

# **TRANSFER OF EMPLOYEES FROM THE PUBLIC TO THE PRIVATE SECTOR: WHAT ARE THE ISSUES TO BE ADDRESSED?**

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## **1. INTRODUCTION**

This paper will outline the key human resources and labour relations issues arising during commercialisation and / or outsourcing processes in the public sector. The paper addresses the substantive issues and raises process issues for consideration. The paper is not intended to provide a rationale for outsourcing or commercialisation, but rather to assist stakeholders once a decision for outsourcing or commercialisation has been taken.

## **2. ORGANISATIONAL RESTRUCTURING**

In the increasingly competitive environment, organisations are seeking ways to become successful and enhance their overall efficiency and effectiveness. In light of this, organisations are closely examining their current structures and systems in efforts to enhance efficiencies. This interrogation of internal structures and systems results, in many cases, in comprehensive restructuring processes. Global case studies indicate that many failures and successes result from organisational restructuring processes – this is of no coincidence as the process of restructuring is often a difficult and complex process.

Three major components of a restructuring process can be highlighted. These include:

- ⇒ The design of the actual transaction and process
- ⇒ Process design
- ⇒ Dealing with the substantive issues of the transaction

## **3. RESTRUCTURING IN THE PUBLIC SECTOR**

### **3.1 Rationale for Restructuring**

Pirie (1985) outlines the issues that the state faces with respect to efficiency and highlights that these form the imperatives for state restructuring. In particular, he describes current problem areas within government. These include:

- ⇒ High production costs
- ⇒ Lower efficiency due to higher staffing levels and inefficient use of machinery
- ⇒ High labour costs due to onerous collective agreements, which are not informed by the financial performance of the state owned enterprise
- ⇒ Capital spend decreases in relation to budgetary spending. This leads to the machinery becoming obsolete and results in decreased efficiencies.

- ⇒ Consumer input and control is limited. This leads to increasing internal focus with little regarding to service delivery requirements of the community
- ⇒ Decision making is based on political factors and not on economic or service delivery grounds
- ⇒ Flexibility and innovation is not encouraged due to the internal focus of the organisation

Pirie (1985) argues that these factors have led to a critical examination by the state of the manner in which state owned enterprises currently function. In particular state owned enterprises have begun to examine mechanisms for enhanced efficiencies. The drive for enhanced efficiency and accountability has led the state into the realm of public private partnerships.

The State is under increasing pressure to examine forms of service delivery that will heighten overall organisational performance. This is due to the objective of improved provision of service to the community at large. Should the outsourcing/ commercialisation process be addressed incorrectly from the start, the chances of a successful implementation and optimum service delivery are reduced. It is certain that stakeholders will monitor the performance of the restructured entity for a protracted period of time following implementation.

Restructuring within the public sector context is not necessarily more difficult than restructuring within the private sector. However, the restructuring within the public sector can be differentiated from private sector restructuring in the following ways:

- ⇒ **Policy Differences** – The rationale for restructuring within the public sector is different to that of the private sector. The private sector designs many of its restructuring initiatives around the profit motive. Restructuring in the private sector aims to increase revenue and ultimately the profit of the organisation. The rationale for restructuring within the State is different in that the imperative is not necessarily profit but rather relates to delivery to the community at large. Customer service and the manner in which services are offered to the community are of the utmost importance.
- ⇒ **Ideology** – A range of different ideological stances exist with respect to privatisation, public private partnerships, outsourcing and commercialisation processes. Each ideological camp has arguments and case examples pointing to either the success or failure of the chosen form of service delivery. In this regard it is imperative, once a decision has been taken, to pursue a particular service delivery form (outsourcing/commercialisation) that plans are established to ensure the success of the project as opposed to the failure of the project before it has even begun.
- ⇒ **Historical nature of the employment relationship** – relationships within the public sector reveal a complex set of collective agreements, bargaining relationships and terms and conditions of employment. In addition, a large number of employees usually exist within the public sector organisation designated for restructuring. Again this reveals a heightened complexity with in that the private sector organisation will need to deal with issues of optimal staffing following the transfer.
- ⇒ **Staff Complement** – Conventional wisdom exists amongst employees and collective organisations that privatisation is associated with job losses. This heightens the sense of insecurity amongst employees when approaching an outsourcing or commercialisation exercise. Due to this insecurity and lack of trust, it is often difficult to embark on a restructuring exercise within the State in that employees often pose a large source of resistance to the restructuring in fear of job losses.

