

ACT
GOVERNING DIRECT SALES AND DIRECT MARKETING (RELEASE 3)
B.E. 2560

IN THE NAME OF HIS MAJESTY THE KING MAHA VAJIRALONGKORN
BODINDRADEBAYAVARANGKUN

Proclaimed on May 14, 2017

Being the 2nd year of the Present Reign

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

Whereas it is expedient to amend the law governing direct sales and direct marketing

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

Section 1. This Act is called the “Act Governing Direct Sales and Direct Marketing, B.E. 2560.”

Section 2. This Act shall come into force after the expiration of one hundred and twenty days as from the day of its publication in the Government Gazette.

Section 3. Definition of “direct marketing” specified in Section 3 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

““Direct marketing” means marketing with respect to goods or services which comprises offering information to promote sale of such goods or services, or direct sales of such goods to consumers at far distance, which require response from the consumer for the purchase of goods or services from the direct marketing business operator. Meanwhile, sale-purchase of such goods or services through electronic commerce is not considered as direct marketing and is subject to standards and terms specified in Ministerial Regulations”.

Section 4. Definitions “partnership” and “company” are, hereby, inserted between the definitions “direct sales representative” and “to purchase” specified in Section 3 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545.

“Partnership” means a registered partnership or a limited partnership under the provisions of the Civil and Commercial Code.

“Company” means a limited company under the provisions of the Civil and Commercial Code, or a public limited company under the law governing public limited companies.

Section 5. Section 9 of the of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 9. The Chairman and Committee Members shall not occupy positions, or be partners, or be shareholders holding more than 10% of the total amount of shares in a company or a partnership carrying on activities which comprise direct sales or direct marketing for the period of one year before being elected the Chairman or Committee Member”.

Section 6. Section 20 of the of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 20. A direct sales business operator shall be a partnership or a company which has registered as direct sales business operator under the provisions of this Act”.

Section 7. Section 24/1 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, inserted as follows:

“Section 24/1. A direct sales business operator and independent distributor shall be held jointly liable to consumers with respect to defective goods or services provided by such independent distributor to consumers, or with respect to losses suffered by consumers due to performance of such independent distributor, namely, neglecting duties under the provisions of this Act”.

Section 8. Sections 26/1 and 26/2 of Part 1 (Direct Sales Business), Chapter 2 (Direct Sales and Direct Marketing Business) of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 are, hereby, inserted as follows:

“Section 26/1. In case where the office is relocated, the direct sales business operator shall notify the registrar in writing within 15 days, as from the day of relocation.

Section 26/2. The direct sales business operator shall submit reports with respect to business operation to the registrar, in accordance with forms, standards and time periods designated and announced by the Board”.

Section 9. Sections 29/1 and 29/2 of Part 2 (Direct Marketing Business), Chapter 2 (Direct Sales and Direct Marketing Business) of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 are, hereby, inserted as follows:

“Section 29/1. Provisions of Section 26/1 shall be applied automatically to direct marketing business.

Section 29/2. The direct marketing business operator shall submit reports with respect to business operation to the registrar, in accordance with forms, standards and time periods designated and announced by the Board”.

Section 10. Section 30 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 30. A direct sales business operator shall have the duty to prepare documentation with respect to sale-purchase of goods or services; an independent distributor or direct sales representative shall have the duty to deliver such documentation with respect to sale-purchase of goods or services to consumers along with the aforementioned goods or services.

A direct marketing operator shall have the duty to prepare documentation with respect to sale-purchase of goods or services and to deliver such documentation to consumers along with the aforementioned goods or services.

The documents specified in paragraphs 1 and 2 shall be made in easily readable and understandable Thai language; the shall comprise both buyer’s and seller’s names, date of sale-purchase, date of delivery of goods or services, and consumer rights with respect to termination of agreement; the aforementioned rights with respect to termination of agreement shall be typed in appropriate size font which allows to see the message more clearly than the rest of the text”.

Section 11. Section 32 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 32. In case where sale-purchase of goods or services performed by a direct sales business operator, independent distributor, direct sales representative, or direct marketing business operator, violates or does not comply with the provisions of Section 30 or Sections 31, such sale-purchase of goods or services does not bind a consumer”.

Section 12. Paragraph one, Section 38 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 38. Any partnership, company, or person wishing to carry on a direct sales or direct marketing business, shall submit an application with the registrar, in accordance with standards and methods designated and announced by the Board”.

