



REAL ESTATE

SEPTEMBER 2018

GENERAL CONTRACTUAL TERMS AND CONDITIONS IN ESTATE AGENCY CONTRACTS

General contractual terms and conditions are those clauses drafted without prior individual negotiation that undetermined prospective clients may simply sign up for or accept, or clauses inserted in individualised contracts, but whose content has been prepared in advance so that the client cannot influence it.

I. RECENT CHANGES

Decree-Law 102/2017 of 23 August came into force practically one year ago. Its objective was to simplify and harmonise the consumer information obligations and to make changes to the initial wording of articles 16 and 32 of Law no. 15/2013 of 8 February – this law establishes the legal framework that applies to operating as an estate agency. **Decree-Law 102/2017 transfers the power to validate estate agency contracts with general contractual terms and conditions from the Directorate-General of the Consumer (Direção-Geral do Consumidor – DGC) to the Institute of Public Markets, Real Estate and Construction (Instituto dos Mercados Públicos, do Imobiliário e da Construção, I. P. – IMPIC).** The Decree-Law also establishes that this obligation is one of simply depositing the form when the form of estate agency contract «to be approved by ministerial order» is used.

Now that Decree-Law 102/2017 is one-year-old and more than five years have passed since the entry into force of the (new) legal framework on access to operating as a real estate agency, **Ministerial Order 228/2018 of 30 August has finally been published** and came into force on 14 August.

Besides approving the form of the estate agency contract, this ministerial order seeks to bring long-awaited clarity as to the terms that bind estate agencies in relation to being exempt from the prior approval procedure and the procedure to obtain the necessary validation of its own forms of contract in cases in which the prior approval of the IMPIC is still required.

II. EXEMPTION FROM THE IMPIC PRIOR APPROVAL PROCEDURE

Estate agencies that opt to use the form of contract published in ministerial order 228/2018 of 13 August are exempt from submitting the estate agency contract for prior approval.

Nevertheless, at least 5 days before using the standard form, those companies will have to send the IMPIC, by email to cmi@impic.pt – available at the IMPIC website in editable format – a copy of that contract with the following information filled in:

- a. Full identification of the estate agency: company name, company identification number (NIPC), registered office, AMI licence number);
- b. The estate agency's email address.

Estate agencies that choose to use the form of contract annexed to ministerial order 228/2018 of 13 August only have to send a copy of that form completed with the necessary information to the IMPIC for deposit at least 5 days before using it

**III. PROCEDURE TO VALIDATE CONTRACTS
 NOT EXEMPT FROM PRIOR APPROVAL**

Estate agencies that do not wish to use the form provided by ministerial order 228/2018 of 13 August may continue to use their own forms of estate agency contract with general contractual terms and conditions upon prior approval by the IMPIC.

Importantly, **estate agencies must communicate their own form of contract with general contractual terms and conditions – and any subsequent amendments – to the IMPIC before they begin to use it. The form of contract may not be used until it has been validated by the IMPIC.**

To obtain the necessary validation, the form of contract (and any amendments to it) must also be sent to the IMPIC (to cmi@impic.pt), together with the following information:

- a. Full identification of the estate agency: company name, company identification number (NIPC), registered office, AMI licence number));
- b. The estate agency's email address.

In turn, the IMPIC will have 20 business days to analyse and validate the form of contract, in its initial version, as well as any subsequent amendments. This period is suspended while the IMPIC requests any information or clarifications from the applicant, or requires it to make any changes to the form of contract. The period begins to run again once those issues have been resolved.

**IV. CONTRACTS WITH AN EARLIER
 APPROVAL BY THE DIRECTORATE-
 GENERAL OF THE CONSUMER (DGC)**

Ministerial order 228/2018 of 13 August provides that contracts with general contractual terms and conditions that were previously approved by the DGC are exempt from the procedures set out in that order, provided they have not been amended since it came into force.

Any form of contract with general contractual terms and conditions that is not the form appearing in the ministerial order may only be used by the estate agency once it has been approved by the IMPIC. If not, it will be null and void.

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 The Lawyer European Awards 2015, 2012
 Chambers European Excellence Awards 2014, 2012, 2009

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 Financial Times - Innovative Lawyers Awards 2017-2011