

## Can I freely choose a form for my contract?

The answer to this question relies on an old and fundamental rule established in Article 219 of the Portuguese Civil Code of 1966 in force in Sao Tome and Principe, which states that the parties of a contract are free to choose and agree upon the form of the contract, except if the law requires a special form.

This rule is a consequence of the general principle of 'private autonomy', also referred to as 'freedom of contract', which grants the parties of an agreement the right to choose to enter into a contract and its counterparty, to freely agree on the contract content, and, of course, to choose the contract form (for more details on this subject, please read the article the paper '[Hey Doc, is my contract admissible?](#)', available at [www.juristep.com](http://www.juristep.com)).

According to the rule of 'consensual form' the parties in a contract can use any form to declare their will. This can be done either by a spoken statement or by a written document. In case of written contracts, the parties may elect to do it by a simple private document, by a private document with their signatures recognized by a notary, or by public deed before a notary. The parties can also freely choose that they only be bind under a specific form.

Under Article 219, the rule of freedom of form does not apply where the law determines that a contract should take a specific form. See the following examples:

- Any contract which recognizes, constitutes, transfers, modifies or extinguishes a property right, a usufruct and other rights over real estate must be executed by public deed before the notary;
- The incorporation of a company, the capital increase, a by-laws modification, or a quotas transfer requires a public deed before the notary.

Where the law requires a specific form to a contract, that legal requirement is mandatory. Any contract in violation of the legal form is deemed void and of no effect, unless other consequence is foreseen.

The general rule is that the parties are free to choose the form of the contract they want to enter into, but they must observe the legal form when is legally required.

One important consequence of this rule is that when the parties choose to enter into a contract not regulated by the law, they are free to choose the form of the contract.

So, if you are going to enter into a contract, as part of the analysis of the validity of the contract under the Santomean law, you should firstly access if the law requires a specific certain form for your contact.

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