

4

MODULE

Strategies and Options

This module considers the following strategic issues and analyzes available restructuring options. Among the key strategic questions are these:

- Who should undertake labor restructuring—government or investors?
- What range of options are available for dealing with restructuring?
- How should these options be sequenced?
- What legal and contractual issues might constrain the choice of strategies and options?
- Leaving labor restructuring to the government—that is, before PPI
- Taking a mixed approach.

Labor Restructuring by the Private Sector

In theory arguments can be made that labor restructuring is best left to the new private investors who:

- Are better equipped than the government to judge the level and kind of skills needed and to implement a process that minimizes adverse selection.
- Have greater incentives to minimize severance costs. Rama (1997) noted that severance packages can be more generous when designed by government.

Examples of PPI arrangements where labor restructuring was investor-led are Argentina's gas transmission and distribution company and Guyana Telecommunications Corporation (box 4.1). This

The new investor will have the best knowledge of which skills, people, and capabilities will be needed in the future.

RESTRUCTURING—WHO SHOULD DO IT?

The primary strategic decision is whether the government or the private sector should undertake labor restructuring. There is no one right approach and countries have followed different strategies, depending on the timetable and urgency of the private participation in infrastructure (PPI) as well as on the nature of labor issues at the enterprise level. There are three options:

- Leaving labor restructuring to the private sector—that is, following PPI

Box 4.1: Restructuring by PPI Investors—Argentina and Guyana

Argentina: Gas del Estado

When Argentina’s natural gas transmission and distribution company, Gas del Estado, was privatized in 1993, the work force of 10,273 was not reduced. The enterprise was broken up into 10 new companies, employees were allocated to each company, and employee restructuring was left to the new owners of these companies. By December 1993 the work force in the companies had been reduced by 32 percent to a total of 6,958. Workers who were retained benefited from shares, salary increases, and performance-related pay.

Guyana Telecommunications Corporation

In June 1991 an international investor paid US\$16.5 million for 80 percent of the shares of the Guyana Telecommunications Corporation. It was recognized that the company had to trim its staff to reduce overstaffing and cut costs. After privatization the company embarked on an action plan to assess the human resources needs of the organization, especially those required to implement its expansion plan successfully.

The action plan was executed in two phases, the first of which was introduced immediately after privatization. It lasted 3 months and involved the following activities:

- Analyzing the existing organization by reviewing methods, procedures, policies, and job duties and descriptions with senior management

- Reviewing personnel files and interviewing and assessing the capabilities and needs of existing employees
- Reviewing administrative tools, including computer hardware and software
- Initiating discussions with union representatives and keeping them informed of plans and actions.

The second phase (3 to 12 months) involved:

- Continuing discussions with the union
- Reorganizing and reassigning personnel where necessary
- Introducing new administration policies where necessary
- Beginning recruitment of Guyanese nationals abroad
- Determining training needs associated with introducing new equipment
- Revising salaries, job grades, and job titles
- Identifying surplus personnel.

The result of this restructuring exercise was a reduction in the work force from approximately 1,100 to 600 employees. A key to the success of this significant cut was the package offered to all employees. The package consisted of a salary increase of about 90 percent for those who were retained and compensation equivalent to 22 months’ salary for those who were let go

Sources: Hinds 1995, Shaikh 1996.

strategy is most likely to work in situations with modest initial levels of overstaffing, a high-growth sector (for example, telecommunications), no severe labor opposition to reform, and locations with effective job markets into which displaced workers can move.

Labor Restructuring by Government

Although restructuring led by the private sector is the preferred route, there are four scenarios in which government will likely need to be involved in labor adjustment:

1. In sectors where overstaffing is severe and opposition to PPI from the public and from

unions and labor is strong, and private investors may be wary of taking on the political burden of carrying out large-scale work force adjustments.

2. Where there are legal and other restrictions on the investor’s ability to implement labor adjustment, either through labor laws or collective bargaining agreements. In India and Sri Lanka, for example, labor laws make it costly, time consuming, and cumbersome for the private sector to retrench staff (Basu, Fields, and Debgupta 1996; Fiszbein 1992; and Salih 2000).
3. Where labor restructuring costs are very high. In cases where investors take on sur-

There are four circumstances where government involvement in labor adjustment can be helpful.

plus labor they discount the sale price accordingly—and a low sale price may be politically difficult for government to accept.

4. Where there is future uncertainty about government's policy and stance on public sector labor issues—for example, if there are significant arrears of wages to workers, unfunded pension liabilities, or investor concern that government might change the rules or laws on retrenchment or restructuring after the PPI transaction has been completed.

In any of those cases, only government action may be able to unblock potential labor problems quickly and avoid delays in PPI.

Where PPI plans are still in the making, government can take steps to reduce the work force through a variety of options, including natural attrition, a freeze on recruitment, the phasing out of pensioner workers, removal of ghost workers, voluntary departures, and compulsory redundancy. The privatization of telecommunications in Tanzania is one example (box 4.2) where work force reduction took

Box 4.2: Tanzania—Telecommunications Work Force Restructuring

The government of Tanzania decided in 1996 to include utilities in the list of state-owned enterprises to be considered for privatization. The Tanzania Telecommunications Company Ltd. (TTCL) was then selected as the first of the utility state-owned enterprises to be divested.

In June 1997 TTCL had some 96,000 lines connected to its network, with annual growth of 3.4 percent and a waiting list of 84,000 lines. The company employed just over 4,688 workers in 1998. Between June 1998 and October 1999 TTCL reduced the number of employees to 3,720, mainly through attrition, restrictions on new employment, and early retirement.

In 1998 a firm of consultants, which was engaged to audit TTCL, recommended a further staff reduction of 1,659 employees. The company decided against forced reduction and instead took the route of a soft option that involved a continued program of attrition, restrictions on new employment except for prospective employees with critical skills, early retirement, and voluntary redundancies. The voluntary departure package was negotiated through the Communication and Transport Union and essentially provided for 6 months' pay for up to 6 years of employment, 18 months' pay for 6 to 10 years, 24 months' pay for 10 to 25 years, and 30 months' pay for up to and above 25 years.

The TTCL divestiture program was expected to take two years beginning in 1998. Privatization would involve the sale of new shares, giving the investor a 35 percent equity stake as well as management control. TTCL's teledensity was less than 0.04 percent, and government policy called for an increase to 6 percent by 2020. The result

was that the expansion program was initiated simultaneously with the privatization program. The market for mobile phones was also liberalized, and three mobile licenses were issued in 1998.

In implementing the program to reduce staffing in preparation for privatization, noncore activities were first unbundled from the core business. The program of expansion also allowed for some workers to be redeployed in the construction division. The net effect was that the company retrenched only 802 workers and most of these employees were severed through the plan negotiated with the unions. Slimming down the work force occurred over three years without large-scale, one-time severance resulting in vast numbers leaving the company at any one time. Because there was no termination of large groups at any time, the program did not attract negative criticism from the press or politicians.

The new strategic investor continued the expansion program that was established in the sales agreement based on the roll-out obligation of 800,000 lines within four years. The company was able to improve its labor productivity significantly while preparing for privatization without most of the negative consequences associated with utility labor retrenchment programs.

The expansion of the mobile operators (five mobile licenses issued by 2001, including one to TTCL) resulted in more than 300,000 mobile connections by December 2001. Many of the workers leaving TTCL were able to find alternative employment with the new mobile operators, which illustrates also that labor retrenchment is easier in industries going through technological changes and rapid expansion.

Source: Parastatal Sector Reform Commission, Tanzania.

A shared approach provides benefits where government deals with a large part of the surplus work force before PPI, and the investor is able to fine-tune the process post-PPI.

place over a three-year period under government ownership prior to privatization. Another example of preprivatization work force restructuring is that of Eskom, South Africa's electricity utility (which will be discussed in another context in box 4.6).

Although government has an important role to play in these cases, there are also some risks associated with government management of labor adjustment. Those risks include the following:

- Because government managers (including those in the implementing agency) are not best placed to predict future staffing requirements, the wrong people may be selected. That in turn may lead to subsequent rehiring of retrenched workers.
- Overly generous severance payments negotiated with workers and unions may smooth over industrial relations in the short term, but may create precedents that are unsustainable for future restructuring of other enterprises or for the incoming PPI investor.
- If there is no political will or consensus, government managers may not be able to move decisively and so delay work force restructuring and PPI itself.
- Reluctant factions within governments may use labor restructuring as an excuse to delay PPI.

Government-led work force restructuring usually deals only with part of the work force, but there are occasional examples where governments have decided to make all workers redundant and settle all labor liabilities prior to PPI. That was the case in the concessioning of Malawi's railway and of Zambia's rail sector (see box 4.3).

A Mixed Approach

A mixed approach by which both government and the PPI investor are involved can help overcome the problems of leaving restructuring entirely to the government or to the private sector. In such an approach work force restructuring is implemented in phases:

1. Government first deals with an initial restructuring of the accumulated work force surplus before the PPI transaction is started, and sets up a social safety net or redeployment program.
2. The PPI investor then acquires management control and is given freedom to fine-tune staffing levels after the PPI transaction.

This shared approach offers the additional advantage of reduced cost to the government because the incoming investor may pay for further adjustments. In the shared approach both the government and the investor contribute to the costs and the decisionmaking involved in work force restructuring.

An example of a mixed approach is Argentina's rail privatization, in which most of the 70,000-worker reduction was undertaken as part of the privatization process. Part of the reduction was privately financed, however, by the operators of the San Martin and Urquiza concessions. They began operations with a combined work force of 2,700 (compared with the previous public enterprise [Ferrocarriles Argentines] total of 8,800) but reduced that force even further to 1,700 at a private cost of US\$10 million (Ramamurti 1997).

Another example is that of the Manila water concession, which provided early retirement to undertake a preconcessioning reduction followed by a probationary period of employment (see box 4.4). That mix allowed the new operator time to make its own assessments of the employees and protect the interests of employees.

Table 4.1 summarizes the advantages and disadvantages of the main choices on labor restructuring responsibility. Irrespective of who undertakes work force restructuring in preparation for PPI, labor adjustment will be a continuing process, not a one-time event.

