

## **B: WORKERS' BUYOUT**

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A workers' buyout (WBO) is part of a business restructuring, rescue, or conversion process whereby employees purchase an ownership stake in the business that employs them, or in a division or subsidiary of the business. In its more progressive expression, a WBO also includes workers' participation in the running of the firm, either directly or through the election or appointment of management.

Through a variety of legal mechanisms that vary according to the national jurisdiction, employees involved in a WBO may first form a new entity, termed a 'newco' by accountants, in order to engage in the legal requirements for buying all or part of the original business interest, which in turn is known as the 'target company' (Bernstein and Hodge, 2008). In simpler WBO procedures, the newco can be a transitory employee association of some sort or employees can form a trust, where the target company is subsequently converted into a new legal entity, usually a worker co-operative. The newco, association, or trust on behalf of the employee collective, is entrusted with the purchase, and the newco then either fuses with the target company or forms a new company and dissolves the target company (Mraz, 2012).

### **Four possible routes to a workers' buyout**

While there are many reasons for employees to engage in a WBO (Co-operatives UK, 2013), broadly WBOs can take four routes:

(1) Employees form a newco that then buys some or all of the assets of the target company in what is known as an 'asset sale,' usually through the issuance of share capital by the target firm. This purchase is financed by workers' shared contributions to the newco from their savings, redirected pension plans (as in the case of Employee Share Ownership Plans, see below), advances on unemployment insurance (as law permits in Italy and Spain, see below), or from other financial sources (such as with the assistance of institutional investors, which can themselves be co-operatives, individuals, or publically traded or private business, such as Italy's 'socio finanziatore').

(2) The employees' newco purchases some or all of the assets of the target company as in scenario 1 but via loan financing (either from banks,



credit unions, or other institutional investors), which is secured by the assets and future revenue potential of the target company or newco, or at times in combination with or directly by workers' own collateral. This is a type of worker-centred 'leveraged buyout.'

(3) The employees, with their unions or other local supporters and legal representatives, first negotiate the transfer of a failing or bankrupted target company or a portion of it with bankruptcy courts or local authorities through some sort of legal or legislative mechanism (e.g., bankruptcy protection or even expropriation legislation, corporate legislation recognizing business conversions to worker co-operatives, or favourable usufruct laws). These mechanisms, in turn, secure the conversion of the target company to workers' collective ownership and management. Versions of this model are used, for instance, in Argentina, Spain, France, and Italy (Ruggeri, 2014; Vieta *et al.*, 2016a). In this third scenario, the newco, most usually in the form of a worker co-operative, is established just before or during the negotiation process. Negotiated conversion settlements may arrive at: (a) a usufruct legal structure where the workers can use, manage, and work the assets of the firm before a final settlement is reached, (b) a rent or lease-to-own model where the workers pay for the use of the assets of the target company over an agreed-upon timeframe and sometimes from so-called 'labour credits' calculated on unpaid wages incurred by the target company, or (c) from an 'expropriation' of the firm through specific legislation passed by local regional governments on behalf of employees when saving a failing firm is deemed to be in the public interest, which is a common scenario in Argentina.

(4) Any combination of the above three scenarios, including co-ownership and co-administrative models between employees and owners or employees and managers of the target company.

### **The three types of workers' buyouts**

Generally, today's WBOs consist of three types: the 'labour conflict WBO', the 'Employee Share Ownership Plan (ESOP) WBO', and the 'negotiated WBO.'

(1) Recent years have witnessed a rise of the 'labour conflict WBO.' Having a long pedigree as a form of workers' control and self-activity dating back to the factory occupations of early 20th century Europe, these types of WBOs have been particularly visible recently in countries and communities hardest hit by the global economic crisis that began in



2007-2008 and the austerity measures that have followed. Labour conflict WBOs emerge in situations with some degree of conflict between workers and owners, management, and/or local and regional authorities, as witnessed for instance in Argentina, Uruguay, Brazil and other Latin American countries over the past 20 years or so and with many new WBOs in Southern Europe today. Often, local unions, community activists, or social-movement groups become involved in assisting the workers in their struggle to save the firm and their jobs. At times, these conflicts lead to extreme measures, such as owners abandoning failing firms and/or worker takeovers and occupations of these firms, sometimes with some degree of repression by the state justified by the upholding of property laws that clash with people's rights to decent jobs. In these situations, the actual WBO process occurs after the worker collective's occupation of the business, which can sometimes last weeks or months, as occurred in Argentina around the years spanning the crisis of its neoliberal model in 2001-2002 (and still occurring to date), and more recently in Greece, Turkey, and increasingly in Italy. The newco – usually as a worker co-operative – is formed during this period of conflict. Resolving the conflict also involves the workers' collective negotiating the control of the firm's assets with bankruptcy courts and/or local authorities (Vieta, forthcoming).

