

**DIRECT SALE AND DIRECT MARKETING ACT,
B.E. 2545 (2002)***

BHUMIBOL ADULYADEJ, REX.
Given on the 23rd Day of April B.E. 2545;
Being the 57th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on direct sale and direct marketing;

Whereas it is aware that this act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29, in conjunction with section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

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

Section 1. This Act is called the “Direct Sale and Direct Marketing Act, B.E. 2545 (2002)”.

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

Section 3. In this Act:

“Direct Sale” means goods or service marketing in the manner of directly offering to the consumers at the residence or the work place of the consumer or of other person or at place other than a regular place of business through the direct sale agent or the independent distributor in single-level or multi-level, but excluding juristic act prescribed by Ministerial Regulation;

* Translated by the Office of the Council of State, with support of The Asia Foundation (Thailand), Copyright 2005.

“Direct Marketing” means goods or service marketing in the manner of data communication to offer goods or service directly to the consumer who is far by distance, and expect each consumer to response for purchasing goods or service from such direct marketing businessman;

“Consumer” means a person who purchases or obtains service from an independent distributor, a direct sale agent, a direct sale businessman or a direct marketing businessman or a person to whom an offer or invitation is made from an independent distributor, a direct sale agent, a direct sale businessman or a direct marketing businessman to purchase goods or obtain services;

“Independent Distributor” means a person to whom ownership in goods or service has been transferred by a direct sale businessman and who has directly offered such goods or services to consumer;

“Direct Sale Agent” means a person who is entrusted by a direct sale businessman to directly offer the goods or services to consumer;

“Purchase” includes hire, hire-purchase or acquire by whatever means for monetary consideration or other benefit;

“Sell” includes let, sell by hire-purchase or procure by whatever means, for which monetary consideration or other benefit is demanded, and also includes offer or invitation to do as aforesaid;

“Goods” means an article produced or possessed for sale;

“Service” means an undertaking to accomplish a work, grant of any right or permission to use or conferring benefit in any property or business, for which monetary consideration or other value is demanded, excluding hire of services under labour laws;

“Board” means the Direct Sale and Direct Marketing Board;

“Member” means a member of the Direct Sale and Direct Marketing Board;

“Registrar” means the Secretary-General of the Consumer Protection Board;

“Competent Official” means a person appointed by the Minister for the execution of this Act;

“Minister” means the Minister having charge and control of the execution of this Act.

Section 4. The Prime Minister shall have charge and control of the execution of this Act and shall have the power to appoint the competent officials and issue the Ministerial Regulations for the execution of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

Section 5. In the performance of duties under this Act, the competent official shall have the following powers:

(1) to issue a summon to any person to give statement or to make a notification of facts or submit a written explanation or an account, a register, a document or an evidence for examination or consideration;

(2) to enter the business place of the direct sale businessman or the direct marketing businessman during business hours of that work place in order to enquire on the fact or examine documents or evidence in order to assure the execution of this Act;

(3) to collect or take goods in reasonable quantities as a sample for examination or analysis without paying for such goods. Nevertheless, the collection or taking of goods and returning of goods as requested by the owner shall be performed in accordance with the rules prescribed by the Board.

The exercise of power under paragraph one (2) shall perform in accordance with the regulations prescribed by the Secretary-General of the Consumer Protection Board. The regulations shall at least prescribe on declaration of good faith prior to entering, presentation of notification for entering to the occupier of premise, and report on the results of performance of duties to commanding official.

In the performance of duties under paragraph one, the competent official shall be provided with reasonable facilities by concerned person.

Section 6. In the performance of duties under this Act, the competent official shall produce the identification of competent official.

The identification of competent official shall be in accordance with form prescribed and published by the Board.

Section 7. In the execution of this Act, a member, a member of a sub-committee, a Registrar and a competent official shall be an official under the Penal Code.

