

E-SIGNATURES, E-DOCUMENTS AND E-SHAREHOLDERS' MEETINGS

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E-signatures are essential to verify the identity of individuals and businesses online and to ensure authenticity of electronic documents.

In the European Union ('EU'), electronic identification and trust services ('eIDAS'), where e-signatures are included, are ruled by [Regulation \(EU\) 910/2014](#) on electronic identification and trust services for electronic transactions in the internal market ('eIDAS Regulation'), which came into force in July 2016.

Although the eIDAS Regulation is directly applicable in all Member States and does not require implementation by local laws, certain specifics such as validity, effects and legal value of e-signatures and e-documents require local regulation that must be in line with the eIDAS Regulation.

In Portugal, local eIDAS specifics are governed by [Decree-Law 12/2021](#), of February 9, 2021 ('Portuguese eIDAS Law'), which is effective since March 11, 2021.

At the same time, the upcoming obligation for companies with FYE on December 31, 2020 of holding their general meetings of shareholders to approve annual accounts until March 31, 2021 leads us to the rules on 'e-shareholder meetings', i.e. meetings held using electronic means.

1. ELECTRONIC SIGNATURES

E-signatures are generally accepted in Portugal in the EU. However, their value as evidence varies according to the type of signature.

The eIDAS Regulation establishes the following types of e-signatures:

- **Simple e-signature:** data in electronic form which is attached to or logically associated with other data in electronic form, and which is used by the signatory to sign, as set out in the eIDAS Regulation. For example, writing a name on an e-mail may be considered a simple e-signature.
- **Advanced e-signature:** an e-signature which additionally is (i) uniquely linked to and capable of identifying the signatory, (ii) created in a way that allows the signatory to retain control and (iii) linked to the document in a way that any subsequent change of the data is detectable.
- **Qualified e-signature:** an advanced e-signature which additionally is (i) created by a qualified signature creation device and (ii) based on a qualified certificate for e-signatures. The use of a qualified e-signature means (i) that the signatory of the document is the individual identified by the qualified signature; (ii) that such individual had the intention to sign the document; and (iii) that the content of the document signed with the qualified e-

The legal value of electronic documents and signatures cannot be denied simply because they are in electronic format.

A document with a qualified e-signature has the same value as evidence of a hand-signed document.

signature has not changed since it was e-signed.

Only the qualified e-signature has the same value as evidence of a handwritten signature. Nevertheless, the other types of e-signatures may be used:

- If the contracting parties agree to use other types of e-signatures (simple or advanced), subject, however, to mandatory provisions on the form required for certain agreements; or
- If someone submits an electronic document signed with other type of e-signature and the counterparty accepts such e-signature as valid.

Qualified e-signatures based on qualified certificates issued in one EU Member State are acknowledged as qualified e-signatures in all other Member States. Providers of qualified certificates for e-signatures in each Member State are listed in the [Trusted List](#).

As the United Kingdom ('UK') is no longer a member of the EU, qualified e-signatures based on qualified certificates issued by providers in the UK are not automatically recognised and accepted in the EU. The UK eIDAS Regulations, which are an amended form of the EU eIDAS Regulation and retain many aspects of the EU regulation, are tailored for use within the UK.

2. ELECTRONIC DOCUMENTS

Electronic documents are valid in Portugal. If the electronic document meets the requirements to be considered a written document – i.e., if it may be represented as a written statement – it will be considered equivalent to a paper document in written form.

Such electronic document signed using a qualified e-signature will be equivalent and have the same value as evidence as a paper document with a handwritten signature. The value as evidence of electronic documents signed with simple e-signatures or advanced e-signatures will be freely assessed by the court, which means additional evidence could be required to demonstrate the content of such documents.

If the electronic document cannot be represented as a written statement, it will have the value as evidence of a photograph or of a copy, even if signed using a qualified e-signature.

Copies of e-signed electronic documents that do not allow the verification and validation of e-signatures may have the same value as evidence of the original if they are certified by a notary.

Under the Portuguese eIDAS Law, the dispatching of electronic documents is subject to the following rules:

- An electronic document sent by electronic means is deemed sent and received by the addressee if it is transmitted and received at the electronic address agreed by the parties;
- The date and time of creation, dispatch or receipt of an electronic document containing a time stamp issued by a qualified trust service provider is effective between the parties and against third parties;
- An electronic document with a qualified e-signature or a qualified electronic seal sent by electronic means that ensure effective receipt is equivalent to dispatching by registered post. If receipt is confirmed by a confirmation message addressed to the sender by the addressee in an identical form, it is equivalent to dispatching by registered post with acknowledgement receipt;

- Dispatching of data and documents using qualified electronic registered mail services is equivalent to using registered post with acknowledgement receipt.

3. ELECTRONIC SHAREHOLDERS' MEETINGS

Although usually shareholder general meetings take place in the corporate head-offices, it is possible for shareholders of Portuguese companies to hold general meetings using electronic means, unless the company's articles of association establish otherwise.

Some aspects must, nevertheless, be taken in consideration when deciding to hold the meetings electronically:

- it is an option of the company and not of the shareholders; and
- the company must put in place technical means to allow confirmation of identity of the shareholders attending the meeting, ensure authenticity and safety of communications in the meeting and to keep a full record of the meeting.

This means, for example, that the notice of the meeting must specify that the meeting is to be held electronically and that the company must provide the shareholders the information required to access the meeting.

Even though the meetings are held electronically, minutes containing the record of discussions and resolutions must be drafted and signed by the chairman and secretary of the meeting (in case of S.A. companies) or by the shareholders (in Lda. companies), as applicable, either in paper or in electronic form.

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