

**Handbook
for business**



ARZINGER

**White Collar Crime
issues: Q & A**



LAW ENFORCEMENT VS BUSINESS – What to expect and how to defend

IMPORTANT TO REMEMBER:

- Perfect compliance with all the provisions of the law does not guarantee immunity from law enforcement agencies
- Law allows pre-trial investigation to be initiated on any allegations made by a law enforcement agency
- The number of investigative and procedural actions within criminal proceedings is unlimited
- The arsenal of tools is sufficient to bring your business to a standstill until any person is served a notice of suspicion
- Cessation of law enforcement authorities' activity does not mean that criminal proceedings are closed

What to expect from law enforcement authorities?



Interrogations



Temporary accesses
(seizures of documents)



Searches



Attachments of property and funds



Transfer of attached property to Asset Recovery and Management Agency for management and sale



Procedural pressure on the management

Reasons why a company may be in the crosshairs:



High income and active promotion in the market



Formal noncompliance with the law



Doubtful contractors



Competitive war



State interest



Internal conflicts



Political projects

HOW TO PROTECT YOURSELF?

- Prepare staff and company for sudden investigative and procedural actions
- Monitor the Unified State Register of Court Decisions for investigative judges' rulings regarding your company
- Periodically inquire with the Prosecutor General's Office whether any criminal proceedings are pending against your company
- Keep track of contractors' work and their problems with law enforcement agencies
- Enter into legal assistance agreements with attorneys in advance on behalf of the company and management
- Be proactive in criminal proceedings, even if your company has no procedural status in them
- Record and respond to all violations by law enforcement authorities against your company and its employees
- Actively involve various business associations, newly established organizations and media resources for defense purposes
- Demonstrate the other party that you intend to fight for your rights using only legal instruments



THERE'S A LETTER FOR YOU!

Requests from law enforcement agencies

 FROM WHOM?	 PURPOSE OF SENDING	 TERM FOR RESPONDING	 MOST FREQUENT FORM
<ul style="list-style-type: none">■ INVESTIGATOR/ OPERATIVE OFFICER of<ul style="list-style-type: none">— the National Police— the State Bureau of Investigations— the Tax Police— the Security Service■ PROSECUTOR of the prosecution authorities■ DETECTIVE of the National Anticorruption Bureau	<div data-bbox="351 389 538 576" style="border: 1px solid #ccc; padding: 10px; text-align: center;"><p>To promptly obtain information and documents necessary for investigation</p></div>	<p>Most often, a short deadline is specified (e.g. within 5 days) or the phrase “provide a response urgently / as soon as possible.”</p> <p>At the same time, these deadlines are only advisory (can be discussed with the author of the request).</p>	<ul style="list-style-type: none">■ Request■ Demand■ Ruling■ Letter■ Other

HOW TO RESPOND



1. Familiarize yourself with the content of the request and make sure it relates to your company, its management, employee, etc.



2. Determine by which body and on which issue the request has been sent



3. It is advisable to contact an attorney to analyze the request and determine whether it is binding as well as the status of the requested information (whether it relates to confidential information, commercial, medical secrets, etc.)



4. Understand (check with colleagues) whether you/the Company have/has the requested information as well as the procedure for getting access it



5. Determine jointly with the attorney whether to provide the requested information and within what scope (based on the points mentioned above)



6. Respond to the request in any case (even if it is not planned or not possible to provide the requested documents/information)

WHAT ARE THE IMPLIED RISKS?

- Complete disregard for the request may result in a court decision on:
 - a. forced access to your documents (including the right to seize originals);
 - b. a search conducted in your office.
- If too broad a response is given (we provide anything you request), the investigating authority will understand that they can contact you again on other issues, without adhering to the relevant requirements of the law.
- Providing “unnecessary documents” that have not been requested by the investigating authority may lead to additional attention to your Company on the part of law enforcement officers and analysis of business processes that were not of interest to them before.

Therefore, we recommend seek advice and analysis from your attorney to choose the best option.



SUMMONS SERVED – What is worthwhile knowing?

HOW DO YOU GET SUMMONED?



