

# Maximizing Your Position in a Tough Economy: Eight Strategies Every Business Should Consider

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The economic downturn is taking an indiscriminate toll on businesses across virtually every industry, as well as all types of individuals. Pink slips are commonplace at companies large and small. The value of investments—ranging from stocks and bonds to real estate—has declined significantly. So, what can companies and individuals do to maximize their position and plan for the future? We have a few suggestions for getting started.

## **Change the Way You Work with Your Customers and Vendors**

Do any of your business partners have bankruptcy or other credit risk? Should you change the terms on which you give credit? If so, consider requiring that products are paid for under cash-on-delivery terms. Another option is to sell product on consignment. If a supplier or customer is having financial trouble, make sure you understand the meaning and effect of “preference claims” in a bankruptcy scenario and position yourself accordingly. Equally important is to understand the warranties that you are receiving from suppliers and providing to your customers. How reliable are these warranties? Do they adequately address the realities of the current economic climate?

## **Protect Yourself against Employee Claims**

As unemployment intensifies, claims of age discrimination are soaring, while claims alleging other forms of discrimination also continue to rise. Older workers who have been laid off face an increasingly tough job market. As a result, they may be more apt to file discrimination claims because they have nothing to lose and little hope of quickly finding alternate employment. As layoffs intensify, claims under the Worker Adjustment and Retraining Notification (WARN) Act are on the rise everywhere, including industries and situations where the provisions of this act were never previously a significant factor. What is a smart company to do? For starters, build your employee files and consider the consequences of any reduction in force with the WARN Act and other employment-related laws in mind. Also, revisit your non-solicitation and non-competition provisions in employment agreements, handbooks and policy manuals. Do you have sufficient consideration for these restrictive covenants? Additionally, you should protect yourself against the potential for increasing instances of employee theft. Is your employee theft and employee liability insurance sufficient to

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cover your risks? Now may be a critical time to reassess those policies.

### **Communicate with Your Lenders**

The breakdown in the credit markets has been covered extensively by the media. Regardless of your company's situation, one of the worst things you can do is fail to communicate regularly with your financial institutions. If your business is performing poorly, communicate with your lenders before breaching a loan covenant. The old adage that it is better to beg forgiveness than to ask permission is no longer a sound strategy. On the other hand, if your company is doing well, your bank will view you as an asset and may find ways to reward you. Also, consider the terms of your debt. What assets are pledged and for what? If you default on a loan or a guaranty, how will that affect other loans or agreements? In this difficult economic climate, it is better to analyze your credit situation now, rather than waiting until it becomes a necessity.

### **Communicate with Your Equity Holders**

Although transparency is always highly valued, it is particularly important in a troubled economic environment. These days, too much information is not a bad thing. Communication with your equity holders is important to head off disputes before they become a distraction and disrupt your business. If you have a private placement memorandum or offering materials, update the information in those documents to reflect changes in your business and the economy. Also, revisit your shareholder or operating agreement. Shifts in the economy and your business may warrant changes to those documents (e.g., the definition of fair market value or the terms of any buyout).

### **Understand Pension Plan Risks**

Many pension plans are grossly underfunded due to losses in the stock market and other changes in the economy. How will your company adjust? If you are an employee, what does this mean for you? In the not-too-distant future, pension administrators will face a growing risk of claims related to their investment decisions and the diversification of assets. Any changes that can be made now should be considered before the problem gets further out of hand.

### **Protect Your Personal Assets**

Although it sounds counterintuitive, decreasing values of stock and other assets may actually provide a benefit—you may be able to transfer assets at a lower price for estate planning purposes. For example, lower valuations can pave the way for planned wealth transfer to your heirs or other beneficiaries. At the same time, low valuations may better enable you to reorganize your assets so as to shield them against claims by potential creditors.

### **Grow or Acquire a Company**

Although business is generally soft right now, the current market presents the best buying opportunity in a long time because valuations are low. This is an ideal time to search out opportunities with competitors who are struggling, but whose business may provide synergies or economies of scale with your own. In light of the tight credit markets, however, beware that any acquisition will likely need to be supported by cash flow and there are fewer qualified buyers able to make acquisitions.

In the growth vein, consider exploring creative financing strategies. If you are unable to get traditional bank financing, then mezzanine debt or preferred equity might be viable alternatives. Look at multiple

banks to see if one or more will offer higher advance rates. Or consider factoring your receivables. Also, have you thought about appealing your most recent real estate taxes? If not, you could be leaving money on the table. These taxes are based on assessed values, and valuations have been plummeting in recent months.

### **Understand the New Laws Enacted or Proposed by the Obama Administration**

New policies, proposals and legislation are emerging daily from the Obama administration. From the financial services industry to the credit markets to the auto industry and everywhere in between, virtually all businesses and individuals are affected in some way by these ongoing developments. Are you positioned to take advantage of the changes that are on the horizon or already in place? While no one knows exactly what the new regulatory schemes may look like, companies that carefully follow the proposed tax laws, health care proposals, labor legislation and other new policies will be better equipped to benefit from the changes. Accordingly, flexibility and adaptability will be critical factors for current and future success.

Obviously, there is no magic bullet or single remedy that will guarantee survival for your organization. But a few simple shifts in strategy can pay dividends, and even position you for success during these challenging times.

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