

LEGAL OPINION

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I - INTRODUCTION

The Legal Regime of Entry, Stay, Exit, and Removal of Foreigners from the National Territory, approved by Law No. 23/2007, of July 4th, since August 2012, with the entry into force of Law No. 29/2012, of August 9th, allows non-national foreign citizens of the European Union, or those who do not have the status of permanent residents here, to obtain a residence permit for investment activity (ARI), commonly known as Golden Visa, by carrying out any of the investment activities set forth in subparagraph d), paragraph 1 of article 3.

The Regime of Residence Authorization for Investment Activity (ARI), commonly known as the "Golden Visa," presents unique characteristics when compared to other types of residence permits provided for in Portuguese law. Specifically, it is important to highlight two particularities: i) the exemption from *ex ante* procedural formalities necessary for entry into the national territory, it being sufficient, for the purpose of submitting the respective application, that the interested party proves their lawful and valid entry into Portuguese territory, either by holding a tourist visa in the Schengen area or through a visa waiver, if they come from countries with which Portugal has bilateral agreements that include such a prerogative; and ii) following the granting of the aforementioned temporary residence permit, a minimum requirement of staying in Portuguese territory for 7 days, consecutive or interpolated, during the first year of residence, and for subsequent biennia, 14 days, also consecutive or interpolated. This provision contrasts with the requirements of stay established for other categories of residence permits.

On February 16th, 2023, the Portuguese Government presented the program entitled "Mais Habitação" (More Housing), which has, as its main objective, to confront real estate speculation, safeguard family homes, increase the housing supply, and promote the expansion of the rental market. The aforementioned program gave rise to Law No. 56/2023, of October 6th, which promotes the approval of several measures in the housing scope and proceeds with the execution of various legislative changes.

Among the proposals approved by the Portuguese Assembly of the Republic regarding the "Mais Habitação" legislative package is the amendment to the legal regime of ARI, which no longer includes the activities provided for in subparagraphs i) (transfer of capital in excess of €1,500,000.00), iii) (Investment in Real Estate in the minimum amount of €500,000.00), and iv) (investment in real estate for rehabilitation, in the minimum amount of €350,000.00), of paragraph d) of Article 3. It also proceeds with the amendment of the investment activity provided for in subparagraphs vii) (Investment in Fund Investment Units) and viii) (establishment of a commercial company and creation of 5 permanent positions or reinforcement of the company's share capital and maintenance of 5 permanent positions, or at least ten jobs, with a

minimum of five permanent ones, for a minimum period of three years) of the said paragraph d).

With the changes approved by the Portuguese Assembly of the Republic, Article 3 of Law No. 23/2007, of July 4th, is amended in the terms transcribed below:

Article 3.

1 - [...];

a) [...];

b) [...];

c) [...];

d) [...];

i) *(Revoked)*;

ii) [...];

iii) *(Revoked)*;

iv) *(Revoked)*;

v) [...];

vi) [...];

vii) *Transfer of funds in the amount equal to or exceeding €500,000, intended for the acquisition of shares in non-real estate collective investment undertakings established under Portuguese law, with a maturity, at the time of investment, of at least five years, and at least 60% of the investment value is realized in commercial companies headquartered in Portuguese territory.*

viii) *Transfer of funds in the amount equal to or exceeding €500,000, intended for the establishment of a commercial company headquartered in Portuguese territory, in conjunction with the creation of five permanent job positions, or for the increase of the share capital of an already established commercial company headquartered in Portuguese territory, with the creation of at least five permanent job positions or the maintenance of at least ten job positions, with a minimum of five being permanent, for a minimum period of three years;*

e) [...];

f) [...];

g) [...];

i) [...];
j) [...];
k) [...];
l) [...];
m) [...];
n) [...];
o) [...];
p) [...];
q) [...];
r) [...];
s) [...];
t) [...];
u) [...];
v) [...];
x) [...];
y) [...];
z) [...];
aa) [...];
bb) [...];
cc) [...];
dd) [...];
ee) [...];
ff) [...];
gg) [...];
hh) [...];
i) [...];
ii) [...];
iii) [...];
ii) [...];
jj) [...];
kk) [...];
ll) [...];
mm) [...];

nn) [...];

oo) [...];

pp) [...];

qq) [...];

rr) [...];

ss) [...];

tt) [...];

uu) [...];

vv) [...];

ww) [...].

