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# PERSPECTIVES

## THE CASE FOR OUT-OF-COURT WINDDOWS

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Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

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## Introduction

When a business faces insolvency, the path forward is rarely straightforward. Should the company file Chapter 11 in hopes of reorganizing? Should it liquidate under Chapter 7? Would an assignment for the benefit of creditors (ABC) or a court-appointed [receivership](#) make more sense?

These options dominate conversations around distressed businesses—but they are not the only choices.

For many companies, including those with [private equity](#) backing, an out-of-court winddown provides a compelling alternative. Done properly, it offers speed, discretion, control, and the potential for higher recoveries than formal bankruptcy proceedings. This article examines the reasons why out-of-court winddowns may be a preferred alternative over bankruptcy for private equity sponsors, lenders, and boards of directors.

### Key Takeaways for Sponsors & Lenders

#### Why consider an out-of-court winddown?

- » Preserve control.
- » Maintain privacy and protect reputation.
- » Deliver equal or better creditor recoveries compared to bankruptcy.
- » Ensure faster resolutions with lower costs.
- » Reduce personal liability risks through careful planning.

## The Glass Box Problem: Why Bankruptcy Carries Stigma

Bankruptcy is often described as a “glass box.” Once filed, the company’s financial state becomes public record. Creditors, competitors, suppliers, and the media gain immediate visibility into the extent of distress.

For stakeholders, this transparency has costs, especially as it pertains to reputational risk:

- » For public companies, bankruptcy can significantly depress share value and brand perception.
- » For [private equity sponsors](#), it can impact fundraising and investor relationships.

By contrast, an out-of-court winddown offers privacy. Creditors, vendors, and employees are engaged directly, but the process can remain outside the headlines. For many boards and sponsors, this discretion is as valuable as the financial outcomes.

## Why Out-of-Court Winddowns Are Gaining Attention

Market volatility, rising interest rates, and tighter credit conditions have made refinancing or restructuring debt more difficult. [Private equity firms](#), in particular, face mounting pressure to manage underperforming portfolio companies efficiently.

Out-of-court winddowns are gaining traction because they:

- » Protect reputations in industries where bankruptcy headlines can damage other holdings.
- » Offer lenders an alternative to expensive, drawn-out court-supervised liquidations.
- » Provide boards with autonomy to manage the closure rather than ceding authority to the court.

As economic conditions remain challenging, these practical benefits are likely to make out-of-court winddowns a viable consideration.

## How Out-of-Court Winddowns Stack Up Against Other Options

To understand why out-of-court solutions matter, it helps to compare them against traditional paths:

### Chapter 11 Reorganization

- » **Pros:** Provides breathing room, automatic stay, and potential to restructure.
- » **Cons:** Costly, public, often fails (many Chapter 11s convert to Chapter 7).

### Chapter 7 Liquidation

- » **Pros:** Court-supervised liquidation of assets, creditor distribution.
- » **Cons:** Loss of control, limited recoveries, slow process.

### Assignment for the Benefit of Creditors (ABC)

- » **Pros:** Faster and less expensive than bankruptcy.
- » **Cons:** Still a legal process, limited flexibility, may not protect officers.

### Receivership

- » **Pros:** Court-appointed receiver manages business and liquidation.
- » **Cons:** Removes board control, may reduce creditor cooperation.

### Out-of-Court Winddown

- » **Pros:** Retains board authority, private, flexible, and can improve recoveries.
- » **Cons:** Requires skilled negotiation, not always suitable for highly litigious creditor groups.

This comparison underscores why out-of-court approaches resonate with boards, lenders, and sponsors who value discretion and control.

## Core Advantages of Out-of-Court Winddowns for Boards, Sponsors, and Creditors

Handled correctly, out-of-court winddowns can deliver superior results equal to bankruptcy. Key advantages include:

- » **Control** – The company's existing Board of Directors (or a newly appointed one) retains control over the Company.
- » **Flexibility** – Management can choose whether to finish projects or selectively liquidate assets, generally with more flexibility than a bankruptcy affords.
- » **Efficiency** – Avoids prolonged court procedures and reduces legal fees.
- » **Creditor outcomes** – Creditors often receive faster, larger recoveries than they would in bankruptcy.
- » **Stakeholder dignity** – Preserves relationships and minimizes reputational fallout.