MENU OF OPTIONS

This section presents a typology of labor adjustment (or work force structuring) options. There are

Box 4.3: Zambia—Redundancy for All Rail Workers

When the Zambia Privatization Agency (ZPA) and the Zambia Railways Corporation (ZRC) considered strategies for labor adjustment as part of a plan to privatize the operations of the railway, a combination of factors indicated that all 1,650 of its workers would receive redundancy payments—even those who kept their jobs. Those factors were:

- An exceptionally generous retrenchment package, negotiated previously with the Railway Workers Union of Zambia, which included a severance package of 3.2 months of salary per year of service plus resettlement and a freehold title on a farming plot (typically 5 hectares) for resettlement on land allocated for farming by a previous government.
- Labor laws that gave every worker in an enterprise transferred to a new employer the right to request that all terminal benefits be paid (including pensions and negotiated severance) and then to leave the enterprise. These laws also provided that any workers who transferred should receive terms and benefits no less generous than their current employment contract.
- Worker suspicion of the employment security offered by both private operators and government, given well-publicized bankruptcies of privatized firms. This meant that the trend in Zambia was for workers to readily accept voluntary or compulsory redundancy (especially when the packages were generous).

- ZRC's financial circumstances. ZRC was in arrears in paying both employees' and employers' contributions to the workers' pension fund.

Those circumstances meant that almost all workers were likely to leave the company rather than join the new operator, who would start with no experienced staff. Government decided to consider offering redundancy to all workers, but there was a financing problem with that idea: government could not afford the costs of retrenching 1,650 workers, although it could finance the retrenchment of the 650 or so workers estimated to be in immediate surplus (that is, the new operator was likely to require only about 1,000 workers). ZRC and ZPA commissioned a consultancy to meet with trade unions and help develop the options. This consultation process led to a revised plan that all workers be offered retrenchment as follows:

- 650 or so workers to receive a full and immediate package of retrenchment benefits, and lose the right to return to work in the enterprise.
- The remaining 1,000 workers to receive the full retrenchment package paid over three years from a portion of the concession fees that the PPI investor placed in a trust fund specifically for that purpose, with benefits protected from erosion as a result of inflation.

Source: Zambia Privatization Agency, Zambia Railways Corporation.

Box 4.4: Philippines—Use of a Mixed Approach through Probationary Employment

Overstaffing at the Metropolitan Waterworks and Sewerage System (MWSS) in Manila was addressed in two phases. Prior to privatization MWSS implemented an early retirement program that was used by about one-third of the work force. The remaining employees were absorbed by the concessionaire with a six-month probationary employment period. After that period the employees became permanent or were separated. The concessionaire ended up with a regularized work force of 4,300 employees, equal to slightly more than half of the preprivatized work force. Of the total number of retrenched employees, only 100 or so were involuntarily separated. The process was

facilitated by an attractive voluntary retirement program, the main components of which added up to payments that were significantly more than they would have received if they were to have retired on the standard government retirement package. Training and work opportunities (including outsourcing) were provided for those who left the company. All rounds of separation were designed to be equivalent to each other. The estimated cost of the early retirement packages was P1.1 billion, or about US\$44 million. Labor productivity improved significantly as a result of the privatization.

Source: Dumol 2000.

Table 4.1: Labor Restructuring—By Whom and When?

Responsibility	Advantages	Disadvantages
<p><i>Government:</i> The implementing agency or government takes responsibility for labor work force restructuring before the PPI transaction.</p>	<ul style="list-style-type: none"> • May be essential if there is a large accumulated staffing surplus • Demonstrates government’s commitment to sector reform • Increases the likelihood of attracting good investors and obtaining a good price for PPI • Enables government to implement change in labor laws and collective bargaining agreements • Can be fast, if there is the political will and support • Facilitates a uniform government policy toward labor adjustment in all public enterprises 	<ul style="list-style-type: none"> • Can lead to adverse selection problems • Government managers may negotiate too-generous deals with labor in their anxiety for smooth industrial relations • It is the most costly option for government, which bears all of the costs. • Can deter investors if linked to “no subsequent retrenchment by the PPI investor” clauses or clauses that reduce labor flexibility • Most politically risky—bad image of government
<p><i>PPI investor:</i> All labor restructuring takes place after PPI transaction.</p>	<ul style="list-style-type: none"> • In theory, gives the best labor efficiency gains because investors are best placed to know future staffing and skill needs and the match between labor and capital investment • Minimizes adverse selection because the future employer does all the selection • Reduces political risk for government—crudely put, the PPI investor can be “blamed” for downsizing 	<ul style="list-style-type: none"> • Unattractive for investors where there is a history of difficult labor relations and no proven track record of work force restructuring • Can create a bad image for the private sector, which will be contrary to policy for governments with a desire to encourage private sector development • Appears least costly for government, although in practice the PPI investor will discount the price to meet these costs
<p><i>Shared approach:</i> Some pre-PPI work force restructuring undertaken by government, with the rest left to the private sector after PPI.</p>	<ul style="list-style-type: none"> • Allows separation of pre- and post-PPI responsibilities. For example, government can retain responsibility for pension liabilities arising before the PPI contract. • Allows government to deal with the bulk of the accumulated surplus and then allows the PPI investor to fine-tune the selection of workers • Ownership of the challenge of work force restructuring is shared by government and the PPI investor • Some reduction in the risk of adverse selection, compared with government-only restructuring. 	<ul style="list-style-type: none"> • More likely to yield a case-by-case negotiated approach, which in practice can lead to bad precedent setting and government guarantees • More demanding of managers in the implementing agency who will need more commercial understanding of likely investor requirements, particularly if unions and government are negotiating on post-PPI terms • More complex negotiations may delay PPI process

many ways to restructure the work force. This section first reviews the different options and then outlines how they might be used in combination as part of a comprehensive labor program.

Early retirement, voluntary departure, and compulsory redundancy are the most commonly used options for labor adjustment. There is, however, a wide range of options that can be used by the implementing agency. The options are not mutually exclusive; in practice the options can be used in sequence or combined with one another.

Broadly, the options can be divided into three groups, as shown in figure 4.1:

1. So-called soft options, which do not introduce new elements of incentive or compulsion, but rely on existing and therefore non-controversial workplace regulations.
2. Options that involve restructuring of the workplace. Some will be voluntary whereas others, such as closure of noncore units, may be seen by workers as involuntary change, especially if there has been little consultation.
3. Retirement and redundancy through voluntary departure options or compulsory means. Voluntary options provide incentives for people to leave, either through early retirement or severance packages. Acceptance is not forced (although in cases where a worker's future prospects are very poor, workers may feel that they have had little choice). Compulsory redundancy options force workers to leave without asking for their consent.

Although not strictly a labor-restructuring tool, employee share ownership (see module 5) is a mechanism that may be used in conjunction with labor restructuring. It can be used in three ways:

1. As an incentive or reward package for workers, particularly those who will remain in the work force.
2. As the basis for management employee buy-outs or employee buyouts of units of the enterprise.

3. As a form of compensation to displaced workers whereby they receive shares instead of cash. As part of a compensation package, however, share transfers are probably best viewed as a supplement to, rather than a substitute for, severance or early retirement.

Three groups of options:

- Soft options
- Workplace restructuring
- Retirement and redundancy.

SEQUENCING OF OPTIONS

In planning a labor program, the implementing agency needs to take into account the sequencing of different options, and the right timing and sequencing can be critical to achieving a successful outcome.

As the examples of South Africa and Tanzania (boxes 4.2 and 4.6) illustrate, major PPI reforms often take time to implement. In such circumstances the implementing agency can start with soft options, progress through voluntary programs, and adopt compulsory redundancy if necessary. Figure 4.2 illustrates such a progression.

Although this Toolkit focuses on work force restructuring prior to PPI, the sequencing of options can extend into the post-PPI period. For example, in the mixed approach adopted in Brazil's federal railway reform the sequencing of activities was planned in three phases:

- Phase 1: voluntary reduction by government through early retirement and voluntary departure, which were offered only to selected job categories.
- Phase 2: compulsory redundancy of employees with unnecessary activities, through an involuntary severance package equivalent to 80 percent of that paid to employees who voluntarily left RFFSA.
- Phase 3: post-PPI redundancy undertaken by the concessionaires. The terms of the contract provided that the concessionaire had to pay the same terms as for the phase 2 pre-PPI involuntary departure for any staff who were made redundant within one year (Estache, Schmitt de Azevedo, and Sydenstricker 2000).



Estache, Schmitt de Azevedo, and Sydenstricker (2000) present a case study of labor adjustment in Brazil's rail sector.

Where PPI is not urgent, a sequenced labor program starting with soft options and continuing over a number of years can be envisaged.

