

Direct Sale and Direct Marketing Act

(No. 3)

B.E. 2560

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun

Given on the 14th of May B.E. 2560

Being the 2nd year of the present reign

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that

It is deemed expedient to amend the law concerning direct sale and direct marketing.

Be it, therefore, enacted by The King, by and with the advice and consent of the National Legislative Assembly acting as Parliament, as follows:

Section 1

This Act shall be called “Direct Sale and Direct Marketing Act (No. 3) B.E. 2560”

Section 2

This Act shall come into force after the expiration of one-hundred twenty days from the date of its publication in the Government Gazette.

Section 3

The definition of “direct sale” in Section 3 of the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed, and be replaced with the following.

“Direct Marketing” means the marketing of goods or services by way of communicating information for the purpose of offering sale of goods or services directly to the consumer who is in the far distance with an aim to have each consumer respond and purchase the goods or service from the direct marketing business operator. As for buying or selling goods or services through commercial electronic means, which shall not be deemed direct marketing, shall be according to the criteria and conditions prescribed by the ministerial regulation.

Section 4 The definitions of “Partnership” and “Company” shall be added between the definitions of “Direct sales representative” and “to sell” in Section 3 of the Direct Sale and Direct Marketing Act B.E. 2545.

“Partnership” means a registered ordinary partnership or limited partnership according to the Civil and Commercial Codes.

“Company” means a company limited according to the Civil and Commercial Code or a public limited company under the Public Limited Companies Act.

Section 5 The provision in Section 9 under the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and replaced by the following:

Section 9 The Chairperson and the Committee Member shall not have a position, or be a partner, or be a shareholder of more than ten percent of all the shares in a partnership or a company operating business in direct sale or direct marketing within a year before holding a position or within the duration of holding the position of Chairperson or Committee Member.

Section 6 The provision in Section 20 under the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and replaced by the following:

Section 20 “Any person who will operate a business in direct sale must be a partnership or a company, and must register the direct sale business under this act.”

Section 7 The following provision shall be added as Section 24/1 under the Direct Sale and Direct Marketing Act B.E. 2545.

“Section 24/1 The business operator in direct sale and independent distributor shall be jointly liable to consumer for any defects of goods or service that the independent distributor has sold to the consumer or for any damage caused by the independent distributor from a non-compliance of the independent distributor under this Act”.

Section 8 The following provision shall be added as Section 26/1 and Section 26/2 as Part 1) Direct sale business operation in Chapter 2 Direct sale and direct marketing business operation under the Direct Sale and Direct Marketing Act B.E. 2545.

“Section 26/1 In the case where there is a relocation of the Office, the direct sale business operator shall notify the Registrar in writing within fifteen days from the date of the relocation.”

Section 26/2 The direct sale business operator must submit the report on its business operation to the Registrar in accordance with the criteria and conditions and time period prescribed by the Board.

Section 9 The following provision should be added as Section 29/1 and Section 29/2 in Part 2, Direct marketing business operation in Chapter 2 Direct sale and direct marketing business operation under the Direct Sale and Direct Marketing Act B.E. 2545.

“Section 29/1 The provision in Section 26/1 shall apply to direct marketing business operation mutatis mutandis.

Section 29/2 The direct marketing business operator must submit the report on its business operation to the Registrar in accordance with the criteria and conditions and time period prescribed by the Board”

Section 10 The provision in Section 10 under the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and be replaced by the following:

“Section 30 The direct sale business operator has a duty to provide the documents regarding the purchase and sale of goods or services. The independent distributor or direct sale agent has a duty to deliver documents regarding the purchase and sale of goods or services to the consumer, along with the goods or services.”

The direct marketing business operator has a duty to provide the documents regarding the purchase and sale of goods or services, and deliver them to the consumer, along with the goods or services.

The documents regarding the sale and purchase in Paragraph one and Paragraph two shall contain messages in the Thai language that can be read and understood easily. They shall specify the name of purchaser and seller, the date of purchase and the date of delivery of goods or services, and also the consumer’s right to terminate the contract. The right to terminate the contract shall be written with letters that can be seen clearer than other messages.

Section 11 The provision in Section 32 of the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and replaced with the following:

“Section 32 Any sale of goods and services by a direct sale business operator, independent distributor, direct sale representative, or direct marketing business operator that fails to comply with Section 30 or Section 31, shall be non-binding to the consumer.”

