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The Five Forms of Will Under Thai Law: Small Defects That Void a Will

The Civil and Commercial Code prescribes five forms of will and provides that a will made in breach of those forms is void. This article sets out all five with the governing provisions quoted in full, identifies the formal defects that arise most often, and explains where the estate goes when a will fails.



Phenhnung Thabthimthong

Co Founder and Managing Partner

Attorney's licence no. 3540/2561

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A will can be drafted with the clearest intention and signed by everyone concerned, and still have no legal effect because one witness signed afterwards, or because nobody wrote the date on it.

Understanding the forms brings two advantages. You can choose the form that fits your family, since a household with children from two marriages and a small family with clearly identified heirs should not use the same one. And you can check your own document while it can still be corrected. Those who do not know lose in the same way: the will becomes a blank sheet of paper at the one moment when nothing can be fixed, and the estate reverts to the statutory order of heirs.

In this article I will explain how many forms of will the law recognises, how each is made and whom it suits, which small defects destroy a will entirely, which defects the Supreme Court has held do not, and where the estate goes if the will fails.

Chapter 1

Five Forms, Not One

The common misconception is that a will comes in one shape: put it in writing and have witnesses sign. In fact the Code prescribes five forms, namely the ordinary written will, the holograph will, the public document will, the secret document will and the oral will. Each has its own requirements, and those of one form

cannot be borrowed to cure a defect in another.¹

This short provision is the key to everything else. The words “only in one of the forms” mean the law leaves no room for a form of your own devising, however careful it may look. A document headed “Will” that fits none of the five is not a defective will. It is not a will at all.

Chapter 2

The Ordinary Written Will

This is the most widely used form, because it can be made at home without involving any official. For the same reason it generates the most disputes about formality: nobody is standing by to check that every requirement has been met.²

Read slowly, the section has four layers: it must be in writing; it must bear the day, month and year of its making; the testator must sign before two witnesses present at the same time; and those witnesses must certify the signature at that moment. Those three qualifying phrases are where most wills fail.

¹ **Civil and Commercial Code, Section 1655** provides:

A will may be made only in one of the forms prescribed in this chapter.

² **Civil and Commercial Code, Section 1656** provides:

A will may be made in the following form, namely, it must be made in writing, dated with the day, month and year at the time of its making, and the testator must sign it before at least two witnesses present at the same time, those two witnesses signing at that time to certify the signature of the testator.

An erasure, omission, addition or other alteration to such a will is ineffective unless carried out in the same form as the making of a will under this section.

Note

At least two witnesses are required, so three or four cause no harm. One is fatal. Extra witnesses do not help if those who signed were not actually present.

Chapter 3

The Holograph Will

The holograph will is the simplest form, requiring no witnesses at all, and suits a testator who does not want anyone to know the contents of the estate. The trade-off is stricter: everything must be written by his own hand.³

The phrase “the whole of the text” is to be read literally: a typed document with a handwritten signature is not a holograph will, nor is a typed document with a handwritten date. The exclusion of Civil and Commercial Code, Section 9 matters, because that is the provision which ordinarily allows a thumbprint to replace a signature, so this form cannot be executed by thumbprint. And if authenticity is later disputed, the handwriting itself is the evidence.

³. **Civil and Commercial Code, Section 1657** provides:

A will may be made as a document written entirely by the testator, namely, the testator must write with his own hand the whole of the text, the day, month and year, and his signature.

An erasure, omission, addition or other alteration to such a will is ineffective unless the testator has made it with his own hand and signed against it.

Section 9 of this Code does not apply to a will made under this section.

Chapter 4

The Public Document Will

This is the most evidentially robust form, because an official records the text, reads it back, signs and affixes the seal of office. Allegations of forgery or a lost original are correspondingly hard to sustain.⁴

People assume that going to the district office guarantees safety. It does not. Paragraph (1) requires the declaration to be made before at least two witnesses present at the same time. In Supreme Court Judgment No. 3045/2548⁵ the Court held that where the testator did not declare the intended provisions before both witnesses together, the public document will was void. The official seal does not cure that defect.

⁴. Civil and Commercial Code, Section 1658 provides:

A will may be made as a public document, namely:

- (1) the testator must declare to the district officer, before at least two other witnesses present at the same time, the provisions he wishes to have included in his will;
- (2) the district officer must record the provisions so declared and read them out to the testator and the witnesses;
- (3) when the testator and the witnesses are satisfied that the record corresponds with what the testator declared, the testator and the witnesses must sign;
- (4) the district officer must sign and date the record, certify in his own hand that the will has been made in accordance with paragraphs (1) to (3), and affix the seal of office.