2 - The amount or minimum quantitative requirement of the investment activity provided for in subparagraphs ii), v), and vi) of paragraph d) of the previous number may be reduced by 20% when the activity is carried out in low-density areas.

3 - For the purposes of the provisions of the preceding paragraph, low-density areas are those defined in Order No. 208/2017, of July 13, with fewer than 100 inhabitants per km² or a per capita gross domestic product (GDP) lower than 75% of the national average.

4 - The investment activities provided for in subparagraphs ii) and v) to viii) of paragraph d) of number 1 require an assessment every two years of their impacts on scientific activity, culture, promotion of foreign direct investment, and job creation.

5 - The investment activities provided for in the subparagraphs referred to in the previous number may not be directly or indirectly intended for real estate investment.

II - SUBJECT OF THE LEGAL OPINION

The central purpose of this opinion is to assess the eligibility of the acquisition of participation units of **HAVEN - HOSPITALITY MANAGEMENT - FUNDO DE CAPITAL DE RISCO FECHADO** (hereinafter referred to as "**HAVEN**"), for the application to the Golden Visa by the investor, in accordance with subparagraph vii), paragraph d) of no. 1 and in paragraphs 4 and 5 of article 3 Law no. 27/2023.

To this end, we propose, in a first phase, the analysis of the up-to-date legal framework for Residence Authorization for Investment Activity (ARI), proposed by the

Government and approved by the Portuguese Assembly of the Republic. Subsequently, we will focus, in particular, on the investment activity related to the acquisition of participation units of Collective Investment Undertakings (CIUs), as defined in item vii), subparagraph d) of paragraph. 1 and in paragraphs 4 and 5 of article 3, previously transcribed.

III - CHANGES TO INVESTMENT REQUIREMENTS IN COLLECTIVE INVESTMENT UNDERTAKINGS

A) - SUB-ITEM VII) OF SUB-CLAUSE D) OF PARAGRAPH 1 OF ARTICLE 3

A.1) - THE "NON-REAL ESTATE CIUs"

We will start our analysis on the relevant legislation on investment in Collective Investment Undertakings (CIUs), which are considered for obtaining residence permits for investment activity. The legal wording resulting from the aforementioned law establishes the criteria for the eligible investments, namely:

"Transfer of funds in the amount equal to or exceeding €500,000, intended for the acquisition of shares in non-real estate Collective Investment Undertakings (CIUs) established under Portuguese law, with a maturity, at the time of investment, of at least five years, and at least 60% of the investment value is realized in commercial companies headquartered in Portuguese territory".¹

The amendment introduced by Law No. 56/2023, of October 6th, approved by the Portuguese Assembly of the Republic, changes the type of eligible entities for the investment activity. The previous regime stated that the investment should be made in "acquisition of units of participation in investment funds or Private Equity funds aimed at the capitalization of companies".

This amendment creates some difficulty in framing the concept of Non-Real Estate CIU, as it does not result from any established legal definition or terminology, particularly in the sector-specific legislation applicable to Collective Investment Entities, which are governed by the Asset Management Regime, approved by Decree-Law No. 27/2023,

¹ Emphasis added.

of April 28th (the "AMR"), and the relevant European regulation. The concept of CIU is provided for in Article 2 of the AMR, which defines them as: "institutions, with or without legal personality, whose purpose is the collective investment of capital obtained from investors in accordance with a previously established investment policy," which can take the form of a company, as a collective investment company, or merely contractual, as an investment fund.

