1. “What are the consequences of privatization of public companies and, or public functions regarding the parties rights in labour relations?”

Possible consequences of privatisations may be large-scale layoffs, price increases and bankruptcies. Privatisation may also entail changes in corporation, commercial and employee-employer relationship law.

As a result of this labour relations may undergo strain during and prior to privatisations. Workers may be concerned to ensure that the new owner will maintain rights and privileges guaranteed by previous collective agreements. As cooperation of the workers is usually necessary for privatisations, often guarantees are given to workers that their collective agreements will be respected. Should these guarantees be subsequently breached workers may be able to sue for breach of contract.

The European Communities (Protection of Employees on Transfer of Undertakings) Regulation 2003 aims to protect the contractual rights of workers in respect of their employment should the business or part thereof be transferred to another employer.

The Regulations provide that the rights and obligations of the original employer arising from an employment contract existing at the date of the transfer shall, by reason of such transfer, be transferred to the new employer. A worker may not be dismissed by reason of the transfer of an undertaking but a dismissal for ‘economic technical or organisational reasons entailing changes in the workforce’ is permissible.

The new employer must also continue to observe the terms and conditions agreed in any collective agreement until that collective agreement expires, terminates or is replaced by another collective agreement. Therefore the position of the worker’s representatives is protected across a transfer.

2. “What are the consequences of the change of legal structures of a private enterprise regarding the parties’ rights in labour relations?”

This question raises similar issues to those discussed above. When changing the legal structure of a private enterprise the rights and duties of the worker may not be altered dramatically without his or her consent. Should the business be transferred to a new employer the 2003 Regulations are applicable.
3. “Are public entities in your Country, or public functions within then, facing a phenomenon of privatisations? Is it possible to quantify it? Did the legislator in your country provide for any kind of legal restriction?”

There has been a significant programme of privatisation implemented in recent years in Ireland, which has witnessed a number of state owned enterprises being transferred to private ownership. Primarily this development took place from the early 1990s and was partly due to the presence of the pro-privatisation Progressive Democrats as the minor party in the new coalition government formed in 1989. The most high profile privatisation in recent times has been privatisation of Eircom, the state owned telecommunications company, in July 1999. So far Irish privatisation has been generally confined to the state bodies, although there is an increasing move right across the public sector to contract out work such as security, catering and cleaning. It is currently planned to privatise Aer Lingus (the state owned airline). As to quantification, there have been roughly 10 privatisations of State-Owned Enterprises since 1991.

Legal restrictions relating to privatisation are mainly those contained in the Companies Act (see below) and the 2003 Regulations.

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

Companies in Ireland for gain and of over 20 members are registered under the Companies Acts 1963 to 1999. Any change in the legal structures of public or private companies in Ireland must be in accordance with the rules laid down in these acts.

As mentioned above the European Communities (Protection of Employees on Transfer of Undertakings) Regulation 2003 will apply should the change in legal structure mean that some or all of the business is transferred to another employer.

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

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

If the change in the legal structure of the company results in a transfer to another employer of the business, the 2003 Regulations apply. Both the original and new employer are obliged to inform their respective worker’s representatives of the date, reasons and legal, social and economic implications of the transfer. This must be undertaken at least 30 days before the transfer date. Discussions must also take place with the worker’s representatives ‘with a view to reaching an agreement’ about the details of any proposed measures concerning the workers. If there are no representatives the employers must arrange for the workers to choose a representative.
- “What are the legal mechanisms that assure in your country the maintenance of worker’s rights, especially those granted by collective agreements, face to the criteria of maximum profitability pursued with such type of structural changes?”

In line with the Transfer of Undertakings Regulations 2003, the transferee must continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement. This is the case until the date of termination, expiry, or the entry into force of another collective agreement.

- What are the consequences that must be faced by a worker who refuses to work for the “new employer”?

If there is a change in ownership and the worker’s job and title remain the exact same than there is no redundancy situation. The 2003 regulations provide that the rights and obligations of the original owner arising from the worker’s contract of employment at the date of the transfer shall be transferred to the new owner. Therefore should the worker refuse to work for the “new employer” this is treated as a refusal to work for the original employer, with the same consequences.

As a general rule, where the terms and conditions offered are different from those of the existing job, the offer must be of "suitable employment" for that worker. If the transfer involves a substantial change in working conditions to the worker’s detriment, the new employer is regarded as having been responsible for the termination of the employment. If the new employer carries out a complete re-organisation, effectively changing the working conditions of the workers, then there can be a redundancy situation.

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

The 2003 Regulations puts in place a complaints procedure should the worker feel that the employer has breached his obligations to him or her under the Regulations. The worker may, within 6 months of the alleged breach, take a complaint to a Rights Commissioner. Decisions of the Rights Commissioner may be appealed within 6 weeks to the Employment Appeals Tribunal. Decisions of both these bodies are enforceable in the Circuit Court.

The principal law dealing with trade disputes in Ireland is the Industrial Relations Act. This act covers ‘any dispute between employers and workers which is connected with the employment or non-employment or the terms or conditions of or affecting the employment of any person’. Therefore if the structural changes concern the employment of personnel, collective action may permissibly be undertaken though only in accordance with this act. This act restrains the use of collective action by setting down pre-conditions to lawful industrial action. If these pre-conditions are complied with, personnel
benefit from certain immunities if their actions are undertaken ‘in contemplation or furtherance of a trade dispute’.