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General and regulatory mobility scenario

Spain's strategic location from a geographical and economic point of view, as well as its historical ties with different cultures at a global level, position it as a linking country between the European continent and America, North Africa and Asia. Spanish migration legislation is extensive, guided by principles established at the European level with a strong focus on attracting investment and human capital.

The Spanish migration system is complex, with different regulations and treatment for nationals of EU/EEA/Switzerland vs. third countries. But within this complexity there are several advantages for obtaining residence permits and applying for nationality for individuals who need or wish to settle in the country.

In this document, we would like to take a first look at the solutions that Spain offers in terms of international mobility, both for companies and for individual investors or family members in their plans to travel for work, business, or personal reasons.



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Business Solutions – Corporate International Mobility Services

2.1. Third country nationals (outside EU/EEA/Switzerland)

LOCAL HIRING, EMPLOYMENT RELATIONSHIP AND SOCIAL SECURITY IN SPAIN

The local hiring of foreigners as employees can be processed under two different regimes:

a) Work permit for employed persons (general regime of the Ley de Extranjería)

- This type of permit entitles the holder to reside and work in Spain for an employer.
This alternative:
- Grants the right to reside and work for a minimum of three months and a maximum of one year.
- It can be renewed, once it has expired, for a period of four years.
- Must be requested by the employer directly in Spain and, once the authorization is granted, the worker must apply for the corresponding visa in his/her country of residence.
- In order to be valid, the worker must be registered with the Social Security once he/she has entered Spain.
- Depends on the fact that the position to be occupied by the worker is included in the catalogue of occupations that are difficult to fill that the State Public Employment Service (SNE) publishes quarterly, except for those cases that exempt the SNE.

Given the difficulty of complying with the requirement of occupying a difficult-to-fill position, this option is more suitable for those who intend to change their migratory status from stay for studies or non-profit residence, for example. The modification does not require that the post to be filled is difficult to fill.

b) Work permit for highly qualified professionals (Law 14/2013)

This is the ideal option for those cases in which the worker is hired by companies with more than 250 employees, which have high turnover or which are considered as a strategic sector (R&D). Likewise, workers who hold a management position, who can accredit at least three years of experience in specialized sectors or with a qualified profile in accordance with the applicable regulations can apply for this permit. It is also a permit applicable to graduates, postgraduates from universities and business schools of recognized prestige.

The approximate annual salary should be €40,000 for qualified workers and €50,000 for managers.

This alternative:

- Is faster in comparison to the general regime of the Ley de Extranjería, with an average response of 15 to 20 working days to applications submitted.
- Can be requested while the worker is in regular stay in Spain or from his/her country of residence once the employer has obtained the residence permit and the worker has applied for the corresponding visa.
- Allows simultaneous or subsequent applications for the reunification of family members.
- The initial authorization will be valid for two years, extendable if the continuity of the work contract and of the conditions for hiring with the specialized profile.

From January 2023, with the publication of the Law on the promotion of the start-up ecosystem, the validity of the initial authorization will be valid for three years, with renewal for two years and with an option for permanent residence after five years.

INTERNATIONAL ASSIGNMENTS, INTRA-CORPORATE OR TRANSNATIONAL WORKERS EMPLOYMENT RELATIONSHIP AND SOCIAL SECURITY AT ORIGIN

a) Work authorization for cross-border workers (General Regime of the Aliens Act)

This type of authorization is a category of work permit for workers who reside in a border area of a State bordering Spain and who return to its territory on a daily basis.

This residence:

- Requires that the worker is not a national of an EU, EEA or Swiss state, or a family member of one of these nationals.
- As with the general work permit, it must be proven that the position to be filled by the worker is difficult to fill.
- The duration of the permit will be a minimum of three months and a maximum of one year, extendable on the same terms as the permit to work as an employed person.
- The worker shall be geographically limited to the area bordering his residence.

b) Work and residence authorization for intra-company transfer (Law 14/2013 on Entrepreneurs)

This authorization applies to those cases in which a company based outside Spain transfers a worker to the national territory to carry out its activity. To do so, the transfer must take place between centers of the same company or group of companies in Spain. There are two types of authorizations:

- ICT-EU type intra-corporate transfer authorization for managers, specialists, and trainee workers. With this type of authorization, the company can transfer the worker to another company in the EU through simplified procedures.
- Intra-corporate transferee authorization for workers performing a contract or professional relationship.

This authorization entitles the holder to reside and work for a period of two years, extendable depending on the maintenance of the circumstances that gave rise to the contract. The main advantages are:

- Processing in 20 working days.
- Allows family reunification simultaneously or after the worker's main application.
- It can be requested while the worker is staying regularly in Spanish territory.
- From January 2023, it is foreseen the case of initial transfers with a validity of up to 3 years.

BUSINESS VISAS

This type of visa can be applied for by those who wish to enter Spain for business purposes.

This visa does not allow the holder to work under contract in Spain. It only allows legal stay for ninety days for professional reasons, such as conferences, meetings, professional talks, professional training, or congresses, among other similar cases.

