Fourth Study Commission
Public and Social Law

QUESTIONNAIRE

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

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

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

Some "special public corporations," a kind of public companies in Japan, have gone through privatization. However, we have no data for quantification. Privatization is usually carried out in accordance with laws applicable to relevant corporations.

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

We have no general rules concerning changes in legal structures of public or private companies. Major changes in legal structures of joint stock corporations and companies with limited responsibility include mergers, transfers of business, and demergers.

3. In the affirmative, please describe the conditions for the application of such rules and their consequences in the relationships between the employer and the workers.
   - Precise in detail the obligations to be met by the employer before or at the moment when a change in the legal structure of his company occurs.
- Which are the legal mechanisms that assure in your country the maintenance of workers' rights, especially those granted by collective agreements, face to the criteria of maximum profitability pursued with such type of structural changes?
- Which are the consequences that must be faced by a worker who refuses to work for the "new employer"?
- Did your country restrain the personnel's right to use collective actions against a structural change?

(1) In the case of a merger, the merged company succeeds to the labor contracts and collective agreements concluded between the former companies and their workers. However, workers who refuse to conclude labor contracts with the merged company have no choice but to leave the company.

(2) In the case of a transfer of business, in principle, the transferee company does not succeed to the labor contracts between the transferor company and its workers, nor does it succeed to the working conditions and collective agreements.

(3) In cases mentioned in (1) and (2) above, with respect to the relationship between a change in legal structure and collective actions, it is generally said that if the change of legal structures affects the working conditions or employment, the employer is generally obliged to respond to collective bargaining and workers have a legitimate right to use collective actions.

(4) The "Law Concerning the Succession of Labor Contracts, etc. upon the Divisive Reorganization of Company" provides for the handling of labor contracts upon demerger. The outline of the law is as follows.
(a) The company may, having prepared a demerger plan, divide the whole or part of its business and have part of the business succeeded to by the new company to be incorporated upon the demerger. In this case, the company to be incorporated upon the demerger shall, in principle, succeed to the labor contracts of workers who are mainly engaged in the business to be transferred to the company to be incorporated upon the demerger.
(b) The company shall make efforts to hold prior consultation with the labor union or the person representative of the majority of workers about issues concerning the demerger in order to gain understanding and cooperation from workers. The company shall also consult with individual workers about whether or not to cause the company to be incorporated upon the demerger to
succeed to their labor contracts.

(c) Between the company to be incorporated upon the demerger and the workers whose labor contracts are succeeded to by the company to be incorporated upon the demerger, the company to be incorporated upon the demerger shall necessarily succeed to the collective agreements concluded between the parent company and the workers to the extent that they relate to working conditions. In principle, the company to be incorporated upon the demerger shall also succeed to other parts of the collective agreements; however, such other parts may be precluded from succession by a demerger plan.