An erasure, omission, addition or other alteration is ineffective unless the testator, the witnesses and the district officer have signed against it.

⁵. Supreme Court Judgment No. 3045/2548

Chapter 5

The Secret Document Will

This form answers the needs of a family wanting both the security of an official record and privacy as to the contents. The testator writes the will, signs it, seals the envelope, signs across the seal, and produces the sealed envelope to the district officer and the witnesses without anyone opening it.⁶

It suits families where early disclosure would cause friction, for instance where children receive unequal shares for reasons of the testator's own. The trade-off is care over the seal and the signature across it, because if the envelope is later opened without the process being repeated, questions of validity follow.

⁶ **Civil and Commercial Code, Section 1660** provides:

A will may be made as a secret document, namely:

- (1) the testator must sign the will;
- (2) the testator must seal the will and sign across the seal;
- (3) the testator must produce the sealed will to the district officer and at least two other witnesses and declare to all of them that it is his will; and if he did not write the whole of it himself, he must also state the name and domicile of the writer;
- (4) when the district officer has recorded on the envelope the testator's declaration and the day, month and year on which the will was produced, and has affixed the seal of office, the district officer, the testator and the witnesses must sign on the envelope.

An erasure, omission, addition or other alteration is ineffective unless the testator has signed against it.

Chapter 6

The Oral Will

The oral will is the form most often talked about and least often available, because the Code opens it only where exceptional circumstances make the other forms impossible. It is not a form one chooses for convenience. ⁷⁸

In plain terms, if a patient who dictated an oral will in a crisis later recovers to the point where he could make a written will, the oral will ceases to be valid one month afterwards, so a written will must be made to replace it.

7. Civil and Commercial Code, Section 1663 provides:

Where exceptional circumstances prevent a person from making a will in any of the other prescribed forms, as where he is in imminent danger of death, or during an epidemic or war, that person may make an oral will. For this purpose the testator must declare the provisions of his will before at least two witnesses present together at that place.

Those two witnesses must without delay appear before the district officer and state the provisions orally directed by the testator, together with the day, month and year, the place where the will was made, and the exceptional circumstances.

The district officer must record what the witnesses state, and the two witnesses must sign; failing which, a thumbprint certified by the signatures of two witnesses may take the place of a signature.

8. Civil and Commercial Code, Section 1664 provides:

The validity of a will made under the preceding section lapses upon the expiry of one month from the time when the testator returns to a position in which he could make a will in one of the other prescribed forms.

Chapter 7

Comparing the Five Forms

Form	Witnesses	Official	Suited to	Usual failure
Ordinary written, s.1656	Two, signing at the same moment	None	Ordinary families, straightforward assets	Witnesses signing later, or no date
Holograph, s.1657	None	None	Testators wanting maximum privacy	Part typed, or thumbprint used
Public document, s.1658	Two, present during declaration	Required	Large estates, or likely disputes	Witnesses not present together
Secret document, s.1660	Two, with the district officer	Required	Where early disclosure causes friction	No signature across the seal
Oral, s.1663	Two, present together there	Witnesses report without delay	Genuine emergencies only	No real emergency, or one month elapsed

In one sentence: the larger the estate and the more distinct groups of heirs, the stronger the case for a form involving an official. The do-it-yourself forms suit simple family structures where nobody has cause to object.

Chapter 8

Two Witnesses, Present at the Same Time

The leading defect in this form is not its contents but the sequence of signatures. The familiar picture is that the testator signs first, and a relative then carries the paper round to each witness over the following days. Everyone signs in good faith and nobody intends deceit, but the form has already failed.

Supreme Court Judgment No. 11034/2553⁹ puts the point squarely. Where one or both witnesses sign without having seen the will being made, and sign only afterwards, that does not comply with Civil and Commercial Code, Section 1656 paragraph one and renders the will void immediately under Section 1705. Even if the witnesses later confirm with the testator that he genuinely intended to make the will, that cannot restore a will which has already become void.

That last point is crucial. Voidness for want of form cannot be cured retrospectively. The only remedy is a fresh will, correctly executed from the start, while the testator is alive and of sound mind.