### 3.2 Partnerships with the Private Sector

The literature is rich with descriptions of the public private partnerships that can be entered into. Rondinelli and Iacono (1996) provide an appropriate summary of the types of public private partnerships. They (1996, p32) describe four broad types, “associated with the...objectives of privatisation:

- Transferring of ownership of state enterprises or assets to the private sector
- Restructuring of state owned enterprises for retention or later sale
- Transferring management of commercial operations, public services or infrastructure to the private sector; and
- Delegating responsibility for production of goods and services to the private sector or NGOs.”

In practice, a variety of options exist to establish relationships with the private sector and fulfil the aims of public sector restructuring. These public or private partnerships include:

- ⇒ **Full privatisation** through the transfer of ownership of a State owned enterprise to the private sector.
- ⇒ **Partial privatisation** through the transfer of ownership of a percentage stake of the State owned assets to the private sector.
- ⇒ **Outsourcing** – where the private sector provides an ongoing service to the State owned enterprise. This often involves an outsourcing agreement regarding the provision of services, combined with the sale of assets within a particular functional area.
- ⇒ **Management contract arrangements** - where management contracts are provided, expert strategic direction and ongoing advice in the area of finance, human resources and operations. The management contractor will receive a fixed monthly or annual fee for services as well as a percentage stake in the revenue generated.

This paper will examine the issues associated with transferring employees from the public to the private sector within the context of outsourcing. Outsourcing involves the transfer of employees from the public sector to the private sector.

### 3.3 Process of establishing relationships with the private sector

The process followed in establishing relationships with the private sector in the outsourcing process is critical in the overall success of the long-term relationship. The benefits attained by both parties throughout the duration of the relationship can be attributed to the process that is followed from the time that the relationship is initiated. The restructuring process within the public sector will involve the following key steps:

- ⇒ **Data Gathering and Gap Analysis** – This involves an analysis of the difference between the existing level of service delivery and the ideal level of service delivery. The gap analysis phase will be heavily dependent on the gathering of data to report on the status quo.
- ⇒ **Choice of Service Delivery Form** – This will involve a decision on the service delivery form that is most appropriate in dealing with the service delivery gaps.
- ⇒ **Planning** for the Implementation of the New Service Delivery Form
- ⇒ **Process design** – This involves the design of the various stages that will lead to the outsourcing relationship
- ⇒ **Implementation** – which involves the transfer of employees to the private sector.

In many cases, the above mentioned process is not planned or followed. Due regard is not given to the differing human resources and time commitments required at each phase of the process. The formation of outsourcing partnerships with the private sector is either rushed or slow to occur and in the long term inappropriately structured for mutual benefit.

#### **4. EMPLOYEE ISSUES AND CONSIDERATIONS WITHIN THE RESTRUCTURING PROCESS**

Within each one of the stages of the restructuring process outlined above, human resources and labour relations considerations exist.