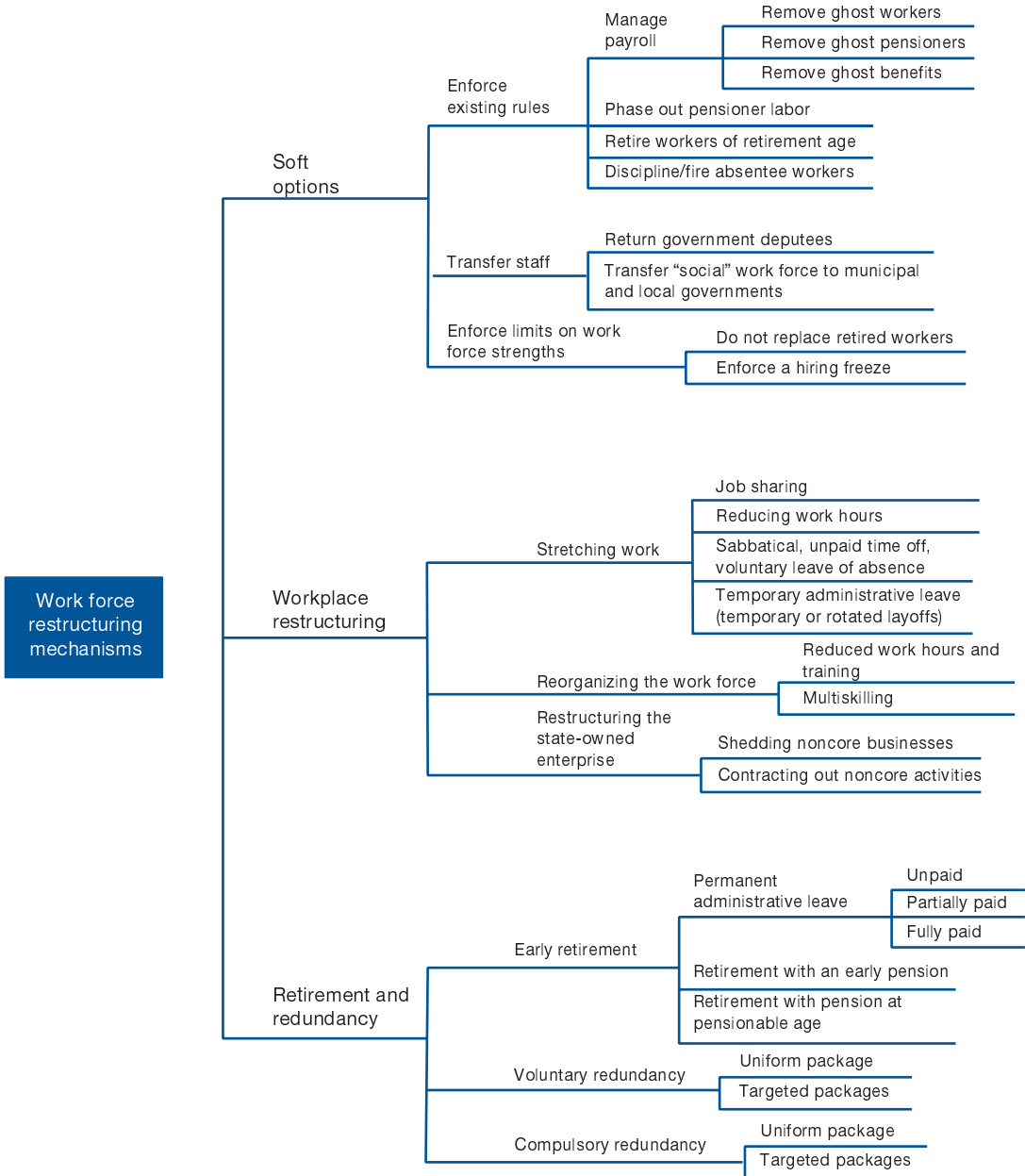


Figure 4.1: Restructuring Options—A Typology

In the event, the concessionaire was able to quickly identify the number of phase 2 involuntary redundancies that were needed, and labor restructuring was completed before privatization.

The sequencing outlined in figure 4.2 may only be appropriate where reforms are not seen as urgent. This in turn will depend on the level of over-

staffing, the political context for reform, the urgency of PPI investment, and government’s overall strategy for private participation in infrastructure. Where the need for infrastructure sector reform and investment is urgent, it will be necessary to bring forward early retirement and voluntary departure so that these are implemented at the same time as are soft options.

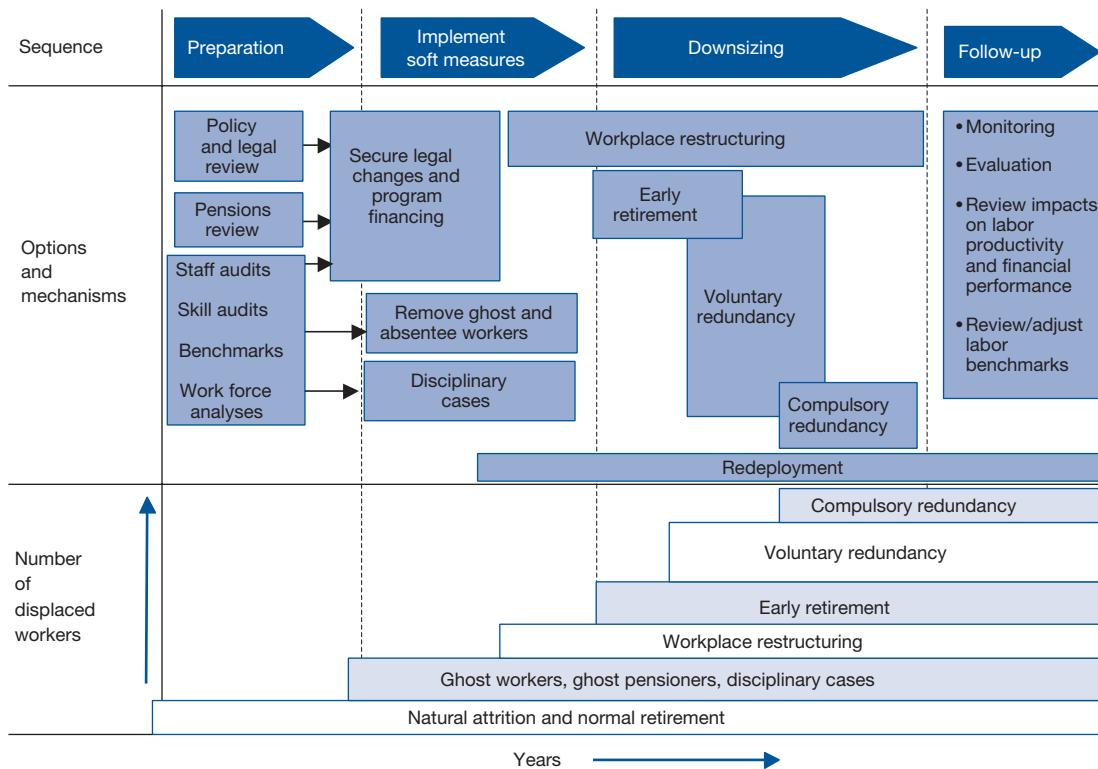


Figure 4.2: An Illustration of Sequencing

The speed at which the implementing agency can move in the early stages, however, is often constrained by:

- Lack of readily available resources to resolve issues (for example, to hire specialists to review pensions, to conduct staff audits, or to design an effective redeployment program)
- The need to comply with laws, labor contracts, and collective bargaining agreements
- Lack of good information to answer key questions on the scope of labor adjustment to be identified. (How many staff are there actually? How many are in surplus? Which skills are most critical? Are there pensions and salary arrears?)
- Lack of financing for meeting the costs of implementing retirement and redundancy options (covered in Module 5 in more detail).

SOFT OPTIONS

Soft options aim to restructure the labor force through the reinforcement of current work regulations. Options include payroll management, enforcement of retirement age, enforcement of disciplinary actions, staff transfers, and freezes on recruitment and promotions. These options can be a starting point to address overstaffing and can lead to substantial labor force reductions, without creating social or political controversy or unrest.

Payroll Management

Removing ghost workers, absentee employees, and ghost pensioners is usually an immediate and non-controversial step toward downsizing. At the enterprise level, however, obstruction can occur where payrolls have been inflated by corrupt and “well-connected” senior and middle managers. In those circumstances the manager in the implementing

Tactical transfers can unblock difficult labor problems, but they risk merely transferring the surplus labor from one public organization to another.

agency may need high-level support within government for his or her actions. Often, however, the mere lack of control has enabled the growth of ghost workers, and introducing a staff audit (see module 5) may be enough to yield significant effects. A plant census undertaken at the steel maker SOMISA in Argentina required photo badges for all workers. Reported employment levels of 14,500 employees quickly fell to 12,000 as shadow employees were eliminated (Hess 1997). In Tanzania's civil service, a national census found that 16,000 (5 percent) of the entire payroll of 350,000 were ghost workers (International Records Management Trust 2001b).

Enforcement of Retirement Age

Enforcing the retirement age can lead to substantial reductions in some work forces by:

- Phasing out workers who are already over the retirement age
- Requiring workers to retire when they reach pensionable age.

Prior to transition in Hungary, about 20 percent of pensioners were active in the labor market. Privatized firms subsequently reduced these numbers, which fell to 9 percent by 1992, as the companies restricted the employment of workers who had reached pensionable age (Szeman 1994).

Enforcement of Disciplinary Proceedings

Many work forces have a small proportion of staff who are being investigated on disciplinary grounds. Some of these cases can linger for months and years while workers are suspended and on full salary or still working. If voluntary departure or compulsory redundancies are to be implemented, it is important that these cases are tackled first. This implies:

- Greater management attention to completing these cases
- Engagement of additional resources (for example, lawyers and arbitration specialists)

to help the implementing agencies undertake disciplinary action in a fair and transparent manner.

To accelerate the departure of employees subject to disciplinary proceedings, some PPI enterprises have developed special voluntary departure package. For example, Eskom, South Africa's power utility, developed a special package for employees who had received formal disciplinary warnings and who chose to resign following amicable discussions (box 4.5).

Staff Transfers to Other Public Organizations

One restructuring option is to transfer surplus staff from an infrastructure enterprise to another public sector organization (for example, a ministry, department, agency, or state-owned enterprise [SOE]). Transfers can let the PPI transaction proceed quickly with a much-reduced work force.

The principal argument against such tactical staff transfers is that they can merely shift an overstaffing problem from one part of the public service sector to another. In most cases governments will avoid such transfers unless there are genuine vacancies elsewhere in the public service. Occasionally, however, transfers have been used as a mechanism for quickly enabling urgently needed PPIs and investments. One example is Jordan's Aqaba Rail concession (see box 4.6), which shows both the opportunity and the problems of tactical transfers.

Some infrastructure companies have workers who are government civil servants on deputation. A proportion of those workers might be transferred back in their original department, or elsewhere. This is an option, however, that will be unacceptable for many governments. If the civil service is overstaffed, simply transferring surplus workers from the SOE sector back into the civil service is not helpful for wider efforts to reform the civil service. Even if one particular PPI scheme only has a few workers who have retained their civil service status, a transfer program for those few may set an unwanted precedent.

Even if there are few employees on civil service deputation in one PPI enterprise, they may create a precedent for other state-owned enterprises that government would rather avoid.

