

# Crisis Management: Navigating Investigations, Litigation, and Communication with the help of lawyers

July 2024

## Introduction

Corporate crises can threaten an organisation's reputation, financial stability, and even its very existence. Effective crisis leadership involves the ability to deal with the concerns of all stakeholders in a timely fashion. During such critical junctures, organisations and their management must navigate an intricate triangle of challenges: internal and external investigations, potential litigation, and critical communications. This article explores how these three elements intertwine and how effective management of this triad is crucial for successfully steering an organisation through crises.

## The Crisis Triangle: Management's Challenge

What is the Crisis Triangle? When a crisis hits, companies face a three-pronged challenge:

- a) **Investigations:** Both internal and external probes into the nature and cause of the crisis.
- b) **Litigation:** Actual or potential legal actions resulting from the crisis.
- c) **Communication:** Managing information flow to stakeholders, the public, and the media.

These three elements form a constantly evolving interconnected triangle or trio of tasks that the company must carefully balance.

### 1. Investigations: Uncovering the Truth

**Investigations** form the first vertex of the crisis triangle. When misconduct or violation of the law is discovered within a corporation, it is necessary to promptly conduct an internal investigation. These investigations serve multiple purposes:

- a) **Fact-finding:** Uncovering the true nature and extent of the problem.
- b) **Legal preparation:** Gathering information to defend against potential litigation.
- c) **Regulatory compliance:** Demonstrating proactive measures to regulatory bodies.

Companies must ensure that investigations are **thorough, unbiased, and timely**.

They may need to establish third-party committees to maintain credibility, especially in cases of alleged executive misconduct. The key to a successful internal investigation is **thoroughness, independence, and credibility**.

Types of investigations may include:

- Internal audits.
- Forensic accounting investigations.
- IT and cybersecurity investigations.
- Employee misconduct investigations.

The CEO's role in investigations is to:

- Authorize and support the investigation process.
- Ensure adequate resources are allocated.
- Maintain independence of the investigation team.
- Review and act on investigation findings.

Law firms can provide critical support in conducting and managing investigations by:

- a) Establishing independence: Law firms can lead or oversee internal investigations, providing credibility and independence to the process.
- b) Preserving solicitor-client privilege: By conducting the investigation under the direction of legal counsel, companies can potentially protect sensitive information under solicitor-client privilege.
- c) Expertise in specific areas: Law firms often have specialists in areas such as anti-corruption, antitrust, or cybersecurity who can lead targeted investigations.
- d) Managing regulatory interactions: Law firms can interface with regulatory bodies, ensuring compliance and managing the flow of information during investigations.
- e) Coordinating multi-jurisdictional investigations: For global companies, law firms, especially those with an international presence, can manage complex investigations across multiple countries and legal systems.

## 2. Litigation: Navigating Legal Challenges

The second vertex of the triangle is **litigation**. In order to mitigate liabilities when companies, their executives and employees are subject to claims and criminal justice procedures, it is essential to swiftly implement appropriate measures.

Companies must work closely with legal counsel to:

- a) Assess potential legal risks and liabilities.
- b) Develop strategies for defence against lawsuits.
- c) Consider settlement options when appropriate.
- d) Ensure compliance with relevant laws and regulations.

The litigation aspect often interacts closely with both investigations and communications, as legal considerations can impact what information can be disclosed and how it's presented. The litigation strategy must align with the company's broader crisis management and business and reputational goals.

Key litigation considerations include:

- Understanding the legal landscape and potential liabilities.
- Balancing legal defence with reputational concerns.
- Managing document preservation and e-discovery processes.
- Coordinating with internal and external legal counsel.

