

Direct Sales and Direct Marketing Act, B.E. 2545 (2002)

Translation

Bhumibol Adulyadej, REX.

Given on the 30th of April B.E. 2545 (2002)

Being the 57th year of the present reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that

It is deemed expedient to initiate the law governing direct sales and direct marketing.

This Act contains certain provisions that limit the rights and freedom of persons, which Section 29 in conjunction with Section 50 of the Constitution of the Kingdom of Thailand permits such initiation by virtue of the statutory provisions.

The King, by the advice and consent of the Parliament, therefore, enact this Act as follows:

Section 1

This Act shall be called "Direct Sales and Direct Marketing Act, B.E. 2545 (2002)"

Section 2

This Act shall be enforceable upon the lapse of one hundred and twenty days commencing from the day after the publication in the Royal Gazette onwards.

Section 3

In this Act,

"Direct sales" refers to the marketing of goods or services made directly to the consumer at his/her home or workplace or the home or workplace of others or any other place which is not an ordinary place of business, through the direct sales representative or uni-level or multi-level independent distributors but not including transactions specified in the Ministerial Regulations.

"Direct marketing" refers to the marketing of goods or services in a manner of communicating information for the sales of goods or services directly to the consumer at a distance and expecting such consumer to respond and purchase the goods or services from the direct marketing operator.

"Consumer" refers to a purchaser or any person obtaining services from the independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator, or any person being offered or induced by the independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator to purchase its goods or services.

"Independent distributor" refers to a person who receives the right of ownership of the goods or services from the direct sales operator, and directly offers such goods or services to the consumer.

"Direct sales representative" refers to a person who is authorized by the direct sales operator to directly offer goods or services to the consumer.

"To purchase" includes to lease, to hire-purchase, or to acquire by any other way by paying money or any other interest in compensation.

"To sell" includes to let, to give hire-purchase, or to supply in any other way by demanding compensation in money or in any other form of interest as well as the offering or inducement with respect thereof.

"Goods" refers to products manufactured or available for sale.

"Services" refers to the undertaking of work granting of any rights or granting of right to use or conferring of interest in any property or business by demanding money or any other form of interest in compensation, but not including employment under the labor law.

"Commission" refers to the Direct Sales and Direct Marketing Commission.

"Member" refers to the Member of the Direct Sales and Direct Marketing Commission.

"Registrar" refers to the Secretary of the Consumer Protection Board.

"Officer" refers to any person authorized by the Minister for the execution of this Act.

"Minister" refers to the Minister in charge and in control of the observance of this Act.

Section 4

The Prime Minister shall take charge and control the execution of this Act and have the power to appoint an Officer and issue Ministerial Regulations with regard to the observance of this Act.

Such Ministerial Regulations shall be enforceable upon the publication in the Royal Gazette.

Section 5

In observing this Act, the Officer shall have the following power:

- (1) To issue a notice demanding any person to give a statement, information, or explanation in writing, or to deliver account books, registration books, documents or any other evidence for examination or consideration.
- (2) To enter into the place of business of the direct sales operator or the direct marketing operator during the business hours of such premises in order to inquire for information or inspect documents or evidence for compliance with this Act.
- (3) To collect or keep a reasonable amount of goods without payment as samples to examine or analyze. Such sample goods shall be collected, kept, and returned at the request of the owner shall be in accordance with the terms stipulated by the Commission.

The exercise of power as stated in (2) of the first paragraph shall be carried out pursuant to the regulations stipulated by the Secretary of the Consumer Protection Board. Such regulations shall at least consist of a provision regarding the express fidelity of the Officer to the occupier of the premises prior to its entrance, the provision of its reasons in writing and the reporting of the result of its performance to its supervisor.

In performing its duties under the first paragraph, related persons shall provide reasonable assistance.

Section 6

In observing this Act, the Officer shall present its Officer identification card.

Such identification card shall be in accordance with the form prescribed by the Commission.

Section 7

In carrying out this Act, the Member, the Sub-Member, the Registrar, and the Officer shall be deemed public officers under the Penal Code of Thailand.