Box 4.5: South Africa—Phased Reform in Electricity

Eskom is South Africa's state-owned electricity company. Government's overall policy is to restructure the sector and encourage competition by (a) creating contestable markets for power generation and allowing the phased entry of private power generation, (b) separating generation from distribution and restructuring distribution and supply into a number of regional electricity distributors, and (c) introducing a regulatory framework.

Government's policy is to avoid retrenchment of workers in state enterprises wherever possible, and the reforms and proposals for PPI have been a key target for opposition by the labor unions. Nonetheless the pre-PPI restructuring of Eskom has resulted in a 40 percent reduction of the work force, from 65,000 to 39,000, over the last six years. This was achieved through a mixture of natural attrition and four different packages of voluntary departure:

- Most generous in terms of benefits is a voluntary separation package available to employees when the restructuring of an element of the company is imminent.
- A less generous severance package, known as the "surplus package," is available in circumstances where the restructured unit is being implemented and surplus positions have been identified.
- A third package is available to individual employees whose performance has been the subject of review and who have been required to take a six-month performance enhancement program under which specific requirements are stipulated and appropriate training is provided. When an individual employee fails to satisfy the requirements of the program or chooses during the program to leave the company, this "volunteers' package" is made available. About 6 of every 10 employees who take this training program do so successfully, that is, they remain with the company.
- The fourth package, known as the "disciplinary package," is provided when an employee, following the initiation of a disciplinary process entailing formal warnings, counseling, and so forth, chooses to resign after amicable discussions.

Source: International Labour Organisation 1999a.

All recruitment freezes are temporary in nature—they have to end eventually.

Recruitment and Promotion Freezes

Recruitment and promotion freezes are always temporary in nature. Even if the freeze lasts a number of years, at some stage new staff must be hired and merit-based promotion reinstated. The implementing agency and the enterprise manager can at least halt increases in staff numbers through:

- Freezes on the hiring of permanent, temporary, or contract staff
- Selective abolition of vacant posts
- Elimination of guaranteed entry to the public service infrastructure company on completion of training programs
- Suspension of automatic advancement systems
- Suspension of the automatic replacement of staff who retire normally.

Advantages of Soft Options

Soft measures are particularly relevant if the manager in the implementing agency has some time before PPI and there is little urgency. Such measures offer:

- A relatively easy mechanism to implement, in political and managerial terms.
- A way to signal government's intentions to tackle work force restructuring in a manner that can provide space for dialogue with unions, workers, and other stakeholders.
- A way to achieve progress even in very difficult circumstances. Where government or the PPI enterprise managers have effectively lost control over staffing and payroll, reintroducing basic staff audits and enforcing normal human resource management can help start the process of labor adjustment.

Soft measures have benefits for the implementing agency. They allow the implementing agency to take action even in difficult circumstances.

Box 4.6: Jordan—Tactical Staff Transfers at Aqaba Rail

The government of Jordan has embarked on an economic reform program that includes PPI. Loss of jobs is a concern, however, in an economy with relatively high levels of unemployment. This is particularly the case in the relatively poorer southern part of the kingdom where the Aqaba Railway Corporation (ARC) operates.

ARC was formed in 1972 to carry phosphate rock from the Jordan Phosphate Mines Company (JPMC) mines at El Abiad and El Hassa to the export facility at the main port of Aqaba. ARC had been operating with significant losses for several years, and its overemployment was substantial. As production was shifting from existing mines to the newer phosphate mine at El-Sheidiyeh over the medium to long term, ARC was consequently faced with the need for investment to handle the enhanced production at the El-Sheidiyeh facility.

After extended discussions concerning the fate of ARC's 1,300 employees, the decision was made to extend a 25-year concession agreement leasing ARC assets to an international consortium.

The consortium has agreed to retain 500 workers from the existing ARC staff to be deployed in the upgrade and repair of the existing rolling stock and track. The government of Jordan has committed itself to employing the remaining 800 employees, with 150 employees going to other government agencies and 650 transferring to the new JPMC operation at El-Sheidiyeh.

If the government of Jordan had not solved the labor redundancy issue, privatization would not have been achievable. Essentially the approach has been to privatize first, to bring in investment, and to solve the employment issue later. The ARC project will result in an overall investment of US\$120 million in railway infrastructure and will paving the way for a separate \$600 million joint venture currently under progress between JPMC and an international fertilizer producer to transfer phosphoric acid from the El-Sheidiyeh facility through the port of Aqaba. Overstaffing, however, remains to be tackled as JPMC is prepared for privatization.

Sources: Government of Jordan 1996–99; Jordan Times 1999.

- A test of political commitment. If vested interests make it impossible for government to take these easy first steps, implementing harder options will not have much chance of success.
- Rotation of employees on temporary administrative leave (this is one meaning of the term “layoff”)
- Operation of plant on reduced schedule (for example, three-day work weeks)
- Job sharing.

WORKPLACE RESTRUCTURING

Changes in the nature and structure of work are also useful tools for the implementing agency. They can enable control or reduction of staff costs while maintaining the work force largely intact until such time as the new PPI investor can select the staff needed.

Reducing Working Hours

Reduced working hours can cut salary costs through various approaches, including:

- Reduced work schedules for individual employees
- Reductions in shifts (for example, moving from three to two shifts)

Those are typically short-lived measures, best suited to situations where managers can expect a turnaround in demand for staff. Those approaches were used, for example, by the airline and airports industries during the sharp downturn in demand for air travel in late 2001.

Placing Workers on Administrative Leave

Employees placed on administrative leave (“furlough”) remain formally employed with the establishment but do not report to work. For professional staff, administrative leave may include periods of sabbatical or training. Administrative leave

can be unpaid or partially or fully paid, depending on labor laws and labor agreements.

Administrative leave has been used in a number of countries. For example, in Argentina's major infrastructure privatizations some workers were sent home with 50 percent of their salaries (Kikeri 1998, p. 6). By far the most extensive use of administrative leave, however, has been in the state enterprise and newly privatized sectors in China (box 4.7) and the countries of the former Soviet Union (FSU). An International Labour Organisation (ILO) survey of several countries of the FSU found that 30 to 80 percent of privatized enterprises made use of administrative leave, as did 60 percent of enterprises in China (see table 4.2). The survey observed that:

In the context of the FSU countries, administrative leaves are fairly costless to employers, reducing wage bills without the burden of severance payments, while providing an easy way to increase labor should conditions warrant. The disadvantage to workers is (at best) reduced income, but with the advantage, over displacement, of retaining rights to certain services or benefits provided by their employers. The most important of these rights may be adding work months to pension eligibility (Evans-Clock and Samorodov 1998, p. 68).

Administrative leave was also used to cope with the high levels of unemployment that arose in Russia, where the number of people employed had decreased from 73.8 million in 1991 to 65.4 million at the end of June 1997. At that time approximately 4 million workers were on administrative leave (Prokopenko 2000).

Administrative leave can provide workers with some form of social assistance until retirement, thus removing them from the enterprise work force but not placing them on a possibly overloaded pension system. This approach has been used in Poland (coal sector restructuring) and in Spain (steel and shipbuilding sectors). In Spain the programs were funded through an Employment Protection Fund, which provided (a) workers under 55 with three years of benefits equivalent to

Box 4.7: China—Administrative Leave for Workers in State-Owned Enterprises

In response to surplus employment in public enterprises in China, in the early 1990s there was a new policy: *Xiagong*. This form of administrative leave allows state-owned enterprise (SOE) workers to remain at home and still be regarded as employees (*zhigong*) of the SOE. The government does not then consider *Xiagong* to be unemployment, and *Xiagong* workers retain the right to company-owned housing and eligibility for social and medical benefits. The number of workers in this category rose from 3 million (1993) to 9 and 12 million in 1996 and 1997, respectively.

It is the responsibility of the individual SOEs to provide compensation for these workers, and the expectation is that a regular cash allowance of up to 70 percent of the original wage will be paid. In practice, however, because there is no government regulation, allowances vary and many workers receive nothing. *Xiagong* workers are also encouraged to seek alternative employment.

Sources: Cao, Qian, and Weingast 1999; Rawski 1998.

80 percent of their gross pay, (b) workers of 55 and older with 80 percent of gross pay up to the age of 60, and (c) workers 60 and older with 75 percent of gross pay up to the age of 65 (Campa 1996).

Reorganizing the Work Force

A key change in human resources management over the last two decades has been the shift from asking “how many people do we need to do the job?” to asking “what is the best way to get the work done?” In other words there is a shift from focus on inputs (how many workers) to outputs (products or services). This shift has had a profound effect on the structure of the work force in many organizations, including infrastructure enterprises. Work force reorganization includes:

- Replacement of a single permanent cadre of workers with a mixture of core employees (permanent), close employees (temporary,

In China and the former Soviet Union, economywide adjustment has placed several million workers on administrative leave.

New ways of working, sometimes called “atypical” work, are becoming more typical.

Table 4.2: Administrative Leave and Reduced Work Schedules in Countries of the Former Soviet Union

Country	Administrative leave		Reduced work schedules	
	Percentage of establishments placing workers on leave	Percentage of employees placed on leave ^a	Percentage of establishments placing workers on reduced schedules	Percentage of employees placed on reduced schedules ^a
Armenia	40.2	18.5	24.6	8.7
China	63.1	4.8	—	—
Georgia	43.0	37.5	10.1	5.3
Kyrgyzstan	79.7	37.4	28.0	28.8
Russia	30.1	13.0	19.3	16.8
Ukraine	43.8	15.6	32.5	12.3

— Not available.

a. Percentage of all workers in surveys placed on leave or given reduced work hours during some period in the preceding year.

Data on work time were not collected for China. Data relate to the period 1994–96.

Source: Evans-Clock and Samorodov 1998.

part-time, retained, and seasonal), and peripheral workers (casual workers, contractors)

- Greater use of outsourced contractors
- Removal or reduction of formal job demarcations, retraining within the enterprise, and greater multiskilling of the work force
- More innovation in forms of employment contract (twilight shifts, job sharing)
- Greater use of technology to facilitate changed work practices (remote metering and customer billing systems, customer-support call centers).

