



Phoenix company fraud

Phoenix company fraud happens after company goes bankrupt and a second company (known as a phoenix company) is started up overnight with the same directors.

Although this is perfectly legal, fraud is committed when the directors abuse the phoenix company arrangement and transfer the assets of the failing company below their market value, before insolvency.

More about phoenix company fraud

When a company goes bankrupt, a second company can start up overnight with the same directors – but without any obligation to pay for the failed company's losses. That's because they appear to be different entities.

This is known as a phoenix company.

It's perfectly legal to form a new company from the remains of a failed company. Any director of a failed company can become a director of a new company, unless he or she is:

- 👉 subject to a disqualification order or undertaking
- 👉 personally bankrupt
- 👉 subject to a bankruptcy restrictions order or undertaking.

Fraud happens when directors abuse the phoenix company arrangement by transferring the assets of the failing company below their market value before insolvency. By doing this, the fraudulent directors reduce the funds available to creditors when the original company becomes insolvent. As a result, the creditors are left out of pocket for the goods or services they supplied.

Once a company enters insolvency or liquidation proceedings, the creditors will be paid in order of priority from whatever remaining company funds are made available.

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If you're a trade creditor, it's likely that you'll receive only a small proportion of the money you are owed. Clearly, this may result in serious financial loss and have a direct impact on your company's ability to keep trading and stay solvent.

In addition, business confidence in your company may suffer, your customer base might shrink and your suppliers may impose less favourable payment terms on you. This will impact on your cash flow and, again, adversely affect your company's ability to stay solvent.

Are you a victim of phoenix company fraud?

- 👉 You are a trade creditor owed funds from the insolvency of a company but can't contact the company or get paid.
- 👉 You are a business that has suffered substantial financial loss after giving trade credit to a new business that has gone under.

What should you do if you're a victim of phoenix company fraud?

If you have a claim or an outstanding complaint against the failed company, don't give up on it.

- 👉 Be persistent. You should not be put off if the phoenix company claims the failed company's liabilities are not theirs, when both companies appear to be the same.
- 👉 Take your case to the Financial Ombudsman Service if you're not satisfied with their answers (www.financial-ombudsman.org.uk).
- 👉 Tell the Financial Services Authority (FSA) about it (www.fsa.gov.uk). It can't help with individual disputes between you and the phoenix company, but the generic problem of phoenix companies is a priority for the FSA.

If you're a creditor to a company undergoing insolvency, it's essential that you help the official receiver or insolvency practitioner to understand the causes of failure. They have a duty to investigate the affairs of companies in compulsory

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liquidation and report evidence of criminal offences to a prosecuting agency. If you believe that the company is withholding information about its assets, or if you have information about the conduct of the company, you should contact the official receiver or insolvency practitioner with the relevant facts.

Protect yourself against phoenix company fraud

Most phoenix companies are perfectly legitimate businesses. But, as with any new customer, you should vet them carefully first. In particular, follow up trade references and check the directors' credentials.

Find out why the previous company failed and ensure the directors aren't serial abusers of the phoenix company arrangement. You can find information on company directors from Companies House (www.companieshouse.gov.uk) or by getting hold of a status report from a credit ratings agency. Only extend trade credit if you are confident that you will be paid on time.

If you suspect that an individual is acting in breach of a disqualification or bankruptcy order, you should report them to the Insolvency Service (www.insolvency.gov.uk). It's a criminal offence to contravene a disqualification order or undertaking, a bankruptcy order, a bankruptcy restrictions order or undertaking. It's also a criminal offence for another person to assist a disqualified person to act in this way.

Anyone who contravenes the order or undertaking could become personally liable for any debts a company incurs while the order or undertaking is contravened. Anybody who carries out that person's instructions may also be personally liable. To find out if a director is disqualified, you can search the disqualified directors register at Companies House (<http://wck2.companieshouse.gov.uk/9097e55ddcb6fa356f261d9098ba8762/dirsec>).

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