The same approach appears in Supreme Court Judgment No. 3979/2545¹⁰, where one witness had not certified the deceased's signature and the signing had not taken place before two witnesses together; the will was void and the estate passed to the statutory heirs as though no will had been made. Supreme Court

⁹. Supreme Court Judgment No. 11034/2553

¹⁰. Supreme Court Judgment No. 3979/2545

Judgment No. 1358/2505¹¹ adds that the question is whether the acts required by law were in fact performed, not merely what the document says on its face.

Chapter 9

A Missing Date

Of all the defects, the most regrettable is the missing date. Writing it takes under ten seconds. Omitting it voids the entire will.

In Supreme Court Judgment No. 3776/2545¹² the Court held that a will bearing the signatures of two witnesses but no date of making was made in breach of Civil and Commercial Code, Section 1656 and void under Section 1705, so the person named as beneficiary had no interest entitling him to apply to be administrator. The same result follows from Supreme Court Judgment No. 6595/2538¹³, where a will without a date was held not to have been made in the prescribed form and therefore void, with the estate passing to the statutory heirs as though no will existed.

¹¹. Supreme Court Judgment No. 1358/2505

¹². Supreme Court Judgment No. 3776/2545

¹³. Supreme Court Judgment No. 6595/2538

Note

Something you can do today: check whether the will you already have bears a day, month and year, and whether that date is the date on which everyone actually signed. If it is missing or wrong, do not simply write it in. A later addition does not perfect the form.

Chapter 10

A Witness Who Is Also a Beneficiary

The next most frequent defect is having the person who is to receive property act as a witness. It happens naturally, because those at home and willing to sign are usually the children or the spouse who are themselves beneficiaries.¹⁴

It is the second paragraph that catches people out. The prohibition extends to the spouse of a witness, so asking a daughter's husband to witness a will that leaves property to the daughter falls within it, even though the husband receives nothing. In Supreme Court Judgment No. 4001/2545¹⁵, where the spouse of a beneficiary signed as witness, that beneficiary could

¹⁴. Civil and Commercial Code, Section 1653 provides:

The writer of a will, or a witness to it, may not be a beneficiary under that will.

The preceding paragraph applies also to the spouse of the writer or of a witness to the will.

An official who records the provisions of a will reported by witnesses under Section 1663 is deemed to be the writer of the will for the purposes of this section.

¹⁵. Supreme Court Judgment No. 4001/2545

not take under the will because the disposition in his favour was void, while the dispositions in favour of the other beneficiaries remained valid.

This distinction matters. A breach of Civil and Commercial Code, Section 1653 voids only the disposition connected with that witness or that witness's spouse; it does not destroy the whole will. The line goes back to Supreme Court Judgment No. 730/2489¹⁶, and Supreme Court Judgment No. 306/2507¹⁷ applied the same reasoning where the spouse of a beneficiary signed as witness. Conversely, Supreme Court Judgment No. 5404/2533¹⁸ held that the witness who may not be a beneficiary means one who signs the will, so a beneficiary merely sitting there without signing was not a witness within the provision and the will was not void.

Note

The practical rule: choose witnesses who receive nothing under the will and whose spouses receive nothing either. A colleague or a neighbour with no interest in the estate is a safer witness than a family member.

¹⁶. Supreme Court Judgment No. 730/2489

¹⁷. Supreme Court Judgment No. 306/2507

¹⁸. Supreme Court Judgment No. 5404/2533

Chapter 11

Who Cannot Be a Witness, and the Testator's Age

Statutory authority for this section ^{19 20}

The two provisions must be kept apart. A testator may make a will at fifteen, below the age of majority, but a witness must have reached majority. Paragraph (1) of Civil and Commercial Code, Section 1670 is therefore often overlooked, because when a witness is needed in a hurry the nearest person to hand may be a grandchild who has not yet turned twenty.

Chapter 12

Signatures and Thumbprints Are Not the Same

Statutory authority for this section ²¹

An elderly testator whose hand shakes will often use a thumbprint, which is permitted, but the section covers only Civil and Commercial Code, Sections 1656, 1658 and 1660, not Section 1657. Note also the phrase “at that time”: the two witnesses must

19. Civil and Commercial Code, Section 1670 provides:

The following persons may not be witnesses to the making of a will:

- (1) a person who has not yet reached majority;
- (2) a person of unsound mind or a person adjudged quasi-incompetent by the court;
- (3) a person who is deaf, mute, or blind in both eyes.

