

Monday » November
7 » 2005

Bankruptcy reforms could hurt companies 'Chill' in restructuring

Duncan Mavin

Financial Post

Monday, November 07, 2005

Changes to Canada's bankruptcy laws that could come as early as January will have "a chilling effect" on troubled companies hoping to turn their businesses around, says the head of a leading corporate restructuring firm.

For companies such as Stelco Inc. seeking to restructure their businesses to avoid going bankrupt, Bill C-55 will reduce flexibility when dealing with labour agreements, causing time delays and disrupting negotiations, said Peter Farkas, managing partner of RSM Richter.

"Nothing kills value in a restructuring like time delays, both because fees mount up, and because businesses don't operate well in restructuring mode when customers don't want to deal with a company," said Mr. Farkas whose firm has handled the high-profile Jetsgo Corp. and Ravelston Corp. insolvencies.

Labour agreements are now not explicitly covered by bankruptcy or insolvency laws, and management and employees must rely on case-by-case decisions from judges like Ontario Superior Court Judge James Farley, who has presided over the Stelco restructuring.

Mr. Farkas praised the current flexibility that allows deals to be made "on the courtroom steps or on the eve of a strike."

Under the proposed bill, however, a company and its employees must follow a multi-step formal procedure that would force both parties to negotiate a settlement.

Mr. Farkas said that procedure "has no end game" and is a "toothless tiger."

It will allow unions to drag out negotiations and prevent companies from restructuring on a timely basis, he said.

The proposed process is in contrast to the flexible approach under existing law and it differs from the law in the United States that allows judges to unilaterally terminate a labour agreement.

"At the end of the day, if a company can't survive without a revision to the labour agreement, then there should be a way to do that," said Mr. Farkas.

However, an official with Industry Canada who asked not to be named said the proposals, which are expected to be given royal assent by early 2006, will provide certainty to stakeholders in a restructuring process.

"At least C-55 attempts to lay the cards on the table and give a framework and guidance," he said. "I cannot see how it reduces flexibility because anything that is

being done now, when both parties agree, can continue to be done."

"It should, in our view, facilitate good faith bargaining," he said.

He said an American-style system is "inappropriate" in the Canadian context, "given a different labour law regime and practices."

In 2004, almost 11,000 struggling Canadian businesses turned to the Bankruptcy and Insolvency Act, and the Companies' Creditors Arrangement Act, both of which have been unchanged for several years.

But Alan Farber of insolvency and restructuring consultants A.Farber & Partners Inc. said the current insolvency acts are "very skimpy" and do not give adequate direction to the parties involved.

He said the bill does not represent a revolutionary change but rather a codification of mountains of existing case law.

Mr. Farber also said the objectives of the bill are to encourage companies to restructure rather than file for bankruptcy, to improve the administration of the restructuring process and to offer better protection to employees.

He said recent very large and "highly charged, multi-unionized" restructurings, such as at Air Canada, have had a bearing on the proposed changes to insolvency laws, especially because labour representatives have been upset by the courts attempts to override employment agreements.

But he also said Bill C-55 will provide a more focused debate and improved guidance for all the parties in a restructuring.

© National Post 2005

CLOSE WINDOW

Copyright © 2005 CanWest Interactive, a division of [CanWest Global Communications Corp.](#) All rights reserved.
Optimized for browser versions 4.0 and higher.