As for the type of CIUs, the AMR in article 5 distinguishes between:

(i) **Undertakings for Collective Investment in Transferable Securities ("UCITS")**- which invest exclusively in securities or other liquid financial assets.

(ii) **Alternative Investment Undertakings (AIUs)**, which, according to Article 208.1 of the AMR, are divided into:

- a) **AIUs in Real Estate** - whose investment policy includes investments in real estate assets;
- b) **AIUs in Private Equity** - which are intended for Private Equity investments, *i.e.*, in companies with high growth and appreciation potential; and
- c) **Credit AIUs** - which are aimed at investing in credit;
- d) **Other Alternative Investment Undertakings**- whose investment policy does not fit into any of the other CIU categories and invest in securities or other financial or non-financial assets, including those permitted for the types of AIUs.

As it is clear from the applicable legal regime, the concept of "Non-Real Estate CIU" does not fit into any typology of CIU regulated by the AMR, and therefore, to interpret the respective concept, we must, first and foremost, try to define what is meant by "Non-Real Estate CIU," and then subsume each of the types of CIU provided for in the AMR under the proposed definition.

We understand that Non-Real Estate CIU should be defined as the CIU that does not have as its object the investment in Real Estate Assets. Considering the proposed concept, we can already conclude that Real Estate AIU does not fit within the presented definition, given the investment policy that precisely involves investing in real estate

assets.

On the other hand, considering the specificity and latitude of the investment policies that the other AIU may adopt, we also consider that whenever investment in Real Estate assets is not provided for in the respective investment policies of the CIU, they will not be considered as Real Estate CIU.

As for the other CIU, since their activity is not the investment in Real Estate Assets, they are likely to be considered as Non-Real Estate CIU and, therefore, eligible for investment under ARI in accordance with Article 3, paragraph 1, subparagraph d), item vii), of Law No. 23/2007, of July 4th.

A.2) INVESTMENT IN COMMERCIAL COMPANIES BASED IN PORTUGAL

Another relevant amendment introduced by Law No. 56/2023, of October 6th, relates to the object of eligible Private Equity Funds for investment, which according to the previous wording should "*be aimed at the capitalization of companies.*"

Article 227, paragraph 1 of the AMR defines that: "*Investment in Private Equity is considered to be the acquisition of equity instruments and debt instruments in companies with high development potential, as a way to benefit from their appreciation.*"

The concept of investment in Private Equity implies its vocation for the capitalization of commercial companies, through the investment in equity or debt instruments, with the aim of providing them with the necessary financial resources for the development and expansion of their activities, seeking to benefit from appreciation. In this sense, Law No. 56/2023, of October 6th, approved by the Portuguese Assembly of the Republic, will not affect the eligibility of this type of funds, which only have to comply with the portfolio composition requirement - at least 60% of the investments made must be in Portuguese territory.

At this point, it should be noted that all types of investment are admissible under this

subparagraph, not being restricted to investment in equity instruments. "Investment" is a fundamental concept in the financial and economic area, referring to the allocation of financial resources with the aim of obtaining future gains. It involves the application of money, time, effort, or other resources in assets or projects that are expected to generate positive returns over time. Investment is an essential part of the functioning of financial markets and plays a fundamental role in economic growth.

Investment, that is, the allocation of capital with the expectation of generating returns, can be realized in different ways, either through equity instruments (e.g., shares of joint-stock companies) or through debt instruments (e.g., bonds issued by companies), or other instruments, as long as it is carried out in companies based in Portugal.

B)- DIRECT AND INDIRECT REAL ESTATE INVESTMENT

Another legislative novelty introduced by the legal wording is that of paragraph 5 of Article 3 of Law No. 23/2007, dated July 4th, which states:

"5 -The investment activities outlined in the sub-items mentioned in the previous paragraph cannot be directed, directly or indirectly, towards real estate investment."²

With this provision having direct application regarding the acquisition of parts of CIU for eligibility for ARI, the question arises here of what constitutes direct or indirect investment in real estate.

