



# Illegal Phoenix Activity Indicators

Labour Hire/Payroll Services



Australian Government  
AUSTRAC



Fintel  
Alliance

An AUSTRAC initiative

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# Contents

<b>02</b>	Purpose
<b>03</b>	Background
<b>04</b>	Illegal phoenix activity
<b>06</b>	Indicators
<b>09</b>	Resources/definitions
<b>10</b>	Appendix A



# Purpose

This report provides indicators to industry and government to identify transactions that relate to illegal phoenix activity. The existence of a single indicator does not necessarily indicate criminal activity. In most cases, there will be multiple indicators that raise suspicion of potential criminal activity. The presence of indicators should encourage further monitoring, examination and reporting where appropriate.

If you recognise these indicators in your business you should consider your obligations under the AML/CTF Act, including ongoing customer due diligence and reporting of suspicious matters (SMRs) to AUSTRAC with the reference "FA17954".

# Background

Illegal phoenixing activity<sup>1</sup> is when a company liquidates its operations to avoid paying its creditors, taxes and other regulatory payments.

Before liquidation, the company transfers its assets to a newly created company. The new company operates in the same, or similar industry and the same directors or close associates maintain control.

This report describes indicators associated with illegal phoenixing in the labour hire/payroll services industries.

The findings and indicators explored in this report have been developed by the Fintel Alliance.

The Fintel Alliance specifically focused on entities suspected of illegal phoenix activity, fraudulent taxation claims and money laundering activities pertaining to labour hire and payroll services.

The impact of illegal phoenix activity is far reaching for the individuals, businesses, government and the community as a whole. This includes loss of wages and entitlements, non-payment to suppliers, avoidance of regulatory obligations and loss of government revenue.

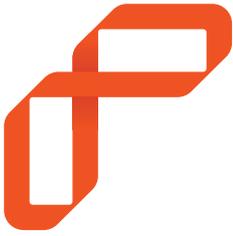
A recent report by PriceWaterhouse Coopers estimates the annual direct impact of illegal phoenix activity to be between \$2.85 billion and \$5.13 billion.<sup>2</sup>

The indicators in this report are specific to labour hire, however many of the indicators are likely to be characteristics of other suspect phoenix activity in various industries, such as construction.

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1 See Resources/Definitions section of this paper for further information

2 <https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/The-economic-impact-of-potential-illegal-phoenix-activity/>



# Illegal phoenix activity

Illegal phoenix activity has a far reaching impact on individuals and the wider community, and requires a joint approach across government and industry to identify and prosecute offenders.

The indicators presented in this report are a result of analysis of current and previous investigations that have identified a number of specific indicators of illegal phoenix activity within the banking sector.

## Labour hire/payroll services

A network controller establishes a network of labour hire<sup>3</sup> companies with one company acting as the payroll company for the various labour hire companies within the network.

The labour hire companies are contracted to provide services to legitimate businesses. These businesses make payments to the labour hire company for the services provided, inclusive of wages, taxes and superannuation.

The labour hire companies transfer their funds to the network payroll company who makes the wages payments, often in cash. The payroll company does not make, or only makes minimal, compulsory taxation or superannuation payments.

The payroll company is placed in administration within 12 to 24 months of registration or commencement of operations.

A new payroll company with similar business activity, name and ownership, is registered by the controller or their associate. The new company continues business operations and transactions that are the same or similar to the liquidated company.

Straw directors<sup>4</sup> are recruited to be the directors of the companies within the network. This provides distance, and clouds the link between the network controller and the companies to assist with avoiding detection.

Companies in the network will have limited or no open source information. Bank accounts are opened within a short time frame of being registered with ASIC, with transactions occurring immediately which are not indicative of the normal customer profile.

## Standalone labour hire companies

Companies providing labour hire services may operate as a standalone entity and not be part of a network which uses a payroll services company.

In these instances, the labour hire company will pay wages without the use of the payroll company and will be the entity that phoenixes to evade their regulatory financial obligations.

Figure 1 provides a visualisation of the labour hire illegal phoenix activity network process:

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<sup>3</sup> See Resources/Definitions section of this paper for further information

<sup>4</sup> See Resources/Definitions section of this paper for definition



Figure 1: Illegal phoenix activity – labour hire/payroll services



# Indicators

The Fintel Alliance through its work, has identified the following list of indicators as being associated with labour hire networks engaging in illegal phoenixing activity.

The indicators listed below, in particular, the demographic indicators, may differ in various networks, and should be considered on a case by case basis.

