

Corporate Structures Newsletter - September 2016

Baker & McKenzie Amsterdam

BAKER & MCKENZIE



For more information
please contact:



Emile Doelwijt
Associate
+31 20 551 7183

Why keeping company records is important

On July 1, 2016, the Penalization of Bankruptcy Fraud Amendment Act (the “Act”) came into force. The Act aims to combat bankruptcy fraud and stimulate companies to keep proper records at all times.

Obligation to keep company records

A Dutch company’s board of managing directors must keep records of the company’s financial position and everything related to the company’s activities. Additionally, it must keep the company’s books, records and other data in such a manner that the company’s rights and obligations can be ascertained from them at any time.

Sanctions if no records have been kept

In the event of a bankruptcy, failure to keep company records may result in liability of the managing directors for the insolvent company’s deficit under civil law. In addition, a company and its managing directors may also be held criminally liable for a lack of company records. This may be the case in the event of a bankruptcy, but also in other situations.

Bankruptcy situations

If no records are kept during or before a company’s bankruptcy, this may result in criminal liability if:

- (i) the lack of company records is intentional; or
- (ii) the lack of company records is culpable and hinders the settlement of the bankruptcy (e.g., if the accounting is undertaken by a third party but the company’s managing director does not check if it is done properly).

The first type of liability may be sanctioned with four years’ imprisonment or a fine of up to EUR 82,000. This liability is not new, but the intent requirement has changed. The intent to prejudice creditors’ rights – which was difficult to prove – is no longer required. Now, it is sufficient to prove general intent. The second type of liability is new. It may be sanctioned with one year’s imprisonment or a fine of up to EUR 20,500.

A lack of records in general

The Act also introduces a new type of criminal liability outside the event of bankruptcy: non-compliance with the obligation to keep company records will now constitute an economic offense. In principle, this offense is punishable by a prison sentence of up to six months or a fine of up to EUR 20,500. There is no special authority that checks whether a company keeps records. Therefore, the chance of discovery seems small. However, an investigation into other potential criminal offenses (e.g., failure to file the annual accounts or bankruptcy fraud) may reveal a lack of records, thus leading to higher sanctions.

Overall, with the implementation of the Act, it has become even more important for managing directors to keep proper company records.