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The Financial & Economic Crisis: Responding Responsibly Some frequently asked questions

What is responsible restructuring?

What started as a mortgage crisis in the United States in the later half of 2007 has now developed into a global crisis, bringing with it unprecedented labour market and social challenges across advanced, emerging and developing countries.¹

Whilst at the macro level international organisations, governments and the peak organisations of workers and employers develop strategies for global and national solutions it is important for every enterprise to appreciate that they can also play a role in founding solutions.

Socially responsible enterprise restructuring can be defined as enterprises consciously taking into account consideration of all stakeholders – managers, owners (shareholders), workers and the community. Today's turbulent global economy requires socially responsible restructuring approaches that are in the interests of both shareholders and other major stakeholders.²

How individual enterprises respond to the crisis will have an impact on the severity of the crisis – in an aggregated sense. The loss of employment through restructuring and downsizing will lower the level of demand for goods and services. A drop in demand such as this will lead to further contraction of economies. In this way the behaviour of enterprises impacts not only on workers but also on the communities and societies in which the enterprise operates.

Whilst enterprises may need to introduce change as a result of the impact of the crisis doing this in a planned way with an eye to medium and longer term is the responsible approach. There is a strong ethical or moral case for enterprises to consider social and environmental aspects, as expressed by international standards and national laws and practices, into their operations. This is particularly true in times of crisis.

There is also a sound business case for adopting responsible workplace practices. A poorly thought out company response to the crisis can adversely affect the company performance as it erodes morale and trust of employees and the community. Loss of skilled, experienced employees may also damage potential for growth and renewal, resulting in repeated downsizing. It may also lose vital knowledge and know-how which is difficult to recover and which can assist in working through difficult times.

The ILO has a number of tools that can assist enterprises to adopt a framework of principles and practices that help it to make responsible decisions at this difficult time. One of the key tools that focuses on the actions of enterprises is the *Tripartite*

¹ ILO/International Institute for Labour Studies *The Financial and Economic Crisis: A Decent Work Response*, ILO Geneva March 2009

² Hansen G.B. (2009) *A Guide to Worker Displacement: Some tools for reducing the impact on workers, communities and enterprises*, 2nd Edition, ILO Geneva

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Declaration of Principles concerning Multinational enterprises and Social Policy referred to as the MNE Declaration.

The MNE declaration represents an international agreement between workers, employers and governments in areas such as employment, training, conditions of work and life and industrial relations. It is a practical instrument that can guide the behaviors of all enterprises and is founded in ILO labour standards (some more details on the MNE declaration are contained at the end of this document).

As an employer how can I respond responsibly with workers?

An obvious priority, in managing a response to the crisis is to maintain the enterprise as a sustainable enterprise able to conduct its business effectively and employ people under decent working conditions.³ This may include a need to review all costs within the enterprise. If restructuring at this time, enterprises should attempt to maximise economic benefits whilst minimising social costs.⁴

Managing the response to the crisis in a way that meets the above objective is a shared concern of employers and workers. Each has an interest in ensuring the viability of the enterprise and maintaining jobs and working conditions. Labour-management cooperation, particularly through increase involvement of workers and their trade unions in the planning and execution of organisational change is also recognised as a necessary condition for coping with the adjustment process.⁵

If your enterprise needs to introduce change the following steps provide a framework of a responsible approach.

- **Step 1 Dialogue**

Dialogue between the enterprise, its workers and their representatives about the impact of the crisis is an important first step. This can help to stimulate ideas about changes that can be made and can also assist in alleviating fears or concerns that distract and impact on the capacity to perform effectively.

- **Step 2 Information & Consultation**

The sharing of relevant information is important as it ensures that everyone understands the nature of the impact of the crisis. This should present a true picture of the position in order to demonstrate the need for change.⁶

Consultation about changes should also take place involving a genuine exchange that ensures that there is an opportunity for workers and their representatives to

³ A discussion of the factors conducive to promoting sustainable enterprises and the practices of sustainable enterprises is contained in *Conclusions concerning the promotion of sustainable enterprises ILC, June 2007 ILO*

⁴ For a guide to socially responsible restructuring see Hansen G.B. (2009) *A Guide to Worker Displacement: Some tools for reducing the impact on workers, communities and enterprises*, 2nd Edition, ILO Geneva

⁵ Rogovsky N (ed), (2005) opcit

⁶ Article 13 Convention concerning Termination of Employment at the Initiative of the Employer No.158

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influence the decisions being made. Consultation allows the decision making process to be informed by the views of workers, particularly as it may effect their employment.

