Restructuring state assets

FEDUSA's policy

The restructuring of state assets over the past five years has not been a good experience.The demise of Sunair and Spoornet's announcement that it planned to retrench 27 000 workers come to mind.The National Framework Agreement (NFA) was intended to promote a smooth and fair restructuring process. More often than not, it damaged the relationship between labour and management and led to a decline in productivity and workers' morale.The parties did not understand the process or implement it correctly.With the release of its policy framework for state-owned assets in August 2000, the government seems to have recognised these problems and tried to address them

This article aims to contribute to an understanding of government's policy framework, to state FEDUSA's position and to highlight the elements that must be in place for successful restructuring.

FEDUSA believes privatisation should be carefully managed, not blindly resisted, if the interests of trade union members are to be protected and promoted.

The NFA

This agreement, signed between labour and government on 7 February 1996, gives the main aims of restructuring as:

- Increasing economic growth and employment – the effectiveness, sustainability and viability of state-owned enterprises are vital to maintaining and generating jobs;
- meeting basic needs – improving the quality and price of services is critical to this objective;
- redeploying assets for growth – proceeds from restructuring should be reinvested in assets and not consumption;
- developing infrastructure by mobilising and redirecting private capital;
- reducing state debt;
- making state enterprises more competitive and efficient;
- financing growth and competitiveness; and
- developing human resources through decent employment conditions, training and retraining, redressing discriminatory practices and enhancing technical and managerial capacity.

Latest policy framework

In August 2000, government released its most comprehensive policy document to date, 'An accelerated agenda towards the restructuring of state-owned assets'. It endorses the NFA's objectives and highlights a number of key restructuring principles: Firstly, competition should be promoted, within a regulatory framework, to ensure restructuring brings lower prices and better goods and services. A regulatory framework will ensure that monopolies do not distort the development of competitive markets in unregulated sectors. The framework must be consistent, manageable and appropriate, but not bureaucratic.

Secondly, government should spell out its intentions and relationship with the restructured state enterprises in shareholder agreements, in the enterprises' corporate governance framework and in a clear policy framework and restructuring programme. The performance of enterprises will thus be easier to assess, enabling the state and investors to make appropriate investment decisions.

The policy states that government should explore options to enhance productivity, profitability, investment and innovation, including equity sales for access to additional funding, technology or markets. Where this is not required, corporatisation, joint ventures, employee participation schemes and community partnerships may be more beneficial. With partial privatisation, other partnership arrangements may also be appropriate.

Government should maximise the return to the fiscus through equity sales, dividends, and/or tax returns. The policy states that long-term returns can be maximised by trading off short-term gains from equity sales in depreciated assets for medium- to long-term gains, such as dividends and taxes, from restructured enterprises.

Restructuring proposals should assess the enterprise's impact on social welfare. It should address the direct and indirect costs and benefits to society, for example concerning employment, pricing and the delivery of essential services.

Government should be transparent about its social objectives, including social plans, employment creation, price subsidies, optimising of public goods and empowerment, enabling shareholders to agree on the restructuring process. Transparency will enable stakeholders to hold government and enterprises accountable and ensure that poor performance can be identified and remedied. Government will monitor the implementation of laws, particularly on transparency and the management of public finances.

The policy states that since 1994 the state's responsibility has increased significantly, putting pressure on its resources. It will aim to stimulate investment and create mechanisms for directing market-orientated strategies. This will ensure growth does not negatively affect people's welfare, make infrastructure a development platform rather than a burden, and release capital for social development.

Why is the state restructuring?

Restructuring is part of a comprehensive government process to limit expenditure on items that can be otherwise managed.

Restructuring and privatisation have been going on since 1973. The previous government tried to strengthen its capital base and encourage growth, but the focus was not on relieving the state's financial burden. Since 1996 the government has decided to relinquish ownership of and responsibility for certain assets and functions. This has many implications for labour. Restructuring and privatisation lead to changes in employment, job insecurity and even job losses.

