

SUBJECT: GOLDEN VISA PROGRAM – Amendments 2023 – recent developments (30.03.2023)

Dear Clients, Partners and Interested Ones,

Today the Portuguese Government announced the measures to be adopted under the Habitational legislative package, following the public hearing period and contributions of private and public entities.

The wording of the law that was approved by the Council of Ministers **was not released yet** but in the press conference, regarding the Golden Visa program, the following declarations were made by the Prime Minister:

“Regarding the Golden Visa, there are in our country, since 2012, up to now, in these 11 years, 11758 residence permits granted, based on the special regime for Golden Visa. What these years of experience indicate to us is that nothing justifies a special regime for Golden Visa. Why? Because 89% of this investment was purely real estate investment. Only in 22 of these 11758 residence permits was there job creation.

Therefore, the granting of this type of residence permit should continue to be allowed under the terms of the general law, and nothing justifies special treatment.

In relation to the visas already granted and their renewal, what we have decided, in order to give security to all those who hold them, is that, their residence permit, at the moment of renewal, and if they meet the criteria that are currently foreseen for their renewal, will be converted into a normal residence permit, just like any other foreigner residing in our country.

In relation to the processes that are pending examination, they will continue to be processed in accordance with the general law, which in the meantime is new and which foresees the granting of a residence permit for business investment purposes or for cultural or scientific research activities.

And, therefore, the processes that are pending today will be examined in accordance with the general law and with the certification by AICEP, or by Banco de Fomento, or by IAPMEI, or by the National Innovation Agency, or by the Ministry of Culture, of their economic, scientific, or cultural added value.

So, we end up with a general regime and everyone will be treated according to the general law and without jeopardizing legal security.”

In terms of the summary released, the document states the following:

“End of Golden Visas

Purpose:

- *End the general regime for granting Golden Visas, without prejudice of the admissibility of residence permits for investment under the terms of the general regime.*

How it works:

- *New Golden Visas cannot be granted as of February 16, 2023.*
- *In the case of golden visas requested and not yet granted, it is safeguarded that those who are pending at SEF or pending due to prior control procedures in the municipalities, shall be officially processed under the residence permit regime for entrepreneurial immigrants.*
- *In the case of renewal of those already assigned, every two years, it is safeguarded the reconversion of the residence permit into a permit for immigrants’ entrepreneurs and provided that the respective requirements are met, duly assessed by the competent authorities to verify the entrepreneurial project in progress.”*

[Free Translation]

From those words one can conclude that:

- The situation is very similar to the one that exists since the first declaration of the Prime Minister on February 16th, which means that, there is a proposal but not yet approved neither in force. As such, the Immigration Office is still receiving new applications;
- The Government intends to eliminate the special regime called “Golden Visa” however will continue to receive foreign investors through other regimes based on the economic, scientific, or cultural added value of the investments performed;
- This time, there were no references to special conditions for the renewal of permits based on real estate investment;
- The Government seems to be willing to convert Golden Visas under D2 permits;
- The Government insists in the retroactive effect of the law to be approved;
- When questioned about the date of entering into force of the amendments, the Prime Minister directed the topic to the Parliament competence.

At this point the market is waiting to have access to the concrete wording of the law that will be sent to Parliament for discussion and amendments, expectably after the Easter period. After this, the diploma must be sent to the President of the Republic who may react as mentioned below.

It is expected that in the Parliament the political party's discussion leads to some amendments, namely in what regards to the retroactive effect (which is understood by the majority of the Law professors as unconstitutional), to the concrete process of Golden Visa conversion into other immigration programs and the alternative investment programs that will lead to a residence permit.

For our part, we will monitor the situation as closely as possible, keeping Clients and Partners aware of any developments that occur and remaining available for any clarifications needed.

Prime Legal

March 30th, 2023.

**SUBJECT: GOLDEN VISA PROGRAM – Amendments 2023 – recent developments
(03.03.2023 + 10.03.2023)**

Dear Clients, Partners and Interested Ones,

Following the recent declarations of the Portuguese Prime Minister about the housing problem in Portugal and political measures proposed to solve it, it was now released the preliminary version of the proposal of diploma that gives a wording to such measures, which is now subject to discussion in public hearing until March 24th, being later approved by the Council of Ministers on March 30, after which it will go to the Assembly of the Republic for the Parliament discussion.