In accordance with the provisions of this new paragraph 5, it is important, first and foremost, to discern what is meant by direct investment and indirect investment, and secondly, to specify the concept of real estate investment.

Direct investment refers to the direct allocation of financial resources for the acquisition and ownership of specific assets (real estate in the case under analysis). These are cases in which the CIU acquires ownership rights or any similar figure over real estate, exercises control over decisions related to these assets, and is directly

² Our underline.

exposed to the risks and returns associated with them.

As mentioned in point A.1) of this opinion, in the case of CIU, only Real Estate AIUs and Other AIUs that, under the law and their respective constitutive documents, are authorized to invest in real estate assets³, fall under the concept of Real Estate CIU. Therefore, in the contrary sense, all other CIU fall under the concept of Non-Real Estate CIU.

On the other hand, indirect investment involves the allocation of financial resources through intermediaries or investment undertakings, such as companies. In this case, the CIU does not have direct ownership or similar figures over the underlying assets (Real Estate), but rather over the shareholdings of the investment undertaking (company). The indirect investor does not make individual decisions about the assets but shares risks and returns proportional to their holdings in the investment undertaking.

Considering the object, nature, and investment policy of the Non-Real Estate CIU, the investment to be made will always be indirect, that is, through investment in shareholdings or credits of an undertaking (company) that will, in turn, invest in Real Estate. At this point, we can state that paragraph 5 creates a special rule, which exempts from the eligible investments provided for in item vii), subparagraph d), paragraph 1 of Article 3 of Law No. 23/2007, of July 4th, the Non-Real Estate CIU that indirectly (through companies in which they hold stakes) invest in Real Estate Assets.

At this juncture, it is now important to understand what will be understood as real estate investment, for the purposes of the application of the legal regime of ARI, considering that the law does not provide any special definition for its application.

Generally, the concept of real estate investment includes the onerous acquisition of real rights over real estate, including the acquisition of ownership rights, the establishment of surface rights or land servitudes, and aims primarily to obtain

³ According to article 208, paragraph 2, of the AMR, real estate assets are considered, in addition to properties, units of participation in real estate AIUs, and equity interests in real estate companies.

financial returns through the onerous exploitation of the property, subsequent resale, appreciation of the property over time, or both options. Essentially, it involves the allocation of financial resources in real estate assets with the expectation of generating income and/or capital appreciation.

For the purposes of indirect investment in real estate (as we have seen, direct investment is not admissible for the concept of non-real estate CIU), we must consider investment in companies whose corporate purpose is real estate activity. These will be companies with economic activity code 68 of Section L, namely the Purchase and Sale of real estate (code 68100), Rental of real estate (code 68200), and Real estate activities on behalf of others (codes in group 683).

However, considering the rules of interpretation of the law, in particular the fundamental principle that its interpretation should reconstitute the legislative intent, the circumstances in which it was prepared, and the specific conditions of the time in which it is applied⁴, it is questioned whether any and all real estate investment is included within the normative scope of this paragraph 5 of Article 3 of Law No. 23/2007, of July 4th.

This legislative novelty is part of a package of changes to different laws aimed at increasing the supply of housing, streamlining licensing processes, increasing the number of rental market properties, combating speculation, and protecting families, the so-called "More Housing" Program.

Regarding the ARI, it appears that this program is being modified due to the alleged real estate speculation, notably in major urban centres and residential properties, causing an increase in property prices as well as their respective rents.

Fundamentally, Law No. 56/2023, of October 6th aims to protect the residential real estate market in Portugal.

In this sequence, it is important to underline that real estate investment is incidental

⁴ Please refer to Article 9 of the Civil Code.

to almost all economic and commercial activities. In particular, the sectors of commerce, industry, agriculture, and livestock, as well as hospitality, deserve special mention. These sectors, for the development of their respective activities, must necessarily acquire or lease/rent a property, creating jobs, and helping in the development of the economy, truly being non-real estate economic activities.