##### **4.1 DATA GATHERING AND GAP ANALYSIS**

A human resources approach can only be developed for the outsourcing initiative following an in-depth knowledge of the organisation and the individual issues pertaining to each employee who is to be transferred. Walker and Price (2000) highlight that an intensive study should be undertaken to understand risks and implementation opportunities. In this regard it is imperative that the first stage in approaching employee-related matters in the commercialisation/ outsourcing process is data gathering. Data should be gathered in the following areas:

- ⇒ Terms and conditions of employment (this includes basic salary as well as any terms and conditions of employment)
- ⇒ Retirement funds
- ⇒ Medical aid
- ⇒ Length of service of employees
- ⇒ Number of employees
- ⇒ Employee categories
- ⇒ Accrued annual and sick leave per employee
- ⇒ Working hours
- ⇒ Executive remuneration
- ⇒ Grading systems
- ⇒ Employment contracts
- ⇒ Outstanding individual disputes

Each of the above mentioned issues will need to be understood from a practical perspective (how the condition operates in practice) and from a financial perspective (what is the value of the condition now and in the future).

Once full understanding of the broad issues mentioned above has been gained, it will become possible to begin the planning process for the outsourcing and the commercialisation process. This applies regardless of the stakeholder grouping involved.

In addition to legislative information, it will be necessary to gather information relating to the labour relations context of the organisation. This includes information relating to the nature of collective unions that exist within the organisation, their level of representivity, any collective agreements that exist at this organisational level, and any outstanding or collective disputes that may exist within the organisation.

## 4.2 PLANNING AND ALIGNMENT WITH ORGANISATIONAL STRATEGY

All transfers in an outsourcing process will further need to occur with due cognisance of the provisions of relevant labour legislation. As has been previously mentioned, the relevant classification of transfer is necessary and often affects the commercial transaction (e.g. is the organisation being transferred as a going concern?). In addition to the proper consideration of the legislative environment, it is imperative that all collective agreements at a national and provincial level are considered (national framework agreement and bargaining council agreements).

The relevant labour legislation, as well as the national and provincial collective agreements will provide insight and obligations with respect to the manner in which the process unfolds (engagement with individuals and collectives, disclosure of information). For this reason the legislative context pertaining to employees should be understood and considered from the outset, as it will impact on the data gathering, planning and implementation phases of the project.

It is obvious that the above-mentioned human resources information, together with the legal framework and labour relations information will assist each stakeholder grouping in approaching the actual initiative. This will fundamentally affect the negotiations between the purchaser and the seller and therefore the human resources teams should ensure that regular feedback into the broader commercial contract negotiation process occurs.

Further to this the seller (in this case the public sector organisation) should consider the manner in which it will approach the engagement process with employees and where applicable, organised labour. This should be considered prior to the contract negotiations with the purchaser. The outcome of the engagement with organised labour should inform the details of the negotiations with the purchaser.

The information that is gathered by the seller or the purchaser will inform the strategic priorities of the organisation. In the case of the seller, the information with respect to human resources and labour relations may provide some insight into the problems that exist in rendering service delivery to the broader community. Full disclosure of information of these issues should be given to the potential purchaser in order to ensure that the objectives of the restructuring process are achieved.

With the information as a backdrop, each organisation should consider how the information complements the strategic objectives. Once this has occurred, planning around the process for implementation can occur. The planning process should ensure that the objectives of the organisation are met and carried out in the service delivery form.

## 4.3 PROCESS DESIGN

In approaching the design of an adequate process for implementation of the particular service delivery form, a number of questions should be asked by the purchaser as well as the seller. These questions include:

- ❑ The *role of leadership* in delivering a successful service delivery form and outsourcing process.
- ❑ The *stakeholders* that exist in the process. These stakeholders could include the individual employee, the trade union, the seller or public sector organisation, the purchaser or outsourced service provider, the broader public sector.

- ❑ **Options for engagement** – This could include consultation, negotiation or communication with the various stakeholder groupings.
- ❑ **Stakeholder interests** – From an examination of the stakeholder groupings, a number of broad range of interests could exist. The process should be designed to ensure that each of the stakeholder interests is adequately addressed.
- ❑ **Disclosure of information** – Consideration should be given regarding the degree of disclosure of information to be given to the various stakeholder groupings.
- ❑ **Contractual negotiations** – Consideration should be given to the manner in which to approach the broader commercial contractual process relating to the outsourcing.