CHAPTER I
Direct Sale and Direct Marketing Board

Section 8. There shall be a Board called the “Direct Sale and Direct Marketing Board” consisting of:

(1) a Chairman who has knowledge and expertise concerning the direct sale business and the direct marketing business, appointed by the Council of Ministers;

(2) *ex officio* members, i.e. the Director-General of the Department of Internal Trade, the Director-General of the Department of Industrial Promotion, the Commissioner-General of the Royal Thai Police and the Secretary-General of the Food and Drug Administration;

(3) members appointed by the Council of Ministers from one representative of an association with the objective concerning the direct sale business, one representative of an association with the objective concerning the direct marketing business and two representatives of association or foundation with the objective concerning the consumer protection;

(4) four qualified members appointed by the Council of Ministers from persons who have knowledge and expertise concerning the direct sale business or the direct marketing business, provided that no less than half of qualified members shall be appointed from private sector.

The Secretary-General of the Consumer Protection Board shall be a member and secretary.

In the appointment of the member under paragraph one (3), all associations with the objectives concerning the direct sale business, the associations with the objectives concerning the direct marketing business, or the association or foundation with the objectives concerning the consumer protection, as the case may be, shall nominate the persons whom they consider appropriate to the Council of Ministers for the appointive consideration. The rules and procedures for such nomination shall be prescribed in the regulations issued by the Minister.

Section 9. The Chairman shall not hold any position or be a partner or a shareholder in excess of ten percent in a partnership or company conducting direct sale business or direct marketing business during the period of one year before he assumes the office or during his term in the office.

Section 10. A member under section 8 (1), (3) and (4) shall hold office for a term of three years. An outgoing member may be re-appointed, but it shall not be an uninterrupted period of two terms.

Upon expiration of the term referred to under paragraph one, if there has not yet been an appointment of a new member, the member whose term in the office has expired shall retain in the office to continue their service until the newly appointed member assumes the office.

Section 11. In addition to vacating office on the expiration of the term under section 10, a member is appointed by the Council of Ministers vacates office upon:

- (1) death;
- (2) resignation;
- (3) being a bankrupt;
- (4) being an incompetent or quasi-incompetent person;
- (5) being imprisoned by a final judgement to a term of imprisonment, except for an offence committed through negligence or petty offence;
- (6) being removed by the Council of Ministers on account of defective or dishonesty in performance of duties, misconduct or deficiency in ability.

In the case where a member vacates office prior to expiration of his term, the Council of Ministers may appoint another person as replacement. The appointed person shall retain the office for the remaining term of the member whom he replaces.

In the case where the Council of Ministers appoints an additional member during the term of an appointed member, the additionally appointed member shall hold the office for the remaining term of the member already appointed.

Section 12. At a meeting of the Board, if the Chairman of the Board does not attend or is not present at the meeting, the members present shall elect one among themselves to preside over the meeting.

At every meeting of the Board, the presence of no less than one-half of the total number of the members is required to constitute a quorum.

The decision of the meeting shall be by majority of votes. Each member shall have one vote. In case of an equality of votes, the person presiding over the meeting shall have an additional vote as the casting vote.

Section 13. The Board shall have the following powers and duties:

(1) to consider a complaint from consumer who suffers hardship or injury resulting from acts of the independent distributor, the direct sale agent, the direct sale businessman or the direct marketing businessman;

(2) to issue or publicize information concerning goods or services which may cause damage to or be prejudicial to the rights of consumer, and this purpose, the name of such goods or services or the name of the independent distributor, the direct sale agent, the direct sale businessman or the direct marketing businessman may be specifically mentioned;

(3) to regulate the direct sale businessman and the direct marketing businessman including supervises practices for direct sale and direct marketing;

(4) to lay down regulations or notifications concerning the execution of this Act;

(5) to consider and decide an appeal against an order issued by the Registrar;

(6) to submit opinion to the Council of Ministers concerning policy and measure for regulating and promoting businesses in connection with the direct sale and the direct marketing, and to consider and give opinion in any matters concerning direct sale business and the direct marketing business as entrusted by the Council of Ministers or Minister;

(7) to scrutinize and expedite execution of powers and duties of competent officials, government offices or other state agencies in accordance with the laws as well as to expedite the legal proceedings by the competent officials for the offences under this Act;

(8) to recommend issuance of Ministerial Regulations under this Act;

(9) other acts as entrusted by the Council of Ministers or Minister.

