

# **Fourth Study Commission: Answers to the Questionnaire for the 2005 Meeting**

Republic of China, TAIWAN

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?

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

Taiwan is a free economy with some planning elements in developing its economy. Accordingly, government-owned enterprises (GOEs) played an important role in Taiwan's industrialisation both directly and in terms of encouraging the growth of the private sector. The economic contribution of the GOEs was especially important before the 1980s.

In the face of global trend of liberalization, privatization of public enterprise was promulgated Since 1989 .In mid-1990's, Several consensus were reached by major political parties at the "National Development Conference" held in 1996, including :(1) 42 chosen GOEs should be privatized in 5 years. (2) Privatization should be promoted in broader scale. (3) State holdings of the privatized GOEs in the competitive industries should be entirely released in 5 years. Up to October 2002, 27 GOEs have been privatized, yielding total proceeds of US\$ 13 billion, including 8 enterprises in banking Industry, 2 in steel &

Machinery, 3 in transportation, 1 in construction, 4 in petrochemicals and 5 in Trust & Insurance Industry. Till 2005, more than 38 public enterprises have been privatized, most by ways of share selling or assets selling. (The definition of privatization of GOE:(1)A state-owned enterprise with less than half (50%) of the equity shares being held by government has transformed itself into a privately-owned enterprise. (2)The parliament has the monitoring power only on GOEs in accordance with the provisions of the Budget Law).

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

Yes, ‘Statute for Privatization of Government-owned Enterprises’, and ‘Enforcement Rules of Statute for Privatization of Government-owned Enterprises’ set basic legal framework for privatization of GOEs. Besides, ‘Labor Standards Act’, ‘Merger and Acquisition Law’(M&A Law), ‘The Protective Act for Mass Redundancy of Employees’, and ‘Labor Pension Act’ are also relevant regulations.

## **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.**

Most employees serving in GOEs are also civil servants, and this is not allowed after privatization of GOEs .After privatization of GOEs, the employment between employer and workers would be subject to Labor Standards Act, which in most cases is of harm to the rights of the employees who also hold civil servant position. Article 8 of ‘Statute for Privatization of Government-owned Enterprises’ sets basic rules for this issue:

(1)In principle, the employments are by law automatically transferred to the new company/employer: Upon the date when a government-owned enterprise is privatized, the employees who are willing to be transferred shall be so transferred; provided, however,

that if it is otherwise agreed upon by the new and old companies/employers upon the time of restructuring or transferring the enterprise, such agreement shall prevail. The above mentioned 'restructuring' or "transferring" refers to "Formation of a private-owned enterprise by joint venture with private individuals by way of contribution in kind", or 'Merger of companies with the surviving enterprise being a private-owned enterprise'. In such cases, article 16 of 'M&A Law' and article 20 of 'Labor Standards Act' shall come into play, the old company/employer and the new company/employer are able to negotiate and decide the transfer of employees.

- (2) Severance Pay and seven-month additional salary for those who are not transferred: Upon the date when a government-owned enterprise is privatized, the employees who are not willing to be transferred, or who are not transferred because of the proviso of the preceding paragraph, shall clear the procedures of severance. Severance pay shall be paid to such employees and shall be calculated in accordance with the criteria for payment of pensions as stipulated in the Labor Standards Act, without being subject to the restrictions of age and seniority of service. An additional six-month salary at the salary rates applicable to them at the time of the privatization, and an additional one-month wage in lieu of the one-month advance notice, shall be paid.
- (3) Hesitation clause: For the employees retained in employment after the privatization of a government-owned enterprise, the original employer of the enterprise may, on the date of their transfer, settle the account of their benefits with respect to their respective seniorities of service based on the payment criteria set forth in the preceding paragraph, but the six-month salary and the wage in lieu of the one-month advance notice shall not be paid. Where any of such retained employees are laid off within five (5) years from the date of the privatization of the government-owned enterprise, the said employee(s) shall be paid a severance pay to be calculated based on the salary rate applicable to him/her at the time of the transfer to the private-owned enterprise or at the time of his/her lay-off, whichever is more beneficial to the employee, plus a six-month salary based on the employee's salary rate at the time of the transfer to the private-owned enterprise and the wage in lieu of the one-month advance notice.

(4) Compensation for rights affected: For the employees who are laid off and who meet the retirement conditions, it shall be additionally handled according to the retirement regulations. For the employees who clear the procedures of severance, or are laid off, should they suffer any loss of pension payable to them under the civil servant insurance program or the old-age payment under the labor insurance program, their losses of such benefits shall be compensated. For the employees who are transferred to and retained by a private-owned enterprise privatized from a government-owned enterprise, if they incur any loss with respect to their insurance period originally covered under the civil servant insurance program as a result of switching their insurance enrollment to the labor insurance program, they shall be compensated by analogy. Any reduction or loss of other rights or interests which are originally available shall also be compensated by government, primarily funded by the funds obtained by government from privatizing government-owned enterprises.

- **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**

**The obligations of the GOEs' employer include:**

- (1) Advance notice according to article 16 of Labor Standards Act.
- (2) Conduct employees' job transfer training, second career training or employment assistance before it is privatized
- (3) Severance Pay and the additional one month salary. Other Compensation for existing rights affected and the additional six-month salary shall be the burden of Government, primarily funded by the funds obtained by government from privatizing GOEs.

- **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?**

Except in case of 'restructuring' or 'transferring', all rights and obligations are transferred automatically to the new company/employer, including collective agreements legally reached by the labor union and the old employer. But there is no legal limitation for the new company/employer to renegotiate with the Labor union to modify the collective agreements. In case of 'restructuring' or 'transferring', collective agreements reached could lose its force, and there is no regulation obligating the new employer to negotiate with the labor union before the occurrence of 'restructuring' or 'transferring'.

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

As mentioned above, the worker who refuses to be transferred is entitled to claim severance pay calculated in accordance with the criteria for payment of pensions stipulated in Labor Standards Act, and additional seven-month salary. In case the workers suffer any losses of pension payable under civil servant insurance program or labor insurance program, the government shall compensate their losses of such benefit.

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

No, collective actions are allowed. There were two strikes held by Union of Chun-hwa telecom and Taiwan Business Bank lately, both GOEs in the process of privatization.