The Financial activity, Bank account and Company registration indicators listed below are more common and would apply to various phoenixing structures involving labour hire/payroll companies.



## Demographic INDICATORS

- male
- occupation – Director
- same/similar ethnicity
- network operates in same geographical locations
- network companies have common contact details
- residential address used as company address when registering



## Financial activity INDICATORS

- regular cash withdrawals from same branches
- structured withdrawals on same or consecutive days
- minimal business type expenses
- most funds spent, little left to cover expenses
- compulsory financial obligations payments are minimal or not being made



## Bank account INDICATORS

- sole account signatory
- multiple accounts with various banks
- phoenixed company account remains dormant
- similar transactions to phoenixed company
- legitimate businesses start transferring to new company account



## Company registration INDICATORS

- sole director/shareholder
- multiple companies, similar names/services
- voluntary liquidation
- links to deregistered companies

## Demographic indicators

Directors of labour hire/payroll companies within the illegal phoenixing network match the following profile:

- » Predominantly male
- » Of the same ethnic background or community
- » Occupation or title listed as Director

Labour hire/payroll companies within the illegal phoenixing network match the following profile:

- » Registered with a sole director/shareholder
- » Operating in the same geographical locations
- » Companies may have common contact details, including email and phone numbers
- » Operating in the same labour hire industry segment e.g. cleaning services, construction, agriculture
- » Have registered addresses that are residential

## Company registration indicators

The following company registration indicators were observed:

- » The company has a sole director/shareholder
- » Directors have multiple current registered companies with similar names and services
- » The company/director will apply to voluntarily de-register the phoenix company
- » When registering the new company it will have the same or similar name, address and contact details
- » The director may be linked to previous de-registered companies.



## Financial activity indicators

Labour hire companies within the illegal phoenixing network were observed to:

- » Transfer the majority of funds received for payment of labour hire services to the network payroll company who made the wages payments on their behalf
- » Display minimal business type payments through their bank accounts which related to daily business operations.

The network payroll company was observed to:

- » Receive funds from multiple “service” related companies, either legitimate or illegitimate, (e.g. cleaning) between \$4,000 to \$20,000 via domestic bank transfer.
- » Conduct regular bank account withdrawals through attending the same bank branches cashing cheques which were made out to “Cash”
- » Conduct funds withdrawals on the same, or consecutive days, or within a few days which were under the \$10,000 reporting threshold
- » Conducting multiple domestic electronic outgoing transfers to third party individual’s bank accounts – potentially indicative of wages payments
- » All funds are withdrawn or transferred, with little or no balance remaining in the account to cover other expenses and regulatory payments.
- » Compulsory regulatory payment transactions (for example, Superannuation, Payroll Tax and tax payments including GST, PAYGI, PAYGW,) <sup>5</sup> are not being made, or are not proportional to the level of incoming funds being received.

<sup>5</sup> Certain state and regulatory payments such as payroll tax will only be compulsory if a dollar threshold has been met. See Appendix A of this paper for further information.

## Bank account indicators

The following bank account indicators were identified:

- » The company has a sole director/shareholder and account signatory.
- » The company may have multiple bank accounts with multiple financial institutions.
- » The bank account of the de-registered labour hire or payroll phoenixed company remains dormant, with no transactions occurring.
- » Transactions in the bank accounts of the phoenixed company and the newly registered company have the same, or similar transactions and same contact details, indicating they are operating the same business.
- » Legitimate entities that are paying for services rendered will transfer funds to a new beneficiary account held by a new entity with the same customer profile of the entity that was phoenixed.

### Seen something suspicious?

On their own, these indicators may appear normal. However, if you notice a combination of indicators, consider submitting a suspicious matter report to AUSTRAC.

High-quality, accurate and timely SMRs give us the best chance to detect, deter and disrupt criminal activity, including illegal phoenix activity.

To find out more visit: [austrac.gov.au/smr](https://austrac.gov.au/smr)

# Resources/ Definitions

## Illegal phoenix activity

<https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/>

<https://asic.gov.au/for-business/small-business/closing-a-small-business/illegal-phoenix-activity/>

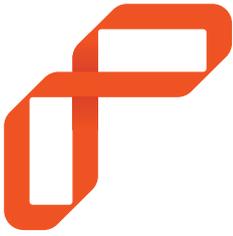
## Labour hire

<https://labourhireauthority.vic.gov.au/provider/general-definition-of-labour-hire-services/>

<https://www.ato.gov.au/Business/PAYG-withholding/Payments-you-need-to-withhold-from/Labour-hire-firms-and-their-workers/>

## Straw/Dummy Director

A Straw or Dummy Director is the visible legal representative of a company, however acts on behalf of the actual owner and has no real involvement in the company so as to mask the effective owner/controller of the entity.



