Illegal Phoenix Activity
Illegal phoenix activity - what does it look like?
What is illegal phoenix activity?

- Illegal phoenix activity is the evasion of tax and other liabilities, such as employee entitlements, through the deliberate, systematic and sometimes cyclical liquidation of related corporate trading entities.

**THE PHOENIX CYCLE**

- **HOLDING COMPANY**
  - Phoenix operators may use a corporate group structure and deliberately undercapitalize subsidiaries.
  - The operator engages dummy directors to “run” the subsidiaries.
- **OPERATE COMPANY**
  - Phoenix operators intentionally evade their obligations, giving them a price advantage.
- **CREATE COMPANY**
- **EXTRACT PROFITS TRANSFER ASSETS**
- **FINANCIAL DISTRESS**
  - Phoenix operators feign distress.
- **WIND UP or LEAVE DORMANT**
  - ...via a “friendly” liquidator.
  - No assets are left to pay creditors, including employees, contractors & suppliers.
  - It is often run from the same premises as the old company.

The new company has a similar name.
Why is it a problem?
Why is phoenix behaviour a problem?

Illegal Phoenix Operators:

- **Siphon government payments** and typically maintain a personal lifestyle that does not match their reported income

- They (and their advisors) actively **seek to exploit legislative and regulatory gaps**

- **Tend to have large networks** and many associates, some of whom are only too willing to step into the company director role
Cost to the community

Total direct cost is $2.85 billion to $5.13 billion per annum.

**Business**
$1.16 - $3.17 billion

**Employees**
$31 - $298 million

Unpaid trade creditors

Unpaid entitlements
Who may be involved?
Who may be involved?

- Directors
- Phoenix operator
- Pre-insolvency advisers
- Friendly valuers
- Friendly liquidators

- If you are considering employing the services of a pre-insolvency advisor, consider the consequences
What are we doing about it?
Phoenix Taskforce Members
Phoenix Taskforce – comprising 36 Federal and State agencies

- **Federal Agencies**
  - Australian Taxation Office
  - Australian Securities & Investments Commission
  - Attorney-General’s Department
  - Australian Building & Construction Commission
  - Australian Federal Police
  - Australian Transaction Reports and Analysis Centre

- **State and Territory Agencies**
  - Office of State Revenue QLD
  - QLD Building & Construction Commission
  - Office of Industrial Relations QLD
  - WorkCover Queensland
  - NSW Police Force
  - Victorian Building Authority
  - WA Building Commission
  - Territory Revenue Office NT
  - Return to Work SA
Phoenix Strategy

Reduce incidence and impact of illegal phoenix activity, improve business and community confidence.

• Educate

• Engage

• Enforce

Results

Since the Phoenix Taskforce was established in November 2014, the ATO has raised more than $1.1 billion in liabilities from audits and reviews of illegal phoenix activities, and returned more than $500 million to the community.
Case Studies

ATO Cases
• Manly property developer, Mr. Benjamin Ensor
• Mr. Suleiman Erdogan

ASIC Cases
• Mr. Steven O’Neill and Mr. John Narramore from company SME’s R Us Pty Ltd
• Mr. Steven Hall of Eagle Business Solutions
• Mr. Pino Fiorentino
• Mr. Timothy Somerville
## Law reform

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<td>• GST on residential property settlements</td>
<td>• Introduction of Director Identification Numbers</td>
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<td>• Extending director penalty notices to GST and related liabilities</td>
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<td>• Expanding power to retain refunds against outstanding tax lodgements</td>
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<td>• Transparency of tax debt</td>
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What are QBCC doing about it?

- Building Industry Fairness (BIF) Act – payment schedules, payment of adjudicated amounts

- Minimum Financial Requirements – compulsory annual financial reporting

- Licensee history available to public

- Monies owed complaints – how does it work?

- Adjudication
What can you do about it?
Indicators of financial distress

- Late payments
- Allegations of defective work
- Lack of communication when payments are due – e.g. unanswered emails and phone calls.
- Requests to enter into payment plans
- Mention made of financial difficulties
- Promises of “pay when paid”
Indicators of financial distress

• New contracts with different names

• Accounts from which payments are received, are changed

• Third parties make payments on behalf of the licensee

• Delays in progress of build

• Requests for new projects received before payment is made for current projects
How to protect yourself

- Always have a written contract
- Prompt issuing of invoices
- Documenting of variations
- Know the rights and obligations of all parties under the Building Industry Fairness Act 2017
- What’s industry saying?
- Internet reviews
- Management of aged debtors
- Discontinuing work / terminating contract
How to report phoenix activity

If you suspect phoenix behaviour, you can:

• complete a **tip-off form** on our website ato.gov.au/tipoff
• contact us by using the ‘**Contact us**' section of the ATO app (available from the app store)
• call **1800 060 062**
• email **PhoenixReferrals@ato.gov.au**

All reports and tip-offs about suspected phoenix activity are forwarded to the Phoenix Taskforce.

We take all reports seriously. Due to privacy laws, we can’t inform you of the outcome of the information you provide, or provide updates on our progress.
Questions