Section 12 The provision under Paragraph 1 in Section 38 of the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and replaced with the following:

“Section 38 The Partnership, Company or any person who wishes to operate a direct sale or direct marketing business shall submit a request to the Registrar according to the criteria and methods prescribed by the Board.”

Section 13 The following provision shall be added as Section 38/1, Section 38/2, Section 38/3, Section 38/4, Section 38/5, Section 38/6 and Section 38/7 of the Direct Sale and Direct Marketing Act B.E. 2545.

“Section 38/1 The person submitting the request to operate a direct sale business must not have had a license in direct sale and direct marketing business revoked in the time period of five years before submitting the request for registration, and must have the following characteristics:

- 1) Is a Partnership with registered capital of at least five hundred thousand baht or is a Company with registered and paid-up capital of not less than one million baht;
- 2) Has a Managing Partner, Managing Director, Manager or a person responsible in operating the Partnership or Company that does not have prohibited characteristics under Section 38/2.

Section 38/2 A person who is a Managing Partner, Managing Director, Manager or the person responsible for the operation of the applicant submitting the request for the direct sale business registration must not have prohibited characteristics as follows:

- 1) Is a bankrupt person
- 2) Is an incapacitated person or quasi-incapacitated person
- 3) Has served sentence of imprisonment by a court as a final verdict except for offenses committed by negligence or petty offenses
- 4) Is a Managing Partner, Managing Director, Manager or a person responsible in the operation of another Partnership or Company having registered direct sale or direct marketing business
- 5) Used to be a Managing Partner, Managing Director, Manager or the person responsible for the operation of the Partnership or the Company that had its registration of direct sale or direct marketing business revoked in the period of five years before the application date.

Section 38/3 The applicant applying for a direct marketing business registration who is an ordinary person must not have his direct sale or direct marketing business registration revoked within the five years before the application date and must not have prohibited characteristics under Section 38/2.

Section 38/4 The applicant applying for a direct sale registration who is a juristic person must not have his direct sale business registration revoked within the five years before the application date and must have a Managing Partner, Managing Director, Manager or the person responsible in the operation of the juristic person who does not have the prohibited characteristics under Section 38/2.

Section 38/5 The applicant applying for a direct sale or direct marketing business registration must place a guarantee with the Registrar, as a guarantee for compliance with this Act in accordance with the criteria, methods and conditions prescribed by the ministerial regulation.

The ministerial regulation under Paragraph 1 may prescribe different amount of money and details considering the size or the type of business operation. The amount of the guarantee shall be revised every three years.

The guarantee under this section shall be cash, letter of guarantee from a bank, or government bonds or state enterprise bonds, as prescribed by the regulation of the Board.

Section 38/6 In the case where the applicant for the registration of the direct sale or direct marketing business places a guarantee under Section 38/5 in cash, in full or in part, the Registrar shall be responsible in opening a separate savings account for the benefit of each direct sale or direct marketing business operator, including the disbursement from the account, as prescribed by the regulation of the Board.

The interest from the deposit under Paragraph 1 shall belong to the direct sale or direct marketing business operator who placed the guarantee.

Section 38/7 The guarantee that the direct sale or direct marketing business operator places under Section 38/5 or Section 41/3 under Paragraph 4 shall not be liable to legal execution.

In the case where there is a transfer or termination of business, the direct sale or direct marketing business operator may ask for the return of the guarantee deposit with interest upon presenting proof that all debt under this act has been paid.

In the case where the direct sale or direct marketing business operator does not proceed with the return of the guarantee deposit and interest within five years from the date of transferring the business or terminating the business, the guarantee deposit and interest shall escheat to the State.”

Section 14 The provision in Section 41 of the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and be replaced by the following.

“Section 41 After receiving an application to register a direct sale or direct marketing business operation, the Registrar shall consider and investigate the following:

- 1) The payment plan must not be contrary to the law or to the public order or good morals;
- 2) The goods or service must have characteristics corresponding to the information that the operator has communicated to offer the sale.
- 3) The contract has the correct and complete list as prescribed by the Board.

In the case where the Registrar finds that the application is satisfied in accordance with Section 38 Paragraph 1 and Section 39, and the applicant has the qualities and does not have prohibited characteristics as in Section 38/1, Section 38/3 or Section 38/4, the Registrar shall inform in writing that the guarantee must be placed with the Registrar within thirty days from the date of receiving the application for the direct sale or direct marketing business registration.

When the applicant for the registration places the guarantee under Section 38/5 in full, the Registrar shall accept the registration for the direct sale or direct marketing business and informs the applicant in writing within fifteen days from the date of receiving the guarantee.