• Step 3 Change

The following is a non-exhaustive list of the types of measures that could be negotiated in order to protect employment within an organisation.

- Internal redeployment - Utilizing a skills assessment of the affected workforce will assist in identifying where worker's skills that are not being utilized in one area could be utilized in other areas of the enterprise. Developing processes such as internal job advertising through internal bulletin boards and intranet sites can help to promote this internal mobility.
- Retraining - It may be more cost effective for an enterprise to further invest in the development of the skills of loyal employees than it would be to lay them off only to have to recruit others. There may also be government assistance to help with both the process and costs of retraining employees as an alternative to lay offs.
- The introduction of changed working patterns or an alternative work schedule including
 - reduced hours,
 - introduction of part-time work,
 - job sharing and
 - flexible leave arrangements.⁷

Where changes to employment arrangements or conditions of employment are involved collective bargaining would be appropriate.

• Step 4 Implementation

It is important that change when implemented accords with the requirements of national law and practice and any requirements contained in collective agreements. In particular the implementation should be responsible, founded on objective criteria and not discriminate in any way on unfair grounds.

• Step 5 Evaluation

An important aspect to promoting success is to evaluate change as it is being introduced and after it is completed to learn from what has occurred and to review whether objectives have been met.

⁷ For further discussion and examples of these initiatives see Rogovsky N and Schuler RS (2007) *Socially Sensitive Enterprise Restructuring in Asia: Country Context and Examples*, ILO, Geneva
Rogovsky N (ed) (2005) op cit

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Checklist for employers when introducing change

- Ensure that any response is taken in the context of sound decisions for the long term of the enterprise which takes into consideration the interests of shareholders and stakeholders.
- Open up a dialogue with workers and their representatives about the impact of the crisis on operations.
- Share relevant information in order to support understanding of the issues and to generate ideas for change.
- Be open to and support a process of involvement of workers and their representatives in the generation of changes.
- Where changes may impact on the employment of, or conditions of work of employees, negotiate these changes collectively with workers and their trade unions.
- Recognise the right of workers to be represented by their union in consultations and negotiations regarding potential changes and responses to the crisis.
- Ensure that any decisions for change accord with applicable national laws and obligations you have arising from contracts, codes, agreement and frameworks to which you have committed.

What should an enterprise do when layoffs are required?

If after consultation and consideration of other options it is apparent that laying off workers is required as a last resort there are some key steps that can be taken to ensure this is done responsibly.

- **Consult**

Consultation at this stage involves the provision of specific information to workers and their representatives about proposed job losses. This consultation should include the provision of all relevant information⁸, and include the consideration of measures (as far as practicable) to avert or mitigate the negative consequences of the layoffs, the timeframes involved and the options available to employees.

- **Take steps to mitigate the impact of layoffs**

Measures to avert or mitigate the negative consequences of the layoffs may include⁹:

⁸ Relevant information includes the reasons for termination contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out. See Convention No. 158 Convention concerning Termination of Employment at the Initiative of the Employer, Part III, Article 13

⁹ For a detail about matters related to consultation on major changes, measures to avert or minimise terminations and mitigating the effects of termination see *Recommendation concerning Termination of Employment at the Initiative of the Employer No. 166*

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- Informing worker's representatives early and directly giving them as much notice as possible, as it is always better to apply for a job from a position of employment than from unemployment.
- Assisting displaced workers with their job search including providing assistance to develop resumes, practice at interviewing techniques, assistance with writing applications and time off work without deduction in pay to attend for interviews.
- Counselling in order to adjust to the change and in order to identify other possible alternative work/career options. This can include providing a mechanism for workers to have skills assessment for future employment opportunities.
- Establishing mechanisms for priority of rehire if or when the organisation is able to re-engage workers.
- Payment of separation or severance packages to assist with the financial burden of the loss of a job.
- Introduction of voluntary early retirement schemes. This can include mechanisms that allow for phased retirement where workers commence working fewer hours in the period leading up to their retirement (part-time retirement).
- Support for entrepreneurship by assisting those employees who may wish to launch their own initiative. The opportunities here will depend on the local economic environment but could include:

Access to office, computer or administrative resources

Help developing business plans and proposals

Loan or gift of equipment

Assistance in raising start up capital

- **Ensure termination practices are fair**

National employment legislation, collective agreements and other relevant industrial instruments that provide for termination of employment, redundancies and layoffs must be observed.