#### 4.4 IMPLEMENTATION

The agreed on process of approaching employee transfers to the outsourced entity should be detailed in the commercial contract. This forms the foundation of the implementation. In approaching the implementation it is important that regular communication occurs between all stakeholders. It is imperative that affected staff receive communication regarding the transfer from the seller or public sector organisation as well as immediately following the transfer from the purchaser.

It is further important that dedicated personnel from the seller and the purchaser ensure that the contractual provisions agreed to in the commercial process are implemented with the agreed on time periods. The seller should ensure that ongoing information is given to the purchaser as and when required.

### 5. COMMON MISTAKES THAT ARE EVIDENT IN SOUTH AFRICAN PUBLIC SECTOR RESTRUCTURING

A number of common problems exist within the establishment of outsourcing relationships between the public sector and the private sector. These mistakes include the following:

- ⇒ **Data gathering** - Inadequate data gathering with respect to the service delivery gaps, as well as the human resources and labour relations information occurs. This data gathering process is critical to the overall success of the initiative in that it lays the foundation for successful implementation and planning.
- ⇒ A **fast/slow approach** is often adopted by the public sector as opposed to a slow/fast approach. In effect this means that the outsourcing initiative is embarked on too quickly without due consideration to the factors that would contribute to a success.
- ⇒ **National agreements** are ignored or are not taken into consideration. These national agreements often lay the foundation for the process design and will further lay the foundation for engagement with stakeholder groupings including the community and organised labour. Lack of consideration to these national framework agreements results in inadequate consultation with the stakeholder groupings and can result in long term delays of the process.
- ⇒ **Political will** - It is imperative that the political will exists to plan as well as implement the outsourcing initiative. This involves the establishment of governance structures for the broader transformation and restructuring process. Political will does not necessarily involve merely the sanctioning of the outsourcing exercise, but further involves the contemplation of the various obstacles to the successful implementation of the outsourcing initiative. With consideration of these obstacles the correct leadership should be put in place to ensure that the ultimate delivery of the outsourcing initiative can in fact occur.

- ⇒ ***Inconsistent leadership*** – It is important that coherent leadership exists throughout the outsourcing process. This is due to the need to ensure institutional memory throughout the data gathering, planning and implementation phases of the outsourcing. In event that leadership is rotated over the period of the outsourcing, this could lead to many inconsistencies and the manner in which the outsourcing initiative is run.
- ⇒ ***Cross-functional teams*** are not constituted and in the event that the cross-functional team is constituted, limited role is given to the human resources and labour relations sub-committee. It will be imperative that the HR and LR team is integrated into the broader commercial process. This will ensure that the HR and LR implications of the outsourcing are considered, as well as ensure that mechanisms are put in place to facilitate the sustainability of the outsourcing relationship.
- ⇒ ***Contractual relationship*** – Many of the planning and data gathering processes will need to be embedded within the broader contractual relationship. This contractual relationship will ensure that the agreements between the public sector and the outsourced provider can be enforceable with respect to human resources over time.
- ⇒ ***Inadequate communication with employees*** – Much insecurity exists when transferring State employees to the private sector. These insecurities should be anticipated by both the public and private sectors organisation and communication and engagement initiatives should be embarked on to address these insecurities head on.
- ⇒ ***Limited post transaction engagement*** – in many cases, limited engagement occurs between the public and private sector following the completion of the contractual negotiations. It should be realised that the outsourcing initiative represents a much longer term process and in this way, every effort should be made to ensure continued engagement regarding employee related and service delivery challenges.

## 6. CONCLUSION

This paper has aimed to identify the complexities involved in transferring employees from the public to the private sector. It has provided insight on the broad process parameters, as well as the key issues for consideration within each stage of the process. In considering this paper it has been emphasised that it is critical to understand the stakeholders involved and their underlying interests in order to ensure an effective implementation process. In addition insight can be gained from the mistakes and errors that have been made in previous restructuring initiatives within the public sector.

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