

# Phoenixing activities in the economy



## Question 1

### The Black Economy

Every country has its economic activity that sustains its citizens. According to the laws of the country, reliable economic activity that sustains the needs of a particular household needs to be registered. The economic activity has to have some certain rules and regulations which it's entitled to. However, there are some of the economic activities that are not recognized by the government. They operate using fraudulent means. They are unrecorded and also untaxed by the government. This kind of economic activities that are neither known by the government nor do they follow taxation rules are referred to as black economy.

The black economy is an economy that continues to take a different form and continues to grow. It is an economy that is mercilessly ruining a legit business day in day out. Majority of legit business organs station are crying foul due to the activities of the black economy. The black economy is widely influenced by a number of activities. It's not stagnant but rather oscillates around technological, commercial, and all the social landscape shift.

These time of economy is highly acknowledged and embraced very fast by the participant. It's majorly supported by values and assumptions that it's a victimless crime. Majority of the small business enterprises feel that the black economy is ruining their business, by the competitors who are a participant in the black market are feeling what is being referred to as an unfair advantage.

Therefore a black economy is a business that does not follow the laid down rules and regulations. It rather engages in unlawful activities such as tax evasion. In the process, they thrive since customers preference is on cheap good, unlike expensive legit goods.

### Phoenixing

Australia, as a continent has witness industrialization and revolution. A lot of companies are emerging and taking over the new markets. During the process of operation, the business is likely to incur massive losses which might ultimately lead to its closure. The business can become liquidated.

When a business is under liquidation and then closes up but opens to continue offering the same services, then it can be referred to as being in a state of phoenix. In other words, phoenixing is an illegal activity which is prosecuted by law. It occurs when a given company decides to create a new business for survival. It's usually done with the aim of avoiding to pay the outstanding debts to the employees, its creditors and also paying the recommended tax.

Phoenixing, therefore, is an activity that brings a lot of damages to the subscribers of that particular company. For instance, the creditors and the employees who were expecting monthly payment from the company. They will be denied the privilege of being paid their debts due to the fact that the company has decided to dissolve and begin as a new company Anderson, (2018).

## Question 2

Estimated costs to the Australian economy of phoenixing

The power and the impact that phoenix has to the economy can never be underestimated. In order to be able to estimate the costs that it has to the Australian economy. First, we need to understand the population that is affected by the effect of phoenixing activities.

The first group of the direct cost that is likely to be affected at large is the government. The government has set rules that a certain amount of tax is supposed to be paid. The tax evaders in the process of phoenixing are so many Richards, (2018). This implies that the number of tax evaders is significantly a good number. This can be estimated to be a total loss of approximately \$ 1660 million dollars to the government in a month.

Another group that is likely to be affected is the unpaid trade and creditors. These are usually individual, who has devoted to supplying the necessities before the company goes into liquidation. These group of people usually suffer in silence due to the act of phoenixing. Very few individuals seek legal attention during the process. The approximated amount as a result of phoenixing towards the creditors can be estimated to range between \$ 2000 - \$3000 million dollars in a month.

The third group who are likely to be affected are the employees of the company. Employees make up the largest population of the workforce in Australia that contribute to the economy. When phoenixing occurs, the employees will definitely lose their jobs. Some of them on a contract basis. They usually differ because the company no longer recognizes the

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fundamental roles that they played before the act of liquidation. The total estimate can range between \$ 31 up to \$300 million dollars in a month.

Therefore, the ordeal of phoenixing is affecting three different groups of people in society. The government, the business (creditors), and the employees. The amount of money that employees lose is estimated to be at \$300 million, the government \$ 1660 million and the creditors are estimated to be \$3000 million dollars. Therefore the sum total of money that is lost in the Australian economy every financial year is almost \$3. 3 billion, Hedges, Anderson, Ramsay, & Welsh, (2017).

Therefore the amount that is periodically lost every year is high. This amount is expected to increase in the event that appropriate actions are not put in place. The government urgently needs to ensure that phoenixing is completely stopped to prevent a loss of over \$3. 3 billion.

### **Question 3**

Industries where phoenixing are most prevalent

According to the report which was released, the researcher discovered that phoenixing activities are prevalent in some industries while very limited in other industries. Building and construction industries are purported to be the mother of phoenixing activities. The building companies will engage in n hiring, crane operators, and construction workers. Due to this particular nature of hiring it makes the company very prevalent to phonexing activity.

The construction industry is well-known for employing a high number of temporary workers who might have very little knowledge in regard to their

entitlements. There are some characteristics of Construction Company that favor the act of phoenixing. Besides these temporary workers are also migrants who may not be aware of their roles, functions, and rights in a given contract.

The issue of subcontracting a particular company to give the contract a particular unit is often very difficult. It's usually the work of the head contractor to perform certain contract after which he will be paid by the client. The construction work does not stop from that place. Other series of subcontractors have to be hired in order to get the job finished on time. These particular groups of subcontractors have a role in ensuring that they receive payments from other subcontractors which must come from the general contractor and then up from the client.

Therefore the majority of contractors and subcontractors decided to use what is regarded to be a false statutory declaration which is common in the industry. It's this kind of false declaration that often leads to a lot of phoenixing activities within the construction industry. To add on the construction industry can move any time from one location to another. They do not have a fixed place of operation but rather operate on any grounds.

Therefore the recovery of the unpaid wages may prove to be totally difficult. This may also be contributed by the fact that employees may not be sure of the company's name that they are working since they have only been hired on within a given number of months or even days. Employees, on the other hand, may alter the names of their payslips hence leading to phoenixing.

