



Nº 67/21

NEWSLETTER

AUTHENTICATION OF PRIVATE ACTS THROUGH VIDEOCONFERENCE IN PORTUGAL: AN INNOVATIVE TOOL

SUMMARY

The commercialisation in the national legal framework is an innovative regime that places a new and relevant tool for the provision of public services, with a high impact on legal commerce, at the disposal of citizens, companies and professionals, without, however, foregoing the observance of the formalities legally imposed for the practice of acts and offering identical guarantees of security and authenticity

This Information is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Information may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact contact@rfflawyers.com.

*

This Information is sent in compliance with articles 22 and 23 of Decree-Law no. 7/2004, of 7 January, regarding unsolicited e-mails. If you wish to be removed from our mailing list and avoid similar future communications, please send an email with "Remove" to the email address newsletter@rffadvogados.com.

Legal 500 – Band 1 Tax “Portuguese Law Firm”/ Band 1 Tax “RFF Leading Individual” and highlighted in “Hall of Fame”, 2013, 2014, 2015, 2016, 2017, 2018, 2019
 Chambers & Partners – Band 1 Tax “RFF Ranked Lawyer”, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and Band 1 “Private Wealth Law” - HNW “RFF Ranked Lawyer”, 2018, 2019, 2020
 International Tax Review – “Best European Newcomer” (shortlisted) 2013 / “Tax Controversy Leaders”, 2014, 2015, 2016, 2017, 2018, 2019, 2020 / “Indirect Tax Leaders”, 2015, 2016, 2017, 2018, 2019, 2020 / “Women in Tax Leaders Guide”, 2015, 2016, 2017, 2018, 2019, 2020 / “European Best Newcomer”, 2016 / “Tax Firm of the Year”, “European Tax Disputes of the Year” and “European Indirect Tax Firm of the Year”, (shortlisted) 2017
 Best Lawyers – “RFF Tax Lawyer of the Year”, 2014 / “Recommended Lawyers”, 2015, 2016, 2017, 2018, 2019
 Who’s Who Legal – “RFF Corporate Tax Adviser of the Year”, 2013, 2015, 2016 / “RFF Corporate Tax Controversy Thought Leader”, 2017 “Corporate Tax: Advisory and Controversy”, 2017, 2018, 2019
 Legal Week – RFF was the only Portuguese in the “Private Client Global Elite Lawyers” 2018, 2019
 STEP Private Clients Awards - RFF “Advocate of the Year 2019” (shortlisted)
 IBFD Tax Correspondent Angola, Mozambique and East-Timor, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020
 Bloomberg Tax and Accounting Author, 2020





INTRODUCTION

On 22 July 2021, the Portuguese Council of Ministers approved a legal decree establishing a legal regime applicable to the authentication of documents by Notaries or other public entities through videoconference ("Decree").

This Decree arises in the context of the SARS-COV 2 pandemic, *i.e.*, COVID-19, in order to overcome the difficulties caused by the restrictions imposed on the practice of face-to-face acts and the consequent demand for online services.

THE NEW AUTHENTICATION OF ACTS THROUGH VIDEOCONFERENCE

This legal regime was approved in May 2020, on an experimental basis, having been the object of an opinion issued by the National Commission for Data Protection (*Comissão Nacional de Proteção de Dados*), at the request of the Office of the Secretary of State for Justice, which led to the identification of several aspects to be rectified as they do not comply with the provisions of the General Data Protection Regulation.

These acts still require the physical presence of the intervening parties before the Portuguese competent authorities, as Notaries, consular agents, lawyers and solicitors and may therefore be carried out remotely, through videoconferes, as from 15 November 2021 onwards.

This Decree will implement an innovative service provision tool for citizens, companies and professionals in the Portuguese legal framework. This tool is expected to have a considerable impact and will comply with the formalities legally required for the practice of acts and the necessary guarantees of security and authenticity as well.

In a similar way to what occurred during the experimental phase of implementation of this new platform, the performance of authentication or certification through videoconference will include several acts, such as legal authentication of letters or signatures, covering the authentication of powers of attorney and any other private documents such as public deeds of acquisition, of use and housing, of surface, of loan, of mortgage, of donation, of creation of horizontal property, of division of a common asset, a promissory

agreement of purchase and sale effective to third parties, among others, without the need for the concrete presence of the Portuguese competent authorities, Notaries, lawyers or solicitors.

Under the terms and for the purposes of the Decree, the Portuguese competent authorities are excluded from carrying out the recognition of testaments or any related acts through videoconference, being exclusively authorised to carry out, by videoconference, (i) the acts related to *Casa Pronta*, (ii) the process of separation or divorce by mutual consent and (iii) the accreditation of heirs, with or without records.

ACCESS TO THE IT PLATFORM AND PROCESSING OF PERSONAL DATA

The performance of the above mentioned acts may, by force of the Decree, be performed through a new platform that will be made available by the Ministry of Justice, with access being made from the digital justice platform and managed by *Instituto de Gestão Financeira e Equipamentos da Justiça*, in articulation with the *Instituto dos Registos e do Notariado*, and will be composed by two distinct reserved

areas, one for the individuals and another one for the professionals.

This reserved areas are going to act as the platform through which it will be possible for both individuals and professionals to submit and access the necessary documentation, sign such documents through qualified electronic signature, access the videoconference sessions and provide consent for audiovisual recording.

The access to the reserved area will be made through an authentication process of each user, made through individuals' personal identification document, or *chave móvel digital*, or any other means issued and authorized by other Member States belonging to the European Union which are recognised for that purpose, under the terms of the Regulation regarding electronic identification and trust services for electronic transactions in the internal market.

CONCLUSIONS

This is an innovative legal regime that places a relevant tool for the provision of public services, with a high impact on legal commerce, at the disposal of



individuals, companies and professionals, without waiving, however, the observance of the formalities legally imposed for the practice of acts, offering identical guarantees of security and authenticity.

Lisbon, 03rd september, 2021

Rogério M. Fernandes Ferreira
Marta Machado Almeida
Filipa Gomes Teixeira
Duarte Ornelas Monteiro
Joana Marques Alves
Raquel Cabral Duarte
Yasser Tavares Vali
Luís Almeida Brito
Ricardo Miguel Martins
Frederico Ferreira da Silva

(Business and Private Clients Teams)

www.rffadvogados.pt