(2) The 'ESOP WBO' model was created in the US in the 1950s and was legislated formally in the US in the early 1970s with reforms to its pension laws (Freeman, 2007). Growing in numbers throughout the 1970s and 1980s, ESOPs have seen a re-emergence in recent years in the US, Canada, and the UK, in particular (NCEO, 2014). ESOPs are a mechanism whereby employees of the target company, via an 'ESOP trust' (a trust fund analogous to a defined contribution pension plan), purchase ownership shares. Retiring owners gain tax advantages for selling part or all of their company (Kruse *et al.*, 2011) and ownership of the target company is usually shared between employees and other types of more traditional shareholders. Most often the ESOP purchase is financed by workers' pension plans (paid out to workers when they leave the firm), but can also be financed by employees' personal savings or via loans (Freeman, 2007). Today in the US, over 7,000 firms have ESOPs involving over 13.5 million employees (NCEO, 2014), including companies such as Publix Supermarkets, Price Chopper, W.L. Gore, and Austin Industries. While a minority of ESOPs have the structure of a worker co-operative (one member, one vote), usually ESOPs do not include workers' direct control of the target company's assets or management rights. Thus, the 'ESOP WBO' is, in reality, only a partial WBO.



(3) In between the two extremes of the labour conflict and ESOP WBO models is the ‘negotiated WBO’. These are WBOs that are negotiated between owners and workers with the mediation of state authorities. Most often in the negotiated WBO, employees have already established a newco early on in the negotiation process – again, often as a worker co-operative – with the intent of buying or renting part or all of the target company. The negotiated WBO model is further facilitated by clear legislation for such buyouts and works with various community experts, lawyers, the co-operative sector, or unions, as well as with local, regional, or national authorities. In some instances, such as in Quebec’s worker shareholder co-operatives, employees may form a worker co-operative and purchase a portion of the stock of the target company, entering into an agreement with the other shareholders (Vieta *et al.*, 2016b). In this scenario, the worker co-operative may or may not also participate in the management of the firm, depending on the agreement reached with the target company’s original owners and administrators. Other such negotiated WBOs include business succession plans, converting conventional sole proprietorships or investor-owned firms into already-existing labour-owned company structures such as France’s Société Coopérative Ouvrières de Production (or SCOPs) or Spain’s Sociedades Laborales (or SALs) (where at least 51% of share capital must be owned by employees), and Italy’s Legge Marcora-based WBOs.

### **The Italian road to workers’ buyouts: a collaborative approach**

Saving upwards of 10,000 jobs and somewhere between 250-300 or so firms across Italy since the early 1980s, and witnessing a spike in new WBOs since the 2007-2008 economic crisis, the Italian method of WBO formation deserves particular mention for the unique way in which it serves to overcome firm failure and economic crises (Vieta *et al.*, 2016a). Since the passing of Law 49/1985, known as Legge Marcora after the senator who sponsored it, Italian WBOs have been facilitated by national legislation and financing that maps out a collaborative approach to workplace conversions to co-operatives between workers, the state, and the co-operative sector.

(1) *Workers* can finance the WBO in part via their savings, labour credits, and/or advances of their unemployment insurance benefits (i.e. ‘*indennità di mobilità*’ and ‘*cassa integrazione guadagni straordinari*’). (2) *The co-operative sector* can also assist in capitalizing WBO start-ups and consolidating the