BY SUMMONS:

- delivered in person
- sent by mail, e-mail or facsimile;
- sent to the place of work and/or residence



BY PHONE OR TELEGRAM



CONFIRMATION OF SUMMONS IS

- return receipt
- video record of a summons being served
- any other data confirming the actual service of a summons or familiarization with its contents

WHO CAN SUMMON YOU?



INVESTIGATOR (DETECTIVE)

PROSECUTOR

COURT

IN WHAT STATUS CAN YOU BE SUMMONED?



SUSPECT

ACCUSED

WITNESS

VICTIM

HOW LONG IN ADVANCE SHOULD YOU BE NOTIFIED?



AT LEAST **3** DAYS PRIOR TO INTERROGATION

- the summons must be received as soon as possible, with time granted to prepare and arrive on call

WHAT LIABILITY IS PROVIDED FOR FAILURE TO APPEAR?



if summoned by an investigator (detective) – **PENALTY**

of UAH **567.50** to **1,135** if summoned by a judge – **PENALTY** of UAH **1,135** to **4,540**

failure to appear may be a ground for a warrant compelling you to appear for interrogation

IS THERE A CHANCE NOT TO APPEAR WITHOUT BEING PUNISHED?

Valid reasons for a person not to appear when summoned are:

1.

restriction of freedom of pursuant to law or court decision

2.

force majeure (epidemics, military events, natural disasters or other similar circumstances)

3.

a person's absence at the place of residence for a long time due to a business trip, travel, etc.

4.

serious illness or stay in a healthcare institution due to treatment or pregnancy, if it is impossible to leave temporarily

5.

serious threat to the lives of close relatives, family members or other close persons

6.

untimely receipt of a summons

7.

other circumstances that reasonably prevent a person from appearing when summoned

IMPORTANT!

The list of valid reasons is not exhaustive



GETTING PREPARED FOR INTERROGATION - Rules to follow

WHAT TO DO IF SUMMONED



Pay attention to whether you have been summoned on time, i.e. no later than 3 days before the interrogation: violation of this requirement makes it impossible to apply compulsion or penalties, and, for greater certainty, it is a good practice to send a notice of inability to appear on summons due to lack of time for preparation



On receiving a summons by phone, ask to send it by mail



Find out in which criminal proceedings the interrogation is planned. Along with the case number, the qualification under an article of the Criminal Code of Ukraine is indicated, which will help you to understand the issue the interrogation relates to



Check if the summons states what procedural action you are summoned for and in what status. The lack of such data should be alarming



On receiving a summons "in person" – indicate the delivery time and date in the return receipt



BEFORE AND DURING INTERROGATION

Nota Bene:



The Constitution of Ukraine and the Criminal Procedure Code enshrine the right not to testify or provide explanations against oneself, family members or close relatives



Your status in criminal proceedings may change. After interrogation as a witness, you may be searched and even be served a notice of suspicion. Therefore, it is not necessary to take any devices containing sensitive information with you



Only the questions asked should be answered: excessive openness can be quite harmful. I don't remember / I forgot are normal reactions during interrogation.



An investigator's friendly behavior may be misleading, so stay alert in any case



Video and audio recording is possible during interrogation: Be prepared so as not to get confused



Read carefully the transcript of interrogation written by the investigator according to your words before signing, so as to avoid distortion of your testimony. You have the right to record your testimony yourself



It is advisable to put a signature on each page of the record to prevent their substitution in the future



Disclosure of the essence of interrogation without the investigator's permission is punishable under criminal law



You have the right to legal assistance and an interpreter if you do not fully understand the language; In any case, the presence of an attorney reduces the risk of illegal behavior towards you on the part of investigators



TEMPORARY ACCESS TO THINGS AND DOCUMENTS (Seizure of documents)

Most critical!

- Temporary access is seizure, but not a **SEARCH**: (The Company chooses itself the scope of documents for access within the effect of the ruling)
- Only **UPON A RULING** of the investigating judge
- The **ORIGINAL** ruling is presented by the investigator (a copy is provided to the owner of things and documents)
- Validity of the ruling is **NOT MORE THAN 2 MONTHS** (previously 1 month)
- The consequence of non-compliance with the ruling is a **SEARCH** (the main task is to avoid it)
- Complete failure to comply with a court decision entails **CRIMINAL LIABILITY** risks

Preconditions for temporary access may be requests under Art. 93 of the Criminal Procedure Code of Ukraine – **do not ignore them!**

If things and documents contain information with secrecy (banking, commercial, etc.), the possibility of their seizure should be directly stated in the ruling.