## Question 4

Difficulties faced by regulators in pursuing phoenix entities

Phoenixing activities continue to be on the rise. These activities are evolving, thus challenging regulators hence being unable to combat these particular activities.

It has, first of all, become a common trend in Australia where the majority of small and medium enterprise decide to provide appropriate and valuable assistance to the directors of companies that are facing financial difficulties. These small and medium enterprises are working hard to turn around the business that is on the verge of collapsing Anderson, (2018). These means the company directors will be saved silently, and the phoenixing activities go on with a lot of ease. Therefore the small and medium enterprise plays a significant role in turning around the business that is collapsing.

Secondly, the subject of legislative requirements is also another issue. In the traditional system, individuals who were qualified and engaged in disciplinary actions were responsible for guiding the companies that liquidating. These imply proper rules could be followed. Recently, the adviser market has totally grown in number. Companies are seeking for advice from unreliable sources who are not professional trained. This implies that many individuals are likely to inform the directors of the company to engage in phoenixing activities so that the business, may survive. Therefore some of the advisers are generally not qualified to inform or advise the company what is expected of them in during liquidation.

Another significant reason why fighting phoenixing is difficult because it's very difficult to identify and take action towards the directors, their associates of the companies that are involved. This is due to the fact of what the report refers to as the controlling minds. There are multiple involvements of phoenixing companies. There is no one single person being involved in the phoenixing. The controlling minds are not even directors but rather specific individuals who oversee the directors of that particular company. Therefore to establish the real owner of the company makes it a challenge; hence, they evade the rules silently.

## **Question 5**

Early warning signs which may assist in the early identification of phoenix activity

There are several warnings that one can use to infer that a company is on the verge of phoenixing. The information which is usually held by financial institutions insolvency industry experts, credit reporting agencies, regulatory databases such as (Dow Jones) and also several trade unions, should be of key interest. This particular organization contains key information in regard to the potential risk of phoenixing by the companies and their directors. Therefore the ATO, ASIC, and FWO should take abrupt measures in reference to the named institutors.

Another important early warning of phoenixing is the suspicious matter reports from financial institutions. When various financial institution begins acting suspiciously, then, it raises a lot of concerns that a given institution is likely to be moving forward toward phoenixing activity.



To add on stakeholders also play a significant role towards detecting the pheonixing activity. The stakeholders have what is regarded as a rich source of information which is not currently available to regulatory authorities.

When suspicious matter and transaction reporting is conducted from a financial institution, then the likelihood of the pheonixing activity will show up. In addition, the banks have security over certain assets shifting. One they have obligations to report suspicious activity then pheonixing will be detected, and appropriate actions are taken.

To add on, the insolvency industry, experts, trade unions, and credit reporting agencies have plenty of information that can help detect the pheonixing activity. When ATO, ASIC and other legalized bodies work alongside with these companies, then pheonixing activities will be detected prior before it occurs.

Another significant lead that could easily detect the pheonixing activity is the non-payment of the payroll tax and the workover premiums Anderson, (2018). They are likely to show the red flag that pheonixing is taking place. The non-payment of payroll tax requires a lot of data sharing with the state and also the territory governments in regard to this particular issue.

The superannuation early flag

The government superannuation is also another important issue that can help determine the early stages of pheonixing activities. The government's announcement which requires superannuation funds in order to report to ATO contributions is increasingly important. This amount is often received frequently or at least on a monthly basis. In addition, when ATO continues

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with further discussion with superannuation funds will help share intelligence of various campiness that is non-compliant or is heading towards pheonixing.

## **Question 6**

Proposals or recommendations identified in the report to address the increase of illegal phoenix activity in Australia

There are several recommendations that have put in place to try and counter the illegal pheonixing activities.

First, it has been proposed that the general information that is contained in the general private sector needs to be assembled is collected by intelligence. The information should also be within the regulatory agencies. They will always raise the red flag in the event that early signs of pheonixing is detected. The regulatory bodies will be using this kind of information to monitor and prevent companies that attempt to engage in pheonixing activities.

The deterrent should be a target not only to the directors and other facilitators but also the controlling minds. This should be effected through offenses and also penalties that are aligned with the seriousness of their harmful ventures

Another significant proposal is the fact that ATO, ASIC, and FWO, should play a critical role in monitoring companies and directors. These should be effected by vigorously perusing the tax debts, the unpaid wages and also take action where necessary before the actual pheonixing activity occurs. Furthermore, in the event that pheonixing takes place, these particular

bodies, the ATO, ASIC, and the FWO should provide the court with the support that it requires.

The proposal by the government to improve the transparency of the tax debts is also another vital recommendation. Under this particular proposal, the ATO will be granted powers to be able to disclose the tax debt information to the credit reporting bureaus. The bureau will have the authority to include the tax debit information to their credit reports. This implies that creditors can take these particular reports into accounts before making a decision.

Another proposal in regard to Phoenixing activities is early warning system is put in place. The combination of this particular system will include combining the database that the government has and the private sector, which will basically be achieved through enhanced suspicious matter reporting and frequent data sharing.

The proposal also recommends that the best way to counter the activities related to phoenixing is the greater enforcement of offenses and maximum recovery of debts. This should be done through greater expertise alongside ATO in reference debt collection and also establishing the insolvency advisory panel.

To add on the, there is also a proposal that recommends increasing the severity of the penalty. When the penalty is increased in the vent that phoenixing will be detected, then the directors and the controlling mind should pay heavily. The heavy penalty will definitely reflect on the harm that the phoenixing has caused to the subscribers of that particular company.

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The general proposal also acknowledges the fact that strong deterrents are needed. They will simply send a signal to phoenix operators and their advisers that phoenixing activity is a total crime that requires severe punishment, Dabner, (2018).

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