



## Hong Kong Competition Law

### INVESTIGATION SERIES: PART 6

#### Dawn Raids

##### Overview

As mentioned in our previous articles, if the Hong Kong Competition Commission (the “Commission”) proceeds to a formal investigation, it will have at its disposal a full arsenal of investigative tools to obtain evidence of infringement.

You may recall that the Commission’s investigation powers include:

1. The power to request information or documents;
2. The power to request any person to appear before the Commission to answer questions; and
3. The power to carry out on-the-spot inspections (so-called “dawn raid”).

A dawn raid is a surprise inspection at a company’s premises by officials of the Commission. Dawn raids get their name from the inspectors’ habit of turning up at the beginning of the business day to guarantee an element of surprise and minimise any disruption to the search.



A dawn raid can be a stressful event for a company and its employees. Companies should therefore ensure that they are well prepared for any potential dawn raid.

##### Be Ready When the Inspectors Arrive

A dawn raid requires a speedy and adequate response. Receptionists and security staff should be trained and prepared to inform management of the dawn raid upon arrival of the officials.

Officials generally arrive in teams comprising of at least two Commission officials and IT experts, and officials may conduct simultaneous investigations at various companies or business locations. It is also important to keep in mind that dawn raids may not be confined to the premises of a company which is under investigation. For instance, the search can extend to the premises of the investigated company’s suppliers or customers.

When the inspectors arrive, you are advised to take the following steps:

1. Contact relevant in-house or external legal advisors to assist in dealing with the officials. The Commission has indicated that it will wait a reasonable time for external counsel to arrive before commencing a search, provided that this will not adversely affect the investigation.
2. Check the officials’ ID documents and request documents evidencing their authorisation to investigate. The Commission is required to obtain a warrant from a judge of the Court of First Instance in order to conduct a dawn raid.

3. Note the authorised scope of the investigation and ensure the officials limit their search and questioning to these matters.
4. Designate an appropriate person to be the point of contact with officers of the Commission during the search.

### What Happens During an Inspection?

During an inspection, inspectors can search any premises, question individuals, examine any book or business record (regardless of form) and take originals, copies or extracts of documents. Inspectors may also use force to enter the premises and seize equipment, such as servers, phones and laptops.

Officials may be well-prepared and already be in possession of site maps, names of staff members, etc. It is important to remain cooperative at all times and convey objections (if any) politely. Also, if the inspectors seal rooms or cabinets, make sure the seals are not broken or tampered with in any way. If possible, statements should only be provided in the presence of a lawyer.

### Safeguards and Documents Outside the Scope of Inspection

It is a good practice to arrange a team of shadowers to accompany investigators and ensure that they are not exceeding their authority. Shadowers should record any objections without obstructing the investigators. Any document seized by the authorities should also be copied, and a copy should remain with the company. Similarly, where computer data is taken, a back-up should be made.

Apart from irrelevant documents and documents outside the scope of investigation, investigators are also not allowed to examine legally privileged communications between you and your legal advisors.

Disclosure of information to the Commission cannot be refused on the grounds that it would involve business secrets. But officials are under a duty to keep confidential any business secrets obtained during the course of their investigation.

### Penalties from Non-Compliance

It is a criminal offence punishable by fine and/or imprisonment to obstruct the conduct of an inspection. Providing false or misleading information, destroying, falsifying or concealing documents can all lead to substantial penalties.

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