

URÍA MENÉNDEZ
PROENÇA DE CARVALHO



Digital documents and electronic signatures

Practical guide

April 2020

Digital documents and electronic signatures

What types of digital documents are there?

There are two types of digital documents: a native electronic document (*documento eletrónico nativo*), which is created by using only digital tools or processes and is sent and stored in a digital format, and a digitised electronic document (*documento eletrónico digitalizado* (*)), which results from the transposition or conversion of analogue information (paper format) into digital information (digitisation). Any document that contains digitised signatures is subject, in evidential terms, to the free assessment of evidence rule (see question concerning the evidential value of documents containing digital signatures).

() Due to the state of emergency caused by the spread of COVID-19, some extraordinary and temporary legal measures have been adopted by the Portuguese Government. In this regard, and during this period, scanned copies and photocopies of acts and contracts shall be recognised as having the same evidential value of the respective originals, unless the person to whom they are presented requests the display of such original. Moreover, the handwritten or qualified electronic signature of scanned copies of acts and contracts does not affect their validity, even using a combination of different signatures on the document.*

Do digital documents have the same value as paper documents?

Although there are some exceptions, which essentially have an impact on the evidential value of documents, there is a general principle of equating digital documents and physical documents. This is the case for correspondence in general (e-mails, letters, etc.), but also for invoices, bank statements, lists, tables, forms, purchase orders, brochures, technical contents, administrative supports (*suportes administrativos*) and agreements.

Can agreements be concluded by electronic means?

Yes, except for legal transactions for which Portuguese law imposes additional formalities, such as being concluded by way of a public deed, certified private documents or documents with signature authentication (*documentos com reconhecimento de assinaturas*). For example: (i) the transfer of real estate and other rights in rem, including, without limitation, the formation of mortgages on real estate; (ii) the incorporation of companies; (iii) documents serving as a means of enforcing title, such as a debt acknowledgment document; (iv) powers of attorney for actions or agreements which require additional formalities; (v) loan agreements with a value exceeding EUR 25,000.

Digital documents and electronic signatures

Is it possible to digitally sign documents?

Yes. The rules applicable to digital signatures (Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 and Decree-Law 290-D/99 of 2 August 1999, as amended by Decree-Law 88/2009 of 9 April 2009) contain the general principle that **an electronic signature should not be denied legal effect on the grounds that it is in electronic form or does not meet the requirements of a qualified electronic signature**. This means that there are several types of digital signatures, and their differences have an impact on the evidential value that is given to documents where these signatures are affixed.

Can someone else affix my electronic signature?

If a person has the necessary powers to sign a document on behalf of a company, that person must sign it personally by affixing his/her signature, rather than delegating the power to another person (e.g. to paste his/her digitised signature), unless, in the case of agreements, the company (e.g. by resolution of the board of directors and/or the signing policies approved by the board of directors) expressly authorises the delegation of powers to that effect (e.g. to another member of the corporate body or to an employee).

Is my location relevant at the time I sign electronically?

If it is necessary to sign the document in a particular jurisdiction (e.g. for tax or regulatory reasons), proceed with caution. In principle, the main factor will be the physical location of the signatory at the time the data is entered into the terminal to sign the document electronically. However, this is not clear-cut - for example, the location of the server where the document is stored may also be considered relevant for these purposes.

Digital documents and electronic signatures

What types of electronic signatures are there?

There are numerous ways of signing a document by electronic means, these do not have to replicate the same conditions as a handwritten signature, but they need to ensure the same functional purposes: (i) the unequivocal identification of the signatory, (ii) the affixing of the signature to the document, which depends solely on the will of the holder, and (iii) the preservation of the integrity of the document.

For this purpose, no specific software or platform must be used. Nevertheless, some software and platforms contain procedures that ensure that documents are properly signed, the identity of the signatories is certified and evidence of the effective signature (namely, through the IP or access keys) is provided, which reduces the risk of error or fraud.

