Labor Legislation Checklist and Notes

[This note elaborates on the range of national and international laws, contracts, conventions, agreements and voluntary codes that may impact on workforce restructuring within PPI. Not all will apply in every country, but this note provides a checklist and – where appropriate – an illustration of how the laws might impact on PPI.]

Labor Laws

A review of labor laws relevant to labor restructuring in PPI will need to look at all relevant aspects to analyze their implications for PPI. These typically include:

- The process and terms of dealing with redundant labor through retrenchments, retirement and other means, including minimum payments to workers on termination of employment
- The rights of workers in the event of transfers of undertakings and outsourcing
- Public and private pension arrangements, and their portability between employers
- Laws governing the rights and duties of employers and employees in relation to union recognition, negotiation and implementation of labor agreements and the lawful scope of industrial action, such as strikes and picketing
- Legislation covering unemployment insurance and other aspects of social security and regulation of joint welfare funds, pension funds and other such systems of workplace-social supports
- Regulatory arrangements for health and safety protection in the workplace
- Laws defining the parameters of terms and conditions of service, such as minimum wages and maximum working days and weeks
- Legislation providing for the rights of specific groups, such as women and ethnic minorities, who might otherwise suffer discrimination
- Procedures for and the roles of state agencies in relation to disputes resolution, including arbitration (binding and non-binding), conciliation and mediation
- Laws defining the rights of workers in 'atypical' or 'contingent' employment, including temporary, part-time and self-employed workers
- Statutory arrangements covering horizontal and vertical pay parities, such as 'equal pay for work of equal value'
- Civil service laws and regulations, which have significance for any change in employment status.

Other National Laws

Other national laws may be relevant too but less obviously so. For example, implementing agencies may need to be aware of the implications of legislation regulating such areas as public procurement and competition policy. Sometimes there can be tension between those laws and arrangements for dealing with surplus labor or setting labor conditions or criteria in bidding documents.

For example, some PPI transactions have helped groups of retrenched workers to set up small enterprises or cooperatives with a view to providing outsourced services back to the business from which they have been retrenched. In some cases, this has included guaranteed contracts for a specified period of time. National laws and regulations governing the competitive environment for public procurement might conflict with such arrangements (see Box below). As more countries sign up to international agreements on procurement, the greater the potential impact on such arrangements. In addition, many countries have national laws and regulations about public

procurement that will already apply, and so form part of the legal environment within which the implementing agency must operate.

PPI Labor, Procurement and International Agreements

The first international trade agreements to include procurement rules covering services were the North American Free Trade Agreement, concluded in 1992, and the WTO Agreement on Government Procurement (AGP), which was part of the Uruguay Round negotiations concluded in 1994.

The stated objectives of the AGP and NAFTA procurement rules are to prevent preferences for domestic suppliers and to ensure a transparent procurement process. National treatment and non-discrimination – core criteria of wider international agreements about trade in goods and services -- are the pillars of both agreements.

These agreements can also apply to PPI transactions. The rules are designed not only to prohibit deals intentionally at variance with those objectives but also to prevent indirect non-compliance through the technical design of contracts, their size or the way in which the tendering process is conducted. The rules apply only to contracts above a certain financial size, and parties to the agreement can also exempt specific service areas. For example, NAFTA's procurement rules do not apply to utilities or to some types of transportation services. Some other exemption criteria, such as local content and technology transfer, are not permitted, but many aspects of the application of the rules are still evolving and will continue to evolve through the disputes mechanisms built into the agreements.

For example, the South African government (not an AGP signatory or observer) has a 'targeted procurement' policy aimed at contributing to the delivery of its 'black economic empowerment' program. (The share of public contracts secured by black-owned businesses has grown from 2.5 percent in 1995 to 30 percent in 2000, according to government numbers.) As well as encouraging the growth of businesses owned by and employing black people, it has provisions for the employment of local people. Although favoring locally *based* businesses is not prohibited under AGP or NAFTA, favoring locally *owned* businesses, or those that discriminate in favor of local or black people in their *employment policies*, might be. It would be a matter of interpretation of the application of the various exemption clauses written into the agreements.