In the performance of duties under this section, the Board may entrust the Office of the Consumer Protection Board to carry out or prepare proposals to be submitted to the Board for consideration.

Section 14. The Board may appoint a sub-committee for consideration or perform any particular act on behalf of the Board.

Section 15. Section 12 shall apply to a meeting of the sub-committee *mutatis mutandis*.

Section 16. In the performance of duties under section 13 and section 14, the Board or a sub-committee shall have the power to order any person to provide the facts, explanations, recommendations or opinion or submit concerning document or evidences for supplementing the consideration.

Section 17. In the performance of duties under this Act, the Board shall provide reasonable opportunity for the person accused or suspected of having committed contrary to this Act to present fact and express opinion, except in the case of necessity or urgency whereby any delay shall cause serious damage to any persons or shall affect the public interest.

In the stipulation or issue of order on any matters under this Act, the Board shall give due regard to the damage which may be caused to consumer, an independent distributor, a direct sale agent, a direct sale businessman and a direct marketing businessman; and in the case where it is deemed reasonable, the Board may stipulate provisional conditions or procedure for the enforcement thereof.

Section 18. The Office of the Consumer Protection Board under the law on Consumer Protection shall be responsible for administrative work of the Board, and shall have the duty in accepting applications for registration of business in connection with the direct sale and the direct marketing, to monitor practice of business in connection with the direct sale and the direct marketing, and to carry out works under this Act.

CHAPTER II

Direct Sale and the Direct Marketing Businesses

Section 19. No direct sale businessman or direct marketing businessman shall conduct business in a manner of soliciting a person to join with direct sale or direct marketing networks by agreeing to provide benefit for soliciting other person to join such network, which calculated from the increased number of participants.

Part 1
Direct Sale Business

Section 20. No person shall conduct direct sale business, unless registered the direct sale business under this Act.

Section 21. A direct sale businessman shall conduct his business in accordance with the benefit scheme submitted to the Registrar under section 38

The benefit payment scheme shall be the following characteristics:

(1) an independent distributor or a direct sale agent who is not employed by the direct sale businessman shall not benefit principally from recruitment of person or introduction of other independent distributors or direct sale agents to participate as a direct sale network;

(2) benefit that is the main income of independent distributor or direct sale agents who is not employed by the direct sale business shall depend on sale of goods or service to consumer, including purchase for his own use or consumption;

(3) an independent distributor shall not be forced to purchase goods;

(4) an independent distributor shall not be persuaded to purchase goods in an unreasonably high volume;

(5) the calculation method for benefit shall be demonstrated accurately or feasible and distinctly;

(6) other characteristic as determined by the Board.

Any benefit scheme that is different from the characteristics set forth in paragraph two shall have effect only to the extent that it is fair to an independent distributor or a direct sale agent who is not employed by the direct sale businessman.

Section 22. No direct sale businessman shall collect a membership fee, training fee, cost of sales promotion materials and equipment or other fees for participating as a network of direct sale business from independent distributors or non-employee direct sale agents at the rate higher than that prescribed and announced by the Board.

Section 23. A contract between an independent distributor and a direct sale businessman shall be made in writing and shall contain at least the following particulars:

(1) unambiguous conditions on benefit payment according to benefit payment scheme;

(2) unambiguous conditions on application fee, training fee, cost of sale promotion materials and equipment or other fees;

(3) unambiguous conditions on any purchase by the direct sale businessman of the goods, sales promotion materials and equipment, manuals or business promotion equipment back from independent distributor, and duration within which independent distributor could exercise such right.

The provisions of paragraph one (1) and (2) shall also apply to a non-employee direct sale agent.

