



Group companies: The risks involved in spreading risk

It seems a safe choice to distribute risk with group companies. Therefore, the disadvantages are likely to be overlooked. Through group companies you will not only limit liability but also claims to third parties. So what do you have to look out for?

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Group companies and risk distribution

Private limited companies (BVs) and Public limited companies (NVs) are well-suited to limit the risk of the entrepreneur. As the company bears its own rights and obligations, the management (and shareholders) are not directly liable for potential debts. Through group companies the risk can be limited even further. Several companies will be established, each performing its own activities. Often they are led by or “hooked to” a parent company. If, for instance, one company of the group will go bankrupt, the other companies of the group will not automatically go bankrupt as well.

“Each advantage has its disadvantage”

However, group companies do not only have advantages. For example, great care is required in group financing and issuing and revoking “[403 statements](#)”. It is often overlooked that there are also risks involved if group companies contract. The different companies often work in close cooperation, for instance when concluding contracts that are relevant for several companies of the group. Often, one company will be the contracting party and this company will, in principle, be the only one entitled to address the other party regarding its obligations under the contract.



How it can go wrong

In a recent case before the Arnhem-Leeuwarden Court of Appeal, within a group, company A had bought tubes that company B had used in housing construction. After company A had gone bankrupt, company B wanted to address the seller because the tubes were defective. Though the seller had sent the invoices to company B and the materials had been supplied there too, according to the Court of Appeal, company B had not been involved sufficiently close in the performance of the contract. Only company A had acted as a party to the contract and company B had no opportunity to recover the damage from the seller.

Conversely, confusion can arise when several companies of the group are involved in the formation of a contract. Who are the contracting parties? The Amsterdam District Court ruled that the companies involved have the responsibility to dispel the confusion of the other party as quickly as possible. If they don't do so, all companies of the group may be considered as contracting parties and will therefore be obliged to fulfil the contract.

Action

- Use group companies to distribute risk within the group.
- Be aware that when contracting through group companies the means of recovery available against the other party are limited.
- Prevent surprises afterwards and decide per contract which companies of the group will (have to) be involved and make this clear to the other party.
- Obtain legal advice to achieve an optimal distribution of liability and claims.

More information

Would you like to get more information about the possibilities of spreading risk when contracting through group companies? Or do you have any other questions concerning contracts and liability, please contact:

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