Section 13. Sections 38/1, 38/2, 38/3, 38/4, 38/5, 38/6 and 38/7 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 are, hereby, inserted as follows:

“Section 38/1. Anyone who submits an application with the registrar to carry on a direct sales business may not be a person whose registration as a direct sales or direct marketing business operator has already been revoked within the period of 5 years before the application is submitted. Such person shall also meet the following criteria:

- (1) Be a partnership with the registered capital of at least THB 500,000, or a company with the registered and paid-up capital of at least THB 1,000,000;
- (2) Managing partners, managing directors, managers or other persons responsible for operation of such partnership or company may not possess any of the characteristics specified in Section 38/2.

Section 38/2. Managing partners, managing directors, managers or other persons responsible for operation of the legal entity which applies for registration as a direct sales business operator shall not possess the following characteristics:

- (1) Being a bankrupt;
- (2) Being an incompetent or quasi-incompetent person;
- (3) Having been sentenced to imprisonment under the judgment (if the case is finalized), except for negligent conduct or misdemeanor;
- (4) Being a managing partner, managing director, manager, or person responsible for operation of any other partnership or company already registered as a direct sales or direct marketing business operator;
- (5) Having previously been a managing partner, managing director, manager, or person responsible for operation of a partnership or company whose registration as a direct sales or direct marketing business operator has already been revoked within the period of 5 years or less before the application is submitted.

Section 38/3. A natural person who applies for registration as a direct marketing operator may not be a person whose registration as a direct sales or direct marketing business operator has already been revoked within the period of 5 years before the application is submitted and may not possess any of the characteristics specified in Section 38/2.

Section 38/4. A legal entity which applies for registration as a direct marketing business operator may not be an entity whose registration as a direct sales or direct marketing business operator has already been revoked within the period of 5 years or less before the application is submitted; managing partners, managing directors, managers or other persons responsible for operation of such entity may not possess any of the characteristics specified in Section 38/2.

Section 38/5. Anyone applying for registration as a direct sales business operator or direct marketing business operator shall place a security deposit with the registrar in

order to secure compliance with the provisions of this Act; this shall be performed in accordance with the standards, methods and terms designated in the Ministerial Regulation.

The Ministerial Regulation specified in paragraph one shall designate the amount of money and specific details which may vary depending on the size or type of the operated business; the amount of money placed as security deposit shall be revised every 3 years.

The security deposit under this Section means cash money, letters of credit from banks, Thai government bonds, or state enterprise bonds, as designated and announced by the Board.

Section 38/6. In case where an applicant for registration as a direct sales or direct marketing business operator provides a security deposit under the provisions of Section 38/5 in cash money (regardless of the fact whether partially, or fully), the registrar shall be responsible for opening of a savings bank account (one per each applicant) for the benefit of such direct sales or direct marketing operator. Disbursement of money from such bank account shall be performed in accordance with the rules designated by the Board.

Profit accumulated from the principal specified in paragraph one shall belong to the direct sales or direct marketing business operator which placed the security deposit.

Section 38/7. The security deposit provided by a direct sales or direct marketing business operator under the provisions of Section 38/5 or 41/3 paragraph four shall not be used for legal execution.

In case where a transfer of business occurs, or a business is terminated, the direct sales or direct marketing business operator shall receive the security deposit back, as well as the accumulated interest; the repayment shall be performed after such operator provides evidence that all the duties under the provisions of this Act have already been fulfilled.

In case where the direct sales or direct marketing business operator does not appear to retrieve the security deposit and the interest within 5 years, as from the day of transferring the business or terminating the business, such security deposit and the accumulated interest shall remain with the State”.

Section 14. Section 41 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 41. Upon receipt of an application for registration as a direct sales or direct marketing business operator, the registrar shall consider and examine the following matters:

- (1) the scheme of benefit payments may not contradict the law, or public order and morals;

- (2) the characteristics of goods or services shall comply with the ones specified in sale proposals;
- (3) the agreements shall comprise accurate and correct data, as designated and announced by the Board.

In case where the registrar finds that the application has been properly submitted under the provisions of Section 38 paragraph 1, and Section 39, the applicant possesses all required qualifications and does not meet any restrictive criteria under the provisions of Sections 38/1, 38/3, or 38/4, then, the registrar shall notify the applicant in writing requesting the latter to provide the security deposit to the registrar within 30 days, as from the day on which the application for registration as a direct sales or direct marketing operator has been filed.

As soon as the applicant provides the full amount of security deposit under the provisions of Section 38/5, the registrar shall perform the registration of a direct sales or direct marketing business and notify the applicant in writing within 15 days, as from the day on which the security deposit has been received”.