Section 24. In direct offering of goods or service to consumer, an independent distributor shall act in accordance with the conditions and the sales plan as designated by the direct sale businessman.

Section 25. When an independent distributor exercises his right to return the goods, sales promotion materials and equipment, manual or business promotion equipment previously purchased from a direct sale businessman, the direct sale businessman shall purchase them back at the price paid by the independent distributor, within the period of fifteen days from the date that the independent distributor exercised his right of return. However, in the exercise of the rights to return in the case where the contract under section 23 has expired, the direct sale businessman shall be entitled to deduct operating cost at a rate not exceeding that prescribed and announced by the Board, and shall be entitled to set-off any debts involving the contract under section 23 payable by the independent distributor.

Section 26. Prior to entering premise to offer to sell goods directly at the residence or the work place of the consumer or of other persons or residence or work place of a consumer or a place other than a regular place of business, the independent distributor or the direct sale agent shall first seek permission from the consumer or the occupant of that premise, and shall not conduct any act interfering or causing annoyance to such person. In this connection, the independent distributor or the direct sale agent shall present his identity card or identification card for independent distributor or direct sale agent issued by a direct sale businessman.

Part 2
Direct Marketing Business

Section 27. No person shall conduct direct marketing business, unless registered the direct marketing business under this Act.

Section 28. Statement contained in data communication for offering to sell goods or service of a direct marketing businessman shall be as provided in the Ministerial Regulations.

Section 29. The provisions of the law on Consumer Protection in respect of Consumer Protection against Advertising shall apply to the data communication for offering to sell goods or service by the direct marketing businessman *mutatis mutandis*, whereby the powers and duties of the Consumer Protection Board shall be regarded as those of the Minister, and the powers and duties of the Committee on Advertisement shall be regarded as those of the Board.

CHAPTER III
Consumer Protection

Section 30. An independent distributor, a direct sale agent or a direct marketing businessman shall have the duty in delivering to the consumer the document concerning the purchase and sell of goods or service.

The document concerning purchase and sell under paragraph one shall contain a Thai language statement that is perceptible, indicating the name of the purchaser and of the seller, the date of purchase and the date of delivery of the goods or service, including the right of consumer to terminate the contract. The right to terminate the contract shall be printed in the alphabets that are conspicuous compared to the general statements.

Section 31. The Board shall have the power to specify details of a document concerning purchase and sell of goods or service that adopts the method of direct sale or direct marketing, with emphasis on price of goods or service that are subject to the consumer is protected and type of goods or service.

The document concerning purchase and sell under paragraph one shall contain at least the following particulars:

- (1) details under section 30;
- (2) scheduled time, place and method of payment of debt;
- (3) place and method of delivery of goods or service;
- (4) method for termination of the contract;
- (5) method for returning of goods;
- (6) warranty on goods;
- (7) replacement of goods in case of its defect.

The announcement prescribing details of a document concerning purchase and sell shall be published in the Government Gazette.

Section 32. A purchase and sell of any goods or service for which an independent distributor, a direct sale agent or a direct marketing businessman does not provide a document concerning purchase and sell having the details under section 30 or section 31 shall not be binding on a consumer.

Section 33. In purchasing of goods or service from a direct sale or from a sale through direct marketing, a consumer shall have the right to terminate the contract by giving written notice of his intention to the direct sale businessman or the direct marketing businessman within seven days from the date of receipt of goods or service. For the direct sale business, consumer may notify his intention to the relevant independent distributor or the relevant direct sale agent.

The provisions of paragraph one shall not apply to types, prices or kinds of goods or service prescribed in the Royal Decree.

Section 34. A consumer exercising the right to terminate the contract under section 33 shall choose to perform one of the following acts:

- (1) return the goods to the independent distributor, the direct sale agent or the direct sale businessman, in the case of the direct marketing;
- (2) appropriately keep the goods within the period of twenty-one days from the date of exercise of the right to terminate the contract, except where the goods are perishable by nature and cannot be kept for such period, the goods shall be kept for a period and according to the method appropriate to their nature. After the expiration of such period, the consumer may or may not keep such goods.

