

23<sup>RD</sup> OF FEBRUARY 2022

## TEMPORARY LEGAL REGIME FOR THE PERFORMANCE OF NOTARIAL ACTS BY VIDEOCONFERENCE

Due to the evolution of the Covid-19 pandemic, which has determined the need to adopt the practice of acts by telematic means, Decree-Law no. 126/2021 was published on the 30<sup>th</sup> of December of 2021, establishing the temporary legal regime applicable to the performance of authentic acts, terms of authentication of private documents and acknowledgements by videoconference.

Although the published legal regime, which will only come into force on the 4<sup>th</sup> of April of 2022, is of a temporary nature, and will be in force for a period of 2 (two) years, after which it will be subject to evaluation, it is certain that it is indispensable considering the current pandemic context, and the restrictions adopted worldwide about free movement.

Indeed, the present Decree-Law will allow the practice of acts that require the presence of those involved, before Registrars and Registration Officers, Notaries, Portuguese Consular Agents, Lawyers and Solicitors, through telematic means, to be carried out through an IT platform made available by the Ministry of Justice.

### 1. Scope of Application

Concerning acts to be performed by Registrars or Registration Officers, only the following are covered by this Decree-Law:

- a. Special procedure for transmission, encumbrance and immediate registration of urban building;
- b. Process of separation or divorce by mutual consent;
- c. Qualification procedure for heirs with or without heirs when the heirs do not wish to proceed immediately with the distribution.

Regarding acts to be performed by Notaries, Portuguese Consular Agents, Lawyers or Solicitors, all notarial acts are covered by the Decree-Law, except for:

- a. Wills and related acts;

- b. Acts related to facts subject to land registration that do not concern: (i) facts that determine the constitution, recognition, acquisition, modification or extinction of property rights, usufruct, use and housing, surface and servitude; (ii) facts that determine the constitution or modification of horizontal property; (iii) promise of alienation or encumbrance of real estate, in the event that it has been granted effects towards third parties or the possibility of assignment of the contractual position; and (iv) mortgages.

## **2. Procedure**

The practice of notarial acts that are covered by the scope of application of the Decree-Law will be carried out using the IT platform made available by the Ministry of Justice, which is still being created.

The Interveners in the act will have access through a reserved area in the referred platform, which will allow the submission of the necessary documents, access to the videoconference sessions, access to the referred documents, and the scheduling of the respective notarial acts.

The access to the reserved area depends on the authentication of the Intervenor, through the following means of authentication:

- a. Citizen Card, Mobile Digital Key, or professional certificate, depending on the professional capacity of the Intervenor;
- b. Digital Mobile Key or other means of electronic identification issued in other Member States, recognized and with a high level of guarantee, in the case of Interveners from other European Union Member States.

The scheduling for the execution of notarial acts is carried out by the respective professional, on the IT platform and will generate an electronic notification to the Interveners, with a hyperlink to access the reserved area of the IT platform, which after authentication, will allow on the scheduled day, to access to the videoconference session for the practice of the respective act.

In addition to verifying the identity of the Interveners, it will be up to the professional

accompanying the act to adopt any measures deemed appropriate to certify that the Intervener is acting of his own free will.

Following the reading and explaining of the document, the Interveners add their qualified electronic signature to the document and submit it to the IT platform. After verifying the quality of the videoconference recording, the professional adds his qualified signature to the document and submits it on the IT platform.

### 3. Probative value

Notarial acts performed under this Decree-Law have the same probative value as acts performed in person if the respective requirements are met.

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**PARES | Lawyers** is available to provide additional information on the performance of notarial acts through videoconferencing in a more concrete and adequate manner to the reality of each Client.

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**Ana Sofia Abreu**

[asa@paresadvogados.com](mailto:asa@paresadvogados.com)

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