It can be found here:

https://www.consultalex.gov.pt/ConsultaPublica_Detail.aspx?Consulta_Id=290

The proposal follows the exact content of the declarations made and does not have yet any input from the market or the political parties, being under analysis and public discussion until March 13rd, 2023, meaning that now there are 9 days for the interested parties to present arguments and suggestions to revise such wording.

The screenshot shows the ConsultaLEX interface for a public consultation titled "Mais Habitação (Legislação)". At the top, there is a progress bar with three stages: "1. Em Curso" (checked), "2. A Terminar", and "3. Consulta Terminada". The main content area includes a table with the following details:

Áreas Temáticas	Tipo Diploma	Entidade Promotora	Data de Publicitação
	Diploma Legislativo	Gabinete Min. das Infraestruturas e da Habitação	2023-03-03

Below the table, it states: "É disponibilizada a legislação referente ao «Mais Habitação»." and provides information about the submission process. The sidebar on the right shows the consultation dates (2023-03-03 to 2023-03-13), the title "MAIS HABITAÇÃO (LEGISLAÇÃO)", and a "COMENTAR" button. At the bottom of the sidebar, there are social media icons for Facebook, Twitter, and LinkedIn, and a link to "VER TODAS AS CONSULTAS".

In what regards to the Golden Visa program, the base wording for this discussion is the following one:

[Free Translation]

General provisions

Article 1st

Object

1- This law establishes measures with the aim of guaranteeing housing for all.

2- For the purposes of the provisions of the previous number, this law proceeds:

(...)

e) To the revocation of the residence permits for investment activity, through the tenth amendment to Law No. 23/2007, of July 4, in its current wording, which approves the legal regime for entry, stay, exit and removal of foreigners from the national territory;

Article 31.

Renewal of residence permit for real estate investment activity

1 - Renewal of residence permits for real estate investment activities granted pursuant to subparagraphs iii) [500k investment] and iv) [350k investment] of point d) of paragraph 1 of article 3 of Law no. 23/2007, of 4 July, in the wording prior to the entry into force of this law, pursuant to paragraph 2 of article 90.º-A of the said Law, depends on proof, by the owner, that the properties are leased for housing purposes by for a period of not less than five years or are being used by the holder's or his descendant's as permanent residence.

2 - For the purposes of the preceding paragraph, the holder must deliver the supporting elements to the competent authorities for the renewal of the residence permit for real estate investment activity, up to 90 days before the expiry date of the authorization.

3 - The following are considered supporting elements for the purpose of renewing the residence permit provided for in the previous number:

a) Registration of the lease agreement with the Finance Portal, in the case of properties rented for a period of not less than three years;

b) Document attesting the tax domicile, in the case of properties intended for the owner's or his/her descendant's permanent residence.

Article 32

Pending residence permit applications for investment activity

1 - Applications for a residence permit to carry out an investment activity requested under subparagraph d) of paragraph 1 of article 3 of Law no. 23/2007, of 4 July, [meaning, all the current 8 available options of investment – real estate, investment funds, job creation, financial, cultural, technologic and corporate investments] which are awaiting a decision from the competent authorities on February 16, 2023, remain valid, without prejudice to the provisions of paragraphs 3 and 4.

2 - The provisions of the preceding paragraph apply, under the same terms, to requests for renewal of residence permits for carrying out an investment activity.

3 - Applications for renewal of residence permits for real estate investment activities granted under subparagraphs iii) [500k investment] and iv) [350k investment] of paragraph 1 of article 3 of Law no. 23/2007, of 4 of July, in the wording prior to the entry into force of this law, which are awaiting a decision from the competent authorities on the date of entry into force of this law, remain valid provided that proof is made available, by its holder, of a of the situations foreseen for in paragraph 1 of article 35.

