



**CONDITIONS FOR GRANTING A PERMANENT INVESTOR RESIDENCE PERMIT ACCORDING TO LEGAL OPINION 184/2021 OF THE LEGAL COUNCIL OF THE STATE**

**INVESTMENT**

**Conditions for granting a permanent investor residence permit according to Legal Opinion 184/2021 of the Legal Council of the State**

In the context of the questions addressed by the Ministry of Migration and Asylum to the Legal Council of the State on whether the conditions, on the one hand, for the granting of a "permanent investor's residence permit" to third country citizens who purchase real estate in Greece are fulfilled, where the price has been paid to the seller at a time when the seller had not yet become the owner of the subsequently sold property and, on the other hand, the binding nature before the Administration of the notary's certificate submitted by the third-country national together with his application for the grant of the aforementioned residence permit, the Legal Council of the State, in its Legal Opinion under no 184 of December 20<sup>th</sup>, 2021, applying both the principle of freedom of contract and full transparency of transactions, subject to control of the source of such income, and proceeding to a more rational and broad interpretation of the provisions of the existing institutional framework, which is also consistent with the spirit of the legislator to attract the interest of third-country citizens to acquire real estate in Greece with the motive of granting a permanent permit, replied in the affirmative to both questions, accepting by a majority the fulfilment of the relevant conditions.

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## BRIEF BACKGROUND

The questions submitted by the above Ministry can be summarized as follows:

- Whether the conditions are fulfilled, based on the provisions of Article 20 paragraph B item 2 L. 4251/2014 (as currently in force), for the granting of a permanent investor's residence permit to applications from third-country nationals who purchased a property in Greece and paid the price to the seller before the drawing up of the sale and purchase contracts, at a time when the seller had not become owners of the subsequently sold properties.
- If the notary's certificate submitted by the third-country national for the purpose of obtaining the relevant residence permit, in the form specified in the Joint Ministerial Decision 32802/2020, binds the Administration as to the existence of the legal requirements for the methods of payment of the purchase price of the immovable property.
- Whether the Administration should revoke its document (from the General Directorate of Migration Policy to the Decentralized Administration of Thessaly and Central Greece) in which it had expressed the view that in cases such as those described in the first part of the question the conditions for granting a permanent residence permit to an investor are not met.

## LEGISLATIVE FRAMEWORK

The provisions on which the Legal Council of the State relied in order to substantiate its answers, include mainly those a) of articles, 1 par.1, (for the definition of a third-country citizen as a person who does not have Greek citizenship or the citizenship of another EU member state), 20 par. b item 2, (for granting a permanent investor residence permit for 5 years with the possibility of renewal to a third-country citizen who has entered or legally resides in the country and has full ownership and possession of real estate in Greece (or has concluded a long-term lease contract of complex tourist accommodation or a timesharing contract), with a minimum value at the time of its acquisition of at least 250,000 euros, which must be paid by a two-line bank cheque to an account of the beneficiary held at a credit institution in Greece or by credit transfer or via POS from a payment service provider in Greece by debiting the purchaser's credit or debit card to the beneficiary's payment account and 136 (for the joint decision of the Ministers of Foreign Affairs and Interior that determines the necessary supporting documents for the issuance of a residence permit, such as, inter alia, the sale and purchase contract, the notary's certificate, the Land Registry or Cadastral certificates provided by L.4251/2014, as currently in force, b) the Article of the under no. 32802/2020 Joint Ministerial Decision of the Ministers of Finance, Justice and Migration and Asylum on the type and content of the notary's certificate, c) the articles of Civil Code 361 (freedom of contract), 513 (definition of sale) and 1033 (acquisition of real estate by contract), d) articles 438 items a and b and 440 of the Civil Procedure Code (for conclusive evidence of what is certified in the document as having been done by the person who drafted the document) e) Articles 1 and 5 of L. 2830/2020 on the duties and obligations of the Notary Public.





## INTERPRETATION OF PROVISIONS AND REPLIES

In the light of the explanatory memoranda of the above legislative provisions for regulations that are functional and compatible with the socio-economic situation of the country and the attraction of investors and the particular concern of the legislator to determine specific ways of payment of the purchase price that ensure the control of the origin of the funds, as well as the prior full payment of the purchase price as a condition for the submission of the application for a residence permit, the Legal Council of the State has ruled:

A) the conditions for the granting of a permanent investor's residence permit to third-country nationals who purchase real estate in Greece are fulfilled, since the Administration cannot demand more information than that which is exclusively and strictly provided for by the law, according to which administrative control exercised is limited to ascertaining the amount of the price and its payment to the beneficiary by one of the permitted payment methods, ensuring transparency of the source of the income and avoiding the conclusion of contracts with a fictitious price, irrespective of whether or not the subsequent seller had ownership of the property at the time of payment of the purchase price. Moreover, the law (4251/2014) does not provide for, but also does not prohibit the payment of the price to the seller at a time when he had not become the owner of the subsequently sold property, as this would be contrary to the principle of freedom of contract, while at the same time requiring that the payment be made to a beneficiary without using the term "seller". Besides, this also confirms the opinion of the Legal Council of the State no 153/2020, which allowed the granting of a permanent investor's residence permit to a third-country citizen who acquired ownership of property in Greece by means of a forced auction and paid the auction price to a person who, at the time of payment, was not the 'seller or owner' of the auctioned property.

B) The Notary's certificate, as it is a public document that has evidentiary value and in particular constitutes conclusive evidence for all as to what is certified to have been performed by or before the Notary who drafted it as well as to what is certified therein, the truth of which the Notary ought to establish (with the possibility of counter-proof) binds the Administration as to the establishment of the fulfilment of the required legal conditions for the ways of payment of the purchase price .

C) The document of the General Directorate for Migration Policy is a simple internal information document of the Administration, which neither has the character of guidelines nor constitutes an enforceable administrative act and therefore there is no room for revocation.

