

## ARGENTINA

WHAT ARE THE CONSEQUENCES OF PRIVATIZATION OF PUBLIC COMPANIES AND, OR PUBLIC FUNCTIONS REGARDING THE PARTIES RIGHTS IN LABOUR RELATIONS?

WHAT ARE THE CONSEQUENCES OF THE CHANGE OF LEGAL STRUCTURES OF A PRIVATE ENTERPRISE REGARDING THE PARTIES RIGHTS IN LABOUR RELATIONS?

The labor consequences of the privatization of public companies in Argentina were: fragmentation and reduction of personnel; voluntary retirements financed by external organisms; anticipated pensions and micro-enterprises; outsourcing and precariousness; work intensification; new computerized technologies; cultural change regarding personnel discipline and replacement; participation of unions as business partners.

1. Are public entities in your Country, or public functions within them, facing a phenomenon of privatisations? Is it possible to quantify it? Did the legislator in your country provide for any kind of legal restriction?

*At present, Argentina is not facing a period distinguishable by privatizations of public companies.*

*Privatizations in Argentina in the last thirty years may be classified in three different periods: a) from 1976 to 1980; b) from 1980 to 1989 and c) from 1990 to 2000.*

*a) 1976-1980: 120 privatized companies, dissolved, liquidated, given as loan or concession or transferred to the Judiciary; 46 companies in process of privatization, provincialization, dissolution, liquidation, concession, loan, or transfer to the judiciary; 207 companies whose stock participation has been completely sold as of June 30 of 1980; and 29 companies partially sold.*

*b) 1980-1989: (Act 22177) 8 (eight) privatized and/or liquidated companies.*

*c) 1989-2000 (Act 23696) - The most important companies were privatized: Administración General de Puertos AGP; Aerolíneas Argentinas S.E.; Aeropuertos; Agua y Energía Eléctrica S.E. / Sector Eléctrico; Area Material Córdoba Aviones; Argentina Televisora Color S.E. LS 82 TV Canal 7 (A.T.C.); Astillero Ministro Manuel Domecq García - DOMEQ; Astilleros y Fábricas Navales AFNE S.A.; Banco Hipotecario Nacional; Banco Nacional de Desarrollo BANADE; Caja Nacional de Ahorro y Seguro; Canal 11, Dicon Difusión S.A. LS 84 TV Canal 13, Río de la Plata S.A. LS 85 TV; Carboquímica Argentina Sociedad Anónima Mixta; Carolina S.A. Minera; Compañía Azucarera las Palmas S.A.I.C.A.P.U.; Conarsud S.A. Asesoría y Consultoría; Consultara S.A. Consultara de la Armada; Corporación Argentina de Productores (CAP); Empresa Desarrollos Especiales S.A. EDESA; Empresa Líneas Marítimas Argentinas ELMA; Empresa Nacional de Correos y Telégrafos ENCOTEL; Empresa Nacional de Telecomunicaciones - ENTEL; Empresa Nuclear Argentina de Centrales Eléctricas S.A. ENACE; Establecimientos Altos Hornos Zapla; Fábrica Militar de Acido Sulfúrico; Fábrica Militar de Tolueno Sintético; Fábrica Militar de Vainas y Conductores Eléctricos ECA; Fábrica Militar General San Martín; Fábrica Militar Pilar; Fábrica Militar San Francisco; Ferrocarril Belgrano S.A.; Ferrocarriles Argentinos S.A.; Ferrocarriles Metropolitanos S.A.; Fondo Nacional de la Marina Mercante; Forja Argentina S.A.; Gas del Estado S.E.; Hidroeléctrica Norpatagónica S.A. - HIDRONOR / Sector Eléctrico; Hierro Patagónico de Sierra Grande S.A. Minera HIPASAM; Hipódromo Argentino; Induclor Sociedad Anónima Mixta; Indupa S.A.; Instituto Nacional de Reaseguros S.E. INDER; Interbaires S.A.; Intercargo S.A.; Junta Nacional de Carnes; Junta Nacional de Granos; LR3 Radio Belgrano; LR5 Radio Excelsior; LV3 Radio Córdoba; Llao Llao Holding; Monómetros Vinílicos; Obras Sanitarias de la Nación - OSN; Petropol; Petroquímica Bahía Blanca S.A.; Petroquímica General Mosconi S.A.I. y C.; Petroquímica Río Tercero; Polisur Sociedad Mixta; Redes de Acceso a grandes ciudades; Servicios Eléctricos del Gran Buenos Aires - SEGBA / Sector Eléctrico; Sociedad Mixta Siderurgia Argentina SOMISA; Talleres Navales Dársena Norte S.A.C.I. y N. TANDANOR; Tanque Argentino Mediano S.E. TAMSE; Tecnología Aeroespacial S.A. TEA; Yacimientos Carboníferos Fiscales - Y.C.F.; Yacimientos Petrolíferos Fiscales S.E. - Y.P.F.*