20. Civil and Commercial Code, Section 1703 provides:

A will made by a person who has not yet completed fifteen years of age is void.

21. Civil and Commercial Code, Section 1665 provides:

Where a testator is required to sign under Section 1656, Section 1658 or Section 1660, a thumbprint may take the place of a signature only if it is certified at that time by the signatures of two witnesses.

certify the thumbprint as it is made, not afterwards, for the same reason that Civil and Commercial Code, Section 1656 is strict about when witnesses sign.

Chapter 13

Which Defects Void a Will and Which Do Not

Statutory authority for this section²²

That single sentence does two things. It tells us that a breach of the formal requirements carries the drastic consequence of voidness. Just as importantly, it tells us what is not on the list, because anything not listed does not void the will.

The clearest example is Civil and Commercial Code, Section 1671, which requires a person other than the testator who writes the text to sign and state that he is the writer. In Supreme Court Judgment No. 3675/2547²³ the Court held that Civil and Commercial Code, Section 1705 specifies exhaustively which cases are void and does not make a will void for non-compliance with Section 1671. Where the witnesses were present together and the deceased signed before them, the will was in proper form and fully valid.

²². **Civil and Commercial Code, Section 1705** provides:

A will or a provision of a will made in breach of Section 1652, Section 1653, Section 1656, Section 1657, Section 1658, Section 1660, Section 1661 or Section 1663 is void.

²³. Supreme Court Judgment No. 3675/2547

Another example is Supreme Court Judgment No. 2874/2559²⁴, explaining that the provision preventing a spouse from disposing by will of more than his or her share of the marital property is not among the sections rendering a will void under Civil and Commercial Code, Section 1705, so the only consequence is that the disposition of another person's share has no effect while other provisions remain operative. The dividing line is therefore reasonably clear: a defect of form destroys the whole will, while a defect not listed in Civil and Commercial Code, Section 1705 affects only the disposition concerned.

Chapter 14

Erasures, Additions and Later Alterations

Just as common is the original will on which the testator has struck out one name and written another in its place, on the understanding that he may do so because it is his own property.

Civil and Commercial Code, Sections 1656, 1657 and 1660, quoted above, each close with a paragraph on erasures, omissions, additions and other alterations, and each provides that the alteration is ineffective unless made in the same form as the will itself, or signed against, as that section requires. In practice, striking out a name and writing another without certification in the required form does not change the will's contents at all. The cleanest course is a fresh will, properly executed, stating that all earlier wills are revoked.

²⁴. Supreme Court Judgment No. 2874/2559

Note

One further point: if the later will intended to revoke the earlier one is itself void for want of form, Supreme Court Judgment No. 306/2507 holds that it does not amount to a revocation. The old will therefore continues to operate, which may be the opposite of what the testator wanted.

Chapter 15

Where the Estate Goes When the Will Fails

Statutory authority for this section ^{25 26}

When the estate reverts to the statutory heirs, Civil and Commercial Code, Section 1629 sets out six classes in order: descendants; parents; brothers and sisters of full blood; brothers and sisters of half blood; grandparents; and uncles and aunts. The surviving spouse is also a statutory heir.

25. Civil and Commercial Code, Section 1699 provides:

If a will, or a provision of a will relating to any property, is ineffective for any reason, that property devolves upon the statutory heirs or upon the State, as the case may be.

26. Civil and Commercial Code, Section 1620 provides:

If a person dies without having made a will, or having made a will which is not enforceable, the whole of the estate is distributed among his statutory heirs according to law.

If a person dies having made a will which disposes of, or is enforceable as to, only part of the estate, the part not so disposed of, or as to which the will is unenforceable, is distributed among the statutory heirs according to law.

This is where the cost of a badly executed will becomes plainest, because a testator's wishes rarely match that order. He may have wanted to leave his property to the grandchild who cared for him, but when the will fails the estate returns to the first class of descendants and to the spouse, and that grandchild may receive nothing. Not because the law forbade the gift, but because the document making it was unenforceable.

Chapter 16

The Administrator of the Estate

A further consequence that often goes unnoticed concerns the administrator of the estate, because in practice banks and land offices will generally not transfer assets to heirs without a court order appointing one. Civil and Commercial Code, Section 1711 provides that an administrator includes a person appointed either by will or by order of the court.

