



COVID-19

Legal Insights n. º 73

Performance of authentic acts, terms of authentication of private documents and legal recognition of signatures, through videoconferencing

Following the evolution of the epidemiological situation of COVID-19, it was published in “Diário da República”, on December 30th, 2021, the Decree-Law no. 126/2021, establishing the temporary regime applicable to the performance, through videoconference, of authentic acts, terms of authentication of private documents and legal recognition of signatures, that require the presence of the intervening parties (participants) before, among others, lawyers (professionals).

Scope of application

In the case of acts to be practiced by lawyers, this diploma covers only the practice of acts in national territory, which fall within their competence, with the exception of the following:

- a) Wills and acts relating thereto;
- b) Acts relating to facts subject to land registration other than those concerning:
 - i) legal facts determining the constitution, recognition, acquisition, modification or extinction of the rights of ownership, usufruct, use and habitation, surface or servitude;
 - ii) Legal facts that determine the constitution or modification of horizontal property;
 - iii) Promises of alienation or encumbrance of real estate, if real effectiveness has been attributed to them, or the assignment of the contractual position arising from that fact;
 - iv) Mortgage, its assignment, modification or extinction, the assignment of the priority of the respective registration and consignment of income.

The IT Platform

The performance of the acts by videoconference is carried out using a computer platform accessible at <https://justica.gov.pt>, through a reserved area, and the participants may be accompanied by a lawyer or solicitor, either in person or remotely, which will be referred to in the documents drawn up.

The access to the platform depends on the authentication by the user, namely through the following means available at autenticacao.gov.pt:

- a) Citizen card, Mobile Digital Key, with validation of the respective professional quality through the Professional Attributes Certification System (SCAP), or professional certificate, in the case of lawyers, either when they are responsible for the performance of the act, or when they accompany, in person or remotely, the participants, or represent them;
- b) Mobile Digital Key or other means of electronic identification issued in other Member States of the European Union.

Through the reserved area of the aforementioned platform, the participants may, namely:

- a) Submit instructive documents;
- b) Consent to audiovisual recording of the proceedings;
- c) Access to videoconference sessions;
- d) Access to instructive documents and documents to be drawn up;
- e) To express that the document to be drawn up is in accordance with his or her will;
- f) Access to the documents to be drawn up, for qualified electronic signature;
- g) Consult the history of the acts in which he or she was intervenient on the platform;
- h) Consult the payments of emoluments due to IRN, I. P.

Besides these functionalities, the professionals' reserved area also allows:

- a) Schedule the performance of the acts and respective videoconference sessions, which is mandatory, identifying the respective participants;
- b) Manage the instructive documents submitted;
- c) Display the identification elements of the participants that are necessary to verify their identity by the professional, collected during the authentication procedure of the participants on the computer platform;
- d) Manage the videoconference sessions;
- e) Submit the documents to be drawn up and the drawn up documents.

Electronic communications

For purposes of this Decree, the communications made by lawyers, shall be performed through the electronic address available by the Bar Association.

Schedules

The performance of acts under the terms of this Decree depends on a prior scheduling to be made by the professional on the computer platform, who shall send a message to the electronic mail address indicated by the participants, containing the confirmation of the scheduling of the act, the hyperlink to the reserved area of the computer platform, the operating rules of the computer platform, and the conditions for holding videoconference sessions. Each appointment shall be assigned a unique identification number for the act. The appointment may be cancelled by the professional who scheduled it, up to the moment of the performance of the act.

Videoconference sessions

The responsibility for conducting videoconference sessions - which are object of audiovisual recording - lies with the professional, who shall ensure compliance with the legal formalities and shall ask the participants to show the space around them.

The verification of the identity of the participants is done, besides the authentication in the platform, by one of the following means:

- Confronting the identification elements of the party collected by the platform with the person's facial image and the answers given by him/her to the professional, at the beginning of the videoconference session; or
- A biometric system to compare the face images collected electronically in real time with the facial image in the information system responsible for the life cycle of the citizen card.

During the session, the professional shares on the screen, the documents that are being read and explained out loud and in the presence, whether simultaneous or not, of each of the participants. The reading out, explanation and signing of the documents shall take place on the same day, under penalty of being declared void, being the professional responsible for making sure that the act is in conformity with the real will of the participants.

Under no circumstances shall the participants turn off the image or sound capture during the videoconference session, under penalty of the proceedings being interrupted by the professional and the act not being concluded.

If the technical conditions necessary for the good conduction of the procedure do not exist (e.g. poor image quality, poor light or sound conditions, or interruptions in the video transmission), the procedure shall be interrupted.

Professionals shall refuse to perform the requested act if the necessary technical conditions are not met or if they have doubts about:

- The identity of the participants
- the free will of the participants;
- the capacity of the participants;
- The genuineness or integrity of the documents presented.

After reading and explaining the document, the participants shall add their qualified electronic signature to the document and submit it on the IT platform.

Once the quality of the recording of the videoconference session has been checked, the professional shall add his qualified electronic signature to the document and submit it to the IT platform.

Once the procedure is completed, an electronic copy of the drawn up document shall be available to the participants.

The instructive documents and the documents drawn up may be consulted on the IT platform, through the respective reserved area, by the participants and by the professional , up to 30 (thirty) days after the performance of the act.

Authentic acts, terms of authentication of private documents and legal recognitions of signatures, made under the terms of this Decree, shall have the same probatory value as acts performed in person, provided that the requirements foreseen therein are observed. The failure to comply with the formalities determines the voidness of the acts performed.

This Decree-Law shall enter into force on April 4th,2022 and shall remain in force for two years, after which it shall be subject to evaluation by the Government.

To access to the entire wording of the Decree-law, please click [here](#).

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