



SUMMER LAW PROGRAMME 2023
ICAB - CALIFORNIA LAWYERS ASSOCIATION

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- According to the most recent estimations, there were approximately **281 million international migrants in the world in 2020**, equivalent to 3.6 per cent of the world's population.
- Globally, the estimated number of international migrants has increased over the past five decades. The estimated total of 281 million people living in a country other than their home country in 2020 is 128 million higher than in 1990 and **more than triple that of 1970**.

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- **Art. 13 Universal Declaration of Human Rights**

1. **Everyone has the right to freedom of movement and residence within the territory of a State.**

2. Everyone has the right to leave any country, including his own, and to return to his country.

- **International law does not recognize the "right to migrate",**

Right to enter any country v. national sovereignty

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Right to migrate recognized at a regional level e.g.:

- **Europe:**

In Europe the right to migrate is guaranteed for citizens of the Schengen area.

Freedom of movement is recognized between the countries that make it up, including the majority of the European Union beneficiaries of the rights of free movement and residence.

- **Africa:**

The African Union also recognizes the free movement of people, and their right of residence and settlement.

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Depending on **country of origin, academic qualification, professional experience or economic means applicable legal framework, processes, and time delays** will vary and have a different legal impact on migrant persons.

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Attraction of highly qualified professionals

Versus

Brain drain

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Shaping concepts on migration processes:

- **Global Mobility** refers to the process of global mobility of a company's employees. Such transfers may be temporary or permanent.
- **International mobility** refers to movement of a person travelling abroad for training purposes over a specified period of time.

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Regulation of migration in Spain. Legal framework: Applicable regimes.

GENERAL
INMIGRATION REGIME

EU REGIMEN

LAW 14/2013 OF SEPTEMBER 27,
ON SUPPORT TO ENTREPRENEURS
AND THEIR
INTERNATIONALIZATION:
MEASURES AIMED AT FACILITATING
THE ENTRY AND STAY IN SPAIN OF
NON-EU FOREIGN INVESTORS
WHO WISH TO ACQUIRE REAL
ESTATE (GOLDEN VISA)

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Legal Framework:

1. **Law 14/2013**, of 27 September, **on support for entrepreneurs and their internationalization.**
2. Law 28/2022, of 21 December, on the promotion of the ecosystem of emerging companies.
3. *Order PCM/1238/2021*, of 12 November, instructions by which determines the procedure of entry and permanence of nationals of third countries who exercise activity in the audiovisual sector.
4. Instruction DGM 1/2023 on the practical aspects of the application of Law 14/2013, of September 27, on support for entrepreneurs and their internationalization, with regard to applications for residence permits for entrepreneurs.
5. Parliament Directive (EU) 2021/1883 European and Council Council of 20 October 2021 on the conditions of entry and residence of third-country nationals with Highly qualified employment purposes

Applicable to non-EU foreigners who intend to enter or reside, or who already reside, in Spain in order to attract investment and talent to Spain. The measure is aimed at investors, entrepreneurs, workers who make intra-company movements, highly qualified professionals, researchers and teleworkers, as well as their families.

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Description and Objectives:

Law 14/2013 of 27 September, in its Title V section 2 relating to "International mobility". It regulates certain cases in which, for reasons of economic interest, **it facilitates visas and residence permits processes, in order to attract investment and talent to Spain.**

The measure is aimed at investors, entrepreneurs, workers who carry out intra-company movements, highly qualified professionals and researchers, as well as spouses and older children, through an agile and rapid procedure before a single authority, and by a variable term depending on the different cases contemplated.

Objectives:

1. Promote entrepreneurial culture and create an environment favorable to economic activity.
2. Facilitate the entry of investment and talent in order to promote economic growth and job creation.

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Regulatory description

Characteristics

a.-Reduction of timedelays: 20 working days from the day of the application for residence authorization, and 10 days for the visa application before the consulate of Spain abroad.

b. Positive silence: for this type of authorizations it operates positive silence.

c.- Beneficiaries: beneficiaries are the relatives of the interested party (it extends to the spouse and common law partners, children under 18 years of age, or of legal age who are not able to provide for their own needs due to their state of health, or economic dependence, may request, jointly and simultaneously or later, a family residence/visa).

d.- Absences from the national territory: Allows absences of more than six months a year, not being an obstacle to renew (prior justification).

e.- Extension of the duration of the initial authorization: Residence permits can have up to a duration of 5 and 3 years renewable.

f.- Flexibility on where to lodge the application: It allows that the application of authorizations to reside is made while foreigners are in Spain with a valid title that authorizes them to do so, or while they are abroad.

g.- National employment situation does not apply, and authorizations are valid throughout the national territory.

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Main type of authorizations:

1.- Investors in:

1. Real estate
2. Companies or bank deposits
3. Public debt
4. Business projects of general interest

2.- Entrepreneurs

3.- Highly qualified workers

4.- Workers who carry out **intra-company transfers**

5.- Training, Research, development and innovation.

6.- International teleworkers (**Digital nomad visas**).

