How to Properly Respond to Dawn Raids in China

By David Pan

With tensions increasing between the world's two largest economies, concern has been rising among Chinese companies about their business operations in the US, and vice versa. Some US-based multinational corporations are wondering if the Chinese government may launch dawn raids against their affiliated companies in China, in retaliation against the US government's sanctions on Chinese companies like Huawei and TikTok. The term "dawn raid" is not defined in Chinese law, but the most similarly defined concepts are "administrative/criminal investigation" or "administrative/criminal inspection," which allow law enforcement to conduct onsite inspections and search corporate records and files to gather information and evidence on suspected violations of law.

Responses to dawn raids in China should not be done recklessly, as an improper response may lead to additional administrative or even criminal liabilities (other than the cause for the dawn raid) for the "raided" company. This article will detail guidelines on how to properly respond to dawn raids in China.

Who can conduct dawn raids

Not all government agencies have legitimate power to make dawn raids. Generally, government agencies that are empowered to conduct dawn raids include the following central government agencies and their local branches: State Administration for Market Regulation, Tax Bureau, Public Security Bureau, Human Resources and Social Security Bureau, Customs, Ecology and Environment Bureau, Cyberspace Affairs Commission and State Security Bureau.

Normally, the empowered government agency cannot suddenly walk up to your reception desk and ask to search your corporate premises. Instead, the agency can only initiate an investigation after

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having registered a case within that agency with some preliminary evidence. In rare circumstances, the agency can conduct a "random" investigation following the principle of "dual randomness and public disclosure," which means that the agency must randomly select the target entity and the officer to conduct the inspection, as well as disclose the investigation process and results publicly.

The scope of such government agencies' authority and powers, in general and in dawn raids, are prescribed in applicable laws and applications, and are usually published on the agencies' official websites. Make sure you understand each government agency's authority and power so that (i) you have a rough idea of what the dawn raid is about when the officials from a given government agency show up; (ii) whether the scope of the dawn raid falls within their powers; and (iii) whether the records and files they request and questions they ask fall within their powers.

Preparation for dawn raids

One ounce of prevention is worth a pound of cure. Proper and sufficient preparation and training can keep a company's staff from getting caught off guard in a dawn raid.

1) Assemble a response team: Ideally the team should consist of management-level staff who are based in China and can speak Chinese. The team should include one legal counsel, one senior management member, one senior member of the IT staff, a government relations officer, and staff members who can assist with notetaking and respond to media inquiries.

2) Data/file storage and backup: All data and documents need to be managed in an orderly manner. In the event of a dawn raid, the officials normally will not allow any time for data/file duplication and/or backup, and will demand seizure of documents and devices at their discretion. A well-managed document/data management mechanism will enable you to keep track of the documents and/or data that has been inspected or seized by the authorities.

3) Train employees: Employees should understand the importance of dealing with dawn raids in an appropriate manner, to avoid at the very least reacting in panic or antagonistically. General trainings shall be delivered to all employees and special trainings should be given to receptionists and security staff, response team members, IT staff and senior management.

4) Prepare and distribute guidelines: Each employee should be given a copy of the guidelines for dealing with dawn raids. They should carefully review the guidelines and be tested on their familiarity with the guidelines in performance reviews.

Response during a dawn raid

When a dawn raid does occur, a proper response should be done in a role-based approach. Each designated role has its unique purpose and functionality in a dawn raid:

1) Receptionists/security staff: Receptionists/security staff are normally at the front lines of a dawn raid, and their response can make a difference. Generally speaking, the receptionist's responsibilities include: (i) verifying the officials' work ID and official documents and recording their names, titles, work ID No. and the government entity to which they belong; (ii) asking the officials about the purpose and scope of their visit, and the person(s) they want to see; (iii) leading the officials to a quiet and isolated space or room; (iv) notifying the response team and politely asking the officials to wait for the arrival of team members; and (v) refraining from obstructing the officials from commencing the inspection by any means.

2) Response team members: After being notified, a team member should arrive at the scene as soon as possible, and his priority is to figure out the exact purpose and scope of the inspection (e.g. the entities being inspected; whether the inspection involves any employees; whether the inspection targets specific products; and the alleged violations). Response team members shall at all times during the dawn raid accompany officials and take note of their actions, such as questions asked and answers given, all rooms visited, cabinets, desks, files, computers and electronic devices requested, examined, copied and seized. Response team members engaging the officials shall (i) convey to the officials that the company will fully cooperate; (ii) identify whether there are other inspection sites; (iii) seek immediate advice from legal counsel (in-house or external).