The business visa must be applied for in the country of residence of the interested party.

2.2. EU citizens (EU/EEA/Switzerland)

EU citizens who are going to stay in Spain for a period of more than 90 days must register with the Spanish authorities.

In order to do so, it will be necessary to prove that the EU citizen has sufficient financial means to support himself/herself. Dependent family members who are also citizens of an EU Member State and must register, must duly prove their family relationship.

During their stay in Spain, EU citizens must take out private health insurance (a requirement in most of the Autonomous Communities), unless they have an employment contract that gives them access to Social Security.

EUROPEAN UNION CITIZEN'S FAMILY CARD

Third-country nationals who are family members of an EU citizen and who reside in Spain with the EU citizen have the right to reside and work under the same conditions as a family member who is a national of an EU country.

At the time of application, the family or cohabitation relationship and, if applicable, the economic dependence of the EU family member must be proven.

In both cases (EU citizen and family member) the initial residence permit is valid for 5 years, renewable as permanent residence.

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Solutions for investors/entrepreneurs and individuals

3.1. Investor Visa (Golden Visa)

Third-country nationals who make a significant capital investment in Spain may opt for an investor visa or an authorization to reside which will be granted for two years, renewable for five years. From January 2023 it will be granted initially for three years.

It can be applied for by complying with one of these conditions set out in law 14/2013:

- At least €500,000 in real estate assets, or at least €2 million in public debt, or
- At least €1 million in: (i) bank deposits; (ii) shares or equity; or (iii) in investment funds or venture capital.
- Projects in Spain considered and accredited as being of general interest or social economic impact (job creation, socio-economic impact or scientific and technological innovation).

This permit combines the advantages of other residence permits, such as:

- The possibility of grouping family members simultaneously.
- The right to work for all applicants, including family members, of working age.
- No minimum residence in Spain is required to maintain legal residence, only one entry into Spain is necessary.

3.2. Non-profit residence permit

This permit grants its holder the right to reside in Spain without working, for one year, renewable, and gives freedom of movement in the Schengen area during the period of validity of the permit. The two main requirements to apply for this type of residence are:

- Proof of sufficient financial means according to the IPREM in force for the year in which it is applied for.
- Medical coverage by means of insurance contracted in Spain, comparable to the Spanish Social Security.

3.3. Long-term residence and long-term EU residence

Once you have resided in Spain for five years legally and continuously, it will be possible to apply for a long-term residence permit. The holder will be able to reside and work in Spain for an indefinite period.

To do so, the applicant must not have stayed outside Spain for more than six months in a period of one year, nor more than ten months in the five years of residence in Spain.

3.4. Visa for entrepreneurs (Law 14/2013)

Those who are going to develop an entrepreneurial activity that results in an innovative project with a special economic interest for Spain (job creation, added value in the Spanish economy) may apply for this type of visa.

Initially, a one-year visa is granted so that the applicant can prepare the entrepreneurial activity and its development. Subsequently, they will be eligible for an initial two-year residence permit.

From January 2023, the requirements for the qualification of the activity as entrepreneurial are simplified, in addition to extending the validity of the initial residence permit to three years.

3.5. Residence permit for self-employed workers

This is for foreigners who wish to work independently in Spain. The requirements for obtaining this permit include the following:

- Drawing up a business plan, which must subsequently be declared viable by the competent authority.
- Accreditation that they have the necessary means to make the minimum investment required for the business.
- Sufficient training or qualification to carry out the activity.

The validity of this permit is initially for one year, renewable for a further four years after the reform of the Aliens Regulations. The renewal can be to obtain a new permit to work as a self-employed person or to change the situation to an employed person.

3.6. Residence permit for international teleworkers (Nomad Visa)

With the approval of the Law for the Promotion of the Start-up Ecosystem, this new type of residency is created for those workers and professionals who travel to Spain but provide services or work remotely for a foreign company. In the case of the provision of services, this may be provided for a Spanish company if the percentage of work for that company is less than 20% of the worker's activity.

The requirements to apply are as follows:

- At least one year's activity of the company or group of companies for which the worker is going to provide services.
- Accreditation of the viability of remote work.
- In the case of an employment relationship, proof must be provided of the existence of an employment relationship between the company and the worker of at least three months prior to the submission of the application.
- If there is no employment relationship but a professional relationship, proof must be provided that the worker has had a business relationship with one or more companies not located in Spain for at least the last three months.
- Documentation that proves the admissibility of remote work on the part of the company.

The foreigner may apply for this authorization in Spain, while on a regular stay, or from his/her country of residence with the subsequent obtaining of the corresponding visa. The initial residence will be granted for three years, renewable for two years, provided that the circumstances that gave the right to grant it are accredited.



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Students

AUTHORISATION OF STAY FOR STUDIES

To be able to study in Spain, the student must first be admitted to a regulated educational center in Spain.

