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Counting the cost of crazy EBAs

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The ructions at Arrium are yet another example of how restrictive EBAs can tie the hands of those seeking to rescue failing Australian firms. Picture Campbell Brodie.

Australian bank executives have clearly not been sufficiently trained on how they can be ripped off by cavalier clients when it comes to enterprise bargaining agreements.

All those Australian banks who participated in the Arrium (formerly OneSteel) $2.4 billion unsecured bank loan debacle will need to explain to their shareholders that, while lower iron ore prices were the main factor causing the Arrium loan losses, inexperienced bank management was also a contributing factor.

Australian banks traditionally have loaned on a secured basis but increasingly in large corporations banks are prepared to loan unsecured while preventing others gaining security via so called negative pledge arrangements. But in the case of Arrium the banks appeared to forget that companies are free to negotiate deals with their workers that substantially lessen the security of banks without asset security and make life even more dangerous for shareholders.

In the case of Arrium, the company may have even put the town of Whyalla in jeopardy. Of course you can also blame the unions.

In The *Weekend Australian* Grace Collier has made stunning revelations about the EBA deal that the Arrium agreed to (***Corporate rescues: before you fork out, read the EBA***, Feb 27). Hopefully, the United States private equity firm, GSO Capital Partners, has studied the Arrium enterprise bargaining arrangements and made their offer while understanding the risks the EBAs posed.

Even though GSO are lending secured, as we saw with Holden, GSO may still be caught. And, of course, GSO also plans to inject share capital, which is high risk.

At Holden we saw just how devastating a bad EBA can be to those who want to keep a plant going. There is little doubt the Holden EBA played a key role in the decision of Punch International Corporation, headed by entrepreneur Guido Dumarey, to earlier this month walk away from the GMH’s Elizabeth plant rescue after initially being very excited despite the obvious difficulties of the competitive market and a limited range of suppliers. The Holden EBA bristled with restrictions on management and flexibility and made the plant totally uneconomic in today’s environment.

The Belgians would have discovered at Holden (as GSO will discover at Arrium) that in Australia bad EBA’s are vicious. The Fair Work Act has a section on “transmission of business”, making EBA’s like a virus which is attached by law to employees, premises and plant. The EBA virus can travel with any of these parts of an enterprise (and sometimes even customers) and infect the new entity.

This means the Belgians' proposed new motor business at Elizabeth, even if it took on no ex-Holden employees, might still become infected by the Holden EBA virus because the Belgians would be in Holden's plant, doing the same work Holden did.

They would therefore be at risk of being ordered by the Fair Work Commission to adopt Holden's crazy EBA for all of their staff. This would kill the new Belgian business as it killed Holden.

Worse, if the new business accidentally took on just one Holden employee — yes, just one — then that employee carries the EBA with them, and the EBA covers them in their new employment. If this happened, it is almost certain the FWC, after an application by the union, would order the new business to adopt Holden's old EBA for the rest of their staff.

That's why in negotiating bad EBA's, Arrium put the Whyalla enterprises and all their backers at great risk.

The Arrium EBAs are not as bad as the Holden disaster but given the iron ore price fall they played a big role in jeopardising the loans of the inexperienced banks.

According to Grace Collier, the main Arrium EBA was made in 2014 and applies until February 2018, although it continues past expiry, with the force of law, forever, until terminated or replaced.

Although base wages are modest — it's the add-ons that are important. An entry-level trade person begins at $120,476 and a level 5 trades is on $160,631, with another increase to $165,450 due in March 2017. Production workers entry level begins on $95,783 and top out at $130,188. These are way above the award but it gets worse.

Staff on long-term non-work related illness, for the purpose of "added financial security", are able to "reasonably expect continued financial support" at their normal rates of pay for up to 12 months, and longer if they are expected to return shortly to the workplace. Other clauses include:

* Union delegates are entitled to 10 days paid union training leave per year and afforded paid time, to "interview a representative of the Company on matters affecting employees". This gives union enormous power.

* Union notice boards are provided and the Company cannot remove union notices unless special conditions apply.

* If the company restructures, and people are put into lower paying jobs, their old rate of pay is maintained forever, which cancels out the whole point of the exercise.

* If an employee with at least two years' service is declassified to a lower pay scale, not only do they stay on their old pay rate, but also the pay rate keeps rising in line with the rises due to the old rate for another two years.

* In the event the mine closing, redundancy pay is 4 weeks per year capped at 104 weeks.

* Where a redundancy is caused by innovation or mechanisation or new technology, the Company must add an extra 3 months' notice or pay, on top of the two years.

The nonsense goes on and on.

There is a current negotiation for a 10 per cent pay cut to help save the company. What's needed is a modern EBA that gives total flexibility.

In Elizabeth the workers will take the redundancy money and run, many onto the government pension. Whether the Whyalla people will have the same view remains to be seen. Or, perhaps GSO really is a modern day Father Christmas.

These days, smaller companies are too smart to enter into EBAs but large companies and their highly paid executives still do it. Many large companies (not Arrium or Holden) also have corrupt deals with the unions. All EBAs should be announced to the stock exchanges and in advance to bankers who have negative pledge agreements and who need to understand the implications.