

# DAWN RAIDS BY THE HONG KONG COMPETITION COMMISSION: A FIRST AID KIT

To investigate potentially anti-competitive activities, officers from the Competition Commission (“Commission”) may carry out unannounced inspections at your offices in Hong Kong.

These unannounced visits are commonly referred to as ‘dawn raids’. The Commission has actively used dawn raids as an investigative tool and this trend is expected to continue. Companies are obliged to cooperate with the legitimate exercise of the Commission’s inspection powers.



**This first aid kit sets out the key “dos” and “don’ts” of how you should handle a dawn raid by the Commission.**

- ✓ Contact the company’s in-house legal department or external lawyers as soon as possible to notify them of the officers’ arrival.
- ✓ Refer visitors from the Commission to the legal department. The Commission’s officers should allow reasonable time for the company’s external legal advisers to arrive at the office before starting to examine documents. You should not be regarded as obstructing the inspection if you call the company’s in-house or external lawyers for advice and assistance. Give them your location and telephone number (so they can reach you).
- ✓ Be aware that anything you say to the officers may be used against the company and, possibly, you.
- ✓ Identify which of the officers is the team leader. Ask to see, and check carefully, any notice or warrant providing the basis for the inspection. That authorisation document should state the location, purpose and scope of the investigation. Provide a copy of the document to the company’s lawyers.
- ✓ Find out as much as you can about what the officers are looking for and whether the Commission is seeking to compel disclosure of information or seeking voluntary assistance with its enquiries.
- ✓ Check and copy the identity documents of the officers. Provide a copy of these to the company’s lawyers.
- ✓ Arrange appropriate IT support to allow the officers to conduct the inspection. This will be a priority for them.
- ✓ Secure documents or equipment in the manner requested by the officers. Any employees affected by IT measures carried out by the officers should be instructed not to interfere in any way. Consider whether automated destruction policies need to be paused and/or preservation notices sent to employees.
- ✓ Where requested, facilitate access to electronic and hardcopy materials relating to the subject matter of the inspection, irrespective of the medium on which they are stored (e.g. laptops, desktops, tablets, mobile phones, hard drives, USB keys, (third-party) cloud-based services which are accessible from the premises etc.).
- ✓ Try to arrange for each officer to be assisted/shadowed by a member of staff and, if possible, a lawyer.
- ✓ Keep as full a record as you can of what the officers ask for and inspect, any questions asked and answered, and of any other discussions.
- ✓ Answer truthfully, fully and promptly any requests for explanations of documents, e.g. their whereabouts, who prepared them (and that person’s role) etc. Do not speculate if you do not know the answer.

- ✓ Officers may wish to interview certain individuals. If so, they should make clear whether this is on a compelled or voluntary basis. If the latter, you should raise this with the company's lawyers before agreeing to be interviewed.
- ✓ Assert legal privilege in any documents which you consider to be privileged and which the Commission is therefore not entitled to inspect. If there is a dispute about this, you should seek to agree with the Commission officers that the relevant documents will be put to one side for later resolution by the company's lawyers.
- ✓ Maintain your own copies of all (electronic and hardcopy) documents copied by the officers, and of their document inventory. The Commission's officers may offer to provide an index and copies of the documents they have taken. In some circumstances, they may seek to seize or copy data for later review at their own premises - if so, you should raise this with the company's lawyers to ascertain whether the officers are permitted to do so.
- ✓ Seek immediate guidance from the company's lawyers if, at any stage, you are uncertain as to how to proceed.
- ✓ Remain calm and courteous throughout any visit.

## DON'T

- ✗ Refuse admission or keep the Commission officers waiting unduly.
- ✗ Tell any person outside the company (except the company's external lawyers) what is happening.
- ✗ Interfere in any way with the IT measures carried out or required by the Commission.
- ✗ Delay in seeking to contact any executive (however senior or wherever they may be) the officers ask to see.
- ✗ Destroy, delete, amend or tamper with any materials, or appear unhelpful or obstruct the Commission's officers.
- ✗ Sign anything at the Commission officer's request without first seeking guidance from the company's lawyers.
- ✗ Speculate when answering any questions from the Commission's officers.

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