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By Jessica Hall

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PHILADELPHIA, Nov 26 (Reuters) - The floundering \$34C.8 billion (\$28US.2 billion) leveraged buyout of BCE Inc faces its toughest challenge yet as it struggles to reverse an accounting opinion on its financial health, legal experts said on Wednesday.

BCE's accountants had issued a preliminary opinion that the company that emerges after the buyout would not meet a solvency test because of current market conditions and the amount of debt involved in the financing.

A positive solvency opinion from KPMG, BCE's accountants, is a condition if the deal is to close on Dec. 11, as planned. Without it, BCE, the parent of Bell Canada, said the buyout is "unlikely" to proceed.

The Ontario Teachers' Pension Plan, along with U.S.-based private equity firms Providence Equity Partners, Madison Dearborn Partners and Merrill Lynch Global Private Equity, are offering to take BCE private.

Ironically, BCE's board inserted the solvency requirement into the definitive agreement, one source familiar with the situation said. BCE, however, said both sides agreed the clause should be written into the agreement.

Now, that solvency opinion could be the undoing of the largest leveraged buyout in history.

Since KPMG's view still remains preliminary, BCE could try to satisfy the requirements before the Dec. 11 closing date, launch a challenge against KPMG, or convince the buyers to proceed with the deal regardless. All of those options are fraught with problems, lawyers said.

"Even in the face of litigation, KPMG will just say 'I'm the neutral messenger,'" Columbia University Law School Professor John Coffee.

BCE could try to find another accounting firm to give an independent solvency agreement or launch a legal challenge that KPMG's opinion was flawed, legal experts said.

"BCE will likely bring in another consulting accounting firm to evaluate KPMG's assumptions and show they made XYZ errors or incorrect assumptions," said Donald Zakarin, head of litigation at Pryor Cashman.

"There will likely be challenges to the assumptions that KPMG used and potentially challenges to KPMG to re-evaluate its assumptions," Zakarin said. "Accounting isn't cut and dry. There's more than mathematical rigor involved."

The condition to have a solvency opinion by a third party is rare in large deals, said Joel Greenberg, a partner at law firm Kaye Scholer, who specializes in mergers and acquisitions.

Once it becomes part of the merger agreement, a court would likely view it as strongly as any other requirement in the deal -- such as regulatory or shareholder approval -- which would make it difficult for BCE to argue that the provision was subject to interpretation .

BCE would have minimal leverage or legal standing to force the banks to fund the deal since the solvency requirement was a clear condition.

"If it's a condition that you get a solvency agreement, absent being able to show some nefarious action on the side, which there's no hint of here, it is a condition, and courts would normally respect that," Greenberg said.

The four banks funding the deal, including Citigroup , Deutsche Bank , Royal Bank of Scotland and Toronto-Dominion Bank , have agreed to provide financing of \$34.35 billion.

BCE's failure to get a solvency agreement lets the banks off the hook for the funding. BCE could try to renegotiate terms with the buyers, or convince the lenders to proceed despite the solvency opinion, but such odds are slim, especially during the global financial crisis, lawyers said.

"A solvency opinion is a requirement of closing. Unless someone is willing to waive that requirement, the deal won't close. Especially in this environment, the chances of someone waiving a solvency agreement are slim," Zakarin said.