Section 15. Sections 41/1, 41/2, 41/3, 41/4, 41/5, 41/6 and 41/7 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 are, hereby, inserted as follows:

“Section 41/1. In case where the registrar finds that the application for registration of direct sales or direct marketing business does not comply with the provisions of Section 38 paragraph one, or Section 39, the registrar shall notify the applicant in writing thereof, requesting to amend or change the application within the period of time which the registrar may deem appropriate. As soon as the applicant amends or changes the application and provides the full amount of security deposit under the provisions of Section 38/5, the registrar shall perform the registration of a direct sales or direct marketing business and notify the applicant in writing within 30 days, as from the day on which the documentation has been received.

In case where the applicant does not amend or change the application in due time as prescribed in the notification mentioned in paragraph one, or does not provide the full amount of security deposit under the provisions of Section 38/5, the register shall issue an order to deny the registration of such direct sales or direct marketing business. The registrar shall notify the applicant in writing thereof, specifying reasons of such denial, within 7 days, as from the day of expiration of the period designated for compliance with the notification requirements.

Section 41/2. In case where the registrar finds that the applicant for registration as a direct sales or direct marketing business operator does not possess enough qualifications or exhibit restrictive criteria under the provisions of Section 38/1, 38/3, or 38/4, the registrar shall issue an order to deny the registration of such direct sales or direct marketing business. The registrar shall notify the applicant in writing thereof,

specifying reasons of such denial, within 30 days, as from the day on which the application for registration as a direct sales or direct marketing business operator has been received.

Section 41/3. Any direct sales or direct marketing business operator who wishes to transfer the business shall submit an application with the registrar.

Transfer of the business under paragraph one may be performed if the transferee possesses enough qualifications and does not exhibit restrictive criteria under the provisions of Section 38/1, 38/3, or 38/4; the transferee of such business shall accept all the rights, duties, and liabilities of the direct sales or direct marketing business operator with respect to consumers.

Provisions of Section 41/4, paragraph two (2) and paragraph three (3), shall be applied automatically to transfer of business.

As soon as the registrar has examined the application for transfer of the business and the security deposit to be placed by the transferee of such business under the provisions of Section 38/5, and the registrar finds that all the data is complete and correct, then, the registrar shall amend the registration data by registering the transferee of the business as the direct sales or direct marketing business operator, as it may be.

Transfer of the business and amendment of the registration data shall be performed in accordance with the standards and rules designated and announced by the Board.

Section 41/4. A direct sales or direct marketing business operator who wishes to stop carry on such business, shall submit an application with the registrar.

For the benefit of consumers, when an application to dissolve the business is submitted under paragraph one, the direct sales or direct marketing operator shall perform the following actions (till the time when the registrar revokes the registration):

- (1) Publishing the information in a local newspaper, at least once, and send such information (with respect to dissolution of the business) via registered mail or through other media to consumers who have already purchased goods or services and are still within the guarantee period, so, such consumers will be able to use their legal rights under this Act;
- (2) Performing the actions prescribed by Sections 33, 34 and 36;
- (3) Appointing a person responsible for repair services, or other services related to the goods or services which are subject to guarantee period;
- (4) Performing other actions, in accordance with the standards, methods, terms and timeframe, designated and announced by the Board.

It is prohibited to any direct sales or direct marketing business operator to offer for sale or advertise goods or services, or make sale-purchase agreements for such goods or services with consumers, starting from the day on which the application to dissolve the business has been filed under paragraph one.

Dissolvement of a direct sales or direct marketing business shall not be considered as a reason for such business operator not to bear responsibility under the provisions of this Act.

Section 41/5. In case when consumers complain or inform the registrar about the losses suffered due to one of the following reasons:

- (1) The direct sales or direct marketing business operator does not fulfill duties under the sale-purchase agreement for goods or services, or under the provisions of this Act;
- (2) Registration of the direct sales or direct marketing business operator has been revoked under Section 42;

Then, the registrar shall promptly examine issues of fact and consider the explanation provided by such direct sales or direct marketing business operator as well. After that, the matter shall be reported to the Board for further consideration, in accordance with the standards and methods, designated and announced by the Board.

Section 41/6. In case the situation under Section 41/5 has been considered, and it has been found that any consumer suffered losses due to performance of any direct sales or direct marketing business operator, then, regardless of the financial amount of such losses, the registrar shall pay monetary damages using the security deposit provided by such direct sales or direct marketing business operator in order to provide reimbursement for consumers.

