

## Extended scope of Portuguese TUPE Regulation

The Portuguese regulation on transfer of undertakings, inserted in the Labour Code (“TUPE Regulation”), was amended by Law n. 18/2021 of 8 April.

The amendments are in line with some previous decisions of Portuguese and EU case law, which ruled that TUPE Regulation shall apply in the context of a services agreement, contracts awarded by public tender or any other type of contract.

Under amended Portuguese TUPE Regulation, the respective provisions shall apply, amongst others, to service agreements entered into in the extent of private security, catering, cleaning and transport services.

In those cases, the transfer of business is deemed to occur at the time when the services are hired or awarded.

The amended TUPE Regulation applies immediately to public tenders or other tender procedures pending or in progress during 2021, including those where the awarding of the contract has been completed.

The transferred employees have the right to oppose to the transfer of the employment agreement, under the same terms as any other employee affected by transfer of undertakings.

Although it was commonly accepted under the general rules, it is now expressly provided that the collective bargaining agreement applicable to the transferor shall continue to apply to the transferee until the end of the respective term or, at least, in the 12 subsequent months to the transfer, save if, in the meantime, another CBA becomes applicable to the transferee.

Finally, the amended TUPE Regulation establishes that, in case either party requests the participation of the Labour Authorities in the information and negotiation stage prior to the transfer, the request must include the information provided to the affected employees (or to their representatives), notably date and grounds of the transfer, the legal, economic and social consequences to the affected employees, the measures envisaged in relation to the latter and also the contents of the transfer agreement.

Law n. 18/2021, of 8 April, enters into force on 9 April 2021 and the original Portuguese version is available [here](#).

### CONTACTS

**Inês Albuquerque e Castro** | Partner | [ic@fcblegal.com](mailto:ic@fcblegal.com)

**Bruno Ferreira Domingues** | Senior Associate | [bfd@fcblegal.com](mailto:bfd@fcblegal.com)

**João Camilo** | Associate | [jvc@fcblegal.com](mailto:jvc@fcblegal.com)

**Francisco Lemos Araújo** | Trainee Lawyer | [fla@fcblegal.com](mailto:fla@fcblegal.com)