4 - For the purposes of the previous number, the holder of the residence permit has 60 days to present the supporting documents foreseen for in subparagraphs a) and b) of paragraph 1 to the authorities responsible for renewing the residence permit under real estate investment as per number 3 of article 35.^o

Article 35

Transitional rule on tax matters

1 - Gains arising from the onerous transfer of real estate are excluded from taxation, provided that the following conditions are met cumulatively:

a) The property is not intended for the permanent residence of the taxable person or his household;

b) *The realization value, deducted from the amortization of the loan contracted for the acquisition of the property, is applied in the amortization of capital owed in mortgage credit intended for the permanent housing of the taxable person or his descendants;*

c) *The amortization referred to in the previous paragraph is carried out within a period of three months from the date of realization.*

Article 37.º

Implementation

This law enters into force on the day following its publication.

It is important to understand that this wording in a preliminary version of the proposed amendments - exactly as summarized by the Prime Minister's declarations on February 16th - which was now made available for discussion purposes at public hearing, will then be sent to Parliament for discussion and amendments expectably on March 16th, where it should take 15 to 20 days for approval. After this, the diploma must be sent to the President of the Republic who may react as follows:

- Direct ratification and in this case, the proposal will be published in the official journal, subject to a transitional period not yet disclosed;
- The President does not accept the proposal as it is, and returns it to the Parliament for amendment or;
- The President accepts the document but requests the evaluation of the Constitution Court to confirm if any fundamental rights or principles are being jeopardize by the new legislation.

Although, seeing it now in wording can create a certain alarm in the market, we recommend all parties to remain calm because the situation it is exactly the same as it was from the moment when the Prime Minister announced the proposed measures on February 16th.

It is our understanding, as well as that of the legal sector that works in this area, that the proposed wording of the law, in the terms presented, suffers from illegality and unconstitutionality in view of the retroactive effect that contains and will not enter into force as it is. As such, we believe that this is not the wording that will come out after the period of public discussion, neither from the discussion in the Parliament. Several entities, including political parties, Madeira Island Government, Associations, private Work Groups and others, have spoken out on the subject, and

are taking steps to maintain the program, albeit under different conditions and / or to ensure a transition period that safeguards ongoing processes and investments.

- <https://observador.pt/especiais/comecou-a-corrida-aos-ultimos-vistos-gold-setor-preve-processos-de-milhoes-contra-o-estado-e-conflitos-diplomaticos/>
- https://expresso.pt/economia/economia_imobiliario/2023-02-20-Mediadores-imobiliarios-dizem-ser-um-disparate-acabar-com-vistos-gold-e-saudam-agilizacao-dos-licenciamentos-6c4b1db4
- <https://www.tsf.pt/portugal/politica/tratar-todos-os-municipios-da-mesma-forma-e-um-erro-montenegro-critica-fim-de-vistos-gold-15859270.html>
- <https://vidaimobiliaria.com/noticias/mercados/fim-vistos-gold-sera-lamentavel-algumas-regioes-interior/>
- <https://www.dinheirovivo.pt/economia/associacao-pede-estudo-sobre-impacto-do-fim-dos-vistos-gold-e-sugere-alternativas-15932188.html>
- https://www.rtp.pt/madeira/politica/fim-dos-vistos-gold-nao-traz-grandes-beneficios-video_112591
- <https://www.construir.pt/2023/02/17/do-assalto-a-propriedade-privada-a-incompreensao-do-fim-dos-vistos-gold>
- <https://eco.sapo.pt/2023/02/24/apesar-do-travao-vistos-gold-no-porto-dispararam-mais-de-200-em-2022/>
- <https://www.dinheirovivo.pt/economia/empresarios-pedem-passo-atras-nos-vistos-gold-15874507.html>
- <https://vidaimobiliaria.com/noticias/habitacao/madeira-pretende-manter-vistos-gold-licencas-al-2/>
- <https://www.imidaily.com/im-people-in-the-news/sef-golden-visa-stoppage-is-a-real-scandal-a-shame-im-people-in-the-news-this-week/>

In this sense, we believe that there are strong legal grounds to challenge any measure that does not comply with the law to effectively protect the interests of investors and other parties involved in investment processes arguing basic principles such as the principle of non-retroactivity of the law, legal security, proportionality, the right to private property, among others, all of them constitutionally foreseen.

