



Civil law approach for corporate fraud; major impact and retaining management.

The civil law approach for corporate fraud evidently has become effective and gains popularity vis-à-vis the criminal law approach, particularly as the Public Prosecution Service generally does not prosecute corporate fraud. Seizure of evidence is one of the most powerful tools in fraud investigations. This concerns seizure of data as this is saved in all conceivable data carriers. In many cases such seizure has forced a breakthrough in the investigation and solving the fraud.

“

If I had been familiar sooner with seizure of evidence, it would not only have been the fraud that would have been solved earlier, but all misappropriated securities would also have surfaced.

– Riskmanager, TPG mail

Seizure of evidence is still often an unknown tool that can be used in fraud investigations or breach of trade secrets for gathering evidence and for establishing the truth. An organisation that investigates fraud with or without the assistance of a specialised agency can apply to the court with the intervention from a lawyer for leave for seizure of evidence.

The power of seizure of evidence is the speed and the impact on the offender(s). If the leave for seizure of evidence has been obtained, seizure of evidence can be levied with a specialised bailiff of the (digital) data carriers, such as laptops, hard disks and smartphones.

After inspection of the seized evidence, other persons involved in the fraud can be identified and the extent of the loss caused by the fraud or the financial penalties, for example for breach of confidentiality clauses, can be established. It is also evident from practice that, once confronted with seizure of evidence, an offender or other persons involved are quickly prepared to provide cooperation to the further investigation or to an extrajudicial solution.

Seizure of evidence can also be used successfully in integrity screening, such as investigation of intimidation and discrimination in the workplace.

Cooperation with experts in the field of fraud investigations increases the effectiveness and the quality of fraud investigations and the reporting.

“

I was surprised by the ease and the impact of seizure of evidence: quick, impactful and very effective.

– Wout Spruijt,
detective agency BMR

Seizure of evidence is also used if the civil law approach for corporate fraud is chosen. With the civil law approach the management of the company retains the control of the nature and the extent of the investigation and can determine the speed.

What does this civil law approach entail concisely stated?

01 Focused investigation

Investigation of fraud by an investigation agency with clear areas needing investigation stated by the client (management, Supervisory Directors, or the Supervisory Board). Investigation by the organisation is also possible, provided that this is done by a specialised department, which can keep sufficient distance from the management.

02 Quickscan en damage control

At the commencement of the investigation a quick scan is made of the risks of reputational damage (damage control) and the amount of the financial loss while balancing the costs and the feasibility (recoverability) of compensation.

03 Imposing seizure of evidence

If the investigation still results in insufficient evidence regarding the offender(s), a specialised lawyer can levy seizure of evidence of all relevant data carriers outside the company. This can take place by means of an application to the court on the basis of the investigation results that are already available.

04 Demand for inspection

Seizure of evidence is levied with assistance from the bailiff. All data carriers will be copied by an IT expert at location or elsewhere. The IT experts can secure the seized data due to this. The person levying seizure can only acquire access to the seized data after permission from the court. The application for the demand for inspection will be submitted by the specialised lawyer.

05 Analysis of the seized data

After the seizure of evidence and after obtaining access, the investigation agency will be involved in the analysis of the seized data and also for the loss assessment.

06 Pressure caused by seizure of evidence

Due to the impact of the seizure of evidence the suspected offender and/or the involved third parties will often voluntarily provide cooperation to the (further) investigation or an arrangement can be reached regarding compensation of loss. If this willingness is absent the (continuation of the) proceedings on the merits at the court will follow.

07 Use of the seizure of evidence

After investigation, seizure of evidence and inspection, the matter can still be reported to the police. The willingness of further prosecution by the Public Prosecution Service is increased due to a thorough investigation. If the offender has compensated the loss (whether or not partially), this will have an impact on the severity of the sentence. This increases the chance of reaching a claim settlement.

It has become evident that this civil law approach is very effective. Within three to six weeks an offender and other external parties involvement can be found for example by means of WhatsApp, texts, or Telegram messages in smartphones seized for evidence. Within the same period the extent of the breach and the loss of the fraud can be analysed.

