



## EFFECTS OF THE DEATH OF THE HOLDER ON THE OPERATION OF THE BANK ACCOUNT

NEWS, LATEST,  
CURRENT TOPICS

### AUTHORS



VICKY RODRIGUES  
LAWYER



MÁRCIA FARIAS  
LAWYER

On the 14th of July 2022, a decision was published in which the Lisbon Court of Appeal considered that, in the event of the death of one of the holders of a joint and several account, the surviving account holder can transfer the full amount deposited, without the banks being able to oppose it.

In Portugal, upon the death of a bank account holder, the death must be reported to the bank where the account is held. From that moment on, and depending on the type of bank account, the account is usually frozen until a deed of entitlement of heirs or judicial authorization is presented in order to allow the account to be operated.



However, Portugal was one of the signatories of the "Convention Abolishing the Requirement of Legalisation for Foreign Public Documents ", concluded in Hague on 5th October 1961, therefore, without prejudice to the legislation in force, the legalization is not a requirement for the authenticity of the document, which is only necessary when there are reasonable doubts regarding its authenticity.

This issue was recently discussed in the Lisbon Court of Appeal, in a case where the Claimant was seeking a declaration of insolvency of the Defendant, but it was found that the Defendant had died years before, and so his death certificate was presented. However, the Claimant did not accept it as proof of the Defendant's death, since it did not contain the Portuguese consular seal in Guinea Bissau, as required by Portuguese law.

The Court considered that, since the Defendant's death had already been addressed in another previous case and the document in question had already been recognized, nor was there any doubt that the document was not accurate, there were no reasons to doubt the authenticity of the document.

The Claimant appealed, and the Lisbon Court of Appeal summarily considered that, as Portugal is one of the signatory countries to the above mentioned Convention, only if doubts arise about the authenticity of the document could its legalization be required, and in this case, the certificate in question confirmed all the elements regarding the death of the Defendant, as well as the characteristics that it had been issued by the official entity of Guinea Bissau; only the recognition of the signature of the public official that should be authenticated with the consular seal was missing. And since the Plaintiff was unable to raise any doubts he had about the authenticity of the certificate, the Court concluded that the steps required for the legalization of the certificate were useless and unnecessary.

The truth is that the legalization of foreign documents does not offer any guarantee of the authenticity of the document; the document can be false and still have the signature of the public official recognized, so the legalization of documents only serves to recognize the signature of the public official who signed it, and not the veracity of the content of the document itself.





In this case, we are dealing with a joint and several account that is characterized by giving each of its holders the right to require the refund by the depositary bank of the entire amount that was deposited. In this account, there were units of participation of a Real Estate Investment Fund.

After the death of one of the account holders, her husband, who was the other joint and several account holder, transferred the units to an account that had been opened in his name immediately after his wife's death.

The claimants, who were daughter and granddaughter of the deceased, claimed that after the death of the account holder, Caixa Geral de Depósitos (hereinafter designated as "the Bank") should have frozen the account immediately, until a deed of entitlement of heirs or a judicial authorization had been obtained. However, the Bank allowed the surviving account holder to continue to transfer funds to the account in his name.

After the Court's decision, and the claimants' appeal, the Lisbon Court of Appeal indicated that nothing in the law obliges a bank to "freeze" or prevent the movement of a bank account after the death of one of its holders.

It should be understood that, in case of a joint and several account, it does not matter who is the owner of the amounts or funds deposited in it. It is important to differentiate the ownership of the account from the ownership of the amounts deposited in the account, since the ownership may belong to one or all of the account holders, or even to a third party, but from the moment they are deposited, only the ownership and who may operate the account is important. The solidarity only concerns the internal relationship between the holders and not the contractual relationship between them and the bank.

Therefore, the bank should not and was not obliged to freeze the account, even if it was informed of the death of the other account holder.

The claimants also argued that the bank had violated the Stamp Duty Code, which states that the transfer of any funds that have been gifted cannot be permitted without the payment of stamp duty on these assets. And so, in their view, the bank would have violated this legal provision by allowing the transfer of the funds. However, the same Code also states that there is an exemption for several gifts, including real estate investment funds, which are not subject to stamp duty, as is the case here.



In any case, even if any fiscal rules had been breached, the husband, who is also the holder of the joint and several account, was free to make all movements and was therefore not breaching any legal provision.

In this sense, the Lisbon Court of Appeal decided to consider the appeal filed by the claimants as unfounded, agreeing with the Defendant in allowing the husband to redeem the units in the terms in which he did, without the Defendant having the right to oppose this.

Despite this decision, in practice and, in our experience with matters of inheritance law, the legal departments of the banks have been wary in allowing any movement of the accounts of deceased holders, even if they are joint and several accounts, until the probate process is fully completed.