



<< Left  
**Penrurk Phetmani**  
Attorney-at-Law  
penrurk.p@tilleke.com

<< Right  
**Nutavit Sirikan**  
Attorney-at-Law  
nutavit.s@tilleke.com

## Direct Sales and Direct Marketing Act: New Compliance Obligations for Business Operators

Amendments to Thailand's Direct Sales and Direct Marketing Act (No. 3), B.E. 2560 (2017) were published in the *Government Gazette* on May 17, 2017, and will become effective on September 15, 2017 (120 days after the date of publication). While the new provisions will enhance consumer protection, they will also impose more stringent regulations and obligations on business operators. This article discusses the amendments and their potential effects on business operators and consumers.

### New Legal Definitions

The amendments significantly change the definition of "direct marketing," which will refer to the marketing of goods and services by means of communicating information, in order to directly offer goods and services for sale to remote consumers, with the expectation that consumers will accept the purchase of such goods and services from the direct marketing operators. It should be noted that, under a new ministerial regulation that is in the consideration and legislation process, the sale and purchase of goods and services in some circumstances may not fall under the definition of "direct marketing," and thus no direct marketing registration will be required.

The amendment also introduces definitions for "partnership" and "company," which were not previously defined. These new definition are intended to limit applicants who qualify for direct sales registration to certain juristic persons (i.e., such applicants must be registered partnerships, limited partnerships, private limited companies, or public limited companies). Individuals are only allowed to apply for direct marketing registration, not direct sales registration.

### Specific Requirements for Direct Sales Registration

Juristic persons that qualify for direct sales registration are required to fulfill statutory requirements, including the need to have paid-up capital of THB 500,000 or more for partnerships, and THB 1 million or more for companies.

### Common Requirements for Direct Sales and Direct Marketing Registration

Juristic persons applying for direct sales and direct marketing registration must not have had their direct sales or direct marketing registration revoked within a period of five years prior to the application submission date.

Furthermore, managing partners, directors, managers, or persons who have the power to manage the partnership or company must not be: (1) bankrupt; (2) adjudged to be incompetent or quasi-incompetent; (3) imprisoned by a final judgement, excluding imprisonment for negligence or misdemeanours; (4) a managing partner, director, manager, or person who has the power to manage a partnership or

another company which has already been granted a direct sales or direct marketing registration; and (5) a managing partner, director, manager, or person who has the power to manage a partnership or a company whose registration has been revoked within a period of five years prior to the application submission date.

Individuals applying for direct marketing registration must not have had their direct marketing registration revoked within a period of five years prior to the application submission date, and must not have any of the five disqualifications mentioned above.

To apply for registration, applicants are required to provide a guarantee to the registrar, in accordance with the amounts prescribed by the ministerial regulation. The guarantee amount that is required may vary according to the size and the specific type of business, and it may be in the form of cash, a bank guarantee, Thai government bonds, or bonds issued by state enterprises in accordance with a notification issued by the direct sales and direct marketing committee. Any proceeds arising from the deposit of this guarantee will belong to the business operators, and the guarantee and proceeds can be claimed back after the transfer or cessation of business.

### Reporting Duties

The amendments will also impose reporting requirements on both direct sales and direct marketing business operators. Operators must submit to the registrar reports relating to their business operations, which are in accordance with the forms, guidelines, and time frame prescribed in the notification issued by the Direct Sales and Direct Marketing Commission. If operators relocate their office, they must notify the registrar within 15 days from the relocation date.

Additionally, any transfer or cessation of operations must be approved by the registrar, in conjunction with the publication of a notification in a local newspaper, and consumers must be informed of this change by registered mail or through another communication channel. In this regard, business operators are not permitted to offer goods and services for sale after the date on which the application for cessation has been filed.

### Enhanced Protection for Consumers

The amendments impose a number of additional responsibilities and liabilities on business operators. First, direct sales operators will be jointly liable to consumers for defects of goods or services, or damages arising from a fault that is attributable to independent distributors. Operators are also responsible for preparing the sale and purchase documents for goods or services and providing the documents to consumers, together with purchased goods or services. For direct sales, independent distributors are required to provide such documents to consumers.

Sale and purchase documents prepared by both operators and independent distributors must be in Thai and easily understandable. The document must contain at least: (1) the name of the buyer and the seller; (2) the sale and purchase date; (3) the delivery date; and (4) the rights of the consumer to terminate the contract, whereby such termination right must be specifically stated so that it is visibly clearer than the other general information. In the event that the operators or independent distributors do not provide sales and purchase documents to consumers with the details above, the transaction will not be considered binding on consumers.

*Continued on page 6*

## Direct Sales and Direct Marketing (from page 5)

### Penalties for Violations

The registrar has the authority to impose corrective measures on offenders for non-serious violations before choosing to revoke their registration, while serious violations will usually lead directly to registration being revoked. The amendments also impose criminal penalties, including fines and/or imprisonment, for a number of violations. For instance, undertaking a direct sales or direct marketing business without registration is subject to imprisonment of not more than one year, or a fine of not more than THB 100,000, or both, with a fine not exceeding THB 20,000 per day during the violation period.

### Director's Liabilities

The managing directors, managers, or any person who is responsible for the operation of the juristic person may be jointly liable for penalties levied on the juristic person if the violation is committed due to the orders or actions of the directors, or if the management had a duty to give an order or act, but failed to do so, causing the juristic person to commit such offense.

### Transition Period

With these amendments set to come into force on September 15, 2017, direct sales and direct marketing companies need to ensure that they take all necessary steps to achieve compliance within the transition period provided under the law:

- ▶ Current direct sales business operators, who are not partnerships or companies, must establish a partnership or company, and reapply for direct sales registration within 120 days from the date on which the amendments become effective.
- ▶ Current direct sales business operators, who are partnerships or companies, must increase their paid-up capital to meet minimum requirements within 90 days from the date on which the new amendments become effective.
- ▶ Current direct sales and direct marketing business operators must deposit the guarantee with the registrar within 90 days from the announcement of the relevant Ministerial Regulation.

Operators must comply with relevant requirements within the specified time frame described above—otherwise, their registrations may be revoked. 🚫