Section 15 The following provisions shall be added as Section 41/1, Section 41/2, Section 41/3, Section 41/4, Section 41/5, Section 41/6, and Section 41/7 of the Direct Sale and Direct Marketing Act B.E. 2545.

“Section 41/1 In the case where the Registrar finds that the application for the registration of the direct sale or direct marketing business does not satisfy with Section 38 Paragraph 1 or Section 39, the Registrar shall inform the applicant in writing to amend or change within the time period that the Registrar deems suitable. When the applicant has corrected or amended the application, and placed the guarantee according to Section 38/5 in full, the Registrar shall

register the direct sale or direct marketing business and inform the applicant within thirty days from the date of receiving those documents.

In the case where the applicant does not comply with the letter informing him to modify or change within the prescribed time period under Paragraph 1, or does not place the guarantee in full under Section 38/5, the Registrar shall issue an order to reject the application for the direct sale or direct marketing business. The registrar shall inform the applicant with reason in writing within seven days from the expiration of the time period to comply with the order.

Section 41/2 In the case where the registrar sees that the applicant applying for the direct sale or direct marketing business registration has prohibited characteristics according to Section 38/1, Section 38/3, or Section 38/4, the Registrar shall issue an order to reject the application for the direct sale or direct marketing business. The Registrar shall inform the applicant with reasons in writing within thirty days from the date of receiving the application for the direct sale or direct marketing business.

Section 41/3 The direct sale or direct marketing business operator who wishes to transfer his business shall submit the request to the Registrar.

The business must be transferred, under Paragraph 1, to a person who has the required qualities and does not possess prohibited characteristics according to Section 38/1, Section 38/3 or Section 38/4. The transferee shall receive all the rights, duties, and liability of the direct sale or direct marketing business operator to the consumer.

Section 41/4 Paragraph 2(1) and Paragraph 3 shall apply to the transfer of the business, *mutatis mutandis*.

When the registrar has checked the application for the request of business transfer and the guarantee that the transferee shall place under Section 38/5, and finds it correct and complete, the registrar shall modify the registration so that the transferee is the direct sale or direct marketing business operator, depending on the case.

The request for the business transfer and modification of the registration shall follow the criteria and conditions prescribed by the Board.

Section 41/4 The direct sale or direct marketing business operator who wishes to terminate the business operation shall file a request with the Registrar

In order to protect the benefits of the consumer, in requesting to terminate the business operation under Paragraph 1, the direct sale or direct marketing business operator must perform the following duties until completion before the Registrar cancels the registration.

1) Announce the advertisement in a local printed newspaper at least once, and inform by registered post or other communication channels the consumers who purchased the goods or services still in warranty period about the termination of business operation so that they may exercise their rights under this act.

2) Proceed according to Section 33, Section 34, and Section 36.

3) Provide a person in charge of the repair or other services related to the goods or services still in warranty period.

4) Other actions according to the criteria, methods, and conditions and time period prescribed by the Board

It is prohibited for the direct sale or direct marketing business operator to offer for sale or advertise the goods or services or enter into contract of Sale of goods or services to consumers from the date of submitting the request to terminate the business operation under Paragraph 1.

The termination of the direct sale or direct marketing business operation shall not be a cause to release the business operator from liability under this Act.

Section 41/5 When there is a complainant or it appears to the Registrar that a consumer has sustained damages due to the following causes:

1) The direct sale or direct marketing business operator does not honor the Contract of Sale of the goods or services or fails to comply with this Act

2) The direct sale or direct marketing business operator's registration has been revoked under Section 42.

The Registrar shall proceed to investigate the facts without delay and also hear the explanation of the alleged direct sale or direct marketing business operator, and present them to the Board for further consideration and decision, so as to follow the criteria and methods prescribed by the Board.

Section 41/6 When there is a decision under Section 41/5 indicating which consumer has sustained damages from which direct sale or direct marketing business operator and in which amount of the damages, the Registrar shall pay the amount of money from the guarantee deposit that the direct sale or direct marketing business operator has placed, in order to compensate for the damages.

Section 41/7 In the case where the guarantee that the direct sale or direct marketing business operator placed is not sufficient for the Registrar to pay for the compensation of the damages to the consumer under Section 41/6 or has decreased due to the payment of compensation to the said damage, the Registrar shall issue an order for the direct sale or direct marketing business operator to place an additional guarantee to restore the deposit to the amount prescribed by the Ministerial Regulation within fifteen days, from the date of receiving the order."