It should also be noted that the President of the Republic has already alerted the government to the need for special caution in dealing with these matters, thus showing his redoubled attention to the impact and scope of the law that will be approved in Parliament and that will be sent to him for validation.

- <https://www.dn.pt/politica/habitacao-marcelo-admite-enviar-pacote-da-habitacao-para-o-tribunal-constitucional-15926935.html>
- <https://tvi.iol.pt/noticias/marcelo-rebelo-de-sousa/habitacao/plano-do-governo-para-combater-a-crise-na-habitacao-so-se-sabe-se-o-melao-e-bom-depois-de-o-abrir-diz-marcelo/20230217/63efa6dd0cf2665294d6022f>
- <https://www.jn.pt/nacional/marcelo-elogia-debate-rico-e-esclarecedor-sobre-programa-de-habitacao-do-governo-15914248.html>

For our part, we will monitor the situation as closely as possible, keeping Clients and Partners aware of any developments that occur and remaining available for any clarifications needed.

Prime Legal

March 14th 2023

SUBJECT: GOLDEN VISA PROGRAM – Amendments 2023 (16.02.2023)

Dear Clients, Partners and Interested Ones,

Today the Portuguese Prime Minister announced a set of measures to give a political reply to the housing problem in Portugal – high prices on the real estate, lack of available properties in the rental market, preference for the short rental system, among others.

Within the measures announced, the Golden Visa program was also mentioned.

The related and exact words of the Prime Minister were: *“Two particularly important measures to combat real estate speculation - the first, the elimination of golden visas, or rather, the elimination of the granting of new golden visas. As for the golden visas already granted, their renewal, in the case of exclusively real estate investments, will only be renewed if they are the*

owner's own or permanent home or of his descendant or if the property is placed, on a permanent basis, on the rental market.”

Later, within the clarifications requested, the Prime Minister said: *“Meanwhile, a new immigration law for foreigners came into effect. This law already regulates in a very innovative way the granting of residence permits for special purposes, for the purposes of studies, investment, highly qualified, seasonal workers, for various circumstances. This regime must be the rule regime, not justifying, nowadays, what is the exceptionality of the golden visas. In fact, what we can see is that of the approximately 11,000 Golden Visas granted so far, more than 9,000 through real estate investment. Very low rate, not to say almost zero in job creation, and very low contribution to other activities. There are some gold visas that are active in the field of cultural patronage. What will happen (one thing is a decision not to have new ones, another thing is what happens to those currently granted). Those already granted, at their end, are subject to evaluation. If it is exclusively for real estate, there will be renovation, if the real estate investment is for permanent own housing, for descendants, or be placed on the rental market (and there we do not place the restriction of being placed on the affordable income market, it is purely and simply placed in the rental market). There are others that were granted for other purposes and, in this case, looking at the current law, it is possible to convert them depending on what the concession counterparts were, namely, in the area of cultural patronage, so there will be no disruption there, there will be a reclassification of the legal figure.”*

Also questioned about the scope of the program termination, the Minister of Finances replied that: *The elimination regarding Golden Visas is general, regarding the entire model that is known because the assessment that is done even of the recent changes that have been made regarding the limitation to real estate were not sufficient regarding the continuation of the mechanism. And it has the following characteristics: (i) on the one hand, we are talking about new applicants, new candidates for golden visas, the system will close and will remain active in renewals under certain conditions and what Mr. Prime Minister referred is that under the new legislation regarding the entry, stay and exit of foreigners that there are mechanisms that allow this mobilization, namely, for investment purposes, which are carried out, namely, in the cultural areas and others that I mention. But the assessment we have so far of the use of the instrument is rather residual in other purposes than real estate and that is why this additional step is taken”.*

(Free Translation)

At this moment, naturally, everybody is surprised, full of questions and uncertainty reigns in the face of statements that are contradictory, alien to the topic under discussion (lack of accessible habitation) and demonstrating a lack of technical knowledge about the legislation in question. In this sense, it is important to look rigorously at the objective data and proceed with caution.