It is possible to apply for this authorization once the foreigner is in Spain, within the first sixty days of regular stay, or in the country of residence by applying for the corresponding visa.

The duration of the stay will depend on the duration of the studies for which it was granted. It may be extended provided that the continuity of the studies taken, and the successful completion of the previous courses are proved.

With the modifications introduced by the Aliens Regulations, the holder of a residence permit for study purposes may combine his/her educational activity with a work activity of up to 30 hours per week, provided that the main activity is study. Likewise, access to the Spanish labor market, once the studies are completed, can be given immediately.

RESIDENCE PERMIT FOR INTERNSHIPS

This type of authorization entitles its holder to reside in Spain while carrying out academic internships through an agreement or with the subscription of an internship contract, aimed at acquiring practical knowledge related to their previous studies. The following is required:

- For work placements: the interested party must have completed their higher education studies in the two years prior to the application.
- For internships with a host agreement: in cases where the foreigner is studying in Spain for a higher degree.
- The internship must be carried out in the same academic field as the higher education degree obtained or in the study program being studied.

Residence will be granted for the duration of the work placement as indicated in the host agreement, with a maximum of six months, extendable for a further six months. As of January 2023, the traineeship under the agreement may be extended for up to one additional year. In the case of work placements, current legislation establishes a maximum of one year for this type of contract.

RESIDENCE PERMIT FOR THE PURPOSE OF SEEKING EMPLOYMENT OR STARTING A BUSINESS PROJECT

This is the ideal option for those students who have completed their studies and have a qualification of at least level 6 (equivalent to a bachelor's degree). It is presented as an alternative to reside in Spain until they find a job.

This permit is currently granted for 12 months. From January 2023, the permit will be granted for up to 24 months.

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Application for Spanish nationality

NATIONALITY BY RESIDENCE

This requires the person to have resided in Spain for ten years legally, continuously, and immediately prior to the application. However, there are some relevant exceptions in which the time limits are substantially reduced:

- Two years of residence for foreigners who are citizens of Latin American countries, Andorra, Portugal, Equatorial Guinea, the Philippines and original Sephardim, by virtue of the special historical link with Spain.
- One year of residence for spouses, widows or widowers of Spanish citizens.

NATIONALITY BY LETTER OF NATURE

This form of acquisition of nationality is not subject to the general rules of administrative procedure. It is granted at the discretion of the Government by Royal Decree, after assessing the existence of exceptional circumstances. This includes nationalities of Sephardic origin, nationalities granted to high-performance sportsmen and women and to personalities of great cultural impact.

SPANISH NATIONALITY BY VIRTUE OF LAW 20/2022, OF DEMOCRATIC MEMORY

The Law of Democratic Memory makes it possible to obtain Spanish nationality in the following cases:

- Applicants born outside Spain to an original Spanish father, mother or grandparents who were exiled for political, belief or sexual orientation reasons and who, as a result, were forced to lose or renounce Spanish nationality.
- Children born abroad to Spanish women who lost their nationality before the entry into force of the 1978 Constitution.
- Children of legal age of Spaniards who obtained the nationality by virtue of Law 52/2007, of Historical Memory.

To apply for nationality in these cases, the condition of exile will be presumed if the migration took place between 1936 and 1956, while in cases where it took place after 1956 and up to 1978, the interested party must prove the facts that led to the exile for one of the causes.

The deadline for applying for nationality under this law is two years, starting on 21 October 2022, extendable for a further year if so, agreed by the Council of Ministers.

There are other exceptions to the general rule of 10 years, e.g., for persons who marry a Spanish citizen only 1 year of residence is required.

NATIONALITY BY OPTION

They will have the right to acquire Spanish nationality by this route:

- Those persons who are or have been subject to the parental authority of a Spaniard.
- Those persons whose father or mother was Spanish and who were born in Spain.

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Other services

6.1. Special taxation regime for posted workers and sole administrators

- To apply for this special tax regime, the taxpayer must not have been a local resident in Spain during the previous 10 years.
- He will be taxed as a non-resident, with a fixed tax rate of 24% on income obtained in Spain on account of employment income, and from 19% to 26% for capital gains.

From January 2023:

- Workers residing in Spain by virtue of a residence permit for teleworking for foreign companies will be able to apply to this regime.
- The regime will be extended to directors of emerging companies irrespective of their percentage shareholding in the share capital of the entity.
- The special tax regime may be applied to family members: spouse or parent of children and children under 25 years of age.
- The exemption for income in kind established in the Personal Income Tax Act will apply.
- The requirement of previous non-residence in Spain will be reduced to 5 years.

6.2. Obtaining a Tax Identification Number (Número de Identificación Fiscal)

The NIE in Spain is necessary for almost all economic and professional transactions and is often needed before one is assigned on the residence permit or registration certificate in the case of EU citizens. The number assigned will be the final one, but this document is valid for 3 months.



Seegman is a law firm located in Madrid and Lisboa, with a multidisciplinary and international team, with experience in providing personalized legal advice to foreign clients who wish to invest in Spain.

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