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Dawn Raid

10 do's and don'ts

The 10 do's and don'ts (Dawn Raid)

It could happen to you or your company: one morning some government authority turns up on our doorstep. They want access to your records and IT systems, they want copies of documents and they want to interview your employees and perhaps yourself. They come at dawn, when the surprise effect is the greatest: a "Dawn Raid".

Such a dawn raid is often the first sign that the government is investigating you and/or your company. For the further course of that investigation, and the outcome of the case, what happens during this visit is often crucial. Cases are won or lost depending on how you and your company respond to the unexpected visit.

A large number of government authorities can turn up unannounced on your doorstep. They can roughly be divided into two main groups: authorities concerned with regulatory and administrative enforcement and authorities dealing with criminal law enforcement. Some authorities fall into both categories.

Regulatory and administrative enforcement authorities include:

- European Commission
- Authority for Consumers and Markets (ACM)
- Financial Markets Authority (AFM)
- The Dutch Central Bank (DNB)
- Inspectorate for Social Affairs and Employment (Health & Safety)
- Environment and Transport Inspectorate (ILT)
- Netherlands Food and Consumer Product Safety Authority (NVWA)
- The Health Care Inspectorate (IGZ)
- Provincial, regional and municipal supervisors

Authorities concerned with criminal law enforcement include:

- Police
- Fiscal Information and Investigation Service (FIOD)
- Inspectorate for Social Affairs and Employment (following a health & safety incident)
- Environment and Transport Inspectorate (ILT)
- VROM Intelligence and Investigation Service (VROM-IOD)
- Netherlands Food and Consumer Product Safety Authority (NVWA)

Regardless of which authority shows up on your doorstep, you should always adhere to the following 10 do's and don'ts:

1. Know who has turned up

Make sure you know exactly which persons of which authority have turned up. Ask to inspect identification cards and take down all the names and official identification numbers of the officials involved.

2. Know why they have turned up

Make sure you know exactly what the purpose of the official visit is. Is it a visit in the course of a regulatory or administrative enforcement effort, or is it part of a criminal investigation?

3. Know what they would want to do

The officials do not just step by for a visit, they have specific goals. These could be seizing your administration, copying digital data or interrogating witnesses. Make sure you know exactly which investigative activities the officials are going to want to perform.

4. Give the officials a safe "headquarters"

The officials will ask for a private space where they can collect and discuss the results of their investigative efforts. Escort them to a conference room. Offices, spaces with files or administration and spaces with non-secure access to the company's computer system are not suitable. See point 9.

5. Call your lawyer

In all instances it is advisable to call your lawyer. Based on the information you have gathered, your lawyer is able to estimate how seriously the visit should be taken. Your CMS Dawn Raid Team contacts are:

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6. Determine who is the spokesperson on behalf of the company

The officials will have questions. These can be very simple, such as inquiring where certain documents are kept, but these can also be complex questions about events or incidents in the past. In all instances it is important to designate one spokesperson as the single point of contact between the officials and the company. Once your lawyer has arrived, he will assume this task.

7. Do not cooperate voluntarily

It is important that the legal status of both your company and yourself are clearly defined. The officials have an arsenal of coercive powers at their disposal. They may demand access to documents, may copy and sometimes seize documents, they may take samples, make copies of digital data, etc. But they may only use these coercive powers in certain circumstances and when certain conditions have been met. The only possible way to clearly establish the legal basis of the actions of the officials is to not cooperate voluntarily, but to always await an official "order" or "demand" of the officials. Your lawyer will make sure this is the case.

8. Do not agree to be questioned or interviewed without your lawyer being present

It may be that the officials want to interview or to take a statement from you or one of your employees. Make sure that such an interview is not conducted without a lawyer present. Ask the officials to wait for your lawyer to arrive. Only in case the officer threatens you with a fine for a failure to cooperate, you have no choice but to submit to an interview.

9. Guard against 'fishing expeditions'

An investigation does not mean that officials must be granted unlimited access to all the information and documents of the company. The activities of the officials should be reasonably related to the scope and purpose of their investigation. If that connection is not clear, object to the activity.

10. Put your objections in writing

It may be that you have objections to the actions of the officials. It is not sufficient to claim at some later stage in the proceedings that you protested verbally at the time of the investigation. If you have concerns, write them down, make a copy of your notes, and give a copy to the officials. Send a registered letter with your concerns to the officials or their supervisor the same day, or instruct your lawyer to do so. Keep a copy of the letter.