An appeal against the decision does not suspend its enforcement but will allow the return of the seized things and documents.

If the Company does not have in its disposal a full scope of things or documents, access permission to which is granted by the court, it is necessary to mention this in writing (in the TA report, in the cover letter, or in the description).

Problems:

- Courts grant about 90% of applications for TA
- The owner of the belongings is normally NOT summoned to court, so it will be problematic to submit the Company's position to the court
- The Company may be not involved in criminal proceedings, but access to its things and documents will be granted by the court
- A ruling may be appealed in exceptional cases
- If investigators demand seizure of originals without a direct reference thereto in the ruling, this is a violation

Analyze the ruling correctly:



Who has been granted temporary access permit, whether the right person performs it



Whether the author of the motion had the right to file it (special attention if the motion was filed by the victim)



whether the address and the name, other details of the Company or the individual who possesses the things/documents match



whether the possibility to seize things and documents is mentioned



whether it is possible to seize originals or copies



whether the validity term of the ruling has expired, how much time is left for enforcing it

RESPOND PROPERLY:

- Avoid being served a ruling in a non-established manner (on the street, outside the office, etc.)
- If you find errors in the details of the ruling, draw the investigator's attention to them
- Accurately indicate the receipt time of the ruling, indicate the time required for its fulfilment
- Check the accuracy of the TA report made by the investigator
- Request to be given a description of the seized documents
- Familiarize yourself with the case file to understand the substance of the case and identify further risks for the Company
- In any case, seek legal assistance from an attorney

MAIN RULES OF SURVIVAL DURING A SEARCH



Due to law enforcement agencies' intensified efforts and their aggressive interest in Ukrainian and international business, Arzinger team has developed a minimum knowledge to be remembered by everyone expecting a visit from law enforcement agencies.

Forewarned is FOREARMED:



1. A pre-signed agreement with an attorney increases his/her chances of taking part in the search



2. In case of an investigator's illegal behavior during a search and involvement of the patrol police in that connection, a badge camera can be an excellent means of video and audio recording



3. The number of attesting witnesses during the search is not limited, which allows inviting people not interested in the investigation



4. Passwords set on computers and phones reduce the chances of investigators' collecting information that may be used against you



5. Journalists, business organizations and embassies may eventually play an important role in preventing illegal actions on the part of investigators



6. Emergency phone numbers and an alarm button save time in reporting a search to the management and staff as well as calling an attorney



7. Restricting visitors' free access to the office and equipping a separate meeting room increases the chances of monitoring law enforcement officers and their actions



8. A training conducted with staff on how to act in case of a search helps remain calm during a search and reduce the number of errors

TRIED AND TESTED:

- ✓ Panic and frivolous conflicts interfere with an attorney's work and increase the chances of an investigator aggressive behavior
- ✓ If a person coming to the company is not the one authorized by the court to conduct a search, request a ruling on establishing a group of investigators
- ✓ Lack of video recording of a search may be a ground for declaring the respective investigative action illegal
- ✓ To record gross violations during a search, call the police and report that the investigators have exceeded their official authority
- ✓ In the course of a search, the company's employees should not communicate with the investigator – a search is not an interrogation
- ✓ A personal search shall be carried out by persons of the same sex and only if there is a suspicion that a person is concealing something
- ✓ There is no point in closing rooms and safes during a search – the investigator will open them by all means
- ✓ Do not leave law enforcement officers unattended
- ✓ If you did not feature something in the comments to the report, consider that it never happened during the search
- ✓ Seized property must be clearly identified and described in detail



ATTACHMENT (ARREST) – Should you worry about your property?

