

Great Spring Cleaning: A great opportunity to clean up work folders and files!

Introduction

Spring is just around the corner! We are close to the end of the first quarter of this year!

Excellent timing to refresh your work folders and business files, right? In this blog, you can find our tips: why?; what?; how?.

And then it's up to you to schedule time in your diary and get started: Good luck!

Why do this?

Accounting duty

Dutch law provides for an 'accounting duty' (*boekhoudplicht*) for companies, formulated as an instruction to its management board. The accounting duty is contained in Article 2:10(1) of the Dutch Civil Code: "*The management board is obliged to keep records of the assets of the legal entity and of everything concerning the activities of the legal entity, according to the requirements arising from these activities, in such a way that the rights and obligations of the legal entity can be known at all times.*"

So, the accounting duty is about keeping proper internal records.

Fail to comply: improper performance of duties

Failure to comply with the accounting duty may have serious consequences. In case of bankruptcy of the company, a legal presumption is triggered: the improper performance of management board duties is considered to be a major cause of a company's bankruptcy. This follows from Articles 2:138(2) and Article 2:248(2) of the Dutch Civil Code. Consequently, if the accounting duty is not met, managing directors' personal liability is likely to be assumed.

So, keeping proper records is key. What is meant by 'proper administration' and what do other legal provisions say about this? Please continue.

GDPR and 'data minimisation'

To the extent personal data are processed in your company's administration, e.g.: HR administration or a mailing-list with contacts that subscribed to receive your newsletters, the GDPR (General Data Protection Regulation) stipulates that, as a company, you must process any and all such personal data with care.

So, a 'proper administration' should also meet the requirements of duty of care.

Pursuant to GDPR, you always need a legitimate ground for processing personal data. In addition, personal data processing for a certain purpose must be restricted by using as little personal data as possible. This is called: data minimisation.

So, be careful and process as little personal data as possible. Always make sure the personal data that are being processed are correct and accurate.

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What data need to be cleaned? Data Retention Policy

Any document and data that are in scope of your accounting duty, as explained above, must be kept 'for seven (7) years', such in accordance with Article 2:10(3) of the Dutch Civil Code.

The Dutch Tax Authority (*Belastingdienst*) instructs you to keep all such data in the form in which the data was received. E.g.: everything you have received digitally should therefore be kept digitally.

Please be aware of the fact that digital bank statements are usually only available for a limited period of time (ranging from 18 months to 2 years). Therefore, make sure you download bank statements in time and file them (as long as required).

Data relating to real estate property need to be kept for ten (10) years (not seven (7) years).

Furthermore, there are rules for retention of personal data: retention periods are either expressly mentioned in a certain law or -if no express rule is available - your company needs to make a decision by its own (observing legal guidelines).

In short: there are quite a few different retention periods to be mindful of. Besides this, please note that the laws sometimes provides for minimum retention periods and in other cases provides for maximum retention periods, that should not be ignored. How to get a proper overview?

Well, by creating and implementing a Data Retention Policy in your company. The Data Retention Policy collects all data retention periods applicable to your company in one single document.

When you use your Data Retention Policy when cleaning your work folders and business files, you can be sure of doing the right thing!

If you have any questions about this or if you need assistance in drafting an adequate Data Retention Policy, please reach out: <https://hplaw.nl/en/contact/>.

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