In addition to meeting these standards in order to ensure that termination practices are responsible the company should observe the following:

- Set objective criteria about how the organisation will select the employees to be laid off in advance and document this.
- Selection criteria should be weighted appropriately.
- Selection criteria should correspond to the business needs of the employer.
- It is preferable that the criteria be capable of being objectively assessed (such as skills, qualifications, training experience).

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- The criteria must not discriminate on invalid or unfair grounds including age, sex, pregnancy, carer/family responsibilities, race, marital status, disability, religion, political opinion, national extraction or social origin, temporary absence from work due to illness, absence from work during maternity leave and union membership or activity.¹⁰
- Communicating the decision to lay off employees should be done sensitively and directly with those employees whose job will be lost. This is a very stressful time and this should be appreciated.

- **Ensure there is a mechanism for resolving grievances and disputes**

Where any concern or grievance arises an individual employee or collective of employees should be able to raise this concern and have it dealt with in an effective manner and without prejudice or fear of prejudice to their position.¹¹

Checklist to ensure laying off processes are responsible

- Consider lay-offs as a last resort however where they are required
 - Consult in detail
 - Take steps to mitigate the impact of lay offs
 - Ensure termination practices are fair
- Ensure there is a mechanism for resolving grievances and disputes

As a worker what can I do?

Workers hold vital information, skills and knowledge that are an important part of any successful enterprise. During processes to manage change this insight that workers have can help to identify and operationalise changes that can improve business efficiency. The steps that workers can take include:

- **Step 1 Dialogue**

Participating meaningfully in a dialogue with the enterprise about the impact of the financial crisis on company operations.

- **Step 2 Information**

¹⁰ Article 5 Convention concerning Termination of Employment at the Initiative of the Employer No.158

¹¹ See MNE Declaration paras 58 and 59

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Share the information and skills that you have with the company in order to identify areas for change that will improve effectiveness of the company. Investigate and give due consideration to the information provided by the company to you regarding the impact of the crisis on its operation

- **Step 3 Participate**

Give consideration to proposals for change and also develop alternative or additional proposals that can improve the viability of the organisation. Canvass with your representatives the types of options or responses that would be acceptable to the workforce.

- **Step 4 Implementation**

Where options for change have been agreed commit to implementing these effectively and provide ongoing feedback and information about areas where improvements can be made.

- **Step 5 Evaluation**

Participate in the evaluation process and use this as an opportunity to make suggestions as to how the company's performance can be improved.

Checklist for what workers can do during change

- Participate through your representatives in a dialogue with the enterprise about the impact of the crisis on its operations.
- Share information and skills regarding improvements that can be made.
- Negotiate for changes that promote the viability of the organisation and protect employment.
- Work to implement effectively agreed changes and provide feedback
- Be involved in the evaluation of the change process.

What can unions and employer organisations do to help out?

Representative organisation have an important role in assisting enterprises to manage the change process by working together to promote responsible approaches to manage change in the context of the crisis. Effective communication between employers and workers' representatives is important if the introduction of new technology or important organisational change is to take place within sound labour relations.

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In addition union and employer organisations have an important role in promoting tripartite and bipartite social dialogue.¹² During a crisis, consultation and social dialogue are even more important to assist governments to find solutions to the crisis at national and global levels.

Together, policy-makers and social partners can take actions to minimise worker displacement and the adverse impacts of economic restructuring.¹³

This can include working together to:

- develop and initiate programs such as national job transition schemes which are deeply embedded in many countries' legal systems, industrial relations traditions and labour market policies.
- Create an enabling environment for enterprises by ensuring the basic conditions for sustainable enterprise development including through the implementation and enforcement of labour and environmental standards.
- Create incentives for enterprises to develop and behave in a responsible and sustainable way.
- Encourage enterprises not to forget about the longer term.
- Promote the principles of sustainable enterprises along supply chains.
- Develop strategies to look at labour supply issues that may emerge.¹⁴

Checklist for employer and workers organisations

- Assist in the change process using expertise and advocacy to promote innovative proposals.
- Participating in identifying agreed proposals for change
- Assisting organisations to focus on the long term
- Promote tripartite and bipartite social dialogue and the identification of schemes supported by government that minimise worker displacement and mitigate the adverse effects of economic restructuring

