



# New Law Bulletin

## Death of a Company

What to do with companies that are at an end and are no longer of any use?

This position was considered recently in the Supreme Court decision of **Thorne Developments Pty Ltd V Thorne [2015] QSC156.**

In that case the Judge gave some background into the operation of the Corporations Act 2001 about deregistration of companies.

Pursuant to Section 601AD of the Act, when a company is deregistered it ceases to exist. If the company retains any property on the registration, all of that company's property vests in ASIC, i.e. ASIC becomes the legal owner of any such property.

ASIC takes the property subject to the same rights that the company had (i.e. subject to any claim or encumbrances).

If there is property that vests in the Commonwealth then the Commonwealth may either continue to act as a Trustee or apply to the Court for the appointment of a new Trustee.

Similarly, if a company is reinstated the company is taken to have continued in existence as if it had not been deregistered. A person who was the Director of the company before deregistration becomes the Director again. Any property of the company that is still with the Commonwealth or ASIC, goes back to the company – Section 601AH.

In this case, the Respondent was appointed as a Trustee without the consent of the Commonwealth whilst the Applicant Company was deregistered. The Court held that the statutory vesting of trust property held by a deregistered company in the Commonwealth is defeasible (i.e. can be challenged) where there is a relevant exercise of power of appointment under a Trust Deed. Therefore, because there was such an appointment the company's application to challenge was unsuccessful.

In this case even though the Respondent had been served with a Bankruptcy Notice this was not enough for the appointment as Director to fail because, in the words of the Court, "the service of a Bankruptcy Notice on a Trustee may lead nowhere."

### **Conclusion**

If there are any matters that remain unresolved on behalf of a company and deregistration is considered, the terms of any Trust Deed (for which the company is a Trustee) should first be considered. This will avoid the uncertainty of any claims or potential claims or property vesting in the Commonwealth and then causing problems later on.