These are sectors that, while not primarily engaging in real estate activities, have an underlying part of real estate investment necessary for the development of their activities. A simple local retail store will always need physical space for its activity, even if it is adapted to current times and only practices e-commerce, it will inevitably have to obtain space for product storage.

However, these properties, and consequently real estate investments, are merely instrumental to the purpose of the activity to be carried out, so we understand that they are excluded from the concept of real estate investment for the purposes of the application of the ARI regime.

Thus, in conclusion, non-real estate CIUs will be eligible for ARI purposes, in which at least 60% of the investments are made in companies based in Portugal, which do not have real estate investment as their main activity, namely the purchase and sale of real estate, rental of real estate, and real estate activities on behalf of others.

IV - ELIGIBILITY OF INVESTMENT IN PARTICIPATION UNITS OF HAVEN FOR THE PURPOSES OF THE GOLDEN VISA APPLICATION

Given the above stated, it is now appropriate to address the possibility of an investor who acquires participation units of **HAVEN - HOSPITALITY MANAGEMENT - FUNDO DE CAPITAL DE RISCO FECHADO**, fulfils the requirements of the investment activity provided for in the new wording of item vii) of subparagraph d), paragraph 1 of Article 3 of Law 23/2007, of July 4th, for the purpose of granting a Golden Visa.

Firstly, it is worth mentioning that **HAVEN** is an Alternative Investment Fund in Private Equity, as can be seen from Article 1, paragraph 2, of the Fund Management

Regulation. As a Private Equity Fund, its investment is aimed at companies with high growth potential and appreciation.

The Investment Policy of the Fund, according to Article 5, paragraph 3 of the Fund Management Regulation, is related to “[...] investments in majority shareholdings of small and medium size companies based in Portugal, regardless their legal form, with growth potential and appreciation, whose activity is focused, directly or indirectly on the management of activities related to the hospitality sector, including tourist accommodation, with a geographical focus on the areas/regions of Porto, Lisbon, Algarve, Madeira, and the Azores.”

For the purpose of the eligibility of the investment in the Fund for the ARI, we can conclude that, in our perspective, as it does not involve direct or indirect investment in real estate assets, particularly through the direct allocation of financial resources for the acquisition and possession of specific assets, the Fund in question falls into the category of Non-Real Estate CIUs.

The fourth paragraph of Article 5 of the Fund Management Regulation clarifies the Fund’s intention, through its investment policy, on being compliant with the legal requirements, namely the ones provided for in Law No. 56/2023, of October 6, as well as the terms and conditions established by Law No. 23/2007, of July 4, in its current wording, for the purposes of Residence Permit for Investment Activity (“ARI”). In view of this, the Fund’s investment policy states that *“The Fund will acquire shares in companies, by investing in their capitalization with the purpose of developing, directly or indirectly, their activity within the scope of hotel services [...]”* (subparagraph a), and *“the Fund will not acquire, nor sell, any real estate properties”*⁵ (subparagraph b)).

Furthermore, the fifth paragraph of Article 5, further specifies what activities can the Fund pursue, in order to proceed with its investment policy, namely: subparagraph a) *“acquisition of parts or the entirety of the share capital of companies with the characteristics mentioned in number 3 [which are companies whose activity is focused, directly or indirectly, in the management of activities related to the hospitality sector],*

⁵ Our underline.

as well as of securities or rights convertible, exchangeable, or that confer the right to acquire such share capital”; subparagraph b) “acquisition by assignment or subrogation, of credits on the companies in which it participates or proposes to participate”; subparagraph c) “make shareholders loans, supplementary contributions, or ancillary capital contributions in companies in which it participates”; subparagraph d) “grant credit, in any form, or provide guarantees for the benefit of companies in which it participates”; subparagraph e) “apply treasury surpluses in financial instruments” ; and subparagraph f) “carry out the necessary foreign exchange operations for the development of its activity.”