In the litigation aspect of the Crisis Triangle, law firms provide essential services such as:

- a) Pre-litigation risk assessment: Evaluating potential legal exposure and developing strategies to mitigate risks .
- b) Litigation strategy development: Crafting comprehensive legal strategies aligned with the company's overall crisis management goals.
- c) E-discovery management: Overseeing the collection, review, and production of electronic documents, which is often a critical and complex aspect of litigation .
- d) Representation in court proceedings: Providing skilled litigators to represent the company in court hearings, trials, and appeals.
- e) Settlement negotiations: Advising on and conducting settlement negotiations to resolve disputes efficiently when appropriate.

### 3. Communication: Managing Perception and Information Flow

The third vertex, **communication**, is critical in shaping public perception and maintaining stakeholder trust. Management must oversee a comprehensive communication strategy that includes:

- a) Internal communication: Keeping employees informed and aligned.
- b) External communication: Managing messages to the public, media, and stakeholders.
- c) Regulatory communication: Providing necessary information to regulatory bodies.

The initial crisis response helps to establish the tone for how stakeholders perceive the crisis and the organization in crisis. Effective crisis communication therefore often has as its main objective **building or rebuilding trust and transparency before controlling the narrative**. This sometimes involves "stealing thunder", i.e. proactively disclosing information about the crisis before it's revealed by other sources.

Communication strategies include:

- Developing a clear, consistent message across all platforms.
- Utilising multiple communication channels (e.g. press releases, social media, internal memos).
- Preparing for media interviews and press conferences.
- Addressing stakeholder concerns promptly and transparently.

While not traditionally seen as part of a law firm's role, many firms now also offer crisis communication support such as:

- a) Legal review of communications: Ensuring that public statements, press releases, and other communications do not create additional legal exposure.
- b) Developing communication strategies: Working with PR firms or in-house communications teams to craft messages that address both legal and reputational concerns.
- c) Regulatory communications: Managing and drafting communications to regulatory bodies, ensuring compliance with disclosure requirements while protecting the company's interests.
- d) Training executives: Preparing CEOs and other executives for depositions, testimony, and media interviews in the context of the legal strategy.
- e) Stakeholder communications: Advising on communications with key stakeholders such as board members, shareholders, and employees, particularly regarding legal matters.

## Balancing the Triangle: Management's Role

Management's primary challenge is to balance these three elements effectively by:

- a) Coordinating efforts: Ensure that investigation findings inform both legal strategies and communications.
- b) Managing timing: Balance the need for thorough investigations with timely communications and legal responses.
- c) Maintaining consistency: Ensure that messages across all three areas are aligned and consistent.

## Post-crisis Long-term Considerations

Organizational learning is a critical component of effective crisis management. Hence, while managing the immediate crisis is crucial, CEOs must also consider the following long-term implications post-crisis:

- a) Reputation management: Implement strategies to rebuild and strengthen the organization's reputation post-crisis.
- b) Organizational learning: Use the crisis as an opportunity to improve systems and processes.
- c) Cultural change: Address any underlying cultural issues that may have contributed to the crisis.

Long-term strategies include:

- Conducting post-crisis reviews and implementing lessons learned.
- Strengthening corporate governance and compliance programs.
- Rebuilding stakeholder trust through consistent, ethical behaviour.
- Investing in preventive measures to avoid future crises.

## Conclusion

By understanding the interconnected nature of the crisis triangle and adopting a strategic, balanced approach, management can with their legal advisors more effectively guide their organizations through crises in a timely manner and effectively preserve their reputation, financial stability, and even their very existence. The key lies in preparation, ethical leadership, and the ability to adapt quickly to evolving situations with the early enlistment of responsive and agile counsel.

Please do not hesitate to contact the team at Simmons & Simmons should any assistance with crises be required.



**Terence Seah**

Partner

T: +65 6831 5580

E: [Terence.Seah@simmons-simmons.com](mailto:Terence.Seah@simmons-simmons.com)



**Joavan Pereira**

Associate

T: +65 6831 5566

E: [Joavan.Pereira@simmons-simmons.com](mailto:Joavan.Pereira@simmons-simmons.com)