newco via share or loan capital financing through the 'fondo mutualistico' made up of 3% of all Italian co-operatives' revenues and from the substantial proceeds of dissolved co-operatives, mainly via Legacoop's Coopfond and Confcooperative's Fondosviluppo. (3) *The state*, mainly through the Ministero dello Sviluppo Economico's (MSE) regulation and underwriting, further supports WBOs via two funds: (a) Foncooper, a rotating fund made of low-interest loans (originally controlled by the Banca Nazionale di Lavoro (BNL), and since the early-2000s Italy's Regional governments and other co-operative sector consortia and financing institutions), and (b) a 'Special Fund' where financial institutions that are mandated to manage the fund on behalf of the state share in the corporate capital of the new worker co-operative on a 1:1 ratio with workers' initial start-up or capital investments. The Legge Marcora – facilitated WBO process and the Special Fund is primarily managed by Cooperazione Finanza Imprese (CFI), which also collaborates with the regional chapters of Italy's co-operative federations and territorial experts. CFI is a limited liability 2nd tier co-operative institutional investor formed in 1986 and mandated by the Italian state, via its principal member, the MSE, to facilitate, help consolidate, and provide business consultancy services to Italy's WBOs and, increasingly since the reforms to the Legge Marcora in 2001, other non-WBO worker and social co-operatives.

As of 31 December 2014, almost 70% of Italy's WBOs were made up of manufacturing firms that can be classified as small-and-medium-sized enterprises (SMEs) of fewer than 50 employees (Vieta *et al.*, 2016a), a typical size for firms created via WBOs (Ben-Ner, 1988). Italian WBOs have particularly taken off in the so-called 'Third Italy' (also known as the 'Made in Italy' areas of the country) where around 75% of the country's WBOs emerged between 1979-2014. The Third Italy is located in the industrial regions of the Centre and the Northeast where the majority of the 'Made in Italy' manufacturing sector is located (Becattini *et al.*, 2009). The creation of WBOs in the Third Italy have also been facilitated by the social capital arising from most of its SMEs being situated within intricate cross-firm production processes in industrial districts consisting of tight, inter-firm production networks (Vieta *et al.*, 2016a).

## References

- Becattini G., Bellandi M., Propris L.D., (2009), *A handbook of industrial districts*, Cheltenham, UK: Edward Elgar.  
 Ben-Ner A., (1988), 'Comparative empirical observations on worker-owned



- and capitalist firms,' *International Journal of Industrial Organization*, 6, pp. 247-260.
- Bernstein J., Hodge B., (2008), 'Sale of businesses to employees in Canada: The leveraged buyout,' *Tax Notes International Special Reports*, Dec. 15, pp. 891-915.
- Co-operatives UK, (2013), *Simply buyout: A guide to employee buyouts and becoming and employee owned business*, available at: <[http://www.uk.coop/sites/storage/public/downloads/8364\\_cuk\\_simply\\_buyout\\_prf4b.pdf](http://www.uk.coop/sites/storage/public/downloads/8364_cuk_simply_buyout_prf4b.pdf)> [accessed on 18 Oct. 2014].
- Freeman S., (2007), 'Effects of ESOP adoption and employee ownership: Thirty years of research and experience,' Centre for Organizational Dynamics, University of Pennsylvania, Working Paper #07-01, pp. 1-33.
- Kruse D., Freeman R.B., Blasi J.R., eds., (2011), *Shared capitalism at work: Employee ownership, profit and gain sharing, and broad-based stock options*, Chicago: University of Chicago Press.
- Mraz J., (2012), 'Accounting for business combinations,' in L. Graham, ed., *Accountant's handbook, vol. 1: Financial accounting and general topics*, pp. 8.1-8.46.
- NCEO (National Centre for Employee Ownership), (2014), *ESOP: Employee stock ownership plan facts*, available at: <<http://www.esop.org/>> [accessed on 17 Oct. 2014].
- Ruggeri A., ed., (2014), *Informe del IV relevamiento de empresas recuperadas in la Argentina, 2014*, Buenos Aires: Facultad de Filosofía y Letras, SEUBE, Universidad de Buenos Aires.
- Vieta M., (forthcoming), *There's no stopping the workers: Crisis, autogestión, and Argentina's worker-recuperated enterprises*, Leiden-Chicago: Brill-Haymarket.
- Vieta M., Depedri S., Carrano A., (2016a), *The Italian road to recuperating enterprises: The Legge Marcora workers' buyouts in times of crisis*, A European Research Institute on Co-operatives and Social Enterprises Report, Trento, Italy.
- Vieta M., Quarter J., Spear R., Muskovskaya A., (2016b), *Worker co-operatives as participatory organizations*, in D. Horton Smith, C. Rochester, R.A. Stebbins, eds., *Palgrave handbook on volunteering and non-profit associations*, Houndmills, Basingstoke, UK: Palgrave Macmillan.