Chapter 1

Direct sales and Direct Marketing Commission

Section 8

A Commission shall be set up and called "Direct Sales and Direct Marketing Commission" and shall consist of the following persons:

- (1) Chairman appointed by the Cabinet amongst persons of direct sales and direct marketing knowledge and expertise.
- (2) Members by position, which include the Director General of the Department of Internal Trade, the Director General of the Department of Industrial Promotion,

the Chief Director of the Royal Thai Police and the Secretary General of the Food and Drug Administration.

- (3) One Member appointed by the Cabinet amongst representatives of associations with objectives relating to the business of direct sales, one representative of associations with objectives relating to the business of direct marketing and two representatives of associations or foundations with objectives relating to consumer protection.
- (4) Four honorary Members appointed by the Cabinet amongst persons with direct sales or direct marketing knowledge and expertise. At least half of such Members shall be appointed from the private sector.

The Secretary of the Consumer Protection Board shall be a Member and Secretary.

In appointing Members under (3) of the first paragraph, all associations with objectives relating to the business of direct sales, associations with objectives relating to the business of direct marketing, or associations or foundations with objectives relating to consumer protection, as the case may be, may nominate any competent person(s) to the Cabinet for consideration and appointment. The conditions and procedures of nomination shall be pursuant to the rules stipulated by the Minister.

Section 9

The Chairman shall not hold any position or be a partner or shareholder of more than 10% in any partnership or company engaged in the business of direct sales or direct marketing within a period of one year prior to the acceptance of the position or during the position as Chairman.

Section 10

The Members under Section 8 (1), (3) and (4) shall hold their positions for a term of three years. The Member may be re-elected for not more than two consecutive terms.

Upon the expiry of each term as mentioned in the first paragraph, if a new Member has not been appointed, the retiring Member shall remain in position until a new Member has assumed its position.

Section 11

Except the case of retirement by rotation under Section 10, the Member appointed by the Cabinet shall be terminated upon:

- (1) Death;
- (2) Resignation;
- (3) Adjudicated bankrupt;
- (4) Being declared incompetent or quasi-incompetent;
- (5) Being sentenced by a final judgment to be imprisoned except for offenses committed by negligence or petty offenses;
- (6) Being removed from position by the Cabinet due to the failure to perform its duties, dishonesty, misconduct or incompetence.

In case of the Member is terminated before the expiry of its term, the Cabinet may appoint a third person in its place. Such person shall serve as Member for the remaining term of the terminated Member.

In case of an additional Member is appointed by the Cabinet during the term of the existing Members, such Member shall hold office for the remaining period of the current term of the existing Members.

Section 12

In the Meeting of the Members, if the Chairman is absent or not present in the meeting, the participating Members shall elect one of the participating Members to act as chairman of the meeting.

In every meeting of the Members, there shall consist of at least half the number of the Members to constitute the quorum.

The resolution of the meeting shall be passed by majority votes. Each Member shall have one vote. If there is an equality of the votes, the Chairman of the meeting shall have a casting vote.

Section 13

The Members shall have the following power and duties:

- (1) To consider complaints from the consumer who is affected or damaged by the actions of the independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator;
- (2) To relate or publicize information regarding the goods or services which may cause damage or harm to the rights of the consumer and for this purpose, the name of the goods or services, or the name of the independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator may be indicated;
- (3) To control the operation of the direct sales operator or the direct marketing operator, including to supervise the direct sales and the direct marketing activities;
- (4) To stipulate regulations or notifications regarding the observance of this Act;
- (5) To consider and decide upon appeals against the Registrar's order;
- (6) To refer matters concerning the policy and supervisory procedures to the Cabinet for consideration, and to promote and support the business of direct sales and direct marketing as well as to render opinions regarding direct sales and direct marketing activities as may be authorized by the Cabinet or the Minister;
- (7) To control and supervise the performance of the Officers, the government divisions or departments to comply with their respective power and duties under the law, including to accelerate the Officers to proceed with cases on wrongdoing committed against the provisions of this Act;
- (8) To initiate the issuance of Ministerial Regulations pursuant to this Act;
- (9) Other matters as may be authorized by the Cabinet or the Minister.