The broad definition of electronic signatures means that, for example, the following procedures qualify as electronic signatures:

- (i) **secret codes (e.g. passwords, PIN number),**
- (ii) **scanned handwritten signatures,**
- (iii) **biometric keys (e.g. fingerprint, iris, facial recognition, voice, "pressure points" of handwritten signatures),**
- (iv) **digital or cryptographic signatures through the use of electronic signature platforms (e.g. DocuSign, AdobeSign), or**
- (v) **electronic signing through the Citizen Card (*Cartão do Cidadão*) or the Digital Mobile Key (*Chave Móvel Digital*).**

However, the different types of electronic signatures (such as the examples above) correspond to different levels of security and reliability, which has an impact on the evidential value of each type of signature before the courts.

Can a combination of signatures be used on a document?

A document may be signed using a combination of different signatures (handwritten and digital), provided each signatory uses a valid signing method.

If, for example, the signatory does not have access to a scanner at home, a digital photograph of the signature page can be an alternative. For practical reasons, all signature pages should be clearly visible.

Digital documents and electronic signatures

What if, after signing, changes need to be made to the electronic document?

Changes may be made (in electronic or handwritten form) to a document after an electronic signature has been affixed, to the same extent as they can be made to a handwritten document.

What is the evidential value of documents that contain digital signatures?

Under the Portuguese Civil Code, documents in their physical form may be either authentic or private. An authentic document is drafted, complying with legal formalities, by the public authorities within the limits of their competence or, within the scope of their attributed activities, by a notary or other public official authorised to perform legal formalities.

All other documents are considered private documents.

An electronic document to which a qualified electronic signature is affixed will be equated to a private document with recognised authorship, in accordance with article 376 of the Portuguese Civil Code.

If an electronic document is not in written form with a qualified electronic signature affixed, the document will be equated to a mechanical reproduction.

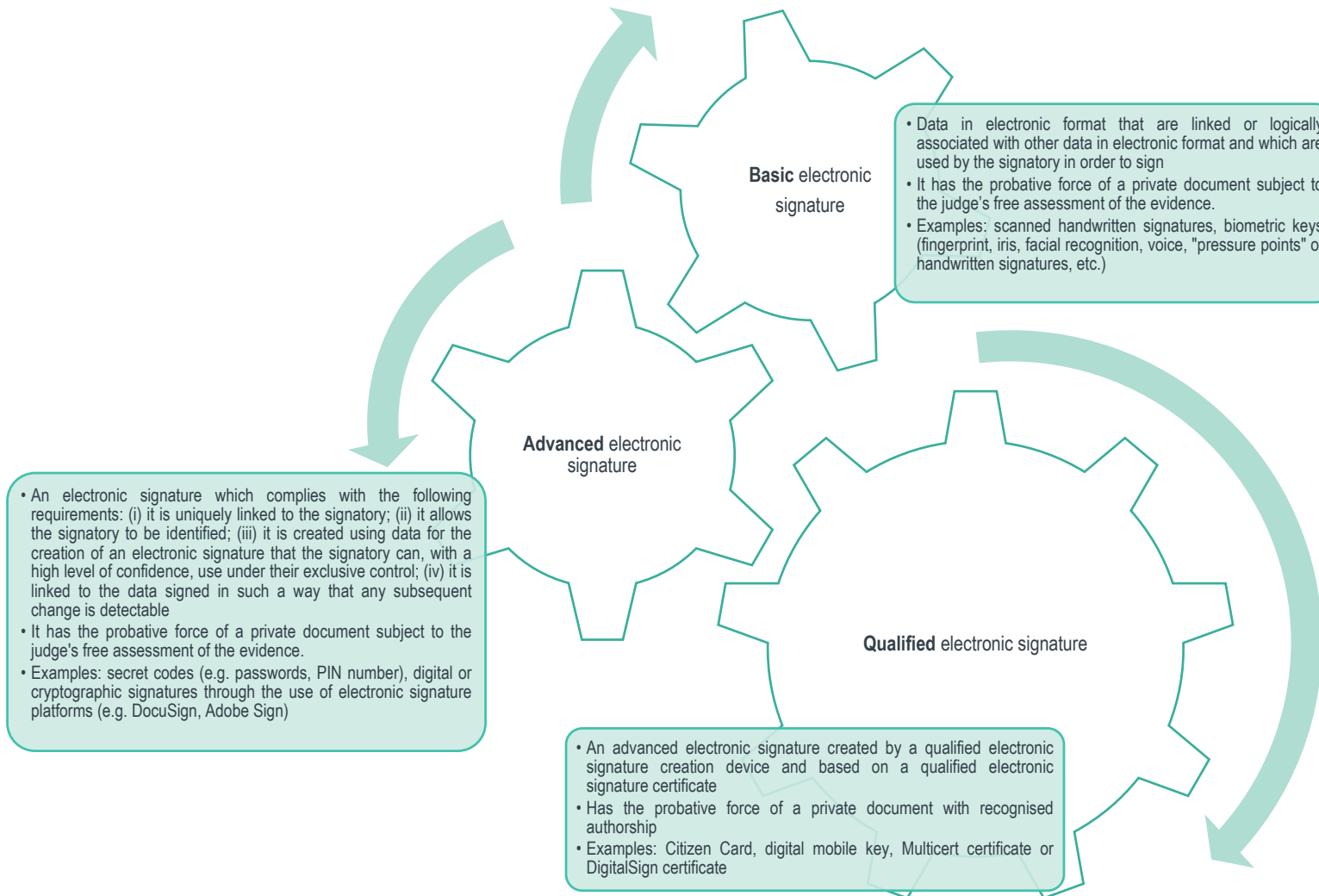
If a simple electronic signature or an advanced electronic signature is affixed to an electronic document, the document will be equated to other private documents.

