

## Reviving dead companies using Thai law

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Death is not always final, at least not for juristic persons under Thai law. Under certain circumstances, companies can be revived after being legally declared defunct or dissolved. This article will discuss how and when such companies can be restored.

Dissolved vs defunct: The way in which a company is terminated is a major factor in the way it can be revived. Under Thai law, a company can end by being "dissolved" or becoming "defunct". There is a difference. A company is dissolved when its owners go through a prescribed legal process to wind down the company. This process is known as liquidation. A liquidator is appointed by the owners to manage the process. After it is complete, the Department of Business Development (DBD) will declare the company dissolved.

A company becomes defunct when it ceases to undertake any activities for a period of time, as determined by the DBD. Under Thai law, the department must have reasonable grounds to believe a company has become inactive. When a company is declared defunct, its name is removed from the department's list of active companies. A common way for a company to go defunct is when its owners "abandon" it and fail to submit annual filings to the department.

Restoring defunct companies: Companies that have been declared defunct can be restored under certain circumstances, as outlined in the Civil and Commercial Code. The company's owners must apply to the Civil Court and convince it the company was active and that the Department of Business Development had unfairly labelled it as dormant.

If the court agrees, it can order the department to restore the company. After restoration, the company may continue its operations as if its name had not been struck off the department's list. Importantly, the court also has the authority to ensure the company is restored to the same position it was in before being declared defunct.

Reviving dissolved companies: When a company is liquidated, all of its remaining affairs are settled including payment of debts and selling and distributing remaining assets. However, it is possible for a liquidator or shareholder to overlook some portion of the assets or liabilities. Bank accounts, real estate or other assets may still be "owned" by a dissolved company. But legally speaking, a dissolved company no longer exists, prohibiting owners or creditors from accessing the assets or debts.

When such a situation occurs, a company can be revived, albeit temporarily, to address the unresolved assets or debts. Two fairly recent separate court precedents — from the Supreme Administrative Court and the Supreme Court — allowed owners to revive their dissolved companies temporarily.

While such court decisions are not binding law (as they would be in a common-law country), Supreme Court rulings are highly influential precedents and do help to shape subsequent decision-making.

A 2009 Supreme Administrative Court ruling (Precedent No.137/2552) permitted a dissolved company to revive itself in order to assign a property lease. In that case, the liquidator realised after dissolution that it had overlooked a lease to a space in a Bangkok shopping mall. The liquidator asked the Department of Business Development to revive the company to deal with the lease. The department declined, saying it had no such duty or authority. The Supreme Administrative Court disagreed, saying the department had unlawfully declined the request and ordered the revival to be approved.

In a 2010 case, the Supreme Court (Precedent No.3302/2553) allowed a company to be temporarily revived to deal with outstanding assets. This case is also important in that it makes it easier to revive a company in case of incomplete liquidation. The Supreme Court ruled that a liquidator, when seeking to revive a dissolved company, can apply directly to the Civil Court and bypass the DBD and the entire Administrative Court process.

In this case, the liquidator, who was also a company director, "discovered" two title deeds to land the company owned after it was already dissolved. The liquidator asked the Civil Court of first instance for permission to sell the land. The court denied the request. On appeal, however, the Supreme Court decided the company could be revived on the basis that outstanding assets remained.

The Supreme Court ruled the liquidation process was incomplete and must therefore be revived to deal with land title deeds. Once the outstanding assets had been distributed, the company would then be dissolved. Importantly, the court also stated the Civil and Commercial Code did not prohibit the revival of dissolved companies to complete liquidation.

The inference: Business owners can take comfort in knowing their company can be restored after termination. The most important issue is how the company was terminated. When a company ends by becoming defunct, its operations can be fully restored. However, companies that are dissolved can be revived only long enough to complete liquidation. Either way, this flexibility is beneficial for business.