## APPENDIX A – Expected compulsory obligations of a labour hire company

The information provided below is of a general nature, and it is noted that payments and obligations may differ for certain businesses and their situations. It is highly likely that legitimate labour hire/payroll services businesses will have some, if not all of the following obligations and make payments accordingly.

### SUPERANNUATION

If an employee earns \$450 or more in a calendar month an employer is generally required to pay superannuation. This payment is referred to as the Super Guarantee (SG) and is a minimum 9.5% of ordinary time earnings.

SG payments are required to be paid by employers to complying superannuation funds at least quarterly.

It is expected that a legitimate labour hire or payroll services company that is paying wages would be required to make SG payments to super funds and this should be reflected in their bank accounts.

<https://www.ato.gov.au/Business/Super-for-employers/>

### COMMONWEALTH TAXATION OBLIGATIONS

The following Commonwealth Taxation Obligations are administered by the Australian Taxation Office (ATO) and are required to be lodged through a Business Activity Statement (BAS). The payment of these obligations if required are likely to be as one amount, rather than individually.

#### GOODS & SERVICES TAX (GST)

Businesses that provide goods and services that are subject to GST are required to register if they have an annual turnover for GST purposes of \$75,000 or more. Some exemptions are applicable for certain industries and businesses.

Businesses are required to report and pay any GST collected for the goods and services provided in their business. They are also able to claim GST paid for any applicable expenses they have incurred. This is reported on their BAS and will result in a net GST payment or refund.

The current GST rate is 10%.

GST Registration	Turnover	Payment Period
Voluntary	<\$75,000	Annually
Compulsory	>\$75,000 <\$20 million	Quarterly
Compulsory	>\$20 million	Monthly

GST turnover and payment periods

A labour hire/payroll services company is likely to be in a payable position, on the basis of making taxable sales, and it would be expected that a payment to the ATO would occur regularly.

<https://www.ato.gov.au/Business/GST/>

**PAY AS YOU GO WITHHOLDING (PAYGW)**

Businesses that make certain payments including to employees and labour hire, are required to withhold tax which is to be reported on their BAS and paid to the ATO. Withholding rates are based on the individual employee’s payment. A labour hire/payroll service company should be reporting and paying PAYGW regularly to the ATO. (O)

<https://www.ato.gov.au/business/payg-withholding/payments-you-need-to-withhold-from/labour-hire-firms-and-their-workers/>

**PAY AS YOU GO INSTALMENTS (PAYGI)**

Businesses may be required to report and pay regular PAYG instalments through their BAS towards their expected income tax liability at the end of the financial year.

This particular obligation is based on a business’ income tax lodgements, as such the expectation of PAYGI payments would differ from business to business.

[https://www.ato.gov.au/Business/Business-activity-statements-\(BAS\)/PAYG-instalments/](https://www.ato.gov.au/Business/Business-activity-statements-(BAS)/PAYG-instalments/)

**PAYROLL TAX**

Payroll tax is a state government mandatory obligation which is payable when wages paid by an employer exceeds a specified threshold. The tax is calculated as a percentage of applicable wages paid.

Employers must register for payroll tax if their wages paid/payable exceeds the applicable threshold. It is a self-assessment system, meaning the onus is on the business to register if they meet the threshold. The payment cycle can differ per state, however generally payroll tax is reportable and payable monthly, with an annual reconciliation completed at the end of the financial year.

State	Monthly Threshold (approx)	Payroll Tax Rate
NSW	\$66,000	5.45%
VIC	\$55,000	4.85%
WA	\$71,000	Tiered between 5.5% and 6.5%
SA	\$125,000	Tiered between 0% and 4.95%
NT	\$125,000	5.50%
QLD	\$92,000	4.75%



State	Monthly Threshold (approx)	Payroll Tax Rate
ACT	\$167,000	6.85%
TAS	\$96,000	Initially 4% then 6.1%

Payroll tax thresholds and rates

Suspicious labour hire or payroll services companies that meet the specified payroll tax thresholds would either not make payment of payroll tax, or would make payments less than required.

Please note that some exemptions may apply for certain businesses and/or regions within the different states. Please see the link below if you require further information.

<https://www.payrolltax.gov.au/harmonisation/payroll-tax-rates-and-thresholds>

