

LEGAL ALERT

EXECUTION OF CERTIFIED ACTS, AUTHENTICATION OF PRIVATE DOCUMENTS AND CERTIFICATION OF SIGNATURES BY VIDEOCONFERENCE

DECREE-LAW NO. 126/2021

On 30 December 2021, the [Decree-Law no. 126/2021](#) (Decree-Law) was enacted, which establishes the legal regime applicable to the execution of certified acts (*atos autênticos*), authentication of private documents (*termos de autenticação de documentos particulares*) and certification of signatures by videoconference.

This Decree-Law **enters into force on 4 April 2022** and shall remain in force for a transitory period **two years**, being subsequently subject to an assessment by the Government as to whether it should be definitively consolidated in the Portuguese legal framework.

This regime may be seen as an answer to the growing demand and use (which the pandemic significantly boosted) of online services.

SCOPE

This regime covers the acts executed, from one hand, by **registrars and justice officials**, but also by **notaries, lawyers or solicitors**.

With regard to acts executed by registrars and justice officials, we highlight that the acts related with the special procedure for the transfer, encumbrance and immediate registration of buildings in

a single face-to-face service (covered by the service usually referred to as “*Casa Pronta*”) can be now be performed by videoconference.¹

In relation to the acts executed by notaries, Portuguese consular agents, lawyers or solicitors, all acts within their competence are covered (with some exceptions)² and, by reference to any events subject to registration with the land registry, the following acts may be performed by videoconference:

- constitution, acquisition or modification of title to ownership, usufruct and residential rights, surface rights and easements;
- incorporation or modification of the horizontal property regime (*propriedade horizontal*);
- promise to sale or encumber real estate assets with *erga omnes* effects (*eficácia real*) or the assignment of the contractual position resulting therefrom; and
- constitution of mortgages, its assignment, modification or termination, assignment of its priority ranking and the assignment of income.

PLATFORM AND VIDEOCONFERENCE

Under this new regime, an electronic platform of the Ministry of Justice (managed by the Institute for Registration and Notary Affairs, I.P.)³ will be made available to support the performance of the relevant acts, through which the access to videoconference sessions will be provided, as well as to allow the documentation management and verification of the identity of those involved. The access to the platform’s reserved area will depend on the authentication of the user, which must be verified through one of the secure authentication methods available in autenticacao.gov.pt.

¹ Being also covered the processes of separation or divorce by mutual consent and inheritance procedures with or without registrations.

² The exceptions correspond to wills and acts related to them, as well as acts related with situations subject to land registration that do not correspond to the situations better identified above, which should continue to be executed in person.

³ In articulation with the Institute of Financial Management and Justice Equipment, I.P.

IDENTIFY VERIFICATION

Identity verification is carried out as follows:

- the identity of the **professionals** (e.g., registrars or notaries) and of **lawyers** or **solicitors** accompanying the participants is carried out through their authentication on the electronic platform;
- the verification of the **participants** is jointly carried out by means of their authentication on the electronic platform and also by: (i) comparing the participant's identification documents with their facial image and with the answers given to the questions asked by the professionals; or (ii) using a biometric system by comparing the face images collected in real time with the image of the information system responsible for the life cycle of the Portuguese identification card.

The professionals shall refuse to perform any acts whenever there is any doubt in respect of the participant's identity, free will and capacity, the authenticity or integrity of the documents presented or when the necessary technical conditions are not met, being established some formal obligations in order to prevent potential situations in which the participant's free will is not assured, such as the professional's obligation to ask the participants to show the surrounding space, and the inability of the participants to disable the image or sound capture during the videoconference session.

QUALIFIED ELECTRONIC SIGNATURE

After reading and explaining the document, the participant signs it by means of a **qualified electronic signature**,⁴ submitting it on the platform. Then, the professional shall sign the document also using a qualified electronic signature.

⁴ The qualified electronic signature corresponds to an advanced electronic signature created by a qualified electronic signature creation device and which is based on a qualified electronic signature certificate (according to the list of trusted service providers available at <https://webgate.ec.europa.eu/tl-browser/#/tl/PT.>)

EVIDENTIAL VALUE AND INVALIDITY

The acts executed by videoconference will be given the same evidential force as the acts executed in person. Furthermore, any acts performed shall be null and void, if the formalities provided for in the aforementioned Decree-Law are not complied.

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