Section 16 The provisions in Section 42 and Section 43 of the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and replaced by the following:

"Section 42 When it appears to the Registrar that the direct sale or direct marketing business operator has exhibited the following conducts

1) Does not operate the business according to the payment plan for the compensation approved by the Registrar

2) Does not accept joint liability with the independent distributor to the consumer under Section 24/1

3) Does not notify the Registrar of the relocation of Office under Section 26/1 or Section 29/1

4) Does not report about the business operation to the Registrar under Section 26/2 or Section 29/2

5) Does not use messages in communicating the information in the offer of sales of goods or services as prescribed in the Ministerial Regulation under Section 28

6) Lacks qualities or has prohibited characteristics under Section 38/1, Section 38/3 or Section 38/4

7) Does not place the additional guarantee in full within three months from the end of the time period under Section 41/7

8) The Managing Partner, Managing Director, Manager or a person responsible for the operation of the juristic person has served sentence of imprisonment by a court as a final verdict in the offense under Section 46, Section 49, Section 51/3 or Section 52/1.

In the case under (2) (3) or (4), the Registrar shall notify the direct sale or direct marketing business operator to correct or change within the time period that the Registrar deems fit. When the time period has expired, and the direct sale or direct marketing officer has not taken action correctly, the Registrar shall revoke the registration of the direct sale or direct marketing business, depending on the case.

In the case under (1) (5) (6) (7) or (8), the Registrar shall revoke the registration of the direct sale or direct marketing business operation, depending on the case.

In the case where the direct sale and direct marketing business operator is the same juristic person, the Registrar shall revoke all the registrations of the direct sale and direct marketing business operations.

When the registrar has issued the order to revoke the registration of the direct sale or direct marketing business operation, the registrar shall notify in writing the direct sale or direct marketing business operators with reasons within seven days, from the date of the issuance of the order.

Section 43 In the case where the person receiving the order from the Registrar under Section 41/1 Paragraph 2, Section 41/2, Section 41/7, or Section 42, does not agree with the aforementioned order, the person shall have the right to appeal in writing to the Board within thirty days, from the day of receiving the order.

The decision of the Board shall be final.

Section 17 The provision in Section 45 of the Direct Sale and Direct Marketing Act B.E. 2545, as amended by the Direct Sale and Direct Marketing Act (Issue 2) B.E. 2550 shall be repealed and replaced by the following:

Section 45 Any person who obstructs or fails to provide convenience to a competent officer who carries on an execution under section 5 or fails to comply with the order of the Committee or Subcommittee under section 16, or order of the Registrar under Section 40 shall be liable to imprisonment for a term not exceeding one month, or to a fine not exceeding ten thousand baht or to both.

Section 18 The provision in Section 47 of the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and replaced by the following:

“Section 47 Any person who fails to comply with section 20 shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one-hundred thousand baht, or to both; and to additional fine at a daily rate not exceeding twenty thousand baht throughout the time of non-compliance.”

Section 19 The provision in Section 49 of the Direct Sales and Direct Marketing Act B.E. 2545 shall be repealed and replaced by the following:

“Section 49 Any person who fails to comply with section 22, Section 28 or Section 29 shall be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding fifty thousand baht, or to both.”

Section 20 The provision in Section 51 of the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and replaced by the following:

“Section 51 Any person who fails to comply with section 26 or Section 37 shall be liable to a fine not exceeding thirty thousand baht.”

Section 21 The following provision shall be added as Section 51/1, Section 51/2 and Section 51/3 of the Direct Sale and Direct Marketing Act B.E. 2545.

“Section 51/1 Any person who fails to comply with section 27 shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one-hundred thousand baht, or to both; and to additional fine at a daily rate not exceeding ten thousand baht throughout the time of non-compliance.”

Section 51/2 Any direct sale or direct marketing business operator who does not provide documents regarding the purchase and sale of goods or services, or any independent distributor, direct sale agent or direct marketing business operator who does not submit the document regarding the purchase and sale of goods or services or submitted the documents regarding the purchase and sale of goods that does not comply with Section 30 Paragraph 1 or 2, shall be liable to a fine not exceeding fifty thousand baht.

Section 51/3 Any direct sale or direct marketing business operator who provided documents regarding the purchase and sale of goods or services that contains false message shall be liable to imprisonment for a term not exceeding six months, or a fine not exceeding fifty thousand baht, or to both.”

Section 22 The following provision shall be added as 52/1 of the Direct Sale and Direct Marketing Act B.E. 2545.