In view of the above, the activities in which the Fund invests are distinctly practical and operational nature, generally aligning with the management features of hotels and other touristic enterprises. Consequently, any potential real estate investment will be of a purely complementary nature concerning the activities conducted by the Fund and the participated companies, this is, necessary for the companies to obtain the income from the operation of the touristic enterprises (revenue from the provision of services). This approach ensures, in our analysis, compliance with the legal requirement to avoid direct or indirect investment in real estate, thereby making the fund eligible for investment aimed at obtaining ARI.

It is further noted that, to avoid the possibility of any income being derived only from the real estate asset, and thus, being a real estate investment, Article 6, paragraph 1, subparagraph c), of the Fund Management Regulation, clearly states that *“the Fund cannot directly hold any real estate assets”*⁶. Therefore, the Fund's investment policy focuses on maximizing the investment of its shareholders by investing in companies with growth and appreciation potential in the operational areas of tourism, hospitality, materializing in hotel management.

We can assume, given the corporate purpose of the companies to invest in, according to the Investment Policy of the Fund as referred above, that the primary income, valuation or return of the companies will derive from the operation of hospitality units,

⁶ Our underline.

particularly hotels and resorts, as well as the operation of leisure activities and management of tourism activities, and the organization of events, therefore, it should not be considered as a real estate investment for the purposes of paragraph 5 of Article 3 of Law No. 23/2007, of July 4th.

Furthermore, it is our opinion that the target companies do not engage in any direct real estate transaction (hence, acquisition and sale of land and buildings), thus not conflicting with the objectives intended with the implementation of the "*Mais Habitação*" Program, not affecting the supply of housing properties, nor reducing the number of existing rental properties, and therefore not contributing to the speculation currently present in the Portuguese real estate market.

Regarding the second requirement that at least 60% of the Fund's investment value be made in companies based in Portugal, we believe that this requirement is met, given the Fund's investment policy, which establishes in Article 5 paragraph 3 of the Fund Management Regulation that "The Fund has, as its purposes, the investment *in majority shareholdings of small and medium size companies based in Portugal, regardless their legal form [...]*"⁷. This unequivocally emphasizes that the entire investment will be allocated to companies based in Portugal, surpassing the legally mandated threshold of 60%.

As for the maturity requirement of the fund, it is provided in paragraph 3, article 1 of its Management Regulations that it has a fixed duration of 12 (twelve) years from the date of the first capital subscription (which corresponds to the incorporation date).

In summary, considering the Management Regulations of **HAVEN** and its investments policy, it is our legal opinion that all the aforementioned requirements are met, and therefore the investment in participation units in this Fund is eligible for the investment activity provided for in item vii) of subparagraph d) of paragraph 1 of article 3 of Law no. 23/2007, of July 4th.

⁷ Emphasis added.

V - CONCLUSION

With the changes to the ARI regime materialized by Law No. 56/2023 of October 6th, the investment described in item vii) of paragraph d) of Article 3 of Law No. 23/2007, of July 4th alters the eligibility criteria for the investment it prescribes. Thus, this investment must fulfil the following pre-requisites:

- (i) **non-real estate CIUs** (all CIUs that do not qualify as Real Estate AIUs or Other AIUs that directly or indirectly invest in real estate);
- (ii) **in which at least 60% of the investments are made in companies based in Portugal** (either through equity instruments or through debt instruments or other instruments);
and
- (iii) **these companies do not have real estate investment as their primary activity**, namely the buying and selling of real estate, real estate leasing, and real estate activities on behalf of others.

In conclusion, as better substantiated above, the investment in participation units of **HAVEN - HOSPITALITY MANAGEMENT - FUNDO DE CAPITAL DE RISCO FECHADO** is, according to our legal perspective based on the literal interpretation of the law, eligible for the investment activity described in item vii) of subparagraph d), paragraph 1 of Article 3 of Law No. 23/2007, of July 4th, as it complies with all the legal requirements set out therein and, furthermore, is clearly not intended directly or indirectly to real estate investment.

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