

## Ins and outs of direct-sales registration in Thailand

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Thailand is a highly attractive market for businesses engaged in direct sales, with most of the top global companies present. The result is a 70-billion-baht industry with an annual growth rate of 8.3%. With many new companies eager to join the fray, this article provides an introduction to the legal requirements necessary to proceed with a direct-sales venture.

Most business activities in Thailand require registrations and/or licences in order to be carried out legally, and the direct-sales business is no exception. Under the Direct Sales and Direct Marketing Act of 2002 (DSA), operators are obligated to register with the secretary of the Consumer Protection Board (as the registrar) through the direct-sales section of the Office of the Consumer Protection Board (OCPB).

The DSA defines "direct sales" as the marketing of goods or services in a manner of communicating information for the sale of goods or services directly to the consumer at home or the workplace or any other place that is not an ordinary place of business through a direct-sales representative or one or more levels of independent distributors.

With the OCPB as the authority responsible for registration, an application by a direct-sales business operator to this government body will undergo a thorough examination aimed at protecting consumers' rights. Under the provisions stipulated in the DSA, once the registrar determines that an application complies with the conditions and relevant regulations prescribed in the DSA, the registrar must accept and process the registration within 45 days from the receipt of the application.

On the other hand, if the registrar concludes that an application does not comply with the law, the applicant will be notified to amend it within a reasonable period of time. Upon resubmission of the revised application, the registrar will process the registration within 30 days if it meets all criteria.

In practice, these prescribed time periods do not apply until an application has passed a preliminary review by the direct-sales section and reached the registrar. There is no time limit on the preliminary review stage, and it may take up to two years, depending on the complexity of the applicant's compensation plan.

While the DSA does not require that an applicant be a company formed in Thailand, in practice this is generally preferred. Additionally, the direct-sales section will often expect a company to have at least one Thai director, and if all directors are foreigners, at least one must hold a valid work permit.

Of utmost importance in terms of the required documents in an application is a compensation or remuneration plan for distributors or representatives. The direct-sales section will examine in great detail whether such plans comply with Section 21 of the DSA. The plan must:

not require an independent distributor to purchase goods;

not encourage an independent distributor to purchase goods in unreasonably large amounts; and

clearly demonstrate remuneration payment calculations.

The direct-sales section also goes by many unwritten internal rules that may be subject to change if the head or registrar is replaced. By way of example, calculation intervals and remuneration payments should not be less than 14 days, but the determined scope of these periods is at the officer's discretion, as according to Section 25 an independent distributor can return any purchased products to the company within 15 days.

Furthermore, if the direct-sales section finds a description in a product catalogue to be an advertisement that contains wording that should be reviewed by the advertisement committee, the direct-sales section may order the company to obtain a written opinion from the advertisement committee.

The product catalogue will be reviewed in great depth, and if it contains any scientific claims, the company must be able to demonstrate scientific test results issued by a reliable organisation in support of such claims. Unlike direct-sales registration, obtaining the advertisement committee's opinion is not free of charge, and it will likely delay the registration process.

Upon the completion of registration, if any changes are made to the documents submitted to the OCPB, the company must inform the OCPB of such changes. Although the registration does not need to be renewed, the company must report its business progress to the OCPB each January and July.

Many of the above requirements are yet to be set in stone, but once written guidelines are entered into Thai law, prospective direct-sales business operators will be able to plan their business strategies more effectively.

Until then, they are advised to seek legal counsel to navigate this shifting legal landscape.