The consumer who chooses to act under paragraph one (2) shall have the duty to return the goods to the independent distributor, the direct sale agent, the direct sale businessman or the direct marketing businessman, as the case may be, so that the latter can come to collect the goods at the domicile of the consumer. However, if the direct sale businessman or the direct marketing businessman requests the consumer to return the goods by mail with postage payable by the recipient, within the period under paragraph one (2), the consumer shall return the goods pursuant to the request of such businessman.

If the goods are consumable, the consumer shall have the duty to return only the remaining portion from utilisation prior to exercising the right to terminate the contract.

The rules and procedures for returning the goods and service shall be as prescribed in the Ministerial Regulations.

A consumer shall have the right to retain the goods until he has been refunded the sum paid by him for the purchase of such goods.

Section 35. Subject to section 34, if a goods or service are damaged or lost due to the fault of a consumer, or a consumer has made the return of the goods or service to become impossible, the consumer shall pay damages to the independent distributor, the direct sale agent, the direct sale businessman or the direct marketing businessman, as the case may be, except for damage normally arising, for the purpose of using the goods or service, from the operating of an assembled thing or a mixing.

Section 36. Where a consumer exercises his right to terminate the contract under section 33, the independent distributor, the direct sale agent, the direct sale businessman or the direct marketing businessman shall refund the total sum that is paid by the consumer to purchase the goods or service within the period of fifteen days from the date of receipt of the notice of intention to terminate the contract.

If any independent distributor, any direct sale agent, any direct sale businessman or any direct marketing businessman fails to refund the total amount and within the period under paragraph one, such independent distributor, direct sale agent, direct sale businessman or direct marketing businessman shall pay to the consumer a penalty at the rate prescribed and announced by the Board.

Section 37. A warranty on goods or service shall be made in Thai language and shall indicate the rights of a consumer to claim his rights pursuant to the warranty that is unambiguous and perceivable as to its stipulated terms.

The details of the warranty on goods or service under paragraph one shall be as prescribed and announced by the Board.

CHAPTER IV
Registration of Direct Sale and Direct Marketing Businesses

Section 38. Any person who intend to conduct direct sale business or direct marketing business shall file an application with the Registrar in accordance with the rules and procedures prescribed and announced by the Board.

With respect to a direct sale businessman, he shall also submit a benefit payment scheme together with the application under paragraph one.

If the benefit payment scheme is to be amended, the direct sale businessman shall notify the amendment to the Registrar before applying the amendment to practice.

Section 39. An application for the registration of direct sale and direct marketing shall be in the form as prescribed and announced by the Board, which shall contain at least the following particulars:

- (1) name of the direct sale businessman or of the direct marketing businessman;
- (2) domicile of the direct sale businessman or of the direct marketing businessman;
- (3) type of kind of goods or service;
- (4) method of sale of goods or service.

CHAPTER V
Registrar

Section 40. In the performance of duties of the Registrar under this Act, the Registrar shall have the power to summon a concerned person to give explanations, or submit necessary documents and evidence for consideration or examination.

Section 41. Upon receipt of an application for registration of the direct sale and direct marketing businesses, the Registrar shall consider and examine the following matters:

- (1) the benefit payment scheme shall not be contrary to law or public order or good morals;
- (2) the features of the goods or service shall be exactly the same as the data communication in the offer for sale;
- (3) the contract contains the accurate and complete particulars as prescribed and announced by the Board.

Where the Registrar considers that the filing of the application is proper in accordance with section 38 paragraph one and section 39, the Registrar shall register the direct sale business or the direct marketing business, and shall give a written notification thereof to the applicant within forty-five days from the date of receipt of the application for registration of the direct sale business or the direct marketing business.