These measures may not have a large impact on work force numbers. Their importance lies, however, in the challenge of creating a more flexible but adequately represented and protected work force.

Restructuring the Enterprise

Enterprise restructuring may lead to posts becoming redundant as a result of the closure, disposal, or transfer of:

- **Noncore activities:** Some infrastructure operations have been not only vertically integrated but almost fully self-sustaining. Railways,

for example, would have the capability for undertaking all repairs in-house. Such disposals are frequently associated with public sector reform and privatization, but they are also a normal activity in the private sector (see Dranikoff, Koller, and Schneider 2002).

- **“Social” units:** Public enterprises in the FSU and China commonly provided an extensive range of social services, particularly in health and education. Similarly, Indian Railways has a large medical service.

Historically these activities have been necessary to keep the PPI enterprise running effectively. Functional reviews may identify benefits to the enterprise if these activities are abolished, transferred to other government agencies, spun off, privatized, or contracted out (sometimes to redundant employees).

RETIREMENT AND REDUNDANCY

If soft options or workplace restructuring options are not enough, voluntary departures, compulsory redundancy, or both may be needed. Given high levels of overstaffing, most PPI schemes will need to turn to these options.

Voluntary departure arrangements are the most widely used mechanism for reducing the size of the work force and arguably are the most politically and socially acceptable largely because of their voluntary nature. A voluntary departure program invites workers to vacate their posts in exchange for a certain compensation package. The compensation may be a cash payment alone or it could be in the form of enhanced pension rights, shares in the new private enterprise, or other emoluments, plus a cash payment. The amount of compensation should act as an inducement to voluntary behavior and therefore is typically more generous than a statutory settlement payable under any national labor laws. Other benefits may also be included in the voluntary departure package (for example, retained rights to medical or housing benefits).

Voluntary programs often include an early retirement component. In such a program, workers cease work before the normal retirement age and receive a partial or full pension (see module 5 for more). Early retirement is usually a voluntary option, but it can be compulsory if the retirement age is reduced for all workers



Public-Private Infrastructure Advisory Facility case studies:

- Valdez 2002 (Bolivia)
- López-Calva 2001 (Mexico)
- Ray 2001 (Orissa).

Most implementing agencies have used voluntary rather than compulsory departure as the core of their labor restructuring program (see, for example, the cases of Bolivia rail, Mexico railways, Orissa power distribution, and Brazil railways on the Toolkit CD-ROM). There are many reasons for this:

- **Political benefits:** It is usually better for government if redundancies can be limited to voluntary redundancies because it demonstrates that there has been limited coercion of the work force (see box 4.8).
- **Fairness:** A voluntary departure package is an indicator that government is treating workers fairly, which will in turn help

smooth subsequent labor programs and SOE reforms.

- **Speed:** Voluntary departure programs, almost by definition, provide a better severance package than the minimum statutory benefit. Where compulsory redundancy is politically difficult, the enhanced benefit is an incentive for workers to leave relatively quickly and in larger numbers.
- **Control of rehiring:** Governments and donors alike are wary of creating a “revolving-door” situation where they finance the costs of severance for workers but then rehire those same workers. One problem with compulsory retrenchment through statutory procedures is that government may be legally unable to prohibit the rehiring of workers. In contrast, the voluntary departure offer is usually a bilateral contract between employer (government) and employee, and so enables government to include clauses prohibiting the employee from working again for government or the post-PPI enterprise.
- **Getting around restrictive legislation:** Compulsory redundancy procedures may be

Voluntary redundancy is the most widely used mechanism for reducing work force numbers in infrastructure companies.

There are some compelling reasons for voluntary rather than compulsory redundancy.

Box 4.8: Argentina—The Success of a Voluntary Approach

“In November of 1990, Argentina began restructuring its Public Administration and Public Enterprises. Voluntary exit programs were implemented to downsize companies. In 1991 and 1992 there were 28,300 and 56,000 retirements respectively. These programs cost \$1 billion financed out of treasury funds, loans from the World Bank and the Inter-American Development Bank, and from the proceeds of the privatization.... Such a massive program of state employment reduction has not been without opposition. The weakness and infrequency of this opposition, however, is remarkable. And while clearly many factors have contributed to this...the absence of opposition to the state employment reduction was clearly also due to its purely voluntary nature” (Robbins 1996, pp. 6, 7).

In a few cases compulsory redundancy may be the only route or may be a government policy decision.

determined by legislation, with statutory procedures, or within collective bargaining agreements or labor contracts. Governments may want to use voluntary departure to avoid compulsory redundancy procedures if those procedures set out mandatory and extended timetables for implementing compulsory redundancy or provide for court-based challenges—all of which could delay labor adjustment by several months, or if they require particular selection processes (for example, a last-in/first-out selection process might be mandated, even though the staff audit might show a need to retain younger workers with different skills).

For all these reasons, voluntary departure programs generally have been adopted to ensure a smoother, faster process of work force restructuring with less risk of confrontation with unions or workers.

Compulsory redundancy may be the selected route when:

- The enterprise is liquidated. This has been the case with a number of airlines, including Aeromexico (box 4.9).
- Governments make a policy decision to pay only the statutory minimum, either because of acute financial difficulties or an in-principle objection to “privileged” SOE employees receiving further benefits from government.
- Certain geographic or functional units are closed.
- Compulsory redundancy follows offers of voluntary departure, and insufficient workers have volunteered.

Compulsory redundancy is best achieved through clear objectives, open communication, and transparent and fair processes. The amount of statutory payment will be determined by labor laws or labor contracts.

Early retirement, voluntary departure, and compulsory redundancy each have their advantages and disadvantages for the implementing agency, as summarized in table 4.3.

KEY CONSIDERATIONS IN DEVELOPING STRATEGIES AND OPTIONS

The PPI implementing agency usually does not have a completely free hand when developing options and strategies for a labor program. Labor laws and the legal status of the enterprise and its employees prior to PPI often restrict the choices that are feasible, while political considerations can strongly influence decisions on employment protection for workers in the PPI bidding process.

Labor-Related Legislation

The strategies and options open to the implementing agency may be constrained by legislation, so an

Box 4.9: Aeromexico—Liquidation and Labor Adjustment

One of two Mexican state-owned airlines, Aeromexico (Aeronaes de Mexico), had only 3 profitable years over the 30 years prior to its privatization, and the government had thought that it would be unable to sell the money-loser. But when 7,250 of the airlines ground workers went out on strike in early 1988, the government seized the opportunity to exit. It declared the company bankrupt, terminated all labor contracts, and sold the company as an asset sale. Compensation to workers was paid by Aeronaes, and it was the creditors of Aeronaes who effectively bore the cost of severance because on average they received only about 70 percent of their claims against the company. Tandon (1995) has suggested that some of the better post-privatization performance of Aeromexico compared with that of the other state-owned airline (Mexicana) arose from labor adjustment issues—specifically:

- Mexicana had been unable to match Aeromexico’s aggressive campaign to improve service quality (which some observers felt reflected Mexicana’s inability to deal with the unreformed labor unions).
- The investors in Mexicana had needed to fund severance costs themselves—over 100 billion (old) pesos in 1992 alone.

Source: Tandon 1995.

Table 4.3: Advantages and Disadvantages of Early Retirement, Voluntary Departure, and Compulsory Redundancy

Early retirement	Voluntary departure	Compulsory redundancy
<p>Advantages</p> <ul style="list-style-type: none"> • Reduces immediate costs, particularly if pensions are deferred • May be the most acceptable option for workers or unions, particularly if the pension scheme is a defined-benefit plan • Shifts financing problems to pension fund or future governments (an “advantage” for today’s government, but one that creates a long-term fiscal liability) <p>Disadvantages</p> <ul style="list-style-type: none"> • Produces uncertain longer-term financial costs for government because returns from government pension funds are uncertain • May lead to loss of the most skilled or experienced workers if early retirement lowers the retirement age • Pension funds may be unwilling or unable to provide early retirement benefits quickly because of problems of administrative capacity or lack of liquidity • A substantial increase in pensioners might tip the pension plan into a financially unsustainable position • Government’s options may be limited by the terms of pension fund rules. • May need negotiation with pension fund trustees or the supervisory board, and so there is potential for delay in the PPI transaction 	<p>Advantages</p> <ul style="list-style-type: none"> • Makes a clean break with employees—no continuing government commitments • Can be structured as a one-time payment with predictable financial costs (and usually a quick payback) • Is relatively simple to negotiate and implement • Gives the implementing agency and government flexibility in designing the package • Is a bilateral contract with employees that often avoids both the legislative procedures and collective bargaining agreement relating to compulsory redundancy • Is politically acceptable because it is voluntary • Permits the government to require that anyone selecting voluntary departure agrees not to work again for the public sector, or for the PPI enterprise, and so reduces the “revolving-door” problem. <p>Disadvantages</p> <ul style="list-style-type: none"> • Has high immediate costs, especially because these plans tend to be generous • Demands that particular care be given to the selection process; generous plans can lead to a rapid exodus of the best workers 	<p>Advantages</p> <ul style="list-style-type: none"> • Makes a clean break with employees—no continuing government commitments • Can be structured as a one-time payment with predictable financial costs (and usually a quick payback) • Is likely to be the lowest-cost option if the statutory minimum payment is made to workers • Produces few adverse selection problems; workers will be selected for compulsory redundancy <p>Disadvantages</p> <ul style="list-style-type: none"> • Is the most politically difficult to implement • Needs a formal and strictly implemented process if it is to be seen as a fair and unbiased process • May have to comply with any collective bargaining agreements with trade unions on which processes to follow in the case of compulsory redundancy • Consultation and negotiation process can lead to long delays • Legislation may prevent the implementing agency from imposing a no-rehiring clause on compulsory retrenched workers, thereby opening a “revolving door”

early task for the implementing agency is to review the legal framework for dealing with labor issues (summarized in table 4.4), so that:

- Strategies and options can be designed within the legal framework.
- The need for any new legislation or amendments is recognized early.
- Labor issues can be appropriately sequenced with or incorporated into other legislation needed for the PPI arrangement.
- Legal issues do not delay PPI.