3) IT staff member: As more and more dawn raids involve the inspection of electronic files and devices, the company's IT staff members are commonly required to comply with the officials' instructions, which may include: (i) explaining the IT environment; (ii) blocking access to email; (iii) disconnecting computers from the network; (iv) removing and re-installing hard drives from computers; and (v) providing administrator access. The IT staff member should take note of all the data accessed or copied by the officials, as well as the technical measures or restrictions established by the officials. Moreover, the IT staff member shall not in any way interfere with the measures established by the officials, and all employees affected should be promptly notified.

4) Employees being questioned: The officials have the power to ask questions within the scope of the investigation. If possible, you should have a designated member of the response team available to answer all questions, as opposed to letting them randomly select employees for questioning. If employees are being questioned, the company should instruct employees that: (i) at the beginning of the questioning, voluntarily state to the officials their titles and job responsibilities; (ii) keep responses short, factual and to the point; (iii) only speak about facts that can be verified and do not speculate or provide opinions or comments; (iv) do not make statements regarding legal issues with respect to the relevant matters under investigation; (v) whenever the employee is unsure of an answer, they should explain this to the officials and request that the question be addressed in writing to enable an accurate formal response; (vi) record or memorize all questions asked and answers given – use a Dictaphone if possible; (vii) do not give false or misleading information; and (viii) carefully check the record of the interview prepared by the officials and request correction in the case of any error.

In addition, it is within the officials' power to duplicate corporate records and seal and seize relevant evidence. You should properly respond to their requirement of seizure but also make sure to exercise your rights:

1) Officials generally will not seize original documents and will only take copies of the documents, but if they insist on seizing original documents, comply with their requirements, take a copy of the original documents, and notify the legal counsel of any originals taken;

2) You may request that officials explain the relevance of the seized materials/data, the inspection documents and the inspection itself;

3) You may request to obtain a copy of the officials' investigation record and list of evidence seized (however, this is not a legal right and officials may not honor such requests).

Another key element in a dawn raid response is to review the record of inquiry/inspection, as this is the officials' record of the inspection and can be subsequently used against you in administrative or criminal proceedings. The response team members should carefully review the record of inquiry/inspection before the officials leave, and request to correct or amend records that are inaccurate, false or misleading. If the officials refuse to correct mistakes, request to record your objection in writing.

After a dawn raid

The response to a dawn raid starts before one occurs and does not end when officials leave.

After officials leave, a response team member should inform on-site employees that the dawn raid has ended, and employees shall: (i) refrain from speculating and discussing the dawn raid; (ii) refrain from disclosing information in person or via social media about the dawn raid to anyone other than the response team; (iii) strictly follow the "no-comment" policy when approached by media or other third parties; and (iv) refrain from destroying or reversing any measures put in place by the officials to secure physical premises, IT infrastructure or any specific documents or data.

After the dawn raid ends, response team members shall collect reports from any involved personnel and make internal communications to all the employees. All personnel who interacted with or were questioned by the officials shall each submit a report to the response team about their communication and interactions . The response team shall make an inventory of the documents, data, materials, products, equipment, data inspected by the officials, and thoroughly review those whose photos, copies or duplicates were seized by officials. This step will serve as a good recap of the dawn raid and as a starting point for follow-up actions.

The company should proactively communicate with the dawn raid authority to see if follow-up meetings can be scheduled. Regardless of whether the officials have required so, such meetings offer a chance for you to discuss and clarify the case with authorities. If further meetings with officials are scheduled, you should carefully

choose the representatives to attend the meeting (normally the legal representative of the company should attend the meetings).

Before you actually go to a follow-up meeting, you should prepare for it by (i) thoroughly reviewing and analyzing the documents, data, equipment, materials and products inspected by officials to predict the scope and substantiality of the investigation, as well as the potential findings and conclusions by authorities; (ii) preparing additional documents or information that the authority requires or may require you to submit; and (iii) evaluating the legality of the dawn raid (if there were any procedural or substantial defects) and whether the legal defects, if any, can be rectified by the authority, as well as the probative value, relevance and sufficiency of the evidence seized by the authority.

The key in subsequent actions following a dawn raid is a proactive exchange with the authority to grasp the progress of the case and influence them to your advantage. If penalties are inevitable, prepare for them and evaluate whether an administrative review or appeal lawsuit is feasible.

Remember that responding to dawn raids requires “full cooperation” but not “fool cooperation.” Be prepared and cooperate with the officials in a dawn raid, but bear in mind the scope of their authority and powers and the reasonableness of their requirements. We hope that the guidelines in this article will help you survive a dawn raid and protect your legitimate rights.

If you would like to know more information about the subjects covered in this publication, please contact:

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