1. It is important to underline that the Government does not have legislative competence to approve changes to the Golden Visa program. The competent body is the assembly of the Republic, which should then receive a proposal with the content of the measures announced above, for voting.
2. It is expected that now there will be 1 month for public hearing, followed by the sending of the final proposal to Parliament for discussion on March 16th, where it should take 15 to 20 days for approval. After this, the diploma must be sent to the President of the Republic who may react as follows:
 - Direct ratification and in this case, the proposal will be published in the official journal, subject to a transitional period not yet disclosed;
 - The President does not accept the proposal as it is, and returns it to the Parliament for amendment or;
 - The President accepts the document but requests the evaluation of the Constitution Court to confirm if any fundamental rights or principles are being jeopardized by the new legislation.
3. The governing party holds the parliamentary majority and therefore can effectively approve the measures announced above without further amendments if they wish so. However, it is common for all parliamentary parties to present proposals for alternative wording, which can be reflected in the wording of the law to be approved, adding new measures or amendments to the ones originally mentioned by the Prime Minister, normally reflecting the inputs received from the period of public hearing, which is essential to the process and for the legislator to know the reality of the facts that will be legislating about.
4. Changes to the other immigration programs (D7, D2 or Digital Nomads) were not addressed, but if some of the measures mentioned above are approved, it is necessary to make a formal amendment to the law in force and this could lead to a new wording with impact also in the so-called standard residence permits.

5. The Government wants to ensure the renewal of ongoing processes, however subject to additional conditions in order to use Golden Visas to repair housing problem.
6. The Government used with some interest the concept of “reclassification of the legal framework”, which is a new concept that seems to emerge to protect the rights of investors.
7. Unusual emphasis was given to cultural heritage in this context, and it is expected that there is something to develop here, despite this being already a viable option of investment under the current regime.

Based on the above, at this stage we believe to be fair to do the following assumptions:

- Expectedly, in the next, at least, 45 days, the current law remains in force.
- At this point, nobody knows – neither the Government nor the Parliament – what the exact content of the final amendments to the law will be.
- There is a significant risk of definitive and total termination of the Program in a medium-short term.
- There is no certainty as to the entry into force of the amendments to the law.
- The door to legal alternatives was opened, which will allow the continuity of the immigration and foreign investment flow to Portugal, either through new programs, or through the requalification of ongoing processes under a different framework.
- There is a willingness from the Government in adopting measures that interfere with the property right – constitutionally guaranteed – and with the principles of legal protection, given the possible adoption of measures with an impact on ongoing processes.
- Several reactions may arise, including a rush to anticipate the submission of processes, so that they are covered by the laws in force; alternatively, the massive presentation of legal proceedings against the State and even preliminary injunctions to avoid these specific amendments; the renegotiation of ongoing investments for adequacy to other types of residency programs or even the massive withdrawal of ongoing processes with requests for compensation from the State.

Potential Approaches

In Portugal there is a saying that “until the washing of the baskets is harvest time”. The truth is that Portugal, unlike other countries, does not traditionally adopt abrupt disruptive measures.

The last change to the Golden Visa program, for example, was also announced by the Government in December 2020, with the changes only being implemented on January 1, 2022.

Thus, the most sensible thing is to wait for the approval of the final diploma, which may actually undergo significant changes, either through the opposition political parties, or through the public contribution to the discussion, in which PRIME LEGAL will actively participate.

In the meantime, and without prejudice to the fact that there is no certainty about what the changes will effectively be and when they will be in force, we believe that investors must make their decisions, considering the risk of the unknown but based on the law in force, with a view to being able to benefit from the legal protection that only a consolidated situation can give. In these terms, for investors at an advanced stage (investment concluded), it is suggested to submit the process as quickly as possible. For those who are still negotiating, the extension of negotiations for a period that allow to have some clarity on the amendments. For those in the early stage of the process, the preparatory steps shall be completed in order to be in position to immediately act when the concrete amendments and timings are known.

For our part, we will monitor the situation as closely as possible, keeping Clients and Partners aware of any developments that occur.

Prime Legal

February 16th 2023

The content of this information does not constitute any specific legal advice; the latter can only be given when faced with a specific case. Please contact us for any further clarification or information deemed necessary in what concerns the application of the law.