VICTORIAN BUILDING AUTHORITY
BUILDING CONFIDENCE

FACT SHEET

Phoenixing activity

What is "phoenixing activity"?

Phoenixing activity is a way to continue operating a company while avoiding liability to others.

In the building industry phoenixing activity has a devastating financial impact on consumers, subcontractors, suppliers and employees. It leaves a chain of people and businesses who don't get paid.

Phoenixing activity is where a new company is set up to continue the same business of an existing company that is intentionally liquidated. Assets from the existing company are moved to the new company that often has a similar name and operates from the same premises.

How is "phoenixing" detected?

The *Building Act 1993* (Vic) has recently been amended to provide the VBA with more powers to assess if building industry actors have or are engaging in phoenixing activity.

The powers build on the existing regulatory framework to enable the VBA to look at the business activity of those engaged in the building industry. This can include looking at companies where a person was a director, secretary, CEO, general manger or a position of influence on its decisions before it was liquidated.

What is the fit and proper person test?

The building regulatory framework requires that those who wish to engage in the building industry be a fit and proper person.

The 'fit and proper person' test is designed to protect consumers, suppliers and subcontractors from those who do not meet the standard to participate in the building industry.

The additional powers build on existing powers to assess and hold to account those who do not meet the 'fit and proper person' test.

How does 'phoenixing activity' work with the fit and proper person test?

The fit and proper person test applies broadly in relation to the VBA taking disciplinary action against a registered building practitioner.

The fit and proper person test at the point of registration or renewal of a registration is made up of the VBA weighing the:

- *Personal Probity Requirements*
- *Financial Probity Requirements.*

Phoenixing activity as a financial probity requirement includes the VBA looking at:

- *Was the person or any director of the company a director, secretary, CEO, general manager or influential person in a company up to 2 years before it was liquidated?*
- *Was the person someone who had influence over a company that was liquidated by directly or indirectly owning 50% or more of its shares?*
- *Did the person give instructions to key position holders at the liquidated company?*
- *Did the person make decision or take part in key decision for a liquidated company?*
- *Did the person represent themselves as controlling a liquidated company?*
- *Indicators that the person liquidated a company to move assets from it to a new company to continue the same business.*

VICTORIA State Government

Want to know more?

If you have any questions about this information, please contact the VBA.

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