For landlords, vendors, and lenders—groups that often face capped or diluted claims in bankruptcy—the flexibility of an out-of-court solution can result in significantly higher recoveries in a quicker timeframe.

# Step-By-Step Guidance to the Out-of-Court Winddowns Process

An out-of-court winddown is not an ad hoc exercise. Advisors typically follow a structured approach to maximize value and reduce risk.

## 1. Assessing Cash and Obligations

The first step is to understand available cash and, separately, outstanding liabilities. Advisors attempt to follow creditor priority rules where possible, but with flexibility to strike settlements.

## 2. Strategically Marshalling Assets

Assets must be identified, marshalled, valued, and liquidated strategically. This may include:

- » Selling inventory to existing customers at discounted rates.
- » Monetizing intellectual property, licenses, or brand assets.

### 3. Negotiating Settlements

Advisors often present vendors with structured options:

- » **Immediate settlement:** In exchange for a release, accept a percentage of what is owed today as full payment.
- » **Deferred, risk-based settlement:** Accept less upfront but retain a contingent right to further repayment if funds remain.

## 4. Making Strategic Project Decisions

Companies must determine whether to complete or halt projects:

- » This requires a “cash-on-cash” analysis – how much does the company need to spend, and how much will it collect?
- » It generally also requires negotiation with the customer to ensure advance payment.

## Stakeholder Perspectives

## Private Equity Sponsors

Out-of-court winddowns allow [PE funds](#) to manage portfolio exits discreetly, avoiding headlines that could complicate future fundraising.

## Lenders' priorities in alternative resolutions.

Lenders often prefer out-of-court solutions that minimize administrative costs and deliver faster recoveries. When handled transparently, these processes can preserve collateral value more effectively than bankruptcy.

## Boards and Management

Retaining control over the winddown allows boards to retain control, manage reputational risk, and minimize personal liability.

## Employees and Workforce Considerations

Employees face uncertainty in any winddown, but transparent communication and timely payment of wages and benefits (and vacation and contractual severance) reduce the risk of litigation.

## Vendors and Landlords

It is often possible to demonstrate superior and quicker recovery to vendors and landlords in an out-of-court process.

## Legal and Liability Considerations

An out-of-court winddown requires careful legal navigation. Key considerations include:

- » **Employee obligations** – Unpaid wages, accrued vacation, and healthcare costs may create personal liability for officers and directors.
- » **Contractual obligations** – Breaches typically result in company-level claims, not personal exposure.
- » **Fiduciary duties** – Boards must demonstrate that they acted in good faith to maximize value for creditors.
- » **State law variations** – Employment laws, notice requirements, and creditor remedies differ by jurisdiction.

Working closely with experienced advisors and legal counsel ensures that the process is both defensible and effective.

## Best Practices for Boards and Sponsors in Out-of-Court Winddowns

For boards and sponsors considering this path, several best practices stand out:

- » **Engage advisors early** – Delays reduce cash and optionality.
- » **Prioritize communication** – Transparency builds creditor trust.
- » **Model scenarios** – Understand the risks and cash requirements of finishing versus halting projects and other scenario planning.
- » **Be realistic** – Overpromising undermines credibility.
- » **Document decisions** – A clear record protects directors from later claims.

## The Advisor's Role in Guiding Boards and Sponsors

Why don't more companies pursue out-of-court winddowns? In part, because it is uncharted territory that does not have established or uniform "rules."

[Restructuring advisors](#), by contrast, specialize in guiding companies through out-of-court options. They bring:

- » **Credibility with creditors** – Advisors can negotiate settlements more effectively than management, which has often exhausted the patience and trust of creditors
- » **Technical expertise** – From asset sales to creditor negotiations, advisors manage the complex details.
- » **Objectivity** – They help boards balance competing interests and make defensible decisions.

In short, the right advisor can mean the difference between a chaotic shutdown and a controlled, value-preserving winddown.

## Conclusion

Out-of-court winddowns are not a cure-all. Some companies, particularly those with litigious creditor bases or highly complex debt structures, may still require court-supervised solutions.

But for many boards, lenders, and [private equity sponsors](#), the out-of-court path offers an elegant alternative to the rigid, costly, and public nature of bankruptcy.

When facing the inevitability of closure, discretion, control, and efficiency matter. Out-of-court winddowns provide all three.



Consider engaging experienced advisors to evaluate whether this approach is right for your situation—and to guide the process toward a dignified, value-maximizing conclusion.

## About the Author

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