In observing this Section, the Member may authorize the Office of Consumer Protection to observe or provide reference to the Member for consideration and further actions.

Section 14

The Commission may appoint a sub-Commission to consider or act on its behalf.

Section 15

Section 12 shall be applied to the Meeting of the Sub-Commission *mutatis mutandis*.

Section 16

In observing Section 13 and Section 14, the Commission or the sub-Commission is authorized to summon any person to give a statement, explanation, comments or opinions, including to submit any related documents or evidence, or any other items to support the consideration.

Section 17

In observing this Act, the Commission shall provide reasonable opportunity to the accused or suspect of infringing this Act to explain and clarify the facts except in case of necessity or urgent basis, which a delay may cause critical damage to any person or may effect public interest.

In rendering any command or order under this Act, the Commission must give due regard to the damage which may occur to the consumer, the independent distributor, the direct sales representative, the direct sales operator and the direct marketing operator. The Commission, at its own discretion, may stipulate conditions or interim procedures in enforcing such command or order.

Section 18

The Office of Consumer Protection under the consumer protection law shall be responsible for the administrative work of the Commission and the acceptance of the direct sales and direct marketing application, and to supervise the direct sales and direct marketing activities to be in compliance with this Act.

Chapter 2

Direct sales and direct marketing

Section 19

The direct sales operator and the direct marketing operator shall not operate their businesses in a manner of inducing any person to join a direct sales or direct marketing network and promising to grant benefits which will be calculated from the number of persons joining the network.

Part 1

Direct Sales

Section 20

No person shall operate the business of direct sales unless registered to conduct the business of direct sales under this Act.

Section 21

The direct sales operator shall operate its business in accordance with its remuneration payment plan submitted to the Registrar under Section 38.

The remuneration payment plan shall be in the following manner:

- (1) It shall not confer benefit upon the independent distributor or self-employed direct sales representative which is received as its main income by means of recruiting any person or recommending any independent distributor or self-employed direct sales representative to join the direct sales network.
- (2) The main income of the independent distributor or self-employed direct sales representative depends on the sales of goods or services to the consumer, including the purchase for personal consumption.
- (3) It shall not require the independent distributor to purchase goods.
- (4) It shall not encourage the independent distributor to purchase goods in unreasonably large amounts.
- (5) It shall clearly demonstrate the actual or possible calculation of the payment of remuneration.
- (6) Any other manners as specified by the Commission.

Any terms related to the remuneration payment plan other than those indicated in the second paragraph shall be enforceable only to the extent that they are fair to the independent distributor or the self-employed direct sales representative.

Section 22

The direct sales operator shall not demand from the independent distributor or the self-employed direct sales representative for membership fee, training fee, promotional material costs or any other fees related to the participation of the direct sales network at a higher rate than imposed by the Commission.

Section 23

The contract entered into between the independent distributor and the direct sales operator shall be in writing and shall consist of at least the following:

- (1) Definite terms regarding the payment of remuneration under the remuneration payment plan.
- (2) Definite terms regarding the membership fee, the training fee, the promotional material costs or any other fees.
- (3) Definite terms regarding the repurchase of the goods, the promotional materials, the manuals, or the business sales promotional materials by the direct sales operator from the independent distributor, including a prescription period for the independent distributor to exercise such rights.

The provisions in (1) and (2) of the first paragraph shall apply to the self-employed direct sales representative *mutatis mutandis*.

Section 24

In offering goods or services to the consumer by direct sales, the independent distributor shall proceed in accordance with the conditions and the sales plan stipulated by the direct sales operator.

Section 25

Upon the independent distributor's exercise of its rights to return the goods, the promotional materials, the manuals or the business sales promotional materials first purchased from the direct sales operator, the direct sales operator may repurchase the same at the price paid by the independent distributor within fifteen days from the day the independent distributor exercises its rights. In the event of the exercise of rights upon the expiration of the contract under Section 23, the direct sales operator is entitled to deduct expenses in the amount not exceeding the rate stipulated by the Commission and shall have the right to set-off any debts relating to the contract under Section 23 payable by the independent distributor.

