

A Decision Framework for Private Credit Restructurings

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The private credit market requires a tailored restructuring playbook in response to rising defaults and the upcoming 2028 maturity wall. In similar circumstances the broadly syndicated debt market previously turned to liability management transactions and chapter 11 proceedings.

Private credit is different: tighter loan documents, smaller lender groups, and relationship-driven negotiations favor more efficient implementation methods, including out-of-court debt-for-equity exchanges, foreclosures, and assignments for the benefit of creditors. These tools prioritize speed, low cost, privacy and consensus. Among the options, the right path depends on the nature of the problem.

Chapter 11 remains a compelling answer when the problem is operational—such as a broken business model, burdensome leases or contracts, or material contingent liabilities such as pending litigation. If the problem is only the balance sheet—too much debt relative to earnings—the answer depends on the players involved and the relative leverage of the lender or lender group.

To select an approach, relevant stakeholders should ask whether creditors can reach consensus, whether the sponsor and other equityholders support the transaction structure, whether the company is on board, how much speed, privacy, and cost containment matter, what the debt documents permit, whether the valuation clearly supports the impairment, what are the relevant tax considerations (e.g., relating to CODI and NOLs), and whether junior creditors or trade counterparties pose involuntary bankruptcy risk.

Regardless of the path selected, lenders may first secure interim protections and perform diligence. Before executing any restructuring, private credit lenders and companies may negotiate forbearance agreements, amendments or waivers that preserve optionality and open a dialogue during the interim period.



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Companies should be prepared for private credit lenders to ask for some or all of the following: the appointment of an independent director or board observer, the delegation of authority to a special committee, the appointment of a lender-approved chief restructuring officer or financial advisor, delivery of a 13-week cash flow forecast with weekly variance reporting, minimum liquidity covenants, standing calls with management and advisors, periodic accrual reports for professional fees along with budget-to actual-variance, borrowing base/collateral reporting, vendor and customer concentration updates, sale process milestones, and comprehensive cash controls, including sweep mechanisms and blocked account arrangements.

A lender group that wants to prevent the company from filing for chapter 11 or gain more control over a sale or other strategic process might sweep the board

or threaten sweeping the board and put in place an independent director with the sole right to file for chapter 11.

During this interim time the parties might perform lien searches, confirm security interests are properly perfected, review loan documents to identify a path to transfer of ownership to the lenders or a third-party sale, obtain a valuation report, and commence marketing efforts.

Also, the new potential owners or investors might want to diligence what it would mean to run the business. The right balance of diligence and process controls between sponsor, company, and the lenders depend on specific circumstances, but given the distinctive leverage dynamics in distressed private credit situations a more collaborative approach on these topics often leads to a more efficient result.

Below is a decision matrix that compares the various options for dealing with distress.

Decision Matrix: Domestic Restructuring Alternatives for Private Credit

In the face of distress, the relevant parties should first assess whether a consensual out-of-court debt-for-equity exchange or other form of recapitalization

is available. In such transactions, existing debt is exchanged for reorganized equity, often with residual debt rolled into a takeback credit facility on revised terms. The benefits can be substantial: these transactions can close in weeks, remain private, cost little, avoid court involvement, limit business disruption, and keep management in place.

Broad mutual releases negotiated in connection with such transactions give consenting parties finality. And the threat of an in-court alternative can induce trade creditors and landlords to provide significant concessions. Sponsors may be able to negotiate retained economics through reinvestment or otherwise depending on the value proposition of a specific situation.

But this approach is not always available: unless the parties are willing to risk litigation, the exchange requires unanimous consent from the company, debt holders, and potentially equity holders, and cannot bind holdouts.

And while exchanges can be particularly useful when multiple creditor and equity classes are involved, with each additional entity there is more complexity and the time to completion is longer. Finally, such exchanges