FEDUSA's position

A strong argument can be made that restructuring and privatisation lead to job losses and should be resisted at all costs.

This, however, fails to recognise that the state/employer may privatise or restructure anyway, and that job losses , may not occur if properly dealt with.

FEDUSA and its affiliates should seek to manage the process in the best interests of members and protect members' rights.

The NFA and framework document indicate that unions facing restructuring are entitled to develop their own mandates, participate fully in the restructuring process, share and discuss policy documents relevant to the restructuring and take or receive advice from experts and consultants.

It is essential that unions obtain all relevant information, including the employer's reason for restructuring; what sections are to be outsourced, restructured or sold; whether any deals to supply or purchase have been struck before the start of restructuring, how the restructuring is to happen, and whether the state has considered the social and welfare implications.

It is vital that unions are fully involved at all times.Where restructuring or privatisation may result in job losses, section 189 of the LRA must be followed. This requires an employer considering any dismissal for operational reasons to consult on measures to avoid or minimise the dismissals, change their timing or mitigate their adverse effects. Consultation is also required on methods of selecting retrenchees and severance pay.

An employer must disclose in writing to the union or affected employees the reasons for the proposed dismissals, the alternatives considered before proposing the dismissals and reasons for rejecting them, the number of employees likely to be affected and their job categories, the method of selecting retrenchees, when the dismissals are likely to happen; the proposed severance pay, any assistance the employer proposes to offer retrenchees and the possibility of re-employing them in future.

The employer must let the other party make representations on any relevant matter, including options for the transfer of ownership and control, outsourcing options, and the different phases of the restructuring or privatisation.

Unions should not participate in processes where the employer is not providing information requested, or where sections 16, 189 and 197 of the LRA are not followed.

Unions must ask relevant questions to obtain the required information, and employers cannot be expected to disclose information they do not have.

Where an employer intends restructuring or selling part of an operation, the union must secure continued employment for its members in negotiations.This will ensure that it maintains its presence in the restructured workplace. Union members may be working in the same place at the same job, with the only difference being that the employer has a new identity. If the restructuring is properly managed, the union should still have members in the workplace. Where the workplace shrinks, it may even have more organisational rights. If members now fall under a bargaining council where the union is not recognised, the problem may be remedied by a cooperation agreement with a FEDUSA affiliate recognised by the relevant council.

Conclusion

Simply privatising state enterprises and breaking up state monopolies does not automatically lead to greater efficiency. International experience shows that without institutional preconditions, privatisation may have worse economic outcomes, with privatised firms holding the economy to ransom. FEDUSA will support the restructuring of state

FEDUSA's 1999 national congress held in Pretoria.

enterprises if the principles contained in the NFA and policy framework are adhered to, in addition to the following:

- Detailed business plans must be drawn up for specific business units. To avoid haphazard processes, labour must be allowed to contribute to these plans. Where possible, these plans should be synchronised between the different business units, avoiding duplication and allowing for the absorption of additional staff;
- the formation of new parastatals on sound business principles, where possible;
- the approach must be holistic, and not in a haphazard manner;
- where assets are sold to a new employer, the state should not abrogate its responsibility for at least 12 months;
- restructuring for operational reasons in the normal course of business and the sale of state-owned assets should be clearly differentiated and treated differently;
- managers should not be allowed to leave a state enterprise with a severance package if their services are retained on contract;
- restructuring should not be used to replace whites with blacks or vice versa. To redress racial imbalances, proper employment equity plans in line with legislation should be drawn up;
- each restructuring initiative must have a social plan that addresses workers' needs in relation to the business unit. The social plan agreed to should not fall short of the standards laid down in the social plan emanating from the Jobs Summit.

Restructuring and privatisation are complex processes. If the interests of FEDUSA's members are to be protected and promoted, they should not be tackled lightly or without due consideration. When an affiliate is drawn into privatisation or restructuring exercise, it must understand what is happening and become actively involved. This will ensure members' rights are protected and improve the chances of an equitable outcome. ★