Section 26

Upon the sales presentation directed to the consumer at his/her home or workplace or the home or workplace of other persons, or any other place which is not the normal place of business, prior consent from the consumer or the occupier of the premises must be obtained before the independent distributor or the direct sales representative enters the premises. The independent distributor or the direct sales representation shall not cause any intrusion or annoyance to the said person(s) and for this purpose, produce its identification card and its independent distributor or direct sales representative identification card issued by the direct sales operator.

Part 2

Direct marketing

Section 27

No person shall operate the business of direct marketing unless registered for direct marketing under this Act.

Section 28

The information used in the offering of goods or services of the direct marketing operator shall be as stipulated in the Ministerial Regulations.

Section 29

The provisions of the consumer protection law related to consumer protection regarding the advertisement shall apply *mutatis mutandis* to the provision of information by the direct marketing operator regarding the offering of goods or services. The power and duties of the Consumer Protection Board shall be deemed the power and duties of the Minister, and the power and duties of the Advertisement Committee shall be deemed the power and duties of the Commission.

Chapter 3 Consumer Protection

Section 30

The independent distributor, the direct sales representative or the direct marketing operator shall have the duty to provide the documents related to the sales of goods or services to the consumer.

The sales documents mentioned in the foregoing paragraph shall be made in easily understood Thai language and shall indicate the name of the purchaser and the seller, the date of the sales and the delivery date of the goods or services. Such documents must also state the rights of the consumer to terminate the contract, which shall be prescribed with emphasized alphabets.

Section 31

The Commission shall have the power to provide the details of the documents on the sale of goods or services by way of direct sales or direct marketing. The price of the goods or services under which the consumer is protected and the type of goods or services shall be duly considered.

The sales documents mentioned in the foregoing paragraph shall contain at least the following details:

1. Details under Section 30;
2. Time, place, and method of payment;
3. Place and method of the delivery of goods or services;
4. Method of termination;
5. Method of the goods return;
6. Warranty of goods;
7. Substitution of defected goods.

Details of the information required to be contained in the sales documents shall be published in the Royal Decree.

Section 32

Any sales of goods or services conducted by the independent distributor, the direct sales representative or the direct marketing operator in absence of relevant sales documents with details as prescribed under Section 30 or Section 31 shall be unenforceable against the consumer.

Section 33

In purchasing goods or services via direct sales or direct marketing, the consumer is entitled to terminate the contract upon expressing its intention in writing to the direct sales operator or the direct marketing operator within seven days from the day it receives the goods or services. In case of direct sales, the consumer may notify the same to the relevant independent distributor or the direct sales representative.

The foregoing provision shall not apply to the category, price or type of goods or services specified in the Royal Decree.

Section 34

Any consumer exercising its right to terminate the contract under Section 33 shall choose to act any one of the following:

- (1) To return the goods to the independent distributor, the direct sales representative or the direct sales operator in case of direct sales, or to return the goods to the direct sales operator in case of direct marketing;
- (2) To take proper care of the goods for a period of twenty-one days commencing from the day it exercises its termination rights, unless the goods are disposable and cannot be kept for the duration of the said period. In such case, the consumer shall keep the goods for a period of time and by means as appropriate to its condition. After the expiry of such period, the consumer may choose to keep the said goods or dispose of the goods at its own discretion.

The consumer who chose to act pursuant to (2) of the first paragraph shall return the goods to the independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator, as the case may be, to be collected at its respective domicile. Should the direct sales operator or the direct marketing operator request the consumer to return the goods by registered mail with collection of payment at destination within the period as specified in (2) of the first paragraph, the consumer shall return the said goods accordingly.

In case of disposable goods, the consumer shall return the remaining part prior to its exercise of the right to terminate the contract.