Any changes in labor laws need to be appropriately sequenced with wider legislative change in support of PPI. In Mexico's rail privatization, for example, constitutional and legislative changes to permit private participation preceded guidelines on labor relations (box 4.10).

The legal review may suggest that labor laws and contracts need to be amended as in the following examples:

- The Algerian government enacted significant changes to its legislation on redundancy and severance in the mid-1990s. It implemented a package of severance pay plus a new unemployment insurance plan that spread the costs of redundancy over time. The legal requirement for union approval of layoffs was eliminated (Ruppert 1999).
- In Tanzania arrangements for the transfer of the labor force were included in new railway legislation that provided for overall sector restructuring, private participation, and establishment of an independent regulator for the sector.
- New laws to enable modernization and restructuring of the ports sectors, which included changes to the work force rights, were adopted in Brazil and Mexico.
- In Argentina, the PPI program was enacted entirely through presidential decrees, but a range of international standards, national laws, and collective bargaining agreements

had to be amended for dealing with labor adjustment (box 4.11).

Laws and regulations relating to the continuity of workers' rights and benefits will also require attention. The terms and conditions of employment in some PPI enterprises are relatively high compared with those in other private sector or public sector employment. Continuation of those terms and conditions can therefore be an important issue in the PPI process. Many privatization laws are silent on labor issues and workers' rights, and effectively give freedom to the new owners to negotiate work force numbers as well as terms and conditions within the limits provided by the general labor code. Sometimes, however, workers' rights are protected as part of the privatization legislation. For example:

- In Turkmenistan the privatization law ensures that transferred workers have the same rights as other workers to participate in employee ownership (box 4.12).
- In Malaysia new private owners are not allowed to modify the employees' terms of service for a period of five years following privatization, including redundancy of the employee.
- Nepal's Privatization Act (1994) provided for continuity of employment and of the terms of employment for workers transferred to the private sector. In practice this has been adopted in all privatizations in Nepal.
- In Tanzania new sector-specific legislation associated with the restructuring and concessioning of the railway provided for the transfer of staff and for their rights when the state corporation was restructured into a company. The article provides for:
 - Continuity of terms and conditions
 - Continuity of service period, which was deemed to be continuous from first employment in the corporation to end of service in the company.
 - Continuity of pension contributions in cases in which the pension plan was

Table 4.4: Labor Issues Legal Framework

Legal instrument	Features
National constitution	<ul style="list-style-type: none"> • As well as providing the framework within which laws are made, changed, and interpreted, some national constitutions also contain specific provisions relevant to labor issues in PPI. For example, the South African Constitution guarantees the rights to form, join, and participate in labor unions and to collective bargaining.
Primary law	<ul style="list-style-type: none"> • In some cases PPI itself will require change to primary legislation; and other legislation might also cover the way in which PPI would be carried out, especially in relation to employment rights. • Relevant laws can include not only those relating directly to employment, such as a labor code, but also those relating to public service provision and regulation, health and safety protection, and civil rights in such areas as nondiscrimination against women and minorities. • In some jurisdictions, to a degree dependent on constitutional arrangements in the country concerned, laws and rules made at the subnational level by provincial authorities and even at the municipal level are as important as national laws.
Secondary laws, regulations	<ul style="list-style-type: none"> • In some cases governments have been able to develop PPI programs through decrees or other instruments of secondary legislation, normally (depending on the constitution) using powers provided under primary legislation, and these instruments can apply to labor issues. • Regulatory arrangements—the powers handed by government to regulators whose independence might be safeguarded by law—can have direct and indirect effects on labor issues in PPI.
Commercial contracts	<ul style="list-style-type: none"> • Existing contracts with suppliers, intermediaries, or others might have implications for PPI plan employment and the structure of PPI bidding documents. • Some contractual arrangements with workers, such as those enshrined in pension fund rules, can also have implications for labor and can either determine parameters within which change takes place or require revision.
Labor contracts and agreements	<ul style="list-style-type: none"> • The scope and legal status of labor agreements will vary in accordance with the statutory framework in which they exist. At the very least they are likely to cover the processes and consultative mechanisms by which agreements are renegotiated, should that be necessary. • Some might be underpinned in a labor code, for example, whereas others might be based on general contract law. • The precise form of legal instruments defining relations with labor and management vary—memoranda of understanding, collective bargaining agreements, and management agreements are among the forms—and each might require distinct procedures of review and revision.
International agreements	<ul style="list-style-type: none"> • Several ILO conventions and recommendations are relevant to PPI. Particularly noteworthy are those relating to the termination of employment (Convention 158), and the ILO's "core labor standards" that now have the support of a wide consensus of international institutions and governments. • In some sectors, such as airways, there are also international standards affecting terms of employment, so pilots, for example, do not work excessive numbers of hours that are incompatible with safety. • International institutions and trade and investment agreements—such as those of the World Trade Organization, the European Union, and the North American Free Trade Agreement—also significantly affect the legal environment. There may be both direct impacts (where such agreements have social and labor clauses) and indirect impacts (where agreements on, say, procurement have implications for employment conditions and criteria in PPI bidding documents).
Informal instruments	<ul style="list-style-type: none"> • Government policy statements on labor, PPI, or privatization are relevant because government agencies will usually want to comply with those policies. • Protocols and even "soft" legal instruments, such as codes of practice, can be significant. They require compliance or change and the procedures associated with them are typically underwritten in more formal legislation, meaning that due process is not just an ethical but potentially also a legal matter. • "Custom and practice" or precedent can also have legal force because acquired rights can result and failure to observe precedent can be open to judicial challenge as being unfair or discriminatory. • Informal instruments can operate at every level from the workplace to the international scene. An example of the latter is the Organisation for Economic Co-operation and Development's guidelines for multinationals (OECD 2002).

Box 4.10: Mexico Rail—How the Legal Framework Changed

Mexico’s railway privatization required changes in the legal framework from the Constitution to various regulations, several of which affected the treatment of labor in the course of restructuring and PPI.

The first step in the railway restructuring strategy was a presidential proposal and approval by Congress to modify the constitutional mandate that declared a state monopoly in railroad transportation. The next step, taken in April 1995, was to create by presidential decree a Comisión Intersecretarial de Desincorporación to be responsible for the privatization project. In May 1995 the Regulatory Law of the Railroad Service was published to establish the basic regulatory framework. It defined the mechanisms and rules for awarding the concessions, the concession period (50 years), and the regulatory framework. The law restricted foreign participation in the rail concession companies to 49 percent, but did not include any requirement to transfer the existing

rail work force to the new businesses. It did, however, include a commitment to training the workers who remained in the company. In June 1995 a restructuring committee was set up to oversee the railway privatization.

In November 1995 the government issued guidelines that acknowledged the important historical role of the labor union and the workers and committed the government to respect all of their labor rights. The guidelines set out the general approach to dealing with personnel issues, but its only firm requirement binding on the concessionaires indefinitely concerned the licensing of locomotive drivers (laying down the qualifications required of drivers, their training, and examinations to which they would be subject). In addition there was a major renegotiation of the labor contract which was streamlined from 3,045 clauses to just 211. More than 1,800 clauses were eliminated and the rest introduced into bylaws

Source: Lopez-Calva 2001.

Box 4.11: Argentina—International Standards, National Laws, and Labor Contracts

When Argentina privatized air and rail transport, it was necessary to change some laws to amend contracts of employment. For example, pilots, flight engineers, and cabin staff were not merely covered by the general minimum conditions of employment applicable in the public sector under the Labor Contracts Act, but also by provisions originally enacted for the Argentine Air Force concerning flight safety. Those flight safety regulations imposed limits on operating hours and guaranteed rest breaks aboard aircraft and on the ground, depending on the type of aircraft. A decree of 1994 introduced greater “flexibility” into conditions of work and employment and in this respect went along with the general trend toward reducing minimum legal standards, but maintained compliance

with international standards established by the International Civil Aviation Organization. In the case of rail, collective agreements were concluded between workers’ unions and the concession companies, but the air companies were more reluctant about collective bargaining and they implemented changes with little negotiation.

In both sectors, however, the outcomes were contractual changes to enable management to deploy workers more flexibly, both by extending permitted working hours and by getting rid of restrictive practices that limited the work that could be done by particular grades of workers (except insofar as international standards required tight specification, as with pilots and flight engineers).

Source: Coradetti 1999.

transferred to the company from the corporation.

The legal assessment (see terms of reference for a legal review on the accompanying CD-ROM) should determine whether existing rights will be protected as an acquired right for a particular PPI arrangement. In some cases this may require legal interpretation. In civil-law countries the specific

enterprise law, the labor code, the commercial code, and administrative law (government law) may have to be reviewed and a judgment may be required if there are inconsistencies among them. In common-law countries the circumstances in which such rules apply can evolve through case law. This has happened in the European Union, where litigation by unions established that

Box 4.12: Turkmenistan—Privatization and Employment Rights

The Law on Privatization of Property in Turkmenistan includes a section dedicated to “Guarantees for Personnel of Enterprises Stated for Destatization and Privatization,” which not only requires collective bargaining but also establishes certain property rights for employees in the enterprise. It provides that:

1. The labor relations between the personnel of enterprises who have undergone destatization and privatization and the new owners of the enterprises will be regulated by existing labor laws of Turkmenistan with consideration for the provisions of this section. The new owner will negotiate a new collective contract with the trade-union organizations at the enterprise within six months after the transfer of ownership rights. Until this contract has been signed, all of the provisions of the earlier collective agreement must be observed.
2. The collective contract will be negotiated at all enterprises and acquire the rights of a legal entity, regardless of the form of ownership. The placement of released personnel in new jobs and other social guarantees will be secured in accord with the employment laws of Turkmenistan.

acquired rights had to be transferred in the event of contracting out as well as mergers and acquisitions.



