



DAWN RAID TEAM

The Werksmans' dawn raid team is constituted of individuals with practical experience who have previously led dawn raid procedures on behalf of regulators, on the one hand, and who have assisted clients with managing the process of being raided, on the other. This balance of experience makes the Werksmans' dawn raid team highly effective and fully capable of representing your best interests while protecting your legal rights.

We have specifically developed a comprehensive and robust dawn raid programme which is customisable and flexible enough to fit within your existing policy framework. The services we offer include, amongst others:

- > developing a detailed dawn raid plan containing all the relevant information your firm will need to effectively manage the dawn raid process;
- > assisting with preparing appropriate processes and procedures for your firm to deploy in the event of a dawn raid;
- > immediately mobilising a large team of legal professionals to your premises when a dawn raid is underway in order to assist with managing the entire process;
- > conducting training sessions with key staff members to prepare them for a dawn raid; and
- > conducting mock (simulation) dawn raids at your premises to determine the readiness of your staff to handle a dawn raid and furthermore, to identify weaknesses within your firm's existing approach to dawn raids that require more attention.

DAWN RAID PREPARATION

Dawn raids are an incredibly invasive and highly stressful procedure used by regulators and law enforcement agencies in order to gather evidence from South African firms that can and will then be used as evidence. These search and seizure procedures are conducted in terms of a warrant issued by a High Court Judge or a Regional Magistrate. However, in certain circumstances, a dawn raid can be conducted without a warrant.

Ensuring that your firm is adequately equipped to deal with a dawn raid is an invaluable tool. The ability to manage a dawn raid process effectively, while at the same time also ensuring that your legal rights are sufficiently protected, is vital. We have set out below the various risks that firms are exposed to during a dawn raid in order to illustrate why it is so important for firms to prepare for such an event.

NOT HAVING A DAWN RAID PLAN

The biggest risk facing any firm that is the subject of a dawn raid is not having a well-thought-out plan which details how to handle the entire procedure. A plan is crucially important because it:

- > reduces the element of panic which staff often experience;
- > gives confidence to staff in dealing with the process; and
- > defines roles and responsibilities of all involved, which makes the process much less chaotic and allows firms to have some control over the situation.

A dawn raid plan should clearly and concisely identify, amongst other things, the following:

- > the names and urgent contact details of the internal team tasked with managing the process;
- > the urgent contact details of your external legal representatives to ensure that they are dispatched to your premises immediately;
- > the first steps that need to be taken when interacting with the inspectors;
- > how all employees should conduct themselves during the process;
- > a system for dealing with the copying and/or removal of documents; and
- > that key individuals are tasked with defined roles during the process to ensure that your legal rights are sufficiently protected.

ENSURING INSPECTORS ACT WITHIN THE CONFINES OF THE WARRANT

The search and seizure process is particularly invasive and has the risk of being abused by inspectors. In this regard, it is crucially important that inspectors executing the dawn raid are restricted to acting only within the strict confines of the warrant in order to protect your legal rights. It is even more important to closely monitor the conduct of the inspectors when they are conducting a dawn raid without a warrant.

ACCESS TO YOUR CONFIDENTIAL AND PRIVILEGED DOCUMENTS

It is important to appreciate that inspectors are not restricted from copying confidential information or removing it from a firm's premises. Despite this, it is vitally important that information which constitutes "confidential information" is identified in order to ensure that the information is not indiscriminately disclosed and shared with 3rd parties. Also, privileged information must be protected at all times. Accordingly, it is extremely important to ensure that there are adequate controls in place to safeguard legally privileged, as well as confidential, information.

This entire process becomes increasingly difficult to manage when documents are stored electronically on workstations, servers or even personal devices such as smartphones and tablets which may be copied by the Commission's IT experts.

REPUTATIONAL EXPOSURE

Dawn raids are usually reported in the media within a very short time. The immediate message is that the company being raided is guilty. This impression needs to be carefully managed in the public domain. Accordingly, it is important to have a carefully worded public statement, in order to address any potential reputational harm, prepared in advance.

IDENTIFYING LEGAL RISKS DURING AND AFTER A DAWN RAID

Keeping comprehensive records of the dawn raid and the documents that are copied and/or seized is not only important to identify confidential or privileged documents but, even more so, to determine after the raid has concluded, if the raid was valid. Also, your business needs documents and information to operate. Immediate understanding of your legal risk is crucial and only by understanding what was seized, can your legal team assist in understanding your exposure and move forward to protect you and your company.

CRIMINAL SANCTIONS

Hindering, opposing, obstructing or unduly influencing any inspector during a dawn raid will be regarded as an offence and could lead to a fine and/or imprisonment. Therefore, understanding your rights is very important.



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> Keep us close

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ABOUT WERKSMANS ATTORNEYS

Established in the early 1900s, Werksmans Attorneys is a leading South African corporate and commercial law firm, serving multinationals, listed companies, financial institutions, entrepreneurs and government.

Operating in Gauteng and the Western Cape, the firm is connected to an extensive African legal alliance through LEX Africa.

LEX Africa was established in 1993 as the first and largest African legal alliance and offers huge potential for Werksmans' clients seeking to do business on the continent by providing a gateway to Africa.

With a formidable track record in mergers and acquisitions, banking and finance, and commercial litigation and dispute resolution, Werksmans is distinguished by the people, clients and work that it attracts and retains.

Werksmans' more than 200 lawyers are a powerful team of independent-minded individuals who share a common service ethos. The firm's success is built on a solid foundation of insightful and innovative deal structuring and legal advice, a keen ability to understand business and economic imperatives and a strong focus on achieving the best legal outcome for clients.

