



New Portuguese TUPE regime

The new Portuguese TUPE legal framework aims to strengthen the rights of the employee's in case of a transfer of undertaking, or parts of undertaking that constitutes an economic unity.

Thus, in the event of TUPE, the employees have now the right to: (i) oppose the transfer of his/her employment agreement; or (ii) terminate the employment agreement.

New amendments to the Portuguese Labour Code have entered into force regarding the legal framework in the event of a transfer of undertaking, or parts of undertaking that constitute an economic entity ("**TUPE**").

In the event of application of the TUPE, the employment agreements previously concluded remain in force. However, under the new rules, if the transfer of the employment agreement causes "serious damage" to the employee, namely by the transferee's evident insolvency or difficult financial situation or, also, if the employee does not trust transferee's policies regarding work organization, the employee can now:

- Oppose the transfer of his/her employment agreement, maintaining the transferor as the employer of the employee; or
- Terminate the employment agreement, which entitles the employee to a monetary compensation equivalent to 12 days of base salary and seniority allowances multiplied by the employee's seniority, capped by 12 base salaries and seniority allowances.

Regarding information and consultation to employees, in addition to the information relating to the date and motives of the transfer, its legal, economic and social consequences for the employees, as well as the prospective measures regarding the employees, the transferor and the transferee are now obliged to provide information on the content of the transfer contract, providing the law with a duty of confidentiality for those who obtain this information.

Another relevant change to the TUPE regime relates to the participation of representatives of the Authority for Working Conditions ("**ACT**"), which may be requested by any party involved in the transfer. The intervention of the ACT aims to promote, namely, the consultation's material and procedural regularity and validity, and the insurance of respect and compliance with the employees' rights.

The transferor shall now be jointly and severally liable with the transferee for the due obligations during the two years following the date of transfer of the undertaking, and not for just one year.

These amendments enter into force starting today.

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