

Race to recovery

Crisis Management – The first 7 days

Poll #1

Within your organisation, do you have a protocol as to what to do if a major counterparty fails?

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What we will cover

Overview

Internal considerations

External considerations – non-counterparty

External considerations – counterparty

Experience of different jurisdictions

Ongoing risk factors

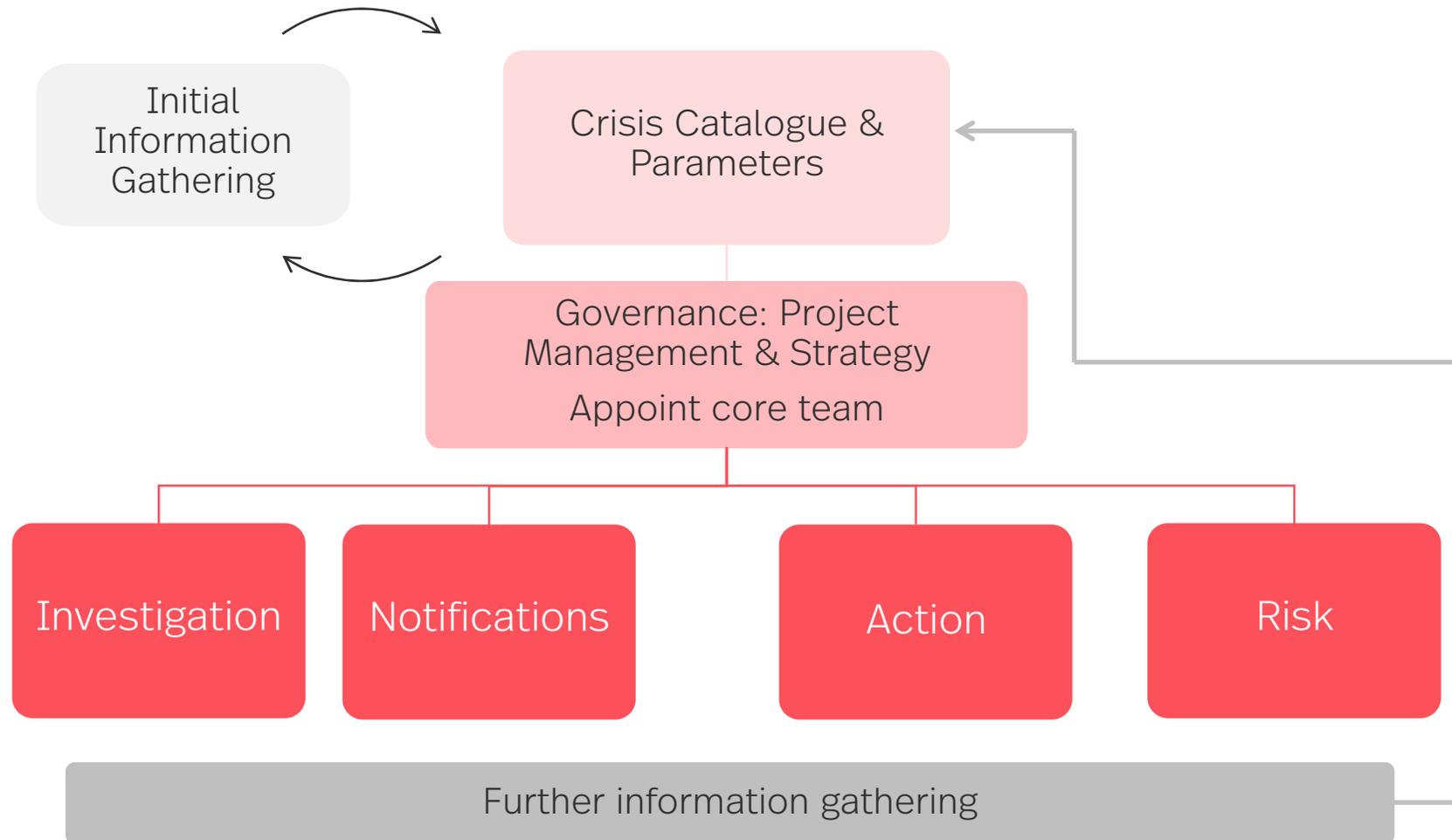
Crisis Catalogue



Typical Crisis Situations

Event Driven	Criminal	Regulatory	Employment	Information	Product
<p>Business continuity (terrorism/ natural disaster/ act of God)</p> <p>Major counterparty problem</p> <p>Market event</p> <p>Ponzi schemes</p> <p>PR/ Scandal/ Press allegations</p> <p>Shareholder/ Investor complaints litigation</p>	<p>Police/ Competition on authorities</p> <p>Raids - offices/ homes</p> <p>Intervention competition/ Cartel/ Antitrust/ Corruption</p> <p>Bribery</p> <p>Fraud</p> <p>Money laundering</p> <p>Insider dealing</p> <p>Tax evasion</p>	<p>Regulatory request for information/ proceedings</p> <p>Market abuse</p> <p>Front running</p> <p>Financial reporting/ misstatement</p> <p>Conflicts of interest</p>	<p>Key team departure</p> <p>Employee criminal events</p>	<p>Whistleblowing</p> <p>Information leak/ Data leak</p> <p>Cyber Attack</p> <p>Data theft</p> <p>Data Protection issues</p>	<p>Systematic product failure</p>

Swimlanes



Poll #2

If such a major incident occurs, who within your organisation is in charge of dealing with it ?

- CEO
- COO
- Risk
- Legal
- All of the above
- No idea, but it's not me

Project Management and Strategy

