

# **To Wind Down or Not . . . in Court or Not . . . That Is the Question**

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**Basic Premise**

Panel will discuss wind-downs and related issues involved in whether to wind-down and whether to use a court supervised process.

**Initial Considerations**

1. Viability assessment
2. Strategic option review
3. Cash and funding available
4. Insolvency status
5. Likely stakeholder cooperation

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### To Wind Down or Not... In Court or Not... That is the Question

#### Issue List to Consider for a Wind-Down

1. Cooperation of secured creditor and general level of trust between company and its primary creditors
2. D&O concerns about shareholder lawsuits or potential claims against the D&O's
3. Existing litigation and/or likelihood of future litigation
4. Hostility of creditor base and likelihood of creditors seeking an involuntary filing
5. Employment issues such as WARN
6. Pension issues
7. Government Regulatory issues
8. Potential to sell group of assets to operate some aspect of the business or all of it as a going concern
9. Government or regulatory investigations
10. Potential owner fraudulent conveyances and preferences
11. Insider transaction complexity
12. Multiple legal entities with different creditor bases
13. Foreign operations and assets
14. Environmental issues
15. Funding available to wind down the business and its administrative affairs properly
16. Potential need to file lawsuits to collect A/R or a settlement or to resolve a dispute
17. Creditor Noticing
18. Completion of in-process inventory
19. Employee retention
20. Records retention
21. Tax considerations
22. Government reporting obligations
23. Legal dissolution

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