Section 41/7. In case where the security deposit provided by the direct sales or direct marketing operator does not cover payments to be performed by the registrar to consumers as reimbursement under the provisions of Section 41/6, or such security deposit has decreased due to previous damages paid, the registrar shall notify such direct sales or direct marketing business operator in writing, ordering to provide additional security deposit not exceeding the amount prescribed by the Ministerial Regulation within 15 days, as from the day on which such order has been received”.

Section 16. Sections 42 and 43 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 are, hereby, repealed and replaced by the following:

“Section 42. In case where the registrar finds that a direct sales or direct marketing business operator performs one of the following actions:

- (1) Does not perform activities in accordance with the scheme of profit distribution approved by the registrar;

- (2) Does not undertake responsibility along with independent distributors to consumers under the provisions of Section 24/1;
- (3) Does not notify the registrar in case of office relocation under the provisions of Section 26/1, or Section 29/1;
- (4) Does not submit operational reports to the registrar under the provisions of Section 26/2, or Section 29/2;
- (5) Does not insert messages prescribed by Section 28 of the Ministerial Regulation while spreading information designated to offer sale of goods or services;
- (6) Does not possess qualifications or exhibit restrictive criteria specified in Section 38/1, 38/3, or 38/4;
- (7) Does not provide the full amount of additional security deposit within 3 months, as from the expiration of the period prescribed by Section 41/7;
- (8) Managing partners, managing directors, managers, or persons responsible for business operation of the legal entity had been imprisoned under the final judgment for any fault under the provisions of Section 46, 49, 51/3, or 52/1;

then, in case of (2), (3), or (4), the registrar shall notify such direct sales or direct marketing business operator in writing ordering to amend or modify performance within the period of time which the registrar deems appropriate. Upon the expiration of the prescribed period, in case where such direct sales or direct marketing business operator does not perform required amendments, the registrar shall issue an order to revoke the registration of such direct sale or direct marketing business, as it may be.

In case of (1), (5), (6), (7), or (8), the registrar shall issue an order to revoke the registration of such direct sale or direct marketing business, as it may be.

In case where both direct sales and direct marketing business operator is the same legal entity, the registrar shall issue an order to revoke the registration of both direct sale and direct marketing business.

As soon as the registrar issues an order to revoke the registration of such direct sale or direct marketing business, the registrar shall notify such direct sales or direct marketing business operator in writing thereof, specifying reasons of such revocation, within 7 days, as from the day on which the order has been issued.

Section 43. In case where a person who has received the order issued by the registrar under the provisions of the Section 41/1 paragraph two, Section 41/2, Section 41/7, or Section 42, disagrees with the aforementioned order, such person has the right to file an appeal in writing with the Board within 30 days, as from the day such person has been notified about the order.

Resolution of the Board shall be considered as the final one”.

Section 17. Section 45 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545, amended by the Act Governing Direct Sales and Direct Marketing (release 2), B.E. 2550 is, hereby, repealed and replaced by the following:

“Section 45. Anyone who impedes or does not cooperate with the official performing his or her duties under the provisions of Section 5, or fails to comply with the order issued by the Board or by the Subcommittee under Section 16, or with the order issued by the registrar under Section 40, shall be liable to imprisonment not exceeding 1 month, or to a fine not exceeding THB 10,000, or to both”.

Section 18. Section 47 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 47. Anyone who violates the provisions of Section 20 shall be liable to imprisonment not exceeding 1 year, or to a fine not exceeding THB 100,000, or to both; such person shall also be liable to daily indemnity not exceeding THB 20,000 for the whole period of violation”.

Section 19. Section 49 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 49. Anyone who violates the provisions of Section 22, Section 28, or Section 29 shall be liable to imprisonment not exceeding 6 months, or to a fine not exceeding THB 50,000, or to both”.

Section 20. Section 51 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 51. Anyone who violates the provisions of Section 26, or Section 37 shall be liable to a fine not exceeding THB 30,000”.

Section 21. Sections 51/1, 51/2, and 51/3 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 are, hereby, inserted as follows:

“Section 51/1. Anyone who violates the provisions of Section 27 shall be liable to imprisonment not exceeding 1 year, or to a fine not exceeding THB 100,000, or to both; such person shall also be liable to daily indemnity not exceeding THB 10,000 for the whole period of violation.

Section 51/2. Any direct sales or direct marketing business operator who does not prepare sale-purchase documents for goods or services, or an independent distributor, direct sales representative, or person carrying on direct marketing business who does not deliver sale-purchase documents for goods or services, or delivers sale-purchase documents for goods or services which do not comply with the provisions of Section 30 paragraph one or paragraph two, shall be liable to a fine not exceeding THB 50,000.