¹² For a discussion about the role of social partners in the design and implementation of anti-crisis measures see Rychly, L. (2009) *Social dialogue and the design and implementation of measures in times of global financial and economic crisis*, ILO, forthcoming

¹³ See Hansen G.B. (2002) opcit

¹⁴ For details of demand and supply side initiatives see Evans-Klock C. et al (1998) *Worker Displacement: Public policy and labour-management initiatives in selected OECD countries*, (Employment and Training Papers 24), ILO, Geneva

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As a purchaser or supplier of goods or services what can I do to act responsibly?

The actions that you take as a company significantly effect suppliers and purchasers and their communities.

The MNE Declarations states

“In considering changes in operations (including those resulting from mergers, take-overs or transfers of production) which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate, government authorities and representatives of the workers in their employment and their organizations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals.”¹⁵

The principles contained in the above paragraph from the MNE Declaration should be applied to those you supply goods and services to and that you purchase goods and services from.

CSR agreements, codes and other trading agreements to which you are a party may also include commercial and social obligations that the company should meet.

In general then the approach should be:

- Review the impact of changes that you are considering on those outside of the organisation (purchasers, suppliers and the community).
- Review any obligations you have arising from contracts, codes, agreement and frameworks to which you have committed and ensure you are prepared to meet these obligations.
- Provide notice to those effected of the changes you propose.
- Engage in a dialogue with those effected about the impact of the changes and measures to mitigate adverse effects where possible.
- Where the changes proposed are large scale and likely to have an impact on the community this consultation should include discussion with governmental (including local) authorities.

The important point here is to provide notice of the proposed changes as early as practicable in order that the dialogue and preparations for change can be most effective.

Checklist for purchasers & suppliers of goods and services

¹⁵ Ibid, para 26

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- Review the impact of changes on those outside of your organisation (purchasers, suppliers and the community)
- Review & meet obligations you have arising from contracts, codes, agreements and frameworks
- Give reasonable notice of any changes and enter into a dialogue about these
- Notify and involve government where there is likely to be an impact on the community.

What are the principles contained within the MNE Declaration

The MNE Declaration provides a framework of principles for responsible enterprise behaviour in five areas. It encourages enterprises to adhere to the following principles:

General:

- Obey national laws and respect international standards
- Contribute to the realization of the fundamental principles and rights at work
- Consult with government, employers' and workers' organizations to ensure that operations are consistent with national development priorities

Employment:

- Endeavour to increase employment opportunities and standards, taking the employment policies and objectives of governments into account
- Give priority to the employment, occupational development, promotion and advancement of nationals of the host country
- Use technologies which generate employment, both directly and indirectly
- Build linkages with local enterprises by sourcing local inputs, promoting the local processing of raw materials and local manufacturing of parts and equipment
- Extend equality of opportunity and treatment in employment
- Assume a leading role in promoting security of employment, providing reasonable notice of intended changes in operations and avoiding arbitrary dismissal

Training:

- Provide training for all levels of employees to meet needs of enterprises as well as development policies of the country
- Participate in programs to encourage skill formation and development
- Afford opportunities within MNE for local management to broaden their experience

Conditions of work and life:

- Provide wages, benefits and conditions of work not less favourable than those offered by comparable employers in the country concerned

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- Provide the best possible wages, benefits and conditions of work, within the framework of government policies, to meet basic needs of employees and their families
- Respect the minimum age for admission to employment
- Maintain highest standards of safety and health at work
- Examine the causes of industrial safety and health hazards, provide information on good practice observed in other countries, and effect necessary improvements

Industrial Relations:

- Observe industrial relations no less favourable than those observed by comparable employers
- Respect freedom of association and the right to collective bargaining, providing the facilities and information required for meaningful negotiations
- Support representative employers' organizations
- Provide for regular consultation on matters of mutual concern;
- Examine the grievances of worker(s), pursuant to an appropriate procedure

Resources**ILO Instruments**

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

Convention concerning Termination of Employment at the Initiative of the Employer, Convention No. 158 and Recommendation No.166

Convention concerning Part-Time Work Convention No.175 and Recommendation No.182

Convention concerning Employment Promotion and Protection against Unemployment No.168 and Recommendation No. 176

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