

Dawn raids: “being prepared” is the name of the game

“For some years now, raids and other types of searches have become an everyday risk for companies”

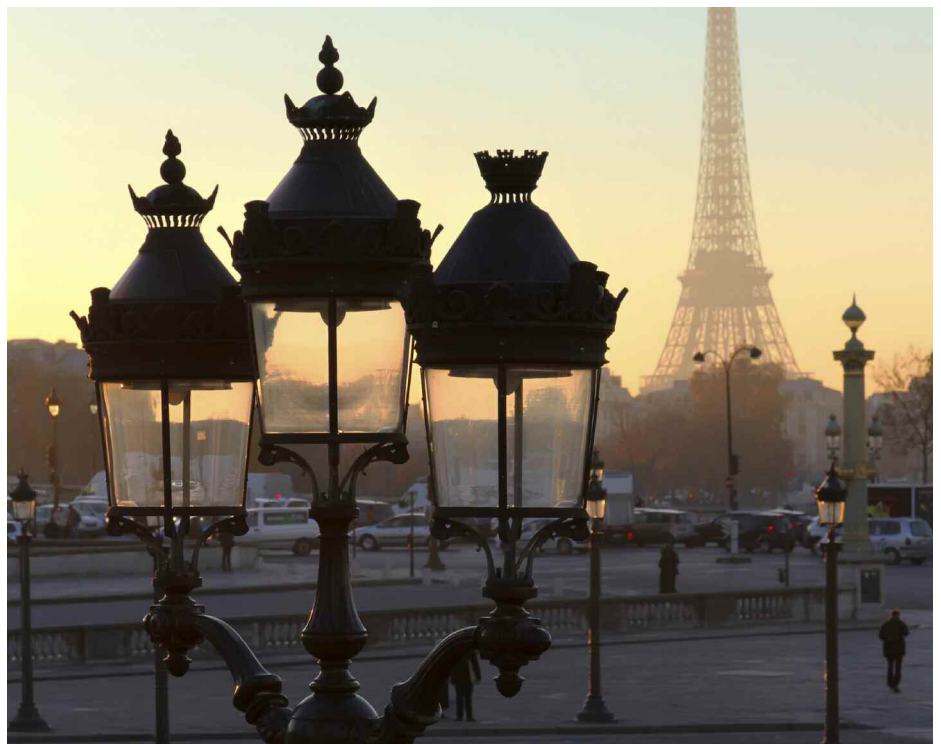
This article first appeared in the French daily financial newspaper ‘Les Echos’ on September 2, 2014 based on an interview with Clifford Chance partner Thomas Baudesson and counsel Charles-Henri Boeringer. Thomas and Charles-Henri, together with Karine Huberfeld wrote the second edition of a Practical guide for companies on how to handle search and seizures and police custody” (in French “*Guide pratique des visites inopinées, perquisitions et gardes à vue dans l’entreprise*” – LexisNexis Editions).

If you’re not prepared for it, a dawn raid can rapidly turn into a state of panic

“Open up, we have a search warrant!” What would you do if your company were raided by investigators or regulators? If you’re not prepared then it can have serious and far-reaching consequences for your business.

“One morning, there is a knock on the door of your company. Were you expecting somebody? No, not at all, and yet there are some investigators standing there. Have they the right to enter the premises? Who are they exactly? Do we have to let them take away whatever items they want? These are the questions, along with others, that company lawyers ask themselves when faced with a dawn raid which, by definition, takes everyone by surprise”, says Thomas Baudesson, Partner in Clifford Chance’s Paris office. “And if no-one is prepared for it, the situation may rapidly turn into a general state of panic with potentially serious consequences for the company,” he adds.

“For some years now, raids and other types of searches have become an



everyday risk for companies,” says his colleague Charles-Henri Boeringer. “A wide number of regulators - the AMF¹, the Competition Authority, the CNIL² - as well as the URSSAF³, French Customs, the tax authorities and the works inspectorate

conduct dawn raids. It’s part of economic activity.” But, he says, if nobody knows how to react, at least 15 to 20 minutes will be needed to seek the right information in order to adopt the right attitude – time that companies rarely enjoy in such situations.

¹ French Financial Markets Authority

² National Commission for Data Protection and Liberties

³ Social Security and Family Allowance Contribution Collection Offices

Knowing the rules

There is a perception that companies and investigators do not have equal rights when a dawn raid takes place as the investigators are often more aware of what they can or cannot do and how far they can pursue their investigations.

“Companies have sensitive data that they are under no obligation to hand over to investigators,” Thomas Baudesson says.

“Take, for instance, documents containing legal advice from a lawyer; those are covered by professional secrecy. However some investigators brazenly attempt to impound such documents, asserting that professional secrecy does not constitute valid grounds for opposing such action. But in some cases this is not true. Being fully prepared enables you to determine

the documents that investigators are free to take away with them.”

Preparing for a dawn raid will ensure that the investigators comply with their initial objective and do not embark on a fishing trip to look for potentially incriminating documents. It will also give staff the information they need to help them avoid panicking, because panic may give the investigators the impression that the company is on the defensive or even in a state of chaos if contradictory answers are given to their questions.

Those in the first line of defence must be aware of the rules relating to the various different sorts of investigation: criminal, administrative, civil or commercial.

“Different rules sometimes exist within the same category. In the case of an administrative investigation led by a regulator, for instance, the investigators’ rights are not the same if they are from the AMF or from the Competition Authority”, explains Thomas Baudesson.

When a dawn raid takes place, “it is essential to know where the dividing line is (and it varies from one situation to another) between reasonable, bona fide, co-operation and safeguarding the company’s interests”, adds Charles-Henri Boeringer. This is to prevent the handing over of sensitive documents while at the same time avoiding possible sanctions under criminal law on the grounds of obstructing investigative proceedings.

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