

EU, Competition & Regulated Markets

When the Inspector Calls

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There is an ever increasing amount of regulation facing business in Ireland. While the different regulatory regimes in Ireland may seem unconnected in fact regulation has become an important tool for managing the economy. For this reason regulators have similar powers of enforcement which allow them to gather information in order to discharge their duties. Regulators may also exchange information in certain circumstances and therefore information gathered by one regulator can in turn be passed between regulators and government agencies such as the Revenue Commissioners, the CAB or the Gardai. For this reason it is important that business today know how to react to regulatory investigations. We have chosen three types of investigations that businesses could face in Ireland by way of example to demonstrate the issues that confront a business when the inspector calls.

COMPETITION LAW "DAWN RAIDS"

Irish and EC competition law provide that officials of the Competition Authority or the European Commission together with the Gardai may conduct unannounced inspections (also known as "dawn raids") on business premises or on private dwellings. Inspectors can search for evidence of a breach of competition law and have the power to search and seize documents and records and ask certain questions. Information gained on a "dawn raid" may be used to build a case against you and infringement of the law can result in large fines and imprisonment of individuals.

Therefore, when dealing with investigations by a competition authority or other regulatory investigators, being prepared for what to do when the inspector calls will allow you to deal with inspectors appropriately and defend the interest of your business during any subsequent procedures.

Advance preparation involves having a plan to deal with each step of the investigation and a key team of people who know what to do during a "dawn raid". In brief, this involves planning for:

Start of the Search

Inspectors from the Competition Authority arrive with a search warrant. At this stage it is important to verify the legal nature of the inspection and the powers of the investigators. It is also important at this stage to organise yourself in order to ensure the presence of lawyers, to put your key team in place and to deal with administrative issues.

During the Search

While the inspection is continuing it is important to monitor the inspectors, to keep a record of what the inspectors do and see, make copies of documents or records they take or copy and note any discussion they have with employees.

After the Search

After the inspectors leave it is important to organise yourself in order to allow you to best defend the interests of your business.

National Employment Rights Authority

The National Employment Rights Authority (NERA) ensures compliance with employment legislation through the provision of information services to both employees and employers, monitoring compliance with employment legislation through the inspection service and via enforcement and prosecution where non-compliance with employment rights legislation occurs. To date 90 inspectors have been appointed to NERA and these inspectors have a role in enforcing employees' rights under various employment legislation including the National Minimum Wage Act and the Organisation of Working Time Act. NERA has powers to enter any premises at a reasonable time, to inspect records, to take copies of relevant documents and to interview and require information from any relevant person. NERA may refer cases with a view to initiating a prosecution to a number of bodies such as the Chief State Solicitors Office, the Construction Industry Monitoring Agency, the Construction Workers Pension Scheme and the Construction Industry Federation. NERA may also seek to have a determination of the Labour Court or the Employment Appeals Tribunal enforced through the Courts Service.

In anticipation of a potential inspection, employers should conduct an audit of their employment practices, for example, ensuring that employees receive payslips, are paid the minimum wage (taking into account recent increases) and their working hours are recorded in accordance with legislative requirements.

Further information regarding NERA can be found on NERA's website at the following link:

<http://www.employmentrights.ie/en/>

The Office of the Director of Corporate Enforcement

The ODCE was established by the Company Law Enforcement Act 2001 and has been in operation since 28th November 2001. Under the said 2001 Act and the Companies (Amendment) Act 2009 it has also been equipped with dawn raid powers, namely the power to enter and search premises and seize documents. As the name suggests, the main functions of the ODCE include:

- Enforcement of the Companies Acts;
- Investigation of instances of suspected breaches with the Companies Acts.

The ODCE was also set up to encourage compliance with the Companies Acts and to educate company officers in relation to their powers, duties and obligations under the Companies Acts.

Under its policing rule, the ODCE has important tools to include the following; the ODCE may be granted a search warrant from a judge, which will allow an ODCE officer to enter premises (which can include a dwelling) and to search and seize any material information uncovered. In this event it is essential that you ask to see the search warrant so as to ensure it is technically correct but also to ensure that it is in fact a search and seize situation. You should also follow the steps already set out above in respect of dealing with such a visit. Another of the ODCE's tools is a "Production Order" which has the effect of requiring the production of certain specified documents, but it does not include the power to enter and search premises. Therefore, in respect of aforementioned powers, it is essential at the outset to determine whether it is a search warrant or a "Production Order" situation.

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