



Australian Government

Protect
yourself against
illegal phoenix
activity

Know who you're doing business with

Recognise an illegal phoenix operator

Illegal phoenix activity is when a new company is created to continue the business of an existing company that has been deliberately liquidated, abandoned, or wound up. This is done to avoid paying taxes, creditors and employee entitlements.

Knowing who you are going into business with can help you avoid companies that may be involved in illegal phoenix activity.

Signs of phoenix behaviour

Some signs that a business may be involved in illegal phoenix behaviour include:

- offering significantly lower quotes compared to other businesses
- requesting payment to another company
- directors who have been involved with liquidated entities before
- changes to the company's directors or name but the manager and staff remain the same
- information requests and garnishee notices from the ATO to your business.

Protect yourself

Some simple steps can help you avoid companies that may be involved in illegal phoenix activity:

- conduct an online search on the company or director's name to uncover relevant information relating to their business
- run checks on a business and the directors, including confirming
 - building licences
 - labour hire registrations
 - company directorships
 - ABN details
 - if any directors or persons in control have ever been bankrupt or in receivership
- depending on the risks associated with the business opportunity, conduct a formal credit check through a credit bureau, seek references, or purchase a company report through ASIC
- ask for proof that the company has registered for, and paid, tax obligations
- include a clause in your contract that the other business is up to date and compliant with its tax obligations – this creates an additional right (in contract) you can pursue in the event of illegal phoenix activity
- establish a good rapport with your project partners – good relationships and ongoing communication will help
- customise your payment terms and identify when you may need to tighten them
- ask for upfront payments, cash on delivery or payments in instalments, or ensure you are taking a large enough deposit
- ensure you have multiple sources of income and business suppliers to limit the impact on your business if another business is liquidated.

You may want to consider mitigating risks by obtaining a company director's guarantee or bank guarantee. This option is more suitable for high value transactions and contracts with longer time frames for performance and payment (for example, a property lease, or a longer term equipment lease).

If you suspect a business of engaging in illegal phoenix behaviour, report them to the ATO. You could be saving yourself and others from financial loss.

Where to get help

The Phoenix Taskforce, made up of a number of government agencies, works to protect your business and employee entitlements by reducing and deterring illegal phoenix activity.

There are several simple checks you can do before engaging with a new company. By taking a few minutes to conduct these checks you could be saving yourself from being ripped off.

- **Australian Taxation Office (ATO)** The ATO can assist businesses with information on tax, superannuation, and the risks of illegal phoenix activity. Visit ato.gov.au/phoenix to learn more. If you suspect illegal phoenix behaviour, report it at ato.gov.au/tipoff or call **1800 060 062**
- **Australian Business Register (ABR)** The ABR can help you confirm whether businesses you are interacting with have a valid Australian business number (ABN). Visit abr.business.gov.au (*ABN Lookup*) and search for the business by name, ABN or ACN. You can then confirm their ABN status, business name, entity type and postcode
- **Australian Building & Construction Commission (ABCC)** Enforces workplace relations laws in the building and construction industry. As a member of the Phoenix Taskforce, it investigates non-payment of wages, superannuation and accrued employee entitlements, as well as non-payment of suppliers, in the building and construction industry. Visit abcc.gov.au or call **1800 003 338**
- **Australian Competition & Consumer Commission (ACCC)** ACCC can assist with information about business rights and obligations under the Australian Consumer Law, including misleading, deceptive and unconscionable conduct as well as for prescribed industry codes, such as the Franchising Code of Conduct which outlines the conduct of franchising participants towards each other. Visit acc.gov.au and for information on franchising acc.gov.au/business/industry-codes/franchising-code-of-conduct
- **Australian Financial Security Authority (AFSA)** AFSA provides a searchable register that can tell you whether someone is bankrupt, or whether there are restrictions on bankrupt people who are running a business or are a company director. Use the Bankruptcy Register Search (BRS) at afsa.gov.au. If you're in business and buy, lease, hire, or sell goods on consignment, you can register your interest in the goods you're supplying on the Personal Property Securities Register (PPSR). If your customer doesn't pay or becomes insolvent, you are in the best position to get your goods, or their value back. Visit ppsr.gov.au to learn more.
- **Australian Securities and Investments Commission (ASIC)** Search ASIC's registers to check if a company is registered or if someone has been disqualified from managing companies. Always ask questions, verify information and report suspicious behaviour. Visit asic.gov.au for more information about illegal phoenix activity and to 'search our registers'.
- **Office of the Fair Work Ombudsman (FWO)** FWO can assist businesses and employees with information and advice about workplace rights and obligations. They have tools and resources on their website to help with minimum pay rates, leave entitlements and other workplace conditions. Visit fairwork.gov.au or call **13 13 94**.