

Factsheet Injury from Criminal Offences

Companies can suffer injury as a result of criminal offences committed by other persons or entities. It is also important in that event to know the company's rights and the options and risks associated with the various steps that can be taken.

Statutory rights/options

A company that has suffered direct damage as a result of an actual or potential criminal offence can be designated as a victim as part of an ongoing investigation. As a victim, the company will usually be entitled to receive information about the case. The company can also request copies of documents in the file that are relevant to it. These could be documents that can be used to try to recover damage from the offender. If the case leads to a criminal hearing, an attempt can be made to recover the damage as part of the criminal proceedings, through an 'injured party claim'. Sometimes, the criminal court will also rule that the State is to collect the damage. The Public Prosecution Service can have the option to attach assets for victims, such as bank balances.

Reporting to the police

An obvious first step towards exercising these rights can be to report the offence to the police. In most cases, companies have no legal obligation to do so. Nor are the investigating authorities obliged to investigate all reports. Due to limited capacity, only a fraction of all reports result in an investigation. Especially in financial cases, many reports are not taken up because they concern a 'civil matter'.

In addition, reporting every single suspicion of a criminal offence is not always advisable. These reports can lead to criminal investigations that are difficult to control and could also harm the company itself. It is also conceivable that the company might unconsciously incriminate itself by filing a police report. For example, if an employee has committed fraud against a third party, the company may be subsequently held liable under civil or even criminal law for the employee's actions. It is important to properly consider in advance whether reporting a suspected offence would be sufficiently feasible and might entail any risks.

There is only one chance to do it right. Sufficient internal investigation and a clear presentation of the facts and the reasons why the matter should be investigated are crucial.

Importance of proactive approach and assistance

In most cases, companies must act proactively to use these rights and options. Even if a company is designated as a victim, the information to which it is entitled is often slow in coming. For example, it is not unusual for companies to receive letters about hearings only after the hearing has already taken place. The company will then have missed its opportunity to file an injured party claim. It is therefore important for companies to adopt an active approach at every stage of the proceedings and call in legal assistance to ensure effective use of their rights and options.

Position as a third party in a criminal case

If the company is a victim of a criminal offence, it and its staff can also become involved in the criminal investigation. This is also possible if, rather than being a victim, it is a third party in the investigation and may have relevant information. For example, the company may face a demand to provide information to an investigating body or even an unannounced inspection of its premises (search) [to Subpage Dawn Raid]. Employees of the company can also be

examined as witnesses. It is usually advisable or even mandatory for the company to cooperate in these situations. However, that does not mean it is wise to do so without further assessment. For example, providing information without being obliged to do so may constitute a violation of privacy legislation under certain circumstances. And undergoing a witness examination unprepared can be stressful for employees and may unintentionally lead them to give an inaccurate statement that may harm the company.

Assistance with injury from criminal offences or involvement as a third party

Companies face various complex issues when trying to recover damage resulting from criminal offences, reporting offences to the police or getting involved as a third party in criminal investigations. Consequently, sound strategic and legal advice is required.

Houthoff has in-depth expertise in criminal law and experience assisting companies that have suffered injury from criminal offence or become involved as a third party in criminal investigations.

Contact

If you have any questions about this factsheet, please email or contact the persons listed below.



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