WTO members are not automatically covered by the AGP, but can opt into it or not. Of the 140 WTO members, 26 are signatories to the AGP, including the United States, Japan, Canada and the 15 members of the European Union. An additional seven countries were by the end of 2000 negotiating accession to the AGP, and 23 more have observer status on the WTO committee that oversees the AGP. Most of these prospective members are developing or 'transition' countries.
(Source: Unpublished paper by Public Services International, Geneva, 2002)

Enterprise-Level Labor Contracts

Changes associated with PPI often require amendments to enterprise-level labor contracts or collective agreements to enable new ways of working. Sometimes such contractual changes require prior legal changes, while in other cases they do not. That depends on the wider legal environment, and whether or not there are national agreements or laws covering all public sector workers, or those in particular sectors or enterprises.

Labor contracts cover a range of items that need to be part of the legal review. These include:

- Basic pay and overtime, unsocial hours, or in other circumstances, such as dirty or hazardous conditions
- Working time
- Entitlements to paid vacations, special leave, sick pay, and similar benefits
- Arrangements for dealing with individual and collective grievances
- Disputes resolution procedures, including arbitration and conciliation mechanisms
- Disciplinary procedures
- Job evaluation, grading structures and differentials in remuneration

- Pension arrangements and rights, including portability
- Procedures for outsourcing
- Productivity agreements and performance measurement arrangements
- Incentives and productivity bonuses such as gain sharing, profit-sharing and performance-related pay
- Union rights, including facilities for internal officials and rights of access for external officials, and boundaries (if any) between the organizing roles of different unions *vis-à-vis* different hierarchical and occupation groups.

Box: Hungary Power - Making and Keeping a Labor Agreement

Hungary's legal framework has been in transition not only because of its transition to democracy and market economy but also in preparation for accession to membership of the European Union. Workers rights are well established.

The Hungarian government launched a privatization program for parts of the country's electricity supply industry in 1994. It consulted the trade unions before and during the privatization process and, as a result, some protections for employees were built into the PPI contracts.

The unions raised a number of concerns about the impact of PPI on existing employees. Their most important concerns were loss of jobs; retraining and redeployment for displaced workers; a collective labor contract for the electricity industry; the future administration of social and welfare facilities in the industry; and opportunities for employees to buy shares.

During the PPI design stage, the unions felt they were not always being properly consulted and involved, and they threatened strike action on more than one occasion. International union organizations became involved in asking the Hungarian government to negotiate. In July 1995 the government reached agreement with the trade unions on all the issues that had been raised.

Among the specific terms of the agreement were that:

- A percentage (5%) of the money received for the shares would be used to create a fund for retraining and redeployment of any displaced workers
- Employment levels in the privatized companies would be protected
- The PPI investors would be contractually bound, as a condition of the privatization, to retain the collectively bargained labor contract.

A year into the PPI, the unions accused some of the companies of not observing the collective agreement on pay and conditions. In particular, the companies were accused of failing to honor the requirement that pay would be increased in line with the terms of inherited agreement. First RWE, and then Tractebel, said that they wanted to withdraw from the national agreement.

The Hungarian energy union appealed for support from international trade unions, especially in the home countries of multinational energy companies with whom they were in dispute. This resulted in extra pressure being brought to bear on these companies to observe the national agreement in Hungary. Following this domestic and international pressure, the companies did eventually implement the pay rises.

(Source: Labour and Social Dimensions of Privatization and Restructuring (public utilities: water, gas, electricity), Loretta de Luca (ed.), ILO, Geneva, 1998 – available for download on www.ilo.org)

In an environment experiencing rapid change, consistency is all the more difficult to accomplish but also all the more important, as both investors and workers lose confidence if laws are seen to be applied inconsistently or unfairly. Investors want to have a clear picture of the extent of risk they are taking on, and this too can limit the scope of implementing agencies to design agreements in ways that offer guarantees to a labor force switching from public to private employment.

ILO Standards and Conventions

The International Labour Organization (ILO) is the United Nations agency with special responsibility for employment issues and a focus on the social impacts of economic change. It was established in 1919 and its governance and organizational arrangements are tripartite, linking representatives of governments, employers, and employees in 'social partnership'. The ILO has 175 countries in membership.

The ILO has a range of instruments through which tripartite decisions are expressed and followed through. The most binding instruments are Conventions, which are sometimes backed up with Recommendations. In addition, the ILO holds tripartite meetings (or, in the case of government services, Joint Meetings, because the employer is the government) on specific subjects – such as privatization of utility services – and these sometimes issue Resolutions and almost invariably a set of agreed Conclusions.

