) Deliver a quarterly progress report, where the development of the incubated entrepreneurial projects is demonstrated;
- f) Report immediately to IAPMEI and to the Foreigner and Border Service any relevant issue or change that can put into question the compliance of the acceptability criteria of the incubated entrepreneurial projects in the scope of the program;
- g) Be submitted to specific control verifications by competent entities, as referred in the previous point, related to the conformity of the statements made during the verification process.

Article 6 Duration

The certification is valid for one year and renewable for similar periods, after verification and analysis by IAPMEI I. P.

Article 7 Decision

- 1 – The evaluation and decision period for applications has the maximum length of 10 working days and the list will be divulged in the first working day which follows in an online platform.
- 2 – To the procedure described in the previous point, shall the rules of Code of Administrative Procedure be applicable, namely the ones related to the preliminary hearing and administrative challenges.

Article 8 Monitoring

For the execution of the program, a monitoring Committee will be created represented by a member nominated who will be by IAPMEI, I. P., a member nominated by the Foreigner and Border Service, a member nominated by the Government responsible for the area of economy and a member nominated by the Government responsible for internal affairs.

Article 9 Cessation

Without prejudice to the provisions of the Law, the certification ends when the incubator fails to comply with the obligations laid down by this regulation.

Article 10 **Commencement date**

This regulation shall come into force 30 days after its publication.

6th November 2017

The Ministry of Internal Affairs, *Eduardo Arménio do Nascimento Cabrita*
The Ministry of Economy, *Manuel da Herédia Caldeira Cabral*