	Out-of-Court Workout	ABC	Strict Forecl. (Equity)	Strict Forecl. (Asset)	UCC Foreclosure	Chapter 11	Ch. 7 Liquid.
Timeline	Weeks–Months	Weeks–Months	Weeks	Weeks	Weeks - Months	30–1000 days (prepack or prearranged); 6–12+ months (traditional)	Months–Years
Rel. Cost	Low	Low	Low-Moderate	Low-Moderate	Moderate	High	High
Court Invlvt.	No	Limited (but can depend on jurisdiction)	No ²	No ²	None, but a sale process is required ²	Yes	Yes
Shed Other Liabilities	No	Limited	Partial (by stranding)	Partial (by stranding)	Partial (by stranding)	Yes	Partial
D&O Releases	No ⁴	No	No ⁴	No ⁴	No ⁴	Yes ³	No
Bind Non-Consenting Creditors	No	No ⁵	No ⁵	No ⁵	No ⁵	Yes	N/A
Pot. Tax Impact	Triggers CODI (up to the extent of insolvency)	Triggers CODI (up to the extent of insolvency)	Triggers CODI (up to the extent of insolvency)	Triggers CODI (up to the extent of insolvency)	Triggers CODI (up to the extent of insolvency)	Shields CODI (but may reduce tax attributes)	Full (but might be moot because entity is liquidating)
Complexity	Low	Low	Moderate	Moderate	Moderate	Moderate - High	High
Contract Rejection / Renegotiation	Consensual only	No	No	Partial (by leaving contracts behind)	Partial (by leaving contracts behind)	Yes (limited in prepack, but can reject leases and cap claims)	Yes

can be paired with a downstream assignment for the benefit of creditors or chapter 7 liquidation to address residual liabilities at a legacy holding company.

Whether or not a debt-for-equity exchange is available, strict foreclosure under UCC Article 9 is similarly useful and may be more desirable when the first-lien debt is undersecured and/or the documents clearly permit credit bidding in a way that might bind holdouts.

In a strict foreclosure, after default and acceleration, the secured party may accept pledged equity interests or specific assets in full or partial satisfaction of the secured obligation under UCC Section 9-620. The secured party generally faces a 20-day statutory objection period, although if the company is on board and a lien search shows that there are no lienholders other than those consenting to the transaction, such period may be eliminated.

If no written objection arrives, the proposal is deemed accepted, the lenders receive all of the debtor's rights in the collateral and the security interest and subordinate liens are extinguished. Most debt documents permit the required lender group to direct a strict foreclosure and restrict junior lienholders from objecting, while permitting releases of liens and claims against entities below the foreclosure.

Despite these benefits, risks remain. Aggrieved creditors may sue, arguing that there was a breach of the underlying debt documents, a breach of fiduciary duties, a fraudulent transfer or that the default was manufactured, among other things. The borrower or a junior creditor may also file bankruptcy before the objection period expires.

Strict foreclosure therefore works best with near-unanimous support from debt holders and the company, where it provides speed and certainty. To the extent there are significant holdouts, a strict foreclosure may be expensive or too risky.

When pursuing a strict foreclosure, lenders may choose between equity foreclosure and asset foreclosure based on the desired end state. Equity foreclosure is operationally simpler: the lender steps into the equity holder's shoes and acquires the entity with its assets and liabilities intact. Asset foreclosure produces a cleaner balance sheet but carries successor-liability and fraudulent-conveyance risk.

Delaware law can remove an additional consent hurdle. Under DGCL Section 272, a secured party may foreclose on all or substantially all of a Delaware corporation's property without a stockholder vote.

When consensus is unavailable, a UCC Article 9 disposition sale may be desirable. A disposition under Section 9-610 can be public or private and offers a sale process without chapter 11. The main legal safeguard on such sales is that they are completed in a "commercially

reasonable" manner. The value received in such a sale is harder for non-participating parties to challenge than the value established through a strict foreclosure because the strict foreclosure lacks a market check. Yet the length and more public nature of such a sale can make it less desirable than strict foreclosure.

While not necessarily the most effective tool on its own, the assignment for the benefit of creditors (ABC) can be helpful to wind down a legacy entity after a foreclosure or debt-for-equity exchange or even facilitate a transfer of assets (while leaving undesirable assets and liabilities behind). ABCs usually finish in weeks to months, are low in cost, draw little publicity, and give stakeholders more control with less tail-litigation risk than a chapter 7.

Chapter 7 usually produces the lowest recoveries because piecemeal liquidation destroys going-concern value; a court-appointed trustee adds cost and creates greater uncertainty for lenders and other stakeholders. While in the past ABC laws have varied from state to state, the Uniform Law Commission in 2025 approved a uniform ABC act to create greater consistency and modernize ABCs. Delaware has adopted such act; New York has not.

Parties in interest should choose the least invasive tool that solves the problem—but consider the spectrum of options and choose early. The framework demands early engagement, accurate diagnosis, and disciplined execution.

As liquidity falls and maturities approach, optionality narrows quickly, as does the opportunity for a more collaborative, measured approach between existing ownership and lenders. The best restructurings in this market will be the ones no one reads about.

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