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I - Authorizations for investors:

I. 1.- Investors in real estate: Investment of at least **€ 500,000** (free of taxes and charges) made directly or through a **company**:

- Not domiciled in a tax haven
- Possesses a majority of voting rights
- Possesses the capacity to appoint or dismiss the Board of Directors

I. 2. Companies or bank deposits: Investment of at least **one million** euros directly or through a **company** in:

- **Spanish companies** listed or not listed on the Stock Exchange
- **Bank deposits** in financial institutions in Spain

I. 3. Government debt: Investment of at least **two million** euros in **Spanish government bonds**, directly or through a **company**.

I. 4. Business projects of general interest: Investment in a business project, carried out directly or through a **company**, which will be developed in Spain and which is considered of **general interest**.

Conditions:

- Create jobs in Spain
- Have a **socio-economic** impact in the area in which it will be developed
- Have a relevant contribution to **scientific or technological** innovation

2.- Authorizations for entrepreneurs:

Foreigners who are going to develop an **entrepreneurial activity** must be of **an innovative** nature with special economic interest for Spain and for this purpose have a favorable report issued by the Economic and Commercial Office of the geographical demarcation area or by the General Directorate of Commerce.

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3.- Authorizations for highly qualified professionals.

Companies that require the incorporation in Spanish territory of foreign professionals may apply for a residence permit for highly qualified professionals, which will be valid throughout the national territory:

- 1. graduates or postgraduates of universities and business schools of recognized prestige, graduates of higher vocational training, or**
- 2. specialists with professional experience of a comparable level of at least 3 years**

Duration: 3 years renewable (for two more)

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4.-Authorizations for intra-company transfer of employees (National and ICT-EU).

Requirements:

1. Existence of present business activity.
2. Higher degree or equivalent or minimum experience of 3 years.
3. Existence of a previous and continuous employment or professional relationship of 3 months with one or more of the companies of the group.
4. Documents from the company that proves the transfer.

Modalities:

4. 1.- **Residence permit for intra-company transfer ICT-EU:** This authorization will proceed in the case of temporary displacements to work as a manager, specialist or for training, from a company established outside the European Union to an entity belonging to the same company or group of companies established in Spain.

For these purposes:

- 1.º **Manager**, one who has among his functions the direction of the company or of a department or subdivision of the same.
- 2.º **Specialist**, who possesses specialized knowledge related to the activities, techniques or management of the entity.
- 3.º **Worker** in training, a university graduate who is posted in order to obtain training.

Duration: maximum duration of the transfer will be 3 years, in case of managers or specialists ;and one in the case of workers in training.

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4.- Authorizations for intra-company transfer of employees (National and ICT-EU).

Modalities:

4.2.- National residence permit for intra-company transfer: this authorization will proceed in cases not contemplated in the previous case or once the maximum duration of the transfer provided for in the previous section has elapsed.

Duration: The period of validity of the residence permit shall be three years or equal to the duration of the transfer.

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5.- Authorizations for training, research, development and innovation.

Applicable to:

- a) The **research staff** referred to in article 13 and the first additional provision of Law 14/2011, of June 1, on Science, Technology and Innovation.
- b) Scientific **and technical personnel** who carry out scientific research, development and technological innovation in **business entities or R+D+i centers established in Spain.**
- c) Researchers **hosted within the framework of an agreement by** public or private research organizations.
- d) **Professors hired by universities, bodies or centers of higher education** and research, or business schools established in Spain.

Modalities:

- a) **EU research residence permit.** This authorization will proceed in the case of foreigners who are holders of doctorate or an appropriate higher education qualification that allows them to access doctoral programs, and have been selected by the research entity in order to carry out a research activity
- b) **Residence permit for national research.**

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6.- Authorizations for International teleworkers (Digital Nomad visas).

Accreditation of compliance with the **requirements**:

1. Copy of full passport or valid travel document. (all pages)
2. Evidence of a **minimum employment/professional relationship of three months** at the date of the application with the foreign company/companies with which it maintains such a relationship.
3. **Evidence of real and continuous activity for at least one year of the foreign company** or group of companies with which the worker maintains an employment or professional relationship.
4. **Letter from the foreign company, authorizing the development of remote work from Spain, and that mentions** the profile of the position, salary to be received, terms and other conditions in which the professional activity will be exercised remotely.
5. **Copy of the degree related to the performance of the position or, where appropriate, minimum substitute experience of** that in functions analogous to the position to be held
6. **Certificate of Social Security coverage** (If there is an agreement with the country of origin) or registration in the Spanish social security accrediting at least the application for registration of the foreign company with the Social Security and the commitment to register once the authorization has been obtained before the start of the work.
7. **Current criminal record certificate from** the country or countries where you have resided for the past two years. Additionally, a declaration responsible for the absence of a criminal record of the last 5 years will be presented (The above will not apply when you are the holder of a residence permit, or stay in Spain for more than 6 months and have already been provided to obtain said authorization)
8. **Public or private health insurance.** Travel insurance is not accepted (Not necessary in the case of registration before the Social Security System).

THANK YOU!!!

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