



REMOTE DEEDS – MODERNIZATION AS A PANDEMIC RESPONSE

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During the Council of Ministers' meeting that took place on 22 July 2021, the Government approved a draft Decree-Law that will set forth the legal regime applicable to authentic acts (*atos autênticos*), terms for authentication of private documents (*termos de autenticação de documentos particulares*) and acknowledgements (*reconhecimentos*) by videoconference.

This Decree-Law is expected to come into force by 15 November 2021 and comes as a response from the Government to the growing demand for online services which the pandemic has significantly boosted, bringing the regime up to date with the most innovative international practices.

Under the terms of the draft Decree-Law, the above-mentioned acts may be carried out through videoconference when requested by the participants and scheduled by a professional, but it should be noted that this regime will not apply to any act that require the physical presence of registrars, notaries, consular agents, lawyers or solicitors. There are limitations on wills and their related acts which shall continue to be made in person.

Regarding facts subject to land registration, the following may be conducted electronically: (i) the constitution, acquisition or modification of ownership rights, usufruct and habitation rights, surface rights and easements; (ii) the constitution or modification of the horizontal property regime

(condominium); (iii) the promissory transfer of real estate assets with *in rem* rights (*eficácia real*); and (iv) the granting of mortgages and assignment of receivables.

Under this new regime, an electronic platform of the Ministry of Justice will be created for the performance of the above-mentioned acts through videoconference which will allow document management and verification of the identity of the participants, who will not be permitted to turn off the camera or microphone during the session. In practical terms, it is expected that this platform will work as well as the well known online meeting platforms Zoom and Microsoft Teams.

It is also important to highlight that the access to the reserved area of the platform depends on the authentication of its users, made through a citizen card (*Cartão de Cidadão*) or a mobile digital key (*Chave Móvel Digital*), for participants, or the professional certificate, for notaries, lawyers, or solicitors.

Regarding non-Portuguese participants, we note that they may be authenticated through other electronic identification means governed by other Member States in accordance with EU law.

We further note that once the document has been read and explained by a professional, the participants add their qualified electronic signature via the platform. Afterwards, a professional will verify the quality of the electronic recording and sign the document, providing a copy of the document to each party.





There are also some rules applicable to the managing entity of the platform regarding the conservation and access to documents, which must be archived and kept for a minimum period of 20 years. Naturally, this does not disregard any similar obligations that fall directly on the professionals responsible for the act.

The acts carried out by videoconference under this draft Decree-Law shall have the same legal effect as if they were carried out in person. Failure to comply with the formalities established by this draft Decree-Law shall make the acts carried out pursuant to it null and void, e.g., the reading, explanation and signing of the documents should take place on the same day, and a professional must ensure that the act is in conformity with the parties' intentions.

It is important to emphasize that the professionals responsible for these acts must refuse to perform them whenever they have doubts about the identity, free will and capacity of the participants, the authenticity of the documents presented or when the necessary technical conditions are not met.

Despite that we cannot totally rule out the risks associated with these remote procedures, we consider this to be a measure to speed up and modernise procedures that have been "demanded" by the pandemic and which will have positive practical effects on the daily life of citizens and companies.

Eventually, after having assessed the proper functioning of the platform and the legal framework established by this draft Decree-Law and if the

results are considered satisfactory by the Government, this framework may become a benchmark and a possible breakthrough for further technological development of justice in Portugal. In fact, the Portuguese Bar Association has already conveyed its opinion that this platform should be used in court proceedings as well. ■