Core Labor Standards and the Global Consensus

Core labor standards (CLS) are a set of four internationally recognized basic rights and principles at work, originally developed through ILO Conventions. The core labor standards are:

(1) Elimination of all forms of forced or compulsory labor;
(2) Effective abolition of child labor, with priority to the worst forms;
(3) Equal opportunity and non-discrimination in employment; and
(4) Freedom of association and the right to collective bargaining.

While there are many other labor standards covering a much broader range of issues, these four have achieved consensus internationally as the "core" standards. They are based on eight 'fundamental' ILO conventions.

Core labor standards do not establish a particular level of working conditions, wages, or health and safety standards to be applied internationally, and they are not intended to alter the comparative advantage of any country or impede trade. International support for the core standards reflects an understanding that they are applicable to all countries regardless of level of economic development and regardless of whether countries have ratified the particular Conventions that cover those areas.

These basic rights have been repeatedly articulated in international human rights instruments and declarations such as the *Universal Declaration of Human Rights* in 1948 and the Convention on the Rights of the Child 1989. The most prominent recent expression of these four principles as a set of core labor standards can be traced to the Declaration of the 1995 Copenhagen Summit on Social Development.

Core labor standards were further substantiated in the ILO's 1998 “Declaration on the Fundamental Principles and Rights at Work”, which calls upon each member to comply with the four principles, regardless of whether that State has ratified the relevant conventions. It also identified a role for international organizations such as the World Bank in promoting respect for core labor standards.

Source: World Bank Core Labor Standards Toolkit (see www.worldbank.org)

In addition, there are some ILO conventions with specific significance in the PPI context, as well as a body of resolutions and conclusions produced through special ILO meetings. For example, an ILO Joint Meeting on Decentralization and Privatization of Municipal Services held in October 2001 drew particular attention in its Conclusions to the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94), the Migrant Workers Recommendation, 1975 (No. 151) and the Continuity of Employment (Seafarers) Recommendation, 1976 (No. 154).

Conventions are binding on member countries once they have been ratified into national law.

Two ILO instruments relating to termination of employment at the initiative of the employer specifically address redundancy processes and procedures:

- ILO Convention 158 of 1982 on Termination of Employment (see Box below)
- ILO Recommendation 166 of 1982 on Termination of Employment.

At the time of writing, Convention 158 has been ratified by 31 countries including several developing countries (see Table below). Amongst other things, it provides for:

- No termination without a valid reason
- Protection against termination on non-valid grounds, such as union membership or office, ethnicity, gender, religion
- The employee's right of defense and appeal
- Entitlement to termination benefits in accordance with national law and practice
- Timely consultation.

Table: Countries Ratifying ILO Convention 158

Country	Ratification date	Status
Australia	26:02:93	ratified
Bosnia and Herzegovina	02:06:93	ratified
Brazil	05:01:95	denounced
Cameroon	13:05:88	ratified
Democratic Republic of the Congo	03:04:87	ratified
Cyprus	05:07:85	ratified
Ethiopia	28:01:91	ratified
Finland	30:06:92	ratified
France	16:03:89	ratified
Gabon	06:12:88	ratified
Latvia	25:08:94	ratified
Lesotho	14:06:2001	ratified
Luxembourg	21:03:2001	ratified
The former Yugoslav Republic of Macedonia	17:11:91	ratified
Malawi	01:10:86	ratified
Republic of Moldova	14:02:97	ratified
Morocco	07:10:93	ratified
Namibia	28:06:96	ratified
Niger	05:06:85	ratified
Papua New Guinea	02:06:2000	ratified
Portugal	27:11:95	ratified
Saint Lucia	06:12:2000	ratified
Slovenia	29:05:92	ratified
Spain	26:04:85	ratified
Sweden	20:06:83	ratified
Turkey	04:01:95	ratified
Uganda	18:07:90	ratified
Ukraine	16:05:94	ratified
Venezuela	06:05:85	ratified
Yemen	13:03:89	ratified
Yugoslavia	24:11:2000	ratified
Zambia	09:02:90	ratified

Source: ILO web site (see www.ilo.org for updates)

Box: ILO Instruments covering Termination of Employment

Of particular relevance to the implementing agency in countries that have ratified the Convention are Articles 13 and 14. These articles relate to the process to be adopted when termination is proposed for reasons of economic, technological, structural or similar nature, and require that the employer shall:

' … provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out' and '…give in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.' (Article 13)

' … notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out. (Article 14)

Trade and Labor Agreements

Some agreements covered by the jurisdiction of the World Trade Organization (WTO) and, to varying degrees, regional trade agreements can also form parts of the legal environment governing labor issues in the PPI context.