Identify those stakeholders that need to be included in the decision making process

Consider which internal stakeholders need to be notified (see next slide)

Consider who needs to be on the core crisis response team

- Legal (employment / regulation / litigation / product lawyers)
- Compliance / Risk Functions
- HR
- Consider whether external resources are required. If lawyers instructed consider the identity of the instructing client for privilege purposes.

Appoint SteerCo and accountable executive if necessary

Ensure team creates and maintains records / decision logs

Project Management



Internal notifications and stakeholders

Identify who needs to be notified within the organisation

What do internal policies require?	Legal	Investor Relations?
Senior management function / Executive Office / Board / NEDs?	Internal audit	Media & Government Relations?
MRLO?	Data Protection Officer?	Finance
Compliance	Security?	IT department?

External



Non-Counterparty – Notifications

Domestic and international Regulatory Notifications?	Market Notification?	Criminal Notifications?
Insurers	The press?	Other contracting parties?
External Auditors	Investors?	Your loved ones...

Your position



Whose interests are at stake ?

Your status:
fiduciary/ asset
manager?
a proprietary
position?

Is your position
hedged?

Back-to-back
contracts?

Contractual considerations:

- Written contract?
- Express terms: Event of default; termination; notices; netting; set off; cross default
- DR : arbitration or court; jurisdiction (exclusive or non-exclusive); governing law

Dealing with the counterparty

Protecting your position



Gain intel

Who is the counterparty?