Quick evidence in case of fraud: seizure of evidence as an effective tool

Civil law approach for corporate fraud; major impact and retaining management.

PALTHE
OBERMAN
advocaten

specialisten in arbeidsrecht

Marcus Draaisma and Lydia Milders (partners Palthe Oberman Advocaten in Amsterdam) are specialised lawyers with extensive experience in the adequate solution of fraud cases in management boards and in the workplace. The seizure of evidence is increasingly used effectively hereby.¹

Some examples from our personal practice follow below, whereby the use of seizure of evidence has resulted in a quick solution of corporate fraud.



Invoice fraud, conflicts of interest and acting in breach of authority

The treasurer of a non-profit organisation stealthily purchased, beyond his authority and with money from the organisation, various goods for private use. He also sent invoices for work, whether or not executed, from his own enterprise. This could be established by means of an in-house investigation by an investigation agency. It could be demonstrated by means of seizure of evidence and attachment for the recovery of money, how long he had been doing this; consequently the extent of the loss was determined.



Theft and handling stolen goods

A company has for months lost expensive equipment from the warehouses. The offenders were not found. This equipment was offered through Marktplaats (Market Place) by a specialised second-hand shop. Seizure of evidence was inter alia levied on the administrative records and telephones at the second-hand shop. On the basis of WhatsApp messages in the telephone the offenders could be "traced back by means of investigation", they were then dismissed. The loss could also be recovered from the offenders and the receiver of the stolen goods.



Breach of a non-competition clause and confidentiality clause

A successful family business notices that a sales manager passes on confidential business information to a competitor. Furthermore, the sales manager had already made arrangements regarding cooperation in the near future. The sales manager was confronted with the investigation results and after questioning instantly dismissed.



Draining all important and strategic company information

The sales manager and principal purchaser secretly set up a competing business together with a former bank employee. Before giving notice of termination of the employment contract, they copy all company-sensitive and company-strategic data, crucial sales and purchase data and induce the most important foreign distributor of the company to switch to their new business by means of blackening the reputation of the company that they are leaving. The loss for the company amounted to millions of Euros. Due to proper investigation with the aid of seizure of evidence the full extent of the fraud could be established. The court held the gentlemen liable for the loss.

In all cases there was always good cooperation between the investigation agency, the in-house integrity department, bailiffs and/or IT experts. This increased the speed and quality and kept the costs manageable.

On the same day seizure of evidence and attachment on his house and accounts were levied for determining the extent of his breach and the loss. After his dismissal the sales manager continued with blackening the reputation of the family business (revenge). Ultimately the sales manager was ordered by the court to pay a financial penalty of Euro 130,000 for the offences. The financial penalty has been paid.

If the above has interested you, we would be happy to make an appointment for further explanation.

P A L T H E
O B E R M A N
advocaten



Marcus Draaisma

Draaisma@paltheoberman.nl
06 - 53 65 58 25



Lydia Milders

Milders@paltheoberman.nl
06 - 18 09 36 06

The advantages of the civil law approach and seizure of evidence:

- 01 Focused investigation by an investigation agency with coordination by a lawyer.
- 02 Is there reason for seizure of evidence? Quick damage control and analysis of the extent of the loss and the expected costs.
- 03 Seizure of evidence of all data carriers of the suspect(s) secures important data for evidence.
- 04 Accurate demand for inspection of seized data with a specialised lawyer.
- 05 The investigation agency also assists during the inspection of data for the necessary reporting.
- 06 Due to the impact of the seizure of evidence the party attached often provides cooperation and a settlement can be reached at an early stage (also for the prevention of negative publicity), whereby the party attached also helps in the further investigation of loss regarding involved third parties.
- 07 By using seizure of evidence the investigation agency is involved in the best possible way and the quality of the inspection is increased.
- 08 The results of the investigation can be used when reporting to the police. Reporting has an impact on the willingness to settle.

¹See also Lydia Milders LL.M and Marcus Draaisma LL.M, in Advocatenblad November 2017, Seizure of evidence an effective tool in employment law.