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Illegal Phoenixing Needs Attention

The Master Builders Association is supporting the ATO and the Phoenix Taskforce to eradicate the building and construction industry of illegal phoenix activity.

Illegal phoenix activity is when a new company is created to continue the business of another company that has been deliberately liquidated to avoid paying its debts, which might include taxes, creditors and employee entitlements.

According to Master Builders Director Michael McLean, illegal phoenixing occurs primarily with sub-contractors who can't manage their finances effectively and don't recognize their statutory obligations to their employees and government agencies.

"Illegal phoenixing in the construction industry causes serious problems and personal hardship for those affected by the practice," Mr McLean said,

"Those workers who are affected lose out on wages, superannuation and other accrued entitlements which can be devastating for their families; whereas the individuals who engage in this illegal activity try and get an unfair advantage over their competitors".

"As a peak industry body, we realize the ATO can't solve this problem alone. We, as an industry, need to help them to identify the suspected culprits and help stamp out the practice by not engaging the illegal phoenixers", Mr McLean said.

"With the building and construction industry currently experiencing a downturn and extremely competitive pricing, the alarm bells are ringing to watch out for illegal phoenix activity".

"What's needed is cultural change where clients and builders scrutinize unrealistic tender prices more rigorously and carry out more thorough checks of contractors before engaging them".

"Master Builders is also encouraging its builder members to work with the ATO to report any examples of previously liquidated companies on their sites which haven't met their statutory obligations", Mr McLean concluded.

The federal government is planning to introduce a comprehensive range of reforms to crack down on illegal phoenixing by unscrupulous business directors. A key element will be a Director Identification Number (DIN) which will link with other government agencies and data bases so regulators can track the relationships between individuals and their business activities.

Specific phoenixing laws will include a dedicated hotline for the public to report suspected phoenix behaviour, greater penalties for those avoiding their tax obligations and stronger powers for the ATO to recover outstanding tax liabilities.

According to the Productivity Commission, an estimated 2,000 businesses each year are involved in phoenix activities, costing our economy over $3 billion.

To learn more, go to www.ato.gov.au/phoenix

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