

## RECENT CHANGES TO THE LEGAL REGIME OF TOURISM DEVELOPMENTS

(DECREE-LAW NO. 15/2014, 23 JANUARY)

### 1. INTRODUCTION

Decree-Law no 15/2014, 23 January (“DL 15/2014”) that entered into force on January 28, 2014, implemented important modifications to the Legal Regime of Tourism Developments, approved by Decree-Law no 39/2008, 7 March (hereinafter referred to as “**RJET**”).

The present article aims to highlight in a non-exhaustive manner the changes that are of most consequence.

On an introductory note it is worth mentioning that, as stated in the preamble of DL 15/2014, the common directive behind the legislative propulsion was the goal to “*make adjustments and changes that the current regime, faced with the existing economic conjuncture and the necessity to grant higher levels of efficiency and simplicity as well as the need to diminish context costs and to liberalize proceedings, showed as being necessary*”.

### 2. CHANGES TO THE CONCEPTS OF TOURISM DEVELOPMENT AND LOCAL HOUSING

DL 15/2014 *apparently* aimed to change the concept of tourism development stating that establishments and facilities that “*do not meet the requirements to be deemed tourism developments*” will not be considered as such, thus appearing to have restricted the previously existing concept.

However this change may not have the large impact as the legislator was swift to qualify the facilities and establishments referred to in section b) of no. 2 as local housing.

On the other hand, the modifications to Article 2 of RJET may not be as innocuous as, on a first reading, they may seem. This is because the previous regulation qualified a facility or establishment as local housing so long as they met the requirements set out by Article 3 of RJET. But now, if a facility/establishment does not meet the requirements to be deemed it will be considered as local housing, which may ultimately result in the enlargement of the notion.

It is noteworthy, however, no. 1, of Article 3 of RJET which, having remained unchanged, stipulates that, by “*local housing establishments*” the law means “*houses, apartments and lodging establishments that, having a use permit, provide temporary housing services, but do not meet the requirements to be deemed tourism developments*”. The new regime seems, therefore, to qualify as local housing, not only houses, apartments and lodging establishments, but also *any* facility/establishment that does not meet the criteria to qualify as a tourism development.



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As for local housing, the new Article 2, no. 3, of RJET, stipulates that its regulation will be made by decree-law (which, in itself, is new); it is reasonable to assume that the new, broader concept of local housing will be applicable as of the date in which that regulation enters into force.

Finally, it is also worth noting that the new Article 4, no. 1 of RJET eliminates former section h): tourism developments are no longer permitted to qualify as nature tourism developments. The new no. 3 now stipulates that any of the still existing types may be acknowledged as nature tourism, provided that, for such purpose, the development operates in areas with natural value and so long as it is recognized as such by the Nature and Forests Preservation Institute (*Instituto de Conservação da Natureza e das Florestas*) (Article 20, no. 2 of RJET).

### 3. NEWS CONCERNING THE INSTALLATION OF TOURISM DEVELOPMENTS

The main novelty on this matter corresponds to Article 23, no. 2 of RJET which now allows the building promoter of a tourism development to choose the request of a license when, under the terms of the building and urbanization legal regime, the proceeding form applicable to the building's prior control is that of the prior communication (*comunicação prévia*).

Another innovation introduced by DL 15/2014 results in the modification of Article 10 of RJET, which now has more demanding requirements for the installation of commercial and service establishments given that the new rules but require those establishments to comply with all potentially applicable legislation to said establishments.

### 4. MODIFICATIONS RELATING TO THE AUTHORIZATION OR THE COMMUNICATION FOR THE USE OF TOURISM DEVELOPMENTS

New, on this matter, is the revocation of Article 31 of RJET that allowed the interested party in the concession of the permit to communicate to the relevant municipality his decision to open to the public. In fact, the delivery of this communication was an essential requisite so that a valid opening title was deemed to exist as well as for the use of the mechanism of the judicial subpoena for the practice of a legally due act (former Article 31, no. 3).

In the new drafting of RJET, not only is the abovementioned mechanism extinct, as the new section b) of Article 32 now provides for a real tacit deferment by stipulating that a valid opening title will be considered to exist if the interested party delivers “*proof of the regular submission of the request for the concession of a use permit for tourism purposes, accompanied by proof of payment of the relevant fee, once the term established by Article 30, no. 3, has expired without an express ruling having been delivered*”. It should be noted that, notwithstanding the tacit deferment, the interested party is only authorized to use a tourism development after paying the corresponding fee, as unequivocally stated in Article 30, no. 6 of RJET.

### 5. CHANGES IN RELATION TO ENFORCEMENT AND ADMINISTRATIVE OFFENCES

In matters of administrative offences, it should be noted that the catalog of situations that are considered offenses as per Article 67 of RJET has increased. Also noteworthy is

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*The increase in the powers conferred upon the Food and Economic Security Authority (Autoridade de Segurança Alimentar e Económica), which is now competent to apply the abovementioned penalties to tourism developments as well as to local housing establishments*

the substantial increase in the maximum limits of the applicable pecuniary penalties for the commitment of such offences, notwithstanding the decrease of the corresponding minimum limits, under the terms of numbers 2, 3 and 4 of Article 67.

Finally worth mentioning is the increase in the powers conferred upon the Food and Economic Security Authority (*Autoridade de Segurança Alimentar e Económica*), which is now competent to apply the abovementioned penalties to tourism developments as well as to local housing establishments (Article 70, no. 1, section a) of RJET), also acquiring power to determine the temporary interdiction of local housing functions, in addition to the previously existing similar power over tourism developments, under the terms and conditions provided for in the new Article 73 of RJET.

## 6. CONCLUSIONS

DL 15/2014 determined the occurrence of some changes to RJET with consequences on the tourist and local housing realities that only practice will make clear.

It is significant and patent, however, that the goal is to simplify procedures and unburden private players in their contacts with the administrative entities both legally and economically. Furthermore, it is evident that the legislator was concerned with the clarification that in the former regulation were difficult to understand or that practice eventually had fixated in a particular manner.

Finally, it should be noted that the enforcement powers over the sector aimed at ensuring compliance with procedures and the perfection of sanctioning devices in the event of violation have increased.

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