Where the Registrar considers that the filing of the application is not proper in accordance with section 38 paragraph one and section 39, he shall issue an order requiring the applicant to make appropriate amendments within a reasonable period. After the applicant has duly made the amendments, the Registrar shall register the direct sale business or the direct marketing business, and shall give a written notification thereof to the applicant within thirty days from the date of receipt of such documents.

In the case where the applicant fails to comply with the order requiring the amendments within the specified period, the Registrar shall issue an order denying to register the direct sale business or the direct marketing business, and the Registrar shall give a written notification thereof together with the rationale therefore to the applicant within seven days from the expiration date for compliance with the order.

Section 42. In the case where there subsequently appears that any direct sale businessman or any direct marketing businessman does not conduct the direct sale

business or the direct marketing business under this Act, the Registrar shall have the power to revoke the registration of the direct sale business or the direct marketing business, and shall give a written notification thereof together with the rationale therefore to the direct sale businessman or the direct marketing businessman within seven days from the date that the Registrar has ordered revocation thereof.

CHAPTER VI

Appeal

Section 43. In the case where the Registrar issues an order denying to register the direct sale business or the direct marketing business under section 41 or issues an order to revoke the registration of the direct sale business or the direct marketing business under section 42, the applicant, the direct sale businessman or the direct marketing businessman, as the case may be, shall be entitled to file a written appeal to the Board within thirty days from the date of a written notification of order denying registration or written notification of revocation order from the Registrar.

The decision of the Board shall be final.

Section 44. Rules and procedures for filing the appeal and the procedure for determining the appeal shall be prescribed in regulations issued by the Board.

CHAPTER VII

Penalties

Section 45. Any person fails to comply with an order of the Board or the sub-committee under section 16 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 46. Any person violates section 19 shall be liable to imprisonment for a term not exceeding five years and to a fine not exceeding five hundred thousand Baht.

Section 47. Any person violates section 20 or 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 a fine not exceeding ten thousand Baht a day throughout period of violation.

Section 48. Any person violates section 21 paragraph one shall be liable to a fine not exceeding three hundred thousand Baht.

Section 49. Any person violates section 22 or section 28 shall be liable to imprisonment for a term not exceeding six month or to a fine not exceeding fifty thousand Baht or to both.

Section 50. Any person violates section 23 or section 25 shall be liable to a fine not exceeding fifty thousand Baht.

Section 51. Any person violates section 26 or section 30 paragraph one or section 37 shall be liable to a fine not exceeding thirty thousand Baht.

Section 52. Any direct sale businessman fails to notify the Registrar for an amendment to his benefit payment scheme under section 38 paragraph three shall be liable to a fine not exceeding three hundred thousand Baht.

Section 53. Any person has committed an offence and was punished under this Act, commits an offence hereunder within five years from the date he is discharged from his punishment, shall be liable to double a penalty.

Section 54. In the case where the offender who is liable to punishment under this Act is a juristic person, the managing director or manager or the person responsible for the operation of such juristic person shall be liable to the punishment imposed by law for such offence, unless he is able to prove that he was not involved in the commission of the offence by such juristic person.

Section 55. Except for the case of section 46, the Board shall have the power to settle all the offences under this Act, and for this purpose, the Board shall have the power to delegate power to settle the case to a sub-committee or an inquiry official or competent official under such rules or conditions as the Board may deem appropriate.

Subject to the provisions of paragraph one, if an inquiry official discovers, in holding an inquiry, that any person who has committed an offence under this Act and

has agreed to have the case settled, the inquiry official shall submit the case to the Board or to the person entrusted by the Board to exercise the power to settle the case under paragraph one within seven days from the date such person expressed his consent to a case settlement.

After the offender has paid a pursuant to the settlement, the case shall be regarded as settled in accordance with the Criminal Procedure Code.

Transitory Provision

Section 56. The direct sale businessman and the direct marketing businessman who already conduct such business on the effective date of this Act shall proceed with the registration of the direct sale business and the direct marketing business within one hundred and twenty days from the effective date of this Act.

Countersigned by:

Pol.Lt.Col.Thaksin Shinawatra
Prime Minister