Section 51/3. Any direct sales or direct marketing business operator who prepares sale-purchase documents for goods or services which comprise falsified data shall be liable to imprisonment not exceeding 6 months, or to a fine not exceeding THB 50,000, or to both”.

Section 22. Section 52/1 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, inserted as follows:

“Section 52/1. Anyone who violates the provisions of Section 41/3, or Section 41/4 shall be liable to imprisonment not exceeding 6 months, or to a fine not exceeding THB 50,000, or to both; such person shall also be liable to daily indemnity not exceeding THB 5,000 for the whole period of violation”.

Section 23. Section 54 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 is, hereby, repealed and replaced by the following:

“Section 54. In case where the offender is a legal entity, and the offense was committed by such legal entity due to an order or performance of its director, manager, or person responsible for business operation of this legal entity; or in case where such person has the duty to issue certain order or perform certain actions and omitted the aforementioned, and such conduct was the reason of the offence, such person shall be liable to punishment prescribed for such offence”.

Section 24. Anyone already registered as a direct sales business operator prior to the execution of this Act, who is not a partnership or company, may carry on direct sales business, but such person shall register as a partnership or company and register as a direct sales business operator under the provisions of this Act within 120 days, as from the day on which this Act is enforced.

Section 25. A partnership or company already registered as a direct sales business operator prior to the execution of this Act, shall have registered capital as prescribed by Section 38/1 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545, amended by this Act. Such capital shall be registered within 90 days, as from the day on which this Act is enforced.

Section 26. Anyone already registered as a direct sales or direct marketing business operator prior to the execution of this Act, shall provide the security deposit within 90 days, as from the day on which the Ministerial Regulation issued under the authority of Section 38/5 of the Act Governing Direct Sales and Direct Marketing, B.E. 2545, amended by this Act, is enforced.

Section 27. In case where anyone already registered as a direct sales or direct marketing business operator prior to the execution of this Act fails to comply with the provisions of Section 24, Section 25, or Section 26 of this Act, as it may be, within the

prescribed period of time, it shall be considered that the registration of such person or legal entity as a direct sales or direct marketing business operator is revoked.

In case where anyone registered as a direct sales or direct marketing business operator under paragraph one, is the same person or legal entity, it shall be considered that the registration of such person or legal entity as both the direct sales and direct marketing operator is revoked.

Section 28. Applications for registration which have been filed before this Act comes into force and are still under consideration of the registrar, shall be considered by the registrar in accordance with the provisions of this Act.

In case where such applications or methods of consideration do not comply with the ways of applying for registration or methods of consideration under the provisions of this Act, the registrar shall issue an order to make the applicant amend or modify his application within 30 days. If the applicant does not perform amendments or modifications, or fails to comply with the order issued by the registrar within the prescribed period, such application shall be dismissed.

Section 29. All Notifications issued under the authority of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 and applied before this Act comes into force, shall be considered applicable, unless such notifications contradict or fail to comply with the provisions of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 amended by this Act, till the day of enforcement of the Ministerial Regulation, Rules, or Notification issued under the authority of the Act Governing Direct Sales and Direct Marketing, B.E. 2545 amended by this Act.

Issue of such Ministerial Regulation, Rules, or Notification specified in paragraph one shall be performed within 1 year, as from the day on which this Act is enforced. In case where it is impossible to perform the aforementioned, the Minister shall report the obstacles impeding such performance to the Ministerial Cabinet.

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

Countersigned by,

General Prayuth Chan-ocha
Prime Minister

NOTE: The reason for the enactment of this Act is the fact that it is expedient to amend several provisions of the law with respect to direct sales and direct marketing business, and to designate more clear and appropriate standards regarding operation of direct sales or direct marketing business. This will serve for the benefit of consumers whose rights related to sale-purchase of goods or services are prejudiced, and serve as the evidence that consumers are protected in case where consumers suffer losses due to the fact that business operators fail to comply with the provisions of this Act. Qualifications required for those applying for the registration as direct sales business operator include establishment of a registered partnership, limited partnership, limited company, or public limited company. Duties of direct sales and direct marketing business operators include providing security deposits under the provisions of this Act and notifying the registrar in case of relocation of offices; operational reports shall be submitted to the registrar as well. Apart from this, business operators shall prepare sale-purchase documents with respect to goods or services. Standards for transfer of the business and dissolution of the direct sales or direct marketing business have been designate, as well as clear factors due to which the registration as a direct sales or direct marketing business operator may be revoked. Appropriate punishments for offences have also been revised. Therefore, it is expedient to proclaim this Act.