2. Has your country a specific set of rules concerning change in legal structures of public or private companies?

*Yes, act 23696, enacted on 8/17/1989 and promulgated on 8/18/1989 established the procedure which was applied during the last period of the privatizations. By means of said act, the Legislative Branch authorizes the National Executive Branch to transform the legal type of all entities, companies and partnerships whichever their legal type was, owned exclusively by the National State and/or other entities of the national public sector, with productive, commercial or public services characteristics, expressly excluding National Universities.*

*The legal framework also includes, among others, Executive Orders 1105/89, 1803/92 (of 9/29/92), Acts 23697, 23928, 23982, 23900.*

3. In the affirmative, please describe the conditions for the application of such rules and their consequences in the relationships between the employer and the workers.

*The consequences of applying said rules were listed at the beginning of the questionnaire. The conditions for the application result from those acts and executive orders, "Legislación aplicable a las Privatizaciones" [Laws and regulations applicable to Privatizations].*

- precise in detail the obligations to be met by the employer before or at the moment when a change in the legal structure of his company occurs

*Companies to be privatized according to the Programa de Propiedad Participada [Program of Participated Ownership] must be constituted under the type of Sociedad Anónima [Corporation] (article 23 Act 23696).*

*The National State, in the event of a change in the legal structures of a public company, according to act 23696 and Executive Order 1105/89, undertakes the preexisting liabilities at the moment of the transfer of the property subject to privatization (article 15 paragraph 12 Act 23696) and under no circumstance shall the privatized entity be liable for labor or pension-related defaults prior to the privatization, which shall be borne by the National State.*

*This is why Executive Order 1803/92 was issued, which established that neither act 11867 nor articles 225 to 229 of the act of labor contract, approved by act 20744 and amendments, shall be applied in any way to the processes of privatization performed or to be performed in compliance with act 23696, its complementary rules and regulations.*

- which are the legal mechanisms that assure in your country the maintenance of workers' rights, especially those granted by collective agreements, face to the criteria of maximum profitability pursued with such type of structural changes?

*At present, there has been a change in the concept of work through the rulings of the Court "Vizotti" (9/14/9004), "Castillo" (9/07/2004), and "Aquino" (9/21/2004) and in the new concept, work is not considered to be merchandise, as it was in the 90s. The acts which guarantee the respect for the workers' rights are, in the collective aspect, the Ley de Asociaciones Sindicales [Labor Unions Act] (Act 23551) and the Ley de Ordenamiento Laboral [Labor Order Act] (Act 25877) which took up again the concept of ultraactividad [ultra-activity - the possibility of applying a law or agreement to situations originated in the past] of collective agreement, among others. As regards the workers' individual rights, the Ley de Contrato de Trabajo [Labor Contract Act] (Act 20744 and amendments), collective labor agreements and awards with the same effects, are applied.*

- which are the consequences that must be faced by a worker who refuses to work for the "new employer"?

*The worker who refused to work for the privatized company, in most cases adhered to the voluntary retirement system, created by Executive Order 287/1992, which had been implemented with loans from the World Bank for the cases of privatizations.*

*Said voluntary retirements caused an increase of the cuenta-propistas [self-employed] (mini companies which eventually did not succeed), and as a consequence the capital obtained from the voluntary retirement was diluted.*

- did your country restrain the personnel's right to use collective actions against a structural change?

*That right was not restricted. However, it is worth mentioning that the unions did not object to the privatization process of public companies, since Act 23696 the workers' sector was recognized the right to the stock capital of the companies, partnerships, establishments or productive estates declared to be subject to privatization This system was called Programa de Propiedad Participada.*

*Said programs were not successful, since the workers never actually received the stock, as evidenced in the case "Antonucci c/ Y.P.F. S.A. y otro" of 11/20/2003.*