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Dealing with a Dawn Raid

A “dawn raid” is the phrase used to describe an unannounced inspection of a company’s business premises or a person’s residential premises, usually early in the morning, often around 9am in the case of business premises.

The Securities and Futures Commission (the SFC), the Independent Commission against Corruption (the ICAC) and the Competition Commission, amongst others, all have the power to gain entry to premises and conduct a search in certain circumstances. Generally, the SFC, ICAC and Competition Commission all need a search warrant to conduct a dawn raid, although the ICAC may conduct a raid without a warrant in urgent circumstances.

What can trigger a dawn raid?

Generally, where the relevant authority has reasonable grounds to believe or suspect that a company or person has contravened certain laws, then such a company or person could be subject to a dawn raid. The raiding authority in each case will depend upon the specific law suspected of being contravened. For example:

The SFC

The SFC is empowered to investigate a wide range of offences and misconduct including by companies licensed or registered with the SFC and companies listed on the Hong Kong stock exchange. Such offences include insider dealing, false trading and price rigging.

The ICAC

Examples of the type of offences that can see the ICAC conducting a dawn raid are those under the Independent Commission Against Corruption Ordinance and the Prevention of Bribery Ordinance including fraud, perverting or obstructing the course of justice, and giving or accepting a bribe.

The Competition Commission

The Competition Commission can conduct an investigation where it has reasonable cause to suspect a breach of the competition rules, i.e., a breach of the rules regarding anti-competitive agreements, abuses of market power, and anti-competitive mergers and acquisitions, currently in the telecommunications industry only.

What can an organisation do to prepare for a “dawn raid”?

Although dawn raids typically take place without announcement and each dawn raid is unique, there are still some steps that an organisation can take to better deal with a dawn raid should it ever occur. For example:

- A response protocol should be devised which will identify who in the organisation forms part of the response team – this will typically include a member of management, someone from the business who knows where documents are located, someone from the IT department who knows how electronic documents can be retrieved, as well as a legal adviser. Given that reception desk staff or members of the security team are often the first members of staff to become aware of a dawn raid, they should know who to contact when the investigators arrive, who can then arrange for all members of the response team to be contacted. It can also be useful to have agreed with an external law firm who can be an emergency contact within that law firm in the event of a raid.
- The response protocol should include plans to ensure that the business can continue to operate during a dawn raid. For example, hard drives or servers may be seized, therefore, it is important to have a contingency plan providing for backups to enable the continued operation of the business.

What steps should an organisation take in the event of a dawn raid?

Wherever possible, the investigation officers should be politely asked to wait in a separate room until the relevant personnel identified in the response protocol are onsite to assist. However, there is no obligation on them to do so and it is imperative that they are not refused entry to conduct their investigation as it can be a criminal offence to obstruct or impede an investigation.

The officers should be asked to provide valid identification documents and the warrant authorising entry and seizure. These documents should be checked to ensure they are in order, for example, that the correct premises are specified, and to better understand the nature and scope of the investigation being conducted.

There may be secrecy obligations applying to the investigation, for example, those arising under section 378 of the Securities and Futures Ordinance, and therefore it is important that staff are only provided with details on a ‘need to know’ basis.

Wherever possible, copies of documents or a list of the documents seized by the authority should be retained. Members of the response team should accompany the officers whilst they are conducting the search, so specific details of what is searched and seized can be recorded.

It is often difficult during the course of the raid to identify documents that may be outside the scope of the

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investigation or may be legally privileged. However, consideration should be given to this and notification and objection provided to the investigators at the time, so that such documents can be separately sealed pending reaching an agreement with the investigators, or a court hearing to determine the treatment of such documents.

It is important to cooperate with the officers throughout the raid such that there is no suggestion of any obstruction which could constitute a criminal offence.

Contact



Nick Dealy

Partner

+852 3405 7656

ndealy@gallhk.com