Can other types of digital signatures be agreed on?

Yes. Despite the types of electronic signatures identified above, and if the parties so agree, it is possible to stipulate that electronically signed documents have the value of a private written and signed document, even if the signatures used do not meet the technical requirements to be classified in this way.

In the absence of any evidence agreement (*convenção de prova*), either party may question the validity of the document and the authenticity of its contents.

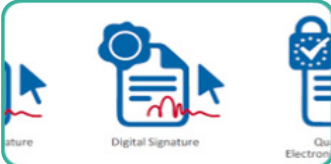
Conclusion



Checklist when considering using an electronic signature



Is there any reason why an electronic signature might not be appropriate for the document I wish to sign?



Do I need to use any particular type of electronic signature, such as an advanced or qualified electronic signature in order for the signature to be valid?



Which software or dedicated platform should I use? What authentication or security systems are implemented by this software or platform?



Whenever an electronic signature platform such as DocuSign or Adobe Sign is used, which party will be in charge of coordinating the signature process?




What information will the parties receive which proves the authenticity of their signatures? Dedicated platforms usually provide a certificate with this information. If the other party is in charge of coordinating the signature process, have I secured a copy of this certificate?

Contact lawyers



Helder Frias
Counsel
Tel. +351 91 772 43 47
helder.frias@uria.com



Joana Mota
Managing associate
Tel. +351 96 713 38 09
joana.mota@uria.com

Further information on how to proceed in this period of global uncertainty can be found on the [UMPC COVID-19 centre of information](#)

URÍA MENÉNDEZ
PROENÇA DE CARVALHO



Disclaimer: This document (and any information made available through the links contained herein) is provided for information purposes only and does not constitute personalized legal advice. Specific legal advice should be obtained prior to any decision, action or omission in relation to the contents of this document. The contents of this document may be subject to change as a result of the approval of exceptional measures that will be in force in Portugal during the state of emergency.

www.uria.com

BARCELONA · BILBAO · LISBOA · MADRID · PORTO · VALENCIA · BRUXELLES · LONDON · NEW YORK · BOGOTÁ · CIUDAD DE MÉXICO · LIMA · SANTIAGO DE CHILE · BEIJING