The terms and conditions of returning the goods and services shall be in compliance with the Ministerial Regulations.

The consumer is entitled to retain the goods until the price of the goods are refunded.

Section 35

Under Section 34, if the goods or services are damaged or lost due to the consumer's responsibility, or it is beyond the consumer's control to return the goods or services due to its own fault, the consumer shall reimburse the damages to the independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator, as the case may be, except for damages incurred in an ordinary course of opening, assembling or mixing for the use of the goods or services.

Section 36

Upon the consumer's exercise of its right to terminate the contract under Section 33, the independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator shall refund to the consumer full amount of the purchase price of the goods or services within fifteen days from the day it receives the notice to terminate the contract.

If the independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator fails to refund the amount within the period prescribed in the foregoing paragraph, the said independent distributor, the direct sales representative, the direct sales operator or the direct marketing operator shall be subject to a fine at the rate as specified by the Commission.

Section 37

The terms of warranty of the goods or services shall be specified in the Thai language and clearly state the rights of the consumer in claiming the warranty and easily understood conditions.

Details of the terms of warranty of the goods or services in the foregoing shall as be stipulated by the Commission.

Chapter 4

Registration of Direct Sales and Direct Marketing

Section 38

Any person who wishes to operate the business of direct sales or direct marketing shall apply for registration with the Registrar under the terms and procedures as may be imposed by the Commission.

In case of the direct sales operator, remuneration payment plan shall be submitted together with the application stated in the foregoing.

In case of an amendment to the remuneration payment plan, the direct sales operator shall notify such amendment to the Registrar prior to its execution.

Section 39

The application for registration of direct sales and direct marketing shall comply with the conditions prescribed by the Commission, which shall consist of at least the following:

- (1) Name of the direct sales operator or the direct marketing operator;
- (2) Domicile of the direct sales operator or the direct marketing operator;
- (3) Category or type of the goods or services;
- (4) Method of offering the goods or services.

Chapter 5

Registrar

Section 40

In the observance of its duties under this Act, the Registrar has the power to summon relevant persons to give a statement or submit necessary documents and evidence for the consideration or inspection.

Section 41

Upon the receipt of the application for registration to operate the business of direct sales or direct marketing, the Registrar shall consider and examine the following details:

- (1) Remuneration payment plan shall not be contrary to the law or against good morals and public order;
- (2) The goods or services are in compliance with the description set out in the offering documents;
- (3) The contract contains accurate and complete information as specified by the Commission.

In case the Registrar deems the application is in compliance with the first paragraph of Section 38 and Section 39, the Registrar must accept the registration for direct sales or direct marketing and notify in writing to the applicant within forty-five days from the date of acceptance of the said application for direct sales or direct marketing.

In case the Registrar deems that the application does not comply with the first paragraph of Section 38 and Section 39, it shall order the applicant to amend or correct its application within a reasonable period of time. Upon the applicant's submission of the amended or modified application, the Registrar shall accept the registration for direct sales or direct marketing and notify in writing the same to the applicant within thirty days from the acceptance of the said documents.

In the event the applicant fails to comply with the order to amend or modify within the specified period, the Registrar shall reject the application for registration of the direct sales or direct marketing and notify in writing together with the grounds of such action to the applicant within seven days from the expiry of the prescription period for the observance of such order.

Section 42

If it subsequently occurs to the Registrar that any direct sales operator or the direct marketing operator conducts its business in violation with the provisions of this Act, the Registrar shall have the power to revoke such person's direct sales or direct marketing registration and notify in writing to the applicant along with the grounds of such action to the direct sales operator or the direct marketing operator within seven days from the date of revocation.

Chapter 6 Appeal

Section 43

In case the Registrar rejects the registration of direct sales or direct marketing under Section 41 or revokes the registration of direct sales or direct marketing under Section 42, the applicant, the direct sales operator or the direct marketing operator, as the case may be, shall have the right to appeal in writing to the Commission within thirty days from the receipt of the order rejecting the registration or the revocation notice from the Registrar.

The decision of the Commission shall be final.