The CD-ROM that accompanies this Toolkit contains:

- Terms of reference
- Legal checklist
- Terms of reference for a review of labor laws as a basis for engaging a legal specialist or consultant to undertake the legal review
- A legal checklist and notes, which further elaborates on the range of laws, agreements, and conventions that may need to be checked.

Employee Status Prior to PPI

During their preparation for PPI, infrastructure organizations are often subject to fundamental

institutional changes that affect the status of employees, as described in table 4.5. A typical first change is when a departmental enterprise is transformed into a state-owned corporation, often through a specific act. Workers cease to be civil servants but remain public sector employees.

Although there are usually greater freedoms than in the civil service, benefits and human resources policies often remain linked to those of the civil service and there is only limited delegation of employment policies to the corporation. Another change is the legal transformation (corporatization) of a statutory corporation to a joint stock company in which the government’s role changes to that of a shareholder and the company is governed by the laws regulating private companies. Although human resources policies still retain public sector characteristics, labor contracts and pay structures become more flexible, with greater autonomy at the enterprise level. The major change in PPI is the move from public to private ownership where workers cease to be public sector employees.

New Zealand rail is a good illustration of an infrastructure company in which the institutional organization has changed over time, paralleled by changes in employee status (box 4.13).

These changes are important for the PPI process. It will be clear to most parties that corporatization in particular is a possible preparation for private participation. Any changes in employee status, pay, benefits, and conditions that are agreed to as part of the broader institutional change while the enterprise is still publicly owned are likely to be preserved throughout the process to PPI. Trade unions are aware of this, and the implementing agency should be prepared to face tough negotiations and industrial action prior to PPI itself. Two examples from the telecommunications sector are summarized in box 4.14.

Employment Protection in the Bidding Process

Two questions that frequently arise are whether to include employment conditions in PPI bids, and what types of conditions should be included.

Employees’ status, benefits, and employment contracts change as the legal basis of the PPI organization changes from departmental enterprise, public corporation, joint stock company, and then into a private company.

Table 4.5: Institutional Reorganization and Changes in Employee Status

Type of PPI entity	Departmental enterprise	State-owned corporation	State-owned company (wholly owned)	Private company
Relevant institutional legislation	Civil service regulations or civil service law	Act of parliament establishing statutory corporation	Joint stock company with 100 percent of shares owned by the state; subject to normal company laws and corporate code (including bankruptcy)	Joint stock company; subject to normal company laws and corporate code (including bankruptcy)
Employee status	Civil servant	Public sector employee	Public sector employee	Private employee

Change of employee status and terms and conditions will require negotiation with trade unions and workers' representatives.

Should the PPI bidding process include employment guarantees by the investor, and should the evaluation of the winning bidder take into account labor-related criteria, such as the bidder's proposals for future work force restructuring?

The implementing agency can choose to set no employment criteria or conditions in the bidding documents, giving maximum flexibility to the private partner to manage labor issues. Alternatively, employment criteria or conditions can be included in the bidding process to protect employment and workers' rights, as in the following examples:

- Including labor requirements as part of *bid evaluation criteria*, such as the number of employees to be retained. Investor selection will then be based, in part, on bidders' response to those criteria.
- Imposing mandatory and specific *labor conditions* that must be complied with in the proposals submitted by all prospective bidders. Labor conditions may include obligations on:
 - Periods of guaranteed employment, where investors promise to maintain overall staffing at a certain minimum level for a defined period.
 - Implementation of redundancy programs. Normally these take the form of “no compulsory redundancies for x

years.” For example, in Benin there was a standard “five-year no layoff” clause in privatization contracts (Campbell-White and Bhatia 1998). There are normally no restrictions on investors offering a program of voluntary departure.

- The minimum severance benefits that workers can receive if there are compulsory redundancies or voluntary departures following PPI.
- Continuity of terms and conditions of service, which require the investor to provide the same or better levels.
- Workers' right to participate in share ownership programs (module 5).

Bid conditions are usually more transparent than evaluation criteria. But although conditions and criteria are attractive from a political and social standpoint, the implementing agency often will recognize that they are not appropriate for the following reasons:

- **Practicality and feasibility of enforcement:** If government is unable to enforce bid conditions or investor compliance with promised approaches to labor management, conditions or criteria are ineffective tools. In Mozambique and Zambia, for example, labor guarantees at privatization were not kept (Campbell-White and Bhatia 1998).

Box 4.13: New Zealand Rail—Changes in Worker Status

The status of workers in the New Zealand rail sector has changed several times. In 1982 New Zealand Rail was converted from a departmental enterprise where workers had civil servant status to a statutory corporation (New Zealand Rail Corporation [NZRC]) where workers were public servants. Subsequently the entity was again changed when it was converted from a statutory corporation in 1990 to a public limited liability company (where staff continued to be public servants). Finally, in 1993 New Zealand Rail Ltd. shares were sold to private interests. The employees' status then changed from public sector employee to private sector employee.

There also were changes in the labor contracts. Until 1986 employees of NZRC continued to be guided by the central civil service conditions of employment. In 1987 NZRC came under the legislation applicable to SOEs that made NZRC independently responsible for bargaining over its own labor relations contract. The key changes were:

- Simplification of the collective labor-government agreement and removal of artificial distinctions among job categories
- Removal of the state service seniority and appeals system for the appointments and promotions process
- Removal of senior management from the collective bargaining agreements to individ-

ual contracts with incentive-based performance measures

- Simplification of the allowance structure and an increase in the base pay to absorb some of the allowances as well as the introduction of incentive-based compensation to most of the white-collar employees.

Nevertheless the contract as a public servant up to 1992 still retained many aspects of the state sector model in respect to hours of work, overtime payments, and penalty payments. Following privatization in 1993, however, under the Employment Contract Act, New Zealand Rail Ltd. as a privately owned company was able to make further changes to the labor contract:

- More flexible working hours, including overtime after 80 hours each fortnight instead of after eight hours per day
- Fewer penalties on work outside the conventional eight-hour day Monday to Friday
- Change from one collective contract to five contracts
- No weekend or night work penalty payments for new employees.

A lump-sum payment was also made to those workers who lost out from the changes to the overtime, penalty, and allowance payments.

Source: Kopicki and Thompson 1995.

Although the preparation of bidding documents is an activity late in the PPI process, it is essential to consider bidding conditions in a strategic way at an early stage.

- **Suitability of employment guarantees:** Employment guarantees work where surplus levels are modest and in high-growth sectors where excess labor can be absorbed through attrition and expansion. But they may not be a solution for public services or enterprises with severe overstaffing.
- **Impact on transparency of the bid selection process:** The more complex the technical evaluation criteria, the greater the chance that the scoring is subjective and nontransparent. In Argentina, initial experiences with rail concessions led to dropping the labor criterion from the technical evaluation in later rounds (box 4.15).
- **Difficulty of comparing bids** when bidders submit different labor treatment plans, as

the United States wastewater example illustrates (box 4.15).

The following guidelines on the use of labor criteria and conditions in the bidding process help address the tradeoffs between political/social desirability and efficiency:

- Use labor conditions rather than labor criteria because conditions are more transparent, and allow like-for-like comparison of bids. Variant (alternative) proposals are still possible, which means that innovative proposals still may be captured.
- Set reasonable conditions so that they do not hinder flexibility. For example, provide transitional employment guarantees rather than longer-term ones, avoid prohibiting voluntary retirements, and specify condi-

Allowing bidders to submit alternative ideas on the treatment of labor makes it difficult to compare like with like.

Box 4.14: Telecommunications—Institutional Structures and Labor Adjustment

France Telecom—Preprivatization Institutional Changes

Before 1991 France Telecom was a central government, autonomous, public law enterprise. In preparation for privatization, France Telecom had to be transformed to a joint stock company.

The change of status from a civil servant of France Telecom to an employee under the general labor code regime and the fear of layoffs related to privatization became stumbling blocks to the privatization, resulting in strong opposition and a number of union strikes. The government had to enter into negotiation with the unions, and at each stage of the negotiation additional concessions were made, including guaranteeing the benefits of civil service status and a commitment that the company would remain 51 percent state owned.

India Telecom—Labor Challenge to Corporatization

In 1999 the departmental enterprise providing telecommunications services in India, the Department of Telecom Services (DTS), was prepared for corporatization. The corporatization of DTS was strongly and consistently opposed by the officers and workers of DTS (about 360,000 total). A nationwide strike took place in September 2000. The strike’s impact was widespread: It received strong media coverage and drew support from other central government unions. It disrupted telecom services severely

throughout India for nearly a week—all telephone lines, cellular, mobile, and Internet services countrywide, and all manually operated telephone and telegraph services were affected.

The strike was ended with the government having remained firm on the need for restructuring of the sector and the need to privatize. In October 2000 DTS was corporatized and converted to Bharat Sanchar Nigam Limited (BSNL), a new wholly state-owned company registered under the Companies Act.

However, several concessions had been made to unions and workers, the most important of which were:

- Maintenance of the staff’s long-term pension benefits, which government guaranteed to meet from a consolidated central fund (although this funding mechanism was subsequently disputed)
- Maintenance of all terms and conditions and staff benefits
- Regularization of about 8,000 quasi-permanent and temporary staff, including providing them with pension benefits
- An immediate salary increase of 1,000 rupees per worker, plus recognition of improved pay scales and increments
- Free telephone connection for all employees, plus reduced call costs.

Sources: Guislain 1997; Adam Smith Institute, unpublished data.

tions that are likely to enhance value and performance, such as minimum annual investments in training.

- If setting labor criteria for bid evaluation, define the rules clearly—both to bidders and evaluators—to make the evaluation process as objective as possible and to avoid manipulation (for example, by counting part-time workers as full-time ones), and ensure transparency in publishing the results.

restructuring should take place, taking into account circumstances at both the country and enterprise levels.

 **Tools (on the CD-ROM)**

Terms of reference for a legal review

Labor law checklist and notes

Note on employee share ownership programs in PPI.

STRATEGIES—A DECISION TREE

Figure 4.3 provides a decision tree to help implementing agencies develop the overall strategy for labor restructuring and assess when and how labor



Additional Material (on the CD-ROM)

Clarke, George. 2001. “Thirsting for Efficiency.” Paper presented at the Regional Conference on the

The decision tree helps guide implementing agencies through the strategic decisions for labor adjustment.