What you should know about attachment

- it provides for restriction of the right to alienate, dispose of and/or use property
- may be initiated immediately as soon as criminal proceedings are registered, and no later than 48 hours in respect of property seized during a search upon completion of investigative action
- is imposed by decision of the investigating judge not later than 2 days upon receipt of a motion of the investigator/prosecutor/civil plaintiff
- availability of a suspect is not a prerequisite for attachment of property
- the owner of property is not necessarily summoned by the court considering the motion, but is granted the rights of a suspect in the part relating to attachment
- several attachments may be imposed on the same property within one or several different criminal proceedings

What is ARMA and what is dangerous about it?

ARMA is a special authority dealing, among other things, with issues of attached property

The decision of the investigating judge on transfer of attached property to the ARMA may not be appealed

The investigator/prosecutor may deprive of property rights by initiating the transfer of attached property to the ARMA for further sale or management

Cancellation of attachment of property is the ground for its return to the owner. In case of sale of property the proceeds are returned to the owner

WHY IS PROPERTY ATTACHED?

It is subject to confiscation and/or special confiscation

Traces of commission a criminal offense remain on things

According to the investigation, things are objects of illegal actions

To compensate for the damage in criminal proceedings

To recover illegal benefits from a legal entity

It has been seized during a search and is relevant to criminal proceedings

What can be attached?



Cash



Cars



Securities



Property and corporate rights



Real estate



Jewelry



Products



Documents



Expenditure transactions



Any other things

HOW TO RETURN THE RIGHTS TO PROPERTY

- 1.** Get familiarized with the files of the criminal proceedings, which became the basis for attachment and obtain a copy of the court decision
- 2.** Draw up a legal position and collect evidence to refute the claims of law enforcement agencies
- 3.** Within 5 days, file an appeal against the court decision and seek cancellation of the attachment ruling. One company has the right to one appeal
- 4.** In case of an adverse decision of the court of appeal, file a motion for cancellation of attachment with the investigative court of the local court. The number of such appeals is unlimited
- 5.** Take a proactive stance in case of return of rights to property in criminal proceedings until they are closed

Defend better together



Advantages of Arzinger's White Collar Crime practice

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More than 18 years on the Ukrainian market of legal services



Offices in Kyiv, Lviv, Odesa and trusted attorneys across Ukraine



International standards of providing services



Cooperation with international business associations



Attorneys ready to provide assistance 24/7



Support to clients at any stages of criminal proceedings



Attorneys have extensive experience in defending international companies and their employees



All attorneys are English-speaking



An integrated approach with the possibility of involving other Arzinger practices: Antitrust, Corporate law, Real Estate, etc.



Understanding the specifics of doing business in Ukraine



Creative approach to complex projects



Our Credentials:

Arzinger attorneys have assisted numerous Ukrainian and foreign companies in responding to law enforcement attempts to request confidential information about the nuances of doing business. Arzinger attorneys worked out each case in detail and chose the best response option. As a result of their well-developed defence strategy, skillfully conducted communication with law enforcement authorities, both the confidential information of clients and the further normal functioning of their business was preserved.

Over the past five years, Arzinger attorneys have accompanied clients in more than 300 interrogations, in which they defended the interests of clients in various procedural statuses: witnesses, victims, suspects. Our attorneys participated in interrogations conducted by both existing and liquidated law enforcement agencies, such as the National Police, the Prosecutor's Office, the Security Service, the National Anti-Corruption Bureau, the tax police, and others. Arzinger always defends the interests of its clients and guards the strict observance of their rights during investigative actions.

In recent years, Arzinger has protected the interests of its clients in more than 200 searches, both at business addresses and at places of residence of companies' employees and business owners. Arzinger attorneys promptly respond to a client's call and take an active part in the said investigative action, in order to protect the client's interests, property and the possibility of ongoing operation after the search. Further in court, the attorneys successfully recover the items seized during the search, money, documents and minimize any subsequent risks for participants in criminal proceedings.

Arzinger's attorneys have extensive experience relative to property attachment in criminal proceedings. Thus, they have repeatedly initiated and participated in the procedure of lifting the attachments imposed by law enforcement agencies, so as to return the property belonging to their clients and the possibility of disposal thereof. Moreover, Arzinger's professionals initiated the attachment of property when defending victims to quickly protect their property from further criminal actions.

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