Implementing agencies need to check the terms of any such agreements to which their governments are signatories so that any relevant legal provisions can be taken into account. Mexico for example is subject to the North American Agreement on Labor Cooperation (see Box below) and any PPI schemes there must recognize collective bargaining and other rights.

The North American Agreement on Labor Cooperation

Before the North American Free Trade Agreement (NAFTA) was signed into law in 1993, its parties, Canada, Mexico and the USA, also reached a side agreement called the North American Agreement on Labor Cooperation (NAALC) with a view to promoting 'compliance with, and effective enforcement by each party of, its labor law'. The NAALC neither changed nor effected convergence of the three countries' labor laws, but does make each party accountable to the others for complying with and enforcing their own.

The NAALC outlines the *objectives*, *obligations* and *principles* of the accord.

The *objectives* include the improvement of working conditions and living standards and the encouragement of an exchange of information about labor laws and institutions in the three states.

The *obligations* range from the general and vague – to have "high labor standards," for example – to the more particular and specific. The latter include a requirement for each country to ensure access to "administrative, quasi-judicial, judicial or labor tribunals for the enforcement of labor law", and that the proceedings of such institutions are "fair, equitable and transparent". Any regulations, procedures and administrative rulings related to the accord must be publicised, and each country is also required to promote awareness of its domestic labor law.

The eleven *principles* written into the accord give expression not only to core labor standards but also go beyond them. They are ranked into three tiers. The most basic level, which allows for the least intervention, includes freedom of association and the right to organize, the right to bargain collectively, and the right to strike. The second level includes prohibition of forced labor, compensation in cases of occupational injuries and illnesses, protection of migrant labor, elimination of employment discrimination, and equal pay for men and women. The highest level includes labor protections for children and young persons, minimum employment standards like minimum wage, and prevention of occupational injuries and illnesses.

The accord is overseen by a Commission for Labor Cooperation, and it includes a procedure for dealing with issues arising from the accord, including complaints.

Voluntary Codes

In addition to legally binding agreements, companies are increasingly committing themselves to codes of practice in relation to labor matters. Many are signing up to practices that promote transparency, eradicate corruption and in a variety of other ways promote good practice in their internal and external relations. An example is the OECD Guidelines for Multinational Enterprises (see Box)

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries (the OECD members plus Argentina, Brazil and Chile).

They provide voluntary principles and standards for responsible business conduct, in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology.

The Guidelines are the only multilaterally labor endorsed and comprehensive code that governments are committed to promoting. The Guidelines' recommendations express the shared values of governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises, including those active in PPI. They aim to promote the positive contributions multinationals can make to economic, environmental and social progress.

Although observance of the Guidelines is voluntary, there are agreed processes and institutional arrangements to encourage their promotion and implementation, which are conducted through national contact points, the OECD Committee on International Investment and Multinational Enterprises and the business and labor advisory committees to the OECD, the Business and Industry Advisory Committee and the Trade Union Advisory Committee.

The Guidelines form one part of the OECD Declaration on International Investment and Multinational Enterprises, a broad political commitment adopted by the OECD Governments in 1976 to facilitate direct investment among OECD Members. They are underpinned by the principle that, rather than enforcing control, international agreement can help prevent misunderstandings and build an atmosphere of mutual confidence and predictability between business, labor and governments.

They are reviewed from time to time, and at the latest review, in 2000, recommendations were added relating to the elimination of child and forced labor. As a result, they now incorporate all internationally recognized fundamental principles and rights at work.

(Source: OECD web site. www1.oecd.org/daf/investment/guidelines/mnetext.htm)

There are cases where trade unions have charged that multinationals have not complied with OECD guidelines (for example in the Power sector in Georgia – see *ICFTU website news item, 28 June 2002 "Profit at all costs: Irish and Spanish multinational flout international standards in Georgia"* www.icftu.org).