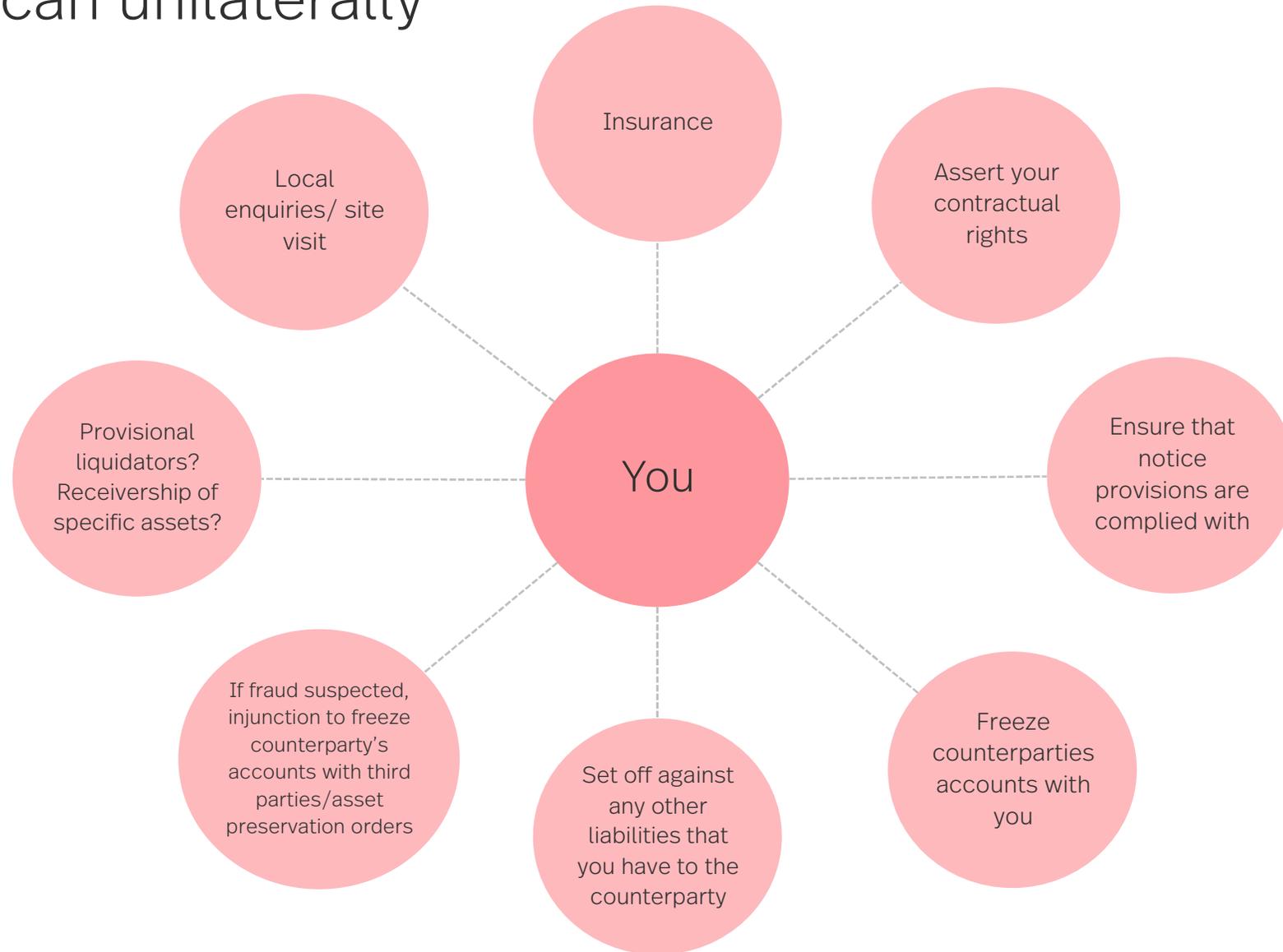
Legal proceedings?

What is your leverage?

Speed may be of the essence... but prudence sometimes pays

Dealing with the counterparty

Do what you can unilaterally



Poll #3

In your experience, what have been the more difficult features of dealing with a major counterparty failure?

(select up to three)

- Never had to deal with one
- Managing litigation in different jurisdictions
- Keeping multiple regulators at bay / satisfied
- Uncertainty / lack of information
- Pressure to act / do something
- Internal recriminations / other people looking to protect their own interests
- Reputation management

Dealing with third parties



If your physical security vanishes or a third party enforces against it

Which jurisdiction?
+
Local supporting actions

Liquidation

Who might be competing for the same assets?

Injunction/
tracing

Insurance

Market intel

Managing multi-jurisdiction issues



Local Regulators

Every system is different and has its own characteristics and ways of dealing with things

Local courts

Local law firms

Hong Kong and PRC

Particular considerations

- No LPP protection (PRC): proper hygiene
- Government agencies involved?
- Denial
- Superficial solutions
- Judicial systems – the familiar and the mysterious
 - “It’s not what you know ...”
 - Private hearings
 - Party
 - Race to court
- Maintain control of local counsel

Ongoing Risk Factors



Identify any ongoing risks and prepare to take initial remedial measures

Incident continuing?	Ongoing consumer or counterparty detriment	Breach of contract	Loss of evidence and/or data
Systems controls (i.e. IT access / premises)	Complaints handling	Litigation risk management	Regulatory risk
Media / publicity	Ongoing market disclosure requirements	Prudential / capital adequacy	Ongoing resourcing requirements

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