Civil and Commercial Code, Section 1713 allows an heir, an interested person or the public prosecutor to apply to the court for the appointment of an administrator, and paragraph (3) expressly covers the case where a provision of a will appointing an administrator is for any reason unenforceable. So when a will is void, the clause appointing an administrator falls with it, and the person the testator trusted to manage the estate may not be the person the court appoints.

In Supreme Court Judgments Nos. 3776/2545 and 3979/2545, the persons named as beneficiaries under void wills had no interest and no standing to apply to be administrators under those wills. Conversely, Supreme Court Judgment No. 6595/2538 shows that a statutory heir entitled to inherit in place of a father who died before the deceased is an interested person entitled to apply under Civil and Commercial Code, Sections 1711 and 1713. Voidness does not leave the estate unadministered; it changes who administers it, away from the testator's choice.

Chapter 17

Matching the Form to the Family

Families with children from more than one marriage, or with adopted children alongside natural children, carry the highest risk of dispute, and the public document will suits them better because an official certifies that the procedure was followed. Families whose principal assets are several parcels of land should use the same form, since land transfers pass through the land office, which examines documents fairly strictly.

For a small family with clearly identified heirs and nobody with cause to object, the ordinary written will is enough, provided the witnesses receive nothing and neither do their spouses, everyone signs together on a single occasion, and the date is written in full. The oral will, in my view, should never be treated as a plan. It is an emergency measure one hopes never to need.

Frequently asked questions

Q Is a will typed on a computer valid?

A Yes, if made as an ordinary written will under Civil and Commercial Code, Section 1656, which requires only that the will be in writing. It cannot be a holograph will under Section 1657, since that section requires the testator to write the whole of the text, the date and his signature by hand.

Q Can a child who will inherit act as a witness?

A It is not advisable. Civil and Commercial Code, Section 1653 prohibits the writer and the witnesses from being beneficiaries and extends the prohibition to their spouses, so the disposition in that person's favour is void. Supreme Court Judgments Nos. 730/2489 and 4001/2545 confirm that only the part relating to that witness fails, not the whole will, but the child still does not receive what the testator intended.

Q Must every will be registered at the district office?

A No. An ordinary written will under Civil and Commercial Code, Section 1656 and a holograph will under Section 1657 need no official involvement. The public document will under Civil and Commercial Code, Section 1658 and the secret document will under Section 1660 do require the district officer. Choosing a form that involves an official is not a legal duty, but it does reduce disputes about formality.

Q If a will is void, must proceedings be brought to set it aside?

A As a general rule, no. In Supreme Court Judgment No. 1358/2505 the Court held that a will made in breach of the form required by Civil and Commercial Code, Section 1656 is void under Section 1705 and simply is not a will, so an interested person may rely on that nullity without bringing proceedings to set it aside. That said, small differences in the facts can produce entirely different legal outcomes, so the document and the sequence of events should be examined carefully first.

In summary

In summary, the Code prescribes five forms of will under Civil and Commercial Code, Section 1655: the ordinary written will under Section 1656, the holograph will under Section 1657, the public document will under Civil and Commercial Code, Section 1658, the secret document will under Section 1660, and the oral will under Section 1663, whose validity is time-limited by Civil and Commercial Code, Section 1664. Section 1705 makes a breach of those forms void. The defects that arise most often are too few witnesses or witnesses signing afterwards, a missing date, and a beneficiary or a beneficiary's spouse acting as witness contrary to Civil and Commercial Code, Section 1653. Defects outside the list in Section 1705, such as a writer's failure to sign under Section 1671, do not destroy the will. When a will does fail, the estate devolves upon the statutory heirs under Civil and Commercial Code, Sections 1699, 1620 and 1629, and the clause appointing an administrator falls with it.

Anyone who understands this does two things better at once. First, choose the form that genuinely fits the family rather than the one that is most convenient. Second, review an existing will with three questions: does it bear a complete date; were the two witnesses present together and did they sign on the same occasion; and does any witness, or any witness's spouse, receive property under it. Because with wills, whether the testator's wishes take effect turns not on how clearly they were written, but on whether the statutory form was observed.

What to do next

- 1** Check three things in the existing will: whether it bears a complete date, whether there are at least two witnesses, and whether any witness or witness's spouse receives property under it.

- 2** If the text has been altered in pen without witnesses certifying it, make no further changes and keep the document as it is.