“Section 52/1 ~~The~~ Any person who fails to comply with Section 41/3 or Section 41/4 shall be liable to imprisonment for a term not exceeding 6 months, or a fine not exceeding fifty thousand baht, or to both, and to additional fine at a daily rate not exceeding ten thousand baht throughout the time of non-compliance.

Section 23 The provision in Section 54 of the Direct Sale and Direct Marketing Act B.E. 2545 shall be repealed and replaced by the following:

“Section 54 In the case where the alleged offender is a juristic person and the offense committed by the juristic person results from the order or the actions of the Committee member, or the Manager, or a person in charge of operation of that juristic person, or in the case where that aforementioned person has the duty to issue the order, or take action and omit to issue the order or take action

causing the juristic person to commit an offense, that person shall serve the punishment enacted for such an offense”.

Section 24 Any person who has registered the direct sale business prior to the date this Act comes into force, which is not a partnership or company in direct sale business, may continue the direct sale business operation, but the person must proceed to register as a partnership or company, and be registered as a direct sale business under this Act, within a hundred and twenty days from the date this Act comes into force.

Section 25 Any partnership or company who has registered the direct sale business prior to the date this Act comes into force must proceed to meet the registered capital requirement according to Section 38/1 of the Direct Sale and Direct Marketing Act B.E. 2545, as amended by this Act, within ninety days from the date this Act comes into force.

Section 26 Any person who has registered the direct sale or direct marketing business prior to the date this Act comes into force must place the guarantee deposit within ninety days from the date the ministerial regulation issued under Section 38/5 of the Direct Sale and Direct Marketing Act, B.E. 2545, as amended by this Act, comes into force.

Section 27 In the case where a person who has registered the direct sale or direct marketing business prior to the date this Act comes into force does not proceed according to Section 24, 25 or 26 of this Act, depending on the case, within the prescribed time period, it shall be deemed that the registration of the direct sale or direct marketing business of the person is revoked.

In the case where a person who has registered the direct sale or direct marketing business under Paragraph 1 is the same person, or the same juristic person, it shall be deemed that the registration of the person or juristic person both in direct sale and direct marketing is revoked.

Section 28 All the applications for business registration that have been submitted prior to the date this Act comes into force, and are still in the process of consideration by the Registrar, the Registrar shall consider the application in accordance with this Act.

In the case where the application for business registration or consideration of the application for business registration has different provisions from the application for business registration or consideration of the application for business registration under this Act, the Registrar shall issue the order to the applicant to amend or correct within thirty days. If the applicant does not amend the application or fails to comply with the order of the Registrar within the prescribed time period, the application shall be rejected.

Section 29 The announcements issued under the Direct Sale and Direct Marketing Act B.E. 2545 in force on the date before the date this Act comes into force shall still be applicable

as long as they do not violate or contradict the Direct Sale and Direct Marketing Act B.E. 2545,
as amended by this Act, until

there is a ministerial regulation, regulation, or an announcement issued under the Direct Sale and Direct Marketing Act B.E. 2545, as amended by this act, coming into force.

The issuing of ministerial regulation, regulation or announcement under Paragraph 1 shall be concluded within one year from the date this Act comes into force. If this is not the case, the Minister shall report the reason for not being able to implement to the cabinet.

Section 30 The Prime Minister shall have charge and control of the execution of this Act

Countersigned by

General Prayuth Chan-o-cha

Prime Minister

Remarks: – The reason for the announcement of the implementation of this Act is as it's deemed appropriate to amend some provisions related to direct sale and direct marketing business operation in order to prescribe the criteria and conditions in the business operation of direct sale and direct marketing to have more clarity and suitability, that shall be the protection of consumer not to be disadvantaged in the purchase and sale of goods or services, in order to have a guarantee that the consumer shall be protected if the consumer has sustained damage caused by the business operator's non-compliance with this Act. The qualities of the applicant for direct sale business registration include being a registered partnership, limited partnership, private company limited or public company limited; and the duty of the direct sale and direct marketing business operator to place the guarantee deposit under this Act, together with notifying the Registrar of the relocation of the Office; sending report of the business operation to the Registrar, and providing documents regarding the purchase and sale of goods or services. Prescribing the criteria concerning the transfer of the business and the termination of the direct sale or direct marketing business, prescribing the clear causes for revoking the registration of the direct sale or direct marketing business operation, as well as improving penalties to be more appropriate, which makes it hereby expedient to issue this Act.