RUBERTO, ISRAEL & WEINER

Same Destination. Different Map.

Ways to Navigate Through Business Risks in a Challenging Economy.

By Bradley L. Croft, Esq.

In this time of financial belt-tightening and economic uncertainty, businesses are taking a closer look at prospective ventures and partners than in recent years. And well they should.

The risk-benefit paradigm has completely shifted. Deals that were quickly green-lit based on little more than relationships, reputations and a shared vision are now stagnating among an economic climate that is questionable at best. The conditions that prompted so many retail, food and hospitality enterprises to proceed with expansions, joint ventures, build-outs, and new initiatives have changed, seemingly overnight. Predictable consumer spending, a robust tourism industry, generally favorable market conditions, and lenient borrowing criteria are disappearing, replaced by deflated currency, erratic Wall Street forecasts, nervous lenders, and a timid consumer market.

While the road to new ventures has grown more hazardous, retail, food and hospitality businesses can successfully navigate these challenges and even turn them into opportunities by following a few time-tested strategies that will minimize the risks posed by an uncertain economy.

1. **Do Due-Diligence Diligently**. Check credit and references. Review financial statements carefully. Look for areas of potential exposure (employment claims, tax liens, leases and other key operating agreements in default, unhappy landlords or vendors with outstanding balances who need to consent to the transfer). Obtain insurance certificates. Shop around for better offers or more attractive terms. It's a buyer's market.

2. **Get it in Writing.** Greater attention to how you paper a deal can minimize finger-pointing and blame shifting after things don't go the way you'd hoped. Enhance predictability as to what your worst case scenario might be if a deal collapses. Consider cost-effective resolution strategies such as mandatory mediation or arbitration or identify in advance a neutral referee to settle potential squabbles should they arise. If you're in acquisition mode, make sure your agreements provide a means to recover potential damages from your seller by providing for portions of the purchase price to be paid after the closing or from funds held in escrow.

3. **Be Ready to Walk Away**. Be prepared to pull the plug if it's warranted. The worst mistake a potential buyer can make is to become so enamored with an opportunity that it neglects to critically evaluate whether the venture is truly the right move for its business. Identify your point of no return and do what's necessary to mitigate losses if the risks of going forward are too great. A few timely tough decisions can be the difference between a soured deal that you can chalk up to the costs of careful due diligence and a soured deal that puts the very survival of your company at risk.

A slowdown in the economy does not necessarily mean it's time to put your new ventures or expansion plans on ice. In fact, in many instances it can be a perfect time to pursue new opportunities, particularly if your company is well capitalized and poised for growth. Being aware of the increased risks and knowing how best to mitigate them will help keep you heading in the right direction.