Box 4.15: Experiences of Using Labor Factors in PPI Bidding

Argentina Rail

In the mid-1990s the government of Argentina restructured its railway into separate freight and passenger train networks, which were concessioned. The six freight concessions were issued first, and the bidding mechanism reflected both political compromises on employment and investment requirements. Bids for the freight networks were evaluated on the net present value (NPV) of the *canon* (annual concession fee) to be paid to the government, as well as on staffing levels, the quality of the business and investment plans, the proposed track access fee for intercity trains, and the share of Argentine interest in the consortium. The bidding process for freight concessions was perceived to be too complex and lacked transparency, however. The bid evaluation criteria were simplified in the subsequent issuing of passenger concessions. Those bidding documents defined the minimum services to be provided and a capital investment program, and bidding was based on the lowest level of government payment. Other criteria, including labor, were dropped.

United States—Municipal Wastewater Treatment

In 1996, intending to privatize its wastewater treatment service, the city of Buffalo, New York, invited proposals from three bidders and required them to set out what they would do with the existing labor force if they won the concession. Each company made a different offer.

One stated that the company “is committed to employing existing staff and making significant investment in the greater advancement of each of its team members.” The company also undertook to extend the one-year no-layoffs pledge required by the city to five years, improving productivity instead through “our innovative approach to providing service level enhancements, and through ‘insourcing’ of minor capital

improvements work, major corrective repairs and other services currently ‘outsourced’ by the board.” In addition the company proposed to implement an extensive training program on process control, maintenance, safety, warehousing, purchasing, and cost control measures. They made no promises, however, about union recognition, bargaining rights, or maintenance of pay levels.

A second bidder also proposed a comprehensive program of employee training and development and promised to maintain employment and terms of employment at then-current levels throughout the period of their five-year plan as a result of a planned extensive meter installation program. While promising to meet all the financial costs of these commitments, the company’s submission declared its assumption that all employees with more than 25 years of service, and therefore able to retire under the terms of the municipality’s pension arrangements, would be enabled to take early retirement.

The third submission anticipated retrenchments, stating that it would seek to eliminate “no layoff” language in existing labor contracts in the course of negotiating terms and conditions with the union, which it undertook to recognize as its workers’ bargaining agent. The company also said it would budget for a 3 percent pay increase, maintain medical payments for up to 18 months, provide training even for redundant employees, and offer other benefits.

In addition to the difficulties of comparing the bids, the city noted that the more commitments on employment made within the submission, the higher their proposed charge for the contract to the city, so that the city itself was faced with the cost of the tradeoff.

Sources: Thompson and Budin, 1997; documents provided by AFSCME, the U.S. public employees’ union.

Reform of the Water Supply and Sanitation Sector in Africa, “Enhancing Public-Private Partnership in the Context of the Africa Vision for Water (2025).” Kampala, Uganda.

Estache, Antonio, Jose Antonio Schmitt de Azevedo, and Evelyn Sydenstricker. 2000. “Labor Redundancy, Retraining, and Outplacement during

Privatization: The Experience of Brazil’s Federal Railway.” Policy Research Working Paper WPS2460. World Bank, Washington, D.C.

Rama, Martin. 1999. Public Sector Downsizing: An Introduction. *The World Bank Economic Review* 13(1):1–22.

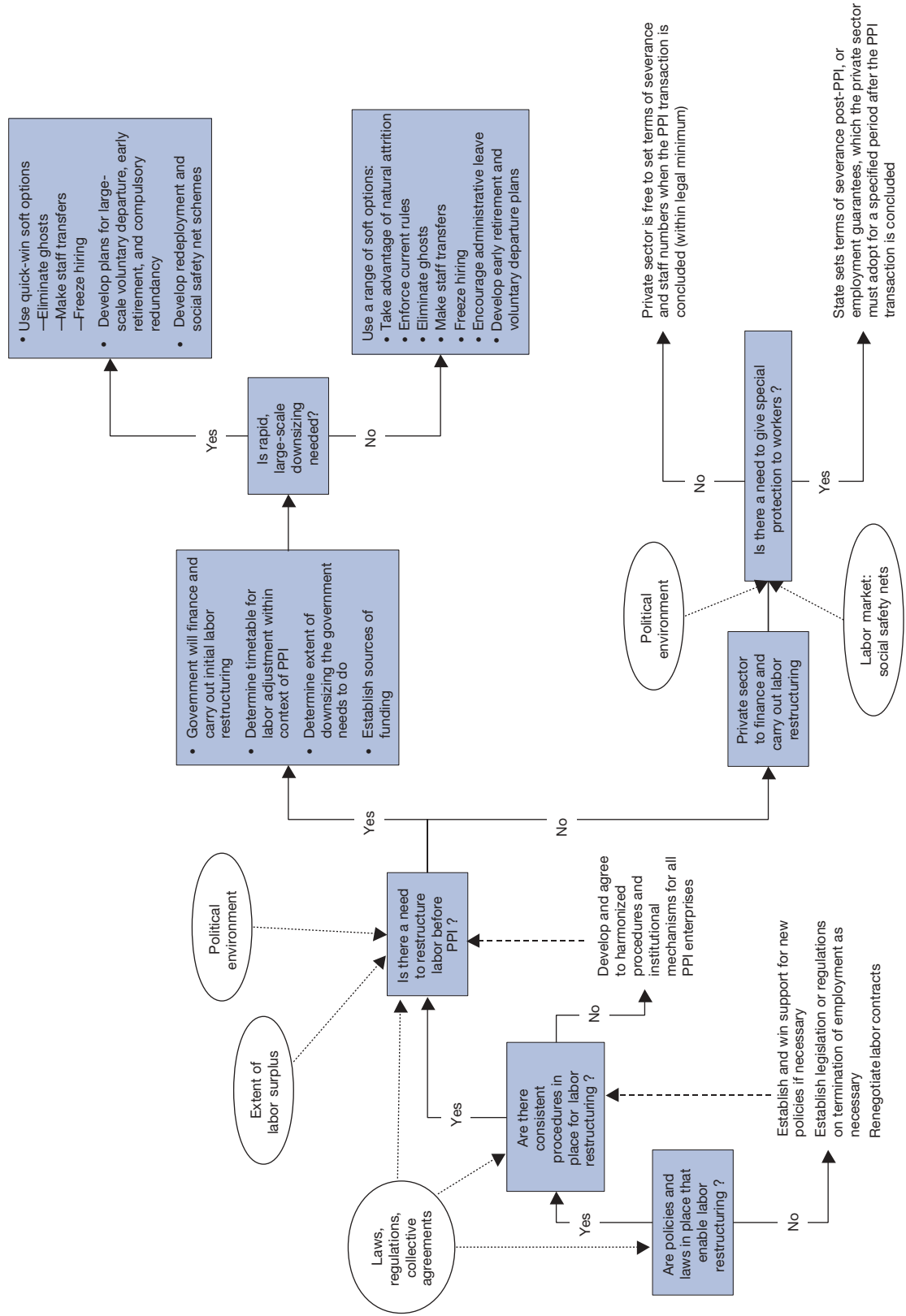


Figure 4.3: Strategic Choices in Labor Adjustment—A Decision Tree



Web Sites

ILO. 2000. "Termination of Employment Digest." Geneva: International Labour Office. (Available for download from the ILO web site: www.ilo.org. For a summary of national laws on statutory termination, see the following area on the ILO Web site: www.ilo.org/public/english/dialogue/ifpdial/publ/publ_emp.htm.)

ICFTU: www.icftu.org.

ILO ILOLEX: ilolex.ilo.ch:1567/english/index.htm. (Site provides access to ILO conventions.)

ILO NATLEX: natlex.ilo.org/natlexnewfaceE.htm. (Site provides access to 55,000 national laws on labor.)

World Bank "Shrinking Smartly": www.worldbank.org/research/projects/downsize/. (Site is a clearinghouse for researchers, development practitioners, and government officials concerned about the difficulties encountered in downsizing a large public sector. Several papers on downsizing strategies are available for download.)

PPIAF: www.ppiaf.org. (Site features other PPIAF resources and tool kits.)

Rapid Response: rru.worldbank.org.

World Bank Social Protection: www1.worldbank.org/sp/. (This site provides access to the online version of the World Bank Core Labor Standards Toolkit, labor markets pages.)



Other Material and Sources

Aeberhard, Jane Hodges. 2001. "Comparative Study of Contents of Civil Service Statutes." International Labour Office, Geneva. (Provides a commentary on different approaches to labor issues in civil service statutes worldwide, including termination of employment. Available for downloading at www.ilo.org.)

National Performance Review. 1997. *Serving the American Public: Best Practices in Downsizing*.

Washington, D.C. (This publication summarizes findings of a benchmarking study on best practices in downsizing in North American public and private sector institutions. See <http://safetyntnet.doleta.gov/comon/downsize.pdf>.)

OECD Guidelines for Multinationals Enterprises: Global Instruments for Corporate Responsibility. 2001 edition (see www.oecd.org). The OECD guidelines for multinational enterprises are recommendations on responsible business conduct addressed by governments to multinational enterprises operating in or from the countries that adhere to the Guidelines (the OECD members plus Argentina, Brazil, and Chile). The chapter on employment and industrial relations is one of the most detailed and comprehensive of the instrument, and deals with:

- Respect for core labor standards (freedom of association and collective bargaining, abolition of child and forced labor, nondiscrimination in employment and occupation)
- The preconditions for enabling effective negotiations and consultations between employers and employees and their representatives
- The provision of information to employees and their representatives
- The observation of adequate employment and industrial relations standards, particularly in the area of occupational safety and health
- Recruitment by enterprises of local personnel and provision of adequate levels of training to them
- Provision of reasonable notice to representatives of employees in cases of major changes in business operations
- Unfair influence on bona fide negotiations through transfers of operating units and/or employees to or from other countries
- The selection of management representatives endowed with the appropriate decisionmaking authority for collective negotiations.