Section 44

The principles and procedures for lodging an appeal and the proceedings of the appeal shall be subject to the rules as may be imposed by the Commission.

Chapter 7 Penalty

Section 45

Any person who fails to observe the order of the Commission or sub-Commission under Section 16 shall be subject to imprisonment for a term not exceeding one month or a fine not exceeding ten thousand Baht or both.

Section 46

Any person violating Section 19 shall be subject to imprisonment for a period not more than five years and a fine not exceeding five hundred thousand Baht.

Section 47

Any person who violates Section 20 or Section 27 shall be subject to imprisonment for a period not exceeding one year or a fine not exceeding one hundred thousand Baht or both, and to a daily penalty of not exceeding ten thousand Baht per day throughout the duration of such violation.

Section 48

Any person who violates the first paragraph of Section 21 shall be subject to a fine not exceeding three hundred thousand Baht.

Section 49

Any person who violates Section 22 or Section 28 shall be subject to imprisonment for a period of not exceeding six months or to a fine not exceeding fifty thousand Baht or both.

Section 50

Any person who violates Section 23 or Section 25 shall be subject to a fine not exceeding fifty thousand Baht.

Section 51

Any person who violates Section 26, the first paragraph of Section 30 or Section 37 shall be subject to a fine not exceeding thirty thousand Baht.

Section 52

Any direct sales operator who fails to notify the amendment to the remuneration payment plan to the Registrar under the third paragraph of Section 38 shall be subject to a fine not exceeding three hundred thousand Baht.

Section 53

Any person who is guilty of an offense under this Act, within five years after completing the terms of the charge, repeats the offense under this Act, shall be subject to a double penalty for such charge.

Section 54

In the case the offender under this Act is a juristic entity, the managing director, the manager, or any person responsible for the undertaking of the business of such entity shall be charged for such offense unless proved not involved in the said entity's offense.

Section 55

All offenses under this Act, except for the offense under Section 46, the Commission shall have the power to settle the charge, and for this purpose, the Commission may appoint a sub-Commission, an inquiry Officer or an Officer to carry out the settlement. The Commission may impose terms of settlement or any other conditions for the authorized person(s), at its own discretion.

Subject to the provisions of the foregoing paragraph, if the inquiring Officer, during the inquisition, finds any person guilty of an offense under this Act and such person agrees to settle, the inquiry Officer shall refer the matter to the Commission or the authorized person of the Commission to settle the charge under the first paragraph within seven days from the day such person agrees to settle.

The charge shall be deemed settled under the Criminal Procedural Code of Thailand upon the offender's payment of the penalty settled.

Transitory Provision

Section 56

The direct sales operator and the direct marketing operator conducting their respective businesses prior to the execution of this Act shall apply for registration of direct sales or direct marketing within one hundred and twenty days from the effective date of this Act.

Countersigned by

Pol. Lt. Col. Thaksin Shinawatra

Prime Minister

Note

The reason in promulgating this Act is due to the current situation of the distribution of goods or services to consumers which is conducted by offering goods or services to the

consumer directly at his/her respective home or workplace or the home or workplace of others or any other place which is not the normal place of business by the presentation or demonstration of the independent distributor or the direct sales representative. Such offering of goods or services confuses the consumer's ability to decide and accept the offering independently and wisely. Further, there is a distribution of goods or services by directly communicating information to the consumer such as by publication and electronic devices, aiming the consumer at a distance to respond and purchase the said goods or services, whereas, the goods or services may not correspond with the description alleged in the publication. Current direct sales and marketing have adopted an inducement and arranging general public to join the business network and conferring promised profits from recommending participants to the network, calculating from the increased number of people in the network. Such action is regarded as fraud to the general public and is an aggressive direct sales of goods or services which may cause the general public, as consumers, to be exploited and treated unfairly and may effect the public order. The provisions of laws currently in force do not provide adequate protection to the consumers, hence, a necessity to enact this law.

Publicized in the Government Gazette, Decree Issue, Volume 119, Part 40Gor,
Dated 30 April 2002

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