- 3** Keep the originals of all wills. Do not destroy an earlier one even if you believe it has been revoked.

- 4** Write down when the will was signed and who was present, while the details are still fresh.

- 5** If a new will is to be made, choose witnesses who receive nothing and whose spouses receive nothing either, and have everyone sign together on a single occasion.

- 6** If the testator has died and it is unclear whether the will is enforceable, gather the documents listed above before taking any further step.

Notes and references

Statutes and judgments cited in this book, with the chapter and footnote number.

Statutes cited

1	Civil and Commercial Code, Section 1655	Chapter 1 · note 1
2	Civil and Commercial Code, Section 1656	Chapter 2 · note 2
3	Civil and Commercial Code, Section 1657	Chapter 3 · note 3
4	Civil and Commercial Code, Section 1658	Chapter 4 · note 4
5	Civil and Commercial Code, Section 1660	Chapter 5 · note 6
6	Civil and Commercial Code, Section 1663	Chapter 6 · note 7
7	Civil and Commercial Code, Section 1664	Chapter 6 · note 8
8	Civil and Commercial Code, Section 1653	Chapter 10 · note 14
9	Civil and Commercial Code, Section 1670	Chapter 11 · note 19
10	Civil and Commercial Code, Section 1703	Chapter 11 · note 20
11	Civil and Commercial Code, Section 1665	Chapter 12 · note 21
12	Civil and Commercial Code, Section 1705	Chapter 13 · note 22
13	Civil and Commercial Code, Section 1699	Chapter 15 · note 25
14	Civil and Commercial Code, Section 1620	Chapter 15 · note 26

Supreme Court judgments cited

1	Supreme Court Judgment No. 3045/2548	Chapter 4 · note 5
2	Supreme Court Judgment No. 11034/2553	Chapter 8 · note 9
3	Supreme Court Judgment No. 3979/2545	Chapter 8 · note 10

4	Supreme Court Judgment No. 1358/2505	Chapter 8 · note 11
5	Supreme Court Judgment No. 3776/2545	Chapter 9 · note 12
6	Supreme Court Judgment No. 6595/2538	Chapter 9 · note 13
7	Supreme Court Judgment No. 4001/2545	Chapter 10 · note 15
8	Supreme Court Judgment No. 730/2489	Chapter 10 · note 16
9	Supreme Court Judgment No. 306/2507	Chapter 10 · note 17
10	Supreme Court Judgment No. 5404/2533	Chapter 10 · note 18
11	Supreme Court Judgment No. 3675/2547	Chapter 13 · note 23
12	Supreme Court Judgment No. 2874/2559	Chapter 13 · note 24

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Supreme Court judgments can be read in full through the Supreme Court's judgment search (deka.supremecourt.or.th)



From the author

If this is happening to you

If you are in this situation, or you are unsure whether the evidence you hold is enough, you are welcome to ask. We can look at what your documents and messages establish as a matter of law, and what options lie ahead.

What to gather before seeking advice

- ☐ The original of every will in existence, including older ones believed to have been revoked.

- ☐ The envelope or cover in which the will is kept, particularly for a secret document will, where the signature across the seal forms part of the required form.

- ☐ The names of all witnesses who signed, with their relationship to the deceased and the marital status of each.

- ☐ Any record or recollection of when and where the signing took place and who was in the room.

- ☐ Identification and household registration documents for the deceased and all heirs, with marriage, divorce and adoption records where these exist.
- ☐ A summary schedule of assets: land title deeds, bank passbooks, vehicle registrations and shareholdings.
- ☐ Copies of any application or court order concerning the appointment of an administrator, if steps have been taken.

1

Tell us the matter and any deadlines

2

Agree the scope and fees

3

Carry out the work and report

An initial consultation carries no obligation, and everything discussed is confidential under professional privilege. Call 065-145-5546 or reach us through whichever channel suits you.

Phenhnung Thabthimthong

Co Founder and Managing Partner, DAP Solicitors & Resolution

This article is general information, not advice on any specific case. A small change in facts can change the entire legal outcome, and the law may be amended, so please consult an attorney before acting.



DAP Solicitors & Resolution Co., Ltd.

580/44 Soi Ladprao 87, Wang Thonglang, Bangkok 10310

Tel. 065-145-5546 · LINE @046pihak · info@dapresolution.com

Mon–Fri, 9:00 AM–6:00 PM

dap-resolution.com